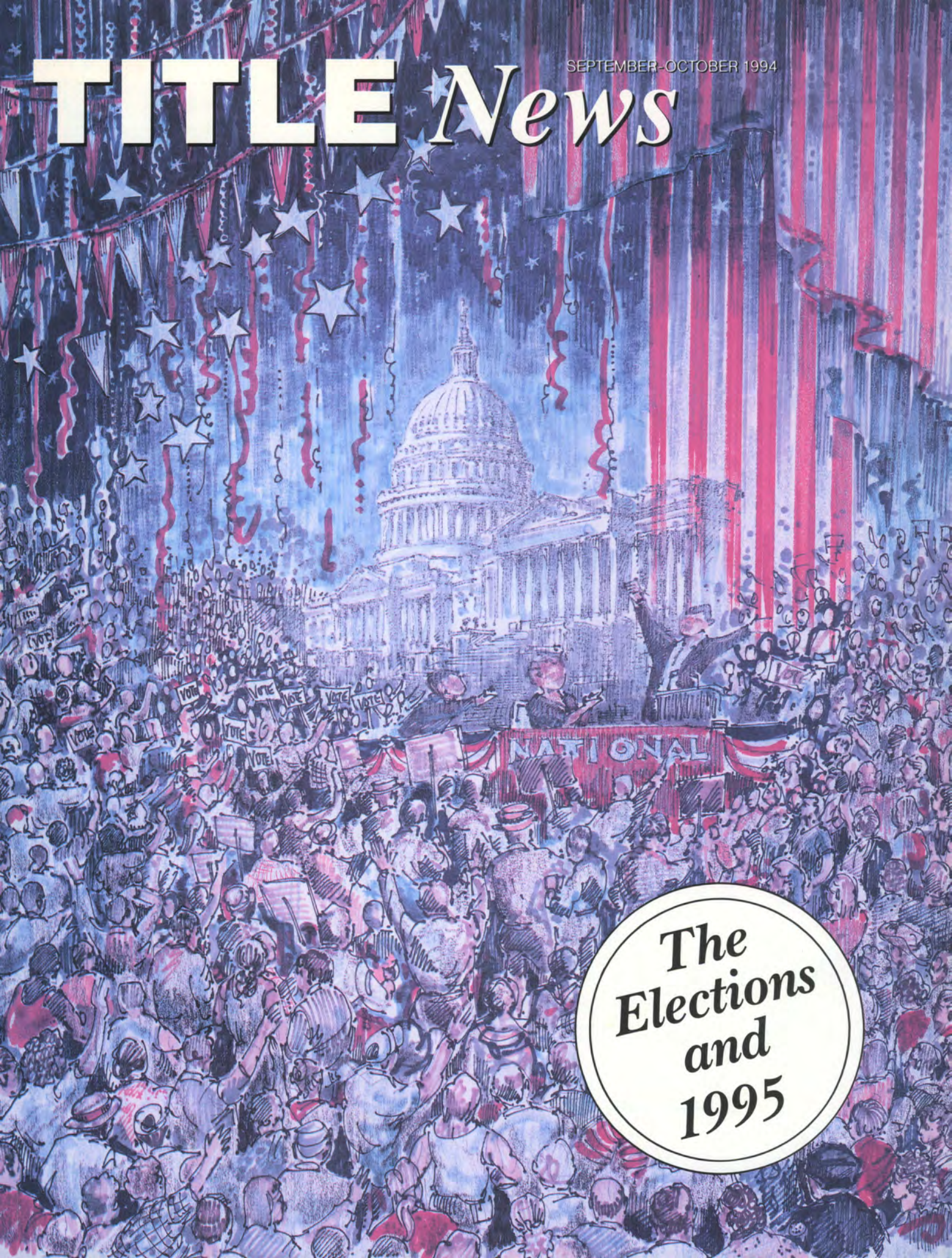


SEPTEMBER-OCTOBER 1994

# TITLE *News*



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Volume 73, Number 5

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## FEATURES

*On the Cover: Change is in the air as the November elections draw near, and the resulting impact on the makeup of Congress could readily affect issues of concern to the land title industry. Possibilities for the Senate and House, including their key committees of leading importance to the title business, are examined in a special article beginning on page 10. (Cover by Halford Design and Graphics)*

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### **6** Two Model Title Acts Advance

*By Richard W. McCarthy*

The NAIC Title Insurance Working Group may have its Model Title Insurance Agent Act and companion Model Title Insurer Act ready for initial consideration by the full membership of the aforementioned body in 1994. Other regulatory proposals also have emerged.

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*By Ann vom Eigen*

Does that Congressional candidate from the freshman class sound like an "experienced outsider" in campaigning for re-election? Following their first campaigns against the Washington establishment two years ago, many are now trying to escape being identified as part of the problem by the voters back home. How will this and other election developments shape the title industry agenda on Capitol Hill next year?

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*By Sheldon E. Hochberg, Esquire*

Court decisions and administrative developments have clarified some of the issues raised by banks and bank holding companies engaging in title insurance activities.

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*By Kathleen August*

There is greater risk of income loss from disability than from death. Recognizing the prevalence and cost involved, ALTA group insurance includes disability coverage.

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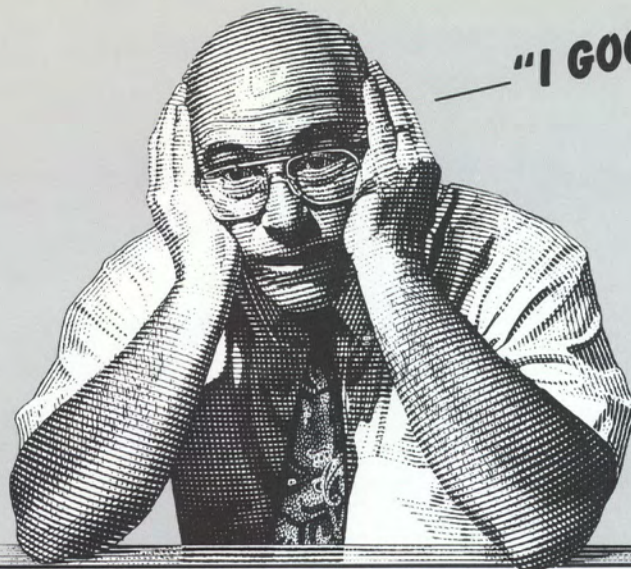
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## A MESSAGE FROM THE PRESIDENT-ELECT



**P**ast President Roger Bell mentioned to me that the year one serves as president-elect of our Association is the best of the four years traditionally spent as an ALTA officer. Roger is a wise man! This has been a memorable year and I would like to share some of my thoughts and experiences from it with you:

- Observing Park Kennedy as he has served as our president has been quite a lesson. We are all busy with our families, work, hobbies, etc.; however, I feel certain no one is any busier than Park. Yet he has never failed to return a phone call or complete a promised task. He has had our Association at the top of his priority list during his entire term and I never sensed his leaning toward either section with any favoritism. His main goal was the betterment of our association. He and Sherry are to be thanked for their dedication.
- One of the job requirements of the president-elect is to travel to the ALTA office in August, sit down with the staff and work out the committee assignments for the coming year. This was something I was concerned with during the year as I worried that I would be on the phone all day pleading with people to serve. My concerns were ill founded as the opposite was the case! There was such an overwhelming response to the request for committee participation that the entire day was spent trying to get everyone placed on the committee(s) they had requested! Another reason to be proud to be a member of our Association!
- In almost every section of the country, the final product in a title company is the title insurance policy. In our travels, it has been most interesting to see that there are so many different methods of getting to the policy. In some states, practices differ from one side of the state to the other. And, of course, most are convinced that their method is the best.
- Traveling to the different areas of the country to attend the various state conventions has provided Linnie and me the opportunity to meet some of the finest people in the country and to see these magnificent United States! The combination of the beautiful country and the wonderful people we are meeting is an experience I do not expect to be equaled in my lifetime! And, while I am at it, *THANKS* to all of you who made our visits so memorable!
- And, finally, some of my thoughts on becoming your next president. If my memory serves me correctly, the Mayan Indians had a custom of selecting a member of the tribe and provided him with anything and everything he desired for a year. At the end of that period, he was sacrificed to the gods! As I mentioned in the previous paragraph, the year spent as president-elect has been a wonderful experience—similar, I would guess, to the "lucky(?) Mayan." Now, I do not equate my moving into the presidency of our Association with what happened to my friend, the Mayan. However, any time there has been a problem, I have had the luxury of calling Park and saying, "Well, Mr. President, what do you think?" I know that Park will still be there to consult with, as will the other past presidents, Board and Association members, and staff. However, I feel like I did years ago on Thursday nights before Friday night football games—let's get started! The membership has provided me a wonderful opportunity and I will do my dead level best to represent you in the manner you expect!

Best regards,

Mike C. Currier



---

# Two Model Title Acts Advance

By Richard W. McCarthy, ALTA Director of Research

Since 1991, the title insurance industry has come under the closest scrutiny by the National Association of Insurance Commissioners since at least the early 1980s. The rationale for this scrutiny was the regulator perceived financial weakness of the title industry.

## Background

By late 1991, it was obvious that the title insurers would suffer their fourth consecutive year of operating losses (prior to investment income). Given these results, regulators began to be concerned about the stability of the title industry. In the fall of

1991, the press and others began to question the ability of the title insurance industry to meet its long term obligations to its insureds. Questions were raised—regardless of the accuracy of their foundation—concerning the adequacy of title insurer reserves and the ability of title insurers to meet their claims paying responsibilities. The New York Times went beyond the questioning to forecast the demise of the title industry and with it the entire "real estate pyramid." The title industry itself sent mixed messages concerning the accuracy of some of the press contentions. These allegations and the multiple and contradictory responses of the title insurers buttressed the concern of the regulators.

At the end of 1991, faced with these confusing but generally negative reports, the National Association of Insurance Commissioners (NAIC) decided that the title insurance industry needed to be looked at more closely to determine what additional solvency controls might be necessary. In addition, they already had concerns about various market practices.

Before we go any further, it may be instructive to step back and look at the NAIC for a second.

## The NAIC

The NAIC is the association of the chief insurance regulatory officials of the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. The purpose of the NAIC is to assist the various state supervisory officials in the:

- (1) Maintenance and improvement of state regulation of insurance in a responsive and efficient manner;
- (2) Reliability of the insurance institution as to financial solidity and guaranty against loss;
- (3) Fair, just and equitable treatment of policyholders and claimants.





The NAIC operates through a series of committees that report to the executive committee, which reports to the membership. The committees, in turn, appoint subcommittees, task forces, and working groups to address specific topics. Where desirable, any of these groups, with the approval of the Executive Committee, may appoint an industry advisory group to work with them.

The Special Insurance Issues Committee has the responsibility for problems relating to miscellaneous lines of insurance including: Title, Captive Insurers, Surety, Fidelity, Mortgage Guaranty, and Reinsurance.

The major regulatory thrusts of the NAIC are in the form of model laws, acts, regulations and guidelines.

### The Title Insurance Working Group

At the close of the 1991 Winter NAIC convention, the Executive Committee appointed a Title Insurance Working Group under the Special Insurance Issues Committee. The Working Group is currently chaired by Robert G. Lange, Acting Director of the Nebraska Department of Insurance, with the states of Alaska, California, Florida, Iowa, Maine, Missouri, and New York also represented on that body. The 1993 charges to the Working Group are:

1. Consider development of amendments to title insurance annual statement blank to increase financial reporting requirements for title insurers
2. Consider development of a model law to regulate title insurance agents
3. Consider developing other regulatory tools to increase regulatory scrutiny of title insurers

Chairman Lange has divided the Working Group into two subgroups, the Market Issues Subgroup chaired by Donald Koch, Chief-Market Surveillance, Alaska Department of Insurance, and the Solvency Subgroup, chaired by himself.

### The Market Issues Subgroup

The Market Issues Subgroup's primary concern is the agent-title insurer relationship. This group has been working for the past two years on a Model Title Insurance Agent Model Act. After many meetings with industry and ALTA staff members and a number of public hearings, we have been told that the Model Act has been completed. However, the Model Agent Act will not be released until a companion Act to regulate title insurers is also completed. We have been told that both Model Acts will be

released in September at the Minneapolis NAIC Convention.

While we have not seen the completed Act, based upon the February 1994 draft and ALTA's public and written comments on the that draft, we believe that the Act will contain the following provisions:

- Licensing of agencies and key individuals in the agency
- Required errors and omissions insurance
- Required annual underwriting, claims, and escrow procedures review by the title insurer
- Required annual financial statements filed with the title insurer
- Required controlled business disclosure

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*...the Model Agent Act will not be released until a companion act to regulate title insurers is also completed.*

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- A state optional 20 percent controlled business limitation
- A requirement that a preliminary report of title (commitment) be provided to the prospective insured three business days prior to closing
- A requirement that all recorded monetary liens be listed in the preliminary report unless the agent knows that the lien has been satisfied, enforcement is barred by a statutory limitation period, or the lien has expired pursuant to its terms or pursuant to statute
- If an agent handles escrow funds, requirements for (1) an annual audit of the escrow accounts, and (2) fidelity coverage for the benefit of the depositor and the insurer

### The Solvency Subgroup

The Solvency Subgroup began its work with the following observations:

- (a) The ratio of losses to premiums has more than doubled (from 4 to 10 percent) in the past 10 years; and
- (b) The state-mandated reinsurance reserve, called the statutory premium

reserve (SPR), formulae have not changed in the past ten years

Without questioning either one of these statements, the members of the solvency subgroup concluded *ex ante* that the industry SPR was currently inadequate. While we would agree that the SPR is not responsive instantaneously to changes in the operating environment, this does not mean that the long run SPR is inadequate.

In the manner of property and casualty reserve regulation, the NAIC has proposed a Schedule P for title insurers. Schedule P requires an insurer to detail losses paid and incurred by year according to the year in which the premiums were earned. That is, for policy year 1982 the insurer would list losses both paid and incurred in 1982, 1983, etc. The length of time after the policy year on which an insurer is required to report depends on the "tail" for losses in the industry—for the title industry, we have begun with a 10-year reporting requirement and will permit the "tail" to grow as needed with the addition of reporting years.

When property and casualty insurers have a fully developed Schedule P and related information, they can, using rather sophisticated models, develop an estimate of total required reserves.

Essentially, what the NAIC hopes to do is to have title insurers, using Schedule P, develop the level of minimum required statutory reserves. With a newly developed SPR, the level of a company's total statutory reserves can be evaluated against the minimum required reserves ascertain of penalty reserves are called for. These penalty reserves, if any, would be deductions from surplus as differentiated from the other reserves.

In addition to Schedule P, the Working Group is proposing additions to Schedule N and a new Schedule O. Proposal drafts are scheduled for a vote by the NAIC Blanks Task Force in October.

Although there are many changes to Schedule N that we are in the process of questioning and commenting on, the most significant addition requires the title insurer to report and age separately the escrow deposits and security (title indemnity) deposits for each agent that provides an insurer with over one percent of premiums written and, also, to report these amounts in total for all agents. Each classification of deposits must be divided into funds held from one to 180 days, funds held from 181 days to one year, funds held from one to five years, and funds held over five years.

Schedule O requires the title insurer to report the premiums written and the total



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### Outlook

The industry has responded to every draft from the NAIC in a timely manner and will continue to work with regulators to improve the regulation of title insurance where necessary.

We expect that the both the Model Title Insurer Act and the Model Title Insurance Agent Act will be distributed at the September NAIC convention. We look forward to commenting on both and continuing our cooperation with the Title Insurance Working Group. 🦋

## Association Leader Claudius Mayo Dies



Word has been received of the death of Claudius August Mayo, 78, former longtime leader of the Louisiana Land Title Association, in Lake Charles, LA. He

joined the Mayo Land Title Company there in 1932, served as its president and chief executive officer from 1946 to 1980 and was chairman of the board after that.

He served the Louisiana title association for 35 years. Except for a term as its president in 1958-59, he was its secretary-treasurer from 1953 through 1988.

Among his civic activities, he served some 12 years on the Calcasieu Parish school board, including its presidency. He was active in library activities, serving as a local library trustee for 28 years, including oversight of the merger of his local parish and city public libraries. The Louisiana Library Association awarded him its Modisette Award for his outstanding work.

He was a charter member and past president of the Southwest Louisiana Historical Association.

An active member of the American Rose Society, he was a chapter president for that organization and editor of its monthly newsletter, *The Rosette*, for 15 years. He was a district director for the society, where he was named outstanding Consulting Rosarian.

Survivors include his wife, Madge D. Hudson Mayo; a son, Bradford H. Mayo, currently president of Mayo Land Title; two daughters, three sisters, a brother and five grandchildren.



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# November Elections Will Bring Changes

*By Ann vom Eigen  
ALTA Legislative Counsel*

**C**hange is in the air for Congress as the November elections draw near. What happens at the polls will substantially influence the climate in which legislative issues are addressed for the next two years. The central questions: How different will the makeup of House and Senate be from 1994, and what will this mean to issues of concern to the title business?

Retirements and turnover in committee membership and leaders are certain to impact the election profile at one level. On a wider scale, the greatest chance for Republican control of both House and Senate in 35 years has energized political speculation throughout the country. While a Republican-controlled Congress might be expected to be more pro business, interaction with the liberal Democratic administration could produce legislative gridlock.

As this goes to press, the anxiety level is high among many members seeking re-election. Tempers are short because of exhaustion from night-long sessions accompanying brinkmanship and heavy legislative negotiation. With re-election on the line, the situation has been exacerbated as campaign trips home have been delayed or cancelled.

Both in the full Congress and in committees, success at the polls is dependent on varying factors. Announced retirements generally are regarded as the only certainties, and even these can be reversed. For instance, Senator Kent Conrad (D-ND) decided to retire three years ago. Then, after constituent urging, he changed his mind and announced for re-election.

There are other leading variables being weighed by the candidates. Including anti-Clinton sentiment tied to the economic stimulus program and 1993 tax bill, along with uncertainty and distrust over health care reform. Freshman Democrats who voted for the tax bill and feel pressure to

support health care reform proposals will experience difficulty in distancing themselves from the President. In addition, anti-incumbent sentiment looms large a scant two years after their initial election. The so-called Christian coalition, a key factor in the religious right, is backing many challengers who strongly favor changing government; this includes a commitment to the defeat of present members of Congress, regardless of time in office.

If all this were not enough, freshman members generally have not yet seen their names on important legislation—or amendments—that have been enacted. And they usually have not built up the case work and constituent service that can help keep a Senator or Representative in office.

## **Committee Assignments**

As for leading title industry issues, RESPA and housing legislation fall within the jurisdiction of the Banking Committees, which characteristically have been very liberal in both House and Senate. There could be a slightly more conservative philosophy emerging in the next Congress, reflecting change in the committee leadership and overall membership. Other issues affecting the title industry—such as legislation requiring insurers to report on the location of insurance policies originated and insurance solvency legislation—are in the jurisdiction of the House Energy and Commerce Committee and the Senate Commerce Committee, where changes in leadership and policy direction are not expected. This assumes that the majority of the Senate and House remain Democratic.

## **Senate**

On the Senate side, the Banking Committee has been chaired by Senator Don Riegle (D-MI), a liberal whose votes often have reflected his labor-based constitu-



ency. His political profile has remained largely the same, despite his leadership of a committee with a money center base concentrated in banking and securities. Following Chairman Riegle's announcement of his retirement, the most likely candidate to assume the chair next year is Senator Paul Sarbanes (D-MD), based on seniority, which historically has dictated the line of succession. A Sarbanes chairmanship would make the continuation of liberal leadership on the committee a virtual certainty.

Senator Sarbanes is seeking re-election this fall. His is considered a "safe seat"; he has represented Maryland for over 20 years, first for three terms as a Congressman and then as a Senator. An Ivy League educated lawyer, he has chaired the Joint Economic Committee, which focuses on macro-economic issues, and has oversight of the Federal Reserve. A veteran Banking Committee member with expertise on Third World and other foreign debt as well as specific banking issues, he also has assumed the chairmanship of the Housing Subcommittee during the present 103rd Congress.

In the 102nd Congress, Senator Sarbanes successfully shepherded Export-Import Bank and Overseas Private Investment Corporation reauthorizations through the Congress, and in the present session is working on a housing reauthorization bill.

Representing a relatively urban eastern state, Senator Sarbanes at this writing is embroiled in his re-election campaign rather than thinking about priorities for the next Congress. However, he has indicated an intent to seek the input of the committee's constituency. He also expects to concentrate on economic activities, such as the Federal Reserve Board's position on interest rates.

Democrats on the Banking Committee generally have been liberal, including Senators Chris Dodd (D-CT), John Kerry (D-MA), and Richard Bryan (D-NV). They were joined this session by Senator Carol Mosely Braun (D-IL), the first black female Senator, and Senator Barbara Boxer (D-CA). A number of these freshmen may cycle off the committee next year. If so, the Senators who replace them are likely to be more conservative.

If the Senate goes Republican, as has happened once during the past decade, Senator Alphonse D'Amato (R-NY), current ranking minority member of the committee, will become chairman. A Long Island-based former county commissioner re-elected to the Senate last year, Senator D'Amato has been a popular moderate

whose general philosophy is pro business. Historically, he has been a strong proponent of privatizing FHA while representing a state where public housing is much in evidence.

Senator D'Amato also has been a key player in the Whitewater hearings. If he gains power in the Senate, an upswing in divisive politics could shake the Administration legislative agenda.

## House

A liberal social outlook is expected to remain a central theme of the House Banking Committee, where Henry Gonzalez (D-TX) is expected to remain chairman. An Hispanic liberal who first was elected to Congress in 1961, Chairman Gonzalez is known for his pro housing, pro consumer style. Unlike his predecessor in the chair, former Congressman Ferdinand St Germain (D-RI), who was notorious for his backroom deals, the Texas Democrat rather is identified by his democratic-with

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*"...the greatest chance for  
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throughout the country."*

---

a small "d"-legislative approach. Chairman Gonzalez allows every committee member to develop and carry individual amendments, which are considered in lengthy debate. The chairman is famous for his marathon markup sessions, often extending over several weeks.

During the 103rd Congress, the socially conscious Gonzalez agenda has been supported by perhaps the most liberal House committee on Capitol Hill, which is comprised of about 50 percent freshmen largely elected as outsiders running against the Washington establishment.

Typical of the character shown by the Banking Committee this year has been legislation requiring insurance companies to submit data to the federal government on their policies in place and their agents, in order to ascertain whether insurance companies are redlining—or failing to issue policies in low income areas. While the House substituted less onerous legislation supported by the insurance industry, which was reported by its more business oriented

Energy and Commerce Committee, the overall social philosophy of the Banking Committee is not expected to change next session.

If the House goes Republican, the Banking Committee chairmanship would likely pass to Congressman Jim Leach (R-IA), a brilliant, independent politician who frequently is "out of step" with the conservative Republican members. He has successfully led the Republican Whitewater charge on the House side.

Changes definitely will be forthcoming at the House subcommittee level because of retirements. For example, Chairman Steve Neal (D-NC) of the Banking Committee's Financial Institutions Subcommittee is leaving at the end of this session. This strong supporter of business is likely to be replaced by Congressman John J. LaFalce (D-NY). A member who at least is somewhat familiar with the title industry, Congressman LaFalce as chairman of the Small Business Committee scheduled and presided over the hearing held last summer on RESPA rules issued by HUD at the end of the Bush Administration. This helped put pressure on HUD to issue the proposed new RESPA rules published in the *Federal Register* this summer.

However, Congressman LaFalce has been heard to grumble that he feels title insurers "never pay claims."

Elsewhere, it is hoped that a good friend of the title industry, Congressman Larry LaRocco (D-ID), will survive a serious electoral challenge by a conservative female candidate and return to the Banking Committee and its Financial Institutions Subcommittee.

Other committees of importance to the title industry are likely to experience only minimal changes. As previously mentioned, insurance legislation falls primarily within the jurisdiction of the Energy and Commerce Committee in the House and the Commerce Committee in the Senate. Chairman John Dingell (D-MI), House Energy and Commerce Committee, the key proponent of federal regulation for insurance, has an easy re-election in prospect. His Senate counterpart, Senate Commerce Committee Chair Fritz Hollings (D-SC), was re-elected last session and will remain at the helm. Chairman Hollings started a title insurance agency as a young lawyer entering practice and is regarded as one of the better informed members of the Senate on the title industry.

Membership is likely to remain fairly stable on the Ways and Means Committee. Congressman Sam Gibbons (D-FL), the current chairman, is in a tight race against a



Republican challenger whom he previously had difficulty defeating. It is hoped that Chairman Gibbons, who is familiar with the title industry from earlier years when he was a title insurance agent, will return to the next Congress.

### The Overall Outlook

In the Senate, Democrats hold 22 of the 35 seats being contested and a number of these appear to be vulnerable. Nine Democratic Senate seats appear to be somewhat or highly subject to Republican takeover, while four Republican seats are thought to be vulnerable.

Especially susceptible to loss are the Democratic seats in Maine and Arizona being vacated by retiring Senate Majority Leader George Mitchell and Senator Dennis DeConcini, respectively.

An all-out scramble for the seat currently held by Virginia Democratic Senator Charles Robb has attracted nationwide media attention. Oliver North's nomination as Senator Robb's Republican opponent has produced deep divisions in the GOP, also giving rise to independent bids by former Democratic Governor Douglas Wilder and Republican Marshall Coleman. The polls have reflected that Senator Robb's margin is slim, making his position tenuous.

Also among the vulnerable Democratic incumbents are Senators Frank Lautenberg of New Jersey and Harris Wofford of Pennsylvania.

Among the Republicans, the seat now held by retiring Wyoming Senator Malcolm Wallop is the focus for a heated contest between GOP Representative Craig Thomas and former Democratic Governor Mike Sullivan, with no clear front runner emerging at this writing. The seat of retiring Senator Dave Durenberger (R-MN) also appears to be up for grabs.

Perhaps the biggest surprise is the possible upset of incumbent Senator Diane Feinstein (D-CA), who as this headed for press was holding a scant lead in the polls over freshman Republican Congressman Michael Huffington. These standings appear to have been influenced by recent substantial media buys for the Huffington campaign.

In the present political arena, the media image of a candidate often can determine the outcome of an election. Along these lines, the Title Industry Political Action Committee appreciates the contributions from title men and women across the country that go toward support of Congressional candidates from both parties with political views compatible to those of the title industry.

Retirements of some old friends and adversaries are likely to affect the outlook for Judiciary Committee issues in the next Congress. Senator Howard Metzenbaum (D-OH), a historic title industry opponent on issues such as the 1099-S separate charge legislation, is leaving at the end of this session. On the other hand, Congressman Don Edwards (D-CA), a former title agent who has spoken on the side of the title industry many times, also has announced his retirement.

With the number of freshmen currently on the House Banking Committee, one burning question is whether all of them will return to Washington next year. A group who largely ran as outsiders, they now face the task of differentiating themselves from incumbents with more time on Capitol Hill—positioning themselves as "experienced outsiders" to move away from the anti-Congressional sentiment flooding the electorate.

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**"Even if a Congress emerges from the elections that is more pro business in nature, look for more concentration on the insurance industry."**

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As suggested earlier, freshman Democratic members also will be marked by their ties to and votes for the President's economic program and perhaps, if the timing so dictates, a health plan that will create uncertainty and perhaps increased costs. With this baggage, there is a serious political threat in being linked to a President whose popularity rating has been running at an incredibly low level for a first term.

Efforts by the freshman class to move away from the sitting President are exacerbated by a common trend. Mid-term elections generally have resulted in big losses for the President's party, and this year should be no different. Democrats have been hurt by the President's lack of popularity and generally can expect a political endorsement from the White House to hinder rather than help. Many Democrats continue to distance themselves from the President, though they may support his policies, and Republicans are cashing in by attacking the problems of the beleaguered Clinton Administration in an attempt to discredit Democrats in general.

In the GOP's favor this election is the fact that there is an unusually large number of open seats this year (49 in the House and nine in the Senate). Factors working against Republicans are, first, the perception that they have stalled on important issues such as health care reform and crime and, second, their endorsement of several divisive candidates who will find it difficult to gain a broad base of support in important races.

While a gain of seven Republican seats is needed for control of the Senate, the House currently has only 176 Republicans. Although Republicans after the election may well have more than 192 House seats for the first time since 1958, they need over 220 to take control of the House. Consequently, the game really is in the Senate.

As this is written, Congress and the Administration remain focused on the current session and the elections. Consequently, there has been no effort to develop a legislative agenda for next year. As the present session winds down, it appears that health care still may be on the table. In addition, expansion of bank powers is a constant goal for the banking industry, which may well have sympathetic regulators in place next year. Also, large segments of the property/casualty insurance industry are pushing for federal regulation of insurance, as well as for licensing and solvency legislation.

Even if a Congress emerges from the elections that is more pro business in nature, look for more concentration on the insurance industry. This places a larger federal role in the title business clearly in prospect. 

## Three Acquisitions Reported by Fidelity

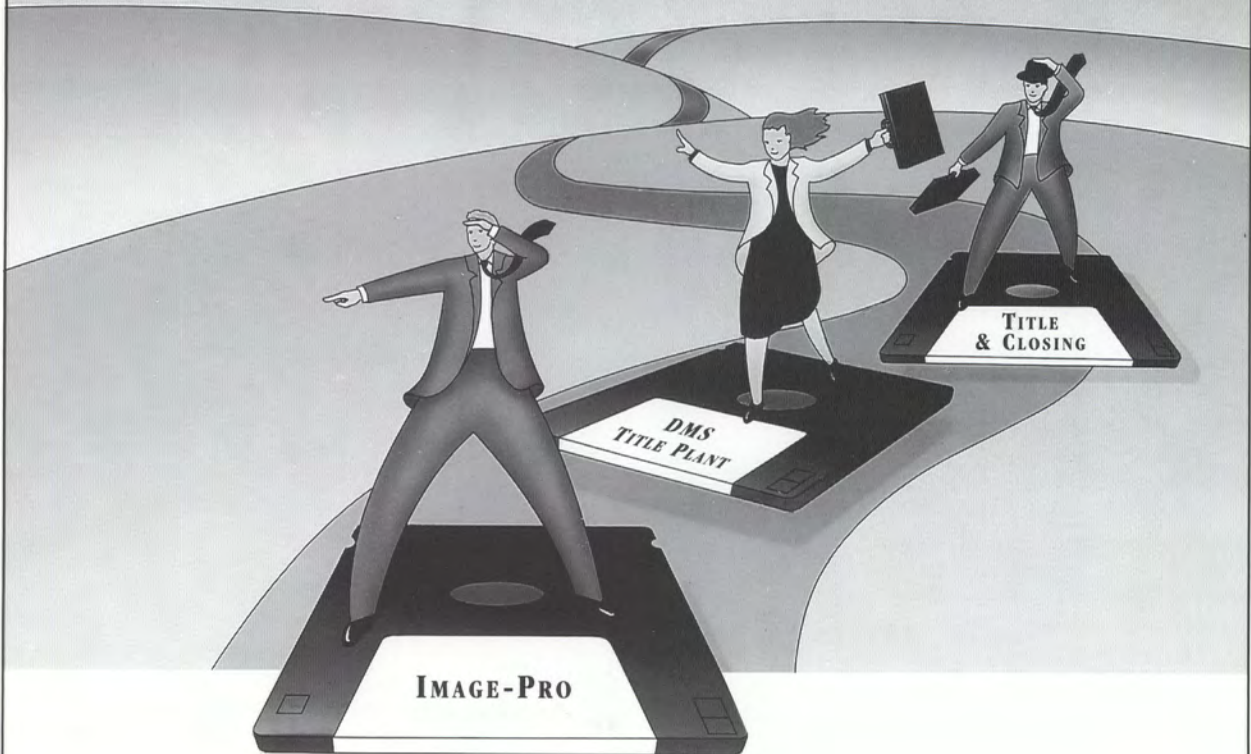
Three acquisitions recently have been announced by Fidelity National Financial, Inc., parent of organizations including Fidelity National Title Insurance Company.

American Title Insurance Company, another Fidelity National Financial subsidiary, has acquired the operating assets of World Title Company's San Diego County operation, which now is a direct operation.

Fidelity National Financial also has announced execution of an agreement with WTC Financial to acquire 60 percent of the assets of its wholly owned subsidiary, World Tax Service, for a price of \$3 million. In addition, the agreement includes an option for WTC Financial to purchase 100,000 shares of Fidelity National Financial common stock at \$14.50 per share.



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# Banks, Bank Holding Companies And Title Insurance Developments

By Sheldon E. Hochberg, Esquire

*Editors Note: The July-August 1989 edition of Title News presented an article by the author entitled, "Banks, Bank Holding Companies and Title Insurance: A Non-Technical Guide Through the Labyrinth of Applicable Law and Regulation." The purpose of that article was to help ALTA members understand the legal issues raised by banks and bank holding companies ("BHCs") engaging in title insurance activities. In the five years since that article was published, there have been a number of court decisions and administrative developments that have clarified some of the issues that were unresolved in 1989. These developments are discussed in the following paragraphs, the organization of which generally corresponds to the organization of the 1989 article.*

*Because this article, for the most part, does not repeat the background information contained in the earlier article, readers may want to review the 1989 article in order to obtain a full understanding of the issues discussed. Photocopies of that article are available from ALTA upon request.*

\* \* \*

## Issues Arising Under The Bank Holding Company Act

During the 1980s, much of the litigation brought by the insurance industry to challenge bank entry into the insurance business involved challenges brought under the Bank Holding Company Act of 1956, as amended ("BHC Act"), 12 U.S.C. Sec. 1841, etc. As a result of several appellate court decisions, the scope of the non-banking prohibitions of the BHC Act has been narrowed, as banks and operating subsidiaries of banks that are affiliated with BHCs

have been held not to be covered by those prohibitions.

In the Garn-St Germain Depository Institutions Act of 1982, Congress established that, with certain limited exceptions, BHCs and the subsidiaries of BHCs that were subject to the limitations on non-banking activities of the BHC Act could not "provide

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**W**hether the OCC will attempt to approve title insurance agency activities by national banks operating outside of the jurisdiction of the Second Circuit will in large measure be determined by the outcome of the VALIC case...

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insurance as principal, agent, or broker." In 1986, the Board of Governors of the Federal Reserve System ("the Board"), which is responsible for administration of the BHC Act, determined that title insurance was covered by these prohibitions. It was clear that these prohibitions applied to the BHC itself and to non-banking subsidiaries that were directly owned by the BHC. What was not clear in 1989 was whether these prohibitions applied to the banks owned by BHCs or to operating subsidiaries ("op-

subs.") owned by such banks.

## A. Applicability of the BHC Act to State Banks and Their Operating Subsidiaries

### 1. Applicability to Activities Undertaken Directly by State Banks

For years, the Board has been of the view that the BHC Act did not apply to state banks and that Congress intended that the permissible activities of state banks were to be determined by the law of the bank's chartering state and not by the Board under the BHC Act. Accordingly, in early 1989 the Board approved an application by Merchants National Corporation, a BHC, for two Indiana state banks owned by the BHC to engage in property and casualty insurance agency activities - activities that were permissible for those state banks under Indiana banking law. The Board concluded that the nonbanking prohibitions of Section 4 of the BHC Act (as amended by the Garn-St Germain Act) did not apply to bank subsidiaries of a BHC.

The Board's determination was affirmed in late 1989 by the United States Court of Appeals for the Second Circuit. *Independent Ins. Agents of Am., Inc. v. Board of Governors*, 890 F.2d 1275 (2d Cir. 1989), cert. denied, 498 U.S. 810 (1990) (the "Merchants II" decision). The court found that there were legitimate arguments to be made on both sides of the issue. However, applying the principles for judicial review of agency determinations established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the court concluded that, in the absence of clear direction from Congress on the issue, it had to defer to the Board's interpretation



of the Act.

In light of the Second Circuit's decision in *Merchants II*, the Board will continue to be of the view that the BHC Act does not apply to the insurance activities of state banks affiliated with BHCs. It is unlikely that insurance industry groups will pursue further litigation on this issue in other circuits so as to establish a conflict among the circuits that might lead to Supreme Court review.

While state law may authorize state banks to sell other forms of insurance through a direct insurance operation conducted by the bank itself, because of the nature of the activities and responsibilities of a title insurance agency it is less likely that state law would authorize a bank to engage directly in such activities. Rather, for legal and practical reasons, a state bank that is authorized to engage in title insurance agency activities is more likely to undertake such activities through a subsidiary of the bank.

## **2. Applicability to Activities of Op. Subs. of State Banks.**

While the Board believes that it has no authority under the BHC Act to regulate the activities of BHC-affiliated state banks, it continues to be of the view that it can exercise jurisdiction over the nonbanking activities of op. subs. of BHC-affiliated state banks. The 1992 decision of the Second Circuit in the *Citicorp* case (discussed below), however, has cast a large shadow over the Board's view in this regard.

The Board's regulations continue to include a provision relating to the permissible activities of state bank operating subsidiaries. This provision, 12 CFR Sec. 225.22(d)(2)(ii) – referred to as the "op. sub. regulation" – permits an operating subsidiary of a state bank to engage, without approval of the Board, in any activity that the bank itself may conduct "directly" under state law, subject to whatever conditions are imposed on the bank by state law. In 1988, the Board began a rulemaking proceeding in which it sought public comment on a proposal (i) to rescind the regulation (thereby subjecting such op. subs. to the limitations on insurance activities applicable to other nonbanking subsidiaries of a BHC), and (ii) to grandfather those op. subs. that were lawfully engaged in insurance activities pursuant to the regulation as of November 21, 1988.

While the Board was considering the proposed changes, *Citicorp* filed an application seeking to take advantage of legislation enacted by Delaware in 1990 that ostensibly permitted Delaware banks to engage in insurance underwriting activities through a division of the bank. (The

Delaware law specifically excluded the underwriting of title insurance from the permissible activities.) In *Citicorp/Family Guardian Life Insurance Co.*, 76 *Fed. Res. Bull.* 977 (1990), the Board concluded that, under the Board's op. sub. regulation, an operating subsidiary of *Citicorp*'s Delaware state bank could not engage in insurance underwriting activities. The Board's decision was based on its determination that, in light of the many restrictions imposed by the Delaware law to separate the operation of the bank from the operation of the bank's insurance underwriting "division," Delaware law really did not permit the bank itself "directly" to engage in insurance underwriting activities – and, hence, under the op. sub. regulation a subsidiary of the bank could not engage in the activities.

*Citicorp* appealed this decision and in

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**A**lthough Section 92 does not expressly prohibit national banks from engaging in the insurance agency business outside of such small towns, the legislative history of the provision made it clear that such a prohibition should be implied...

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*Citicorp v. Board of Governors*, 936 F.2d 66 (2d Cir. 1991), cert. denied, 112 S. Ct. 869 (1992), the Second Circuit held that, given the decision in *Merchants II* and the Board's position in that case that Congress intended in the BHC Act to allow the states, rather than the Board, to determine the permissible activities of state banks, the Board could not apply the nonbanking prohibitions of the Act to the activities of operating subsidiaries of state banks. Interestingly, the Board not only declined to seek Supreme Court review of the Second Circuit's decision, but it opposed the petition for a writ of certiorari filed by the insurance industry. The Board contended that, while it disagreed with the Second Circuit's conclusion that the BHC Act did not subject the activities of op. subs. of BHC-affiliated state banks to Board regulation, it did not believe Supreme Court review of the *Citicorp* decision was warranted because there was no conflict in the circuits on this issue, and



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He represented the title insurance industry in connection with enactment of RESPA and the 1983 controlled business amendments, and has counseled ALTA in connection with HUD's implementation of RESPA.

Congress was considering the matter. (This was a reference to the amendments to the Federal Deposit Insurance Act, discussed below.)

In sum, while the Second Circuit has ruled that the Board cannot regulate the activities of state bank op. subs., the Board has not accepted the *Citicorp* decision as a binding precedent applicable outside of the Second Circuit (New York, Connecticut, and Vermont). Whether and in what circumstances the Board would be prepared to apply its op. sub. regulation to banks in other circuits is unclear.

It should be noted that, under the Board's op. sub. regulation, state law would have to authorize the bank itself to engage in title insurance agency activities in order for it to be permissible under the BHC Act for an op. sub. of a state bank in that state to engage in such activities. The fact that state law permitted banks in that state to own title insurance agencies would not be sufficient to trigger the application of the Board's op. sub. regulation.

## **B. Applicability of the BHC Act to National Banks and Their Op. Subs.**

The Board has long been of the view that the permissible activities of national banks affiliated with BHCs are to be determined by the Comptroller of the Currency under the National Bank Act, and that the nonbanking provisions of the BHC Act do not apply to such national banks. Although the Second Circuit's decision in *Merchants II* only addressed whether the BHC Act applied to the activities of state banks, the logic of that decision would equally apply to national banks.

With regard to the activities of op. subs. of national banks, it was hoped that once the Board amended the state bank op. sub. regulations to make clear that such subsidiaries could not engage in insurance activities prohibited by the Garn-St Germain Act amendments, it would then apply comparable rules to the op. subs. of national banks. As of now, there is little likelihood that the Board will move ahead with the



rulemaking, begun in 1988, to amend the state bank op. sub. regulations.

### **C. Exemption G BHCs Are Authorized to Engage in Title Insurance Agency Activities Without Limitation**

Exemption G provides an exemption from the insurance prohibitions contained in the Garn-St Germain Act amendments for those BHCs that were lawfully engaged in insurance agency activities as of January 1, 1971. 12 U.S.C. Sec. 1843(c)(8)(G). In *American Land Title Ass'n v. Board of Governors*, 892 F.2d 1059 (D.C. Cir. 1989), the U.S. Court of Appeals for the D.C. Circuit upheld the determination of the Board in *First Wisconsin Corporation*, 75 Fed. Res. Bull. 31 (1989), that BHCs entitled to Exemption G rights could engage in title insurance agency activities even though the Board had never approved such activities for BHCs and none of the Exemption G companies had ever engaged in such activities prior to January 1, 1971.

There are approximately 9 BHCs that enjoy Exemption G rights. Firststar Corporation (formerly First Wisconsin Corporation) and Norwest Corporation have been the most active of the Exemption G companies in purchasing or establishing title insurance agencies in recent years. Such agencies may issue title insurance policies in transactions other than those involving mortgage loans made by banks affiliated with the Exemption G BHC. (In contrast, BHCs that wish to engage in insurance agency activities through an affiliated state bank or its op. sub. may be limited by state law to engaging in such activities only in connection with their own mortgage loan transactions.)

Exemption G rights only apply to insurance agency activities; the exemption may not be used by an Exemption G company to engage in title insurance underwriting.

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

#### **A. Title Insurance Agency Activities by National Banks**

At the time the 1989 article was published, we were awaiting the decision of the United States District Court for the Western District of Texas in a case brought by ALTA and the Texas Land Title Association challenging the interpretive ruling of the Office of the Comptroller of the Currency that national banks have the "incidental" power under 12 U.S.C. Sec. 24 (Seventh) to engage in title insurance agency activities in connection with their mortgage loan transactions. In August of 1989, the court granted the United States motion to dismiss the case on the grounds that the interpre-

tive rulings did not constitute final agency action that could be reviewed under the judicial review provisions of the Administrative Procedures Act, and that the issue was not otherwise ripe for review until the legal conclusions reflected in the rulings were applied in the concrete setting of an OCC approval of a national bank's application to engage in the challenged activities. *American Land Title Ass'n v. Clarke*, 743 F. Supp. 491 (W.D. Tex. 1989).

Shortly thereafter, the OCC provided the requisite finality and ripeness to the controversy when it approved the application of Chase Manhattan Bank, N.A., to establish two operating subsidiaries that would issue title insurance policies in connection with the bank's mortgage loan transactions.

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*...under the (Federal Reserve) Board's operating subsidiaries regulation, state law would have to authorize the bank itself to engage in title insurance agency activities in order for it to be permissible...*

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ALTA, joined by the New York State Land Title Association, refiled the challenge to the OCC ruling in the U.S. District Court for the Southern District of New York.

ALTA's principal contention was that the authority of national banks to act as insurance agents was expressly addressed and limited by Congress in 12 U.S.C. Sec. 92. Section 92 authorizes national banks located and doing business in any place the population of which does not exceed 5,000 to engage in insurance agency activities. Although Sec.92 does not expressly prohibit national banks from engaging in the insurance agency business outside of such small towns, the legislative history of the provision made clear that such a prohibition should be implied from the limited grant of insurance agency powers. This was the holding in *Saxon v. Georgia Ass'n of Ind. Ins. Agents*, 399 F.2d 1010 (5th Cir. 1968), a key decision relied upon by ALTA.

In 1991, the district court denied the summary judgment motion filed by ALTA and granted the OCC's motion to dismiss. *American Land Title Ass'n v. Clarke*, 772 F. Supp. 1352 (S.D.N.Y. 1991). On appeal, however, a panel of the Second Circuit u-

nanimously reversed the district court. *American Land Title Ass'n v. Clarke*, 968 F.2d 150 (2d Cir. 1992). In an opinion authored by Chief Judge Oakes, the court agreed with the Fifth Circuit in *Saxon* that Section 92 constitutes an implied limitation on the authority of national banks to engage in insurance agency activities under their "incidental" powers and that, contrary to the determination of the Comptroller, title insurance was covered by Section 92. (Section 92 empowers national banks to act as the agent "for any fire, life, or other insurance company" in small towns.) The panel did not reach the issue whether, in the absence of Section 92, national banks would have the incidental power to engage in title insurance agency activities. Despite the urging of the Solicitor General, Chase Manhattan, and a number of bank and bank holding company trade associations, the Supreme Court declined to review the Second Circuit's decision. *Ludwig v. American Land Title Ass'n*, 113 S. Ct. 2959 (1993).

In May, 1994, the District Court entered a final order declaring that the OCC's approval of the Chase Manhattan application was void and contrary to law, but declined to issue an order that would more broadly prohibit the OCC from approving applications by other national banks to establish title insurance agency operating subsidiaries. Whether the OCC will attempt to approve title insurance agency activities by national banks operating outside of the jurisdiction of the Second Circuit will in large measure be determined by the outcome of the Supreme Court's decision in the VALIC case, discussed in Part C, below.

#### **B. Other Significant Recent Cases on Insurance Agency Activities of National Banks**

##### **1. Other Section 92 cases**

Shortly after the oral argument before the Second Circuit in *ALTA v. Clarke*, a divided panel of the D.C. Circuit dropped a bombshell by concluding that Section 92, which was enacted in 1916, had been repealed in 1918! *Independent Ins. Agents of Am, Inc. v. Clarke*, 955 F. 2d 731 (D.C. Cir. 1992). Although Section 92 no longer appeared in the United States Code after 1958, Congress had amended the provision in the Garn-St Germain Act Amendments in 1982 and the OCC had acted as if the provision were in force. Because Section 92 was so critical to its analysis in the title insurance case, the Second Circuit felt compelled to address the views of the D.C. Circuit and to explain why it believed the provision had not been repealed. Given the conflict between the two circuits on this is-



sue, the Supreme Court granted certiorari and, in a unanimous opinion authored by Mr. Justice Souter, concluded that the provision had not been repealed in 1918. *United States National Bank of Oregon v. Independent Ins. Agents of Am, Inc.*, 113 S. Ct. 2173 (1993). (The cause of the problem was the misplacement of quotation marks around the statutory language enacted in 1916 that made it appear as if it had been included in a section of the revised statutes that was repealed in 1918 – a classic example of "scrivener's error.")

Having been told by the Supreme Court that Section 92 was still on the statute books, the DC Circuit addressed the merits of the litigation. The case involved a challenge to the determination of the Comptroller that the United States National Bank of Oregon, which had established a branch office in a small town aptly named Banks, Oregon (population: 489), could sell insurance from that office to customers located anywhere in the country. The court concluded that Congress had not made clear in Section 92 that there were any geographical limits on the insurance customers of banks located in small towns, and, therefore, the court had to defer to the Comptroller's interpretation of the statute because it was a permissible interpretation. *Independent Ins. Agents of Am., Inc. v. Ludwig*, 997 F. 2d 958 (D.C. Cir. 1993). Review of the decision was not sought in the Supreme Court.

Whether other circuit courts or the Supreme Court would agree with the D.C. Circuit that Section 92 permits any national bank to use a branch office located in a small town to sell insurance to customers nationwide is unclear. Moreover, it is still an open issue as to what activities, if any, bank officers or employees located outside of the small town may engage in to assist or further the insurance agency activities of the small town branch office. Finally, it is not clear whether or how this decision will facilitate the ability of a national bank to operate title insurance agencies. An employee located in a small town may be able to solicit life, homeowners, or auto insurance business from customers in large cities through the mail or by phone. On the other hand, in light of the functions performed by a title insurance agent it may be impossible for an office located in a small town to perform the core title insurance services in connection with transactions involving real estate located in large cities.

## 2. Decisions Involving the Power of States to License or Regulate the Insurance Agency Activities of National Banks

There are a number of cases currently before the courts that focus on the extent to which the states may license or regulate the insurance agency activities of national banks.

In Interpretive Letter No. 623, Fed. Bank. L. Rep. (CCH) Paragraph 83,505 (May 10, 1993), the OCC staff opined that any licensing requirements imposed by the state of Connecticut on national banks selling annuities in that state would be preempted by federal law because "the power to license is the power to prohibit." Connecticut insurance law prohibits lending institutions and their affiliates from being licensed for the sale of fire, casualty, health or life insurance. In November 1993, Shawmut Bank

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### *In view of the Second Circuit's decision in ALTA v. Clarke, such piggyback provisions should not be interpreted as permitting state banks to engage in the title insurance agency business.*

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Connecticut N.A. acquired an insurance agency located in New Haven and subsequently moved the agency's operation to Chester, CT, which has a population of less than 5,000. The bank contends that, because federal law (Section 92) authorizes the bank to conduct the insurance operation from that place, the Connecticut insurance commissioner cannot deny it a license on the basis of the state law. The bank has sought a declaratory judgment on this issue in federal district court. *Shawmut Bank Connecticut, N.A. v. Googins*, (U.S.D.C. D. Conn.).

Three recent federal district court decisions have addressed the preemption issue. In *Owensboro National Bank v. Moore*, 803 F. Supp. 24 (E.D. Ky. 1992), the court concluded that the insurance commissioner of Kentucky could not refuse to send insurance agency applications to a national bank because Section 92 preempted the provision of Kentucky banking law that the commissioner believed limited the ability of banks to be affiliated with insurance agencies. The case is on appeal to the Sixth Circuit.

In *Barnett Banks of Marion County v. Gallagher*, 839 F. Supp. 835 (M.D. Fla. 1993), the court denied Barnett's request for a pre-

liminary injunction seeking a declaratory judgment against the Florida insurance commissioner regarding whether state law that precludes subsidiaries of banks from engaging in insurance activities in Florida is pre-empted by Section 92. The case is on appeal to the U.S. Court of Appeals for the Eleventh Circuit. A month earlier, a federal district court in East Baton Rouge, LA, upheld (in an unreported decision) a ruling by the state insurance commissioner prohibiting a national bank from selling insurance.

In 1990, the Eighth Circuit Court of Appeals concluded that a national bank that was selling debt cancellation contracts to its loan customers, pursuant to an OCC ruling that such activity was incidental to banking, could not be required by the state insurance commissioner to obtain a license because the commissioner believed that such contracts constituted a form of credit insurance subject to state law. *First Nat. Bank of Eastern Ark. v. Taylor*, 907 F.2d 775 (8th Cir.), cert. denied, 111 S.Ct. 442 (1990).

Finally, in an unusual decision the insurance commissioner of Indiana recently denied a license to NBD Bank, N.A., which had sought to sell insurance in Indiana through an office located in Corydon, IN, a town with a population of less than 5,000. The bank intended to sell insurance to customers located outside of Corydon. The commissioner denied the license because she concluded that the Comptroller of the Currency and the D.C. Circuit in *Independent Ins. Agents of Am., Inc. v. Ludwig*, 997 F. 2d 958 (D.C. Cir. 1993) (discussed above) were wrong in their interpretation of Section 92 that national banks may use an office in a small town to sell insurance to customers located anywhere. The decision is now on appeal. *NBD Bank, N.A. v. Bennett*, Civil Action No. IP94 862 C (S.D. Ind. Indianapolis Div.).

The extent to which the states may regulate the insurance activities of banks and their affiliates will be an increasingly important issue in the years to come. While there are good reasons why the states should not be allowed to interfere with the banking operations of a national bank, these reasons may not be applicable to other kinds of commercial activities (such as securities or insurance) undertaken by banks or by separate corporations that happen to be owned by banks.

## 3. The Supreme Court's Review of the Fifth Circuit's Decision in the VALIC Case May Provide Definitive Guidance on the Scope of Section 92

While the Supreme Court declined to review the Second Circuit's decision in *ALTA*



*v. Clarke*, it has granted certiorari in the case of *Variable Annuity Life Ins. Co. ("VALIC") v. Clarke*, 998 F.2d 1295 (5th Cir. 1993), *cert. granted sub. nom. Ludwig v. Variable Annuity Life Ins. Co.* The VALIC case involves the OCC's approval of an application by NationsBank to sell fixed and variable annuities. In a letter dated March 21, 1990, to counsel for NNCB National Bank (now NationsBank), the OCC concluded that (1) annuity contracts are primarily financial investment instruments, comparable to securities, debt instruments, and certificates of deposit that national banks have the authority to sell; (2) because annuities are not an insurance product, Section 92 places no limit on the locations from which banks can sell annuities; and (3) even if annuities were an insurance product, Section 92 was intended to apply only to "broad forms of automobile, home, casualty, and liability insurance," and not to "specialized" forms of insurance, such as credit life insurance and title insurance, that are incidental to the business of banking.

VALIC, which sells annuities in all 50 states, challenged the OCC's ruling. As in the ALTA suit on title insurance, the district affirmed the OCC's ruling. The Fifth Circuit, like the Second Circuit in the title insurance case, unanimously reversed.

The Fifth Circuit began its analysis with Section 92. Quoting extensively from the 1968 Fifth Circuit decision in *Saxon* and the Second Circuit decision in *ALTA v. Clarke*, the court concluded that the affirmative and limited grant of insurance agency powers to national banks in Section 92 necessarily implied a Congressional denial of broader insurance agency powers under the "incidental" powers provision of 12 U.S.C. Section 24 (Seventh). Because the court found that Congress had reflected a clear intent on this issue, it concluded that there was no basis for the district court to have given *Chevron* deference to the OCC's interpretation. (Under *Chevron*, such deference is only warranted when Congressional intent cannot be discerned by the court.) Finally, the court concluded that annuities constituted insurance and that Section 92 was not limited, as the OCC was contending, to so-called "broad forms" of insurance such as fire and life insurance. (Section 92 by its terms applies to national banks acting as agents for "any fire, life or other insurance company . . .")

Both the Comptroller of the Currency and NationsBank filed petitions for writs of certiorari in the Supreme Court and the petitions were granted in June, 1994. Oral argument is scheduled for the fall of 1994 and

a decision in the case is expected in early 1995. ALTA will be filing an *amicus curiae* brief in the case.

How the Court's decision may affect the authority of national banks to act as title insurance agents will depend on the issues addressed in the decision. On the one hand, the Court could conclude that annuities are not insurance and, therefore, there is no need to address whether Section 92 constitutes a limit on the locations from which banks may sell insurance products or whether there are insurance products that are not covered by Section 92. On the other hand, the Court could well address the Section 92 issues and determine, once and for all, whether Section 92 prohibits national banks from engaging in insurance agency activities outside of small towns and what insur-

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**T**he authority of state banks to engage in insurance activities will continue to be an active issue in state legislatures...and before state banking and insurance regulators.

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ance agency activities, if any, are not embraced within Section 92.

**C. Title Insurance Underwriting Activities By National Banks**

On April 29, 1991, the OCC approved an August 9, 1990 application by Citibank (Florida), N.A., to acquire and operate a title insurance company as a second tier operating subsidiary that would underwrite title insurance policies on loans made by the bank. The approval was based on a 1987 OCC staff interpretive letter that indicated that a national bank could establish an operating subsidiary that issues title insurance policies in connection with the bank's loan transactions. Interpretive Letter No. 377 (Feb. 6, 1987), *reprinted in* [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) Paragraph 85,601. The proposals addressed in both the 1987 interpretive letter and the Citibank application indicated that all policies issued would be reinsured with one or more other title insurers. Accordingly, it is not clear to what extent the approval really involved title insurance

underwriting (in the sense that the operating subsidiary would be assuming risks and liabilities under the policies it would be issuing).

While a number of strong arguments could be made in litigation challenging a determination that national banks have the authority to engage in title insurance underwriting, litigation was not brought in connection with the Citibank (Florida) application because the bank did not implement the approval obtained from the OCC.

**Insurance Activities by State Banks and Their Subsidiaries**

**A. Insurance Agency Activities**

Whether particular state banks may engage in title insurance agency activities, either directly or through an operating subsidiary, is determined by the law of the bank's chartering state and the laws of the other states in which the bank may operate. Some states permit such activities, while other states prohibit such activities. A useful index to the provisions of the various state laws in this area may be found in Prof. Joyce D. Palomar's recently-published treatise *Title Insurance Law*, Section 3.02[2] at pp. 3-10 to 3-14 (1994). (Indeed, Chapter 3 of the treatise, entitled "Banks as Title Insurers," provides an extensive discussion of the legal and policy issues raised by bank control of title companies.)

A number of states authorize their banks to engage in activities that are permissible for national banks. In view of the Second Circuit's decision in *ALTA v. Clarke*, such piggyback provisions should not be interpreted as permitting state banks to engage in the title insurance agency business.

For many years, the Federal Deposit Insurance Corporation (FDIC), in its role as regulator of the federal deposit insurance funds, had a regulation (12 CFR Section 332) that prohibited insured state banks from "insuring, guaranteeing or certifying titles to real estate." In connection with its implementation of the 1991 amendments to the Federal Deposit Insurance Act (discussed below), the FDIC repealed this provision. *Powers Inconsistent With Purposes of Federal Deposit Insurance Law*, (Final Rule), 58 Fed. Reg. 64,458 (Dec. 8, 1993). The FDIC appeared to be of the view that this provision, which was first adopted in 1948, applied to title insurance activities engaged in by a bank "as principal," rather than as an "agent." Accordingly, the FDIC concluded that the regulation was no longer needed since the activities addressed in the regulation were covered by the regulations implementing the 1991



amendments.

The authority of state banks to engage in insurance activities will continue to be an active issue in state legislatures around the country and before state banking and insurance regulators. State land title associations will need to be alert to developments in this area and to be prepared to participate in the policy debate on whether banks ought to be title insurance agents in their own loan transactions.

### **B. Insurance Underwriting Activities**

The Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, added a new Section 24 to the Federal Deposit Insurance Act, 12 U.S.C. Section 1831a, that governs the activities that may be engaged in by insured state bank and their subsidiaries "as principal." In general, new Section 24 provides that insured state banks may not engage in any activity that is not permissible for national banks unless (i) the state bank meets certain capital standards, and (ii) the FDIC finds that the activity will not pose a risk to the deposit insurance fund. With regard to insurance underwriting, however, Section 24(b) provides that "an insured state bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks." Thus, unless the insurance underwriting activity is permissible for national banks, insured state banks may not engage in the activity. There is no exemption for well-capitalized banks or for insurance underwriting activities that the FDIC may find do not pose a risk to the insurance fund.

On December 8, 1993, the FDIC promulgated final regulations implementing the provisions of new Section 24 of the Federal Deposit Insurance Act that govern the activities of insured state banks and their subsidiaries. "Activities and Investments of Insured State Banks: Final Rule" (Amending 12 CFR Part 362), 58 Fed. Reg. 64,462 (Dec. 8, 1993). In November of 1992, the FDIC had promulgated its initial set of regulations under Section 24 that addressed the equity investments that insured state banks may make. 57 Fed. Reg. 53,213 (Nov. 9, 1992). The "activities" regulations, which embody a number of concepts first adopted in the equity investment regulations, apply to activities of insured state banks and activities of their majority-owned subsidiaries.

In determining what activities are permissible for national banks, the FDIC has decided that, in addition to activities authorized by statute, or in regulations, official circulars, or bulletins issued by the OCC, it will also recognize as permissible

any activity "recognized as permissible . . . in any order or interpretation issued in writing" by the OCC. 12 CFR Section 362.2(b), 58 Fed. Reg. 64,483. Accordingly, the FDIC may view OCC Staff Interpretive Letter No. 377 (discussed above) as indicating that it is permissible for national banks to engage in title insurance underwriting activities in connection with their own loans, even though the activities approved in that letter were never implemented and the Second Circuit has held that national banks cannot even engage in title insurance agency activities outside of small towns.

The FDIC has also indicated that even if a court decision overrules the conclusion of the OCC regarding the lawfulness of a particular activity, the FDIC will continue to apply the opinion of the OCC unless the OCC applies that court decision to all national banks. See background section accompanying final regulations, 58 Fed. Reg. at 64,464 col. 3.

Of course, since the activities approved in both OCC Interpretive Letter No. 377 and in the Citibank (Florida) application entailed the bank's reinsuring 100 percent of the risks on all policies it issues, state banks can only engage in title insurance underwriting pursuant to Section 24 of the FDIA to the same extent, and would likewise have to reinsure all of their risks. In any event, there are good reasons to believe that the courts would not uphold the OCC's determination that national banks have the incidental power to act as title insurance companies -- and, hence, that insured state banks may not engage in title insurance underwriting. Members of the title insurance industry should be alert to any attempt by a state bank to establish a title insurance underwriting operation in reliance on the new FDIC rules so that an appropriate test case can be brought to establish that neither national banks, nor state banks insured by the FDIC, have the authority to engage in title insurance underwriting.

### **The Real Estate Settlement Procedures Act (RESPA)**

On November 2, 1992, the Department of Housing and Urban Development (HUD) promulgated final regulations in implementation of the 1983 controlled business amendments to RESPA. 57 Fed. Reg. 49,600. Certain aspects of the regulations have proved very controversial, and HUD has recently published for public comment certain changes affecting payments that may be made by an employer to its employees for referrals of business to affiliated settlement service providers, and the

operation of computerized loan origination services ("CLOS"). 59 Fed. Reg. 37,360 (July 21, 1994).

It is important to recognize that the anti-kickback and controlled business provisions of Section 8 of RESPA apply with full force to controlled business arrangements engaged in by national or state banks. Accordingly, referrals of business in RESPA-related transactions (one-to-four family homes) by bank loan officers to a title insurance agency owned by or affiliated with the bank would have to comply with the controlled business provisions of RESPA (*i.e.*, the bank would have to make timely disclosure to the consumer of information about the ownership affiliation between the bank and the title agency, the consumer could not be required to use the services of the bank-owned agency, and the only thing of value received from the arrangement could be a return to the bank of bona fide dividends on its ownership interest). Moreover, any charges made by the bank-owned agency or commissions received from title insurance companies would have to be for services actually rendered, as required by sections 8(a) and (b) of RESPA.

### **Conclusion**

In the absence of clear direction from Congress -- which is not likely to be forthcoming -- the rules regarding the insurance activities of banks and their affiliates will continue to be fought out at the state level and in the courts. The title insurance industry has a vital stake in what those rules will be, and should continue to play an active role in shaping their development. ➤

1. Operating subsidiaries are corporations owned by banks that are permitted to engage in activities permissible for the banks themselves.
2. 12 U.S.C. Sec. 24 (Seventh) authorizes national banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking." The OCC had concluded that national banks could act as title insurance agents in connection with their own transactions because such activities were "incidental" to their express power to make mortgage loans.
3. To the extent that the bank agency located in the small town fails to perform the core services of a title insurance agent, commissions paid to the bank-owned agency may run afoul of the anti-kickback prohibitions of Section 8 of the Real Estate Settlement Procedures Act. (See discussion above.) Alternatively, if the bank performs any of these services at locations other than at the small town office, it may be engaged in unauthorized activities.



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# Disability -- Surprisingly Commonplace

By Kathleen August

**M**ost middle-class Americans are familiar with the need for life insurance coverage, and more are finding a need for disability insurance. As the baby-boomer generation ages, with families dependent on two incomes, consumers are realizing the greater danger of losing income from injury rather than from death. More mortgage foreclosures are due to disability than death.

ALTA, recognizing the prevalence and cost of disability, offers ALTA members disability insurance as part of its program. Disability is a more common occurrence than you may think:

- Three out of ten working individuals between the ages of 35 and 65 are disabled for 90 days or more
- Nearly one in five individuals between the ages of 35 and 65 will become disabled for five years or more
- One out of 11 working age Americans has a condition that limits the amount of work he or she can do

Disability has no respect for age. At age 25, the average duration of one disability occurrence is over two years; and, at age 45, the average duration increases to over three years per occurrence.

## Employer Costs

An employer has to relate to the personal side of disability and make disability a part of the company's planning process. Disability costs total just over 8 percent of payroll: 4 percent in direct costs, 4 percent in hidden costs, and almost 1 percent in management costs. Employers routinely underestimate these costs because they don't always know the real disability price tag in their organization. UNUM's, the nation's leading disability insurance underwriter, 1991 Full Cost Study indicates the average disability cost to the employer is \$2,285 per employee per year.

Direct disability costs include: medical

absence; short term disability; long term disability; disability pension; workers' compensation – both medical and indemnity; the disability component of Social Security; and miscellaneous accident insurance. When employees are absent, their work doesn't always get done: there are seldom replacements who do the same amount of work at the same pay. Thus, the employer loses some amount of valuable productivity. Although employers intuitively acknowledge the hidden costs of disability, they usually can't measure them, even in organizations with sophisticated databases.

When disability occurs, employers find Workers' Compensation and Social Security do not have all the answers. While Workers' Compensation can help to cover disabilities, it only covers accidents that occur on the job, or illnesses that are work related. And it's difficult to qualify for Social Security benefit. An initial five-month waiting period must be satisfied before any payments can begin, and the long term prognosis must be permanent disability. Due to stringent eligibility requirements, 58 percent of Social Security disability claims submitted are initially denied.

## Insured vs. Self-funded

When the time comes to plan on how to handle the costs of disability and an employee's loss of income, employers have two basic choices: to self-fund or insure.

For self-funded employers, cost equals the actual payout for salary continuance or disability benefits plus the value of future benefits for these claims. The employer's administrative and accounting costs also must be included.

When an employer purchases insurance to cover the costs of disability benefits, the premiums paid plus the "internal" expenses of administering the program are the cost for disability benefits.

There are many advantages to transferring the risk of disability costs to an insur-

ance company:

- **The insurance company makes all the claim decisions.**

The employer does not have to decide who's disabled, or what level of disability exists.

- **The company avoids setting dangerous precedents.**

Arrangements made for one disabled employee may need to be honored for all future employees as well. An insured plan establishes equitable criteria.

- **The company has no drain on cash flow.**

The insurance company is liable for the disability benefit payments. The business incurs only a modest, fixed expense to cover the insurance premiums. This means that, unlike self-funded plans, the company is not required to record as a business expense the estimated future cost of salary continuation for currently disabled employees. (FASB 112)

- **The company won't lose key tax advantages.**

There is no tax advantage for the company that pays the salary of a disabled employee who is not working; the money paid is not consid-



*The author has been program manager for the ALTA Group Insurance Trust since 1986 and has over 21 years experience in life/health coverage. She is a broker licensed for all lines of coverage by the State of Illinois and earned her degree in business management at Elmhurst College. Before joining Mack and Parker, Inc., Chicago-based all lines insurance brokerage firm, in 1979, she was employed by Zurich Insurance Company.*



## DURATION OF DISABILITY

Age	Duration (months)
25	26.4
35	34.8
45	40.8
55	34.8

The duration for age 55 and older has been reduced by factors such as mortality and retirement.

ered salary, so your business does not get a tax deduction. (IRS Reg. 162) The company's insurance premiums are tax-deductible. They are treated as an ordinary and necessary business expense.

- **Employee morale is improved.**

Employees do not have to worry about security. An Employee Disability Plan can also make it easier to attract and retain good talent.

### Short, Long Term Disability Insurance

The name of the insurance products which continue an employee's salary in the event of disability are Short Term Disability (STD) and Long Term Disability (LTD). Both plans have their benefit amounts based on a percentage of the salary to be replaced, usually between 60 percent and 70 percent.

STD has a short waiting period before benefits can begin, such as one day, eight days, or 30 days, and benefits are paid for only 13 or 26 weeks. Another term for this product is Weekly Income since benefits are usually paid on a weekly basis. According to UNUM's database, normal pregnancies and injuries are the most common causes of Short Term Disability (STD) claims.

LTD benefits usually begin after a longer waiting period, such as the 60th, 90th, or 180th day of disability. Benefits are usually paid on a monthly basis, rather than weekly. The benefit durations are usually for a least five years, or until age 65 with special provisions for employees who become disabled after age 60. Employees becoming disabled at age 69 or older are ensured a minimum of 12 months of benefits. According to UNUM's database, cancer and accidents are the leading causes of Long Term Disability (LTD) claims.

### ALTA's Disability Program

ALTA offers its members both Short Term and Long Term disability plans. All plans are guaranteed issue; no individual health questions are asked, as long as the employee participation requirements are satisfied.

For employers with two to nine employ-

ees, there is a Trust program. By combining the experience of small employers together, UNUM is able to offer "big company benefits" at reasonable rates. For employers with ten or more employees, there is more plan design flexibility. Renewal rates are based on the demographics and experience of the company.

The plans can stand alone, or be combined together to create an income protection plan with no gaps in coverage. Over the past two years, UNUM has seen a two-fold increase in the number of customers opting for programs which integrate Short Term Disability (STD) with Long Term Disability (LTD). The driving force behind this is an increased awareness of the relationships between STD and LTD claims, and the need to deal with two phases of disability. When UNUM is involved from the beginning of the disability through the STD plan, time is saved in establishing basis for the LTD claim and the possibility of a satisfactory return-to-work arrangement or rehabilitative program.

### UNUM Leading Disability Insurer

UNUM (pronounced you-num) was known as the Union Mutual Life Insurance Company, and has been headquartered in Portland, ME, since before the Civil War. In 1986, it demutualized and changed its name to the Latin word for the numeral one, UNUM, to reflect its concentration on one product.

UNUM has achieved the disability leadership in the U.S. The combined 1993 group disability premiums in UNUM of America and First UNUM Life Insurance company exceeded \$1 billion. No other disability carrier in the United States has achieved this level of premium. As of March, 1994, UNUM Corporation became a part of Standard & Poor's "S&P 500," a listing and market valuation index of the 500 major publicly traded U.S. corporations. A.M. Best has given UNUM Life Insurance Company of America the highest possible rating - A++ (Superior).

### ALTA Chose UNUM For Results

In 1992, ALTA decided to endorse UNUM as their disability carrier based on UNUM's reputation, performance standards, and ability to administer a plan suitable for both the three-person abstract office and the 200-employee title insurance underwriter.

UNUM's Standard of Performance states that 95 percent of all claims will be acted on within three to five days of the receipt of all information. Each claim is assigned to a disability specialist, who stays with the

## TOTAL DISABILITY COSTS

### Direct Costs

STD Program Costs  
F.I.C.A.

Salary Continuance Payments

LTD Program Costs

Worker's Compensation

Overtime

### Hidden Costs

Absenteeism

Morale

Recruiting Costs

Customer Satisfaction

Labor Shortage/Unavailable Skills

Subrogation Expenses

Lost Business (Opportunity Costs)

Work Place Hassles

Potential Tax Issues

Inappropriate/Unnecessary  
Medical Costs

Training/Retraining

Unwanted Turnover

Confusion



claim from beginning to end. The average work load of a Specialist is 100 claims so they can give individualized attention. Clean claims on original submission will be adjudicated within five to seven business days. A clean claim means the claim form was fully completed, there are no outstanding issues, and there is a clear liability per the contractual provisions. Claim benefit amounts will be accurately calculated 99.5 percent of the time (excluding retroactive offsets). If a claimant is not satisfied with results, the claim can be appealed to ERISA. Less than 15 percent of appealed claims are overturned by ERISA.

Because Social Security denies more than half of its initial benefit claims, UNUM has Social Security specialists who work with the disabled to get their Social Security awards. UNUM has a 65.4 percent appeal approval rate (all Social Security awarded claims divided by all open claims.) The average national appeal approval rate is 19 percent. UNUM has a higher approval rate because UNUM's Social Security specialist has an average of nine years experience and knows how the system works.

Many of the facts quoted in this article are from UNUM. UNUM has its own disability lab, a research and proprietary information program for the study of disability. In claims prevention and rehabilitation, UNUM is helping to set the industry standard. In 1993, UNUM implemented a medical resource strategy to further invest in doctors and other specialized personnel. Through this and other efforts, UNUM works with employers and the disabled with strict confidentiality to help both parties evaluate the likelihood and advisability of the employee returning to work.

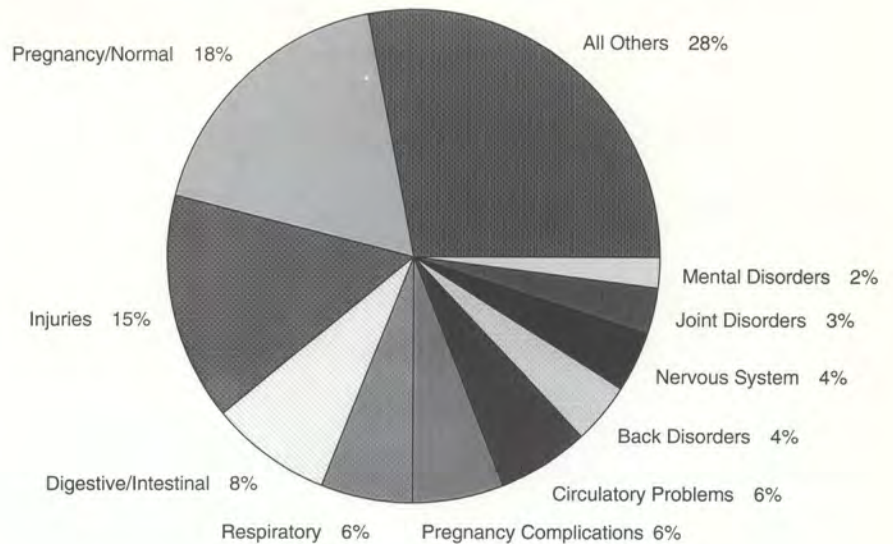
### Access -- ALTA's Program

The first step is to contact Mack and Parker, ALTA Group Insurance Trust's broker and program manager. To prepare a proposal, Mack and Parker needs your employee census with salary information, and your plan design ideas. A team of dedicated insurance professionals will review the information and prepare a proposal. After you have reviewed the proposal, the team will help you determine what plan features are best for your organization. A balance needs to be established -- your program needs to provide benefits so a sustained work lapse due to disability is not financially devastating, but working needs to be more attractive than staying at home.

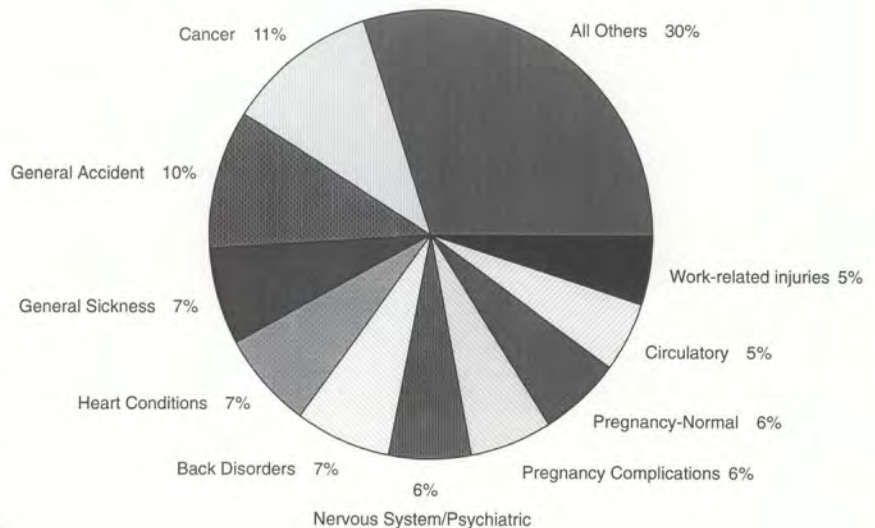
Once you have approved the plan

*continued on page 31*

## Most Common STD Claims by Condition



## Most Common LTD Claims by Condition





## Elections, Honors PLTA Highlights

William W. Rice, III, president, Great Valley Abstract Corporation, Wayne, PA, has been elected president of the Pennsylvania Land Title Association. He is the first title insurance agent to achieve that honor.

Rice previously has served as a member of the ALTA Board of Governors and Abstracters and Title Insurance Agents Section Executive Committee. He presently is a member of the ALTA Government Affairs Committee and is Pennsylvania state trustee

for the Title Industry Political Action Committee. Also, he is president of Title Industry Assurance Company, the errors and omissions insurance risk retention group designed exclusively for ALTA members.

Other new PLTA officers are James F. Conmy, Lawyers Title Insurance Corporation, Philadelphia, vice president; John J. O'Driscoll, Commonwealth Land Title Insurance Company, treasurer; and Mark S. Korman, Conestoga Title Insurance Company, Lancaster, secretary.

PLTA presented its Albert E. Pentecost Award for achievement on behalf of the organization to William D. Himmelreich, Chi-

cago Title Insurance Company, Philadelphia, and to Kenneth C. Sorensen, T. A. Title Insurance Company, Doylestown. The association's Distinguished Service Award was presented to J. William Cotter, Jr., T. A. Title, Media.

PLTA Certified Land Title Professional designations were awarded to Conmy; O'Driscoll; Thomas M. Croke IV, Stewart Title Guaranty Company, Norristown; Albert J. Gibboni, Fidelity National Title Insurance Company of Pennsylvania, King of Prussia; and Katherine McKay, PLTA executive vice president, Wayne.

Receiving PLTA Associate Land Title



New Pennsylvania Land Title Association officers being installed in the above photograph are, from left, John J. O'Driscoll, treasurer; James F. Conmy, vice president; William W. Rice, III, president; and Mark S. Korman, secretary. In the other photograph are PLTA Pentecost Award recipients William D. Himmelreich, left, and Kenneth C. Sorensen.



Professional designations were David Carlino and John Medinger, both of Penn Title Insurance Company, Reading.

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## CAE Designation Awarded to Dozer



Daniel H. Dozer, Columbus, OH, has been awarded the Certified Association Executive (CAE) designation of the American Society of Association Executives. He is executive director of the Ohio Land Title Association.

CAE is the highest level of professional achievement attainable within ASAE. Personal and professional accomplishments are considered in determining designees, along with administering a seven-hour written examination covering more than 24 areas of association management.

Dozer is an active participant in leading program discussions for the ALTA affiliated title association management seminar held at each convention of the national association.



## Three Acquisitions For First American

Recent acquisitions announced by First American Title Insurance Company include the purchase of Republic Title of Texas, Inc.; the purchase of Jefferson-Pilot Title Insurance Company, Greensboro, NC; and the purchase of Attorneys Title Corporation, Washington, DC.

First American will continue to use the Republic Title name in the Dallas-Fort Worth area, according to the company. Republic wrote more than \$15 million in title premiums last year. Principals William A. Kramer, Paul A. Pulliam and David A. Shuttee are continuing with Republic, 20 percent of which previously was owned by First American.

Joseph M. Ritter is continuing as manager of the Greensboro-based operation and now is North Carolina state manager for First American.

Attorneys Title operates in suburban Maryland and Virginia, as well as in the District. John Mahoney, formerly president of Attorneys Title, will continue to manager day-to-day operations and now is vice president and DC manager for First American.

## Plaudits for Career Of Tulsa Titlewoman

The 40-year career of Patsy Cravens at Tulsa Abstract & Title Co. recently was saluted through a feature article published in the *Tulsa World*. She began in 1954 as a typist earning 75 cents per hour and currently is president of the organization.

"The history of land is so interesting, it's never-ending," she said in the article. "I never wanted to leave."

Tulsa Abstract currently has some 85 employees in three area offices.

## Repurchase of Stock Approved by Fidelity

Fidelity National Financial, Inc., parent of organizations including Fidelity National Title Insurance Company, has announced approval by its board of additional repurchase—in the open market or in private transactions—of up to three million shares of its common stock or a comparable amount in the company's zero coupon Liquid Yield Option Notes



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(LYONs), due 2009 and convertible into 19.177 shares of common stock per \$1,000 maturity of LYONs.

This, according to Fidelity, is in addition to the two million shares previously authorized for repurchase by the board—one million shares each on March 31, 1994, and June 15, 1994.

## Title Data Interest For First American

First American Title Insurance Company has purchased 5.55 percent of the capital stock of Title Data, Inc., from American Title Company, a unit of Dallas-based American Title Group, it was reported by the Texas concern.

Title Data, with headquarters in Houston, specializes in providing turnkey computer systems and services to the title industry.

## Record Net Income For Investors Title

Investors Title Company, Chapel Hill, NC, has reported record net income of \$1,565,253 for the first half of 1994, up 61 percent over \$969,379 for the same period a year earlier.

According to the company, revenue increased 26 percent over the same period—from \$6,812,208 to \$8,571,993.

## Hickory Branch For Investors Title

Investors Title Insurance Company, Chapel Hill, NC, has announced the opening of a branch office in Hickory, NC.

Anna Wise has been named manager of the new operation.

## Community Aids Re-Birth of Valmeyer

Community Title and Escrow, Inc., has a major role in the rebirth of flood-ravaged Valmeyer, IL.

After floodwaters destroyed the original town, the community purchased a 500-acre tract on the bluffs above and a lottery was held to determine which family would receive each lot. According to Darcy Read of Community Title, the company early this summer sent representatives to a temporary town hall in the new location to perform insured closings and disburse checks in the first round of FEMA buyouts.

The remainder of the closings were to be completed later in the summer. Community title was awarded title work on 298 parcels in that locale. Infrastructure work has begun for Valmeyer II, with construction scheduled to begin later in 1994.



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## NAMES IN THE NEWS



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**McLaughlin**



**Banks**



**Bonita**



**Halvorsen**



**Matney**



**Budnick**



**Aaronson**



**Emery**

The First American Financial Corporation, parent of First American Title Insurance Company, has announced the appointment of **Frank E. O'Bryan**, Newport Beach, CA, to fill a vacancy on its board of directors. He presently is chairman of the board for the Spring Mountain Group, whose subsidiaries include Spring Mountain Escrow Corporation, largest independent escrow organization in the state.

Three newly-promoted senior vice presidents at First American Title's Santa Ana, CA, headquarters are **Clifford L. Morgan**, senior underwriter; **Albert Rush**, in charge of claims prevention; and **William T. Heslington**, national accounts director. **Timothy P. Sullivan**, vice president, has been promoted to head the home office legal department. **Rodney D. Ives** has joined First American as national accounts manager with offices in Edina, MN.

**Patrick E. McLaughlin** has moved to the corporate staff of First American Title Guaranty Company, Oakland-based subsidiary of First American Title. **Richard Banks** has been named to replace **McLaughlin** as division manager for the company's Solano County office.

**Joseph C. Bonita**, chief underwriting counsel, and **William T. Halvorsen**, western region manager, Chicago Title Insurance Company, have been elected senior vice president. **Bonita** is the present

chairman of the ALTA Title Insurance Forms Committee.

**Thomas C. Murphy** has joined the company's National Accounts Unit, a division located in Conshohocken, PA, as resident vice president of sales and marketing. **Larry M. Matney**, vice president, has been named manager of the Great Lakes Area for the company, with offices in Cleveland.

Elsewhere at Chicago Title Insurance, **Ken Scott** has been named vice president and escrow administrator, Rosemead, CA; **Roger Noll** has been appointed assistant vice president and remains state counsel, Milwaukee; **Andrea Budnick** has been named assistant vice president and continues as SMART department manager, and **Lori Dale** has been appointed assistant vice president while remaining accounting manager, both Seattle; **Donna Slomins** has been named assistant vice president and branch manager, Merritt Island, FL; and **Camille Jaski** is the new assistant vice president and manager, Oak Forest/South Holland, IL.

Also, **Doris Aaronson** has been appointed agency operations officer, Fort Myers, FL; **Michael Lambert** has been named trust officer and manager, trust accounting, Chicago; **Stephen Emery** has been appointed associate regional counsel, Pittsburgh; **Mark Archuleta** is the new southeast area accounting officer,

West Palm Beach, FL; and **Melissa Roth** has been named assistant title officer and remains underwriter, Chicago.

**Rhonda Utecht** has been named state agency administrator for Chicago Title's subsidiary, Ticor Title Insurance Company, West Palm Beach, FL.

Also, Chicago Title's parent, Allegheny Corporation, has appointed **Robert M. Hart** senior vice president and general counsel with offices in New York, NY.

Lawyers Title Insurance Corporation has announced the election of **Dana R. Ward** as vice president-area manager, with offices in New Orleans. Elsewhere, **Stephen W. Francis** is the new manager of the company's central Virginia branch, Richmond; **Holly H. Wenger** has been named assistant corporate counsel and **Karen H. Kirkland** corporate accounting systems manager, both Richmond corporate headquarters; and **Carl D. Nielsen** has been named assistant regional claims counsel and **Bruce Howard Epstein** and **Stephen J. Goodin** associate counsel-claims, all in the company's Pacific states regional office, Pasadena, CA.

**Terry J. Romaniak** has been appointed branch manager for Lawyers Title, Springfield, MA, and **Amy K. Mataban** is the new manager of the company's greater Baltimore metro office, Towson, MD.

Newly announced assistant vice presi-



dents at Commonwealth Land Title Insurance Company are **Robert J. Sylvester, Jr.** (also to sales manager), **Timothy R. Gordon** and **Robert A. Jevarian** (remain marketing representatives) and **Kevin M. Huben** (remains branch counsel), all Stamford, CT. **Christopher J. Rausch** has been named manager-internal audit and **Gregory J. Walsh** director-internal audit, for both the company and its subsidiary, Transamerica Title Insurance Company, Philadelphia headquarters.

**Linda K. Trively** has been promoted to branch manager for Commonwealth, Harrisburg, PA, and **Martin J. Strelecky** has joined Transamerica Title as counsel, Seattle. **Terry Garland** assistant vice president, is in charge of Commonwealth's recently opened Portland, ME, office, where **Richard W. Smith** has been named state counsel.

**Timothy J. Oberley** has been promoted to marketing specialist at First Land Title Company, Fort Wayne, IN.

**Holly Alderman**, title attorney and commercial officer, has been named manager of the new Investors Title Insurance Company commercial real estate transactions department, Chapel Hill, NC. **Danita Minor** has been promoted to manager of

the company's branch underwriting office, Manteo, NC.

**Steven A. Cantwell** has joined Rattikin Title Company, Fort Worth, TX, as a title examiner.

**Michael E. Maguire**, a 20-year title industry veteran, has joined Strategic Mortgage Services (SMS) as senior vice president and chief title counsel, Property Title Division, with offices in Costa Mesa, CA. Also in Costa Mesa, **Ted D. Gregory** has been promoted to vice president of customer service and **Pete Meade** to vice president of sales, Settlement Services Division. **Rodney A. Wycoff, Sr.**, is the new director of national policy and programs and **Guy Reese** director of quality assurance, Appraisal Division. **Fred Wm. Millard** is the new area sales director, southwest region.

Elsewhere at SMS, **John Saucedo** has been named vice president of operations,

Mortgage Document Division, Orange, CA; **Gilbert Ramirez** is the new northeast regional vice president and **Jim Wiesner** vice president of quality assurance, both Appraisal Division, Pittsburgh; **J. Michael Morris** has been named Appraisal Division regional vice president, Atlanta; **Bruce Wenmoth** has been appointed central region regional vice president of first mortgage sales, Cleveland; and **Eric Kozlowski** has been promoted to area sales director, first mortgage sales, Rochester, NY.



**Archuletta**



**Ward**



**Francis**



**Wenger**



**Kirkland**



**Nielsen**

## Fort Dearborn Title In Survey Venture

Fort Dearborn Land Title Company, Williamette, IL, has announced a joint venture with Boyes Land Surveying Company to form Fort Dearborn Land Surveying Company.

Gregg Walter, vice president for Fort Dearborn Land Title, heads the new entity, in partnership with James Boyes. The new surveying company specializes in residential land surveys.



**Epstein**



**Goodin**



**Rausch**



**Walsh**



**Trively**



**Strelecky**



**Garland**



**Smith**

## Monroe Authorizes 4 for 1 Stock Split

Monroe Title Insurance Corporation, Rochester, NY, has announced approval by its board of directors of a 4 for 1 stock split, subject to approval by shareholders and state regulators.

Net income per share for the company for the first half of 1994 was reported at \$4.85, up from \$4.20 for the same period last year.



**Oberley**



**Alderman**



**Cantwell**



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Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (        ) \_\_\_\_\_ Fax (        ) \_\_\_\_\_

Are you currently insured?  **Yes**     **No**    If Yes, please provide the following information:

Insurance Co. \_\_\_\_\_ Limits \_\_\_\_\_ Deductible \_\_\_\_\_

Premium \$ \_\_\_\_\_ Expiration Date \_\_\_\_\_ How many years continuously insured? \_\_\_\_\_

What is your Gross Revenue Split? (In dollars):

Title/Abstracting/Search    \$ \_\_\_\_\_

Settlements/Escrow        \$ \_\_\_\_\_

Other                            \$ \_\_\_\_\_

TOTAL                            \$ \_\_\_\_\_

Is 100% of your work Residential/Commercial and/or Agricultural? (No oil, gas, mineral/metals, etc.)  **Yes**     **No**

Have you had any E & O claims or circumstances in the last 5 years?  **Yes**     **No**



## DISABILITY

continued from page 23

design, Mack and Parker will assist you in completing the enrollment application. UNUM will issue the plan and prepare sample employee notification letters. UNUM administers, prepares billings and pays claims. Disability benefits are paid directly to the disabled employee, but UNUM works with both employer and employee to assure the fastest possible recovery and return to work.

An essential component to a successful disability program is to continually review the program and make sure it still meets the company's needs. Mack and Parker will work with you to make modifications to your program as the need arises.

You can call 1-800-346-2582 for more information. *Sources Other Than UNUM Used for Disability Statistics*

1. 1987 Commissioners Group Disability Table, Society of Actuaries.
2. Disability Statistics Abstract (No.2, December 1991) produced by The Institute for Health and Aging, School of Nursing, University of California.
5. Commissioners Disability Table, 1986.
6. Overview of Entitlement Programs, 1992 Green Book, U.S. Ways and Means Committee, Washington, D.C. GPO 1992. ✈

## Chicago, Agent Form Information Service

An innovative service providing a unique array of property and other real estate information products and services has been announced in the formation of ReallInfo, Inc., a joint venture of Chicago Title and Trust Company's Chicago Technology Services Corporation and Greater Illinois Title Company, Chicago Title policy-issuing agent.

Based in Chicago, ReallInfo combines the extensive information base of Chicago Title's proprietary title plants with Greater Illinois marketing and technological capability, according to Paul Sands and Gregory M. Kosin, respective presidents of CTSC and GIT.

ReallInfo is scheduled to be operational in Cook and DuPage counties (IL) later this year, and to be rolled out in the seven-county Chicago metropolitan area next year.

The greatest single advantage of ReallInfo is on-line access to historical data

from the title plants of Chicago Title, Sands added. ReallInfo delivers information in both Windows and conventional DOS formats.

As a marketing and research tool, ReallInfo among other things allows production of real estate farm reports, searching of individual and multiple properties, generation of comparative sales information and development of mailing lists, Kosin said. ReallInfo allows activity beyond generating information from public and title plant data resources. As an example, he said ReallInfo could develop a target marketing model tailored to a particular lender that incorporates data from both the lender's client base and ReallInfo sources.

## Geotrac Acquisition Announced by SMS

Strategic Mortgage Services, Inc. (SMS), Costa Mesa, CA, has announced the acquisition of Geotrac, Inc., a leading innovator of flood compliance, fair lending compliance and geographic information systems.

Increased legislative and regulatory pressure on lender flood and fair lending compliance prompted SMS to seek an appropriate solution, leading to the acquisition, according to SMS.

## 1994 AFFILIATED ASSOCIATION CONVENTIONS

### September

8-10 **North Dakota**, Site unannounced, Devil's Lake, ND

9-10 **Missouri**, Adams Mark Hotel, St. Louis, MO

15-17 **Dixie**, The Sandestin Beach Hilton, Destin, FL

18-20 **Ohio**, Dayton Marriott, Dayton, OH

21-23 **Nevada**, Harvey's Hotel, South Lake Tahoe, NV

### October

12-14 **Nebraska**, Midtown Holiday Inn, Grand Island, NE

13-14 **Wisconsin**, Holiday Inn East Towne, Madison, WI

23-26 **Florida**, Lake Buena Vista Hilton, Orlando, FL

### November

2-4 **Arizona**, Site unannounced, Lawson, NE

# BACKPLANTS AUTOMATED

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## NEW MEMBERS

### WELCOME!

*ALTA proudly welcomes its newest members and sincerely thanks those members 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

##### Alaska

Kachemak Bay Title Agency, Homer, AK.  
Stewart Title Co. of Alaska, Anchorage, AK. (Recruited by Malcolm Morris, Stewart Title Guaranty Co., Houston, TX.)

##### California

Yosemite Title Company, Inc., Sonora, CA.

##### Colorado

Empire Title & Escrow Corp., Denver, CO.  
North American Title Co. of Colorado, Denver, CO.

##### Florida

First Title & Abstract, Key West, FL. (Recruited by Marjorie Schwartz, Columbia Title, Coral Gables, FL)

##### Hawaii

First Hawaii Title Corporation, Kailua-Kona, HI.

##### Illinois

American Title Corporation, Lincolnshire, IL.

##### Kansas

Land Title & Abstract Services, Garden City, KS.  
Security Title Co. of McPherson, Inc., McPherson, KS. (Recruited by Gary Eggers, Hutchinson Title Co., Hutchinson, KS.)

##### Maryland

Benchmark Land Title & Escrow Corporation, Towson, MD. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
Cornerstone Title Company, Columbia, MD. (Also recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
Elizabeth Seufferling, Englewood, MD.  
Keystone Title Settlement Services, Inc., Frederick, MD. (Recruited by Bayard Waterbury III, Montgomery Abstract Associates, Inc., Rockville, MD.)  
Professional Title & Escrow, Rockville, MD. (Also recruited by Bayard Waterbury III, Montgomery Abstract Associates, Inc., Rockville, MD.)

##### Massachusetts

Sylvia Hurley & Associates, North Ready, MA. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
Versitas Title, Inc., Arlington, MA.

##### Michigan

Bell Title Company, Lansing, MI. (Thomas Leavitt, Old Republic National Title, Petoskey, MI.) Central Title Services, Ann Arbor, MI. (Recruited by Richard Cecchetti, Old Republic National Title Insurance Co., Minneapolis, MN.)  
Loftis Title Company, Grand Blanc, MI.  
Northwest Title Company, Cadillac, MI. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
The Golden Title Insurance Agency, Inc., Farmington Hills, MI. (Carl Hasselwander, First American Title, Troy, MI)

##### Missouri

Ozark Mountain Title & Escrow Co., Inc., Branson West, MO.  
Saline County Title Company, Marshall, MO. (Recruited by Steve Lewis, Pettis County Title Co., Hood River, OR.)

##### Montana

Carbon Title Guaranty, Red Lodge, MT. (Ted Lovac, American Title & Escrow, Billings, MT.)

##### New Jersey

Bay Title Agency Incorporated, Howell, NJ.

##### New York

K.P. Abstract Co., Inc., Syracuse, NY. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
Lafayette Abstract, Inc., Buffalo, NY.

##### North Carolina

Atlantic Land Title Agency, Inc., Wilmington, NC.

##### Ohio

Ambassador Title Agency, Inc., Newark, OH.  
Gary F. Frye, Marietta, OH. (Recruited by Mike Currier, Guaranty Title Co., Carlsbad, NM.) Northwest Title Agency of Ohio and Michigan, Toledo, OH. (Recruited by Douglas Taylor, Security Union Title Insur-

ance Co., Columbus, OH.)

Ohio Valley Title, Inc., Steubenville, OH. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)

SMS Property Title Service Division, Cleveland, OH. (Recruited by Frank Finch, Nations Title Insurance Co., Overland Park, KS.)

##### Oregon

Florence Title & Escrow, Inc., Florence, OR.  
Mid-Columbia Title Company, Boardman, OR. (Recruited by John C. Stanley, Columbia Title Co., Hood River, OR.)

##### Pennsylvania

Applehouse Abstract Co., Westchester, PA.  
Fayette Professional Services, Uniontown, PA. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)  
Genesis Abstract, Inc., Hatsboro, PA. (Recruited by Mike Currier, Guaranty Title Co., Carlsbad, NM.)  
U.S. Property & Appraisal Services Corp., Bridgeville, PA.

##### South Dakota

Jerald County Abstract Co., Inc., Wessington Springs, SD. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)

##### Tennessee

Dyer Land Title Co., Inc., Dyersburg, TN. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)

##### Texas

Centex Title, Dallas, TX.  
Hopkins Abstract Co., Sulphur Springs, TX. (Recruited by Harold Eastland, Eastland Title Co., Hillsboro, TX.)  
Title Insurance Company of America, Dallas, TX.  
W.W. Howeth Co., Gainesville, TX. (Recruited by Rich Curd and Doug Dolan, TIAC, Chevy Chase, MD.)

##### Virginia

Salem's Best Title Agency, L.C., Salem, VA.



### **West Virginia**

Flynn, Max, Miller, Toney & Klein, L.C.,  
Huntington, WV.

### **Wisconsin**

Packer Valley Title Corporation, Marinette,  
WI. (Recruited by Gerard Faller, Greenbay  
Abstract, Green Bay, WI.)

## **ASSOCIATE**

### **Florida**

ACC Orlando, Sanford, FL.

Ronald A. Kriss, Valdes-Fauli, Cobb, Bis-  
choff, Kriss & Mandler, P.A., Miami, FL.  
(Recruited by Jerome H. Calica, Keyes As-  
set Management, Inc., Miami, FL.)

### **Idaho**

Richard Mollerup, Meuleman, Miller, &  
Cummings, Boise, ID.

### **Iowa**

Gerald Stambaugh, Laird, Heiny, McMani-  
gal, Winga, Duffy & Stambaugh, P.L.C.,  
Mason City, IA.

### **Minnesota**

Title Service Solutions, Inc., Prior Lake,  
MN. (Recruited by Kirk Knott, Old Republic  
Title Insurance Co., Minneapolis, MN.)

### **Missouri**

Greg A. Nickell, Morrison & Hecker, Kansas  
City, MO. (Recruited by Larrie Hindman,  
Morrison & Hecker, Kansas City, MO.)

### **New Jersey**

Current Status, Inc., Cranford, NJ. (Re-  
cruited by Joseph Petrucci, Republic Title  
Agency, Inc., Elizabeth, NJ.)

### **New York**

Nationwide Information Services, Albany,  
NY.

### **Oregon**

Great Western Software, Tualatin, OR.

### **Pennsylvania**

John C. Wagner, Spotts, Stevens, McCoy,  
Inc., Whitehall, PA.

### **Tennessee**

Gregory S. Perrone, Law Offices of Gre-  
gory S. Perrone, Brentwood, TN.

## **ASSOCIATE, LEGAL DIVISION**

### **California**

Michael C. Flynn, Rubin, Eagan & Feder,  
APC, Beverly Hills, CA. (Recruited by Shel-  
don Rubin, Rubin, Eagan & Feder, Beverly  
Hills, CA.)

Douglas E. Miles, Shapiro & Miles, Santa  
Ana, CA.

### **Florida**

Douglas J. Thiel, Coral Gables, FL.

### **Massachusetts**

E. Christopher Kehoe, Robinson & Cole,  
Quincy, MA.

Joel A. Stein, Perlman, Rubin & Stein, P.C.,  
Braintree, MA.

### **Michigan**

Gary Taback, Sommers, Schwartz, Silver &  
Schwartz, P.C., Southfield, MI.

### **Missouri**

Michael O'Flaherty, Stinson, Mag & Fizzell,  
P.C., Kansas City, MO. (Recruited by Lar-  
rie Hindman, Morrison & Hecker, Kansas  
City, MO.)

### **Montana**

R.J. "Jim" Sewell, Jr., Smith Law Firm, P.C.,  
Helena, MT. (Recruited by Bill Gowen,  
Helena Abstract & Title, Helena, MT.)

### **Nebraska**

John Q. Bachman, Gaines, Mullen,  
Pansing & Hogan, Omaha, NE.

### **New Hampshire**

David C. Green, Follender, Connors,  
Wolkawski & Green, Nashua, NH. (Re-  
cruited by Peter Norden, First American Ti-  
tle Insurance Co., Boston, MA.)

### **Pennsylvania**

Richard R. Goldberg, Ballard, Spahr, An-  
drews & Ingersoll, Philadelphia, PA.

Joseph F. Kessler, Dilworth, Paxson,  
Kalish & Kauffman, Philadelphia, PA.

### **Virginia**

Robert Rae Gordon, Gordon, Estabrook,  
Yeonas & Pesner, P.C., McLean, VA.

### **Wisconsin**

Cecile M. Faller, Attorney at Law, Green  
Bay, WI. (Recruited by Gerard R. Faller,  
Green Bay Abstract & Title, Green Bay,  
WI.)

## **Net Income Drops For Lawyers Title**

Lawyers Title Corporation, parent of  
Lawyers Title Insurance Corporation, has  
reported net income of \$3 million for the  
first half of 1994, compared to \$5.5 million  
for the same period last year.

The first six months of this year include  
capital gains of \$1.2 million and income  
taxes of \$1.1 million, according to the com-  
pany, compared to capital gains of \$4.9 mil-  
lion and no income taxes last year.

Revenues for the first six months of 1994  
totaled \$262.8 million, compared to \$222.7  
million for the same period last year.

## **Income Decreases For First American**

The First American Financial Corpora-  
tion, parent of First American Title Insur-

ance Company, has reported first half,  
1994, net income of \$17 million and reve-  
nue of \$741.4 million, compared to \$26.2  
million and \$612.5 million, respectively, for  
the same period last year.

Included in the 1993 income figure was  
a one-time tax benefit of \$4.2 million.

Revenue for the second quarter, 1994,  
was \$369 million, an increase of 11 percent  
over the comparable period last year. Ac-  
cording to the company, the increase was  
largely due to an upswing in lower-margin  
agency business.

A significant decline in refinance activ-  
ity resulting from higher mortgage interest  
rates was a primary contributor to this  
year's business slowdown, according to  
the company.

## **First Half Decline In Fidelity Earnings**

Fidelity National Financial, Inc., parent  
of organizations including Fidelity Natio-  
nal Title Insurance Company, has an-  
nounced net earnings of \$10,968,000 for  
the first six months of 1994, compared to  
\$13,755,000 for the same period last year.

Revenue for the first half of 1994 was  
\$273,939,000, contrasted with \$257,633,000  
for the same period a year earlier.

A decrease in company revenue and  
earnings for the second quarter of 1994 was  
primarily due to the dramatic decline in re-  
financing activity and a sluggish residential  
resale market, both caused by higher mort-  
gage interest rates, according to Fidelity.

## **Charlevoix Abstract Reaches 50th Year**

Charlevoix (MI) Abstract & Engineering  
Co. has celebrated its fiftieth anniversary  
with an open house, according to its presi-  
dent, Mary C. Feindt, who chairs the ALTA  
Liaison Committee with the American Con-  
gress on Surveying and Mapping.

Mary is the first woman to become a re-  
gistered land surveyor in her state, accom-  
plishing this two years before purchasing  
the company. The acquisition came in  
1944—the year in which she first became a  
candidate for county surveyor in her com-  
munity. Her bid for public office was suc-  
cessful.

In recent years, her leading committee  
challenge for ALTA has been the ongoing  
development of the ALTA-ACSM Minimum  
Standard Detail Requirements for Land Ti-  
tle Surveys.



## MARKETPLACE

*Rates: Situations wanted or help wanted, \$80 for first 50 words, \$1 for each additional word, 130 words maximum (reduces to \$70 for first 50 words, \$1 for each additional word, three or more consecutive placements). For sale or wanted to buy, \$250 for 50 words, \$1 for each additional word, 130 words maximum (reduces to \$225 for 50 words, \$1 for each additional word, three or more consecutive placements). Additional charge for box around ad: \$20 per insertion for situations wanted or help wanted, \$50 per insertion—for sale or wanted to buy. Send copy and check made payable to American Land Title Association to Title News Marketplace, American Land Title Association, Suite 705, 1828 L Street, N. W., Washington, DC 20036. Responses to classified placements should be sent to same address unless otherwise specified in ad copy.*

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**WE BUY MISSOURI TITLE AGENCIES!** We are interested in purchasing title agencies in Missouri. Specifically in St. Charles, Springfield, Joplin, St. Joseph, Sedalia, Marshall, Columbia or Branson. Possibility of current management staying in place after purchase. We will respond to all correspondence. Please send inquiries to *Title News* Box B-317.

### For Sale

**FLORIDA TITLE AGENCY** for sale, 1993 sales in excess of \$3 million. Owner with other business interests wishes sale to underwriter or other large agency. Multiple offices in west central Florida. Send inquiries to *Title News* Box S-200.

## CALENDAR OF MEETINGS

### 1994

October 6 **Regional Educational Seminar**, Boston Marriott Newton, Newton, MA

October 23-25 **Title Counsel Meeting**, Silverado, Napa, CA

### 1995

(All the following meetings are at Tucson National Golf and Conference Resort)

January 20 **Membership & Organization Committee**

January 20 **TIAC Board**

January 20-21 **Education Committee**

January 20-21 **Public Relations Committee**

January 23 **ALTA Board of Governors**

January 23 **TIPAC Board of Trustees**

January 23-34 **Title Insurance Forms Committee**

January 23-24 **Land Title Systems Committee**

March 3 **Regional Educational Seminar**, Atlanta, GA

April 5 - 7 **ALTA Mid-Year Convention**, The Westin Resort, Hilton Head, SC

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

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## Drummonds Elected Arkansas President

Joy Drummonds, president, Washington County Abstract and Title Company, Springdale, AR, has been elected president of the Arkansas Land Title Association.

Other recently-installed officers of the organization include Jim Winton, Clay County Abstract, vice president; Judy Carter, Lincoln Abstract, secretary-treasurer; and Glenn McMullin, Independence County Abstract, Charles Epley, Carroll County Abstract, and Gregg Wall, Tucker Abstract, all directors.

## Lawyers Announces Information Network

Lawyers Title Insurance Corporation has announced a licensing arrangement with InfoTRUST, Inc., Pennsylvania-based developer and operator of a nationwide real estate information services network.

The network, called DIMEX (digital information mortgage exchange), relies heavily on state-of-the-art artificial intelligence technology. According to Lawyers Title, DIMEX is the first of its kind to offer mortgage loan origination with wholesale rates, title insurance, appraisals, credit reports, vendor services, econometrics and a unique interactive multiple listing system that offers pictures of homes and area maps.





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