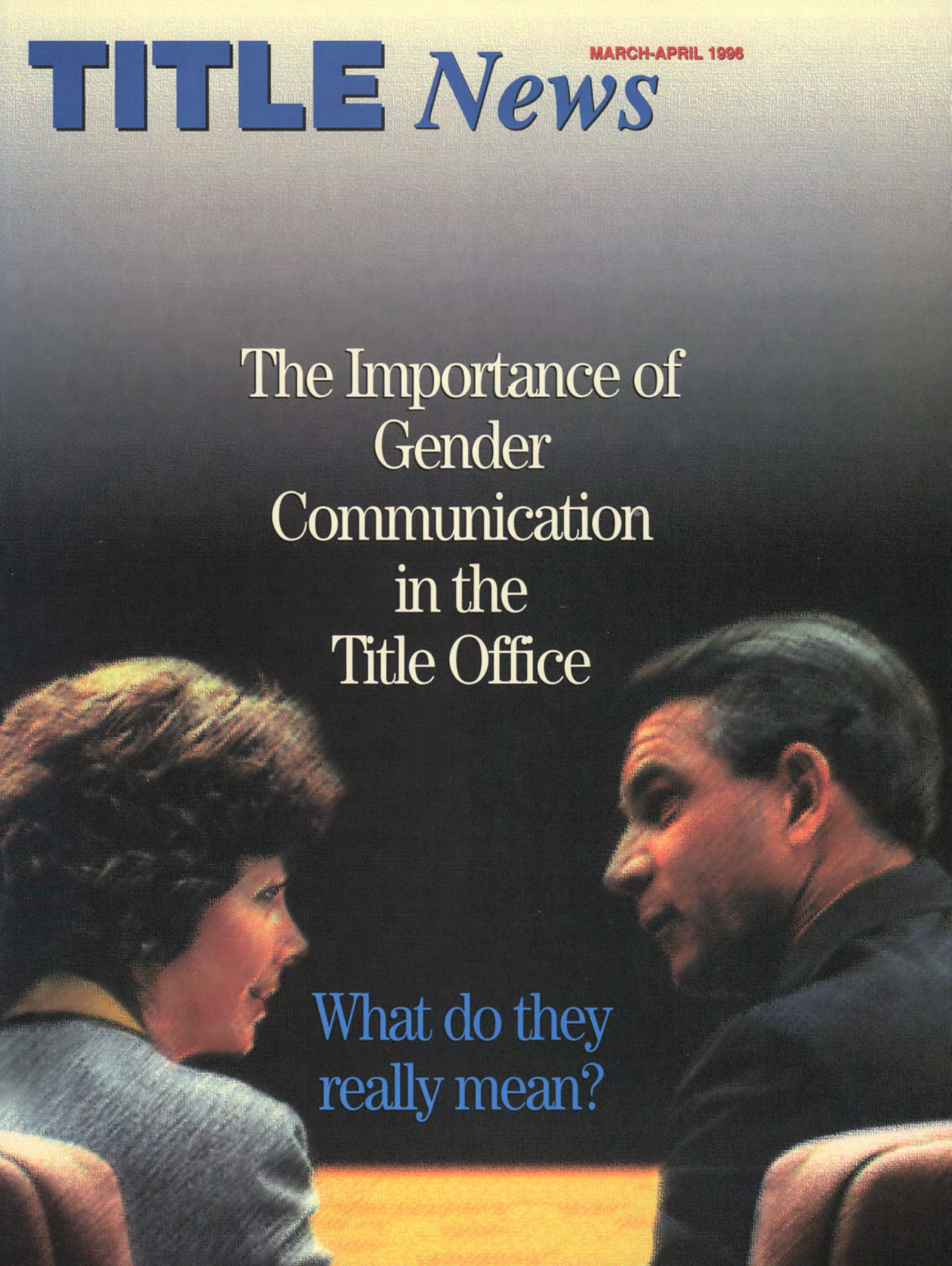


TITLE *News*

MARCH-APRIL 1996

The Importance of Gender Communication in the Title Office

What do they
really mean?

A black and white photograph showing a man and a woman in profile, facing each other. The woman is on the left, with short dark hair, wearing a light-colored top. The man is on the right, with dark hair, wearing a dark shirt. They appear to be in a conversation. The background is dark, and there is a bright light source at the bottom, creating a glow.

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Volume 75, Number 2

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On the cover: *How you say it does matter in a title office—especially in communication between a male and a female employee. Effective interpersonal communication can dramatically impact what is accomplished, if gender differences are kept in mind. For more on the subject, please turn to page 8.*

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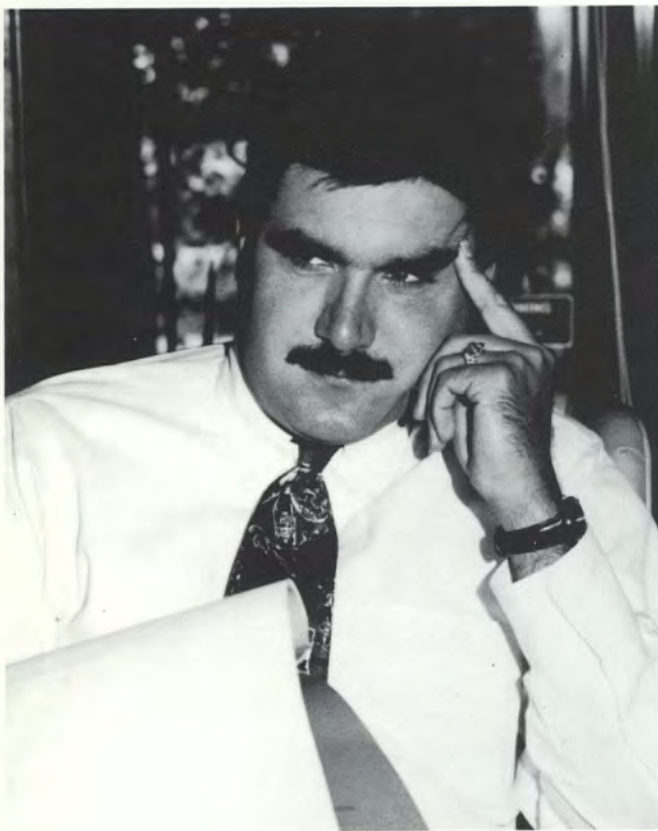
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A Message from the President-Elect



With spring rapidly approaching and favorable interest rates working to increase new orders throughout the different segments of our industry, you would expect that our business focus would be wholly on traditional issues such as managing customer demand, enhancing service standards and monitoring revenue flow. However, as I talk with different agents and underwriters around the country, the really troubling issue everyone seems concerned with is the continuing question of how many of our customers potentially could be our future competitors and what forces are at work that will affect that issue both now and in the future.

By now, I am sure you have heard about the Weston Edwards study or have read about it in the September-October, 1995, issue of *Title News*. However, I believe the issue attracting more attention and generating more concern in today's "title world" is concentration by merger or acquisition in the financial institutions community and the implications for that in light of advances in data storage and retrieval.

We are now hearing whispers about multi-state or regional title plants storing massive amounts of information accessible to many different users and "seamless" loan processing taken on portable PCs, with appraisals, credit, flood, title, home warranty, inspections and title commitments all ordered simultaneously, with some results expected in minutes and all approvals required within hours.

There's no question that concentration of "revenue pools," i. e., the industry's title premiums, in fewer hands, combined with improvements in technology, will bring new players into the game. We will see change, but with that change will come opportunity. New strategic partnerships will be developed, new products devised, new services offered and, most importantly, new opportunities created to demonstrate innovative or superior service.

Some in our industry will argue these changes favor the truly national companies. However, vision and the creativity that inevitably flows from it are resources even the smallest entrepreneur can use to advantage.

I can't tell you how our industry ultimately will evolve. But I can say that ALTA will be working to help you navigate through this period of change by providing a forum for communication on all kinds of issues, a platform for partnership development, a display case for new products and services, an education and training resource and, most importantly, a representative for your company on national legislative and regulatory issues recognizing that some seek to accomplish through regulatory or legislative fiat what they can't achieve through free market competition.

ALTA works for you—each and every day. Let no one tell you differently.

Dan R. Wentzel



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ALTA Completes Basic EDI Framework

With secondary mortgage market demand for electronic processing expected to surge in the near future, ALTA now is positioned for helping member title companies respond effectively as lender customers are impacted and call for faster, more accurate service.

In the basic-level ALTA videotape on electronic data interchange (EDI) in the title industry sent last year to all member companies of the Association, Federal National Mortgage Association Vice Chairman Franklin D. Raines in an on-camera appearance emphasized that the technology is becoming such a standard in mortgage finance that it will be very difficult to fully participate in the market without it. He said EDI standards have been incorporated in new technology Fannie Mae has rolled out to lenders. Over time, Raines added, these systems only will recognize electronic transmissions including those by EDI, and lender reluctance can be expected when it comes to keying in information such as previously was the case.

Raines added that ALTA should be commended for its leadership in bringing EDI capability to the title industry.

Completing the basic framework for a title business EDI transition, a task group from the Association Land Title Systems Committee late in 1995 was able to win national approval through the American National Standards Institute (ANSI) for two additional EDI standard formats. These are EDI Transaction Sets 197 (title evidence) and 199 (settlement information), which augment Set 265 (title services ordering)—nationally accepted through ANSI in 1994 after development through the Systems Committee.

Many of the data elements used for Set 265, which cover the full range of a title insurance transaction, were inserted again in the two newer sets. Set 197 allows the transmission of commitments, policies and other evidentiary documents from a title company back to the originating customer.

Set 199 is basically data which comprises the HUD 1 or HUD 1-A form.

Along with the three previously mentioned sets, there are others needed for conducting title business electronically. Set 841 provides the capability for sending a document in a print image or as binary data, and Set 997 is a functional acknowledgement that transactions received are in X.12, the EDI computer language. Set 824 can be used when a trading partner wishes to change a value in information previously transmitted through Set 265. And, Sets 869 and 870 are for order status request and order

...lender reluctance can be expected when it comes to keying in information such as previously was the case.


status, respectively. All these can be implemented with appropriate technical support.

Overall, EDI is designed to convert data into a standard format, easing problems that may arise when trading partners use different terminology and have differing computer programs. Differences in technology and format are resolved by EDI, allowing introduction in a title operation without excessive disruption or cost.

Currently in the development stage at this writing is an implementation guide for use with the three sets. ALTA members will be advised when the guide is completed and available. Also under discussion among Systems Committee members and others is the possibility of creating a title plant transaction set.

Although competitive pressure admittedly is the immediate driving force behind

an EDI transition for the title industry, Systems Committee members suggest looking toward the horizon for related openings that result in improved processes within a title operation.

Those serving on the task group during the development of the now approved EDI standards for the title industry include Pete Nichols and Mike O'Neil, Chicago Title; Fred Hemphill, Commonwealth Land Title; Mike Franks, Genesis Data Systems, Inc.; Paul Sakrekoff, Empire Title & Escrow; David Tandy and Darren Ross, Landata, Inc.; and Bill Thiss, Virtual Enterprise Systems. 

Oregon Companies Acquired by Fidelity

Fidelity National Financial, Inc., parent of organizations including Fidelity National Title Insurance Company, has announced its acquisition for cash of the common stock of two Oregon concerns—Professional Escrow, Inc., Salem, and Title Insurance and Escrow Services, Inc., Eugene.

Both now operate as branches under the new name of Fidelity National Title Company of Oregon.

In addition, Fidelity National Financial has acquired an option to purchase title plants in Linn County and Benton County, OR.

Folder Emphasizes Full Title Coverage

Publication of a new, quick-read ALTA general distribution folder emphasizing the importance of full title insurance coverage is scheduled for this spring. The folder will fit into a No. 10 envelope and includes a blank page suitable for imprinting the name of a company.

Each member of the Association will be sent a complimentary sample copy.

The Importance of Gender Communication in the Title Office



What
do they
really
mean?

Effective interpersonal communication can dramatically impact what is accomplished in a title office. The result can be enhanced if assumptions are avoided and the other person is specifically asked what is needed at a particular moment. This is especially important when the communication is between a male and a female employee.

A keen awareness must be maintained that humans do not always say exactly what they mean or want, and that it is the mutual responsibility of both parties to make sure there is a clear understanding.

These key points were emphasized by Kevan Schlamowitz and Nancy Stern, professionals with a particular insight into "gender jive" communication, during a lively presentation at the recent ALTA An-

nual Convention.

The communications duo noted these leading indicators that generally focus on the gender differences in men and women-influencing what they say and how it is said. They advised remembering that there are exceptions to the following generalizations.

- The language of men is more direct than that of women
- Women seek assistance from others more frequently than men
- Men are more inclined toward giving orders
- Men are more likely to tell jokes and stories in public
- Women express their feelings more frequently
- Although members of each gender claim innocence, men and women interrupt with about the same frequency--with men holding the edge at work and women dominating at home
- Women generally are more apologetic
- Men usually dominate public discussion
- Men are more likely to boast regarding their successes
- Women are more inclined to seek approval from others

Among the more common misreadings by the opposite gender is that women are apologizing when they say, "I'm sorry," so often. What they usually are doing is showing empathy- -I'm sorry you are having a bad day, and so forth.

Women who nod their heads frequently during a conversation probably are not signifying agreement. This frequently means that a woman is listening without necessarily agreeing, while she is connecting.

Commenting on the woman's inclination to seek assistance more often, Schlamowitz, a certified medical psychologist, pointed out that men are taught-often from early boyhood- -that being in charge and having the answers come first. Consequently, men equate information with power and consider the lack of knowledge a sign of weakness. With this tendency present in a hierarchical society, men often avoid the appearance of not knowing. Being in charge is considered more important than finding the answer.

A keen awareness must be maintained that humans do not always say exactly what they mean or want...

Women, on the other hand, feel less threatened when knowledge is lacking. As Stern put it, women are subconsciously most concerned about connecting with others. The duo said they were not surprised when random checking before their Convention appearance indicated that, in title company operations, women are more likely to work where there are people connections- -such as in closing departments. Men tend to be more concentrated where information is the primary function, such as in title research or management systems.

Management Styles Differ

Stern and Schlamowitz used skits including audience volunteers to portray different management styles characterizing the respective masculine and feminine sides.

In the skit portraying a male-structured meeting, there was greater emphasis on assertiveness- -seeking compliance rather than building consensus. As was indicated, there is less concern over people being comfortable than with getting the job done.

Conflict is viewed as more or less inevitable, and men accept it.

In contrast, commitment and buy-in were emphasized in the feminine style meeting, where the opinions of participants were sought. Stern said this second approach can be especially important when major change is in the offing, because those on hand like to feel they have some control of events.

Schlamowitz and Stern pointed out that good management calls for a balancing of

the two approaches. Sometimes, a leader will need to be fully and firmly in charge. In other instances, commitment and buy-in will mean better results.

More women and greater diversity in the work force are hallmarks of the nineties, the duo concluded, and this diversity offers management better resources than previously available. They added that effective gender communication at work and elsewhere will result in a whole that is greater than the sum of its parts. ✎

How You Say It Does Matter



Kevan Schlamowitz, Nancy Stern discuss the intricacies of gender communication.

Nancy Stern is the president and owner of her own consulting firm that specializes in management and employee development. An EMMY-award-winning television personality for her PBS series, she has taught at the University of California San Diego and at the Management Development Center, San Diego State University.

Stern previously was a secondary school teacher in Michigan, where she received the Teacher of the Year Award from the Michigan Interscholastic Forensic Association. She also has worked in the business community in media production, management, sales and public relations.

Among her writings is the work entitled, *101 Stupid Things Trainers Do To Sabotage Success*.

Stern is well identified with her belief that *how you say what you say matters*.

Kevan Schlamowitz, Ph.D., is a board certified medical psychologist who combines humor and knowledge with compassion. His writings include articles on performance enhancement, sales communication and the relationship between psychology and the environment. He maintains a busy speaking schedule and has made numerous appearances on talk shows.

Besides serving as a consultant to executives and athletes, he has served as a university instructor, operated a successful private practice, and has been the director of clinical services at a leading health and fitness resort.

In his book, *Emotional Prosperity For Life!*, Schlamowitz deals with the challenges of working and living in the frustrating and hectic times of today. Among issues he addresses are finding a balance between personal and professional life, improving communication in relationships, and coming to a new understanding of self esteem.

Home Ownership at 30-Year High, According to Census Bureau Figures

Figures released by the Census Bureau show an increase of nearly a full percentage point in the national home ownership rate for 1995, the greatest year-to-year increase in the 30 years data has been available. For the fourth quarter, 1995, the ownership rate was 65.1 percent, the highest quarterly showing since 1981.

As pointed out by the National Partners in Homeownership, if the ownership rate for 1996 matches that of last year, the reading would be 66 percent, an all-time record. The Partnership, a voluntary group of 56 private and public sector real estate organizations whose membership includes ALTA, is supporting President Clinton's strategy to increase the national rate to an historic

high of 67.5 percent by the year 2000.

ALTA participation in four specific areas of activity has been authorized by the Association Board of Governors. These are defined by the Administration as: Alternative Approaches, Technological Improvements, Standardization of Settlement Instructions, and Bulk Purchase of Settlement Services.

In connection with the President's initiative, work is under way within ALTA on a proposed uniform closing instruction letter that is designed for electronic data interchange (EDI), with an eye toward emphasis the government and secondary mortgage market organizations are placing on this technology.

Williamson and Wilson counties—using Chicago Title's Opticom software residing on the aforementioned company's main-frame system.

In the Nashville operation, Title Data is converting and installing approximately 4 million records stored on the Opticom system, representing over 15 years of plant records.

According to Title Data, TIMS is used by the company in Texas to maintain the nation's fourth largest plant data base. The system is designed to enable a title company or joint plant group to maintain its plant, on its computer and in the user's office, without most of the problems often associated with larger computerized plant systems.

Intercounty New National Insurer

Intercounty National Title Insurance Company, newest entry in the national title insurance underwriting industry and second underwriter to be domiciled in the state of Illinois, has opened its headquarters at 120 West Madison Street, Chicago.

Intercounty has been organized as a title underwriter that can schedule and conduct closings as well as deal with a variety of post-closing problems, according to Susan A. Pelozo, president of the new company. She said Intercounty has received an enthusiastic response from attorney title agents, controlled business entities, banks and others lenders, and real estate brokers.

Landata Develops Electronic Module

Landata Systems, Inc., has announced its first module of SureClose, new electronic business environment of its parent, Stewart Title Guaranty Company, which is designed to electronically link business partners in a real estate transaction.

Called DocRouter, the module is structured to address the need for placing a document with the right person on time, and to quickly correct errors in closing documents. After corrections are made, a document can be electronically sent to a closing office in minutes.

According to Stewart Title, DocRouter has created new opportunities for communication between business partners through the use of e-mail messages that eliminate telephone tag, voice mail and faxing.

Progress Toward National Home Ownership Goal of 67.5 percent by the year 2000

	Current Rate (4th qtr. 1995)	Previous Rate (3rd qtr. 1995)	Rate at the end of 1994
Nation Overall	65.1%	65.0%	64.2%
Minorities	44.3%	44.0%	43.7%
Households with Less Than Median Income	49.4%	49.0%	48.6%
Households Under Age 35	57.9%	57.9%	57.1%

Increase in Number of Home Owners Since End 1994
1,407,000

Joint Title Plants Move Installations

Installations are being completed at this writing for joint title plant groups in Fort Worth, TX, and Nashville, TN, following their purchase of software licenses from Houston-based Title Data, Inc.

The Fort Worth operation is Central Title Information Services, owned by Southwest Land Title Company, subsidiary of Old Republic National Title Insurance Company, and by Rattikin Title Company. The group maintains takeoff card plants for Tarrant

County, and will use TIMS (registered trademark) software to maintain a new, computerized multi-user and possibly multi-county plant.

Installation in Fort Worth includes acquisition and conversion of over 26 years of grantor/grantee indices from the Tarrant County Clerk, along with a 470,000-parcel tax data file from the Tarrant Appraisal District.

Owners of the Nashville group are Chicago Title Insurance Company, Lawyers Title Insurance Corporation, and Old Republic Title. The group now maintains a plant for Davidson, Rutherford, Sumner,

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Tailoring Coverage with Endorsements

By Kenneth R. Jannen, Esquire

It does not take much reflection to recognize that the standardization of policy forms is a good thing. It lets the insured know, when he is ordering a policy, exactly what his coverage will be. The insurer knows what its responsibilities will be because the provisions of insurance policies, just like those deeds, mortgages, leases, and other legal documents, have been determined in court cases and by the experience that insurers and insureds have had in the marketplace over the years.

In a sense, title insurance forms are quasi standardized since, while the insuring provisions, exclusions, conditions, and stipulations in use in the United States have been standardized through the American Land Title Association (ALTA) and similar state-level organizations, the information that is typed on Schedules "A" and "B" is determined on a local basis. Efforts to standardize what goes in the exceptions on Schedule "B" have been made through the use of manuals and guidelines for the formats of exceptions by various companies, but their use is limited by the willingness of those preparing the policies to consult and follow the guidelines, the "give and take" negotiation as to the language in exceptions between company personnel and representatives of the insured, and the fact that the particular title problem encountered may not exactly fit with the recommended wording in the manual.

The policy forms themselves, however, can be modified through the use of endorsements. Endorsements have been created by the ALTA or similar organizations, promulgated by insurance commissioners, crafted by innovative underwriters, or forged through negotiation between company personnel and the insured's attorneys. These endorsements approach many

of the problems that are peculiar to particular title risks or transactions. Let's take a look at a few of the provisions in the policy and how endorsements are used to treat them:

Insuring Provision No. 3 - Loss by Reason of Unmarketability of Title. The issue of unmarketability of title relates to the principle that a court of equity will not force a person to purchase, lease or lend money secured by a lien on the title to a piece of property when the ownership may be in doubt or there may be a lien or encumbrance that would impair the ability to use the land as intended. If there is a likelihood that litiga-

...endorsements approach many of the problems that are peculiar to particular title risks or transactions.

tion would be brought against the prospective purchaser, lessee or lender in an attempt to enforce the outstanding rights, the court will generally relieve him of any obligation that he may have to buy, rent, or accept a mortgage on the land. Occasionally, an insurer may come into a situation where the title is in question, but where it is confident that the rights of the insured will prevail. The proposed insured, however, may be concerned that, in the event that he wants to sell the property or borrow money secured by a mortgage on it, the purchaser or lender may not be as confident as the in-

surer that the title problem will be resolved. A compromise may be reached by adding an endorsement to the policy agreeing to provide future policies, or the insurer may add a stipulation to the policy to the effect that the title will not be deemed to be unmarketable, provided that another title insurer is willing to issue its policy with the same terms as the policy currently being issued.

Insuring Provision No. 4 - Loss by Reason of Lack of a Right of Access to and from the Land. This insuring provision pertains to a legal right of access between the land and, in most cases, a public road, rather than a practical ability to get from the public road to the land. On occasion, the insured may have a need for coverage to the effect that his legal right of access is to a specific public road, such as in the instance where a parcel of commercial property is being insured and a right of access to and from particular roads is of importance to



The author is vice president, regional counsel—southeast region, and Caribbean operations manager, First American Title Insurance Company, with offices in Plantation, FL. He has been instrumental in the organization of the ALTA Associate Member, Legal Division, and in

1995 was recognized as ALTA membership recruiter of the year. Currently, he is first vice president of the Florida Land Title Association—an organization which has presented him with its Raymond O. Denham Memorial Award. He received his juris doctorate from New York Law School, and has served on the statutory Florida Foreclosure Study Commission. The accompanying article is based on presentations he has delivered at educational sessions of the Dixie Land Title Association.

the insured's business. In that case, an "Access Endorsement" might be included in the policy.

Item 1(a) of the Exclusions From Coverage -- Laws, Ordinances, or Governmental Regulations Relating to Zoning, Subdivision, Land Use, and Environmental Protection Laws. While the laws of some states prohibit zoning coverage by title insurance companies, in states where it is permitted, the insured may be able to obtain an endorsement such as the ALTA Form 3, which assures the insured that the land is classified under a particular zoning class that includes certain described uses. This is generally used for vacant land, as contrasted with an ALTA Form 3.1, which includes the coverage in the ALTA 3, but also insures against loss or damage arising from a final decree of a court of competent jurisdiction prohibiting the use of the land, with any structures located on it at the date of policy, as those uses are specified in the endorsement. It also insures against actual loss if the court requires the alteration or removal of the structure because the zoning ordinances have been violated with respect to certain specified issues.

Exclusion 3(b) of the Exclusions from Coverage -- Unrecorded Matters Known to the Insured. This exclusion relieves the insurer from liability for:

"Defects, liens, encumbrances, adverse claims or other matters...not known to the company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy"

One of the problems that a proposed insured may face is that, while he may not have knowledge of a matter in fact, he may be deemed to have knowledge of that matter by law. For instance, due to the relationship of partners, knowledge of one partner is imputed under the law to the other and to the partnership. The reason for this is that each partner is the agent of the other and of the partnership with regard to partnership matters. The law assumes that what one partner knows about a partnership-related matter he will tell, or should reasonably be expected to tell, to his fellow partners. This is what is known as "implied actual knowledge." Suppose that an individual wants to invest money in a partnership that will hold title to a piece of land that has been owned by his future partners. If those partners know of an unrecorded matter (perhaps even one that they created themselves), the partnership may not be deemed to be a bona fide purchaser under the recording

act because the partnership and its members are deemed to know of the matter's existence. The partner making the investment in the partnership, and who has had no prior relationship with the land, may request an assurance from the insurer that it will not deny liability as to otherwise covered matters, based solely upon the knowledge of his fellow partners. This is what is known as a "non-imputation endorsement."

While a non-imputation endorsement is not available in all states, for those jurisdictions where it is available, the title insurer may have certain conditions that must be met before it is issued, such as indemnifications and affidavits from the partners who have had a relationship with the land, stating that they have neither created nor know of any matters that could create a lien on, or interest in, the land. The affidavits or indemnities are generally accepted after a re-

There are literally hundreds of recognized formats for endorsements... in order to give back some of the coverage as to a specific matter that is taken away by an exception.

view of the financial statements of the proposed affiants in order to make sure that, should their affidavits be erroneous, they will be in a position to respond in damages to the title insurer.

Item 5 of the Exclusions from Coverage -- Usury and Similar Laws. This exclusion is for loss arising from the invalidity or unenforceability of the insured mortgage, when the claim is based upon a usury, consumer protection or truth-in-lending law. Most states prohibit the collection of interest rates that their courts or legislatures deem to be excessive. Depending upon the laws of a certain state, the charging of certain rates of interest may even invalidate the debt and the lien of the mortgage. Because of this, an insured may request usury coverage. Due to the interstate nature of lending transactions, title insurers are reluctant to give this coverage in a general manner, but may be willing to give it as to the issue of whether or not a loan is usurious under laws of a particular state. In many cases, a

legal opinion from the borrower's attorney will be required, unless the law of the state is very clear in exempting the transaction from its usury laws. Some states prohibit usury coverage.

Definition of "Insured" Under Item 1 -- "Definition of Terms" in the Conditions and Stipulations. The definition of "insured" in an owner's policy reads as follows:

"the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors."

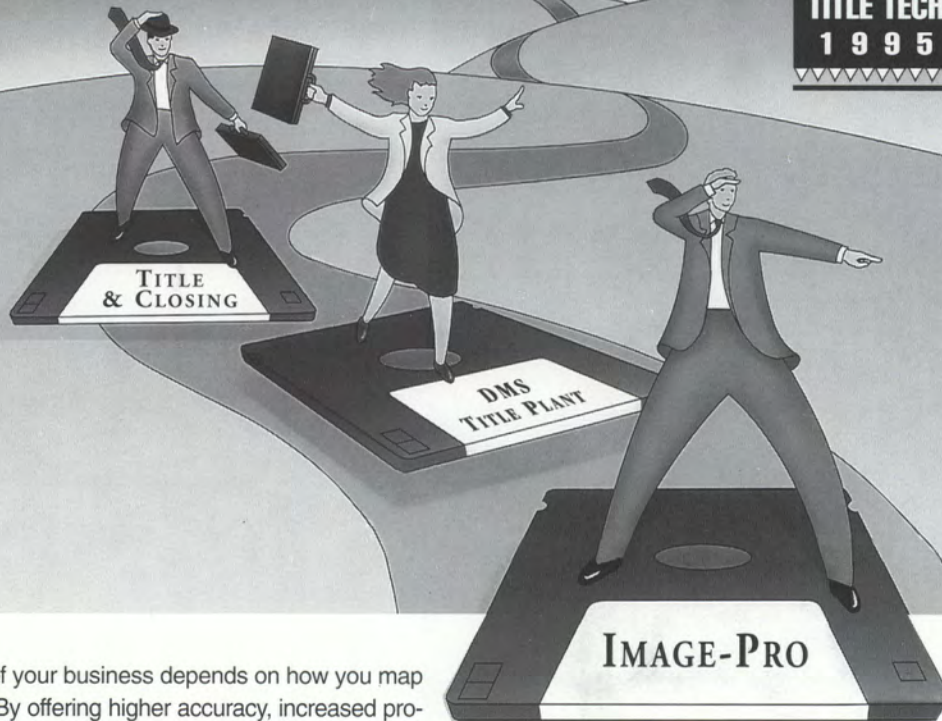
The definition may become critical in a situation where the customer wants to modify or change the entity through which he is holding title to the property. For instance, in a situation where title is held in the name of a general partnership, a change in the composition of the partnership by withdrawal or admission of members may effect a "dissolution" of the partnership under the Uniform Partnership Law. This situation was exhibited in the case of Fairway Development Company v. Title Insurance Company of Minnesota, 621 F. Supp. 120 (D.C. Ohio, 1985), where an insured general partnership had taken title to a piece of property, purchased an owner's policy, and the partnership's composition had been modified by the substitution of partners.

After the change in partners, a gas line easement, constituting an encumbrance on the title, was discovered. The title insurer denied liability, contending that its policy had lapsed due to the discontinuance of the existence of the insured partnership. Litigation ensued and the court held that the policy had indeed lapsed, due to the dissolution of the partnership, under the Uniform Partnership Law. Because of this issue, many real property practitioners representing general partnerships will request that the policy be issued with a "Change of Partners" or "Fairways" endorsement.

This issue may also apply in a situation where the customer contemplates that title will be conveyed at some point in the future to a related corporation or entity. While the insurer does not want to insure against the possibility of future changes in the title or future liens and encumbrances, it may be willing to extend its coverage to the contemplated future titleholder as of the original Date of Policy. The endorsement, known as an "Expanded Insured" en-

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dorsement, describes a class of potential future owner who would be considered to be insureds under the policy, as of its original date.

Definition of "Land." The policy insures, under its insuring provisions, various matters in connection with title to the land. The land is described on Schedule "A" by its physical boundaries, but its legal and physical extent is defined under item 1 of the Definition of Terms in the Conditions and Stipulations as follows:

"The land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy."

As you can see, the improvements are limited to those improvements which by law constitute real property. The issue as to whether an improvement constitutes real property comes into focus when we consider the issue of whether or not a manufactured housing unit or mobile home would fall under that definition. Mobile Homes, as their name applies, are extremely portable, thus having the prime characteristic of personal property, as contrasted with real property. Bricks and mortar have the same characteristic of mobility, but once they are affixed to the land, they become real property. The difference is really, in a sense, caused by the ease and extent of the ability to physically sever the mobile home.

A lender making a loan on a piece of property improved with a mobile home or "manufactured housing unit" will ask that the definition of land be deemed to include the manufactured housing unit located on the land at date of policy. This is done with an ALTA Endorsement Form No. 7. This has become a fairly common endorsement, but there are requirements, which vary by insurer and by state, with regard with what is necessary to include this endorsement. Some examples of requirements are: proof of removal of some of the characteristics that make it mobile, such as hitches and axles; assessment of the unit as real property or inclusion of the value of the unit in the tax assessment for the land; the termination of registration of the unit as a vehicle; and an affidavit stating that the mobile home or manufactured housing unit is and will continue to be considered and intended to be real property.

Also, just to be on the safe side, title insurers usually require, if a mobile home with a certificate of title is involved, that the certificate show the borrower to be the owner and that the lender be listed as a lienor.

The Reduction of Insurance, under Sub Paragraph 9(b) of the Conditions and Stipulations. This paragraph provides that payment of the principal of the indebtedness secured by a mortgage insured under a loan policy reduces the amount of insurance pro tanto. Generally, we issue a loan policy for the principal amount of the indebtedness secured by the insured mortgage. In some situations, we insure for less than the full amount of the indebtedness because the value of the mortgage as security is itself less, for instance, the borrower may borrow \$100 million, but the loan may be secured by other kinds of property, such as pledges of stock, personal property secur-

While it sometimes induces anxiety, innovation is fun and helps the industry to provide a product that is useful to its insureds as their needs change.

ity interests (such as liens on vehicles and other equipment), a letter of credit, or loan guarantees. The value of the land, as security, may only be \$10 million. In that instance, we may insure the mortgage for the \$10 million land value. Under this provision, however, as each dollar is paid on the loan itself, the amount of insurance is reduced by one dollar.

Consider what would happen in our example of the \$100 million loan, where we have insured the mortgage for \$10 million, and the loan is paid down to \$90 million. The amount of the coverage under the policy has been reduced by the \$10 million that has been paid on the loan, but that was the full amount of the coverage under the policy! According to subparagraph 9(b), the reductions in the indebtedness have extinguished the coverage. To avoid this situation, the lender may ask for what is known as a "Last Dollar Endorsement," which indicates that the amount of insurance will not begin to be reduced until the indebtedness

has been reduced to the amount of insurance stated in the policy.

Limitation of Liability under Sub Paragraph 8(d) of the Conditions and Stipulations. This provision states that, except for certain advances made under construction loans secured by the insured mortgage, indebtedness created after the date of policy, except for advances made to protect the lien of the insured mortgage and secured by it and reasonable amounts spent to prevent deterioration of improvements, will not be covered under the policy. What about a situation where the insured mortgage secures a revolving credit loan? The indebtedness under the revolving credit loan is advanced, paid down, and re-advanced through the life of the loan. Without an endorsement to overcome sub paragraph 8(b), the re-advances, being after the date of policy, would not be covered.

Because of this, lenders request "Future Advance" or "Revolving Credit" endorsements. These endorsements also address the effect of Exclusion 3(d) of the loan policy, which states that, except for certain specific matters, the policy does not insure against matters attaching or created subsequent to date of policy. In most states, provided that the mortgage is recorded before the matter arises and provides that it secures advances and re-advances made subsequent to date of the mortgage, the lien of the mortgage will have a priority over subsequent conveyances and certain kinds of liens and encumbrances.

Revolving credit or future advance endorsements may vary from state to state, depending upon whether or not the lender may advance to the borrower if he knows that the land has been conveyed to another, or whether he may gain a priority for these advances over construction liens of which he may have actual knowledge or which are recorded in the public records. Advances made subsequent to the filing of a bankruptcy by the borrower or a subsequent owner are generally excluded, as are environmental protection liens, federal tax liens, ad valorem taxes and assessments imposed by governmental authority.

While the scope of this article is limited, the ability to innovate on the part of the industry and its customers is not. There are literally hundreds of recognized formats for endorsements, either modifying the provisions of title insurance policies, expanding their coverages, or qualifying exceptions on Schedule B, in order to give back some of the coverage as to a specific matter that is taken away by an exception.

Many more endorsements are created

continued on page 21

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RB	03/23/95		Policies Due	memo	01	95-00003	/ /	
RB	03/23/95		Receive Survey	memo	01	95-00004	02/24/95	RB
RB	03/23/95		Receive Survey	memo	01	95-00005	02/24/95	RB
RB	03/23/95		Receive Survey	memo	01	95-00006		
RB	03/23/95		Order Survey	memo	01	95-00014		
RB	03/23/95		Order Tax Cert.	memo	01	95-00014		
RB	03/23/95		Receive Survey	memo	01	95-00007		
RB	03/23/95		Receive Survey	memo	01	95-00008		
RB	03/23/95		Receive Survey	memo	01	95-00001		
RB	03/24/95		Commitment Due	memo				
RB	03/24/95	08:30am	Closing Room 2	memo	01	95-00004		
RB	03/24/95	09:30am	Closing Room 1	memo	01	95-00005		
RB	03/24/95	01:00pm	Closing Room 1	memo	01	95-00007		
RB	03/24/95	03:00pm	Closing Room 3	memo	01	95-00008		

F8 Completed F9 Edit

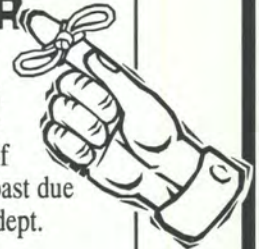
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Ralph Bone, Los Angeles National Business Unit area manager for Chicago Title Insurance Company, has been elected vice president. Also elected a vice president of the company is **Neil A. Clark**, New York City.

Commonwealth Land Title Insurance Company has announced the promotion of **Michael J. Fonder**, Chicago, to vice president and Illinois state manager.

David B. Spangler, Philadelphia, has been promoted to vice president-administrative services for the company and its subsidiary, Transnation Title Insurance Company. Also for the two companies, **Brian P. Jensen** and **Paul W. Knittel**, both Philadelphia, have been promoted to assistant vice president-employee rela-



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tions and assistant vice president-benefits and human resources administration, respectively.

Joseph C. Reineberg has joined Commonwealth as associate state counsel, Fairfax, VA. **Robert D. Peck** and **Pamela Hannappel** have been appointed National Title Service Division manager and assistant manager/closing officer in Transnation's recently opened office, Phoenix. **Mary Sue Schulberg** has been named assistant agency counsel for Commonwealth, Pittsburgh.

Lawyers Title Insurance Corporation has announced the election of **Billy F. Vaughn**, a title industry veteran, as vice president-agency manager, Dallas. He is a former president of the company, and also has served in executive positions for other title concerns.

Paul B. Unkauf has joined Lawyers Title as commercial escrow manager, New Orleans. **Karen Price Uemura** has been appointed office manager for the company subsidiary, Lawyers Title of North Carolina, Monroe, NC.

William G. Ergas has been appointed vice president-treasurer and **Patricia L'Heureux** has been promoted to vice president-facilities management, First American Title Insurance Company, Santa Ana, CA. Also at company headquarters there, **Jon Bradley Hill** has been

appointed assistant national claims counsel.

Timothy L. Kalep has joined First American Equity Loan Services, Inc., Cleveland, as senior vice president of planning and development. First American Equity is a subsidiary of the First American Real Estate Information Services, Inc., operating segment of First American Title's parent, The First American Financial Corporation.

Tony Fratis has been named vice president-agency manager, North American Title Insurance Company, Sacramento, CA.

Houston Title Company has announced the appointment of **Roland Flick, Jr.**, and **Charline Johnson** as vice president and senior commercial closer, respectively. Each brings more than 35 years of title industry experience to the Texas operation.

Robin P. Gilroy has joined Metropolitan Title Company, Howell, MI, as chief financial officer.

Lynda Myers has been promoted to advertising manager, T. A. Title Insurance Company, Media, PA.

Nancy Seabold has been promoted to president, First Security Title, Minneapolis. She replaces **Judy Van Meter**, founder of the company, who retired.

Jean E. Childress Bailey has been

promoted to examination department manager, Rattikin Title Company, Fort Worth, TX. **Mary Witt** and **Missy Trubatsky** have joined the company as assistant vice president-business development and escrow officer, respectively.

Craig Preston has joined AmeriTitle, Mill Run, OH, as customer service representative.

New President For Yosemite Title



Jeff Kerns

Yosemite Title Company, Sonora, CA, has announced the appointment of Jeff Kerns as president, concurrent with the naming of Pete Kerns as chairman of the board. Yosemite Title was founded in 1966 by

the late Sam Kerns, father of Pete Kerns, George Geiger and the late Elinor Brown.

The company was the first title and escrow company to be licensed by the State of California to handle collection escrows.

Monroe Reorganizes To Improve Service

Monroe Title Insurance Corporation has reorganized its work force into four regions, in order to free key title professionals from administrative duties for greater concentration on customer service.

Backroom operations are being consolidated into the four regions through technology developed by Monroe and its affiliate, Offsite Public Records Access. This includes incorporating computer networking and laptop computers into operations for greater efficiency and cost effectiveness, according to Dennis W. O'Neill, Monroe's president and chief operating officer.

ENDORSEMENTS -

continued from page 16

for specific transactions and begin to evolve their way into widespread use.

While it sometimes induces anxiety, innovation is fun and helps the industry to provide a product that is useful to its insureds as their needs change. As long as we, in the industry, maintain an open mind and a circumspect willingness to serve, we can meet the needs of our customers for a long time to come. 🐾



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Lessons from Losses

By Sean Hanifin, Esquire

The advice given by the California Supreme Court in a significant year-end decision: "Check the subdivision declaration."

In *Citizens for Covenant Compliance v. Anderson*, 47 Cal. Rptr. 989 (12/29/95), the California Supreme Court enforced restrictive covenants that were *not* contained in any deed conveying an interest in the property in question. Acknowledging that it was making new law, the court held that all subsequent purchasers have "constructive notice" of any recorded declaration, even if the declaration is not referenced in any deed.

The Andersons operated a winery. They were sued by an unincorporated association of neighboring residential owners who sought to enforce 38-year-old restrictive covenants providing that the property "shall be used for residential purposes only." The restrictions neither appeared nor were referenced in any deed in the chain of title.

Two lower courts refused to enforce the restriction because it was not contained in any document exchanged between any buyer and seller in the chain of title. The California Supreme Court reversed and overruled several prior decisions that had held restrictive covenants enforceable only if contained or referred to in a deed.

Specifically, the court said, "It is reasonable to conclude that property conveyed after the restrictions are recorded is subject to those restrictions even without further mention in the deed." The court specifically stated that its decision would apply retroactively.

One judge vigorously dissented. He pointed out that the practice of subdividing land in California dated back at least 130 years. Arguably, under the court's new decision, a more than 100-year-old restriction

might affect title today even if that restriction were never found in the chain of title.

Neither the majority nor the dissenting judge discussed in detail the possible implications of this decision for title abstractors or title insurers. It is clear from the decision, however, that the restrictions at issue were *not* identified in all of the involved title reports. On a going forward basis, it appears, at least in California, that *all* potentially pertinent subdivision declarations must be researched in any examination of title.

The author is claims counsel to the Title Industry Assurance Company, the ALTA-endorsed errors and omissions insurer. He is a partner in the Washington, D. C., law firm of Ross, Dixon & Masback, L. L. P., where he specializes in professional liability and errors and omissions insurance matters. He received his law degree from the University of Chicago Law School.

Old Republic Buys Oklahoma Concern

Old Republic National Title Insurance Company has purchased American Guaranty Holding Corp., Oklahoma City, according to an announcement by the two firms.

American Guaranty is Oklahoma's oldest and largest title insurance company, the announcement stated, adding that the aforementioned company's assets approach \$9 million—with 1995 revenues in excess of \$5 million.

The principal companies of American Guaranty are American Guaranty Title Company, Oklahoma City, and Canadian Valley Abstract Company, El Reno, OK.

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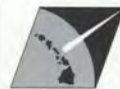
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April

14-17 **Tennessee**, Grovepark Inn, Asheville, NC

25-27 **Oklahoma**, Marriott, Oklahoma City, OK

May

5-7 **Iowa**, Collins Plaza Hotel & Convention Center, Cedar Rapids, IA

9-11 **New Mexico**, Best Western Inn & Suites, Farmington, NM

14-17 **California**, Monterey Plaza, Monterey, CA

16-18 **Palmetto**, Hilton Resort, Hilton Head Island, SC

June

6-8 **Texas**, Hyatt Hill Country Resort, San Antonio, TX

6-9 **New Jersey**, Newport Doubletree Islander, Newport, RI

7-8 **Arkansas**, Ramada Inn, West Memphis, AR

9-11 **Pennsylvania**, ANA Hotel, Washington, DC

12-14 **South Dakota**, Kings Inn, Pierre, SD

13-16 **Colorado**, Steamboat Resort, Steamboat Springs, CO

23-25 **Oregon**, Sunriver Lodge, Bend, OR

27-30 **New England**, The Black Point

Inn, Prouts Neck, ME

July

11-13 **Illinois**, Oakbrook Hills Resort & Spa, Oakbrook, IL

11-13 **Michigan**, Grand Hotel, Mackinac Island, MI

11-13 **Utah**, Stein Eriksen Lodge, Deer Valley/Park City, UT

August

1-4 **Idaho**, The Coeur d'Alene, Coeur d'Alene, ID

8-10 **Kansas**, Holiday Inn, Manhattan, KS

8-10 **Montana**, Fairmont Hot Springs Resort, Anaconda, MT

15-17 **Minnesota**, Riverport Inn & Suites, Winona, MN

15-17 **North Carolina**, Wintergreen Resort, Wintergreen, VA

18-21 **New York**, Southhampton Princess, Bermuda

21-23 **Wyoming**, Holiday Inn, Cody, WY

September

5-8 **MD-DC-VA**, Princess Royale, Ocean City, MD

8-10 **Ohio**, Hyatt Regency, Cincinnati, OH

11-13 **Nebraska**, Holiday Inn, Hastings, NE

12-13 **Wisconsin**, Radisson, La Crosse, WI

12-14 **Dixie**, Sandestin Beach Resort, Destin, FL

12-14 **North Dakota**, Ramada Plaza Hotel, Fargo, ND

12-15 **Washington**, Campbell's Resort/Lake Chelan, Chelan, WA

18-20 **Nevada**, Hyatt Regency, Incline Village, NV

19-21 **Indiana**, Westin Hotel, Indianapolis, IN

November

3-6 **Florida**, Hilton Innsbrook Resort, Tarpon Springs, FL

6-9 **Arizona**, Carefree Inn, Carefree, AZ

19-21 **Missouri**, Doubletree Hotel & Conference Center, St. Louis, MO

December

5-6 **Louisiana**, Omni Orleans Hotel, New Orleans, LA

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Lawyers Offering Flood Certification

Lawyers Title Corporation, parent of Lawyers Title Insurance Corporation, has announced a strategic alliance with Palma, Lazar & Ulsh, Inc., a Pennsylvania headquartered flood data service with 20 years experience in providing flood certification services.

Under the agreement, Lawyers Title owns a minority interest in a limited liability company, Palma, Lazar & Ulsh of Virginia, LLC, through which Lawyers Title markets flood certification services to its customers, including Palma's life-of-loan product.

The agreement reflects an emphasis on Lawyers Title enhancement of single source services in addition to title insurance, according to Janet A. Alpert, president of the Virginia-based company.

Technology Award For Stewart System

Stewart Title Guaranty Company's "Virtual Underwriter" information system has won the Best Policy and Procedure Application of the Year award in the Folio Info-Base competition among all industries using the technology of Folio Corporation.

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Development of "Virtual Underwriter" was through Landata Systems, Inc., a subsidiary of Stewart Title.

1996 CALENDAR OF MEETINGS

April

11 ALTA's Land Title Institute/Indiana Land Title Association Regional Seminar, Hyatt Regency, Indianapolis, IN

May

30 ALTA Board of Governors, Williamsburg Inn, Williamsburg, VA

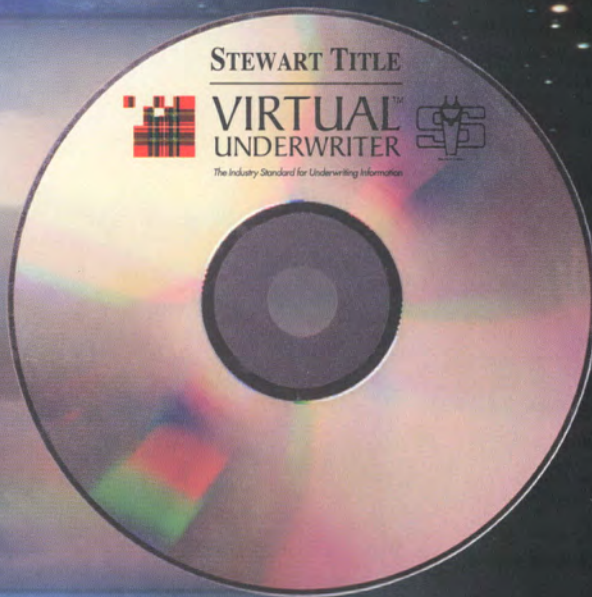
September

13 ALTA's Land Title Institute/Oklahoma Land Title Association Regional Seminar, Tulsa, OK

October

16-19 ALTA Annual Convention, Westin Century Plaza Hotel, Los Angeles, CA

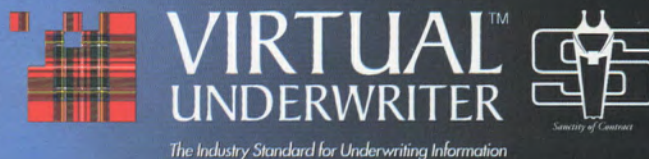
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