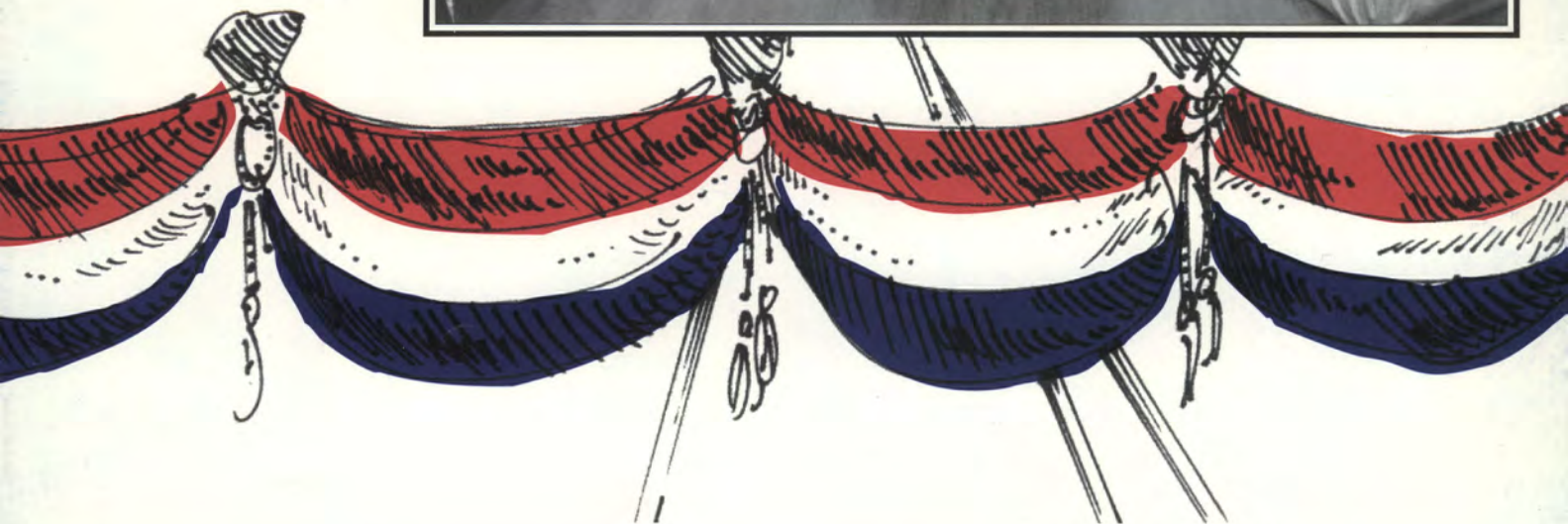


# TITLE *News*

JUNE - JULY 1992



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# TITLE *News*

MAY • JUNE 1992

**On the Cover:** ALTA members from Connecticut talk issues with Chris Dodd, senior Senator from their state, in the offices of the Democratic Senate Banking Committee member. They joined other members of the Association for Capitol Hill visits to their constituent Senators and Representatives during the 1992 ALTA Mid-Year Convention in Washington. Title executives shown include Rich Patterson on the Senator's right, with Tom Ferraro at his immediate left, seated next to John Ford. (Photograph by Ken Abbinante)

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## A MESSAGE FROM THE ABSTRACTER-AGENT CHAIRMAN



I have been around title people and title offices almost all of my life. My grandfather started our family business and my father is still active in the business. I worked for my father in his abstract office during the summers while going to high school and college. After my college graduation, I worked for a title insurance underwriter over a seven-year period before returning to the family business.

During the time I was with the underwriter, I had the opportunity to travel to several states and work with numerous title professionals in their offices. From my experience in those days, and in more recent years, I have developed the following observations.

People who are involved in the land title business are no longer hidden by drawn blinds and dusty books full of records. Today, they are right up on the front lines, on an equal footing with other real estate professionals—the lawyers, the lenders and everyone else involved with land transactions! Title people have moved themselves into this position because they have become more knowledgeable about what it takes to get their product issued and the contract closed.

At the same time they were learning about real estate law, surveys, financing and the like, title people began to realize their careers could be made much more enjoyable if they taught their customers about the title business. And so, they became both educators and students—causing a better line of communication between themselves and their customers.

As this equal footing with their customers was coming about, a feeling of pride was developing! Modern title offices and the latest equipment replaced dreary workplaces and the green eye shades. Those involved in the industry began to realize that they, as individuals and through the work of their trade associations, could have their voices heard in the halls of the State and Federal law makers. Since a natural result of their work caused them to be well informed about happenings in their communities, they found themselves becoming more active in local business and civic affairs.

It became apparent that more highly qualified people needed to be brought into the industry. Consequently, owners and managers began to realize that it was time for them to stop "processing the orders for practice or drill" and stop practically giving their product away. They began making more realistic but still competitive charges for their work.

It would appear that the days of title companies paying for every real estate related social function are over. Instead, these social events have become more of a joint venture with all of the related industries being asked to participate. This is a strong indication that title professionals no longer will allow themselves to be looked upon as those at the bottom of anyone's marketing totem pole.

As I prepare this for printing in *Title News*, I wonder if those who read the message will agree or disagree with my observations. Granted, there is room for discussion. However, I do believe we can all agree we are part of a great industry. Title people don't have to back up and look over their shoulders at anyone. There is understandable pride in what we do, in our people and in our title plants throughout the country.

It's up to us to make the most of this and remain where we belong—on the first team!

Best regards,

Mike C. Currier

# An Invitation to Participate

By Richard J. Oliver  
ALTA President-Elect

Some time ago, I remember a conversation with then incoming ALTA President Jack Rattikin that dramatically changed my role in the Association.

It seemed that Jack was interested in encouraging more of our members to become active in the affairs of ALTA. He suggested that, if I wanted to increase my involvement, I should pass along the names of any ALTA committees on which I would like to serve. Jack promised to give my request full consideration as he planned committee appointments for his year as president of the Association.

Shortly afterward, Jack sent a letter to all ALTA members, extending the same invitation.

That initiative *did* bring a gratifying increase in the number of ALTA members who volunteered for committee service. As a result, I was appointed to the Land Title Systems Committee. Although my company does have automation, I do not pretend to be a management information expert. But my contributions as an abstracter-agent interested in keeping our industry up to date in this rapidly expanding area of technology were welcomed. Some of my fellow committee members were large title underwriter management information professionals, and they valued the perspective that executives from smaller title companies brought to the committee.

That started it for me. Now, I am looking forward to the high honor of serving as your ALTA president beginning in October. And, as other incoming presidents of our Association have done since, I plan to follow the excellent approach started by Jack Rattikin as I work on committee appointments for my administration. About the time you receive this issue of *Title News*, I will be sending all ALTA members a letter—inviting you to write

me and list the committees of the Association on which you are interested in serving for the coming 1992-93 presidential year.

Following is a list of the ALTA committees whose members are appointed by the president, along with a brief summary of their responsibilities. I hope you will study this list, and let me know regarding your preferences. I will give all requests full consideration.

ALTA committees represent the bedrock strength of our Association, and service as a committee member is fulfilling and enjoyable. Many important issues and tasks come before our committees, and as a committee member you will have an important role in related activity that helps shape the future for the entire title industry.

If you are interested in continuing or beginning involvement through ALTA committee service, please send me your letter promptly. This is a great opportunity for contributing to the betterment of our industry.

Here is the list of ALTA Committees with members appointed by the Association president, along with a brief general summary of their responsibilities.

The **Bylaws Committee** considers proposals to amend the ALTA Bylaws and revise the ALTA Code of Ethics.

The **Directory Rules Committee** receives suggestions, complaints, problems, reports of disputes and protests arising from any *Directory* listing and reports recommended changes in *Directory* listing rules and regulations to the Board of Governors.

The **Education Committee** evaluates the education needs of the Association, affiliated regional and state title associations, and individual ALTA members and plans activities that will best meet these needs.

The **Government Affairs Committee** recommends to the Board of Governors po-

sitions and involvement in federal and state governmental activities affecting the land title industry and develops and implements strategy and tactics in accordance with the Bylaws to facilitate reaching legislative/regulatory objectives.

The **Grievance Committee** considers and investigates complaints involving alleged misconduct by ALTA members in relations with the general public, ALTA, or other members of the Association.

The **Improvement Of Land Title Records Committee** reviews significant legislative, administrative and technological developments in the land records area that may affect the title industry—and maintains communication with county recorders/clerks on matters of mutual interest.

The **Committee On Internal Auditing** monitors the American Institute of Certified Public Accountants and reports on any recommended changes in internal auditing practices and procedures, monitors the title industry with respect to changes in business practices, and develops internal auditing procedures for any new practices. This is a specialized committee consisting of corporate underwriter audit directors and chief financial officers.

The **Judiciary Committee** reports important decisions rendered in Federal and State courts relating to the duties, liabilities and responsibilities of the abstractors and insurers of title to real property or liens and obligations thereon and other decisions relative to land titles, and publishes its findings for the ALTA membership.

The **Land Title Systems Committee** studies automation of local title office operations and title plants and provides the ALTA membership with timely information and

*continued on page 23*

# Committees – A Major ALTA Strength

Some of these faces may be familiar, others less so. Together, they represent committee leadership--the bedrock strength of ALTA. Over the years, most who have held high ALTA office began their move up the ladder through committee service. Much of what ALTA accomplishes is attributable to the willingness of bright and able title people to be a part of Association committees.



Capitol Hill in Washington is familiar turf for activity involving Government Affairs Committee Chairman Marvin Bowling (right) and Title Industry Political Action Committee Chair Dan Wentzel.



Title Insurance Forms Committee Chair Oscar Beasley heads an ongoing work effort to keep forms responsive to customer needs.



Edward Marsilje, left, and Fred Hemphill, respective chairs of the Land Title Systems Committee and its Mortgage Bankers Association of America Data Standards Task Force Subcommittee, are involved in work to facilitate electronic ordering of title services by the mortgage banking community.



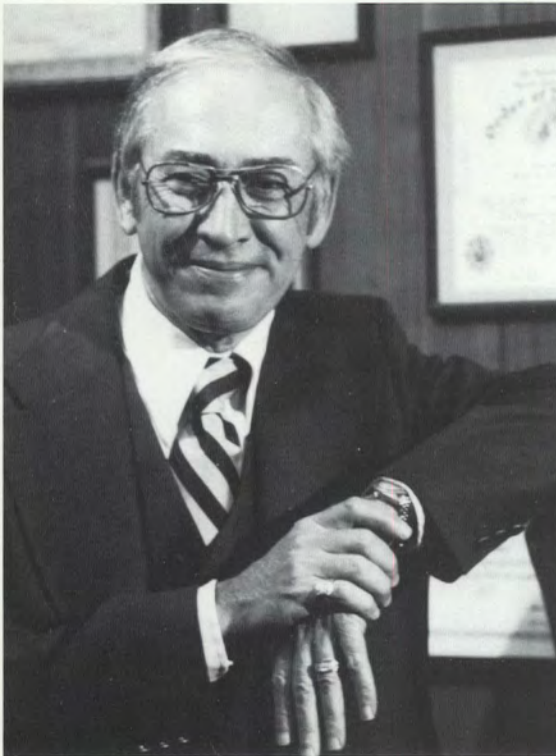
Education Committee Chair Barbra Gould proudly previews the new settlement officer videos of the Land Title Institute.



Chairman Gerry Faller, right, heads the Membership and Organization Committee charged with the all-important task of recruitment and retention of ALTA members across the nation. Among the top performers in the committee's 1992 campaign is Bayard Waterbury, Recruitment and Retention Subcommittee member.

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—John Ruskin (1819-1900)

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# Public Records - - Vision 2000

By Guy D. Paquin

In his 1990 State of the State Message, Governor Mario Cuomo stated "A number of our County Clerks have pointed to changes . . . in their responsibilities as requiring a broad review of their responsibilities. In response to these concerns, I will appoint a study group task force composed of County Clerks, representatives of the New York State Land Title Association, the State Bar Association and the New York State Bankers Association to assess the present status of local recording and filing responsibilities and, where appropriate, make recommendations for reform."

For anyone who depends on the public record, a sigh of relief was in order. For everyone else, it was either "huh?" or "so what?" Those reading this are well aware that the sigh was not the louder of the two.

Those of us who deal with public records/records management/management of informational services/records access/freedom of information/information technology/information resources management/ etc. etc. etc., readily admit that "THE RECORDS" are simply not important to most people in the grand scheme of things. If the budget officer must choose between shelter for the homeless and "THE RECORDS", guess which loses? If he has to allocate funds to public safety or "THE RECORDS", guess which wins? If the choice is pest control in the local jail or "THE RECORDS", the vermin win (temporarily).

Armed with this knowledge, one would think that the creation of a gubernatorial task force to deal with "THE RECORDS" would be a giant step forward and one would be correct. Of course, the task force was created with no funding and this charge from the Governor, which appears overwhelming.

#### *Mission Statement*

*"To examine all existing statutes which impact on the recording and fil-*

*ing of public documents; evaluate these statutes in light of new technologies; compare and contrast these with filing and recording systems in other states and jurisdictions; and make recommendation to the Governor for the development of a standardized system of recording, filing and accessing public documents throughout the State of New York."*

**Figure 1**

### **Governor's Task Force On Local Filing And Recording**

**Westchester County Clerk -  
Chair**  
**New York State Land Title Association - 2 members**  
**New York State Association of  
County Clerks - 2 members**  
**New York State Bar Association  
- 2 members**  
**New York State Bankers Association - 2 members**  
**Savings Bank Association of  
New York - 2 members**  
**New York City, Department of  
Records & Information Services  
- 1 member**  
**State University of New York - 1  
member**  
**New York City Department of  
Transportation - 1 member**  
**Board of Regents - 1 member**  
**Library School, Columbia Uni-  
versity - 1 member**

The task force members (see Figure 1), realizing that they must uphold New York's reputation for creativity, formulated a plan which will enable the accomplishment of this mission.

What follows is a brief history of the development of a comprehensive plan which will result in the modernization of public record keeping in New York. Parts of our experience in New York may be helpful in your state. Perhaps the steps described will trigger an idea which can be used in your state to generate understanding of the problem, and assistance from your state legislative and executive leadership.

### **Beginnings in Bar Liaison**

In order to explain how this occurred, we must perform the classic flashback to the mid-1980s. In the summer of 1985, as I was nearing the end of my term as President of the New York State Association of County Clerks, I decided it was time to try to improve the relationship between the clerks and those who use their offices. I invited the President of the State Bar Association to be a guest at the Clerk's Convention. Neither he nor I had any idea what we were starting.

As a result of that outreach, a joint committee of County Clerks and real property attorneys appointed by the Bar Association President was formed with the goal of standardizing computerization and access to the records of the County Clerks. That committee became known as the ACCESS Committee and still functions today. It has been expanded to include representatives of the New York State Land Title Association, the commercial and mortgage bankers associations and representatives of various State agencies.

With a laudable goal and strong desire to progress, the committee surged forward

*continued*

## PUBLIC RECORDS

*continued*

only to run into one brick wall after another. It soon became apparent that the elephant was just too big for this committee to eat. Standardization of computerization and access for all 62 counties in New York (in view of the myriad of State laws, local laws, State agency regulations, various county charters, etc. etc.) seemed an impossibility. The committee decided to address one issue at a time and initially concentrated on the problem of standardizing and modernizing the system for Uniform Commercial Code filings for cooperative apartment loans. A functional system was developed which meets the needs of all constituencies and is currently before the State Legislature for approval.

Realizing that the task was much too complicated for the somewhat limited representation of the ACCESS Committee, the idea of a much larger group, representing all of those involved in records creation, management and preservation (and with some authority) was conceived. As this idea flourished, the elephant seemed to grow ever larger. It was determined that New York has 4,148 units of local government which, in some way, create, manage or preserve records. These vary from counties to villages, from public authorities to sewer districts, from school districts to fire districts, and so on. As more research was done, it began to seem that each of them had some law or regulation which dictated its record keeping practices. Not true, of course, but it seemed that way.

It was also apparent that any attempt to force new requirements or standards upon these entities would be met with resistance if not accompanied by the resources to pay for them. The dilemma became how do we require standardized records practices without forcing additional costs on those units of government which will need to make changes. After much pondering, it became obvious that it cannot be done.

Lesser mortals might have given up at this juncture but not these intrepid souls. "What if . . ." became the password to meetings and the opening to phone calls and, for months, "Yeah, but . . ." became the reply. Nobody remembers who or when exactly, but at some time an idea was born. It was nurtured and cared for and, in 1987, the State Legislature passed what has become known as the Local Government Records Law. It was signed into law by Governor Cuomo in August, 1987, and all of New York's records problems were solved—NOT!!

## Provisions Of Records Law

The Local Government Records Law repealed numerous statutes dealing with records and record keeping and provided for, among other things, the following:

- Vesting all oversight and authority over local records in the Commissioner of Education.

**Figure 2**

### **Government Records Advisory Council**

#### **State Government Agencies (1 member each)**

**New York State Committee on  
Open Government  
Department of State  
Office of Court Administration  
Office of the State Comptroller**

#### **Others**

**(1 member each unless noted  
otherwise)**

**New York State Council for  
Social Studies  
New York State Association of  
City and Village Clerks  
New York City Department of  
Records & Informational  
Services  
New York State Bar Association  
New York State Association of  
County Data Processing  
Directors  
Metropolitan Transit Authority  
New York State County Histori-  
ans Association  
New York State Conference of  
Mayors  
New York State Association of  
Local Government Records Of-  
ficers  
New York State Supervisors &  
County Legislators Associa-  
tion  
New York State Land Title Asso-  
ciation  
New York State School Boards  
Association  
New York State Association of  
Towns  
New York State Association of  
Town Clerks  
New York State Association of  
County Clerks - 2 members**

- Creating the Local Government Records Advisory Council to be appointed by the Commissioner. (See Figure 2 for composition.)
- Requiring every unit of local government to create a records management program and appoint a Records Management Officer.
- Requiring every unit of local government to maintain records and conform its records management program to the act, and to the regulations of the Commissioner and the Local Government Records Advisory Council.
- Creating within the State Archives and Records Administration (SARA), a Bureau of Local Government Records to oversee the program and provide administrative support to the Council and to local governments and to provide, in each of the State's judicial districts, a local technical assistance office— each of these local offices to be staffed by at least one certified records professional and staff and one office with two professionals and staff to serve New York City.
- Creating within each judicial district a regional advisory committee to be made up of local government records officers from that district.
- Establishing a grant-in-aid program for local governments to assist in funding of their mandated records management programs, and to encourage joint programs.
- Imposing a surcharge of \$5.00 to be collected for the recording of every document recorded in a County Clerk's office and to be collected at the initiation of every matter in the Supreme or County Court. Providing for the recording officer to retain for his county \$0.25 of each fee collected and to remit the balance monthly to the Local Government Records Improvement Fund. Creating that fund under the dual control of the Commissioner of Education and State Comptroller. Of the money in the fund up to \$2 million annually shall be used to fund the operations of the regional offices and administer the grant-in-aid program. The balance shall be used for competitive grants to local governments for the establishment and improvement of their records programs. The grants shall be approved by the

*continued on page 21*

## *It's Time to Communicate...*

It has been almost three and one-half years since I joined the New York State Land Title Association. Prior to this, I served almost 12 years as the County Clerk of Albany County, New York. I am well aware that my experience in the recording office probably carried a great deal of weight with the Association members who interviewed and hired me. It certainly wasn't my experience in the title business.

In those three and one-half years, I have been asked many times to intercede on behalf of the title industry with one County Clerk or another on recording problems of every description. In almost every instance, I have found it possible to work out a resolution acceptable to both the County Clerk and the Association member. In almost every instance, this has been accomplished with nothing more than a phone call.

By now you are probably saying to yourself, "Sure, it's easy for you to do that. After all, you used to be one of them. We can't do that in our state because they think we are trying to get away with something or they don't like us because we are always in their office getting in their way."

I could continue the scenario for pages, but each of you has your own version of the above. The point is that my experience tells me people in the title industry too often have a tendency to view recording officers as "the enemy". "They" won't let us do our job. "They" messed up that recording. "They" rejected that deed and there was nothing wrong with it. Etc. etc. etc.

On the other hand, often it's "the searchers". "The searchers" bring in batches of papers at 4:50 p.m. and demand that we get them on. "The searchers" treat my clerks like slaves and then expect us to cooperate. Etc. etc. etc.

It seems to me that "we" and "they" have the same goal—to get documents recorded and make them accessible in the most efficient manner possible. Assuming that premise, there should be a better way. I suggest that communication is the first step.

With few exceptions, the recording officers I've known over the past 15 years have been dedicated public officials trying to do their job despite budget cuts and ever-growing dependence on the transfer of real property as a revenue source. All too often, these individuals become so entangled in the day-to-day operations of their offices that they lose sight of the goal of efficient recording and accurate records. This is not a criticism, merely an observation.

All too often, title industry members (by far the largest constituency of recording offices) become embroiled in debates on minutiae in the recording office when we would be better served by finding ways to aid the recording officer in the accomplishment of his/her duties. We understand the necessity of getting that mortgage on record, but have we taken the time to make the employees of the recording office knowledgeable of its importance?

Remember that these are not your "fat cat politicians" but over-worked, underpaid civil servants to whom your important mort-

gage is just another piece of paper. What have you done today to help that recording clerk or microfilm operator get his/her job done in a more efficient manner?

While the recording officer requires his/her employees to wear business attire and behave in a businesslike manner, the office can be full of searchers and examiners in jeans and tee shirts who are clowning around, yelling and joking. Is there resentment to this? You bet there is!

When I was first elected County Clerk, I asked the County Bar Association to assign three real estate attorneys to serve as an advisory committee to help me modernize the office. When I left office almost 12 years later, the same three individuals were still the committee. If your recording officer has not requested such input from title people and other real estate professionals, have you suggested it? Have you offered to be part of the solution?

Does your state recording officers' association even know that your state title association exists? Sound like a stupid question? In my accompanying article, I relate the first outreach of the New York State Association of County Clerks to the users of their offices in 1985. At that time, no member of the Clerks' Executive Committee knew that the New York State Land Title Association existed. Whose fault was that?

Does your state title association send representatives to your recording officers' meetings/conventions? Do you have a recording officers' panel at your title association convention to engage in dialogue and to keep the industry up to date on their plans in areas such as computerization, legislation, etc.? Does your title association assist your recording officers in lobbying for legislation which will help them and the title industry? We do all these things in New York and the results benefit both groups.

The New York State Land Title Association has held numerous regional meetings for title people and County Clerks, deputies and staff. Set up so no one has to travel more than an hour, these round table meetings are an opportunity for the informal airing of problems and concerns, sharing lunch (provided by the Association) and dialogue concerning all areas of the recording business.

The dynamics of these meetings never cease to amaze me. In the morning, the recording officers/staff are all on one side of the table and the title people on the other. After lunch, each County Clerk is seated with the title people who work predominantly in his/her county.

In the accompanying article, I've described what has been accomplished in New York in just seven years as a result of simply communicating and working together. While I am pleased with what we have accomplished, I remain concerned about the preparedness of all parties for the technological leaps on the horizon. Optical disk imaging of public records is here and we had better be

# TIPAC Campaign Off to Encouraging Start

By Dan R. Wentzel  
Title Industry Political Action Committee Chairman

**T**he 1992 Title Industry Political Action Committee Fundraising Campaign is off to a good start. As *Title News* goes to press, our program to develop financial support for the campaigns of Congressional candidates has accumulated almost \$47,000.

Again this election, TIPAC is creating a voice for our industry in Congress by contributing to the individual campaigns of candidates from both parties with political views compatible with our business concerns. The encouraging results this year have been achieved because of outstanding efforts made by several executives in the title industry. Because such volunteer work often goes unacknowledged, the TIPAC Board this year decided to begin formally recognizing the outstanding efforts of title people whose TIPAC performance has been exceptional.

We presented two "early bird" TIPAC performance awards at the recent 1992 ALTA Mid-Year convention in Washington, D.C. TIPAC Board member Richard L. Pollay, President and Chief Operating Officer, Chicago Title Insurance Company, was honored for his key role in generating over \$9,000 in contributions from the Chicago Title and Trust Family of Title Insurers by the time of the Convention. The accompanying photograph shows him receiving the award for the ALTA member company whose administrative and executive personnel generated the greatest dollar amount contributed to for TIPAC by the Mid-Year Convention date.

Lawrence M. White, Executive Vice President, First American Title Insurance Company, assisted by California TIPAC State Trustee Don Wangberg, turned in an impressive fundraising effort in the state of California. They also received awards; Larry's presentation is pictured with this article.

ALTA members in California at that point had contributed \$5,955 – the highest dollar amount of any state. The TIPAC Trustees are looking forward to presentation of more awards for outstanding service at the ALTA Annual Convention this fall.

What does \$47,000 in personal contributions to TIPAC really mean? This represents substantial improvement over 1991, where we raised only \$39,000 for the entire year. At our meeting in January, the TIPAC Board established a 1992 fundraising goal of \$60,000 in personal contributions from members of the title industry. The Board believes this is a reasonable target for three major reasons.

First, in the last Presidential election year– 1988– TIPAC raised over \$60,000.

Second, at least some economic recovery in the housing market is expected.

Third, we hoped that individuals in the title industry will recognize the special political opportunities present in the 1992 elections for allowing the title industry to

participate in shaping the makeup of Congress. At the beginning of this year, political analysts projected substantial turnover in the House of Representatives– at least 100 new members. Thus, 1992 represents an unusual opportunity to help elect business-oriented Representatives on Capitol Hill.

Events occurring on both the political and economic front indicate an improved outlook for the industry, and hopefully one that stimulates member contributions. The Presidential race is now narrowing down to three candidates, but the primary process at least generated some recognition of the need for reorientation of Administration policies toward businesses. The success enjoyed in the Presidential primaries by "alternative" candidates such as Jerry Brown and Ross Perot are a meaningful sign. Hopefully, interest in the political process is rising.

Refinancings have reached a record vol-

*continued on page 24*



**TIPAC Chairman Dan Wentzel presents awards to Lawrence White, left, and to Richard Pollay for their respective leadership in generating the top state and company dollar amounts for financial support of Congressional candidates from both parties with views compatible with concerns of the title business.**

the

# TITLE INSURANCE LAW

## NEWSLETTER

Litigation News &amp; Comment for Defense Counsel

February 1992

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April 1992

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- *News briefs:* Recaps the considerable catalog of news and events that title insurance generates these days.
- *Litigation notes:* A discussion—from a litigation standpoint—of points of interest arising in the reported cases.
- *Bookshelf:* Recent articles, and other publications in the field reviewed.
- *Title insurance law database:* Features news of the Hinshaw & Culbertson computerized title insurance law database.
- *Quarterly index and case table:* Indexing by topic and reference to policy provisions.

# The New Sentencing Guidelines For Organizations: A Practical Guide

By William T. Hassler, Esquire

**W**e have just marked the first anniversary of the U.S. Sentencing Commission's proposed Guidelines for the Sentencing of Organizations, which were promulgated on May 1, 1991. The Guidelines now apply to the sentencing of any organization convicted of an offense committed after November 1, 1991.

Since the Guidelines' inception, they have become a favorite topic of articles in trade publications, and the basis for dozens of seminars. Authors have pointed out that under the new Guidelines sentences for the unwary corporate defendant may easily exceed \$72 million, while a corporation clever enough to retain reliable, white-collar criminal defense lawyers (a description fitting the typical author of such articles) may drastically reduce its exposure through the careful design and implementation of an effective corporate program to prevent and detect violations of law. The discussion below seeks to put such claims into perspective, and explore in a realistic way the differences the sentencing Guidelines and compliance programs adopted in their wake are likely to make in the unhappy event a company is the subject of one of the new wave of white-collar criminal investigations.

Organizational managers have long sought to insulate themselves and their organizations from criminal liability through the adoption of corporate codes. Under this approach, managers hoped that a compliance program could shield them from the taint of wrongdoing by individual employees. See, e.g., Pitt and Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability*, 78 Georgetown L.J. 1599, 1610 (1990). These expectations, however, generally proved to be unfounded. It was the rare government

investigator who would excuse a corporation for misconduct by its employees simply because the company had created a "paper" code of conduct that claimed to discourage wrongdoing. Indeed, as a matter of law, a corporation generally is criminally liable for acts committed by its employees, even if those acts were contrary to explicit corporate policy. As a consequence, many organizations in the past found that the protection that they had sought in adopting such codes was unrealized when an actual case or investigation arose.

The promulgation of the Sentencing Guidelines has changed this balance. The Guidelines in many cases mandate stiff fines, but in exchange promise a reduction in the range of fines applicable to an organization that possesses a compliance program that qualifies under the Guidelines' criteria. In some cases, the applicable fine range could be reduced by 75 percent or, in extreme cases, even more.

In addition, the Guidelines provide that an organization that lacks an effective compliance program at the time it is sentenced will face mandatory probation, which may include intrusive Federal oversight of the organization's future operations. Given these facts, it may seem that there is little to be lost and much to be gained by adoption of a compliance program.

## Potential Civil Side Effects

In weighing the benefits of a compliance program, however, a company must first decide whether the anticipated reduction in criminal liability will offset the potential side effects of such a program in any collateral civil actions -- for example government suspension or debarment actions or lawsuits by private plaintiffs. In many cases, the finan-

cial effects of collateral civil matters will be far greater than the underlying criminal liability, and the costs and benefits of a compliance program must be weighed in this context.

Unfortunately, certain aspects of compliance programs, particularly poorly designed programs, may greatly weaken an organization's posture in any subsequent civil proceeding. Although most organizations will attempt to conduct their compliance program in a way that maximizes the privileged nature of the program, total protection is difficult to guarantee.

As a result, problems that are unearthed by a compliance program may become known to, and highlighted for, plaintiffs' attorneys or government compliance officers. To the same effect, an organization whose compliance program detects instances of non-compliance that it allowed to go uncorrected may find itself in a position much worse than if it had no program at all. These and other issues make the creation of a compliance program a potential two-edged sword that must be handled carefully.

Moreover, even carefully designed programs present difficult choices that are often overlooked when the program is being developed. First, an organization receives no credit for its compliance program if the organization "unreasonably delayed" reporting the offense to appropriate governmental authorities. Where the offense involved is clear-cut -- e.g., a traditional fraud or bribery of a public official -- the decision to inform regulatory officials may not be difficult. But in the context of recent attempts to broaden white-collar criminal enforcement to include more marginal conduct,

*continued on page 25*

# Settlement? Closing?



It's All  
in

## VIDEO TOUR DE FORCE

**P**roduce a set of educational videos on the work of the closing/settlement officer--that can be used across the nation--despite the differences in local law and custom? Come on!

That formidable challenge danced before members of the ALTA Closing and Education Committees some time ago, as they considered the prospect of turning out quality videos that would meet the training/informational needs of diversely located title people and others without becoming tangled in the variations of local practice.

Many debates and several script rewrites later, the intrepid video educators have succeeded. Working closely with Business Television, Inc., a seasoned production company, and ALTA staff, a joint subcommittee from the two committees this spring completed work on two new tapes that will provide a useful and lasting message on closing/settlement for a remarkably diverse audience. In terms of what the title industry has accomplished educationally, they represent a video tour de force.

They are entitled, "Behind the Scenes--A Look at the Settlement Process" and "Closing Real Estate Transactions: Process and Problem-Solving with the HUD-1". Each is a VHS color tape with running time of approximately 25 minutes, and sells for \$50. The videos are offered through ALTA's educational arm, The Land Title Institute, and are accompanied by workbooks developed by Karen Koogler, which can be duplicated for

those using these offerings. These workbooks are included at no additional charge.

### Tapes Have Different Purposes

"Behind The Scenes" provides a broad overview of the work of the closing/settlement officer and can be used with a wide variety of audiences. "Process" is for the training of closing/settlement personnel, and presents a line-by-line analysis of the HUD-1 Form.

"But we do that differently in my area," was a commonly heard comment from the subcommittee and other experts as early

script drafts were reviewed. All expressed concerns were carefully considered in shaping the final productions. In the final design, the videos actually represent a two-stage approach: (1) showing the actual video, and (2) adapting the workbook to instructive commentary by individual users that fills in local details.

After completion of the project, personnel from both ALTA and BTV who have worked on all LTI educational videos produced in recent years agreed the two new offerings are the most challenging LTI video assignment to date. Besides technical accu-



Adjustments are made by the camera and sound men as Rhea Feikin prepares to portray an experienced settlement officer in a video take.

racy, another demanding aspect was realistically presenting the numerous roles of a settlement officer in bringing a closing to successful completion.

Title evidencing and insuring scenes were brought to life by on-location taping at the First American Title Insurance Company offices in Washington, D.C. First American Regional Vice President Tony Schembri and Vice President Larry Blasingame provided an environment that was ideal for shooting those all-important parts of the two productions.

After what seemed an awesome amount of review, comment and script editing, the time for actual shooting and editing arrived. As frequently happens, additional production decisions needed to be made on a spot basis with the camera ready to roll for first take or retake. After it was over, those involved were in agreement that a previously unavailable level of excellence had been reached in providing education and information on the role of the closing/settlement officer. And, that ALTA capability in producing educational videos had just risen dramatically.

Additional information on the new tapes, and other previously existing LTI videos, is available from the Washington office of the organization, telephone (202) 331-7431.

## It's Easy As A-L-T-A

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Whether yours is problem, solution, compliment or criticism, the ALTA staff will be pleased to hear from you! Remember that 1-800-787-ALTA will bring you instant attention.

## Finley Dies; Former Counsel for ALTA

Memorial services were in Washington, DC, for William T. (Tom) Finley, Jr., 56, former ALTA general counsel who died at his home there after an extended illness.

He was a founding partner in the establishment during 1969 of the Washington law firm of Pierson Semmes & Finley. With his colleague Sheldon Hochberg, he began working for the title industry in 1972--assisting ALTA and a number of its members in a wide variety of legislative and administrative matters in Washington. His service as ALTA general counsel was in 1981-84.

In 1991, he--along with Hochberg--joined the Washington law firm of Steptoe & Johnson as partners.

During his career, he had served as clerk to Associate Justice William J. Brennan of the U. S. Supreme Court, as chief counsel for a Senate Judiciary Committee subcommittee on improvements in judicial machinery, and as an associate deputy attorney general in the U. S. Department of Justice.

Survivors include his wife, Julie Hamm Finley, two sons, a sister and a brother.

The family suggests memorial contributions to the American Association of Neurological Surgeons Research Fund, 22 South Washington Street, Park Ridge, IL 60068.

## Florida Insurer Acquired by PMI

PMI Mortgage Insurance Co., a subsidiary of Allstate Insurance Company, has announced acquisition of American Pioneer Title Insurance Company, an underwriter based in Casselberry, FL.

American Pioneer was established in 1981 and is reported to have 17 branch offices and nine title plants serving 22 counties in Florida through both agents and direct operations. Revenues of the title underwriter were reported at over \$19 million for 1991.

According to the announcement, PMI acquired American Pioneer from American Pioneer Casualty Insurance Company, a subsidiary of American Pioneer Federal Savings Bank, a Florida-based thrift institution currently in receivership with the Resolution Trust Corporation.



(Above, left) John Reeves is cast as a busy real estate broker. (Above, right) Rhea Feikin edits narration she is about to deliver with assistance from the teleprompter operator. (Below) Briane Bowman receives helpful advice from Larry Blasingame of First American Title on her role as a title plant employee as Director Bryan Ashby listens at right.



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toll free at (800) 628-5136 for information. If you are not currently a member, call the Association at (202) 296-3671 for an application. It's your business. And you haven't time for the E&O hassle.

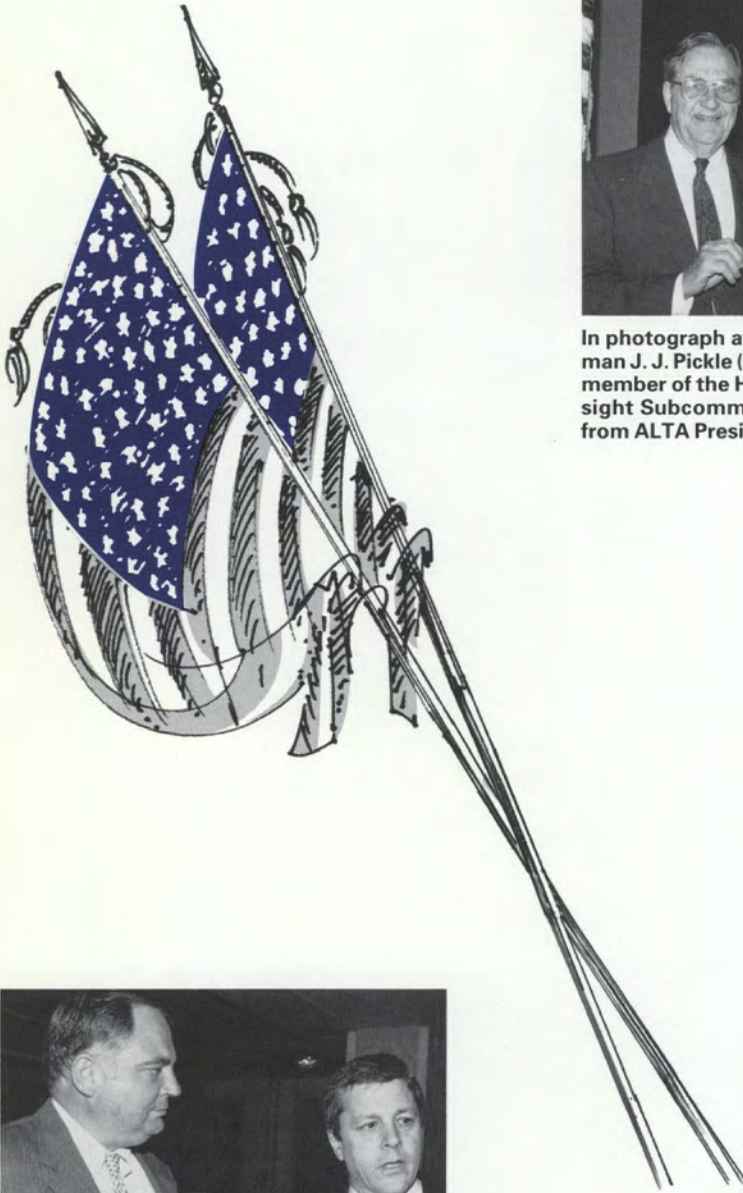


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# Capitalizing on A Convention



In photograph at left are TIPAC Chairman Dan Wentzel, right, and Congressman J. J. Pickle (D-TX) at a special Convention reception honoring the veteran member of the House Ways and Means Committee and chairman of its Oversight Subcommittee. Chairman Pickle receives additional congratulations from ALTA President Dick Cecchetti at right.

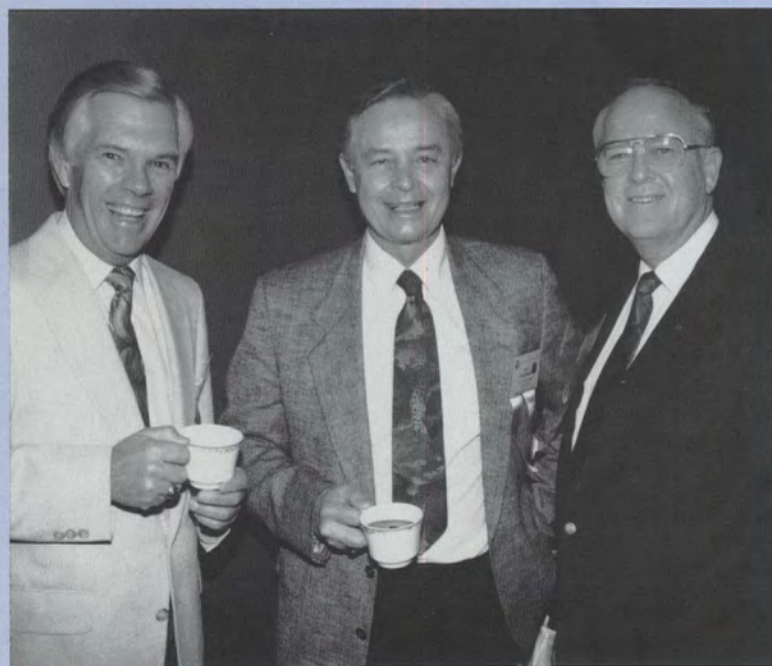
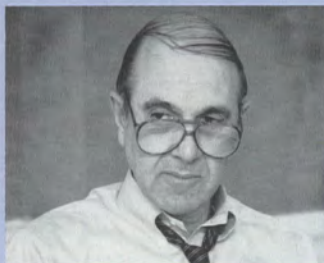


ALTA Past President Charlie Hon, left, shares a conversation during the Convention with a fellow Tennessean, Democratic Congressman John Tanner.

**M**embers attending the 1992 ALTA Mid-Year Convention capitalized on its Washington location, visiting with their Senators and Representatives for a discussion of major issues concerning the title business. Combined with this timely federal legislative communication were a Convention agenda that probed state regulatory topics and covered a variety of educational sessions on subjects ranging from sexual harrasment in the workplace to conversion of public records to optical imaging.

As this and the accompanying pages attest, the traditional informative enrichment and camaraderie of the meeting were accompanied by important initiatives in industry affairs. (Photographs by Ken Abbinante)

# Convention Activity Reflects Communication



Pictured at top, left, are ALTA Governor Herb Wender (right) and Congressman Rick Santorum (R-PA).

Immediately below are Herschel Beard and Jack Rattikin, III of the ALTA Education Committee.

At bottom, left (from left) are three ALTA dignitaries --Abstracter-Agent Section Chairman Mike Currier, Immediate Past President Bill Thurman and Past President Jack Rattikin, Jr.

Vermont Commissioner of Banking, Insurance & Securities Jeffrey Johnson (top, center) and New York Deputy Superintendent of Insurance Richard Hsia (immediately below) present their views on proper regulation of title insurance at a General Session.

(Center, third from top) As Convention activity begins, Bill Colavito gets down to business.

(Top, right, from left) TIPAC Chairman Dan Wentzel, ALTA Past President Dick Toft, Congressman Philip Crane (R-IL).

Immediately below, Jim Phillips of Canon U.S.A., Inc., clarifies a technical point during the Educational Session on issues involved in conversion of county land records to optical disk systems.

# on Widely Diverse Range of Topics and Issues



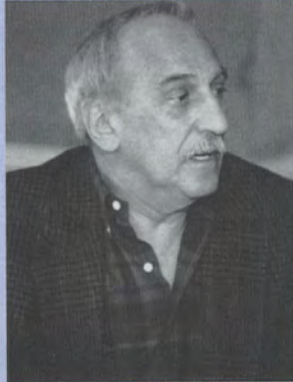
Pictured at top, left (from left) are ALTA Governor Charlie Foster and Lou Meyer. Immediately below, Abstractor-Agent Section Executive Committee Member Joe Parker raises a question during a meeting of that body. At top, center, ALTA President Dick Cecchettini (right) congratulates Parkin Lee and (in photograph to right) Tom Rostad, respective winners of the Convention exhibitor and attendance prize drawings. ALTA Governor Malcolm Morris is shown at center, second from top, and immediately below is Missouri Land Title Association President-Elect Steve Crawford. Pat Berman of ALTA staff congratulates Jim Sax, winner of the Land Title Institute prize drawing, at right, second from top. Immediately below is ALTA Governor Parker Kennedy. At bottom, right, ALTA Abstractor-Agent Section Executive Committee Member Herman Dance (right) visits with two fellow Floridians--Lee and Wendy Huszagh.



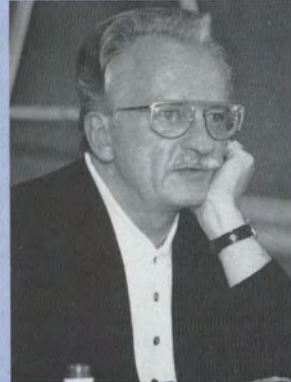
# Focus on The Future



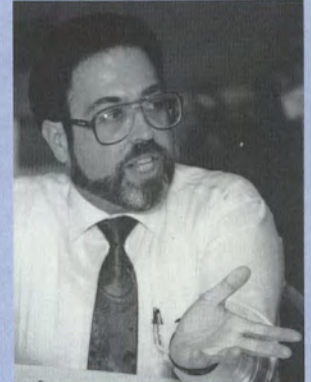
Dale Astle



John Dosa



John Bell



Rich Angelo



Jim Kramer and Marge Schwartz

They gathered during the 1992 Mid-Year at the invitation of the Public Relations Committee. Representing a broad cross section of title industry leadership, a special Focus Group assembled to develop recommendations for the ALTA Board of Governors on the future mission and priorities of the Association. (In addition to those pictured here, participants included Bill Blincoe, John Collopy, Paul Kennedy and Gerard Knorr.)



Randy Farmer and Glenna Yates



Barbara Harms



Jan Alpert

**PUBLIC RECORDS**

*continued from page 8*

Commissioner of Education upon the recommendation of the Local Government Records Advisory Council.

- A "sunset" provision with regard to the surcharge.

Since its creation, the local records program has provided funding for a multitude of local initiatives and programs, has established a statewide technical assistance network and has proved itself to be an unqualified success. As an offshoot, the program has generated another group of dedicated individuals whose main concern is the preservation and protection of public records. The New York Association of Local Government Records Officers (NYALGRO) has become the forum of these professionals and numbers over 400 members and is still growing. It is now time to leave our flashback and return to the creative activities of the task force. Knowing full well that sitting around the conference table and discussing the situation would not accomplish its mission, the members decided to tap the resources available to determine current status and to research available alternatives.

The five counties of the City of New York and five other counties have been selected to serve as analysis sites for examination of

the requirements and methods of filing and recording at the county level and at other levels within the county. State agency involvement has been solicited from those agencies involved with filing of public records. A grant has been obtained from the Local Government Records Fund to provide for a Project Director and staff, and for hiring a research firm to survey existing practices both in New York and in other jurisdictions.

Existing groups such as the ACCESS Committee, LGRAC, NYALGRO, SARA, and Office of Court Administration (OCA) will be charged to provide detailed studies of certain aspects of the project (see Figure 3). Hopefully, these studies will provide the foundation upon which the task force can build its recommendations for changes and improvements.

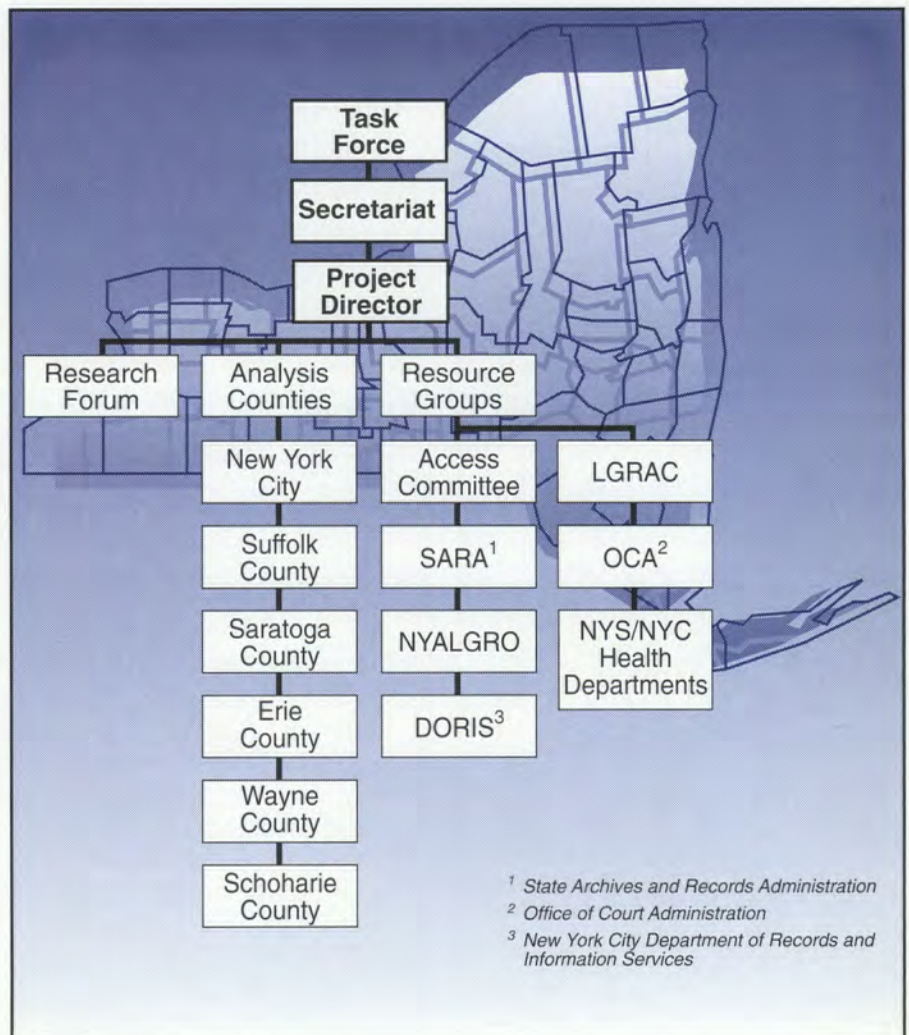
The project timetable calls for the final report to the Governor, including recom-

mended legislative changes, by December 31, 1993. An ambitious project certainly, but



*The author held the position of executive vice president of the New York State Land Title Association before recently becoming executive director of the Title Insurance Rate Service Association, the industry rating organization in that state. He previously served for 12 years as Albany County (New York) Clerk, is a past president of the New York State Association of County Clerks, and was named NYSACC County Clerk of the Year by that organization. Also, he is the first recipient of the New York State Association of Local Government Records Officers annual award to the person who has done the most to promote local government records programs in that state—which has been named the Guy Paquin Award. He is a member of the New York Governor's Task Force on Local Filing and Recording.*

**Figure 3 -- Organizational Chart**



<sup>1</sup> State Archives and Records Administration  
<sup>2</sup> Office of Court Administration  
<sup>3</sup> New York City Department of Records and Information Services

**Fidelity Acquires California Units**

Fidelity National Financial, Inc., and Lawyers Title Corporation have announced the signing of a letter of intent through which Fidelity—a title insurance underwriter based in Irvine, CA—will acquire for cash certain assets of Lawyers Title's northern California operations. At this writing, the closing was expected to take place shortly afterward.

Involved in the transaction are operations of Lawyers Title in Alameda, Contra Costa, Sacramento, San Francisco, San Mateo and Santa Clara counties. They are part of the Lawyers Title wholly owned West Coast subsidiary, Continental Lawyers Title Company, Universal City, CA.

Lawyers Title is the parent of Lawyers Title Insurance Corporation, which will continue operation of its National Division office in San Francisco.

Fidelity National is the parent of Fidelity National Title Insurance Company.

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Records Bureau  
New York State Education  
Department  
State Archives  
10A63 Cultural Education Center  
Albany, New York 12230  
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### COMMUNICATE

*continued from page 9*

ready for it. Remote access to recording office data is here and, as an industry, we are not prepared. No one knows what technology will bring before the new century. The quill pen and eyeshade are gone and the books of deeds are going. Before we know it, the recorder's data of a hundred years will be in a black box the size of a television set (or maybe a VCR).

At the 1991 ALTA Annual Convention in Boston, I was privileged to serve as moderator for a panel on the topic of relations between recording officers and the title industry. The ALTA 1992 Mid-Year Conven-

tion included a workshop on optical disk recording of public records. This indicates an awareness on the part of the title industry of the need for better relations and communication with those who maintain real property records and the need to understand new technologies.

This awareness and these steps are important to the title industry. But I believe they are only tentative baby steps, when what is needed is a giant leap into the arena of improved relationships with recorders and joint involvement in the development of technology. If we, as an industry, through our national and state title associations, and as individual title professionals, don't become involved now, governments will proceed without our input. The result, however well intentioned, could create far more problems than it solves.

-- Guy D. Paquin

## First American Restructures Debt

The First American Financial Corporation has announced completion of a debt restructuring described as a major step toward reaching the company goal of becoming substantially debt free.

According to the announcement, proceeds from a \$65 million secured term loan were used to refinance outstanding demand and other debt of First American Financial and its subsidiaries, and to cover certain other transaction costs. The result: eliminating all of the company's demand debt and replacement with term debt maturing in seven years or less.

Because the refinancing is an amortized loan with no balloon payment, the debt removal goal will be achieved at the end of the term, a company source said.

First American Financial is the parent of First American Title Insurance Company.

## Alaska Company Changes Name

Security Title & Trust Company of Alaska is changing its name to First American Title Company of Alaska following acquisition by First American Title Insurance Company.

The Anchorage-based operation now is a wholly-owned subsidiary of First American.

### Reminder

The publication date for the Association membership Directory has been changed from January to June, 1993. Accordingly, the listing cards that are normally received by ALTA members in late June will not be mailed until October of this year. This change in schedule will really only involve going from a January - December timetable to a June - June annual publication.



## PARTICIPATE

*continued from page 4*

advice in this field. The committee monitors developments in electronic information transfer, and is responsible for the ALTA Annual Convention Automation Exposition.

The **Liaison Committee With The Commission On Uniform Laws** observes, with the approval of the National Conference of the Commissioners on Uniform Laws, drafting sessions of that body on proposed model acts of concern to the title industry that are being developed by the National Conference.

The **Liaison Committee With The National Association Of Insurance Commissioners** monitors and reports on matters of interest to the title industry that arise through the NAIC, and works with that body in the promotion of sound legislation and regulation.

The **Membership And Organization Committee** promotes membership in or affiliation with ALTA and develops programs designed to retain the existing ALTA membership.

The **Public Relations Committee** develops and executes a program of communication in order to improve favorable national understanding and acceptance of the land title industry and its services among priority audiences.

The **Research Committee, Underwriter Subcommittee**, assists the ALTA officers and staff in performing economic analyses on matters of interest to the title insurance industry. The committee collects, compiles and reports title industry financial information to the ALTA membership, members of Congress, state insurance departments, and the general public.

The **Research Committee, Abstractor-Agent Subcommittee**, collects data pertaining to, and reports on, the organizational and financial characteristics of ALTA member abstractors and agents.

The **State Legislative And Regulatory Action Committee** obtains information on state legislative and regulatory proposals affecting the land title industry, and recommends action regarding such proposals.

The **Title Insurance Accounting Committee** assists the Association officers and staff in analyzing any accounting matters that might affect the title insurance industry and works with the American Institute of Certified Public Accountants and the National Association of Insurance Commissioners toward developing uniform accounting practices and procedures. This is a specialized committee consisting of financial personnel.

The **Title Insurance Forms Committee** reviews, the approved ALTA title insurance forms and recommends new forms or revisions of existing forms to keep title insurance coverage responsive to the needs of insureds and the title industry, and consistent with requirements of supervisory authorities. This is a specialized committee consisting of title underwriting counsel.

The **Title Underwriter Counsel Committee** promotes the exchange of information within the ALTA membership about current developments in the law affecting title insurance and conveyancing generally. This is a specialized committee consisting of title underwriter counsel.

The **Claims Administration Committee** promotes greater efficiency and effectiveness in the internal management of title insurance claims through the sharing of ideas and information about individual company problems and solutions. The committee also disseminates information regarding automation of claims records, claims categorization, alternative dispute resolution mechanisms, procedures for the establishment of claims reserves, management of outside counsel resources, litigation risk analysis and assessment and other claims administration issues. This is a specialized committee consisting of title underwriter claims counsel.

The **Closing Committee** provides interdisciplinary consultation on matters involving residential and commercial real estate closing in order to assist ALTA staff in liaison efforts with federal and state legislatures and regulators or related industry groups. The committee also recommends industry guidelines or positions on closing issues, including but not limited to uniform closing instructions; tax reporting concerns; regulatory sanctions involving closing agents; and additional federal regulatory burdens to be placed upon closing agents.

The **Committee On Indian Land Claims** keeps ALTA and its members apprised of new developments in the Indian Land Claims area and monitors ongoing Indian claims litigation to determine its general impact on title insurance and conveyancing. This is a specialized committee consisting of title underwriter counsel.

The **Liaison Committee With The American Congress On Surveying And Mapping** develops joint educational and informational materials to explain the importance to the consumer and real estate professional of owners title insurance and an accurate land title survey.

The **Recruitment and Retention Subcommittee** recruits new ALTA members

and works to retain the present membership of the Association.

The **Reinsurance Committee** promotes the exchange of information within the ALTA membership about current developments in the law affecting the reinsurance and coinsurance of title insurance risks. This is a specialized committee consisting of title underwriter counsel and reinsurance specialists.

The **Risk Management Committee** assists the title industry in developing appropriate responses to fraud and dishonesty in the current operating environment and reviews the possibility of securing catastrophic insurance coverages from Lloyd's of London.



*President-Elect Oliver is president, Smith Abstract & Title, Inc., Green Bay, WI.*

## Oregon Agency Receives Award

Josephine County Title Co., Grants Pass, OR, has been named Family Business of the Year by the Oregon State University Family Business Program. The title insurance agency was selected for the honor among approximately 100 medium size businesses in Alaska, Idaho, Oregon and Washington.

Josephine County Title was founded in 1956 by James DeCoursey, Sr., and currently employs 57 people in Grants Pass. A related business employs 40 in Medford, OR.

The award cites the company as "a positive role model for commitment to the community" and goes on to state: "This family business is exactly what small-town America was built on: Honest, hard-working, family-loving people."

David DeCoursey and Jim DeCoursey, respective executive vice president and senior vice president of the company, are quoted in a local newspaper story on the honor and agree that following the Golden Rule is a major element in what Josephine County Title has become.

"It's kind of like a family with 57 kids," Jim DeCoursey is quoted as saying. "The older ones take care of the younger ones."

## TIPAC

*continued from page 10*

ume, and new sales are beginning to increase in many parts of the country.

As predicted in January, retirements from Congress are reaching record levels. Some 55 members of the House at this writing have announced their resignations. Six members have been defeated for renomination, and there are expected to be five incumbent match-ups--resulting in a minimum of 65 new members in the 103rd Congress.

Four members of the Senate Banking Committee are retiring.

Anti-incumbent sentiments are running high, and redistricting and the House bank "rubbergate" scandal threatens many individuals who had so-called safe seats. Congressional experts now predict there may be as many as 150 new members of the next House of Representatives.

Consequently, the political and economic assumptions made in January appear accurate.

The TIPAC Board also made several changes this year that have helped us achieve improved results. Our ALTA all-member solicitation campaign was under way in early February, bringing contributions in earlier than in previous years. PAC

contributors are receiving more recognition. Chairman's Club, Gold Club and Presidents Club members all receive commemorative pins annually. Also, all TIPAC contributors who attended the 1992 ALTA Mid-Year Convention were invited to a special "members only" reception with the Honorable J.J. Pickle (D-TX), a senior member of the powerful House Ways and Means Committee.

In addition, it is the hope of the TIPAC Trustees that the title insurance industry recognizes the 1992 elections present an important opportunity to educate political candidates on our concerns. One of the best ways to educate is to have industry members participating in the election process.

There are at least two from the title industry who are running for Congress this year. Charles J. Kovaleski, president, Attorney's Title Insurance Fund Inc., Orlando, FL is running for one of the seats that will be created in central Florida as a result of increased population and redistricting. He hopes to receive the Democratic nomination for the yet-to-be-created seat. John Korsmo, president, Cass County Abstract Company, Fargo, ND has received the Republican endorsement for the North Dakota Congressional seat which opened up as a result of Representative Byron Dorgan's decision to run for the U.S. Senate.

This is a year of political opportunity for the title industry. With the enthusiastic support of title professionals nationwide, TIPAC will make the most of it.

Two ALTA Staff members also contributed to this article; they are Ann vom Eigen, legislative counsel and PAC director, and Sherri-Lynn Minor, legislative assistant.

*Chairman Wentzel is chairman and chief executive officer of North American Title Company, Walnut Creek, CA, and co-chairman of its affiliated title insurer, North American Title Insurance Company. He is a member of the ALTA Abstractors and Title Insurance Agents Section Executive Committee.*

## Commonwealth Acquisition Near

Commonwealth Land Title Insurance Company and IVT Group, Inc., have announced a definitive agreement for Commonwealth's acquisition of IVT's subsidiary, Industrial Valley Title Insurance Company.

As part of the agreement, Commonwealth also will acquire IVT's wholly-owned subsidiary, New Jersey-based Continental Title Insurance Company.

It is expected that the acquisition will reach the final stages in third quarter 1992.

IVT is based in Devon, PA, and has business concentration in the greater Philadelphia metropolitan area, an agency network in Florida, and other offices through the Middle Atlantic states including Continental Title's New Jersey operations.

## Fidelity Offering Common Stock

Fidelity National Financial, Inc., has announced filing a registration statement with the Securities and Exchange Commission relating to the offering of 950,000 shares of the company's common stock.

According to the Irvine (CA) based title insurance underwriter, plans call for offering 750,000 of the shares by the company and the remaining 200,000 shares by selling stockholders.

At this writing, Fidelity had announced the intention to use the proceeds of this offering to complete its acquisition of Meridian Title Insurance Company and its subsidiary, American Title Insurance Company.

## WEIGHING UNDERWRITERS?



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## GUIDELINES

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the decision whether to inform enforcement authorities immediately of a potential or borderline violation becomes more difficult, particularly where any recurrence of the questionable conduct can be prevented in the future.

In the title insurance industry, for example, the question of what constitutes an unearned fee under RESPA may not be immediately clear. The Guidelines, however, would require that a company, upon learning of a potential violation, decide immediately whether to turn itself in and effectively put itself at the mercy of the prosecutors, even when such a potential "violation" might otherwise promptly be corrected and not occur thereafter.

Second, under the Guidelines an effective compliance program must be enforced through "appropriate disciplinary mechanisms." Discipline must be applied not only to employees actually responsible for an offense, but also to responsible employees who merely fail to detect the offense.

In cases involving knowing wrongdoing, a responsible company would frequently choose to discipline employees who have violated the law, regardless of the Guidelines.

In cases, however, where a "violation" does not result from intentional wrongdoing, and where employees appear to have made a misguided but good faith effort to comply with applicable standards, an organization may for a variety of reasons (including a legitimate concern for fair treatment of its employees) choose not to impose what it considers to be draconian sanctions. If this decision differs from a prosecutor's view of what constitutes appropriate or adequate discipline, the company may find its desire to treat its employees fairly in conflict with its hope of receiving credit for creation of an effective compliance program.

### Implications for Discipline

The disciplining of employees has additional implications in the context of a criminal investigation. From the point of view of a white-collar defense lawyer, it is often vital that an organization and its employees stand united in the face of a government investigation. The government's frequent strategy in such cases is to offer inducements to certain individuals in exchange for testimony against other individuals and the organization itself.

To the extent an organization disciplines individuals in the midst of an investigation,

as the Guidelines encourage, the unity of the defense group may be greatly weakened -- and the government's job made easier. Where wrongdoing by an employee is blatant and intentional, and all relevant facts are known, the organization may for its own reasons want to impose appropriate discipline.

In the more typical case, however, where the facts are unclear and violations that have occurred appear not to have been intentional, an organization may find itself facing a difficult choice between imposing discipline to qualify for credit under the Guidelines, and maintaining unity among the defense group and good morale within its work force.

Finally, there are a host of technical requirements with which an organization must be sure to comply in order for its compliance program to be considered "effective." For example, an organization must use due care not to delegate substantial discretionary authority to an individual whom the organization knew, or should have known, had "a propensity to engage in illegal activities."

Similarly, a failure to incorporate and follow applicable industry practice will "weigh against" a finding that a compliance program is effective. In the context of the title industry, these two requirements strongly suggest that companies that wish to implement a compliance program will want to consider participation in the Title Industry Reference Program that has been created to minimize fraud-related losses. (*Title News*, July-Aug. 1991, p. 16)

In light of these realities, should an organization develop a compliance program? It is estimated that 45 percent of the nation's 1,000 largest corporations have now adopted compliance programs. A number of reasons explain the trend toward adoption of programs.

First, regardless of the Sentencing Guidelines, a compliance program that *works* is likely to reduce the number of violations committed by an organization's officers and employees, with consequent reductions in exposure to both criminal and civil liability. The *relative* reductions available under the Guidelines, which only come into play for offenses actually detected and prosecuted, may be insignificant in relation to the benefits of reduced incidents of non-compliance.

Second, in the process of developing a compliance program an organization is likely to have prepared itself for the difficult practical questions discussed above if it should unfortunately be faced with a criminal investigation, as is increasingly likely

under current theories of prosecution. An organization that has done the groundwork needed to establish a compliance program will probably be in a far better position to respond quickly than an organization that focuses on its options for the first time after the government has appeared at its door with a search warrant or subpoena.

Finally, under the Guidelines there are clear benefits to having a compliance program if there is any likelihood that a company may find itself the subject of a criminal investigation. As noted above, an organization with an effective compliance program may qualify for significant reductions in applicable fines under the Guidelines. Perhaps equally importantly, an organization can avoid the mandatory probation and Federal oversight to which an organization without an effective program is subject.

*The author received his law degree from Yale Law School and is a member of the Bar of the District of Columbia. His practice encompasses civil and criminal environmental counseling, toxic tort litigation and white collar criminal matters. Before joining the law firm of Steptoe & Johnson in Washington, D. C., he was an Iran/Contra prosecutor. He has also prosecuted environmental crimes for the U. S. Department of Justice. During the 1992 ALTA Mid-Year Convention, he spoke on the subject of corporate counsel's responsibility for compliance programs.*

## CALENDAR OF MEETINGS

### 1992

**August 20** ALTA-TLTA Educational Seminar, Stouffer Nashville, Nashville, TN

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

### 1993

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

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

### 1994

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

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

## NAMES IN THE NEWS



**Sullivan**



**Pettus**



**Thompson**

The First American Financial Corporation has re-elected the following incumbent directors:

**George L. Argyros, J. David Chatham, William G. Davis, Lewis W. Douglas, Jr., Paul B. Fay, Jr., Frank C. Harrington, Harold C. Kean, D. P. Kennedy, Parker S. Kennedy, Robert B. McLain, Anthony R. Moiso, R. J. Munzer, Roslyn B. Payne and Virginia M. Ueberroth.**

**Mark R. Arnesen** has been named vice president and corporate secretary of First American Financial and its principal subsidiary, First American Title Insurance Company, with offices in Santa Ana, CA.

**Timothy P. Sullivan** has joined First American Title as vice president-claims counsel, and **Nancy M. Pettus** and **Patricia A. Thompson** have been promoted to vice president in the Legal/Claims department, Santa Ana.



**Birnbaum**



**Burton**



**Andersen**



**Willson**



**Pierce**

**G. Reid Lange, Jr.**, has been promoted to vice president and national manager for the Tax Certification Division of First American Real Estate Tax Service, Inc., Los Angeles.

Attorneys' Title Guaranty Fund, Inc., Champaign, IL, announces the election of **Peter J. Birnbaum** as president and chief executive officer. An 11-year veteran with the organization, he previously had been chief executive officer, Chicago operations.

Chicago Title Insurance

Company announces the election of the following to vice president: **Edson N. Burton, Jr.**, Southfield, MI, Michigan area manager for Chicago Title, Tigor Title Insurance Company and Security Union Title Insurance Company; **Edward J. Andersen**, Illinois Claims Department manager and **Donald E. Willson**, associate regional counsel. Both Andersen and Willson are based in Chicago.

**Thomas M. Comerford** has joined Chicago Title as resident vice president and sales/marketing manager of the National Accounts Unit, Philadelphia. In addition, the following have received promotions at the company: **Gary Cooper**, to resident vice president and San Antonio (TX) area manager; **Linda Green**, to title officer and under-

writer, Cleveland; **W. Tom Harris, Jr.**, to resident vice president and remains branch manager, Raleigh-Durham, NC; **Steven Hunt**, to senior title officer and remains senior title attorney, Bloomington, MN. **J. J. Scott Immel**, to assistant vice president and remains branch and county manager, Santa Clara, CA; **James Marlin**, to title officer and remains agency attorney, Waukesha, WI; **Sharon Mosteller**, to underwriting counsel, National Accounts Unit, Philadelphia; **Thomas McCulloch**, to assistant vice president and manager, Multnomah County Title, Beaverton, OR; **Susan Tempest**, to resident vice president and Houston area branch manager; **Don Wade**, to resident vice president and remains regional claims counsel, Fairfax, VA.

National Title Insurance Company has promoted



**Bozarth**



**Carter**



**Weber**



**Carpi**



**Thomas**



**Polley**



**Gentry**

**Mercedes Tabares**, manager of its National Title Company Closing Division in Miami, to assistant vice president.

Investors Title Insurance Company has named **Eva Searle** underwriting manager of the Chapel Hill, NC, underwriting office.

World Title Company has named **Jamanna K. Pierce** subdivision/commercial consultant in its Colton, CA, office.

Recent promotions at the Richmond, VA, headquarters of Lawyers Title Insurance Corporation include **Robert S. Bozarth** to vice president-major transactions counsel, **John M. Carter** to vice president-corporate counsel, **John D. Weber** to vice president-associate general claims counsel and **Janice E. Carpi** to underwriting counsel.

Also in Richmond, **Judith J. Thomas** has been named legal counsel in the National Division office, **James L. Polley** has been appointed branch counsel in the branch office there and **Carol F. Gentry** has been appointed compensation administrator at National Headquarters.

**Ellis A. Ankony** has been named senior vice president-regional manager in the Lawyers Title Troy, MI, office, with responsibility for all branch and agency operations in Michigan.

Other recent appointments by the company include **Alfred D. Santoro, Jr.**, to area counsel, Hackensack, NJ, office; **Alan D. Keiser** to manager, Philadelphia metropolitan office with responsibility for the branch and National Title Service Division operations there; **Cailin A. Quinn** to manager, Towson-Severna Park, MD, office; **David W. Modine** to assistant vice president-commercial marketing, South Florida Commercial Office, North Palm Beach; and **William J. Burkhardt** and **William D. Teveri**, both to assistant counsel, Pacific States office, Universal City, CA.



**Miller**



**Ditter**



**Mitchell**



**Leaverton**



**Ankony**



**Santoro**



**Keiser**



**Quinn**



**Modine**



**Hackett**

Commonwealth Land Title Insurance Company announces the promotion of **William E. Hackett III** as president of Commonwealth Land Title Company of Fort Worth and vice president of the parent concern. Also in Texas, **Marc C. Miller** has been named executive vice president of Commonwealth Land Title Company of Dallas.

Elsewhere, **Thomas L. Ditter** has been named vice president and division manager, **Robert C. Mitchell** vice president and division counsel and **Jack D. Leaverton** associate counsel in Commonwealth's newly opened Mountain States Division office, Boise, ID; **Thomas E. Polk** has been promoted to vice president and Arizona state counsel and **John P. Golab** named Arizona associate counsel for Commonwealth and its affiliate, Transamerica Title Insurance Company, Phoenix; **Brian F. Juodzevich** has joined the Commonwealth National Title Services



**Polk**



**Golab**



**Juodzevich**



**Prinzivalli**



**Fernandez**



**Meador**

Division as vice president, New York City, where **Paul J. Prinzivalli** has been named assistant vice president.

**Manny Fernandez**, former Miami Dolphins football star, has joined Commonwealth as assistant vice president and major account executive, Miami; **Dennis R. Meador**, vice president for Commonwealth and Transamerica Title in Louisville, has been promoted to manager of the National Processing Center.

## 1992 AFFILIATED ASSOCIATION CONVENTIONS

### July

**9-11** Illinois, Prea Marquette Hotel, Peoria, IL

**16-18** Utah, Stein Eriksen Lodge, Deer Valley, UT

**22-25** Michigan, Tree Top Glenn Resort, Gylers, MI

### August

**6-8** Indiana, Hyatt Regency Hotel, Indianapolis

**13-15** Idaho, Coeur D'Alene, Coeur D'Alene, ID

**13-15** Minnesota, St. Paul Hotel, St. Paul

**13-15** Montana, Park Inn, Lewiston, MT

**13-15** North Carolina, Omni Hotel, Charleston, SC

**19-21** Wyoming, Little America, Cheyenne, WY

**20-22** Kansas, Holiday Dome, Topeka, KS

**30-September 2** New York, Ramada Renaissance, Saratoga Springs, NY

### September

**3-5** Dixie, Opryland, Nashville, TN

**10-12** Missouri, Westin Crown Center, Kansas City, MO

**15-18** Nebraska, New World Inn, Columbus, NE

**16-18** Nevada, Harvey's Resort Hotel & Casino, Lake Tahoe, NV

**17-19** North Dakota, Town House Hotel, Grand Forks, ND

**18-20** DC/Maryland/Virginia, Princess Royal, Ocean City, MD

**20-22** Ohio, Sheraton Suites, Cuyahoga Falls, OH

**25-26** Washington, Tyee Motor Inn, Olympia, WA

**25-26** Wisconsin, Radisson Hotel, La-Crosse, WI

### November

**1-4** Florida, The Ocean Grand, Palm Beach, FL

**5-7** Nevada, Harrah's Del Rio Hotel & Casino, Laughlin, NV

### December

**3-5** Louisiana, Westin Canal Place, New Orleans, LA

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