

Title News

the official publication of the American Land Title Association



*Dr. Peale
To Address
Annual Convention*

August, 1969



President's Message

AUGUST, 1969

Plans are now nearly complete for our Annual Convention to be held at Haddon Hall, Atlantic City, New Jersey, on September 28, 29, 30 and October 1. Reservations should be made now; first, to assure our members of accommodations requested, and secondly, to aid our staff.

Many subjects of vital importance to all of our members will be discussed and decided, including, but not limited to, the proposed single form policy, and amendments to our Constitution and By-laws. A report will be made on the progress of the Declaration of Principles drafted by the conferees of our Association and the American Bar Association.

Speakers of renown will address us, and the social side of the Convention promises to be outstanding.

Again, please make your arrangements as soon as possible.

Sincerely,

Gordon M. Burlingame

Title News

the official publication of the American Land Title Association

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ON THE COVER: Dr. Norman Vincent Peale, one of the most widely-known ministers of modern times and author of the best-seller, *The Power of Positive Thinking*, has accepted an invitation to address the 1969 American Land Title Association Annual Convention at the Chalfonte-Haddon Hall Hotel, Atlantic City, N. J. For more details, see page 8.

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GARY L. GARRITY, Editor

Purchaser Notice in Six States

Since 1964, at least six states have passed laws or adopted insurance regulations requiring that real estate purchasers under certain conditions be informed of the availability of owner's title insurance.

Five of the States—New Jersey, Tennessee, Maryland, Pennsylvania, and Florida—are known to require such informing of purchasers in transactions involving the acquisition of mortgagee's title insurance. In these

states, the responsibility of informing the purchaser about mortgagee's and owner's insurance generally is placed on the title insurance company. Purchasers who are so informed and who do not wish owner's title coverage are required to sign a waiver or disclaimer. In general, the effect of such waiver options appears to be an increase in the simultaneous issue of lender's and owner's title insurance in the states concerned.

Form of the written notice and waiver called for by Pennsylvania Insurance Department Bulletin

Pursuant to the requirement of the Pennsylvania Insurance Department, notice is hereby given that a mortgagee's title insurance policy is to be issued to your mortgage lender and that such policy does not afford title insurance protection to you in the event of a defect in the title to the real estate which you are acquiring (including but not limited to unpaid bills for labor and material, forgeries, missing heirs, unpaid taxes, etc.). You are hereby advised of your right and opportunity to obtain an owner's title insurance policy in your favor for the amount of your purchase price (or the amount of your purchase price, plus the cost of any improvements which you anticipate making).

The said requirement directs that you sign the statement below if you do not wish to purchase this protection.

.....
Name of company issuing policy
by
title

This is to certify that the foregoing notice of right to purchase owner's title insurance policy for the protection of the undersigned purchaser has been received and the undersigned purchaser hereby waives such right. It is understood and agreed (name of company) shall have no responsibility to the undersigned purchaser for the status of the title to the real estate being acquired or for any loss by reason of a complete or partial failure of title.

.....
Signature of mortgagor/purchaser

Another approach to the informing of purchasers is found in Texas, where the Real Estate License Act of 1967 states:

"At the time of the execution of any contract of sale of any real estate in this state, the real estate salesman, real estate broker, real estate agent, or Realtor shall advise the purchaser or purchasers, in writing, that such purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that such purchaser or purchasers should be furnished with or obtain a policy of title insurance; and provided further, that failure to so advise as hereinabove set out shall preclude the payment of or recovery of any commission agreed to be paid on such sale."

In Texas, E. Gordon Smith of Lawyers Title Insurance Corporation reports that title companies do not uniformly require a waiver from the

purchaser in cases where the purchaser orders mortgagee coverage and declines to purchase owner's title insurance. It is noted that the practice of securing a waiver was abandoned in Dallas about four years ago, although it is continued to some extent in other cities. Under the Texas Real Estate License Act, the responsibility of informing the purchaser is discharged through the language of printed real estate sales contracts.

In New Jersey, Walter A. Sprouls of New Jersey Realty Title Insurance Company advises that titlemen did not seek the 1964 state law requiring notice and waiver where owner's coverage is concerned. The law's origination is traced to a housing development situation where some entrepreneurs and their agents failed to provide good title to the purchasers and mortgagees. Subsequent public investigation revealed that these purchasers were the victims since fee title insurance was not procured for them—although they paid the title premium and examination fees which resulted in protection of the mortgagees.

As a result, legislation was introduced in New Jersey that would have required financing institutions to notify purchasers who are their mortgage loan applicants that owner's title insurance exists and is available. At the request of mortgage lenders, the legislation was amended to transfer the responsibility for notification to titlemen. After passage of this legislation, the sale of owner's title insurance is reported to have increased substantially in New Jersey. Experience in the state has indicated that, when asked to sign a waiver stating they do not want owner's coverage, purchasers frequently give the matter more thought and then agree to order owner's title insurance since the additional premium does not greatly increase cost.

In Tennessee, J. L. Boren, Jr., of Mid-South Title Company, Inc., reports that state regulatory action developed in 1966 when the commissioner of insurance and banking met with a group of titlemen to discuss the need for advising the purchaser that a mortgage policy protects only the mortgagee's investment. The

commissioner was familiar with a practice in one part of the state, where the seller pays for owner's title insurance. It had come to the attention of the commissioner that some sellers were eliminating this requirement from contracts without purchasers being aware of their lack of financial protection.

As a result of this Tennessee meeting, the state department of insurance and banking issued a regulation that requires titlemen to provide the purchaser with notice of the availability of owner's title insurance and with the related waiver. Mid-South Title Company, Inc., prints its own forms in providing the notice and waiver, capitalizing important words for emphasis and adding an item to be signed by the closer witnessing the reading and signing of the notice and waiver.

Continued on page 15



Burlingame addresses Pennsylvania titlemen.

A notice and disclaimer form prepared in Maryland

NOTICE TO OWNER, ACKNOWLEDGEMENT AND DISCLAIMER

To: INSURANCE COMMISSIONER, STATE OF MARYLAND

Property:

Mortgage Loan Amount:
Date:

Mortgagee Policy No.:

In connection with the settlement of a mortgage loan made to me/us on the captioned property, the loan closer or settlement officer has explained to me/us, as follows:

1. That the lender, is requiring a mortgagee title insurance policy of Title Insurance Company in the face amount of the loan, the charge for which is \$.....
2. That no protection is afforded to me/us under such mortgagee title insurance policy.
3. That I/we can be protected to the extent and by the terms of an owner's title insurance policy in the face amount of the purchase price for the property by paying an additional \$.....
4. That (if mortgage loan does not involve a simultaneous purchase but is secured by my/our presently owned property) I/we can obtain such owner's title insurance policy in the face amount of the fair market value of the property by paying an additional

DISCLAIMER

Notwithstanding the above explanation made to me/us, in accordance with Chapter 714 of the Acts of the General Assembly of Maryland, 1967, I/we hereby decline to purchase an owner's title insurance policy.

WITNESS:

.....
.....



Author Mitchell, left, with William J. McAuliffe, Jr., ALTA executive vice president.

Loan Costs and Usury

*A. J. Mitchell, Jr., Associate General Solicitor
Equitable Life Assurance Society
of the United States*

In the past, when interest rates were substantially below the maximums permitted by state laws, the practice of lumping mortgage loan fees and charges ("loan costs") was of little concern to counsel for lenders since all such costs could be absorbed between the rate charged and the maximum rate allowed.

The fact that rates on conventional residential loans are pushing the usury limits in various states places new emphasis on identifying or defining, on a state-by-state basis, those loan costs which do and those which do not have to be included in the computation of interest. However, the fact that interest rates are reaching the maximum permitted by law for the first time in the history of many of the states results in a dearth of usury decisions by the courts of these states. The problem becomes even more complex for counsel for national lenders concerned with the usury laws of all the states in which they operate.

After months of inquiry from our business people as to what loan costs could be charged in a particular state without being included in the computation of interest, and because these inquiries generally resulted from the allegation that our competition was charging fees which appeared to be in conflict with their understanding of our instructions, I prepared a memorandum on the subject. Because of the general nature of the memorandum and the possibility that it may assist others concerned with the subject, a copy is set forth as follows:

MEMORANDUM

SUBJECT: Usury—Mortgage Loan Fees and Charges

For the purposes of this memorandum mortgage loan charges *paid by a borrower* in connection with conventional loans on single family residences (not FHA or VA) are divided into four categories, namely:

- A. Points;
- B. Charges or fees for considering and evaluating a proposed loan;
- C. Closing costs; and
- D. Commitment fees.

A. Points

For the purposes hereof, "points" include bonuses, discounts, or any other fees or charges which are made by a lender, not for services rendered, but solely for the use of money loaned.

Generally speaking, points may be collected if the amount thereof when added to interest does not exceed the maximum rate of interest permitted by statute. Thus, if a lender made an 8 per cent loan (8 per cent being the maximum interest rate permitted), and, in addition, required the borrower to pay points, usury would be clear immediately.

Where, however, the interest charged is below the maximum rate allowed by statute (again using 8 per cent), the courts have held that the points must be "spread" over the terms of the loan to determine whether the 8 per cent maximum is exceeded. While many lawyers believe that the "spreading" rule would be applied generally, the question has not been decided in a number of states.

On the other hand, the "spreading" rule would *not* be applied in those states, such as New Jersey and Maryland, that have enacted legislation which specifically prohibits the collection of points in conventional loans.

B. Charges for fees for considering and evaluating a proposed loan.

Included in this category are those fees and charges normally paid by a borrower and retained by a lender for investigating the credit of the borrower and appraising the property. In a construction loan, in addition to the fees for investigation and appraisal (which entails the review of plans and specifications), an additional fee may be collected by the lender for making inspections. The criteria in connection with the collection of these fees is—were the charges reasonable in connection with the services rendered. If reasonable, such charges are not interest.

With respect to construction loans,

the Supreme Court of Arizona¹ in a recent decision stated the following:

"Construction loans, also known as interim financing, involve more complicated problems and higher risks than ordinary long-term loans. As a result, such loans are generally handled by firms having the necessary expertise, and are more expensive to obtain, than loans on completed buildings. The construction lender takes the risk that something may delay the completion of the project. Delay may cancel the already-signed leases which give the project value. Delay may sap the financial strength of the builder so that he goes broke. Delay may cause completion to be made at much higher prices, thus making the completed project unprofitable. In return for taking these higher risks, construction lenders seek high returns and rapid turnover of the money they have to loan. They expect construction loans to be paid when the buildings are completed, or very soon thereafter, out of the 'permanent', or long-term loans that are generally arranged before construction starts. The construction lender must be equipped with both the know-how and the personnel to remain in close touch with the project at all stages. This is necessary in order to be sure that proper licenses and inspections are obtained from all regulatory bodies, that the construction complies, at all stages, with the plans and specifications and with the regulations of the F.H.A. or other agency that is to insure the permanent loan, and that the money advanced periodically is actually used to pay off laborers and suppliers of material promptly, so that no mechanics' liens are filed, etc. A charge for supplying such supervision is proper if it bears a reasonable relation to the cost of such services. Such a charge is not interest."

¹ *Altherr vs. Wilshire Mortgage Corporation*, 448 P 2nd 859 (1968).

A number of states, such as Virginia, North Carolina, and West Virginia, have enacted legislation which permits a flat fee based on a percentage of the loan to be collected by the lender *in lieu* of all other charges for *considering and evaluating* a proposed loan.

In addition, New York and Maryland have enacted legislation which specifically outlines those charges which may be made by a lender and not be included as interest. New York permits an appraisal fee and also an inspection fee on construction loans; Maryland does not permit any such fees if retained by the lender.

C. Closing Costs

In this category are those charges normally paid by a borrower to or for the account of a third party, including the following: surveys; title search and title evidence; attorney's fees; hazard insurance premiums; recording fees; taxes and notarial fees.

Such charges as a general rule are held acceptable because they are not payments made to the lender for the use of money. An exception to this general rule is Michigan.

Closing costs may be charged in addition to the permitted charges referred to under category B hereof.

D. Commitment Fees*

In this category are included "standby" fees. Generally speaking these fees are held to be charges for making or keeping money available and not for the use of money and thus do not involve the question of usury. It has been stated that:

"Commitment fees are customary, and provided they are not completely out of line with the going rate in a community there appears to be little danger of challenge on this score."²

* It is recognized that in certain sections of the country the term "Commitment Fee" is used to define and include the charges I have referred to herein under Category B. For the purposes hereof, however, the term is intended to include only the charge normally referred to as a "Standby Fee".

² 16 Bus. Law. 188 (1960).

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This memorable shot shows early-day Los Angeles monorail called "Aerial Swallow" by its inventor.

Old Photos Aid TI Public Relations

*Joseph J. La Barbera
Director of Advertising
and Publicity
Title Insurance and
Trust Company*

Title Insurance and Trust Company, Los Angeles, has proved that one of its best and most effective public relations "tools" is its famous collection of early-day California photos. As publications become aware of this treasure chest of Californiana, its fame will no doubt be extended and increased.

In this look-ahead, move-ahead era there are still many who pause to look back and savor the richness of the past. How did California appear to previous generations? What landscape preceded the present skyline of freeways, high-rises and housing tracts?

TI, in an effort to preserve the flavor, look and spirit of days gone by, has gathered an outstanding photographic collection of the California of yesterday. With the famed C. C. Pierce photo collection form-

ing the nucleus, the more than 15,000 photos touch on phases of California history from the early rancho days to the land rush of the twenties.

This photographic library of negatives and prints is maintained as a free public relations facility of the company, and photos are loaned to publishers, authors, schools and many other organizations and individuals who need illustrations of a historical nature.

The only restrictions on their use are the customary ones imposed by any library. The photos are not permitted in commercial advertisement.

A word about Mr. Pierce:

In 1886, C. C. Pierce, a young Chicago photographer, decided to spend a winter in Los Angeles for his health. He brought two other photographers with him and they proceeded to "take" the town. They

went from door to door, telling the proprietor of every little business house that he really should have pictures of his noble establishment for posterity.

Maybe they thought it was just sales talk, but they were telling the truth. For Pierce's one winter stretched to 55 winters and the same number of summers, and he recorded on film the history of Los Angeles and many nearby places for the last half-century. Hardly any event of civic, commercial or social importance took place for nearly 50 years of which Pierce did not obtain a photographic record. The Tallyho clubs, the bicycle clubs, the early automobile runs, the first historic airplane meet, the building of the Santa Fe railroad, and Los Angeles harbor, the activities of such groups as Teddy's Terriers, and real estate alterations of the city, the developments of oil fields—all these and many other things were photographed by Pierce, and the plates or negatives were carefully filed in fire-proof vaults.

In many cases the photographic records made by Pierce are the only ones available. It is doubtful, for instance, if anyone in the Mother Lode country has any such records of buildings and scenes which have

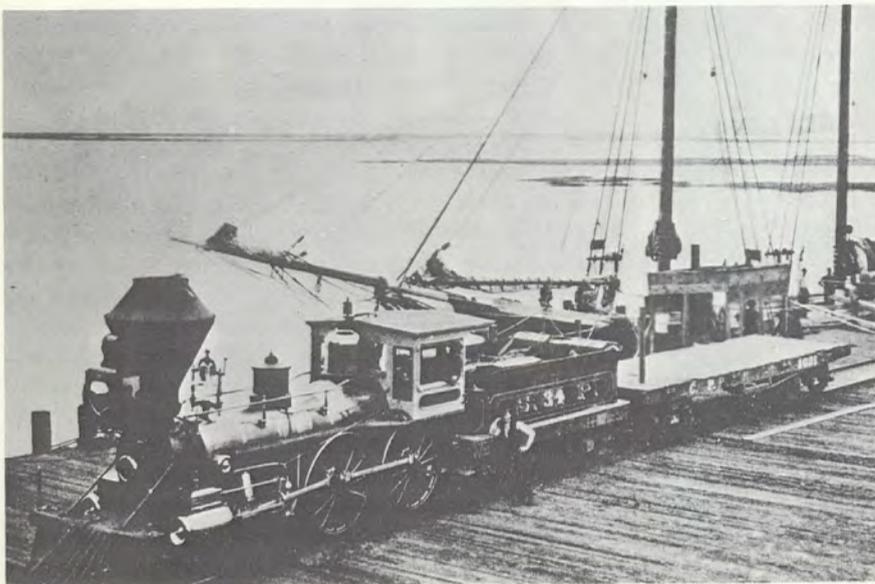
vanished from that district. George Wharton James got Pierce to go with him to take photographs for several of his books, and Pierce got far more pictures of historic spots, Indians and scenes than James could ever use.

Pierce was approaching his eightieth birthday at the time of his death. Until that time he carried on his work at a studio located on West Pico

Boulevard in Los Angeles. The collection consists of prints, of portraits and of views taken during the early years of this century. Most are of Southern California scenes. Los Angeles is well represented with views of downtown streets, commercial and civic buildings, and residential areas. Among other Southern California subjects are photographs of downtown Santa Monica and the Palisades,



TI's Joe La Barbera, right, and Jack Webb with TI historical photos used in TV's "Dragnet."



Here is the first locomotive to be used in Los Angeles county—put into service in 1869.

Topanga Canyon, several oil fields, Palm Canyon, San Luis Rey Mission, and San Diego's Old Town.

In 1941, TI purchased the collection. The company is proud to have this outstanding historical collection, and is pleased to share it with those who are preserving and retelling the legends of yesterday's colorful California.

As any public relations professional knows, it is extremely difficult to equate a PR effort with corresponding company income. However, the photo collection has provided one instance as an exception to this rule. Two orders totaling close to one million dollars in liabilities were registered as a result of courtesy shown to the client in providing these historical photographs.

Dr. Peale Joins Roster Of Convention Speakers

Planning for the 1969 ALTA Annual Convention was highlighted recently when Dr. Norman Vincent Peale accepted an invitation to appear on the program September 29.

The well-known minister joins a list of distinguished speakers and other attractions that will make up a

sparkling Convention agenda September 28-October 1 at Chalfonte-Haddon Hall Hotel, Atlantic City, N. J. As a fitting Convention postscript, title men and women are being offered an ALTA tour to Paradise Island and Nassau in the Bahamas October 2-9. Related information is

being sent to ALTA members to aid in planning.

Dr. Peale will present remarks entitled, "Why Positive Thinkers Get Positive Results." His appearance will give title men and women an opportunity to listen first hand to an inspiring clergyman whose career has placed him in the forefront of religious life in the United States.

Since 1932, Dr. Peale has been minister of Marble Collegiate Church in New York City—which reportedly is the oldest Protestant church in the United States. He is president of his denomination, the Reformed Church in America, and has through speeches, books, and print and electronic media reached millions of people throughout the world.

His book, *The Power of Positive Thinking*, was at the top of the best-seller list for three years and sold some 2.5 million copies. It was translated into 30 languages and over a million copies have been sold in paperback. Dr. Peale has completed 15 other books—the most recent of which is *Enthusiasm Makes the Difference*.

More than 200 newspapers carry Dr. Peale's weekly column, "Confident Living," and approximately two million subscribers receive *Guidposts*, an inspirational magazine which he serves as editor-in-chief. More than 500,000 people around the world receive publications each month from The Foundation for Christian Living at Pawling, New York—which was formed in 1940 to circulate his sermons and writings. Dr. Peale also has a five-day-a-week radio program, "Confident Living."

An important part of Dr. Peale's ministry is The American Foundation of Religion and Psychiatry, which he and a psychiatrist, the late Dr. Sidney Blanton, established. The national foundation maintains an interfaith, interracial outpatient clinic licensed by the State of New York and provides counseling to about 500 troubled persons every week.

Additional information on developments relating to the 1969 Convention will be provided to ALTA members in the weeks ahead. Watch for it.



Queen's Staircase in Nassau—a post-convention tour highlight awaiting ALTA members.



Robley J. Simpson addresses Ohio seminar.



Robert Williams talks at Idaho meeting.

Examiners Seminar Successful in Ohio

Approximately 200 officers and employees of title companies and savings and loan associations—in addition to practicing attorneys—attended the Fourth Annual Title Examiners Seminar recently conducted by the Ohio Title Association at Columbus, Ohio.

John Teeple, attorney, of Alliance, Ohio, and president of the association, reported that this was a record attendance.

The seminars are primarily for examiners and are geared toward their needs. Instructors are officers of title companies and practicing attorneys.

Seminar talks included:

“Assessments and Taxation” by Sherman Hollander, Ohio Title Cor-

poration, Cleveland; James C. Klusmeyer, Title Insurance Company of Minnesota, Cincinnati, reporting on “Wills, Devises, Afterborn Children, and Power of Sale”; and “Partnerships and Corporations” by Malcolm B. Ramey, attorney, Shumaker, Loop & Kendrick, Toledo.

“Easements, Licenses and Encroachments” was the topic discussed by Dwight Shipley, Lawyers Title Insurance Corporation, Columbus. Robley J. Simpson, Land Title Guarantee and Trust Company, Cleveland, led the discussion on “Services of Process,” and “Marriage, Divorce and Dower” was covered by Robert T. Williams, Ohio Title Corporation, Cleveland.

Robley J. Simpson, chairman of the education committee of the association was in charge of the seminar.

Idaho Title Association Elects Mary Davis

Members of the Idaho Land Title Association elected Mary Davis, manager, Land Title Insurance Company, Payette, as association president at their annual meeting June 26-29 at Coeur d'Alene, Idaho.

Other officers elected for the coming year include: vice president, Panhandle district—Robert L. Ring, manager, Panhandle Title Company, Coeur d'Alene; vice president, Southwest district—Joe Gamboa, manager, Canyon Abstract & Title Co., Caldwell; vice president, Southeast district—Lois Jepson, Jerome Abstract & Ti-

tle Co., Jerome; and secretary-treasurer, Jeanette Pauli, secretary, The Title Insurance Company, Boise.

Among business acted upon at the meeting, Idaho association members adopted a resolution opposing proposed changes in the ALTA Constitution and By-Laws regarding membership.

The meeting included a selection of outstanding speakers, work sessions on current topics, and, of course, leisure time to enjoy gathering with old and new friends in the land title industry.



Margueritte Held, new president of the Arkansas Land Title Association, is flanked by fellow officers (from left) Bill Scott, vice president; Gerald Cathey, secretary-treasurer; Jerry Nixon, director; W. S. Bronson, director.

Warren A Speaker At Arkansas Meeting

Little Rock was host city for the Arkansas Land Title Association's 61st Annual Convention, which was held April 3-5, 1969.

Among the distinguished guests was John W. Warren, chairman of ALTA's Abstracters and Title Insurance Agents Section. Other distinguished speakers were Maurice Britt, lieutenant governor of Arkansas, and Richard O. Miles, division landman of Arkansas Louisiana Gas Company, Fort Smith, Ark.

Title insurance was discussed by Bill Spotts, Little Rock Abstract Company, and Gerald N. Cathey, Standard Abstract & Title Company, Little Rock. Jim Gray, immediate past president, explained how he had built his new title plant using automated data processing techniques exclusively. State Representative John E. Miller of Melbourne, Ark., himself an abstracter, discussed the new Abstracters' Law (Act 109 of 1969) at a luncheon.

New officers elected at the convention were: Mrs. Margueritte B. Held, Guaranty Abst. Co., West Memphis, president; Bill J. Scott, Ashley County Abstract Company, Hamburg, vice president; and Gerald N. Cathey, of Little Rock, secretary-treasurer. Donald V. Cathey of Little Rock was elected to a three-year term on the board of directors.

Holstein Addresses New Mexico Titlemen

The fortieth Annual Convention of the New Mexico Land Title Association was held May 22-24 at Albuquerque.

Tom Holstein, vice president of ALTA, discussed the current situation regarding Congress and the land title industry. In additional remarks, he said he knows of three universities that now have courses on land title work. He stated that salaries in the industry would have to be increased to attract qualified new personnel.

The underwriters' meeting was moderated by Ray Sweat, Pioneer National Title Insurance Company of Los Angeles. Omer Tucker discussed underwriters, agents, and Plant laws, and it was the general consensus that the Plant Law should be complied with.

Tom Preston of Stewart Title Company in Houston was appointed to moderate the Underwriter's Meeting at the 1970 Convention.

President Tucker asked that a letter of recommendation be sent to ALTA stating that the New Mexico Land Title Association believes that state membership should be a prerequisite to membership in ALTA.

A panel consisting of Clifford E. Dinkle, senior vice president of the Albuquerque National Bank; Joe D. Fulmer, vice president of Mortgage Investment, and Hugh J. Graham, Jr.,

vice president, of Albuquerque Federal Savings and Loan, discussed the "Mortgage Market—Present and Future." A panel of three Realtors—George Walker, Walker-Hinkle, Albuquerque; Salty Sparks, Salty Sparks Agency, Las Vegas; and R. H. Stephens, Stephens-Irish Agency, Las Vegas, discussed "Service Requirements of the Real Estate Industry." Association President Omer Tucker suggested that a committee be appointed to work with Realtors in the area, since Realtors reported difficulty in obtaining title evidence in some areas.

Other topics discussed were the truth in lending regulation; the Uniform Commercial Code; interstate land sales; and surveys. Jack McAninch of Pioneer National Title Insurance Company in Dallas, and Frank Morrato of New Mexico Title Company in Albuquerque, lead a discussion entitled, "Title Insurance Policies and Binders."

Officers elected at the Convention include: president, John Floyd, Las Cruces Abstract and Title Company, Las Cruces; first vice president, Woody Nezzar, Gallup Title Company, Gallup; and second vice president, Ed Chapman, First Title Guarantee & Trust Co., Albuquerque.

Tennessee Group Elects S. P. Graves

The Tennessee Land Title Association held its convention at Chattanooga, Tenn., May 9-10, at which time the following new officers were elected:

Sanford P. Graves, East Tennessee Title Insurance Agency, president; Nat W. Parham, Memphis Title Company, vice president; and Myron Ray Ely, East Tennessee Title Insurance Agency, secretary-treasurer.

John W. Warren, chairman of ALTA's Abstracters and Title Insurance Agents Section, was among speakers who addressed the convention.

The Tennessee association adopted a resolution opposing any change in ALTA membership requirements.



ALTA Vice President Tom Holstein, left, and Colorado Association President Bob Roberts relax.

Colorado Meeting Features Varied Topics

Ninety Colorado Land Title Association members and guests enjoyed the charm and beauty of Steamboat Springs, Colo., where their 49th Annual Convention was held June 12-14.

The famous ski area provided a relaxing and picturesque background for a successful combination of work and relaxation.

The agenda was tailored to fit the modern abstracter and titleman. It ran the gamut of the national picture as conveyed by ALTA Vice President Tom Holstein; data processing and a peek at the future through sophisticated EDP storage and retrieval equipment; a new title insurance code as presented by Bob Brown, assistant Colorado insurance commissioner; the way in which the homebuilders view the title industry; and the "truth in lending" regulation and its consequences in the title world.

Business sessions were backed up with ample opportunity for enjoying the free moments. A fresh mountain

trout breakfast in the park was enthusiastically received by everyone present.

The Colorado association elected new officers during the Convention. Chosen as president was Gates Gooding, Routt County Abstract Company, Steamboat Springs, who, with his wife, Doris, hosted the 1969 convention. First vice president is Betty Lynde, Lawyers Title of Pueblo, Inc., Pueblo; and second vice president is M. E. Kensinger, El Paso Abstract Co., Colorado Springs. A new director is G. H. Mayes, Jr., Lawyers Title Insurance Corporation (state title officer). Carryover directors are James W. Guyer, Larimer County Abstract Company, Fort Collins, and Gerald Grosword. Immediate Past President Robert Roberts, Platte Valley Title & Mortgage Company, Sterling, becomes an *ex officio* director for one year. Re-elected secretary-treasurer was James Roffe, who is with Transamerica Title Insurance Company, Midwest Division Headquarters, Denver.

Curlis to Presidency Of Utah Association

The Utah Land Title Association held its Annual Convention at the C'Est Bon Hotel in Park City, Utah, May 8-10.

Officers elected during the convention are: Warren H. Curlis, McGhie Land Title Company, president; N. Gayle Nielson, Security Title Company, vice president; and Lucille R. Wright, Security Title Company, secretary-treasurer.

Thomas J. Holstein, ALTA vice president; Oscar H. Beasley, vice president and chief counsel of First American Title Insurance Company; Frank E. Good, vice president of Louisville Title Insurance Company; William G. Fowler, attorney from Salt Lake City; and Alex Marzek, vice president, Chicago Title Insurance Company, addressed Utah association members on various subjects.

Utah association members voted in opposition to proposed changes in the ALTA Constitution and By-Laws regarding membership.



Commonwealth Land Title Insurance Company has provided title insurance for the new owners of America's oldest theater, the Walnut, which was built in Philadelphia in 1809. Lawrence Shubert Lawrence, Jr., (left), whose family has owned the theater since 1941, is shown passing a plaque to Philip Klein (right), president of the new nonprofit Walnut Street Theater Corporation—which will restore the building as an example of the early American theater. The plaque commemorates the dedication of the theater as a registered National Historic Landmark.



From left: Samuel Black, director, Bureau of Examinations, Insurance Department, Pennsylvania; James Sheetz, vice-president, Commonwealth Land Title Insurance Company; Lewis Anderson, executive vice-president, Philadelphia Title Insurance Company and president, Pennsylvania Land Title Association; Charles Cowley, associate chief counsel, Insurance Department, Pennsylvania; Gordon M. Burlingame, chairman of the board, The Title Insurance Corporation of Pennsylvania, executive vice-president, Pennsylvania Land Title Association, and president, American Land Title Association.

Pennsylvanians Enjoy Busy Convention

Timely topics and the picturesque setting of the Pocono Mountains combined to produce a highly successful Forty-eighth Annual Convention of the Pennsylvania Land Title Association May 25-27 at Shawnee-on-Delaware, Pa.

Gordon M. Burlingame of The Title Insurance Corporation of Pennsylvania was one of the busier program participants, reporting as ALTA president on May 26 and returning to the lectern May 27 to present his remarks as executive vice president of the Pennsylvania association.

Other program talks on May 26 included "New Real Estate Financing Devices, Some Devious," by Francis P. Gunning, vice president and associate general counsel, Teachers Insurance and Annuity Association, New York City; "Authority of Authorities" by William J. Staley of the law firm of Patterson, Crawford, Arensberg & Dunn, Pittsburgh; "Unusual Developments in Leasehold Interests" by Mayor Shanken of the Philadelphia law firm of Cohen, Shapiro, Berger, Polisher & Cohen; and a report by ALTA Executive Vice President William J. McAuliffe, Jr., on Washington developments of interest to the land title industry.

On May 27, other program commentaries included a discussion by ALTA Director of Public Relations

Gary L. Garrity on the importance of local public relations work by individual titlemen; "Benefit Assessments—Recent Developments" by Carl F. Mogel of the law firm of Balmer, Kershner, Mogel & Speidel, Reading, Pa.; "Overwater and Underwater Titles" by Fairfax Leary, Jr. of the Philadelphia law firm of Saul, Ewing, Remick & Saul; and "Where Are We (and the Profits) Going in the Title Business?" by Joseph H. Smith, vice president, Lawyers Title Insurance Corporation, Richmond, Va.

Lewis C. Anderson of Philadelphia Title Insurance Company was re-elected president of the Pennsylvania association at the convention and will serve a second one-year term. Other officers re-elected for the 1969-70 year include Fred B. Fromhold, Commonwealth Land Title Insurance Company, vice president; Leroy Snyder, Berks Title Insurance Company, treasurer; Carl Obermiller, Commonwealth Land Title Insurance Company, secretary; and Burlingame as executive vice president.

The Pennsylvania association passed a resolution favoring proposed changes in the ALTA Constitution and By-Laws regarding membership.

Guests at the Convention included Samuel Black, director, bureau of exhibits, and Charles Cowley, associate

chief counsel, both of the Insurance Department, Commonwealth of Pennsylvania.

Golf, receptions, and an annual banquet added to the enjoyable relaxation as events moved smoothly under the guidance of Richard Burroughs of The Title Insurance Corporation of Pennsylvania and Mrs. Burroughs.

Easton New President In Washington State

The Washington Land Title Association held its annual meeting May 8-11 at Olympia, Wash.

Speakers included State Senator R. Frank Atwood, who addressed the conventioners on "What's Happening in the Legislature." Another speaker was ALTA Executive Vice President William J. McAuliffe, Jr., who presented a report on developments in Washington affecting the land title industry.

Newly-elected officers of the association chosen at the meeting for the 1969-1970 term include president, Chester W. Easton, manager, Spokane County branch, Transamerica Title Insurance Company; vice president, W. Sherwood Norton, president, Security Title Insurance Company of Washington; secretary-treasurer, Richard A. Hogan, associate counsel, Pioneer National Title Insurance Company, King County.



The registration desk is busy in Olympia.

names
names
names
names in the news



MACY



HATALA

Paul A. Anderson, assistant treasurer and manager, administrative services, Pioneer National Title Insurance Company, Portland, Ore., retired June 30th after 24 years service with the company.

Matthew J. Hatala, Jr., has been appointed manager administrative services replacing Anderson.

Fred L. Macy has been named coordinator and supervisor of the business development department of Pioneer National Title Insurance Company in Oregon.



PUTNAM

Lem P. Putnam has been promoted to Oregon State manager of Pioneer National Title Insurance Company.

Donald E. Walters has been promoted to Midwest Region counsel.

Keith M. Hill has been appointed manager of Pioneer National Title Insurance Company's Washington County Operations in Oregon.



HILL



WALTERS

* * *

Crosley and Boeye, Inc., of Webster City, Iowa, has changed its name to Hamilton County Abstract Company. The change is to further effect a separation and identity of the abstract business from other business interests of Crosley and Boeye, Inc. (now Crosley and Foster, Inc.), which also is engaged in insurance and real estate activities. No changes in ownership or personnel are involved. The founder of the firm, Varick C. Crosley, was a charter member of the Iowa and American Land Title Associations.

* * *

C. H. "Jack" McGirr, formerly with Pioneer National Title Insurance Company, will become manager of Cascade Title Company, Eugene, Ore. He is a past president of the Oregon Land Title Association.



SMITH



WHITAKER

Commonwealth Land Title Insurance Company, Philadelphia, has announced the promotion of **Eugene W. Smith** to vice president and **Eugene J. Whitaker** to assistant vice president. Smith is presently responsible for agency operations in Pennsylvania, Delaware, and North and South Carolina.

Frank J. Ruck, Jr., and **P. Charles De Rita** have been appointed managers of the company's Germantown and South Philadelphia offices, respectively.

* * *



MENNENOH

John D. Mennenoh, manager of the Peoria (Ill.) County Division of Chicago Title and Trust Company, has been elected a vice president of the firm. He will continue as manager of the Peoria office.



Fort Worth Star Telegram Photo

The Fort Worth-Tarrant County (Tex.) Junior Bar Association recently selected Jack Rattikin, Jr., right, president of Rattikin Title Company, Fort Worth, to receive its Outstanding Young Lawyer Award. Mike Cummings, president of the association making the award, and Rattikin are shown with a plaque signifying the honor.

IN MEMORIAM



Theodore E. Warren

Word has been received of the death of Theodore E. Warren of Ashtabula, Ohio, who died June 4 after a brief illness. He was 71.

He was an active civic leader in the Ashtabula community and a member of the Ohio and American Land Title Associations. Mr. Warren received his law degree from Cornell and was admitted to the Ohio Bar in 1921.

He is survived by his wife, Ada Edsell Warren, a daughter, a son, and seven grandchildren.

USURY—continued from page 5

In the Arizona case referred to above, the court considered a commitment fee as "a fee paid for a promise to have the money available for long-term loans to borrowers when and if they were procured". The court added:

"Under proper circumstances a reasonable commitment fee is undoubtedly legal, and is not usury. However, even amicus curiae admit that it can be used as a cloak for usury, under certain conditions".

Since there is very little case law on the subject of commitment fees, this decision may well indicate a trend that will be followed by other state courts, namely, that the reasonableness of the fee must be considered.

Summary

The difficulty in setting forth conclusions for mortgage loan charges which would be applicable in all the states results from the fact that since the Depression interest rates have, in general, remained below the legal maximums. Now that this is no longer true, attorneys search in vain for court decisions which set forth necessary guidelines. Unfortunately, even such decisions as exist are not entirely consistent. A review of such cases, and the legislation that has recently been enacted in a number of states increasing maximum interest rates, only add to the confusion. For example, the term "points", as I have defined the term, (category A) is used interchangeably with the term "bonus", "premium", "loan origination fee" or "service charge".*

In certain parts of the country, however, the term "loan origination fee" or "service charge" covers the charges I have set forth under category B and/or C hereof. In addition, some of the recent legislation which permits the collection of a category B charge from the borrower refers to it as a "fee or discount not to exceed per cent of the amount of the loan". Other legislation that covers category B charges refers to a "processing and investigation fee not to exceed per cent of the amount of the loan", or, a "supervision and inspection fee not to exceed per cent of the amount of the loan".

* The basic rule to remember here is that if the fee, irrespective of what it is called and despite the fact that it is collected only once at the inception of the loan, cannot be justified as reasonable on the basis of the services rendered, the trend of the courts and of the legislators has been to regard it as a charge that must be included in the computation of interest.

An additional problem in formulating conclusions exists. The usury laws of a number of states applicable to a life insurance company are not applicable to banks or savings and loan associations.

In order, therefore, to determine the loan charges that can be made in a particular state, we must first know:

1. The type of lender making the charges;
2. What the charges are called;
3. What are the charges for; and
4. Who is paying them.

NYU Offers Program Featuring Title Study

The Real Estate Institute of New York University this fall will offer a program of study to qualify individuals to become title examiners and title readers. The program also is designed to prepare students to assume executive responsibility in the land title industry.

The course will meet two evenings a week beginning in September, and can be completed in two semesters.

Two lecturers for the fall semester have been selected. They are Daniel S. Chorne, counsel for The Title Guarantee Company, and Henry G. Fury, underwriting counsel, Chicago Title Insurance Company.

An industry advisory council composed of officers of American Title Insurance Company, Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, City Title Insurance Company, Inter-County Title Guaranty & Mortgage Company, Security Title and Guaranty Company, Title Guarantee Company, and Edward T. Brown of the New York State Land Title Association will meet periodically to evaluate progress of the program. The council assisted in designing the curriculum.

Further information concerning the program may be obtained by writing The Real Estate Institute, New York University, One Fifth Avenue, Suite 2-K, New York, New York 10003.

Three years after the Tennessee regulation became effective, it appears that the notice and waiver requirement is being observed and that it receives virtually no unfavorable comment. There appears to be a lack of uniformity across the state concerning the effect of the regulation. In

Nashville and in Chattanooga, where the seller customarily has furnished owner's title insurance until some sellers began to delete this provision from the contract, the increase in simultaneous issue is believed to be as much as five per cent. In Knoxville, where the seller customarily furnishes no title evidence, the increase in simultaneous issue appears to be negli-

gible. In Memphis, Mid-South Title reports its ratio of simultaneous issues has increased by 61.13 per cent since the regulation went into effect—but adds that simultaneous issues still are only 15.13 per cent of the mortgagee policies issued by the company. Another company reports that its simultaneous issues in Memphis have increased by approximately 25 per cent since the regulation became effective.

In Maryland, a series of attorney defalcations—coupled with the stark discovery that owner's title insurance was not being provided contemporaneously with coverage required by mortgagees—led to passage of a disclosure and disclaimer statute by the state legislature. The 1968 law requires, among other things, that a signed disclosure be in writing and notify real estate purchasers of their right to buy owner's title insurance at a stipulated premium set forth therein. The waiver must be signed prior to disbursement of mortgage funds and be retained by the insurer for a period of three years.

Frank W. Marsalek of Shenandoah Land Title Corporation estimates that issuance of owner's title insurance in Maryland has increased from 5 per cent of cases involving mortgagee coverage before the disclosure and disclaimer statute was passed to about 75 per cent of such cases since the law went into effect.

In Pennsylvania, the state insurance commissioner issued a bulletin effective August 1, 1968, requiring that:

"All title insurance companies and agents of title insurance companies issuing mortgagee's title insurance upon a loan made simultaneously with the purchase of all or a part of the real estate securing such loans, where no owner's title insurance policy has been ordered, shall, prior to the disbursement of the loan funds or the issuance of the mortgagee's title policy, cause the mortgagor to be advised in writing of the fact that a mortgagee's title insurance policy is to be issued, of the fact that such policy does not afford title insurance protection to the owner-mortgagor, and of the owner-mortgagor's right to obtain title insurance in his own favor; and if the mortgagor elects not to purchase

Mid-South Title's adaptation of the Tennessee notice and waiver form

NOTICE AND WAIVER

(Required by Departmental Regulation 30, Department of Insurance and Banking, State of Tennessee)

RE:
(Address or brief property description)

Pursuant to the Regulations of the Department of Insurance and Banking of the State of Tennessee notice is hereby given that a **MORTGAGEE'S TITLE INSURANCE** policy is to be issued to your mortgage lender, that such policy **DOES NOT AFFORD TITLE INSURANCE PROTECTION TO YOU IN THE EVENT OF A DEFECT OR CLAIM OF DEFECT IN TITLE TO THE REAL ESTATE WHICH YOU ARE ACQUIRING (SUCH AS UNPAID BILLS FOR LABOR AND MATERIAL, FORGERY, MISSING HEIRS OR TAX LIENS)**, and that an owner's title insurance policy in your favor for the amount of your purchase price (or for the amount of your purchase price plus the cost of any improvements which you anticipate making) may be purchased.

Departmental Regulations require that you sign the statement below if you do not wish to purchase this protection.

MID-SOUTH TITLE COMPANY, INC.
General Agent for
COMMERCE TITLE GUARANTY COMPANY

This is to certify that we have received the foregoing notice and waive our right to purchase an owner's title insurance policy for our protection. We acknowledge that Mid-South Title Company, Inc., and Commerce Title Guaranty Company shall have no responsibility to us for the status of the title to the real estate which we are acquiring.

.....
Signature of Mortgagor

.....
Signature of Mortgagor

CLOSER'S CERTIFICATE

As evidence of compliance with Departmental Regulation 30, Department of Insurance and Banking, State of Tennessee, I certify to Mid-South Title Company, Inc., and Commerce Title Guaranty Company that the foregoing NOTICE AND WAIVER was read by the Mortgagor(s) in my presence and that the WAIVER was signed by the Mortgagor(s) in my presence.

.....
Closing Attorney, Closing Agent or Notary Public

owner's title insurance, the title insurance company shall obtain from the mortgagor a statement in writing that the said mortgagor has received such notice and that the mortgagor waives the right to purchase owner's title insurance."

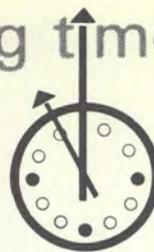
The bulletin goes on to set out the form of the written notice and waiver.

The action by the Pennsylvania state insurance commissioner resulted from suggestions by the Title Insurance Advisory Committee appointed by the commissioner. It is my observation that this requirement has increased simultaneous issues in the state.

A bulletin issued by the Title Insurance Division of the Treasurer's Office, State of Florida, requires that—effective May 15, 1969—"all title insurance companies and trusts and agents of title insurance companies, and members of trusts issuing mortgagee's title insurance" provide notice and waiver to real estate purchasers concerning mortgagee's and owner's title insurance. The language and waiver forms relating to the Florida regulation are similar to the insurance regulations issued earlier in Tennessee and Pennsylvania.

In general, the effect of laws or insurance regulations requiring that certain purchasers be informed about owner's title insurance seems to be favorable in the states where such measures now apply. A desirable result is that more home buyers are joining mortgagees in protecting real estate investments through title insurance.

meeting timetable



August 14-15-16, 1969
Montana Land Title Association
YoGo Inn
Lewistown, Montana

August 21-22-23, 1969
Minnesota Land Title Association
Edgewater Motel
Duluth, Minnesota

August 22-23-24, 1969
Ohio Title Association
Atwood Lodge
Dellroy, Ohio

September 4-5-6-7, 1969
Missouri Land Title Association
Plaza Inn, Kansas City, Missouri

September 11-12-13, 1969
North Dakota Land Title Association
Plainsman Hotel
Williston, North Dakota

September 12-13, 1969
Kansas Land Title Association
Lassen Motor Hotel
Wichita, Kansas

September 12-13, 1969
Nevada Land Title Association
Reno, Nevada

September 28-29-30, October 1, 1969
ANNUAL CONVENTION
American Land Title Association
Chalfonte-Haddon Hall Hotel
Atlantic City, New Jersey

October 9-10-11, 1969
Nebraska Title Association
Lincoln, Nebraska

October 16-17, 1969
Dixie Land Title Association
Calloway Gardens
Pine Mountain, Georgia

October 23-24, 1969
Carolinas Land Title Association
Whispering Pines Motor Lodge
Southern Pines, North Carolina

October 26-27-28, 1969
Indiana Land Title Association
Stouffer's Inn
Indianapolis, Indiana

October 30, November 1, 1969
Florida Land Title Association
Causeway Inn Resort
Tampa, Florida

October 30-November 1, 1969
Wisconsin Land Title Association
Holiday Inn
Eau Claire, Wisconsin

October 31-November 1, 1969
Land Title Association of Arizona
Francisco Grande Hotel
Casa Grande, Arizona

December 3, 1969
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

1970

April 1-2-3, 1970
MID-WINTER CONFERENCE
American Land Title Association
The Roosevelt Hotel
New Orleans, Louisiana

October 7-8-9-10, 1970
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York, New York

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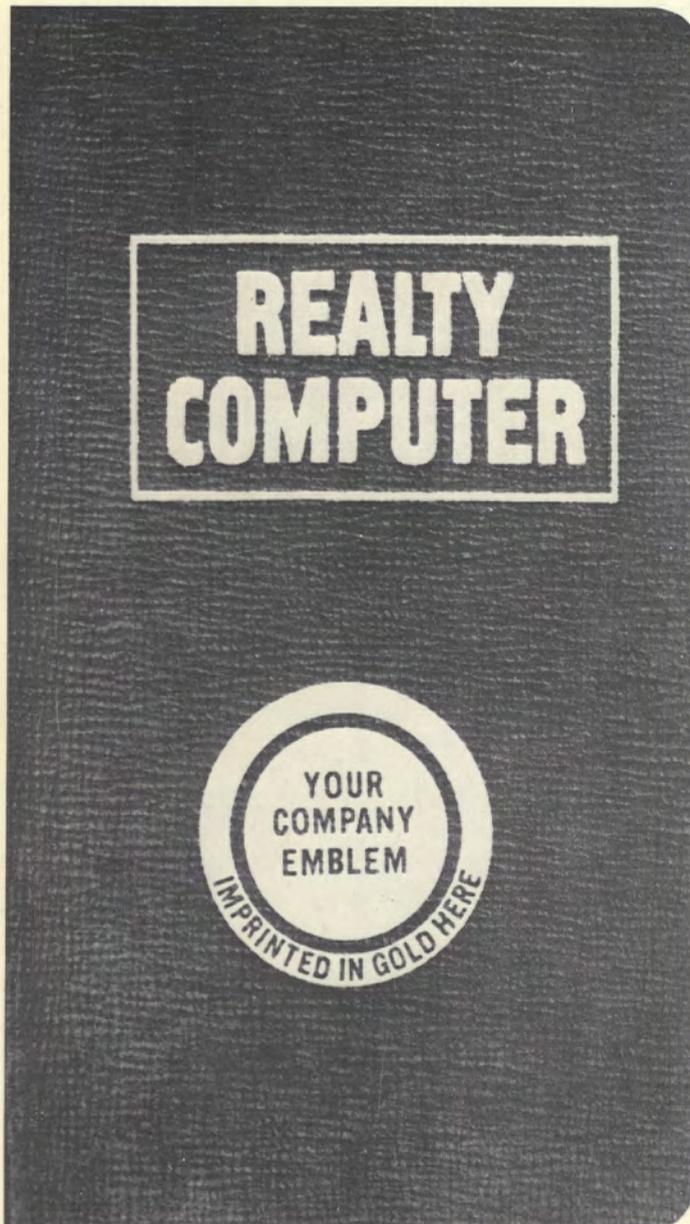
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