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SEPTEMBER - OCTOBER 1992



**ALTA Annual Convention -- Maui, October 14 - 17**

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# TITLE SEPTEMBER • OCTOBER 1992 News

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**On the Cover:** In the words of Hawaiians, "Maui is the best." ALTA members and others will experience the ambiance that earned this accolade in a few short weeks when the Eighty-Sixth Annual Convention of the Association unfolds on the lush tropical island. Updating information on all aspects of this singular event is provided in this edition.

## FEATURES

### **5 High Court Ruling Will Have Wide-Ranging Implications For Innocent Owner Defense**

*By David F. B. Smith, Esquire*

The United States Supreme Court is expected to rule this fall in a case that could invalidate established interests in real property.

### **8 The Multifamily Mortgage Foreclosure Act Proves Effective...**

*By Geoffrey L. Patton, Esquire*

More than 10 years after enactment, the measure has greatly reduced the time needed for HUD foreclosure—and allows immediate transfer of land title.

### **9 but Raises Two Major Issues**

*By John Goode, Esquire*

On the other hand, the Multifamily Mortgage Foreclosure Act has created concerns regarding applicability and due process.

### **15 RESPA Enforcement -- A Report from the Front**

*By Phillip L. Schulman, Esquire*

A year after HUD creation of a special unit to enforce the anti-kickback provisions of RESPA, it is clear that this small staff means business.

### **19 Record Treasure Hunt In Florida**

*By R. Harris Turner*

After a three-month quest extending across eight locations, Fidelity Title & Guaranty Co. tracked down the records of a former competitor that were needed to expand operations into a neighboring county.

### **23 "Maui No Kai Oi" Translates Into a Great Convention**

*By Leigh A. Vogelsong*

With the October 14-17 ALTA Annual Convention dates drawing nearer, a sparkling agenda is taking shape that blends informative sessions with exotic leisure time activity.

## DEPARTMENTS

- 3 A Message from the President**
- 32 Names in the News**
- 35 Calendar of Meetings**
- 35 New ALTA Members**
- 40 1992 Affiliated Association Conventions**

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## A MESSAGE FROM THE PRESIDENT



For all of us in the title business, the financial performance of our industry during the first few months of this year has been most gratifying. Traveling to state title conventions and talking to people around the country, I find our membership to be in an upbeat, but not euphoric, mood. There is a feeling of guarded optimism as to how long the good times will last. Most of our members appear to be exercising a great deal of restraint before adding to staff or increasing fixed costs—opting more for overtime and variable expenses that can be off-loaded rapidly if the market rebound does not continue.

However, good times do not mean that the problems facing our industry have abated. Quite the contrary, many issues are heating up. Banks are still pressing hard to get into our business; state regulators, independently and acting through NAIC, are taking a hard look at our industry and are asking some challenging questions; independent rating organizations are gathering information from underwriters and other sources in anticipation of rating title insurers; HUD, via its RESPA enforcement arm, is examining previously unquestioned industry practices to determine whether or not they are violations of RESPA; some legislators are proposing federal regulation of the insurance industry; and we have a never-ending stream of problems created by various governmental agencies.

Needless to say, our Association will be busy as we gear up to represent your interests on these and other issues as they arise. It is comforting to know that we have an extremely capable and hard-working staff dedicated to serving your needs. But, we can't put the entire burden on the staff. Many times, it is the grassroots support from our membership that makes the difference. So, when called upon, please lend a hand.

At the same time, when our industry is coming under intense scrutiny from many sources, it would serve us well, agent and underwriter alike, to take a break from counting cash and devote time to examining our business practices and ethics. Perhaps, individually and collectively, we can take steps to return this industry to the high road before outsiders and regulators chart our course for us.

Richard A. Cecchetti

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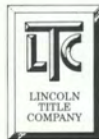
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# High Court Ruling Will Have Wide-Ranging Implications For Innocent Owner Defense

By David F. B. Smith, Esquire

**S**ometime in October of 1992, the United States Supreme Court will hear the case styled *United States v. A Parcel of Land, Buildings, Appurtenances and Improvements Known As 92 Buena Vista Avenue, Rumson, New Jersey, and Beth Ann Goodwin*, No. 91-781. This case with the prolix name is a civil forfeiture action brought by the United States to forfeit the residence of a former girlfriend of a reputed drug dealer.

The implications of the case go far beyond its particular factual setting, however. The case is expected to determine whether the United States can forfeit property—notwithstanding the innocence of its owner—when the owner acquired his interest in the property subsequent to the occurrence of the illegal activity giving rise to the forfeiture. Because the government's position in the case threatens to invalidate established real property interests, the American Land Title Association and the Mortgage Bankers Association of America filed a joint *amicus curiae* brief in the Supreme Court advocating the rights of innocent owners. The American Bankers Association and the Federal Home Loan Mortgage Corporation also filed *amicus curiae* briefs.

Since 1978, Congress has progressively expanded the scope of civil and criminal forfeiture, so that property involved in a broad range of illegal activity is now subject to forfeiture. Money laundering, racketeering, moonshining, gambling, pornography, and tax evasion, as well as activity involving illegal drugs, can all serve as acts giving rise to forfeiture. Civil forfeiture provisions authorize in rem proceedings based on the legal fiction that the property itself is the wrongdoer. See *Calero-Toledo v. Pearson*

*Yacht Leasing Co.*, 416 U.S. 663, 680-83 (1974). Numerous statutes authorize civil forfeiture proceedings. *E.g.*, 21 U.S.C. Sec. 881 (1988); 18 U.S.C. Sec. 981 (1988); 18 U.S.C. Sec. 2254 (1988). In contrast, criminal forfeiture statutes authorize in personam proceedings, in which forfeiture occurs in connection with an individual's conviction of a crime. *E.g.*, 21 U.S.C. Sec. 853 (1988); 18

continues to be the law today. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 680-83 (1974).

Recognizing the severity of forfeiture at common law, Congress provided statutory protection for the rights of innocent owners in connection with both civil and criminal forfeiture proceedings. The typical civil forfeiture innocent owner provision states that "no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." 21 U.S.C. Sec. 881(a)(6) (1988); see also 18 U.S.C. Sec. 981(a)(2) (1988); 18 U.S.C. Sec. 2254(a)(2) (1988); 21 U.S.C. Sec. 881(a)(7) (1988). In contrast, the typical criminal forfeiture innocent owner provision enables a claimant who can establish either that "the right, title, or interest [in the property subject to forfeiture] was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property," or that "the petitioner is a bona fide purchaser for

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**T**he case is expected to determine whether the United States can forfeit property—notwithstanding the innocence of its owner—when the owner acquired his interest...subsequent to the...illegal activity....

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U.S.C. Sec. 1467 (1988); 18 U.S.C. Sec. 1963 (1988); 18 U.S.C. Sec. 2253 (1988).

It seems fundamental to our American legal system that only those guilty of illegal conduct can be punished, and one naturally expects this principle to hold true for forfeiture law. Nevertheless, by 1814 it was well-established at common law that the innocence of the owner of property subject to civil forfeiture was no defense to forfeiture. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 680-83 (1974); *United States v. 1960 Bags of Coffee*, 12 U.S. (8 Cranch) 398 (1814). More remarkably, this



The author is a partner in the Washington, DC, law firm of *Pierston Semmes and Bemis*. He has advised ALTA and title insurers in connection with forfeiture issues, and is counsel for ALTA in the 92 Buena Vista Avenue case. In addition, he has written extensively on forfeiture law.

value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section," to obtain an amendment of the forfeiture order exempting his property from forfeiture. See 21 U.S.C. Sec. 853(n)(6) (1988); see also 18 U.S.C. Sec. 982(b)(i) (1988); 18 U.S.C. Sec. 1467(l)(6) (1988); 18 U.S.C. Sec. 1963(l)(6) (1988); 18 U.S.C. Sec. 2253(m)(6) (1988).

Another long-standing common law forfeiture concept is known as the relation-back doctrine. The relation-back doctrine provides that the title of the United States in property subject to forfeiture relates back to the date of the illegal event giving rise to the forfeiture. See *Texas v. Donohue*, 302 U.S. 284 (1937); *United States v. Stowell*, 133 U.S. 1, 16-17 (1890); *In re Thacher's Distilled Spirits*, 103 U.S. 679 (1880); *In re Henderson's Distilled Spirits*, 81 U.S. (14 Wall.) 44 (1871); *United States v. 1960 Bags of Coffee*, 12 U.S. (8 Cranch) 398 (1814). Congress also codified the relation-back doctrine in many forfeiture statutes, both civil, see 21 U.S.C. Sec. 881(h) (1988); 18 U.S.C. Sec. 981(f) (1988); 18 U.S.C. Sec. 2254(g) (1988), and criminal. See 18 U.S.C. Sec. 1467(b) (1988); 18 U.S.C. Sec. 1963(c) (1988); 18 U.S.C. Sec. 2253(b) (1988); 21 U.S.C. Sec. 853(c) (1988).

The relationship between the civil forfeiture innocent owner provision contained in 21 U.S.C. Sec. 881(a)(6) and the relation-back doctrine contained in 21 U.S.C. Sec. 881(h) is the central issue in the *92 Buena Vista Avenue* case. The relation-back provision in section 881(h) does not refer directly to the innocent owner provision in section 881(a)(6). The relation-back provision in section 881(h) simply states:

All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

21 U.S.C. Sec. 881(h) (1988); see also 18 U.S.C. Sec. 981(f) (1988); 18 U.S.C. Sec. 2254(g) (1988). Congress's failure to refer specifically to the civil forfeiture innocent owner provision when it codified the relation-back doctrine has enabled the United States to assert in the *92 Buena Vista Avenue* case that the relation-back doctrine cuts off all rights in the property subject to civil forfeiture that arose subsequent to the illegal event giving rise to the forfeiture. The government's position is that the innocent owner defense "can only be asserted by a claimant who acquired an interest in the property before commission of the act triggering the forfeiture." U.S. Br. at 5. If the government's position is correct, then no claimant who acquired his interest in the property subsequent to the occurrence of

the illegal activity giving rise to the forfeiture—no matter how innocent that claimant is—could ever qualify as an innocent owner under the civil forfeiture statute.

The government attempted to avoid the sweeping impact of its position in the *92 Buena Vista Avenue* case by maintaining that "[t]his case concerns only the recipient of a gift of drug proceeds. It is therefore unnecessary for the Court to decide in this case whether a bona fide purchaser of drug proceeds could seek to block a forfeiture under Section 881(a)(6)." U.S. Br. at 36 n. 13. Indeed, the precise question on which the Supreme Court granted certiorari is whether a donee can be an innocent owner within the meaning of 21 U.S.C. Sec. 881(a)(6). That question, however, directly implicates the issue whether the relation-back doctrine applied in civil forfeiture proceedings defeats every innocent claimant who acquired his interest in the property subsequent to the occurrence of the illegal activity giving rise to the forfeiture, including innocent bona fide purchasers for value. If it does, then all claimants—not simply donees—who acquired their interests in the property subse-

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**I**f the relation-back doctrine is applied in this fashion, innocent owners... are helpless to protect their property from forfeiture.

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quent to the occurrence of the illegal activity giving rise to the forfeiture can never qualify as innocent owners.

### **I. The Civil Forfeiture Innocent Owner Provision Should Protect Innocent Bona Fide Purchasers For Value**

Congress intended the civil forfeiture innocent owner provision to protect innocent bona fide purchasers for value including those who acquired their interests in the property subsequent to the occurrence of the illegal activity giving rise to the forfeiture, notwithstanding the relation-back doctrine. Section 881(a)(6) was enacted in 1978, six years prior to the enactment of section 881(h) in 1984. Section 881(a)(6) clearly excepts from forfeiture property "to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." See 21 U.S.C. Sec. 881(a)(6)

(1988).

The plain language of section 881(a)(6) protects an innocent owner without regard to the time of the illegal activity giving rise to forfeiture. This broad construction of Section 881(a)(6) is supported by the Joint Explanatory Statement that accompanied the legislation, which stated: "Finally it should be pointed out that no property would be forfeited under the Senate amendment to the extent of the interest of any innocent owner of such property. The term 'owner' should be broadly interpreted to include any person with a recognizable legal or equitable interest in the property seized." Joint Explanatory Statement of Titles II & III of the Psychotropic Substances Act of 1978, 124 Cong. Rec. S17647 (Oct. 7, 1978). There simply is no indication in either the statute or its legislative history that the protection for innocent owners was limited to claimants who acquired their property prior to the occurrence of the illegal activity giving rise to the forfeiture.

When subsection 881(h) was enacted six years later, there was no indication that its enactment was intended to limit the existing protection for innocent owners provided by Section 881(a)(6). As the court of appeals in *92 Buena Vista Avenue* determined, Section 881(h) vests title in the United States "in that property described in Subsection (a)." Subsection 881(a) lists the property that "shall be subject to forfeiture," but obviously Section 881(a)(6) excepts an innocent owner's property from forfeiture.

Because of the language of Section 881(a)(6), an innocent owner's property is not subject to forfeiture under Subsection 881(a), and therefore the relation-back provision of Section 881(h) does not apply to an innocent owner's property. As the court of appeals reasoned: "If the property is exempted from forfeiture pursuant to an innocent owner defense and therefore is not forfeitable property under Subsection (a), then Section 881(h) does not apply to such property that is not subject to forfeiture." 937 F.2d at 102.

This construction of Subsections 881(a) and 881(h) is buttressed by the statements of the proponents of the Section 881(a)(6) innocent owner provision. The innocent owner language resulted from an amendment offered by Senators Nunn, Mathias and Wallop intended "to make it clear that a bona fide party who has no knowledge or consent to the property he owns having been derived from an illegal transaction, that party would be able to establish that fact under this amendment and forfeiture would not occur."

Senator Culver of Iowa stated "that the original language could have been construed to reach properties traceable to the



illegal proceeds but obtained by an innocent party without knowledge of the manner in which the proceeds were obtained. The original language is modified in the proposed amendment in order to protect the individual who obtains ownership of proceeds with no knowledge of the illegal transaction."

Both of these statements addressed a situation in which the illegal activity occurred prior to the time that the innocent owner acquired his interest in the property. Senator Nunn described a bona fide owner who had no knowledge that his property was "derived" from an illegal transaction. Senator Culver thought the provision protected an owner who obtains "ownership of proceeds with no knowledge of the illegal transaction." For the government's position to be correct, both of these Senators had to completely misunderstand the effect of the amendment they were supporting.

## II. The Interpretation of The Relation-Back Doctrine Advanced By the United States May Violate The Due Process Clause

The interpretation of the relation-back doctrine urged by the United States conflicts with the constitutional "innocent owner" standard enunciated by the Court in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689-90 (1974). In *Pearson Yacht*, the Court stated:

*It would be difficult to reject the constitutional claim of an owner whose property subjected to forfeiture had been taken from him without his privacy or consent. Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive.*

*Id.* at 609-610 (emphasis added) (citations and footnotes omitted).

Even if an innocent owner were uninvolved in and unaware of the wrongful activity, and also had done all that reasonably could be expected to prevent the proscribed use of the property—the *Pearson Yacht* standard—the government's interpretation of the relation-back doctrine would still defeat the innocent lender's claim. This is another reason to reject the government's interpretation of the relation-back doctrine. "It has long been an axiom of statutory interpretation that where an otherwise acceptable construction of a statute would raise

serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." It was precisely for this reason that the United States District Court for the Southern District of Florida held that the claim of a mortgage lender who acquired its lien subsequent to the occurrence of the illegal activity giving rise to the forfeiture was not defeated by the relation-back doctrine.

## III. Administrative Remission and Mitigation Procedures Administered by the Department Of Justice Are No Substitute For Statutory Protection For Innocent Owners

The government sought to justify its interpretation of the relation-back doctrine by asserting that an innocent bona fide purchaser could still recover his interest in the forfeited property by petitioning the Department of Justice for remission and mitigation. U. S. Br. at 35-41; see 21 U.S.C. Sec. 881(d) (1988); 28 C. F. R. Sec. 9.1-9.7 (1991). Remission and mitigation is an administrative procedure managed by the Director of the Office of Asset Forfeiture, a non-judicial official in the Criminal Division of the Department of Justice. See 28 C.F.R. Sec. 9.3(d) (1991); United States Dep't of Justice, *Annual Report of the Department of Justice Asset Forfeiture Program* (1990) at 6, 13. The administrative authority to remit or mitigate forfeiture, however, is not a satisfactory remedy for an innocent bona fide purchaser, for a number of reasons.

First, it is well-established that an innocent claimant has no right to remission or mitigation; the decision whether to grant remission or mitigation is entirely a matter of grace, normally not subject to judicial review. The remission regulations promulgated by the Department of Justice provide explicitly that even when a claimant has satisfied the standards for obtaining remission set forth in the regulations, the Department may still refuse to grant a complete recovery to the claimant. The regulations state: "In addition to having the discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of discretion, mitigate forfeitures of seized property. *Mitigation may also be granted when the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted.*" 28 C. F. R. Sec. 9.5(c) (1991) (emphasis added). A procedure in which a claimant can satisfy the standards for remission but nevertheless be denied relief is not a satisfactory substitute

for statutory protection of innocent bona fide purchasers.

Secondly, an innocent owner, especially an innocent mortgage lender, is likely to receive a lesser recovery under the Department's remission and mitigation regulations than the owner would be entitled to receive under statutory innocent owner provisions. For example, recent cases have established that an innocent lender who qualifies as an innocent owner under 21 U.S.C. Sec. 881(a)(6) is entitled to recover the outstanding principal balance of the loan, any unpaid interest that accrues up to the date the loan principle is repaid, and reasonable costs and attorney's fees incurred in protecting its lien in the forfeited property. See *United States v. Federal National Mortgage Ass'n*, 946 F.2d 264, 266-67 (4th Cir. 1991). In contrast, the remission and mitigation regulations prior to their amendment in 1987 did not permit recovery of interest accruing after the property was seized. See *United States v. 8.4 Acres of Land Located in Little River Tp., Horry County, S.C.*, 648 F. Supp. 79, 83 (D.S.C. 1986), *aff'd mem.*, 823 F.2d 549 (4th Cir. 1987); *United States v. One Piece of Real Estate, Described in Part As: 1314 Whiterock and Improvements, San Antonio, Bexar County, Tex.*, 571 F. Supp. 723 (W.D. Tex. 1983). Even today the regulations do not allow recovery of interest up to the date the principal is repaid, but instead allow recovery of unpaid interest only through the last full month prior to the granting of the remission petition. The remission regulations also do not permit an innocent mortgage lender to recover its reasonable attorney's fees and costs. See 28 C.F.R. Sec. 9.2(h) (1991).

Third, the remission regulations require a claimant to satisfy a higher standard in order to obtain recovery than an innocent owner is required to show under the statutory innocent owner standard. The regulations provide for remission when the petitioner, *inter alia*, has "a valid, good faith interest in the seized property," had no knowledge of the illegal activity, and "had taken all reasonable steps to prevent the illegal use of the property." See 28 C. F. R. Sec. 9.5(b) (1991). This standard for recovery under the remission regulations is derived from the standard for relief under the due process clause suggested by the Court in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689-90 (1974). That is, the Fifth Amendment's due process clause shields an innocent owner's property from forfeiture if the innocent owner can establish "not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use

*continued on page 31*

# The Multifamily Mortgage Foreclosure Act Proves Effective...

By Geoffrey L. Patton, Esquire<sup>1</sup>

**A**t any one time, the Department of Housing and Urban Development holds over 2,000 mortgages and deeds of trust which it refers to collectively as "multifamily mortgages." These mortgages<sup>2</sup> cover several different types of properties, including multifamily housing projects (those which contain five or more dwelling units), hospitals, nursing homes, commercial properties, and vacant land. HUD acquires its multifamily mortgages in two ways: 1) by assignment from lenders who are insured against the borrower's default under insurance programs authorized by the National Housing Act,<sup>3</sup> or 2) as security for loans made directly by the Department under such programs as Section 312 of the Housing Act of 1964,<sup>4</sup> and Section 202 of the Housing Act of 1959.<sup>5</sup>

In a number of cases, the loans secured by HUD's multifamily mortgages are seri-

ously in default. If the defaults cannot be cured, HUD's principal remedy for recovery of amounts due to it under the loans is foreclosure. Until 1981, however, HUD had no uniform method of foreclosure available to it. In roughly half of the states, HUD foreclosed nonjudicially under state law. In states where nonjudicial foreclosures are not permitted, HUD foreclosed judicially in United States District Court.

This disparity of remedies seriously burdened HUD's administration of its housing programs and adversely affected the residents of the properties covered by the mortgages as well as the communities in which they were located. In states where judicial foreclosure was necessary, HUD's foreclosure actions were frequently delayed by opposition from the mortgagor or crowded dockets. Judicial foreclosures were rarely completed in less than a year, and cases lasting three to five years were common. During these delays, the properties typically suffered deterioration and vandalism, necessitating additional federal management and holding expenses when HUD is the high bidder at the foreclosure sale.

Despite these problems, judicial foreclosures had at least one advantage over the speedier nonjudicial procedures: the ability under federal law to sell the property free of any redemption period.<sup>6</sup> When HUD foreclosed nonjudicially under state law, in contrast, it was subject to the redemption period applicable in that state, sometimes many months long, regardless of federal law on the subject.<sup>7</sup> In some states, the mortgagor is permitted to remain in possession of the property during the redemption period, collecting the income produced by the property.<sup>8</sup> This prevents HUD from assuring that the property, its residents, and the income it generated were protected during the redemption period. Such redemption periods impaired HUD's ability to protect the property it acquired at these foreclosure

sales and discouraged the repair of the properties.

## Congressional Corrective Action

Congress recognized these difficulties and took measures to correct them in 1981 when it passed the Multifamily Mortgage Foreclosure Act.<sup>9</sup> This statute provides HUD with a uniform nonjudicial procedure which it may use in all 50 states, the District of Columbia, Puerto Rico, and other territories and possessions to foreclose on its multifamily mortgages without regard to the law of that state or jurisdiction.<sup>10</sup> The Act permits foreclosure of mortgages held by HUD pursuant to Title II of the National Housing Act and Section 312 of the Housing Act of 1964, which encumber any property except those on which there is a one to four family residence.<sup>11</sup> Not covered are the relatively few mortgages held under other titles of the National Housing Act and the mortgages securing direct loans made under Section 202 of the Housing Act of 1959.

Foreclosures under the Act are similar procedurally to nonjudicial foreclosures conducted under state law. They are conducted by third parties called commissioners who prepare and serve notice of the sale, conduct the sale, execute the deed, distribute the sale proceeds and perform other du-

*continued on page 11*

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**T**he average time it takes HUD to foreclose has dropped from several years to less than four months...

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The author is trial attorney, Office of Program Enforcement, Office of General Counsel, U. S. Department of Housing and Urban Development, Washington, DC. He is principal staff member responsible for all issues concerning foreclosure of HUD-held mortgages on multifamily housing projects. A member of the HUD Office of General Counsel staff since 1974, he received his law degree from the Georgetown University Law Center.

# but Raises Two Major Issues

By John Goode, Esquire

In the accompanying article explaining the workings of the Multi-family Mortgage Foreclosure Act (hereinafter the Act),<sup>1</sup> Geoffrey Patton presents a persuasive argument for a uniform method of foreclosing in a nonjudicial manner. A similar argument is set forth in the Prefatory Note to the Uniform Land Security Interest Act (ULSIA) approved by the National Conference of Commissioners on Uniform State Laws in 1985.<sup>2</sup>

As a Virginia lawyer schooled in the tradition of expeditious nonjudicial foreclosures, I am sympathetic to these arguments. However, I see two major issues raised by the Act - its applicability to mortgages executed prior to the effective date of the Act and whether the procedure provided for in the Act and the regulations<sup>3</sup> affords due process.

*Retroactivity.* Can a state legislature or Congress enact a statute that grants a power of sale in connection with then outstanding mortgages? Apparently, as indicated by their Prefatory Note, the Uniform Law Commissioners did not think that a mortgagor's expectations based upon existing law and the terms of the mortgage could be upset by subsequent legislation. In Section 601 of ULSIA they provided that it would apply only to transactions entered into and events occurring on or after the effective date of the Act. Section 3703 of the Multifamily Mortgage Foreclosure Act simply states that "multifamily mortgages held by the Secretary encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this part, or pursuant to other foreclosure procedures available, at the option of the Secretary."

HUD takes the position that this Act applies to mortgages entered into before the effective date of the statute (October 1, 1981). It is difficult to believe that Congress (or a state legislature for that matter) can change the rules of the game after a mortga-

gor has encumbered his property with the expectation that any foreclosure would be conducted in accordance with the foreclosure laws and procedure of the state where the land is situated. As I understand the theory of power of sale foreclosures, the *power* comes from the mortgagor. This could not be the case prior to October 1, 1981. Of course as time passes there will be fewer and fewer mortgages in foreclosure that have been entered into prior to October 1, 1981.

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*I see two major issues raised by the Act—its applicability to mortgages executed prior to the effective date of the act and whether the procedure provided for... affords due process*

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*Due Process.* The more long lasting and probably more significant issue is the constitutionality of the procedure outlined in the Act and in the regulations. I will concede that Congress can preempt state law in this area, particularly where the mortgagee is a department of the federal government.<sup>4</sup> On the other hand, the fact that the mortgagee is a department of the United States government raises the constitutional law question to a higher level. Many of the cases upholding the validity of foreclosure pursuant to power of sale have relied on the lack of state or federal action.<sup>5</sup> Where the foreclosing mortgagee is the United States, federal action is, by definition, present. Does the procedure outlined in the Act as supplemented

in the regulations provide to any defaulting borrower or other interested party the due process required by the Fifth Amendment?

The purpose of due process is to ensure fundamental fairness in governmental proceedings which may adversely affect the protected rights of an individual. The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of a case against him and a meaningful opportunity to defend his interest.<sup>6</sup>

As noted above, the Act permits HUD to bring about nonjudicial foreclosures on multi-unit residential and nonresidential mortgages held by it in an effort to make available a uniform and expeditious foreclosure remedy so as to protect the federal financial interest in the affected properties.

As a prerequisite to foreclosure under the Act, 24 C.F.R. Sec. 27.5(b) provides as follows:

Before commencement of a foreclosure under this part, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner, *but before service of the notice of default and foreclosure* (emphasis added).

In a litigation context, due process of law is afforded a litigant if he has an opportunity to



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be heard at any time before final judgment is entered.<sup>7</sup> The informal opportunity under the Act to be heard (described by one commentator as "almost...an afterthought")<sup>8</sup> may not satisfy due process considerations. An informal hearing is available to the mortgagor before notice of foreclosure has been served. Ordinarily, notice must be given a sufficient length of time before the hearing to afford an opportunity to be present.<sup>9</sup> The purpose of the notice safeguard is to require that an individual having a legally protected property interest be fairly informed about a claim against him. An opportunity for a hearing is meaningless when a party has not been properly notified. A fundamental requirement of due process is an opportunity to be heard, which should be granted at a meaningful time and in a manner which is appropriate to the nature of the situation.<sup>10</sup>

HUD gives the mortgagor one other opportunity to challenge the foreclosure before the foreclosure sale. The regulations at 24 C.F.R. Sec. 27.25(a)(2) require the foreclosure commissioner to cancel the foreclosure sale if:

The commissioner finds, upon application of the mortgagor at least three days prior to the scheduled sale, that the default or defaults upon which the foreclosure is based did not exist when the Notice of Default and Foreclosure Sale was served. (emphasis added).

The regulations do not set forth any guarantees of the right to introduce evidence, the right to confront and cross-examine witnesses, an opportunity to employ counsel, and raise issues and set up defenses, nor do they provide for a standard of proof for the fact finder or any procedural guidelines for the mortgagor wishing to make such application to the foreclosure commissioner.

Furthermore, the foreclosure commissioner is designated by HUD, not the mortgagor, and HUD may remove the foreclosure commissioner with or without cause. This may be contrasted with the theory that a trustee under a deed of trust has a fiduciary relationship with the mortgagor as well as the lender.<sup>11</sup>

The United States Court of Appeals for the Eleventh Circuit said the following concerning a Farmers Home Administration administrative hearing:

The second due process requirement, a meaningful opportunity to contest an adverse decision or action, is more problematic. A fair hearing requires an impartial arbiter.... We have serious reservations about the neutrality of the hearing officers. The regulations establish that the hearing officer is a nearby district director. On its face, the regulation appears less

than neutral. The nearby district director will be evaluating a decision to foreclose made by a peer and already approved by his boss, the state director.... The Supreme Court...has stated that hearing officers are presumed to be unbiased until a conflict of interest or other specific reason for disqualification is shown. It is the plaintiff's burden of proof to show a conflict of interest. ... At trial, the plaintiffs may be able to further demonstrate a conflict of interest in the hearing officers. On the surface, the plaintiffs have shown a substantial likelihood that a conflict may exist that would impinge the hearing officer's impartiality.<sup>12</sup>

Even if it can be said that the procedure under the Act provides an impartial tribunal

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*If it could be shown that the mortgagor had waived rights that he may have... title insurers might be more comfortable in insuring titles coming through this type of foreclosure, at least with respect to cutting off the rights of the mortgagor*

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in which the mortgagor can obtain a hearing, it should be noted that junior lienors and the holders of other subordinate interests are not afforded any opportunity for a hearing although notice is afforded to certain designated parties.

Notwithstanding the above due process concerns, a possible solution that would at least bring HUD's procedure more in line with current procedure in many power of sale states would be an informed waiver by the mortgagor. If it could be shown that the mortgagor had waived rights that he may have (in addition to those provided by the Act and the regulation) in accordance with the guidelines outlined by the U.S. Supreme Court in *D.H. Overmeyer v. Frick Co.*<sup>13</sup> title insurers might be more comfortable in insuring titles coming through this type of foreclosure at least with respect to cutting off the rights of the mortgagor.

On the other hand, in their work Nelson and Whitman questioned whether a "fool-proof" waiver could be devised that would satisfy most title examiners and pointed out that "it is doubtful that such a waiver would also be effective against holders of subordi-

nate interests in the mortgaged real estate."<sup>14</sup> Unfortunately, HUD has not amended its mortgage forms to refer to its rights under the Act to provide a "warning" to mortgagors that the mortgage would be foreclosed, not in accordance with the normal state procedures, but in accordance with the Act. Just as a mortgagor who executed a mortgage prior to the effective date of the Act could have reasonably expected that normal foreclosure procedures would be followed, I am inclined to think that a party executing a subsequently executed mortgage would have similar expectations.

Careful title insurers have traditionally been cognizant of due process requirements in insuring titles dependent upon tax sales, equity suits and the like. The importance of this concern was underlined by the United States Supreme Court in 1983 in *Menonite Board of Missions v. Adams*, 462 US 791, 103 S Ct 2706, 77 L Ed 2d 180 requiring mailed notice to mortgagees in tax sales notwithstanding state statutes permitting notice by publication only. However, notice alone does not appear to be sufficient. Unless the mortgagor has waived it in accordance with the rules laid down in *Overmeyer*, due process in a governmental deprivation of property also requires an opportunity for a hearing.

Until we have a definitive judicial ruling approving HUD's current practice (or until HUD starts including waiver language, or other notice that it may foreclose pursuant to the Act, in its mortgage forms) some of us will remain doubtful whether the procedure now being followed passes constitutional muster particularly with respect to the "opportunity for hearing" aspect of due process.

As noted above, even this may not be sufficient with respect to the rights of the holders of subordinate interests. However, the procedure would be more in line with current procedures in power of sale states and with the expectations of the parties.<sup>15</sup>

<sup>1</sup> 12 USC Sec. 3701 et seq.

<sup>2</sup> *The Importance of a Simple and Modern Statute.* An important purpose of the Act is to modernize and simplify the law applicable to secured real estate transactions. Real estate law has ancient historical roots. To a greater extent than probably any other area of the law, real estate law remains bound by rules first applied many generations ago when economic and social conditions were far different than they are today. While our courts sometimes recognize that many existing rules are inappropriate to modern circumstances, those courts have been understandably hesitant to change by judicial decision rules on which parties will have relied in structuring the transaction before the court.

*Changing rules by statute, of course, will not have the drawback of defeating the expectations of parties to completed transactions, since the statute will operate prospectively only.* (emphasis added)

*Reducing Costs Upon Foreclosure.* Whatever the causes of that phenomenon, there is little doubt that delays in completing real estate foreclosures in many states have increased the risks of vandalism, fire loss, depreciation, damage and waste. The resulting losses have plainly raised the cost of private mortgages, and have significantly eroded the economic value of many government subsidy programs involving real estate mortgages. Recent data indicates an unprecedented growth in the portfolio of foreclosed properties by the secondary mortgage market and government lenders.

Delays in foreclosure generally and delays in the transfer of title due to redemption periods observed in some States have encouraged the practice known as "equity skimming" with consequent financial loss to the Government, homeowners, and mortgagees generally.

The National Conference believes that the availability of a uniform, less expensive, and more expeditious foreclosure procedure would ameliorate these conditions, and would facilitate the sale and resale of secured real estate loans."

<sup>3</sup> 24 C.F.R. Sec. 27.1 et seq.

<sup>4</sup> *U.S. v. Viewcrest Garden Apartments, Inc.*, 268 F.2d 380 (1959) cert. denied 361 U.S. 834, 80 Sup. Ct. 156, 4 L. Ed. 2d 120 and *U.S. v. Stadium Apartments, Inc.*, 425 F.2d 358 (1970)

<sup>5</sup> Powell, Law of Real Property, Sec. 468[7] and 468[8]; Nelson and Whitman, Real Estate Finance Law, 2nd Ed. Sec. 7.27, 7.28

<sup>6</sup> *Sniadach v. Family Finance Corp.*, 395 US 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); *Fuentes v. Shevin*, 407 US 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)

<sup>7</sup> *Ewing v. Mylunger & Casselberry, Inc.*, 339 U.S. 594 (1950)

<sup>8</sup> Nelson and Whitman, Real Estate Finance Law, 2nd Ed. Sec. 7.25

<sup>9</sup> *Roller v. Holly*, 176 U.S. 398 (1900)

<sup>10</sup> *Scherer v. Davis*, 543 F.Supp. 4 (D.C. Fla. 1982)

<sup>11</sup> 55 Am Jur 2d, Mortgages, Sec. 17.

<sup>12</sup> *Johnson v. U.S. Dept. of Agriculture*, 734 F.2d 774 (1984).

In an unreported 1989 Bankruptcy Court opinion the Court found that an officer of the Farmers Home Administration who acted as an agent of the Trustee acted in such an impartial manner as to render a foreclosure sale voidable. *Smith v. US*, U.S. Bankruptcy Court for the Western District of Virginia, Adversary Proceeding No. 5-87-0059

<sup>13</sup> 405 US 174, 31 L.Ed.2d 124 925 Ct 775. The waiver must be made voluntarily, intelligently, and with awareness of the legal consequences.

<sup>14</sup> Sec. 7.26

<sup>15</sup> Admittedly some of the authorities quoted herein cast doubt on long standing practice regarding power of sale foreclosures by state or federal agencies pursuant to state law. This is a risk of doing business that each underwriter will have to accept or reject. Because of its impact on established practice, one would hope that any holding of unconstitutionality in this area would be prospective only.

## PATTON

*continued from page 8*

ties as described in the statute. There is no redemption period after the sale, and the purchaser can take possession upon passage of title.<sup>12</sup>

Although foreclosures under the Act closely resemble traditional nonjudicial foreclosures, there are several significant differences. Under certain circumstances, HUD must require a purchaser other than itself to continue to use the property after foreclosure in the same manner and under the same restrictions, including a limit on the income of the tenants, as it had been operated before the sale.<sup>13</sup> In all other cases,

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### **W**hen third parties are the successful bidders, they must usually borrow some or all of the purchase price, and the lenders will require a mortgagee's title insurance policy

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HUD can impose such obligations on a purchaser if it chooses.<sup>14</sup> In practice, most HUD foreclosures contain these requirements.

These provisions were the result of Congress' concern that if a party other than HUD purchased a low and moderate income property at foreclosure, the purchaser could evict the present tenants and convert the project to use for higher income tenants. If this happened, the community would lose a housing asset for low and moderate income people, and the purpose for which HUD's mortgage insurance or loan was originally provided would be defeated.

A few years later, Congress deviated again from the traditional foreclosure when it required HUD to provide cash subsidy payments or other financial assistance to third party purchasers, regardless of the method used to foreclose.<sup>15</sup> Congress recognized that financial aid was an important element in the preservation of low and moderate income rental housing. To comply with this requirement, HUD has made the obligation to accept this assistance a term of most HUD foreclosure sales. To further assure the viability of these properties, HUD requires, where necessary, that a purchaser agree to perform repairs and to present a letter of credit to guarantee that the repairs are completed.<sup>16</sup>

In all other respects, a foreclosure under

the Act is similar to other nonjudicial foreclosures.

Final regulations implementing the Act were published on February 24, 1984, at 24 C.F.R. Part 27.<sup>17</sup> Since then, HUD has used the procedures contained in the Act and the regulations as its principal method of foreclosing on multifamily mortgages.

Through July 1, 1992, HUD has referred approximately 265 cases to commissioners for foreclosure under the Act. These cases involved property in more than 40 states, including many in which nonjudicial foreclosure procedures are available, such as Texas, California, Colorado, Georgia, and Missouri. Roughly 80 percent of these referrals have involved mortgages held by HUD under the mortgage insurance programs of Title II of the National Housing Act, while the remainder have involved loans made by HUD under Section 312 of the Housing Act of 1965.

Of all the foreclosures referred to commissioners, approximately 150 were actually completed. The others were terminated prior to completion because, among other reasons, the owner declared bankruptcy before the sale could be held,<sup>18</sup> the mortgagor brought the loan current before sale, or the high bidder could not comply with the terms of the sale.

Approximately half of the properties sold under the Act have been acquired by HUD and half by third parties. Sales under the Act typically take from 90-120 days from the time the case is referred to the commissioner until the date of sale. If a third party is the high bidder, closing usually takes place within 30 days after the sale.

### **Title Insurance Role Important**

Title insurance plays an important role in many of the sales conducted under the Act. When third parties are the successful bidders, they must usually borrow some or all of the purchase price, and the lenders will require a mortgagee's title insurance policy. The lender's title insurance agent will then examine the record to determine that the commissioner has complied with the notice and other requirements of the Act. We have instructed commissioners to cooperate fully in this process.

One aspect of the Act that is of special interest when issuing title insurance is that notice of the foreclosure sale must be given to parties with an interest in the encumbered property as shown in the public record 45 days prior to the original date of the sale.<sup>19</sup> This means that an interest which arose fewer than 45 days before the sale could survive the foreclosure unless the commissioner provided notice to the party holding that interest in sufficient time before the sale. It is unlikely that such an interest would be created during this brief interim before

the sale, but it has happened.

Despite the large number of properties foreclosed under the Act, it has generated relatively little litigation. In all, five mortgagors have sought restraining orders or injunctions against sales held under the Act, while one other mortgagor sought to vacate a sale conducted under the Act because it allegedly violated the stay of bankruptcy. In these cases, however, the courts denied each request for a restraining order or injunction,<sup>20</sup> and the claim that HUD's sale had violated the bankruptcy stay was rejected.<sup>21</sup>

The mortgagors in some of these cases have alleged that the Act violates various provisions of the constitution, including the due process and impairment of contract clauses, but no court has yet provided an explicit determination that the Act is or is not constitutional. All of the cases to date have been decided on less lofty grounds specific to that case. Nevertheless, one court came very close to making a determination that the Act is constitutional when it stated from the bench that the Act carried with it a presumption of constitutionality and that it:

does provide very streamlined procedures for enforcing the government's rights and the government here is the creditor. The fact that the procedures are streamlined does not mean that they are unconstitutional. . . . I am not satisfied from the submission that the [mortgagors] have shown a reasonable likelihood of success on the merits and convincing the Court that the statutory procedures are unconstitutional on their face or that they are unconstitutional as . . . they are being applied in this case.<sup>22</sup>

Another court implicitly recognized the validity of the Act when it ruled that HUD could foreclose, even though the underlying default was nonfinancial, when HUD and the commissioner had complied with all of the procedural requirements of the Act.<sup>23</sup> In determining that the Act's preforeclosure notice requirements had been complied with, the court gave no hint that those requirements were themselves inadequate or did not provide the mortgagor with its due process rights.

In a third case, the court implicitly upheld the Act by refusing to invoke Sections 549(a) and (c) of the Bankruptcy Code to vacate a sale held under the Act.<sup>24</sup> Here, the debtor/former mortgagor did not attempt to challenge the validity of the sale. Instead, it claimed that the sale was valid but had to be set aside. In rejecting this claim, the court, like the debtor, expressed no doubts that the sale was legal.

Perhaps one reason why the Act has received ongoing judicial support is that HUD

has added an important step in its foreclosure process that is designed to provide due process to the mortgagor before his property is sold. That step, which is not required by the Act itself but is part of the regulations, is the opportunity for a mortgagor informally to present reasons why the mortgage should not be foreclosed.<sup>25</sup> Under the regulations, this presentation may be held at any time before notice of the foreclosure sale is served, but in practice it is always held much earlier than that, even before the final decision to proceed with foreclosure is made.<sup>26</sup> In this way, the mortgagor's views are part of the record that HUD considers when it makes its decision to foreclose. Now, more than ten years after it was passed, it is clear that the Act has accomplished its purposes. The average time it takes HUD to foreclose has dropped from several years to less than four months, permitting HUD to recover its investment and replenish its insurance funds that much more quickly. The properties themselves and their residents have also benefited because the purchaser, whether it is HUD or a third party, can obtain title and possession immediately upon the closing of the sale, and can then begin to address the project's physical and operational needs. As Congress intended, the Act has proved to be a most effective tool for administering HUD's programs. 🦋

<sup>16</sup> HUD Notice H91-68, Delegation of Authority to Foreclose Multifamily Mortgages (July 30, 1991) p. 20.

<sup>17</sup> 47 F.R. 7072 (February 24, 1984)

<sup>18</sup> When the owner files a bankruptcy petition before the sale, the sale is automatically stayed pending resolution of the bankruptcy proceeding. It is HUD's policy to aggressively pursue relief from the automatic stay so that it may complete the foreclosure.

<sup>19</sup> 12 U.S.C. 3708(1)

<sup>20</sup> *Hitchcock Realty, Inc. v. U.S. Department of HUD*, No. 4:89CV01521 (N.D. Ohio Aug. 15, 1989) (Oral Order); *Tall Trees Garden Apartments Limited Partnership v. Kemp*, No. 89-2256 (D.C.D.C. Aug. 28, 1989) (LEXIS, Genfed Library, Dist file); *Geneva Limited Partners v. Kemp*, 779 F.Supp. 1237 (N.D.Cal. 1990); *Sutton Place Cooperative, Inc. v. U.S. Department of HUD*, No. IP 90-1837-C (S.D.Ind. Sep. 24, 1990); *United States v. Lisbon Square*, No. 91-C-281 (E.D.Wisc. May 1, 1991) (Oral Order)

<sup>21</sup> *In re: Davidson Rehab Partners*, 103 B.R. 440 (Bankr. S.D.N.Y. 1989)

<sup>22</sup> *United States v. Lisbon Square*, No. 91-C-281 (E.D. Wisc. May 1, 1991) (Oral Order, Transcript at 3-4)

<sup>23</sup> *Geneva Limited Partners v. Kemp*, 779 F.Supp. 1237 (N.D.Cal. 1990)

<sup>24</sup> *In re Davidson Rehab Associates*, 103 B.R. 440 (Bankr. S.D.N.Y. 1989)

<sup>25</sup> 24 C.F.R. 27.5(b)

<sup>26</sup> HUD Notice H 91-68, Delegation of Authority to Foreclose Multifamily Mortgages (July 30, 1991) pp. 22-24.

## Past President's Wife Succumbs

Services were in El Dorado, KS, for Nadine S. Silvers, 81, wife of 1963-64 ALTA President Clem H. Silvers, who died in a hospital there. She was a retired teacher and a graduate of Pittsburg State University.

Besides her husband, survivors include a son, a daughter, a sister and five grandchildren.

The family suggests contributions to Susan B. Allen Memorial Hospital, 720 West Central, El Dorado, KS 67042, where a memorial has been established in the name of Mrs. Silvers.

## ALTA Directory Schedule Changes

Listing cards for the next edition of the ALTA membership Directory will be mailed in October, 1992, in keeping with a change in the publication schedule.

Beginning in 1993, the Directory will be published annually in June.

<sup>1</sup> The views contained in this article are those of the author and do not necessarily represent the views of the Department of Housing and Urban Development. No official support or endorsement by HUD is intended or should be inferred. 24 CFR 0.735-203(e)(3)(i).

<sup>2</sup> In this article, the terms "mortgage" or "mortgages" include deeds of trust, security deeds, mortgage deeds or any other instruments encumbering real property which are given to secure repayment of a HUD-involved loan.

<sup>3</sup> 12 U.S.C. 1702 et seq.

<sup>4</sup> 42 U.S.C. 1452b

<sup>5</sup> 12 U.S.C. 1701q

<sup>6</sup> *United States v. Victory Highway Village, Inc.*, 662 F.2d 488, 498 (8th Cir. 1981); *United States v. Scholnick*, 606 F.2d 160, 167 (6th Cir. 1979); *United States v. Stadium Apartments, Inc.* 425 F.2d 358, 360 (9th Cir. 1970).

<sup>7</sup> *Calvert Associates v. Harris*, 469 F.Supp. 922, 926-7 (E.D. Mich. 1979)

<sup>8</sup> e.g., Wisc. Stat. Ann. 846.61 (repealed by 1983 Act 92, Sect. 16, eff. November 17, 1983)

<sup>9</sup> Part 6, Sect. 361 et seq., Omnibus Budget Reconciliation Act, P.L. 97-35, 95 Stat. 422 (August 13, 1981), 12 U.S.C. 3701 et seq.

<sup>10</sup> 12 U.S.C. 3703

<sup>11</sup> 12 U.S.C. 3702(c)

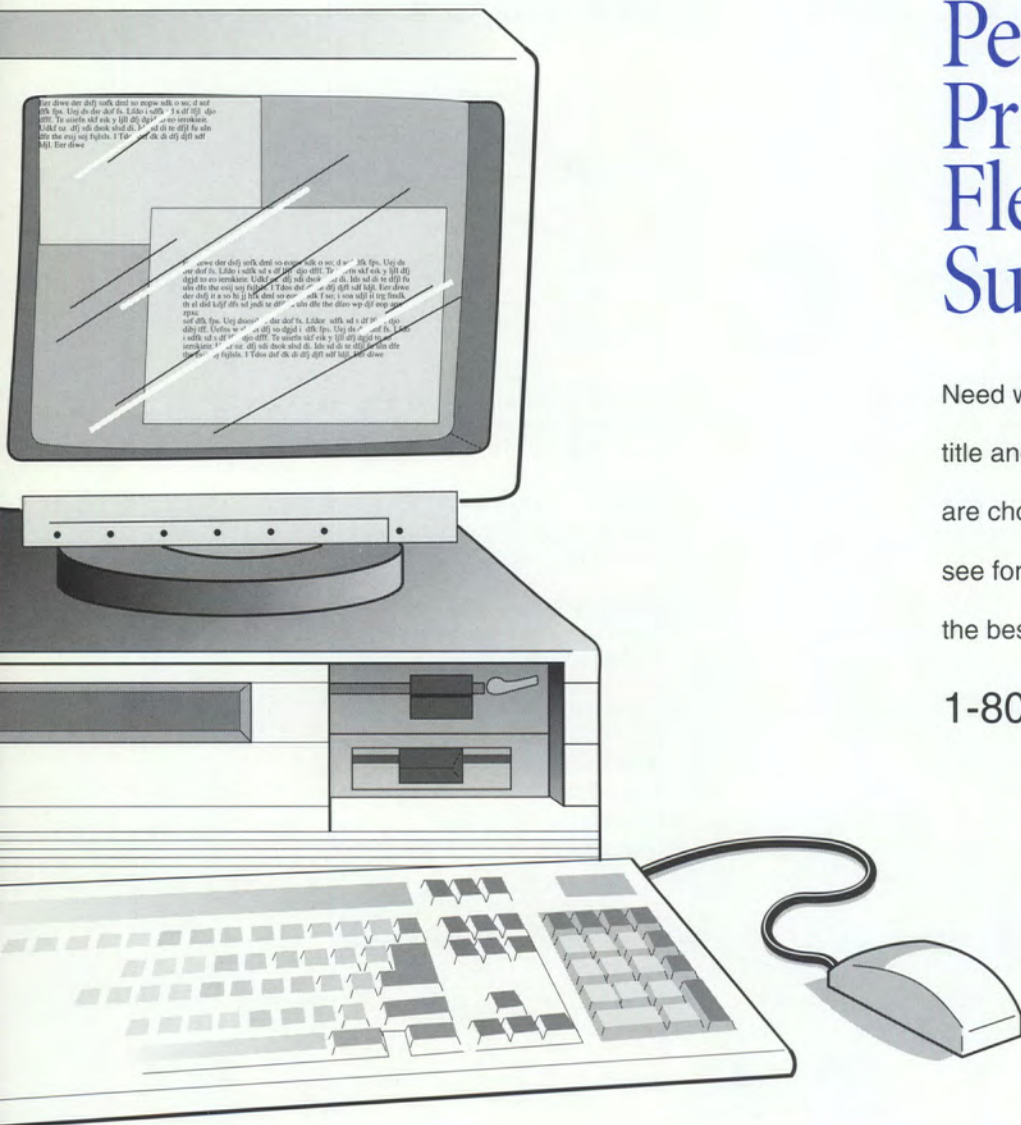
<sup>12</sup> 12 U.S.C. 3713(c) and (d)

<sup>13</sup> 12 U.S.C. 3706(b)(2)(A)

<sup>14</sup> 12 U.S.C. 3706(b)(1)

<sup>15</sup> 12 U.S.C. 1701z-11 (1991)

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# RESPA Enforcement -- A Report from the Front

By Phillip L. Schulman, Esquire

It has been a year since the U.S. Department of Housing and Urban Development (HUD) established an enforcement unit to police the anti-kickback provisions of the Real Estate Settlement Procedures Act (RESPA). Those provisions make it a crime to pay out or receive a thing of value for the referral of a settlement service. If you're one of the 200 or so settlement service providers that were investigated by the RESPA Enforcement Unit last year, you don't need to be told this small enforcement team means business.

Title agents that receive the lion's share of insurance premiums while title underwriters do all the work; mortgagees that provide money, vacation trips, fax machines or low-interest loans to real estate brokers to encourage referrals; or real estate brokers that form settlement service companies and then require customers to use these affiliated entities -- all have found themselves easy targets for the new RESPA Unit.

Exaggeration? Consider the numbers. Over RESPA's first 17 years, HUD received perhaps 800 inquiries. In the two years since the RESPA Enforcement Unit was formed, the total has soared to nearly 400 complaints each month. The complainants? Businesses fearing an unfair advantage from competitors that pay referral fees.

Let's look at what the RESPA Enforcement Unit has been up to this past year. What violations drew their attention? Does it make sense to approach HUD about entering into a consent agreement or other form of amnesty -- to avoid the penalties of RESPA?

## About the Act

Congress enacted the Real Estate Settlement Procedures Act in 1974 to protect home buyers by requiring advance disclosure of settlement charges and by eliminat-

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*If you're one of the 200 or so settlement service providers that were investigated...you don't need to be told this small enforcement team means business*

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ing kickbacks and referral fees, both of which could cause higher settlement service costs. RESPA applies to "federally related mortgage loans," which means virtually all purchase-money, first-lien, residential loans, including both conventional and government (FHA and VA) loans. It does not presently apply to refinancings, second-lien loans or most construction loans; that may soon change.

It is the anti-kickback provisions in Section 8 that are the primary target of the RESPA Enforcement Unit. Section 8 of RESPA generally prohibits a person or entity from giving or accepting a fee or thing of value for the mere referral of business related to a settlement service. Settlement ser-

vices include title searches and examinations, surveys, title insurance, attorney services and the preparation of documents and services by real estate agents and brokers.

Court cases have held that the origination of a loan is not a settlement service -- although HUD takes a different view. If RESPA regulations ever see the light of day, HUD is almost certain to define settlement services to include the making of a loan. For now, loan originators had better tread carefully.

This past year, the RESPA Enforcement Unit has focused on whether the payment of a fee or thing of value was for services actually performed or whether all or part of that payment was for a referral of business. A "thing of value" is broadly defined to include money, commissions, profits, property, discounts, credits, low-interest loans, free fax machines, computers and the like. Virtually anything one receives in consideration for making a referral is considered by



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HUD to be a "thing of value."

In addition, no person or entity may give or accept any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service other than for services actually performed. Referrals *per se* are not outlawed by RESPA. What the Act does prohibit is any payment for referral of certain types of business.

Violators should realize Section 8 gives the RESPA Unit some impressive firepower. HUD may, for instance --

- seek a court order to enjoin a company's business activities;
- require restitution to the person or persons unfairly charged a settlement service in an amount three times that of the original charge;
- require the company to return all profits made through an unauthorized activity; or
- seek debarment of real estate agents, mortgage lenders and brokers, title agents and underwriters and sellers from further participation in government loan programs.

If that doesn't get your attention, the Act permits HUD to seek \$10,000 fines or criminal penalties of up to one year's imprisonment.

### **What You Need to Know About The RESPA Enforcement Unit**

First, it's small. With fewer than a half dozen full-time staffers, the RESPA Unit cannot possibly monitor or supervise an entire industry. They have, however, maximized their efforts by contacting state attorneys general, insurance commissioners and consumer interest groups, who act as the Unit's eyes and ears. The most fertile source of leads by far comes from businesses making allegations against their competitors. RESPA Enforcement Unit Director David Williamson estimates that 80 percent of the unit's 400 monthly complaints come from tattletale competitors.

Although over 200 reviews were initiated in the first year, with its small staff the RESPA Unit has had to become more selective in deciding which cases it will investigate. Some complaints may be handled by telephone. A RESPA investigator will call the subject and determine whether the matter is serious enough to warrant a full review. In many of these cases, especially where the questionable activity has stopped, the Unit simply requests that the person or entity sign an affidavit declaring that the practice has ceased and swear that future activities will comply with the Act.

If the facts warrant, on the other hand, count on a full investigation. That means requests for documents; written responses to detailed questions about the subject's busi-

ness activities; or, in more serious cases, the issuance of subpoenas compelling production of documents and testimony.

The RESPA Unit has also joined forces with state attorneys general. The Act permits state attorneys general to bring actions on behalf of consumers. In addition, many states have their own unfair trade practices acts that give attorneys general authority to investigate and enjoin violators who engage in kickback activities. Minnesota and Illinois, for example, have teamed up with HUD to initiate joint reviews. State and federal investigators today are reviewing the business practices of real estate brokers, mortgagees, title agents/underwriters and attorneys engaged in settlement services.

### **The Philadelphia Story**

The RESPA Unit also has enlisted the Department's Regional Offices as an enforcement resource. An experiment in Phil-

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*The most fertile source of leads by far comes from businesses making allegations against their competitors*

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adelphia has resulted in a frenzy of RESPA investigative activities.

The Philadelphia Regional Office's jurisdiction encompasses Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia. The Philadelphia Regional Administrator offered the RESPA Unit the services of its Fair Housing investigators to conduct on-site investigations of settlement service providers.

At a public meeting in April, the Regional Administrator and the RESPA enforcement staff told their audience -- over 400 settlement service providers -- to expect vigorous enforcement of the anti-kickback provisions of the Act. Phones at HUD rang off the hook, letters and allegations came fast and furiously -- and approximately 50 RESPA enforcement actions already have been opened. Director Williamson is seeking to initiate similar programs in other HUD Regional Offices.

All in all, this small band of RESPA enforcement investigators are making their presence felt. What types of RESPA violations have attracted the Unit's attention?

### **Common Findings**

The Department informs the industry of its RESPA obligations through regulations and informal advisory opinions. Unfortu-

nately, the Department has all but stopped issuing advisory opinions and the regulations have not been materially updated in eight years. That means that many settlement service practices and procedures now in use have not been addressed by agency regulations. Proposed regulations continue to be bottlenecked at HUD or the Office of Management and Budget -- the result is confusion and uncertainty on the part of the industry. The RESPA Unit has recognized this shortcoming and is less likely to penalize settlement service providers for activities which have yet to be addressed by regulations.

Instead, the RESPA Unit has concentrated most of its enforcement efforts in areas where existing rules are clear, or at least clearer. Here is a summary of this year's HUD Hit List.

*Thing of Value.* HUD is presently investigating arrangements in which various things of value are provided to persons in a position to refer settlement business or services and equipment are provided referrers at less than their reasonable value. For example, referrers have been supplied with computer equipment and fax machines that can be used to communicate with the providers, but also may be used by the referrers for their own purposes. HUD has taken the position that providing "non-dedicated" equipment violates Section 8. Mortgagees have had to return or pay for computers, fax machines and printers supplied by attorneys, credit reporting bureaus and title agents. Real estate brokers accepting a portion of a title agent's premium or excessive fees from mortgagees for taking a credit application also have been required to end these practices.

*Sham companies.* A common violation involves referrers of settlement services joining together to form settlement companies that perform little or no work, yet receive excessive fees. Groups of real estate brokers, for example, have formed mortgage companies and title agencies and then subcontracted out all or nearly all of the settlement functions, while retaining a substantial portion of the fees. HUD finds such conduct to be in violation of the Act.

*Controlled business arrangements.* HUD is engaged in several investigations of controlled business arrangements that involve the relationship and business activities among affiliated service providers. Investigations to date have focused primarily on real estate brokers that own an interest in a mortgage company, mortgage broker or title agency. HUD investigators have come down hard on controlled business arrangements when consumers have not been informed of the affiliated relationship or of the true costs charged by the affiliated entity;

not been given the option of selecting a non-affiliated settlement provider; or payments to the real estate brokers/owners are based on the volume of business referred by the individual broker rather than a return on ownership interest.

**True title agents.** Title agents typically refer title business to title underwriters. In most cases, the agents receive the largest portion of the insurance premium. HUD claims that title agents are only entitled to this larger share if they perform "services significant to the issuance of title policies." If, instead, title agents subcontract out all or substantially all of their duties to the title underwriter or other third party, yet retain a large piece of the premium, HUD considers the receipt of the premium to have been paid for the referral of business, not for services actually rendered.

RESPA does not define the term "title agent" nor describe "significant services" to the issuance of a title policy. In a settlement agreement reached with a title agent last October, however, in which the agent paid HUD \$1 million, the Department did define what it considered to be "significant services". HUD holds that to be a title agent, one must examine the actual search package; determine insurability by preparing the title commitment; issue the policy in one's own name; and assume liability for its acts or omission to act. HUD is actively investigating the relationship between title underwriters and their agents.

### Voluntary Compliance

At any stage of a RESPA investigation, a company may elect to enter into an administrative settlement with HUD. Settlement may mean modifying existing practices or forking over hard cash, or both, in order to make the matter go away.

The RESPA Enforcement Unit also encourages persons and entities to come forward voluntarily *before* HUD opens an investigation. This represents voluntary compliance or a form of amnesty. Voluntary compliance may or may not make sense, depending on your circumstances. Keep in mind, that there's a price to pay if you seek voluntary compliance. Don't expect a certificate of appreciation for stepping forward -- you or your company will still get whacked. The whacking will be less severe, however, than if HUD finds you on its own. Before you rush to volunteer, consider a few questions:

1. Are you a likely candidate to be investigated?
2. Is the RESPA Enforcement Unit conducting investigations in your backyard?
3. Are you likely to be "turned in" by one of your competitors or a disgruntled employee?

4. What's likely to happen if you do come forward?

5. Can you expect fair treatment?

Before HUD opens an investigation, it generally considers several factors:

- *Gravity of the offense.* Was the violation intentional or inadvertent? Was the act a clear-cut violation of the anti-kickback provisions or did it involve payments in an area not yet addressed by HUD regulations? Was this an isolated instance or is the questionable practice continuing?
- *Injury to public.* Was the consumer ripped off? Was the consumer required to use a particular settlement service provider? Did the company's actions result in the consumer paying a higher cost for the settlement service? (Payment of a referral fee does not always result in increased costs to

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## The Act permits state attorneys general to bring actions on behalf of consumers

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the consumer; e.g. when a state sets the charges, as in the case of certain title insurance rates).

- *Benefits received.* Did the referral fees received total \$5,000 or \$500,000? The higher the fee accepted in violation of the Act, the more likely HUD is to select your company for investigation.
- *Ability to pay.* Does your company have a net worth with which to pay a sizeable fine, or are there insufficient assets available? The bigger the company, the more likely the Department is to pursue the matter.

After evaluating these factors, if you feel you're a serious candidate for investigation -- or simply can't sleep at night until the matter is resolved -- voluntary compliance may be for you. It is not for everyone.

Should you decide to contact HUD about voluntarily entering into an agreement:

### 1. Mitigate Your Damages

Before approaching the RESPA Unit, mitigate your damages by stopping the questionable act. If you were paying out or receiving referral fees -- stop. That may mean terminating an employee engaged in an unauthorized or unlawful practice. It

may require terminating relationships with errant vendors. Impose controls and, most important, take whatever corrective actions will prevent slipping back into the questionable practice.

### 2. Go In Unannounced

If you march in to HUD, tell them what you did and then can't cut an acceptable deal, you have blown your cover for nothing -- except making it easy for HUD to go after your company. Instead, have your lawyer provide HUD with a hypothetical set of facts, and then ask HUD what their terms would be to settle. If the terms are unreasonable and you decide to take your chances, at least you haven't given the store away by announcing your name and serial number.

### 3. Carefully Draft the Agreement

Be sure that any agreement you enter into does not include an admission of liability or fault. Remember that RESPA authorizes criminal penalties. The last thing you want to do is conclude an administrative settlement with HUD, only to have the U.S. Attorney's Office or state attorney general bring a criminal action against your company. Make sure a settlement is conditioned upon there being no sanctions or penalties against you or your company.

### 4. Insist on Anonymity

After settlement, HUD typically issues a press release disclosing your identity and the terms of the agreement. In some cases, HUD may waive disclosure or at least may be willing to negotiate the timing of a press release. It's worth a try.

### 5. Seek A Repayment Schedule

You can expect a fine. The size of the fine will depend on the factors discussed above: seriousness, injury, size of the fee, net worth of your company. If the fine is steep, request permission to pay the fine over time. In the past, HUD has been amenable to a reasonable repayment schedule.

The RESPA Enforcement Unit recently has joined forces with the U.S. Attorney's Office on RESPA matters. If the U.S. Attorney's Office is involved, you can expect a rougher ride. You should at least try for a global settlement that releases your company from all administrative, civil and criminal penalties. An interagency agreement almost certainly will carry a higher fine and bring greater publicity. The bad news is that Williamson says his Unit intends to seek alliances with more U.S. Attorney's Offices in the coming year.

What are the implications for the industry? For those who knowingly give or accept fees for the referral of settlement services, the stakes have been raised. RESPA enforcement may be 18 years late, but it's here in full force. You ignore it at your own peril. ➤

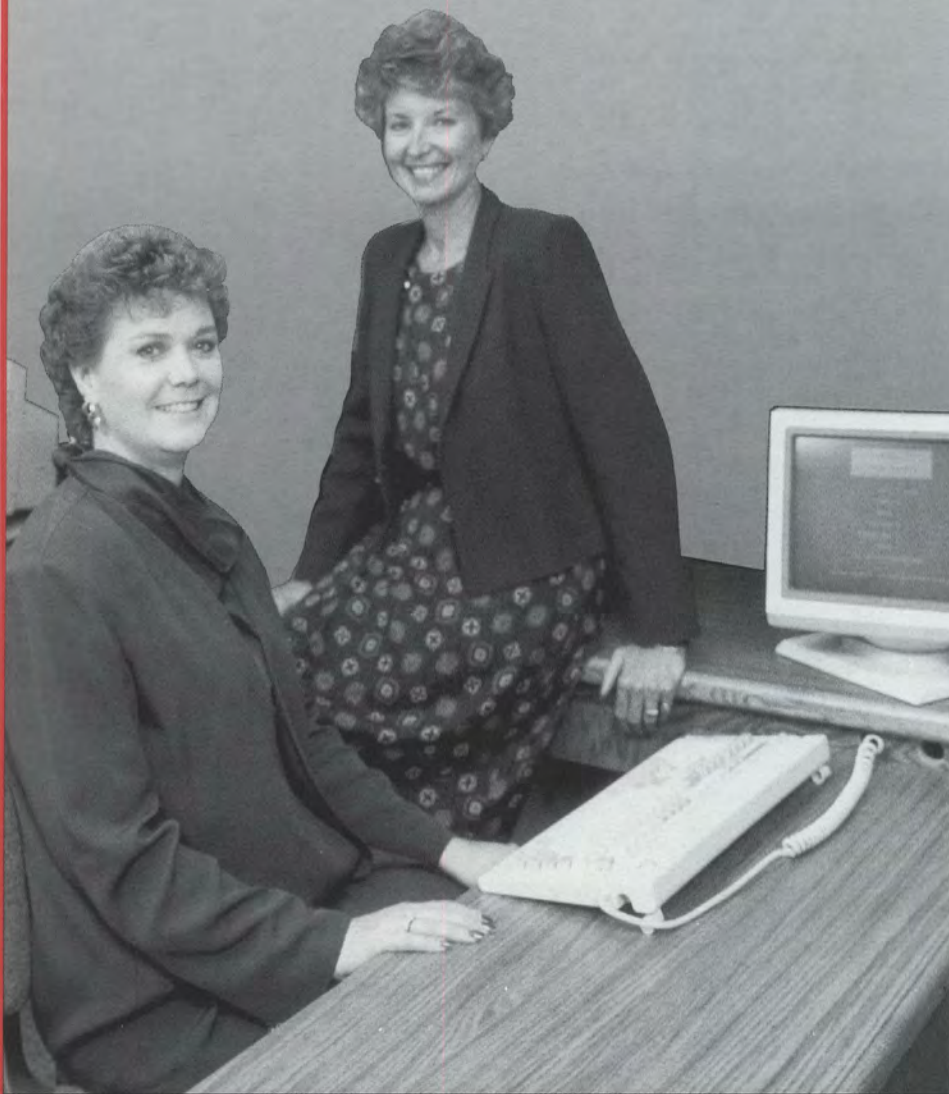
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**Location:** Sturgeon Bay, Wisconsin  
**Underwriter:** First American Title Insurance Company  
**Computer:** Titlepro system with seven work stations

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**Family:** husband, Steve; children, Angela and David  
**Activities:** Sevastopol School Board, Rotary International, Altrusa of Door County

**Music:** Garth Brooks  
**Vacation Spot:** Lake Tahoe and the Caribbean  
**Recreation:** Golf, skiing and reading

**Executive:** Cathy Wiese, Owner  
**Family:** husband, John; children, Pamela and Paula  
**Activities:** Door County Economic Development Board of Directors, Chairman of City Purchasing & Building Committee, and YMCA Public Relations Chairman

**Recreation:** Golf, boating and dancing



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# Record Treasure Hunt in Florida

By R. Harris Turner

**H**istory came full circle this year when land title information from two central Florida companies dating back over a century was combined in a single organization.

This retrospective actually began in 1991, when management at Fidelity Title & Guaranty Co., Winter Park, decided on expansion into a third neighboring county. That triggered an extensive search for records of a Lake County abstract company, which dated back to the 1870s. Economic conditions had forced the closing of this company in 1985.

In tracking down and identifying the records targeted for acquisition, Fidelity Title

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*It took about three months to trace all of the records sought, which were physically placed in eight different locations*

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employees assembled a memorable picture of courage and resourcefulness involving both public and private sector persons with a forward-looking interest in the preservation of title information through public land records.

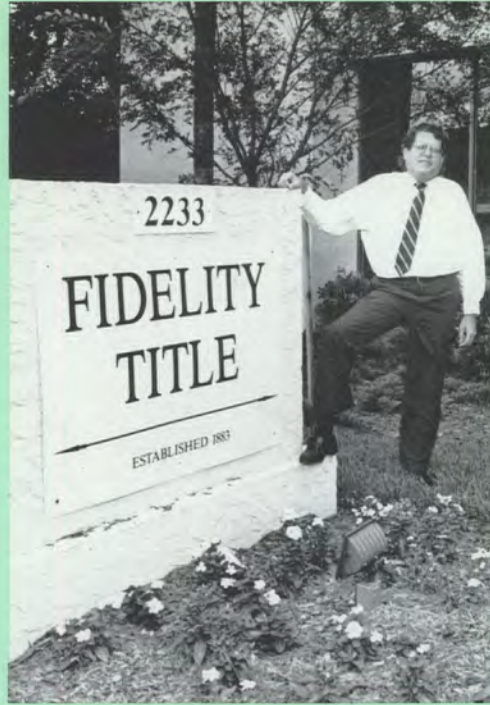
You could say the story began in 1868, when the Orange County court house burned and the only records saved were those in a tract book the clerk had taken home to catch up on his posting. The court house fire left a lasting impression. When the new court house was built and new records assembled in 1875, the clerk decided to post a new set of records for his own use off site. Later, this led to formation in 1883 of the Abstract Corporation with use of the off-site books.

Moving along to 1887, Lake County was



*Buried treasure—almost. Carl Bauchle, top, one of Fidelity Title's owners, and Von Moye, plant manager, with some of the 120 filing cabinets of records from a former competitor company that were tracked down in a three-month quest extending across eight locations. Fidelity acquired the records, weighing over 14,000 pounds, for expansion of its Central Florida title operations into a neighboring county.*

Author R. Harris Turner is president of Fidelity Title and Guaranty Company and is a co-owner of the business, along with Larry P. Deal and Carl T. Bauchle. He received his law degree from the University of Tennessee School of Law and issued his first title insurance policy in 1970. He has been involved in title insurance and real estate law since that time. The main office of Fidelity in Winter Park, FL, shown here, is the third occupied by the company since its creation in 1883.



Abstract grew during the early Florida land booms, Abstract Corporation changing its name to Fidelity Title and Guaranty Company as the expansion continued. When Seminole County was formed from the northern part of Orange County, the records were split and Fidelity Title posted both Orange and Seminole counties.

Although both companies and their owners managed to survive the Great Depression in the economic growth that continued through Central Florida, freezing weather devastated the citrus industry in that part of the state during the early 1980s and the resulting slump forced the closing of Lake Abstract. Despite this development, William Burleigh, grandson of the founder, arranged for storage of the tract books and other records which formed the basis of the title plant.

Among the records stored were those William Burleigh's grandfather purchased in founding the company--which were saved from the Tavares fire by his grandmother.

Then came the 1991 decision by Fidelity Title calling for expansion into Lake County, and the search was on to locate the records of Lake Abstract. Before the records were rounded up, this quest took on aspects of a Florida treasure hunt.

Contact was made with all of the people associated with Lake Abstract at the time of its closing in 1985. There was a rumor that at least some of the records were in a tractor trailer at a local junk yard. This proved to be accurate when some of the tract books were indeed traced to a trailer in a junk yard, where they had rested since 1987.

It took about three months to trace all of the records sought, which were physically placed in eight different locations. As each of these locations was uncovered, a running inventory was kept to determine if all records sought still were available.

Upon completion of the hunt, it was determined that all the 119 tract books of Lake Abstract were recovered--along with computer postings started by that company, film, documents and tract books from Orange and Sumter counties.

An agreement was reached for purchase of the Lake Abstract records, and Fidelity Title has restored this Lake County title plant in its facilities at Winter Park. Computerized postings, tract books and records for Lake, Seminole and Orange counties now are housed in this single location.

Incorporating the Lake County records at Winter Park is a more than sound business decision by the management of Fidelity Title. Everyone concerned is pleased to see this re-establishment in an active title operation of an historic link to the colorful past. 🐾

created from parts of Orange and Sumter counties. Those books the Orange County clerk was using to post the portion of that county which became part of Lake County were sold by William Beardall, one of the founders of the Abstract Corporation, to the three founders of Lake Abstract Company.

About a year later, fire again played a dramatic role on the history of local land recordation. When the downtown section of

Tavares, county seat for Lake County, became engulfed in flames, the wife of Edwin Stark Burleigh, one of the Lake Abstract founders, retrieved the company title records from its burning building, loaded them into a horse-drawn buggy, and drove the buggy into nearby Lake Dora--keeping the record books out of the water and away from the fire.

Both the Abstract Corporation and Lake



Historical fascination abounds in this original tract book acquired by a founder of a Fidelity Title predecessor company formed in 1883. From left are William E. Burleigh, former vice president of Lake Abstract Company, the predecessor firm, and grandson of its founder; Brian W. Burleigh, great grandson of the Lake Abstract founder; John Beardall, great grandson of the Fidelity Title founder and manager of computer information services for the company; and William Beardall, attorney and grandson of the founder.

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# 'Maui No Ka Oi' Translates Into A Great Convention

*By Leigh A. Vogelsong  
ALTA Director of Meetings and Conferences*

**T**he idyllic setting of West Maui offers a perfect backdrop for the Eighty-Sixth ALTA Annual Convention October 14-17. Traditionally independent with a proud heritage, the beautiful island reflects a kindred spirit of individual leadership suggesting the character of those who have shaped the title industry for more than a century.

Opportunities to build from this heritage of inner strength are abundant in the program agenda for the upcoming Convention.

Leading topics and issues are reflected in the guest speaker lineup for the event (see separate profiles, this edition). Bringing the benefit of his considerable experience to a commentary on the outlook for the American financial system will be L. William Seidman, former chairman of the Federal Deposit Insurance Corporation who later became the first chairman of the Resolution Trust Corporation.

Presenting his views on the downshifting of the nation and the growing preference of corporate leaders to domicile in small, relatively remote locales will be David A. Heenan, chairman, president and chief executive officer of Theo. H. Davies & Co., Ltd., the North American holding company for Hong Kong-based Jardine Matheson, one of the Big Five companies in Hawaii. And, there will be an insider's view on the upcoming election from Steve Roberts, senior writer for *U. S. News & World Report* and a widely quoted authority on Congress.

There is much to be gleaned from the variety of informative presentations sprinkled through the Convention calendar. With program details still being completed at this writing, roster confirmations have been re-



**ALTA \* MAUI**

ceived for a panel of title underwriting company chief financial officers, who will join guest moderator Dr. Nelson Lipshutz, president of Regulatory Research Corporation, for a discussion of title insurer solvency concerns. Industry panelists include Jack Derloshon, First American Title Insurance Company; Charles Gregory, Title Insurance Company of Minnesota; Brian Hughes, Stewart Title Guaranty Company; and Robert Scherer, Chicago Title and Trust Company.

Educational session leaders announced to date include Carol Kinsey Goman, internationally recognized authority on organizational change, creativity and employee loyalty, who will team with a title industry panel in addressing the need for engaging work force creative energies and commitment in the 90s, and Karen Koogler, managing director of the Koogler Group, who will conduct an examination of business ethics and the bottom line. Mike Franks, Stewart Title, Fred Hemphill, Lawyers Title Insurance Corporation, and Paul Sakreko, World Title Co., will offer a projection on what can be expected when mortgage banker title customers begin asking for the new Title Insurance Services Electronic Data Interchange Order Format jointly developed by ALTA and the Mortgage Bankers Association of America.

Additional panels are being assembled for a Congressional issues update, a session on commercial loan workouts, and a program on quality control and fraud prevention. Capitol Hill insiders are among those being invited for the legislative update combined with a complimentary continental breakfast, which will focus on issues including bank powers, removal of the McCarran-Ferguson federal antitrust exemption for insurance, tax policy and lender liability under Superfund. Commercial loan workout panelists will walk attendees through a hypothetical workout emphasizing title insurance protection. In the quality control/fraud session, there will be concentration on identification and prevention of customer-employee-agent fraud, dealing with general office fraud and improving employee selection with emphasis on honesty.

Attracting considerable attention from regional and state title association leaders is the seminar on structuring the role of these organizations in state regulatory activity. Leading discussion at the Convention's popular Affiliated Association Officer-Executive Seminar will be Larry Green and Cathy Lancaster, respective veteran chief staff executives for the California and Texas state title associations. Another Affiliate Seminar highlight will be the well regarded round table discussions by size of association-

# 1992 ALTA Annual

## Monday, October 12

9:00 a.m.-5:00 p.m. Title Insurance Forms Committee Meeting (Hyatt)  
 3:00 p.m.-5:00 p.m. Convention Registration (Marriott)

## Tuesday, October 13

7:00 a.m.-6:30 p.m. Hana Adventure (Optional Tour)  
 7:00 a.m.-12:00 noon Convention Registration (Marriott)  
 5:30 p.m.-7:00 p.m.  
 8:30 a.m.-5:00 p.m. Education Committee Meeting (Hyatt)  
 9:00 a.m.-5:00 p.m. Title Insurance Forms Committee Meeting (Hyatt)  
 12:00 noon-5:00 p.m. Affiliated Association Officer-Executive Seminar and Luncheon (Hyatt)  
 2:30 p.m.-5:00 p.m. Government Affairs Committee Meeting (Hyatt)

## Wednesday, October 14

3:00 a.m.-12:00 noon Haleakala Crater Sunrise Tour (Optional)  
 8:00 a.m.-10:00 a.m. Membership & Organization Committee Meeting (Hyatt)  
 8:00 a.m.-2:00 p.m. Convention Registration (Marriott)  
 5:00 p.m.-6:45 p.m.  
 8:00 a.m.-5:00 p.m. Haleakala Downhill Daytime Tour (Optional)  
 9:00 a.m.-12:00 noon Directory Rules Committee Meeting (Marriott)  
 9:00 a.m.-5:00 p.m. Title Insurance Forms Committee Meeting (Hyatt)  
 9:00 a.m.-10:30 a.m. Abstracter-Agent Section Executive Committee Meeting (Hyatt)  
 9:00 a.m.-10:30 a.m. Underwriter Section Executive Committee Meeting (Hyatt)  
 9:00 a.m.-5:00 p.m. Lender and Life Counsel Meetings (Hyatt)  
 11:30 a.m.-1:30 p.m. Past Presidents Luncheon (Hyatt)  
 12:30 p.m.-5:00 p.m. Land Title Systems Committee Meeting (Hyatt)  
 1:00 p.m.-5:00 p.m. Indian Land Claims Committee Meeting (Hyatt)  
 1:00 p.m.-5:00 p.m. Picnic Snorkel Cruise (Optional Tour)  
 1:30 p.m.-5:00 p.m. ALTA Board of Governors Meeting (Hyatt)  
 5:30 p.m.-6:30 p.m. First Time Convention Attendee Mixer (Hyatt)  
 6:30 p.m.-8:00 p.m. Ice-Breaker Reception/Exhibits Open (Marriott)  
 "Escape to Maui"

# Convention Calendar

## Thursday, October 15

7:30 a.m.-8:15 a.m.	New Member and Recruiter Breakfast (Hyatt)
7:00 a.m.-8:15 a.m.	Continental Breakfast with the Exhibitors (Marriott)
7:00 a.m.-8:30 a.m.	TIPAC Board of Trustees Meeting (Hyatt)
8:00 a.m.-1:00 p.m.	Convention Registration (Marriott)
8:00 a.m.-12:00 noon	AUTOMATION SYMBIOSIS IX Exhibits Open (Marriott)
8:30 a.m.-11:30 a.m.	General Session (Marriott)
11:35 a.m.-12:00 noon	Section Meetings including Nomination and Election of Officers (Marriott)
12:15 p.m.-4:30 p.m.	Iao Valley/Maui Tropical Plantation (Optional Tour)
1:00 p.m.-5:00 p.m.	Picnic Snorkel Cruise (Optional Tour)

## Friday, October 16

7:00 a.m.-8:15 a.m.	Electronic Data Interchange Breakfast and Mini-Seminar (Marriott)
7:00 a.m.-8:30 a.m.	Legislative Breakfast (Hyatt)
8:00 a.m.-12:00 noon	AUTOMATION SYMBIOSIS IX Exhibits Open (Marriott)
8:00 a.m.-1:00 p.m.	Convention Registration (Marriott)
8:30 a.m.-11:15 a.m.	Educational Sessions (Marriott)
9:00 a.m.-12:00 noon	Spouse/Guest Brunch (Hyatt)
12:00 noon-5:00 p.m.	Golf and Tennis Tournaments (Marriott)
12:30 p.m.-5:00 p.m.	Public Relations Committee Meeting (Hyatt)
1:00 p.m.	Cut-off for Banquet Coupon Exchange

## Saturday, October 17

8:00 a.m.-12:30 p.m.	Convention Registration (Marriott)
8:00 a.m.-12:00 noon	AUTOMATION SYMBIOSIS IX Exhibits Open (Marriott)
8:30 a.m.-11:25 a.m.	General Session (Marriott)
11:30 a.m.-12:00 noon	Executive Session (Marriott)
12:15 p.m.-2:00 p.m.	TIPAC Luncheon (Hyatt)
2:15 p.m.-4:00 p.m.	1992-93 Board of Governors Meeting (Hyatt)
6:15 p.m.-7:00 p.m.	Pre-Banquet Reception (Hyatt)
7:00 p.m.-11:00 p.m.	Annual Banquet (Hyatt) "Royal Monarchy Ball"

where affiliate leaders share common problems and experiences.

Convention registration begins on Monday afternoon, October 12, at the Maui Marriott Resort, with various functions through the week at the Marriott and the nearby Hyatt Regency Maui. The Ice-Breaker Reception will be Wednesday evening at the Marriott, also site for the General Sessions on Thursday and Saturday, as well as most of the Friday Educational Sessions. Completing the proceedings will be the Annual Banquet Saturday evening at the Hyatt.

AUTOMATION SYMBIOSIS IX, the Annual Convention exposition featuring the latest in title industry systems, will be located in the Marriott. Besides being the site for the Title Insurance Services EDI Mini-Seminar accompanied by a complimentary continental breakfast on Friday morning, the exposition area will offer another complimentary continental breakfast with the exhibitors immediately before the opening General Session on Thursday morning.

A special insight into Hawaiian culture will be offered at the Convention Spouse/Guest Brunch to be held in the Hyatt outdoor theater on Friday morning. The program will re-create Hawaiian history through music, story telling, chants, hula dancing and period costumes. Models will begin with the pre-missionary period, wearing tapa and fresh fern skirts, and then change attire to reflect missionary era, the monarchy period of King Kamehameha, and more modern times.

For a complete Convention overview, please see the accompanying calendar and the companion article on Maui history, points of interest and Convention tours.

Special ALTA rates have been established for pre or post Convention travel to Hyatt hotels on the neighboring islands of Kauai, Oahu and the Big Island of Hawaii. Both pre/post and Convention duration accommodations are to be made by mailing hotel registration forms to ALTA/Travel Planners, San Antonio. The registration forms have been sent previously to all ALTA members; questions may be referred to ALTA meetings department, telephone 1-800-787-ALTA.

In keeping with Hawaiian tradition, casual Aloha wear is appropriate for Convention functions—slacks, shirts/blouses or casual dresses prevailing over coats, ties and comparable attire. Accordingly, sport shirts or Aloha shirts, slacks, sport coats and summer dresses will be quite acceptable for the Annual Banquet. For those desiring to go "formal Hawaiian" at the Banquet, white shirt, trousers and shoes with red waist sash are appropriate for men and dressy muu

*continued on page 28*

# Enhance Your Maui Beach Apparel

with this distinctive T-shirt, designed especially for ALTA. Not only are these T-shirts perfect for bathing suit cover-ups and early morning beach strolls, they are also a wonderful way to proudly display your ALTA spirit. Made of durable, 100% heavyweight cotton, your T-shirt is sure to offer years of wear. Order today!



*Members Tony Winczewski, Carrie Hoyer-Abbinante, and Joe Ritter prepare for Maui ocean breezes in their ALTA T-shirts.*

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# Lofty Crater, Lush Rain Forest, Tropical Nights—Maui Has It All

**M**aui, site of the Eighty-Sixth ALTA Annual Convention, often is thought of as the "real Hawaii" or, simply, paradise. From the slopes of Haleakala, its 10,000-foot dormant volcano, to lush vistas to the enchantment of tropical nights, this island jewel offers an unforgettable experience to title men and women. Convention tours will provide an opportunity to become acquainted with major points of interest, with individual exploration always an option.

On the eastern coast, along the lower slopes of Haleakala, are the uplands of Kipahula Valley, a magnificent rain forest providing a refuge for native Hawaiian birds and plants. The mountainous western end of the island is the location for the neighboring towns of Kahului and Wailuku, comprising the Maui business center. Kahului is the site of the island's principal airport.

Also to the west, the mountains give way to the land below and the environment becomes dry and warm. This is the location of Lahaina, whaling port of the world for some 40 years before its economic demise in the early 1870s. Lahaina remains a popular attraction for modern day visitors to Maui, still retaining its historic motif.

Not far from Lahaina is the Kaanapali resort development along one of the world's great beaches, location of the ALTA Annual Convention hotels—the neighboring Hyatt and Marriott. Standing outside the hotels and gazing across Pacific waters toward the islands of Molokai and Lanai adds scarcely needed emphasis that Maui is special.

South and east of Lahaina, along the lee shore of East Maui, are beaches ranking among Hawaii's best—divided into distinctive individual shapes by low, rocky headlands.

Joining the Kipahulu Valley rain forest in the Hana district on the eastern end of the island are a magnificent array of vistas including wide, green meadows which tumble down into the ocean. Hana town retains the

spell cast over missionaries who came to convert the natives in the 1830s and remained. There are many attractions—the church tower dating back to missionary times, waterfalls and cliffs, the caves at Waianapanapa, the sandy crescent of Hamoa Beach, ruins of the old temple to Lono, rock carvings, a sprawling cattle ranch, and the lovely Seven Pools, to name a few.

All together, Maui is a once-in-a-lifetime experience for new visitors, a return to paradise for those who previously have been to the island. Following are brief descriptions of Convention tours and other offerings designed to further enhance this tropical adventure. More details will be available at the ALTA/Travel Planners registration desk located in the Marriott. For additional information in the interim, call the ALTA meetings department at 1-800-787-ALTA.

## **Hana Adventure**

*Tuesday, October 13  
7:00 a.m.-6:30 p.m.*

Crossing the 54 bridges to Hana, waterfalls and lush rain forests abound, along with stops at two national parks and two vil-

lages before reaching quaint Hana town. There will be a visit to the much-discussed Hasegawa General Store and an opportunity to take a dip in the Seven Pools—so don't forget swim suit and towel.

## **Haleakala Crater Sunrise Tour**

*Wednesday, October 14  
3:00 a.m.-10:30 a.m.*

A truly awe-inspiring experience is witnessing sunrise over the rim of Haleakala crater. Jackets and blankets are recommended for this mountain adventure amid barren splendor.

## **Haleakala Downhill Sunrise Tour**

*Wednesday, October 14  
3:00 a.m.-12:00 Noon*

After viewing the spectacular sunrise on Haleakala summit, join an experienced crew in coasting the 38 miles down to sea level on custom built Schwinn cruiser bikes.

## **Haleakala Downhill Daytime Tour**

*Wednesday, October 14  
8:00 a.m.-5:00 p.m.*

For those interested in the bicycle de-



scent from crater rim, but without the 3:00 a.m. tour departure necessary to catch the sunrise.

### **Picnic Snorkel Cruise**

*Wednesday or Thursday,  
October 14 or 15  
1:00 p.m.-5:00 p.m.*

A sail to Maui's most beautiful snorkeling areas, where shallow reefs teem with tropical fish. Tour includes deli lunch, equipment and instructions.

### **Iao Valley/Maui Tropical Plantation**

A drive along the beautiful Maui coastline to Iao Valley to view "The Needle," a strange volcanic formation set in tropical jungle—then on to the Maui Tropical Plantation, featuring 120 acres filled with Hawaii's famous tropical fruits, crops and exotica.

### **Other Optional Events**

Helicopter tours, dinner cruises and other optional events also are available through ALTA/Travel Planners. Local transportation can be used to visit the attractions of nearby Lahaina, which still retains a great deal of its charm from the whaling era that began in 1819 and ended some four decades later. 🦋

### **GREAT CONVENTION**

*continued from page 25*

muus or summer cocktail dresses are the mode for women. All this is made more appealing by Hawaiian temperatures averaging between 75 and 85 degrees, with temperate trade winds.

Those who miss the August 26 deadline for discounted registration fees still may attend by paying the on-site fees and registering by mail with ALTA/Travel Planners in San Antonio, subject to available space. Travel Planners can be reached at 800-531-7201, and also can assist with air travel as desired.

In addition, there will be golf and tennis tournaments on Friday afternoon. The golf competition will be on the Royal Kaanapali Golf Course near the hotels, and tennis is scheduled for the Marriott courts. As this is written, slots for the golf outing are filling rapidly.

Only a few weeks remain before title men and women pack swimsuits and shades and board their planes for this unique Convention adventure. Come October, ALTA members making the trip will learn first hand why Hawaiians say: "Maui No Ka Oi"—Maui is the best! 🦋

## **Convention Guest Speaker Headliners**



### **L. William Seidman**

**Past Chairman**

**Federal Deposit Insurance Corporation  
And Resolution Trust Corporation**

Where is America's financial system headed? Bill Seidman is uniquely positioned to deliver an insider's view. After serving as fourteenth chairman of FDIC during a period in which the agency handled over 1,000 bank failures and took over administration of the S&L industry insurance fund, he later became the first chairman of RTC and supervisor of its creation. While at RTC, he was in charge of an operation that handled over \$400 billion in assets from failed S&Ls. Earlier, he served as President Ford's assistant for economic affairs and then moved to Phelps Dodge Corporation as vice chairman and chief financial officer before returning to Washington to head FDIC and RTC.

*Saturday, October 17, General Session*



### **David A. Heenan**

**President and Chief Executive Officer**

**Theo. H. Davies & Co., Ltd.**

Urban blight and suburban flight are driving many leading companies to domicile in smaller, remotely located population areas. This preference is part of a prevailing national trend to redistribute power organizationally and geographically. Monitoring these dramatic changes and presenting his observations is David A. Heenan, CEO of Theo. H. Davies & Co., Ltd., one of the Big Five companies in Hawaii and author of *THE NEW CORPORATE FRONTIER: The Big Move to Small Town, USA*, published by McGraw-Hill. A former executive for Citicorp and Caltex Oil in the United States and Asia/Pacific, he later served as dean of the University of Hawaii business school and then became vice president for academic affairs. Previously, he was a member of the faculties of the Wharton School and the Columbia Graduate School of Business.

*Thursday, October 15, General Session*



### **Steven V. Roberts**

**Senior Writer**

**U. S. News & World Report**

What about those kaleidoscopic November elections? An analysis of this daunting subject is a challenge made to order for Steve Roberts of *U. S. News*, widely respected authority on Congress and a reporter and broadcaster for more than 25 years. While attending Harvard, he served as editor of the *Crimson*, the university daily, and after graduation became research assistant to James Reston, Washington bureau chief for the *New York Times*. A year later, he moved to reporter for the *Times* city staff, one of the youngest in the history of that paper. His later assignments for the *Times* included Los Angeles bureau chief, the Capitol Hill beat in Washington and then White House correspondent. In his present assignment with *U. S. News*, he analyzes the policies and politics that affect the lives of all Americans.

*Saturday, October 17, Title Industry Political Action Committee Luncheon*

# Two ALTA Past Presidents Elected Honorary Members

Two ALTA past presidents with a history of active involvement in title industry government affairs have been elected Honorary members of the Association by the organization's Board of Governors.

Presentation of this high honor will be made during the 1992 ALTA Annual Convention to Roger N. Bell, president, Security Abstract & Title, Inc., Wichita, KS, and to Marvin C. Bowling, Jr., president and chief operating officer, Lawyers Title Insurance Corporation, Richmond, VA.

In addition to their lively interest in government and politics, both Roger and Marvin have for years been advocates of maintaining excellence in the performance of local title evidencing work as a fundamental strength of the title industry.

Besides serving as president of the Kansas Land Title Association, Roger spent six years as a member of the state abstractor board of examiners there and served on the Wichita State University Real Estate Advisory Committee. He has been honored by the Kansas Realtor Association for his contributions to the real estate business.

In a *Title News* profile that was published at the time of his installation as ALTA president in 1987, Marvin emphasized the importance of supervising the title industry through state legislatures and state regulators—and expressed opposition to efforts in Congress to remove the McCarran-Ferguson Act federal antitrust immunity provision for insurance where appropriate state regulation is in effect. He underscored differences brought by the local nature of title evidencing and called for preservation of state regulatory authority as the best alternative for everyone concerned. One of the priority issues he has faced in 1992 as chairman of the ALTA Government Affairs Committee is continuing opposition by the Association to efforts on Capitol Hill to eliminate the McCarran-Ferguson antitrust exemption.

Roger's term as ALTA president was in 1978-79. He served as chairman of the Title Industry Political Action Committee in 1984-89, and is a veteran of the Government Affairs Committee.

When Roger and Marvin share the platform for presentation of their Honorary memberships, it will be a reunion of sorts. Two years ago, they sat together at the microphone to provide expert commentary during the recording of a title insurance audio learning tape for residential real estate sales people. This project of the ALTA Public Relations Committee was completed in cooperation with the National Association of Realtors. Copies of the tape were distributed nationwide by ALTA to State Realtor Associations and local Realtor Boards.



ALTA Honorary members designate Marvin Bowling, left, and Roger Bell during a 1990 recording session for a title insurance audio learning tape for residential real estate sales persons.

## ALTA 800 Number Does It Faster-Free

Active and Associate members of ALTA have always been a telephone call away from the Washington office of the Association. Only, now it's free.

By dialing 1-800-787-ALTA toll free, members in all 50 states can receive immediate attention from the staff. It's a good way to bring faster response to inquiries, as well as turn the wheels more quickly on specific items of Association business.

Remember, 1-800-787-ALTA toll free spells better mileage for dues dollars.

## Browne New ALTA General Counsel

Edmond R. Browne, Jr., an attorney with extensive background in the area of mortgage finance, has joined the ALTA staff as general counsel.

During his career, he has served on the Mortgage Bankers Association of America government relations staff, dealing with agencies including HUD and Federal National Mortgage Association. He also has worked in the Federal Home Loan Mortgage Corporation general counsel's office, where his responsibilities included the drafting and interpretation of uniform loan documents.

In addition, Ed has served as general counsel for Norwest Mortgage in Minneapolis, and as corporate counsel for American Residential Mortgage Corporation in San Diego. Most recently, he has been in private practice, being responsible for the Washington office of a New Jersey based law firm.

Ed received his law degree from Catholic University in Washington, and also earned a master's degree in public administration from Northern Illinois University.

## Lawyers Forms Exchange Entity

Lawyers Title Insurance Corporation has announced the formation of Lawyers Title Exchange Company, an entity created to function as an independent third party in facilitating tax-deferred real estate exchanges. Lawyers Title Exchange is structured to act as an intermediary for delayed exchanges which, along with simultaneous exchanges, now are permitted under Federal law. The new company operates through the regional offices of its title insurance underwriter parent.

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## TIAC

## **ALTA Offers An Important Member Benefit To Resolve Your Long-Standing E&O Problems.**

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TIAC has been endorsed by the ALTA Board of Governors--as an E&O resource dedicated to stabilizing the market for members of the Association. Now is an excellent time to take an extended look at your E&O future. Then call TIAC.

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## INNOCENT OWNER

*continued from page 7*

of his property." *Id.* at 689-90. This means that the Department's remission and mitigation regulations simply provide what the Constitution already requires.

### IV. Conclusion

The interpretation of the relation-back doctrine urged by the United States vitiates the protection provided to innocent owners by the civil forfeiture innocent owner provision. If the relation-back doctrine is applied in this fashion, innocent owners are who acquired their interests in property subsequent to the occurrence of the illegal activity giving rise to the forfeiture are helpless to protect their property from forfeiture. Congress intended civil forfeiture innocent owner provisions such as 21 U.S.C. Sec. 881(a)(6) to protect innocent owners in such circumstances. ✈

## Past President Fromhold Dies

Services were in Bryn Mawr, PA, for Fred B. Fromhold, 74, ALTA past president and Honorary member who died there after an extended illness.

Before retiring in 1983 as chairman and chief executive officer of Commonwealth Land Title Insurance Company, he spent more than 47 years with that concern and its predecessor, Pennsylvania Title Insurance Company.

Besides serving as an ALTA officer, including his term as Association president in 1981-82, he previously was an ALTA member of the National Conference of ALTA-American Bar Association Conferees, the Association Government Affairs Committee, the Retirement Committee and the board of the Land Title Institute.

He was a past president of the Pennsylvania Land Title Association and was named Distinguished Titleman for his service to that organization.

Survivors include his wife, Elinore; two sons, Michael J. Fromhold, PLTA vice president who is vice president and regional counsel for First American Title Insurance Company, Valley Forge, PA, and Fred B. Fromhold, partner in the law firm of Fromhold and Jaffe, Rosemont, PA; one daughter, Patricia Driscoll; a sister, Frances Jamieson; and 13 grandchildren.

The family suggests memorial contributions to the American Heart Association, where he served as a member of the Board of Governors, or to St. Jude Children's Research Hospital, 332 North Lauderdale Street, Memphis, TN 38105.

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## NAMES IN THE NEWS



**Burns**



**London**



**Kostka**



**Roney**



**Towns**



**Ballard**

**John J. Burns, Jr.**, has been appointed chairman of the board of Alleghany Corporation, New York City. Alleghany is the parent of the Chicago Title and Trust Family of Title Insurers.

Chicago Title Insurance Company of Oregon has a new president, **Bradley J. London**, who also is Portland tri-county manager. He is a past president of the Alaska Land Title Association.

Chicago Title Insurance Company has announced the following promotions in its Illinois operations: **Steven Brown**, to assistant vice president and remains office manager, Oak Forest; **Barbara Kostka**, to assistant vice president and remains office manager, Hillside; **Peter Petersen**, to assistant vice president and office manager, Arlington Heights; **Dorothy Roney**, to assistant vice president and remains office manager, Arlington Heights; **Patricia Towns**, to assistant vice president and office manager, Skokie; **Christopher Unger**, to title operations officer and manager of title production and **Constance Elliot**, to escrow manager, both Wheaton; **Gloria Ballard**, to assistant vice president and title production manager, North Ashland; **Charles Pichla**, to assistant vice president and remains division manager, Chicago.

The company has announced these promotions in its Florida operations: **Barbara Dupignac**, to resident vice president and remains office manager, Orlando; **Mary James**, to

agency operations officer, Punta Gorda; **Dolores Josack**, to agency operations officer and remains agency representative, Ft. Lauderdale; **John Menkel**, to title operations officer and remains title production manager, Tampa; **Carol Schmalholz**, to agency operations officer, Stuart; **Herbert Swan**, to resident vice president and remains branch manager, West Palm Beach; **Lynda Winkowski**, to resident vice president and remains Florida/Caribbean marketing manager, West Palm Beach.

The company has announced the appointment of **Susan O'Berry** as marketing representative for Osceola Title, Kissimmee, FL.

In its Indiana operations, the company has promoted **Richard Prather** to resident vice president and remains agency operations officer, **Jacob Yonkman** to Indiana state manager, and **Donald Monahan** to assistant vice president and remains agency representative, all Indianapolis.

In Minnesota, the company has appointed **Kathryn Austen** assistant vice president and agency operations manager, Bloomington.

In New Jersey, the company has appointed **Michael Preziosi** branch manager, Hackensack.

Security Union Title Insurance Co. has appointed **Diane Kutter** operations manager and remains assistant vice president, Eden Prairie, MN.

Ticor Title Insurance Co. has appointed **James Gallaway** resident vice president and **Allan Dick** assistant vice president and agency manager, both Southfield, MI.

**Sandy Hornberger** has joined Ticor Title Agency of San Antonio, TX, as marketing director.

Commonwealth Land Title Insurance Com-



**Pichla**



**Swan**



**Winkowski**



**Yonkman**



**Gallaway**



**Waters**



**Daly**



**Fishlinger**



**Szymanski**



**Wagner**

pany has announced the following appointments in its Pennsylvania operations: In Philadelphia, **John D. Waters**, promoted to vice president-claims, **John M. Daly** to vice president-loss prevention, **Keith Fishlinger** to national title services account executive, **John W. Szymanski** to national title services sales representative; in Pittsburgh, **Cheryl A. Wagner**, promoted to assistant vice president.

In Texas, **David Ginger** has joined Commonwealth and its affiliate, Transamerica Title Insurance Company, as vice president and Texas agency manager with offices in Dallas; he is a Texas Land Title Association director. Also, **Lisa D. Lavelle** has joined Commonwealth as vice president and national title services manager and **Patricia M. Rodricks** has joined as senior escrow officer, both Houston.

**William W. Webb** has been promoted to regional counsel for Commonwealth and Transamerica and **Charles Van Cleave** has been appointed vice president and San Francisco county manager for the companies, both San Francisco. Also in California, **Robert Ussery** has joined Commonwealth as vice president and county manager, Fresno.

In New York City, **Melvin Mitzner** has joined the companies as vice president and chief underwriting counsel, **Harold S. Boxer** has been promoted to vice president and state agency counsel and **Maribeth Walsh** has been

promoted to assistant vice president and assistant state claims counsel.

**J. Donald Cole** has been promoted to vice president-regional underwriting counsel for the companies, Atlanta.

**Virginia B. Moran** has been promoted to vice president-senior claims counsel for the companies, Parsippany, NJ. Also in that state, **Stephen M. Popovich** has joined Commonwealth as marketing representative, Linwood.

**Jerry T. C. Ohail** has been appointed vice president and remains division agency manager for the companies, Bellevue, WA.

**Roger E. Dinnin** has been appointed Washington, DC/Southern Maryland area manager for Commonwealth with offices in Washington, DC; **Selina E. Ianace** has joined the company there as director of marketing for the metropolitan Washington area. **Martha A. Rogers** has been promoted to Northern Virginia area manager for the company, Fairfax, VA.

**Thomas W. Zimmerman** has been promoted to Denver branch manager and **Ray Constand** El Paso county manager for the company, the latter named appointee having offices in Colorado Springs.

**Gilbert M. Shaud** has been promoted to assistant vice president and Yavapai County manager, Prescott, and **Kathleen A. Pebley** has been promoted to Bullhead City escrow branch manager, both for Transamerica Title in Arizona.

**Scott D. Hoeft** has been promoted to Washenaw County manager for Transamerica Title, Ann Arbor, MI.

In Florida, **Charles M. Woodruff** has joined Commonwealth as assistant vice president and branch manager, Orlando, **D. Elaine Beck** has joined the company as account executive, Fort Lauderdale.

**P. Eric Carstensen** has been appointed assistant vice president and Illinois state agency manager for the company, Chicago.

**Janice E. Carpi** has been elected vice president-underwriting counsel and **Peter F. Welch** vice president-regional claims counsel for Lawyers Title Insurance Corporation, Richmond, VA. **Michelle K. Bowen** has been appointed systems manager, systems development and support, for the company, also at Richmond.



**Ginger**



**Lavelle**



**Rodricks**



**Webb**



**Van Cleave**



**Ussery**



**Mitzner**



**Boxer**



**Walsh**



**Cole**



**Moran**



**Popovich**

In the Lawyers Title Troy, MI, operation, **Sherry L. Hinsperger** has been appointed assistant vice president-branch manager and **Mark**

## Texas CPA Group Elects Pat Wilson

Pat L. Wilson, chief financial officer, Alamo Title Insurance of Texas, San Antonio, has been elected to the office of president-elect, Texas Society of Certified Public Accountants.

He will become president of the society in June, 1993.

**C. Tarrant** has been named quality assurance manager.

**Glen M. W. Trowbridge** has been appointed counsel in the company's Los Angeles National Division office.

**Becky Provance** has been appointed manager of the recently opened Newark, NJ, office of AmeriTitle.

**Patricia Wolak** has been appointed vice president-underwriting operations and **W. Morris Fine** vice president for Investors Title Insurance Company, Chapel Hill, NC.

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*continued on page 34*

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has appointed **Douglas Brewer** manager of finance and planning, **Tate Parker** northeast regional manager and **Robert G. Sutherland** director of sales, Arlington, VA.



Ohail



Dinnin



Ianace



Rogers



Zimmerman



Constand



Shaud



Pebley



Hoeft



Woodruff



Beck



Carstensen



Carpi



Welch



Bowen



Hinsperger

## Past President Reppert Dies

Services were in Liberty, MO, for Arthur L. Reppert, 78, ALTA past president and Honorary member who died there after an extended illness. He served as president of the Association in 1961-62.

A past president of the Missouri Land Title Association, he also had served as a trustee of the ALTA Group Insurance Trust. He had been associated with Clay County Title Corporation in Liberty since 1936, retiring as president of the organization this year.

He received his law degree from the University of Missouri at Kansas City School of Law and was a member of the Clay County and the Missouri bar associations.

A 50-year member of the Boy Scouts of America, he was a recipient of the Scoutmaster's Key, the Commissioner's Key, the Scouter's Award, the Award of Merit, and the Silver Beaver and Silver Antelope awards.

Survivors include his wife of 55 years, Louella L. Reppert; a son, John C. Reppert, and three daughters, Mary Margaret Oberkrom, Martha Ann Brant and Bettie Lou Anderson, all of Liberty; a brother, a sister, and nine grandchildren.

The family suggests memorial contributions to the Heart of America Boy Scouts for the Camp H. Roe Bartle Building Fund, 10210 Holmes Road, Kansas City, MO 64131-4200.

## Do You Have Missing Copies?

Do you keep old editions of *ALTA Title News*? If so, you may be able to help fill in some "missing links" in the Association office library.

In a recent search, the following issues were identified as absent from the office files where they were originally stored. If you have any of them and care to send them to ALTA, it will be much appreciated. Just address your envelope to *Title News*, American Land Title Association, Suite 705, 1828 L Street, N. W., Washington, DC 20036. Thanks.

1989–November–December

1982–August

1978–January

1976–All issues except July and December

1965–March

## Fidelity Extends Through Purchase

Fidelity National Financial, Inc., has announced the closing of its acquisition of Meridian Title Insurance Company, American Title Insurance Company and its subsidiaries from Meridian Bank, Inc.

The acquisition purchase price of \$21,120,000 is based on the consolidated net worth of Meridian as of February 28, 1992, net of an \$11 million dividend paid by Meridian Title to Meridian Bank.

Fidelity, a title underwriter based in Irvine, CA, made an initial payment of \$7 million at the time definitive acquisition agreements were executed in August, 1991. The initial payment consisted of \$1 million in cash and 500,000 shares of Fidelity common stock, the company reported.

Payment of the balance of \$14,120,000 in cash was made to Meridian Bank at the closing, according to Fidelity. Meridian Bank also has retained a \$20 million preferred stock investment in American Title.

According to Fidelity, the acquisition adds direct operations in Florida, Michigan, Missouri, Pennsylvania, New Jersey, New York and North Carolina. The acquisition increases the number of states in which Fidelity is licensed from 33 (plus D.C.) to 48.

## CALENDAR OF MEETINGS

### 1992

**September 20-22** Reinsurance Administrators Meeting, Sheraton at Fisherman's Wharf, San Francisco, California

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

**November 7-10** Title Counsel Meeting, Omni Richmond Hotel, Richmond, Virginia

### 1993

**January 11** ALTA Board of Governors Meeting, Loews Ventana Canyon Resort, Tucson, AZ

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

**June 10-12** Title Insurance Executives Conference, Marriott at Sawgrass Resort, Ponte Vedra Beach, FL

**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

### 1995

**October 18-21** ALTA Annual Convention, Loews Anatole Hotel, Dallas, Texas

### 1996

**October 16-19** ALTA Annual Convention, Westin Century Plaza Hotel, Century City, California

## Educational Leader Templeton Dies

Services were in Albuquerque, NM, for P. C. Templeton, 67, a nationally recognized leader in title industry education who died there after an extended illness.

He was a past member of the ALTA Education Committee and the Land Title Institute board of directors, along with being a past president of the New Mexico Land Title Association. At the time of his death, the 40-

year industry veteran was president of First American Title Company, Albuquerque; he started the operations of that organization in the state in 1969.

While serving on the ALTA Education Committee, he was a member of its first Video Subcommittee, taking an active part in producing the first two in the current series of LTI educational videotapes, "The Need for Land Title Services" and "Principles of Title Searching."

He was a popular lecturer at ALTA regional educational seminars held around the nation, delivering commentary on subjects including escrow/closing, land descriptions and easements.

During the 1992 NMLTA Convention, it was announced that the P. C. Templeton Lifetime Achievement Award had been created to recognize title persons from that state who make exceptionally outstanding contributions to that association. The first recipient of the award was P. C. Templeton, who unfortunately was unable to accept the presentation in person at the convention.

Survivors include his wife of 46 years, Susie B. Templeton, a son and three brothers.

## Investors Acquires 12 Issuing Offices

Investors Title Insurance Company has completed the purchase of 12 issuing offices from its North Carolina agents, according to an announcement from the organization.

Based in Chapel Hill, NC, Investors Title underwrites title insurance through its two insurance subsidiaries, primarily in the southeast.

## NEW ALTA MEMBERS

*ALTA proudly welcomes its newest members and sincerely thanks those responsible for their recruitment. The recruiters noted in parentheses have now qualified for membership in the ALTA Eagle's Club and are eligible for the "Recruiter of the Year" prize.*

### ACTIVE

#### Arizona

**First Southwestern Title Agency of Arizona, Inc.**, Chandler, AZ.

#### Arkansas

**Service Abstract Co. of Randolph County, Inc.**, Pochahontas, AR. (Recruited by Craig Gill, Arkansas Title Insurance Co., Pine Bluff, AR.)

#### Colorado

**Clear Creek-Gilpin Abstract & Title Corp.**, Georgetown, CO.

**Grand County Title & Escrow Co., Inc.**, Granby, CO.

#### District of Columbia

**Commercial Settlements, Inc.**, Washington, D.C.

#### Georgia

**Standard Title & Abstract Co.**, Atlanta, GA.

#### Idaho

**Pioneer Company**, Boise, ID. (Recruited by

## 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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Steve Harrell, Boise Title & Escrow, Inc., Boise, ID.)

## **Illinois**

**County Title Co.**, Bartonville, IL.

## **Kansas**

**High Plains Land & Title**, Dodge City, KS. (Recruited by Barbra Gould, Ford County Title Co., Inc., Dodge City, KS)

## **Louisiana**

**Red Stick Title Co., Inc.**, Baton Rouge, LA.

**Simone W. Gallion & Associates, Inc.**, Baton Rouge, LA.

## **Maryland**

**Equity Title Service Corp.**, Bethesda, MD. (Recruited by Bayard H. Waterbury, III, Montgomery Abstract Associates, Inc., Rockville, MD.)

**Fenton Title Company**, Silver Spring, MD. (Also recruited by Bayard H. Waterbury, III.)

**Madison Title & Escrow, Inc.**, Rockville, MD.

## **Massachusetts**

**Olde Colony Title Co., Inc.**, Plymouth, MA.

## **Michigan**

**Bliss Abstract & Title, Inc.**, Midland, MI.

**Cislo Title Co.**, Flint, MI. (Recruited By Robert J. Wilson, Jr., First American, Troy, MI.)

**Huron Shores Abstract & Title, Inc.**, Rogers City, MI. (Recruited by Michelle Lievois, Commonwealth Land, Troy, MI.)

## **Minnesota**

**Cornerstone Title, Inc.**, Bloomington, MN.

## **Nebraska**

**North Platte Title Co., Inc.**, d/b/a Scott Abstract, North Platte, NE. (Recruited by Kathie Nathan, Dodge County Title & Escrow Co., Fremont, NE.)

## **New Jersey**

**Colonial Title & Abstract Service**, Morristown, NJ. (Recruited By Richard A. Wilson, Trans-america, Parsippany, NJ.)

**The GRL Group, Inc.**, Iselin, NJ.

## **New Mexico**

**Ekmar Abstract & Title Co., Inc.**, Truth or Consequences, NM.

## **New York**

**Jewett Abstract Corp.**, Staten Island, NY.

## **North Carolina**

**United Title Co.**, Raleigh, NC.

## **North Dakota**

**McLean County Abstract Co., Inc.**, Washburn, ND.

## Oregon

**First American Title Co. of Malheur County,** Ontario, OR. (Recruited by Kindra Lizarraga, Oregon Land Title Assn., Portland, OR.)

## Pennsylvania

**Congress Abstract Corp.,** Philadelphia, PA. (Recruited by William W. Rice, III, Great Valley Abstract Corp., Wayne, PA.)

## Tennessee

**First Crossville Title Co., Inc.,** Crossville, TN. (Recruited by Robert Croley, Tennessee Valley Title Insurance Co., Knoxville, TN.)

## Texas

**Ticor Title Agency of San Antonio,** San Antonio, TX. (Recruited by James A. Johnson, Charter Title Co., Houston, TX.)

## Utah

**Superior Title Co. of Utah, Inc.,** Midvale, UT. (Recruited by Lawrence Lacombe, Ticor Title Insurance Co. of California, Los Angeles, CA.)

## Virginia

**Security Agency Services, Inc.,** Fairfax, VA. (Recruited by Bayard H. Waterbury, III, Montgomery Abstract Associates, Inc., Rockville, MD.)

## Wisconsin

**Lakeland Title Services, Inc.,** West Bend, WI. (Recruited by Marjorie Bardwell, Ticor Title Insurance, Milwaukee, WI.)

**Northern Title and Abstract Corp. of Vilas County,** Eagle River, WI.

**Preferred Title,** Madison, WI. (Recruited by Richard Oliver, Smith Abstract & Title, Inc., Green Bay, WI.)

*continued on page 39*

# ALTA Membership— How it works for you:

## Networking

Providing opportunities to share your ideas with other industry professionals.

## Political Action

Monitoring government initiatives in time to shape the outcome. Voicing your concerns to Congress and regulatory agencies.

## Education

Teaching you at every turn through seminars, Land Title Institute correspondence courses and videotapes, and publications.

## Automation

Keeping you abreast of the latest national trends.

## Insurance Services

GIT—Group Insurance Trust—medical, dental, life, and disability insurance.  
TIAC—Title Industry Assurance Company—errors and omissions insurance.

## Leadership Opportunities

Your chance to shape the direction and scope of the title industry.

## Conventions

Bringing you timely topics and knowledgeable speakers at attractive locations.

## Publications

Information targeted and tailored to your needs and interests.

## Directory Listing

ALTA's state-by-state **Directory** serves as a source for business and publicizes your membership.

## Prize Offered To Recruiters

Interested in recruiting new members to ALTA? Here's your incentive! This year's top recruiter\* will be awarded a framed print, signed and numbered, by noted Hawaiian artist B.H. Freeland. The rendering depicts "Afternoon Shadows at Kapalua," a picturesque Hawaiian golf course overlooking a serene ocean.

The artwork was chosen to complement almost any office decor. With soothing shades of green and blue, this limited edition print is as attractive as it is valuable. The prize will be awarded to this year's top recruiter in Maui, at the ALTA Annual Convention, October 14-17.

Thus far, this year's top slot is held by a member for recruiting only three new members. There is still plenty of time to get in the running and win the prize!

\* A recruiter is defined as an ALTA member designated by the applicant as having recommended membership and becomes effective at the applicant's time of acceptance into the Association.

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**"Closing Real Estate Transactions: Processing and Problem-Solving with the HUD-1"** uses the HUD-1 Form as a learning example. The settlement statement is explained by section and line number. This detailed program is designed for beginning closers or persons desiring a more thorough understanding of the HUD-1 Form. Package includes 47-page training workbook. (VHS color, running time 21-1/2 minutes) Price: \$50.00

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Questions? Call the LTI office (202-331-7431) for assistance.



## NEW MEMBERS

continued from page 37

## ASSOCIATE

### California

**Kurt G. Pahl**, C.P.A., Beverly Hills, CA.

**Dana M. Sabraw**, Baker & McKenzie, San Diego, CA. (Recruited by John L. Hosack, Esq., Tobin & Tobin, Los Angeles, CA.)

**Walter B. Simpson**, Imperial Bank, San Francisco, CA.

### District of Columbia

**Sheldon B. Hochberg**, Steptoe & Johnson, Washington, D.C.

**David F.B. Smith**, Pierson Semmes and Bemis, Washington, D.C.

### Georgia

**Jimmy J. Boatright**, Alma, GA. (Recruited by Vicki A. McNeese, The Security Title Guarantee Corp. of Baltimore, Baltimore, MD.)

### Kentucky

**Janet G. Kelley**, Wyatt, Tarrant & Combs, Louisville, KY. (Recruited by John S. Osborn, Jr., Wyatt, Tarrant & Combs., Louisville, KY.)

### Maryland

**Steven A. Loewy**, Ober, Kaler, Grimes & Shriver, Baltimore, MD.

### Massachusetts

**Howard J. Hall**, Hall, Balas, Finnegan & Alphen, P.C., Westford, MA. (Recruited by Charles W. Parker, Jr., Chicago Title, Boston, MA.)

**Lawrence P. Heffernan**, Harrison & Maguire, P.C., Boston, MA. (Recruited by Peter Norden, First American, Boston, MA.)

### Michigan

**Memory Lane Systems, Inc.**, Petoskey, MI.

### New Jersey

**Sean M. Pattwell**, Herbert L. Jamison & Co., West Orange, NJ. (Recruited by Deborah Gabry, Attorney, Nutley, NJ.)

### New York

**Guy D. Paquin**, Title Insurance Rate Service Assn., New York, NY.

**John H. Richards, Esq.**, Glen Falls, NY.

### Ohio

**Richard S. Rivitz**, Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A., Cleveland, OH. (Recruited by Edward R. Horejs, Jr., Chicago Title, Cleveland, OH.)

**P. Reid Lemasters**, Benesch, Friedlander, Coplan & Aronoff, Cincinnati, OH. (Recruited by James McAndrews, Benesch, Friedlander, Coplan & Aronoff, Cleveland, OH.)

## Texas

**Andy W. Lydick**, Barrett, Burke, Wilson, Castle & Frappier, Dallas, TX. (Recruited by Stephen A. Hester, Minnesota Title, Houston, TX.)



*In a late addition to our New Members list, ALTA welcomes Security Title & Escrow Co., 218 West Olive St., Newport, OR 97365-0076. Security Title & Escrow Co. may be contacted by calling John F. Mooney at (503) 265-5394.*

## Lawyers Acquires Agency in Medina

Lawyers Title Insurance Corporation has acquired the assets of Lawyers Title Agency of Medina, Inc., Medina, OH, and has announced plans to maintain a direct branch in the same location.

Barbara Wright, former branch counsel in the Cleveland office of Lawyers Title, has been named manager of the Medina operation. According to the underwriter, Stan Scheetz, former president and owner of the agency, will continue as a consultant and will work in sales. The staff of the former agency will remain unchanged.

## ILTA Regulatory Support Continues

Continuing support of efforts by the state Department of Financial Institutions to strictly enforce a title insurance act that became law in 1990 will be a high priority for the Illinois Land Title Association in coming months, according to Gregory M. Kosin, newly installed president of the organization.

ILTA successfully lobbied for the act that created a regulatory role for the department, it was reported by Kosin, president, Greater Illinois Title Co., Chicago. He said the association will continue to back efforts by the department to define the role and responsibilities of title insurance agents in Illinois.

Other new officers of ILTA are H. Stat Geer, vice president, Chicago Title Insurance Company, Geneva, first vice president; Linda P. Bennehoff, president, Chicago Title Agency of Rockford, second vice president; Laurie Fleishman-Spear, regional claims counsel, Lawyers Title Insurance Corporation, Chicago, secretary; and Herbert J. Schiller, president, Northern Land Title Corporation, Woodstock, treasurer.

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## 1992 AFFILIATED ASSOCIATION CONVENTIONS

### 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  
**23-26** Washington, Tyee Motor Inn, Olympia, WA  
**23-26** Wisconsin, Radisson Hotel, LaCrosse, WI

### November

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

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

### December

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

## Ackleson Installed In New Mexico

Scott Ackleson, Dona Ana Title Company, Las Cruces, has been installed as new president of the New Mexico Land Title Association.

Other new officers include Edward Lee, Title Resources Guaranty Company, Albuquerque, president-elect; Ronald Miles, Graham Abstract Company, Inc., Portales, vice president; and Bill Wooten, First New Mexico Title, Taos, immediate past president.

New directors are James Sitterly, Curry County Abstract & Title Company, Clovis; and David Pyeatt, Elliott & Waldron Title & Abstract Co., Inc., Hobbs.

Edward Lee has been presented NMLTA's Citizen of the Year Award for outstanding achievement and dedication to the title industry.

The association this year has introduced a new P. C. Templeton Lifetime Achieve-

ment Award for long and meritorious service to the industry. Its first recipient: P. C. Templeton, First American Title Co. of New Mexico, Albuquerque, nationally known authority on land title issues who has made numerous contributions to industry education. Mr. Templeton, who was unable to attend the convention presentation in his honor in May, died approximately two months later. Please see the death notice elsewhere in this issue.

## New Jersey Added By Conestoga Title

Conestoga Title Insurance Co. has been licensed to engage in the title insurance business in New Jersey.

Founded in 1954, the title underwriter is based in Lancaster County, Pennsylvania, and also is represented by agents in that state, Maryland and Delaware.

## INDEX TO TITLE NEWS ADVERTISERS

<b>ALTA Group Insurance Trust</b>	
Chicago, IL .....	page 31
<b>R. J. Cantrell</b>	
Muskogee, OK .....	page 2
<b>Corporate Development Services</b>	
Wayne, PA .....	page 39
<b>Genesis</b>	
Englewood, CO .....	cover 2
<b>First Data Systems</b>	
Nashville, TN .....	page 33
<b>Land Title Institute</b>	
Washington, DC .....	page 38
<b>Old Republic Title Company</b>	
Chicago, IL .....	page 4
<b>Paxon Corporation</b>	
Eugene, OR .....	page 13
<b>Specialized Management Support</b>	
Costa Mesa, CA .....	page 14
<b>SoftPro Corporation</b>	
Raleigh, NC .....	page 36
<b>Sulcus Computer Corporation</b>	
Greensburg, PA .....	cover 3
<b>Title Agents of America</b>	
Houston, TX .....	page 22
<b>Title Industry Assurance Company</b>	
Chevy Chase, MD .....	page 30
<b>Titlepro</b>	
Lancaster, PA .....	page 18

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