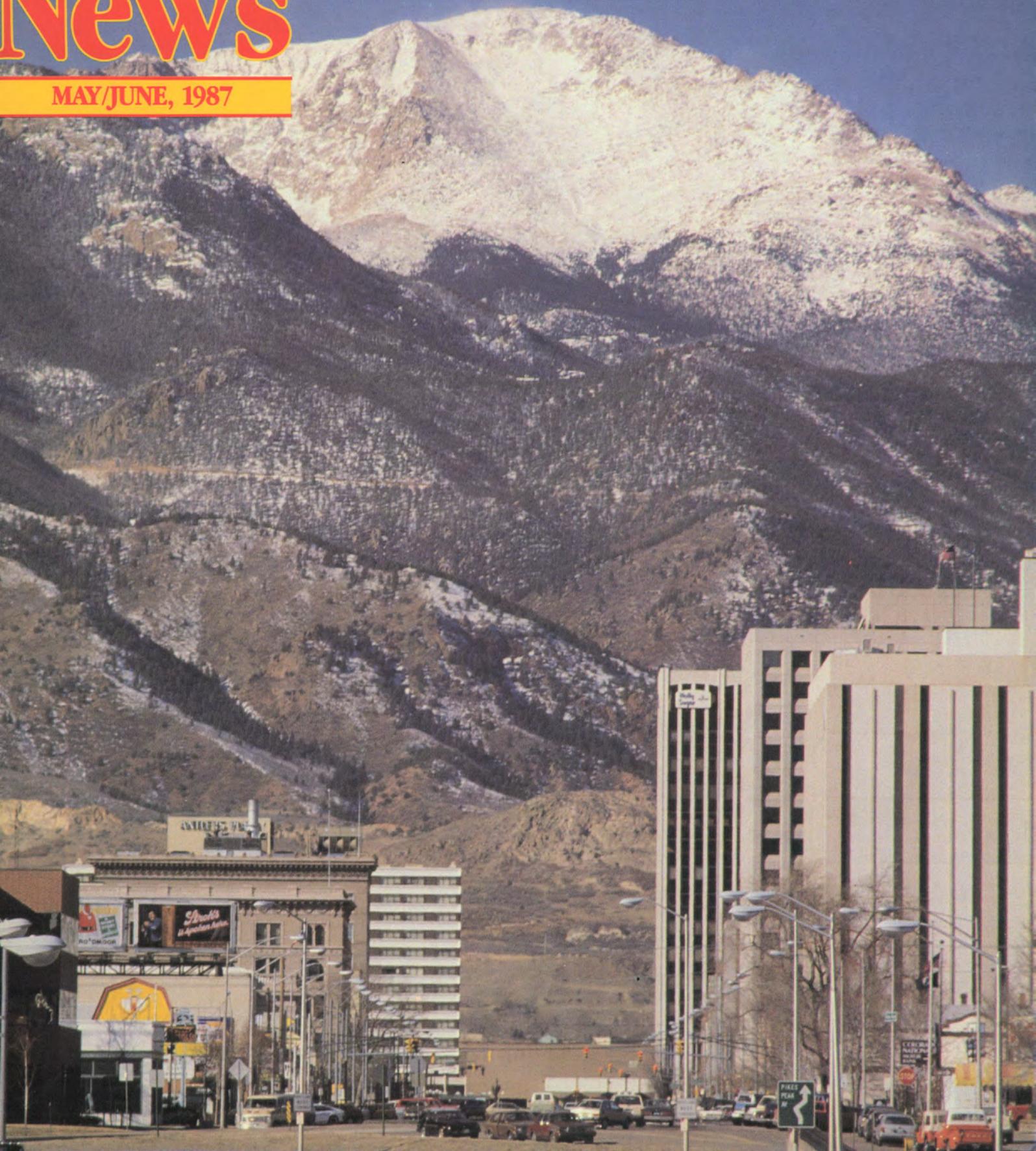


Title News

MAY/JUNE, 1987



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Title News

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Front Cover: Rising majestically to a height of 14,110 feet west of Colorado Springs is Pike's Peak, with a summit among the highest in the Rocky Mountain Range. The peak was discovered in 1820 by Army Colonel Zebulon Pike, who said, "It will never be climbed." Today, motorists can drive to the top. The Broadmoor Hotel, Colorado Springs, is the site of the 1987 ALTA Western Regional Title Insurance Executives Meeting June 11-12. (Photograph by Tom Kimmell)



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1. To join Archive Retrieval System, Inc., please complete the application found to the right. There is registration fee of \$75.00. Sign the application, enclose a check for the registration fee, and mail both to the address given on the application.
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Type or machine

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Type or machine

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Account numb

It Takes.

Form Approved OMB No. B. TV
1 FHA 2 FMHA
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SETTLEMENT STATEMENT
STATEMENT OF HOUSING AND URBAN DEVELOPMENT
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own. Items marked "(p.o.c.)" were paid outside the closing; they are shown here fo
cluded in the totals.

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2

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Enclosed is our company check for \$75.00 to cover the onetime setup fee. Our organization is:

Name _____

Address _____

City, State, Zip _____

Employer ID Number _____ Phone _____

We would like to take advantage of ARS's Reporting Service for Real Estate Closing Information. In order to participate we agree to provide ARS with the required closing information in the ARS prescribed format. Submissions will be in batches of not more than one hundred (100) items and will occur at least monthly. Failure to submit batches as soon as 100 documents are accumulated may cause delay in processing. We further understand that the enrollment is not binding on our part, but we intend to participate through 1987.

Our monthly volume is approximately: (check one)

0 - 50 51 - 100 101 - 150 151 - 200 more than 200

A company check for \$.50 (fifty cents) per item will be sent with each batch submitted for processing. Reject items (i.e. illegible, incomplete, hand written, improper form or other condition that prevents processing) will be charged an additional \$.50 per item if the number of rejects exceeds 3% of the batch. Special request reports will be available for a \$50.00 set up charge plus \$.10 (ten cents) per record processed. ARS will return a processed copy of the batch control sheet and a printed list containing each processed item within two weeks of submission. Corrections are to be made to the printed list and included with the next submission. Magnetic media in the IRS format will be provided before January 31, 1988 (quarterly if volume is sufficient) and each subsequent year along with a printout of the included data and run totals balancing to submitted control sheets. The enrolled organization is responsible for validating the data and submitting the magnetic media to the IRS. ARS's only liability is to correct errors identified in the listings and provide replacement media for submission. Please note that all information given to ARS is held in strict confidence and will be used only for reporting to the IRS. This information will not be used for any other purpose and will never be sold without your written permission.

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A Message from the Chairman, Title Insurance Underwriters Section



One of the most significant challenges facing the title insurance industry today, and one which will affect our industry's future profoundly, is the pace of change in the area of financial services. The push for deregulation of financial institutions is responsible for much of the change process.

The recent advent and growth of the home equity loan is a prime example of a new product available due to the restructuring of the financial services industry and the new tax act. A major challenge here is to meet the needs of the lender/customer in a cost effective and efficient manner. While the size of such transactions is small, recent articles in the press indicate that the volume of these transactions is high due to recent tax changes. One estimate has the dollar value of second mortgages outstanding jumping to \$400 billion by 1990 from \$175 billion today, largely because of home equity loans.

The industry's response to this opportunity has been uneven to date, partly due to varying requirements of lenders across the country. Lenders in the west require a title policy based on a closing by mail, which is in itself a challenge. In the midwest, some do not necessarily require title policies, but handle recordings by mail. Obviously, this is a potential market that requires a highly automated environment in order to be profitable.

How we address home equity loans is but

one example. The point is, the title insurance industry has had a somewhat stable product concept in the past. We must now be willing and able to flex and change in order to respond to challenges and opportunities presented to us. The changes that we are seeing in the financial services area today are signals of even more dramatic change in the years ahead.

The market will demand creative response from the industry. Our response should be thoughtful as certain patterns of change shift or increase risk. In my view, the record is clear that our industry has absorbed more than its share of risk in recent years. Regrettably, technology has made the transfer of information or assets much faster than reasonable control procedures and their human users can handle. Our operating environment is shifting further away from safety and security due to automation, depersonalization, and the mobility of capital.

We must meet the challenge, but not at the price of policyholder security.

A handwritten signature in dark ink, appearing to read 'Richard P. Toft'. The signature is stylized and cursive.

Richard P. Toft

"There's hardly anything in the world that some men cannot make a little worse and sell a little cheaper, and the people who consider price only are this man's lawful prey."

John Ruskin (1819-1900)



R. "Joe" Cantrell
"A title agent for title people"



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Be Wary of 1099-B Service Contracts

Widespread uncertainty has continued in the land title industry over how to comply with real estate reporting requirements of the Tax Reform Act of 1986 that became effective January 1, 1987. Regulations on compliance were not forthcoming from the Internal Revenue Service in the early months of the year, and there has been considerable puzzlement among those in title and settlement operations as to who must report and how this is to be done.

Standing prominently in this hurricane's eye of confusion is the newly-required Form 1099-B and its information that must be sent to IRS, by those so designated, on "magnetic media."

At this point, it is up to title executives concerned to decide whether to engage service companies for this reporting, or to find other means such as incorporating the function into their own automation capability. In considering what to do, those facing 1099-B compliance are advised to study their options carefully before signing a long-term service contract—and to remember that "magnetic media" reporting does not necessarily have to involve expensive, mainframe computer tapes.

Some Hard Facts

It should be remembered that IRS *will accept* 5¼-inch, floppy diskettes. Computer tapes *do not have to be used*. Even a home computer using 5¼-inch diskettes can produce the IRS reports, although its owner might have to seek technical assistance. It is estimated that the bottom price range for an adequate computer can be as low as \$600.

Among service companies, some with reliable records are reported to be charging *less than \$5 per transaction* for producing these reports. On the other hand, a spot check of the market recently found others who charge *four times as much*.

These variables underscore the need for a close appraisal of individual needs and capabilities before making a substantial commitment to 1099-B reporting. Title agents should

check with their underwriters to determine if more economical 1099-B processing is available from this source, and the regulations should be studied in case there is an alternative that will make the electronic processing unnecessary.

Careful Study Needed Re 'Magnetic Media'



Haviland

As this is written, the Internal Revenue Service has not yet issued regulations for compliance with real estate reporting requirements of the Tax Reform Act of 1986. In view of widespread interest among those in land title and settlement operations in these new requirements and the use of "magnetic media" to handle the reporting function on IRS Form 1099-B, the surrounding automation situation is reviewed in the accompanying article, which has been prepared for the consideration of managers concerned with this activity.

It is hoped that the article will help readers of *Title News* develop an informed perspective so they will be in a better position to make decisions on their own 1099-B processing.

Comments may be sent to me at South Ridge Abstract & Title Co., 229 S. Commerce, Box 1070, Sebring, FL 33870, and please send a copy to ALTA staff in Washington, D.C.—Chairman John D. Haviland, ALTA Land Title Systems Committee.

What Does It Really Cost?

Here is a rough projection of 1099-B processing costs, based on the presently known required information consisting essentially of seller's name, social security number and address; gross proceeds; date of closing; and whether property is seller's principal residence.

A computer operator should take less than one minute to enter the aforementioned data. Skilled word processors earn about \$10 per hour; \$10 divided by 60 minutes will equal 17 cents for labor costs.

Also to be included are the cost of a computer and printer to print the hard copy 1099-B forms to send to real estate sellers at the end of the year. As previously stated, a computer which will handle the job can be purchased for as little as \$600, a printer would be roughly an additional \$300, and the 1099-B blank forms—it is believed—will be free at IRS offices.

A volume of 100 closings per month is 1,200 per year; 1,200 × 17 cents per transaction equals \$204 annual labor cost.

Postage would be \$264, even at non-bulk rates of 22 cents, and envelopes should cost less than five cents each, or \$60. It may be possible to deliver a copy of 1099-B at settlement.

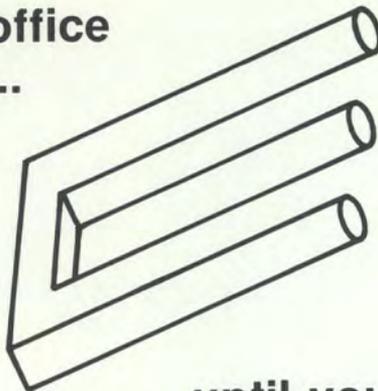
Allowing another minute per transaction for printing the hard copy 1099-Bs and stuffing envelopes would add \$204 to labor costs.

All this would total \$1,632, or \$1.36 per transaction. Amortizing the cost of computer and printer over five years would bring a total of \$912, or 76 cents per transaction.

On the side of doing the 1099-B work within the title company is the argument that it takes longer to fill out an information sheet (a separate sheet is needed for each transaction) to send to the service company than to process the form directly. Using the service company would require paying both that company and the title company employees working on this activity.

Continued on page 39

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Congressional Close-Up for TIPAC Leaders During Trustee Seminar in Washington

Board and state trustees of the Title Industry Political Action Committee (TIPAC) recently gathered in Washington, D.C., for a day and a half seminar to review the PAC's fund-raising efforts; gather insights on the 100th Congress and its key committees; increase the title industry's visibility on Capitol Hill; hear talks by Washington luminaries; and have direct contact with members of Congress.

The TIPAC representatives journeyed to Capitol Hill for evening dinners with Representatives Stephen Neal (D-NC), Buddy Roemer (D-LA), and Thomas J. Manton (D-NY) to develop a perspective on the latest developments in Congress. Informal views were shared on subjects ranging from the Iran-contra problem to the real estate reporting requirements of the Tax Reform Act of 1986. These private dinners, first of their kind for TIPAC, proved an extremely successful way to launch the forum.

The following day brought a stimulating political program that offered a variety of speakers and panel discussions. At the invitation of ALTA President John R. Cathey, The Bryan County Abstract Company, Durant, Oklahoma, Senator David Boren (D-OK) discussed campaign reform legislation introduced this year, which he said is responsive to growth in political spending that is out of control.

Federal Election Commissioner Lee Ann Elliott offered practical advice on ways to make the overall PAC system work ethically and effectively.

"Examples from Allied Association PACs" was the subject for a discussion presented by a panel that included Mark Bolduc, MORPAC (Mortgage Bankers Association of America); John Kinan, BUILDPAC (National Association of Home Builders); and Randall Moorhead, National Republican Congressional Committee (he formerly was in charge of the National Association of Realtors PAC). They shared experiences and offered a number of ideas on developing PAC literature, fund raising, and state-level activities.

Mel Kensinger, Commonwealth Land Title Insurance Company, Colorado Springs, Colorado; David Lanier, Lawyers Title Insurance Corporation, Albuquerque, New Mexico; and Richard Strecker, Chicago Title Insurance Company, Akron, Ohio, formed the state trustees panel, which focused on "Successful State Fund-Raising Tactics." Their discussion included carrying ideas from the allied association panel forward on the state level.

Trustees Praise Seminar Content

Trustees in attendance at the recent TIPAC seminar in Washington had these comments:

I just want to express my appreciation and congratulations for what I thought was the best TIPAC meeting I

TIPAC Chairman Roger N. Bell, The Security Abstract & Title Company, Inc., Wichita, Kansas, reviewed TIPAC's accomplishments for the trustees. TIPAC funds received last year were put to good use in the campaigns of 59 congressional candidates, he said, 88 per cent of whom were re-elected. Chairman Bell also announced that the TIPAC Board of Trustees has agreed to add two more TIPAC membership categories: the \$350, "Gold Club" membership and, for contributions of \$500 or more, "Chairman's Club" membership. The carryover categories are as follows: \$25, "Supporting" membership; \$50, "Active" membership; \$100, "Sponsor" membership and, \$200, "Sustaining" membership. He challenged the leadership of TIPAC to raise, in 1987, at least \$50,000 for supporting the campaigns of appropriate congressional candidates from both parties.

Washington Post Columnist Haynes Johnson wrapped up the program with, "A Look at

Continued on page 12

Continued on page 12



Senator David Boren (D-OK), second from left, is shown at breakfast with TIPAC's trustees at the PAC's recent seminar in Washington, D.C. Senator Boren began the day's program by speaking on campaign reform legislation. From left are TIPAC Chairman Roger N. Bell, The Security Abstract and Title Company, Inc., Wichita, Kansas; ALTA President John R. Cathey, The Bryan County Abstract Company, Durant, OK, who is Oklahoma State trustee; and TIPAC Board Members D. P. Kennedy, First American Title Insurance Company, Santa Ana, California; and Joseph D. Burke, Commonwealth Land Title Insurance Company, Philadelphia.



In these photographs taken on Capitol Hill at private dinners preceding the TIPAC seminar in Washington, PAC trustees and Congressmen gather for an exchange of views on a variety of subjects. At top, Congressman Thomas J. Manton (D-NY), left, is shown with Board Trustee Joseph D. Burke, Commonwealth Land Title Insurance Company, Philadelphia, center, and State Trustee Gerald L. Lawbun, Lawyers Title of Northern Nevada, Reno, right. Center: State Trustee F. Alton Russell, SAFECO Title Agency of North Carolina, Inc., Raleigh, left, is with Congressman Steven Neal (D-NC). In the lower photograph, Congressman Buddy Roemer (D-LA), center, is shown with State Trustee Jess R. Nelson, Ticorn Title of Louisiana, Inc., New Orleans, left, and TIPAC Chairman Roger N. Bell, The Security Abstract and Title Company, Inc., Wichita, Kansas.

SEMINAR—continued from page 11

the 100th Congress." Johnson is a Pulitzer Prize winner, author and television commentator. His enlightening speech was well received as he gave personal observations and shared his experience on the political scene.

A number of the trustees also visited with their Representatives and Senators on Capitol Hill before and after the program.

TRUSTEES—continued from page 11

have ever attended. I was most impressed with the format, and especially enjoyed Steven Neal, congressman from North Carolina.—D. P. Kennedy, president, First American Title Insurance Company, Santa Ana, California.

At our weekly company staff meeting, I was holding forth on TIPAC, its great contribution and the responsibility that our management has to further its cause. All were in agreement.—Joseph D. Burke, president and chief operating officer, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania.

I really enjoyed the meeting in Washington. Every guest and speaker was excellent and most enjoyable, and I thank you again for arranging such an interesting and informative program.—Jess R. Nelson, president and chief title attorney, Ticorn Title of Louisiana, New Orleans.

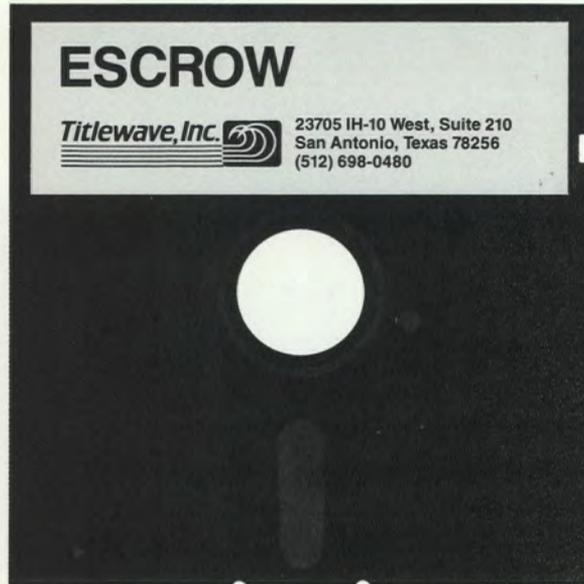
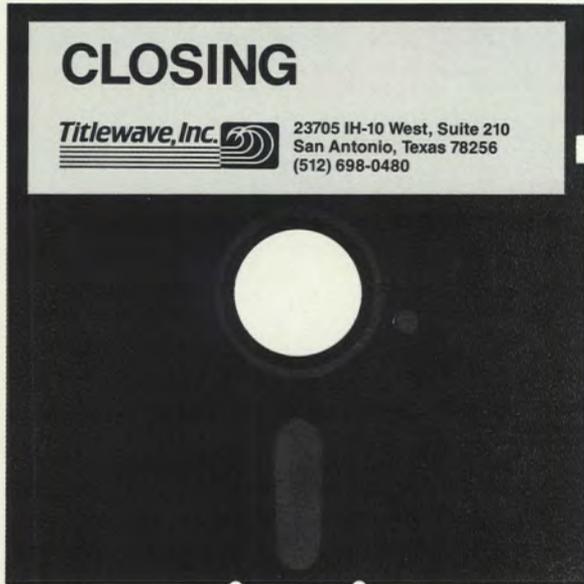
I thought it was mutually beneficial to the trustees as well as the congressmen who attended. We had a very informative meeting with Representative Steven Neal (D-NC), which lasted about three hours, in which there was a great exchange of ideas. It was very helpful.—F. Alton Russell, vice president, SAFECO Title Agency of North Carolina, Inc., Raleigh, North Carolina.

It was one of the most interesting, informative and professional TIPAC meetings I have ever attended. The participants, the program and the speakers—everything really was very professional. Everyone learned a lot, especially from the allied association panel.—Billy Vaughn, president, National Marketing Division, Ticorn Title Insurance Company of California, Dallas, Texas.



In these views from the TIPAC Trustee Seminar in Washington, ALTA President John R. Cathey, right, Oklahoma state trustee for the PAC, greets Oklahoma Senator David Boren, top left. At top right, Washington Post Columnist Haynes Johnson addresses the group. TIPAC Chairman Roger N. Bell and Federal Election Commissioner Lee Ann Elliott are shown in the left and center photographs, middle row, respectively. At middle, right, Texas State Trustee Billy Vaughn, right, talks with Mark Bolduc of MORPAC. At bottom, left, from left, State Trustees Mel Kensinger (Colorado), David K. Lanier (New Mexico), and Richard E. Strecker (Ohio) join in a panel presentation. At bottom, right, State Trustees W. Scott Bronson, Jr. (Arkansas) left, and Jeffrey A. Rimer (Pennsylvania), take a break.





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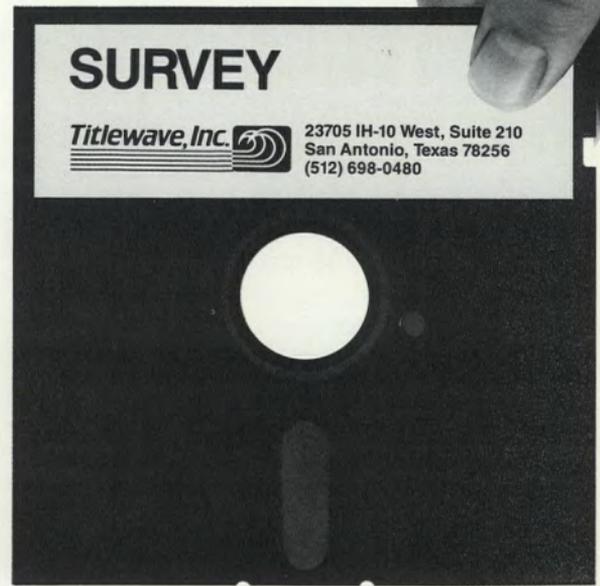
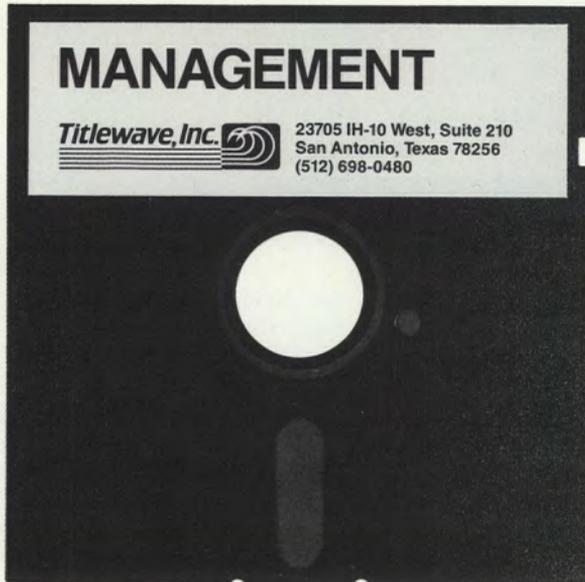
Quickly create examiners reports, waivers, commitments, interim construction binders, mortgagee's policies, and owner's policies with this program. It also features an underwriters remittance report by underwriter and integrates the commitment into the OTP and MTP automatically. 150 hard coded wordings are stored in the existing system. Additionally, wordings may be created by the user and stored for future use. This program integrates with our Document Preparation Software.

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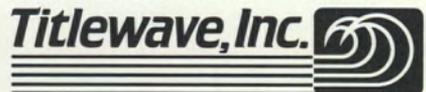
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Current Problems in Bankruptcy

Thomas G. Stapleton

Betty J. Schall

Michael G. Magnus

Thomas Stapleton

Some well-qualified authorities have stated that the filing of a petition in bankruptcy does not have any effect upon title, although it serves as a caveat to the world and is in effect an attachment and injunction.

In recent years, we have had greater occasion to consider this "caveat" because of the increase in the number of bankruptcies.

We are fortunate to have two people with us who may be able to give us a better understanding of these matters. Of course, those who have specific bankruptcy problems should check with counsel familiar with the law as it exists in their particular federal and state jurisdiction. But Betty Schall and Michael Magnus will provide you with some assistance in dealing with some of the more common problems encountered with bankruptcies.

Betty will start by dealing with the problems created for the examiner of titles when a bankruptcy petition is disclosed on your commitment or preliminary report, and Michael thereafter will tackle the problems we confront where a party in the chain of title has filed his petition and received a discharge prior to the date of our title evidence.

Betty Schall

The ALTA commitment form is used in many localities for reporting on title. In an example, let's say it shows a sale for \$100,000, with the proposed insurance to come, and the seller, John D. Jones and Mary J. Jones. On Schedule B, after the 10 standard exceptions, there are general real estate taxes on the property; there are two deeds of trust; there are two judgments; there is a federal tax lien; and then there is a lien claimed by the

State of Washington Department of Social and Health Services; and there is a pending bankruptcy proceeding that John and Mary filed April 22, 1986.

Now, let's look at this pending bankruptcy and how it affects the title. Who needs to sign the deed? How do you determine that? How are the various encumbrances on the property affected by the pending bankruptcy, if at all?

The first thing that might be noticed is that we vest in John D. Jones and Mary J. Jones. We don't make any reference to the fact that they are in bankruptcy proceedings. I don't know how all of the title underwriters do it, but under the new code that went into effect in 1978, I believe that the property is still vested in the bankrupt. Even though the bankruptcy trustee has to administer the bankruptcy that's in a representative capacity, similar to someone who's under a guardianship, and the property still is vested in the bankrupt, unlike the way it used to be under the Bankruptcy Act before 1979.

The first inquiry that needs to be made when there is a pending bankruptcy against the seller is whether or not this is exempt property. The way to determine that is by looking at the schedule that the debtors filed at the time they filed their bankruptcy petition. The schedule lists all of their real property; it lists all of their personal property; any pending action that they are involved in in court; and it also lists the property that they claim as exempt.

Now, in some states including Washington, the debtor has a choice between the federal and the state exemptions. The federal exemptions are more generous on personal property, and less generous on real property than many state homestead exemptions.

In Washington, the state homestead exemption is \$25,000. So, most debtors who have any substantial equity in their property take the state exemption.

In Oregon, I understand that, by statute, the debtors don't have that option. They have to take the state exemption. They can't choose the federal exemption.

Let's say that John and Mary have listed this property as exempt. Then, what do you need to determine? How do you know that the

court has allowed those exemptions? That's not as easy as it used to be under the Bankruptcy Act. Under the act, an order was entered approving the exemptions. But that is not done under the code.

Now, if the exemptions are not challenged by 30 days after the conclusion of the first meeting of the creditors, then the exemption stands. You have to depend on the negative, the absence of any objection to the exemption within 30 days after the meeting of the creditors, which means the exemption is allowed.

Obviously, if you find anything in reviewing that bankruptcy file that indicates anybody has challenged the exemptions, you probably will want to raise a question about that, and at least talk to your underwriter or legal counsel about it.

One thing to bear in mind on exemptions is that only individuals get to take exemptions. If this were a corporation or partnership selling the property, they would not be entitled to any exemption, so you wouldn't have to make that particular determination.

If the property is exempt, and if 30 days have gone by after the first meeting of the creditors, and nobody has challenged the exemption, then the debtors would deal with this property as though it were not in bankruptcy. The liens and judgments would have to be paid in the normal course of events.

The debtors would be the ones who would sign the deed, and nothing would need to be done by the bankruptcy court. If it is not exempt property, or if the debtors had so much equity in it that it was above the homestead amount of \$25,000 in Washington or \$20,000 in Oregon, so that you had some equity that was being administered by the trustee, then you would have to have deeds from both the debtor and the trustee, because you would have partially exempt property up to the homestead amount. Above that amount, you would have the property being administered by the trustee for the bankruptcy estate.

If you have totally non-exempt property, then you would, at the minimum, have to have the trustee's signature on the deed, which would require a court order approving the sale. Some underwriters might also require the debtors to sign to release any interest that

the debtor may have.

Now, how do we deal with the various liens and encumbrances on the property? If this is just a normal sale where no one is attempting to sell the property free and clear of liens, then these liens and judgments would just be paid in the normal course of events, as if there were no bankruptcy pending.

The real estate taxes are paid in any case, so those will have to be paid off in closing as though there were no bankruptcy.

The deeds of trust would have to be reconveyed and the judgments would have to be released, and the same is true with the tax lien and the social and health services lien.

If this were a sale where the trustees were attempting to sell the property free and clear of liens, then we would have to deal with it a little differently. A sale free and clear of liens is when the bankruptcy estate sells property free of liens that had attached by operation of law, like the judgment liens, or by voluntary encumbrance of the property, such as the deeds of trust these encumbrances attach in the same priority that they had on the property to the proceeds of the sale.

There are limited circumstances in which a trustee can have a sale free and clear of liens. When this is done, there is a procedure. Obviously, when you are removing liens from real property, and not paying people off, title insurers have to be very careful.

Sometimes bankruptcy trustees and attorneys for debtors have trouble understanding that title companies are not enthusiastic about insuring sales free and clear of liens that are attached to the property when they know people are not being paid off. Often, bankruptcy attorneys and trustees will try to take shortcuts and not follow the code, and say, "Well, I don't really have to do this. I don't really need to document all of these things, and what you're asking us to do is burdensome to us. We shouldn't have to go through this procedure."

I think insurers need to be careful because, if there is a problem with the sale later on, and one of those lien claimants asserts his interest wasn't properly dealt with, if someone challenges a sale free and clear of liens, insurers are the ones who have to pay the court costs of litigating and whatever judgment may be entered.

When there is a sale free and clear of liens, the trustee has burdens under Bankruptcy Code, Section 362, Subsection f.

The citation says: "The trustee may sell the property under Subsection b or c of this section free and clear of any interest in such property of an entity, other than the bankruptcy estate, only if . . ."

There are five situations that allow such a sale:

1. The applicable non-bankruptcy law would permit a sale of such property free and clear of such interest;

2. If such entity consents to the sale; or,

3. If such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or,

4. If such interest is in bona fide dispute; or,

5. If such entity could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

The bankruptcy trustee has to show at least one of those things to the court in order to be able to sell property free and clear of the liens. The bankruptcy trustee does this by sending a notice of the proposed sale free and clear of liens to all of the creditors of the estate. That notice has to list the sale price of the property;

it should list all of the liens that the bankruptcy trustee is trying to sell free and clear of; and it should be very specific. Just a general notice without saying it is to be free and clear of liens, just saying there is to be a sale, or a notice that is not specific about what is being attempted is adequate.

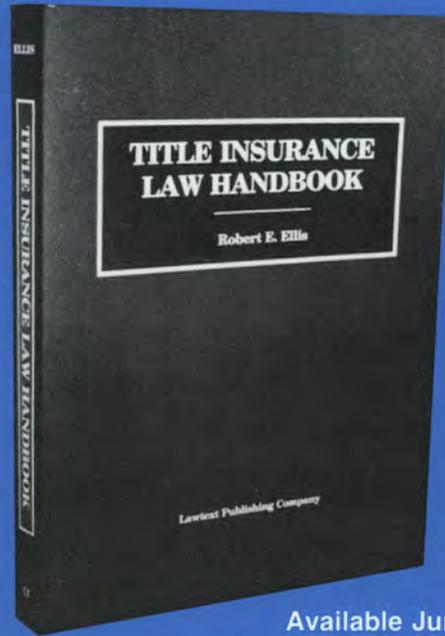
After that notice is sent, the creditors must at least have an opportunity for a hearing to be held. They have to be given a date by which they can file objections to this sale. The objections have to be in writing, and filed with the bankruptcy court. Then, if there are no objections—or if there are, and the court has a hearing and determines that the sale free and

Continued on page 19



From left, Authors Stapleton, Schall and Magnus discuss bankruptcy problems of interest to the land title industry (top photograph) during the recent ALTA Regional Seminar held in Jantzen Beach, Oregon. Stapleton is senior associate title counsel, Ticor Title Insurance Company, Portland, Oregon; Schall is assistant regional counsel, Chicago Title Insurance Company, Seattle, Washington; and Magnus is vice president and counsel, Oregon Title Insurance Company, Portland. The accompanying article is adapted from their seminar presentation. In the other photograph, Schall discusses a question with a seminar attendee at the conclusion of the program.

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About the Author

Robert E. Ellis, a member of the Illinois Bar, and formerly general corporate counsel and secretary of Chicago Title Insurance Company, brings over 25 years experience to this subject, in all phases of title insurance law. Entering private practice in 1983, he is now of counsel with the Chicago firm of Nagelberg & Resnick.

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clear is still in the best interests of the bankruptcy estate—the court enters an order, which should be very specific. It should specifically describe the property, preferably by a legal description; it should specifically list the liens that the property is to be sold free and clear of; and it should contain a statement as to which of the grounds from Section 362(f) the court has found the trustee has met.

Sometimes, the creditors will allow the sale and agree their lien is to be transferred to the proceeds from the real property. Obviously, if it is stipulated by all of the people who show on your title commitment as having a secured interest in the property, you are in a lot better position than if somebody has objected or somebody has not objected but has not participated in that proceeding.

Title insurers need to be especially careful when someone is attempting to sell property free and clear of an Internal Revenue Service lien. Tax liens are not dischargeable in bankruptcy, and the debtor normally will come out of the bankruptcy, if all the taxes have not been paid off by the trustee, with those still attached to him. He cannot be discharged from those, even though the bankruptcy court has jurisdiction over the IRS, and certainly has authority over them. Whenever we deal with the IRS, I think our experience is that we have all had our fingers burned at one time or another. As underwriters, we want to be particularly cautious if somebody is trying to sell clear of an IRS lien, and the IRS has not consented to have their lien attached to the proceeds.

At a minimum, we should be sure there are enough proceeds from the sale that the IRS is going to be one of the creditors who is paid off in full. If they are not, you definitely should review it with counsel before you are willing to insure free and clear of that IRS lien, because litigation with the IRS can be very expensive, as I think we all know.

Once the order is entered that specifically lists all of the liens that the property is being sold free and clear of, there is still an appeal period, unless everyone who has a secured interest in the property has stipulated to their liens being transferred to the proceeds. The appeal period is a minimum of 10 days after the order is entered, during which time parties in interest can object. You want to be sure no appeal has been filed during that period before you rely on that order to sell free and clear, and I know that is one of the most common problems I have had with attorneys for debtors and attorneys for trustees in dealing with these orders. They typically wait until the last minute to get them entered. They then send them over to us. The order is not sufficiently detailed, and does not list all of the liens. Sometimes it doesn't even show the sale

price, and they want us to rely on it the day it is entered in court. That's something that, in general terms, I think we are unwilling to do, because there is a chance of an appeal of that.

If there is an appeal and it is found that one or more of those liens is still attached to the property, then the title insurer is going to have a real problem.

QUESTION FROM THE AUDIENCE: What happens if a judgment comes in after the bankruptcy has been filed? Do they have to make an attempt to remove that?

STAPLETON: Normally, when someone files bankruptcy, all actions against them are stopped by law. No one is supposed to be able to do anything with that debtor. If someone has a judgment entered against him after the bankruptcy is commenced, especially if it's a sizable judgment, I would require their attorney to go to court and have that judgment voided on the basis of bankruptcy, because it's their problem to fight it out in court. It's appropriate to require them to have that judgment voided, at least if it is a sizable one.

If it's a very small judgment, and they're dealing with property that is exempt or is clear, but their equity is less than the homestead amount anyway, you may feel comfortable taking out that judgment on that basis. But, on sizable judgments, I would definitely require that their attorney—which isn't difficult for them to do—go to court and enter proof of the bankruptcy.

Betty, maybe you could answer a question for me. What happens if a bankruptcy is filed after a sale on the trustee's administrative foreclosure, but before the trustee's deed is given? What is the effect of that?

SCHALL: I think that's a real gray area.

STAPLETON: I think it is, too.

SCHALL: In a case where the pendency of the bankruptcy had stopped the sale because the sale had not occurred until the deed was delivered, and the deed hadn't been delivered, I think we probably would not want to insure through that trustee's deed at that point.

STAPLETON: I think that's a reasonable position. I allowed myself to be talked out of that same thing by an attorney in Portland, and I would normally wait more than 10 days before they record it, and in the interim, there is a bankruptcy intervening. I was convinced to take it out, based upon the provisions of our statute which deals with trustees, that the sale terminates the interest of all parties to whom notice is given. There is authority in other parts of the country that, if the sale terminates the interest, there is nothing for that automatic statute to offer it on.

SCHALL: I think we agree that the effect on the title is a gray area. Sometimes we might be willing to go with it, depending on our state law, but we want to be really cautious about that. It is a situation where there could be some litigation about whether or not

the trustee's sale was stopped, even though it had actually occurred, because the deed had not actually been delivered, or there was a question about delivery.

STAPLETON: Another question I have is whether or not an intervening bankruptcy would extend the time for bringing an action. In Oregon, we used to have six months to bring an action to foreclose a construction lien, and there are other statutes. Also, what effect would it have upon the redemption right? Would it extend the time for exercising redemption? In Oregon, the time limit used to be a year; now, it is 180 days.

SCHALL: Again, I think that is really a gray area. I don't think there has been a lot of case law on it.

MEMBER OF THE AUDIENCE: There is a federal appellate court case from another state, either Minnesota or North Carolina, which holds that the filing of a petition in a bankruptcy does not stay the running of a redemption period, but it doesn't stay simply the running of the clock. It will stay an affirmative action to foreclose but, if the clock is just ticking away, it doesn't hold that ticking of the clock.

There are a couple of court cases in Colorado which indicate that the filing of a petition of bankruptcy may extend the period of redemption up to 60 days, under, I think it's 108(b) of the Bankruptcy Code. But, if the bankruptcy is filed more than 60 days before circuit court, this is in Colorado, the period of redemption might be extended as much as 60 days.

MAGNUS: Let me interject. There is a split of authority among the courts. Some courts have specifically said that Section 362 automatically stays the period of redemption. In other words, the filing of the petition automatically stays any period of redemption. Other courts have held that the period of redemption is not automatically stayed.

The 60-day period provided for under Section 108(b) is a given. I think the Ninth Circuit has a case in point.

In a related area, Judge Hess, here in Portland, has ruled that, notwithstanding the period of redemption, a Chapter 13 debtor, under a Chapter 13 filing, can cure, subsequent to a foreclosure sale, the default. That's under Section, I think, 1324(a)(1).

So there is some possibility that, given your particular area, you may have a statute being tolled for that period of time.

SCHALL: A lot would depend on your state laws.

MAGNUS: it depends on how it's interpreted.

SCHALL: I think title insurers usually take a conservative position on that. Not only do we want to avoid bad outcomes of cases, but we want to avoid being involved in cases at all, because of the attorneys' fees that we incur, even to win. I think in general we take a very

conservative approach where there is a split in circuits, when it really hasn't been resolved.

One other thing I want to cover is how different chapters would affect our example. We talked about Chapter 7. If there were a Chapter 11, which is the business reorganization chapter, who would sign the deed would depend on whether or not there is a trustee. Normally, in Chapter 11 these days, we see the debtor in possession. If the debtor were in possession, and there is no trustee, then the deed should be signed by the debtor-in-possession. If there is a trustee, then the deed should be signed by the trustee.

In a Chapter 13 proceeding, you would want a deed from the debtor, certainly, and you would probably want either a deed from the trustee or a court order allowing the sale. Because the debtor buying or selling the property, even exempt property, might affect his ability to make payments under the plan. I am aware of at least one case in Seattle Federal District Court where it was found that, even though the debtor was dealing with exempt property, he still should have obtained an order from the bankruptcy court when he was under a Chapter 13, because it affected his ability to make payments under the plan.

The fact that he had sold one house that was his residence and bought another changed his payment ability, so that's something to bear in mind.

MAGNUS: There is a current Eighth Circuit rule that you cannot toll the period of redemption, absent fraud. So there is one circuit that says you cannot toll it, but there are courts that will allow it.

Michael Magnus

My report is the Oregon title report, and I am going to handle mine a little bit differently. I am going to go through the exceptions and, though I do have a rather long laundry list of things that take place, I'm just going to highlight some major points. Keep in mind, my preliminary title report is a post-bankruptcy-how-to report, so you won't see an exception for bankruptcy proceedings, because the case, theoretically, has been closed or dismissed, and/or the debtor has been discharged. In Oregon, we use a preliminary title report form and other states use commitment forms.

The first exceptions are for taxes. The title industry practice is to require that those taxes be paid. There is a statute, and at least one lawyer in this city has argued successfully before the bankruptcy court here in Oregon, that the liens of Clackamas and Multnomah counties for a piece of property on both county lines ought to be subordinated to the interest of his client. There is at least somebody who has been successful in that respect. That citation is 11 USC, Section 724. I know, most of us think, "Can taxes be subordinated?" They

should always have priority. Under bankruptcy law, there is a provision in the code that allows for subordination of real property tax liens. In my company, any time we have a post-bankruptcy matter, we're going to require that the taxes be paid in full.

There really is no effect on the easements in a bankruptcy proceeding, except to the extent that there is a joint maintenance agreement. If the debtor listed the other party as a creditor that had a right to use his easement and there was some kind of maintenance costs to be provided for in that easement agreement, then the debt for maintenance costs would be a dischargeable debt. Certainly, there may be some issue about whether or not there is a continued lien for maintenance costs if it was discharged in bankruptcy. It depends on the drafting of the document. Whether the costs are eliminated as an exception should be determined on a case-by-case basis.

Covenants, conditions and restrictions really are not affected—except maybe a homeowner's association lien. Even though the obligation of the association, depending on how the documents were structured, may have discharged in the bankruptcy proceeding, the lien may still continue.

The trust deed exception is where we really get into where bankruptcy has an impact on our title exceptions following a discharge. Keep in mind, I am assuming that this trust deed was a valid lien, and, therefore, the beneficiary is what is called a secured creditor.

For all of you not familiar with the concept, there are, in bankruptcy law, secured creditors and unsecured creditors. Even though a judgment creditor, for example, may have a lien under state law, for purposes of bankruptcy law, he would be considered an unsecured creditor.

The first lien, the trust deed, if valid, would continue as a lien against the property. There is no question about this point under bankruptcy law. However, keep in mind that what a bankruptcy does is, when a discharge has been entered, it discharges the personal obligations of the debtor. If this trust deed was listed in the schedules as an obligation of the debtor, then the obligation secured by that trust deed would have been discharged in bankruptcy.

There is some possibility of that happening. That's the first thing you have to remember because people, when they go into bankruptcy, as you probably well know, say: "But my lawyer said I wouldn't have to pay." Well, that's true. A debtor doesn't have to pay the obligation. However, the debtor's property can be utilized to satisfy that obligation, which can be a difficult concept for the average person to understand. But that's really what the difference is: the difference between your property and your obligations as a person.

The way we handle those things is that, generally speaking, we require that the trust

deed be paid in full, or be assumed by the new buyer. I don't think that anybody really handles it much differently from that.

When Betty was talking about selling free and clear of liens, obviously that process takes place during the bankruptcy. When you are dealing with a bankruptcy situation subsequent to the discharge, you're never going to see a sale free and clear of liens. It just won't ever turn up. As a result, the debtor has the right to sell the property, in most instances. What you have to do is examine the chain of title and determine what kind of proceeding took place. The reason for that is that a Chapter 7 bankruptcy resolves most, if not all, of the personal obligations of the debtor that are listed in the schedule. However, if you are dealing with a Chapter 11 proceeding or a Chapter 13 proceeding, then they are somewhat hard to understand—there, generally speaking, is no trustee. If there is no trustee, the debtor is, in effect, the trustee, and that's what is called a "debtor in possession."

The debtor in possession has the right, so long as it conforms with the plan, to transfer or encumber the property in the ordinary course of business.

Here, locally, we have an example. There is a large company that is in bankruptcy, and they had tremendous amounts of subdivision property. They are debtors in possession, and they have a right to sell the property pursuant to the terms of the plan.

A Chapter 13 debtor can only be an individual. A Chapter 13 debtor must have unsecured debts of less than \$100,000 and secured debts of less than \$350,000, and must have a regular source of income.

As I stated earlier, if this is exempt property, it is conceivable the debtor will be permitted to pay the first lien out of the plan. On the other hand, the debtor may be required to pay through the trustee, and most Chapter 13 plans have a sort of standard statement that they can't sell, mortgage, transfer or convey the property without further order of the court. So you have to check your Chapter 13 plan to see what this debtor can do and whether this property will remain the property of the estate.

If the plan provides that the debtor is to make the monthly payments directly to the beneficiary rather than to the trustee, then it's quite possible that you will want to get the consent or the acknowledgment of the trustee that the Chapter 13 debtor can sell or encumber the property. You should always ask your underwriting counsel what they want to have happen. Do they want the trustee's consent? How do they want it done? Does it have to be through the court? Can the trustee just simply sign a letter? Does the trustee need to sign some kind of deed? It varies from company to

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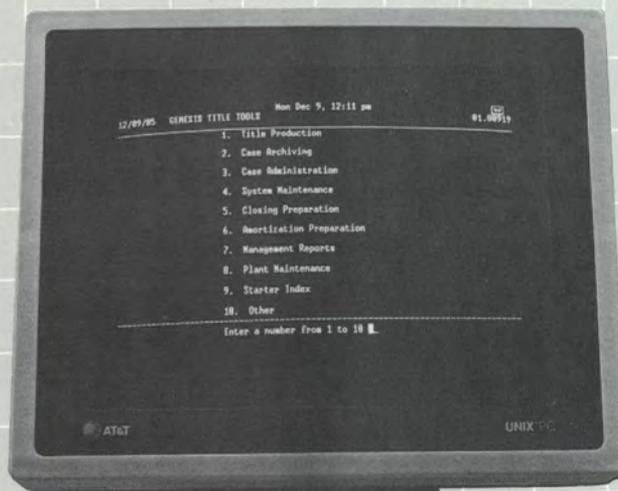
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Ray D. Martin, Jr.

As I reflect in writing this article, there is an obvious upside to 1986 being the most successful year, overall, for the title industry in recent memory. With a few states as exceptions, title companies across the country enjoyed an admirable business climate. Orders soared and demands for service increased proportionately.

There is, however, a resultant downside in this prosperity—high employee turnover and an influx of inexperienced personnel in our operations. We are always confronted with the problem of educating new employees in the title industry. But, in times like these, that problem is magnified.

Larger companies, in many instances, have

developed their own training programs for the new employee and continuing educational programs to assist their personnel in developing title insurance careers. These programs are costly and a luxury that many of our members cannot afford.

Your Association, through the Land Title Institute, a related organization of ALTA, has taken the steps necessary to assist you with this most difficult problem.

The Land Title Institute, which became a part of ALTA in 1980, offers training opportunities to ALTA members at both the basic and advanced levels. The basic course consists of 10 assignments covering 12 sections designed to be covered in approximately eight months, with a maximum allowable time of 12 months. The advanced general course consists of 16 assignments covering 18 sections with an approximate completion time of 12 months and a maximum allowable time of 18 months. These schedules are based upon the completion of one section every three weeks.

Charges for these courses have been exten-

sively revised in 1986, with an eye toward making the courses more affordable to smaller operations. Participants have the option of enrolling their company in a program providing for monthly tuition fees and a nominal charge for texts for each participating employee, or electing an alternate enrollment plan, designated as sponsorship, which provides for the payment of a one-time fee covering both tuition and text material.

The schedule of tuition fees under the subscription plan is as follows:

Total Number of Employees	Per Month
Less than 10	\$ 35
10-49 inclusive	50
50-99 inclusive	85
100-199 inclusive	125
200-299 inclusive	175
300-399 inclusive	225
400-499 inclusive	275

Charges under the sponsorship plan are \$125 for the individual enrollee in the basic



Martin

Author Martin is a director of The Land Title Institute, Inc., and is the current president of the Florida Land Title Association. He is senior vice president and regional manager for Title Insurance Company of Minnesota, with offices in Jacksonville, Florida.

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course and \$150 for the individual enrollee in the advanced general course. A \$25 discount is given on these charges to ALTA member applicants.

If employee education is your problem, the Land Title Institute has a solution. For further information please contact Ramona Chergoski, Executive Vice President, The Land Title Institute, Inc., P.O. Box 9125, Winter Haven, Florida 33883; Telephone (813) 294-6424.

Membership Committee Chairmanship to Rattikin



Rattikin

homa.

Rattikin previously was a member of the committee, and has been serving as chairman of the Texas Land Title Association Member-

The appointment of Jack Rattikin, III, as chairman of the ALTA Membership and Organization Committee has been announced by Association President John R. Cathey, president of The Bryan County Abstract Company, Durant, Okla-

ship Committee. A third generation titleman and the son of ALTA Past President Jack Rattikin, Jr., he is a graduate of the Texas Tech Law School and is vice president and administration officer for Rattikin Title Company, Fort Worth.

His late grandfather, Jack Rattikin of Fort Worth, was ALTA president in 1939-40.

The Rattikin Title vice president was named to replace Committee Chairman Melvin H. John, who has left the title industry.

Beth Peterson New ALTA Staff Member



Peterson

Her primary duties include administrative duties on behalf of the Title Industry Political Action Committee (TIPAC), assisting with state legislative and regulatory matters, production of the *Capital Comment* newsletter, and assisting ALTA members in their contacts with Con-

Beth S. Peterson has joined the ALTA staff as legislative assistant to Director of Government Relations Robin E. Keeney.

gress and federal agencies.

gress and federal agencies.

Beth is from Jamestown, New York. She has a degree in international business from Grove City College, Grove City, Pennsylvania.

Clay County Abstract Purchased by Security

Security Land Title Co. of Omaha has purchased Clay County Abstract Co. in Spencer, Iowa, according to Joseph W. McNamara, Jr., president of the Nebraska concern.

McNamara said that Clay County Abstract is being merged with Security, an abstract and title insurance company which also has offices in South Sioux City, Iowa, and Papillion, Nebraska.

New Branch Opened By American Pacific

American Pacific Title & Escrow Company, Salem, Oregon has announced a new branch operation in Medford, Oregon. Edward A. Jolly, vice president, is in charge of the new branch.

The acquisition of this new operation adds a fifth county to American Pacific Title's operations.

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ALTA Judiciary Committee Report: Part IV

Wetlands

Cinque Bambini v. State of Mississippi, 491 So. 2d 508 (Miss 1986)

Cinque Bambini brought an action to confirm title and remove clouds from title to 2400 acres of largely undeveloped property in Hancock County near the Mississippi Gulf Coast. As the lands are arguably tidelands, the State of Mississippi claims title in its capacity as trustee of the federally created public trust, created by the United States under the equal footing doctrine in the granting of statehood in 1817. The Chancery Court of Hancock County held that the state owns 140.863 of the 2400 acres consisting of two lakes, covering 98 of the 180 acres, dredged by the state to obtain fill material for construction of Interstate Highway I-10 in the mid-1960s. The remaining 42 acres consist of the north branch of Bayou LaCroix and 11 small drainage streams. Cinque Bambini appealed assigning as error that the chancery court erred in the definition of the geographical contours of the public trust.

On appeal, the Mississippi Supreme Court stated that for all practical purposes, the case turned on whether the disputed lands were a part of the public trust and the result of that determination would be the enjoyment of the revenues from anticipated oil and gas exploration. After a lengthy journey through the history of the creation of the public trust, citing

Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977), the court noted that once Mississippi had been admitted to the union and once the public trust had been created and funded, the role of the equal footing policy ended and title to the lands conveyed in trusts became vested in the state with state authority over trust properties recognized by federal law as plenary. State law prohibits disposition or use of trust property except in furtherance of the public purpose. *International Paper Co. v. Mississippi State Highway Dept.*, 271 So. 2d 395 (Miss. 1972). Because the determination of what lands were given to the state in trust is the initial step in the identification, geographically and topographically, of the inland reach of the trust boundaries of the lands held by the state in trust today, the court noted that this question is one of federal law. *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10 (1935). Because early federal case law refers to the trust as including all lands within the ebb and flow of the tide, but the U.S. Supreme Court held in *The Genessee Chief*, 53 U.S. (12 How.) 443 (1851), that the definition of the trust included all navigable freshwaters, Cinque Bambini's contention is that the surveyable boundaries of trust properties were redefined to include only those waters navigable in fact in 1817, tidal influence being irrelevant. The state's position is that, in addition to such navigable waters, the trust also includes all lands subject to the ebb and flow of the tide in 1817 and be-

low the then mean high water mark. Acknowledging that many of the new states had no coastline and therefore no lands within the ebb and flow of the tide, therefore the equal footing doctrine was to have no meaning in those inland states, the U.S. Supreme Court expanded the trust definition to include all navigable freshwaters. *The Genessee Chief*, *supra*.

Finding no federal case expressly deciding whether at the time of statehood tidally influenced non-navigable waters were included in the state-owned public trust, the court addressed the issue of whether the advent of the navigable waters test, as expressed in *The Genessee Chief*, is a complete redefinition of the geographical scope of the trust, or a mere addition to the tideland/tidewaters trust, applicable only in the case of non-tidally influenced freshwaters. The court held that its understanding of federal law was that the United States granted to the state in trust all lands, to which the United States then held title, including their mineral and other subsurface resources, subject to the ebb and flow of the tide below the then mean high water level—regardless of whether the water courses were commercially navigable at the time of Mississippi's admission into the Union, regardless of how insignificant the tidal influence, or how shallow the water, regardless of how far inland and remote from the sea. Similarly granted were the beds and streams of all non-tidal waters which were navigable in fact in 1817. Noting that it is illogical in that Mississippi law allows shallow, non-navigable freshwater streams and their beds to be privately owned and therefore excluded from the public trust, but to include non-navigable tidewaters within the trust, the court stated that before *Shively v. Bowlby*, 152 U.A. 1 (1984), Mississippi had already adopted the common law rule that riparian owners hold the beds of such waters to the center of the stream. *Morgan v. Reading*, 11 Miss. 366 (1844). This anomaly in Mississippi's trust did not support Cinque Bambini's contention for relief, however.

In addressing Cinque Bambini's contention that their title to the property was based on Spanish grants dating from April 15, 1813, four years prior to statehood, and therefore, the United States never had title and could not transfer title to the State in trust, *Summa Corp. v. California ex rel. State Lands Commission*, 466 U.S. 198 (1984), the court held that Cinque Bambini's claim came too late based on *Henderson v. Poindexter*, 25 U.S. (12 Wheat.) 530 (1827), in which the U.S. Supreme Court gave no recognition of titles to

Report Published in Installments

The accompanying cases and others published in additional issues of *Title News* constitute the most recent report of the ALTA Judiciary Committee. In addition to Chairman Ray E. Sweat, the following served as members of the committee during preparation of this compilation.

Samuel R. Gillman; Nicholas J. Lazos, Esquire; Bernard M. Rifkin; Michael J. Fromhold; Hugh D. Reams, Jr.; R. N. "Bob" Merritt; Gerard K. Knorr; James K. Weston; Donald P. Waddick; Abraham Resisa; Jerrel L. Guerino; John S. Thornton, Jr.; William M. Heard, Jr.; Robert J. Whisman; Frank P. Willey; E.A. Bowen, Jr.; Charles E. Riggs; Turalu Murdock; Steven H. Winkler; J. H. Boos.

Ted W. Morris, Jr.; Michael Pietsch; Robert C. Mitchell; James Weston; Jack C. Daw; E. W. Adams; Roy H. Worthington; Charles I. Tucker; Louis G. Shusan; Daniel Murray, Esquire; Timothy J. Whitsitt; Gary F. Casaly; Theodore C. Caris; D. P. Waddick; Bobby L. Covington; James W. Hicklin; Don Al Asay; Richard A. Johnson; Mark W. Vaughn; Louis C. Meyer, Jr.

P. C. Templeton; Harold A. Kleinfeld; Joseph Ritter; John H. MacMaster; Dale W. Griffin; Dale L. Astle; Michael G. Magnus; Philip M. Champagne; Carl E. Wallace, Jr.; Ernest G. Carlsen; Phil B. Gardner; Guy C. Jackson, III; Michael J. Jensen; Mark Schittina; Hugh D. Reams, Jr.; James E. Tompkins; Eugene J. Ouchie; Roy P. Hill, Jr.

Continued on page 28

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lands in Spanish West Florida held under Spanish grants after 1783. The court noted that on February 12, 1812, the Congress authorized the President to take West Florida below the 31st Parallel. 3 Stat. 472 (1812). On May 14, 1812, the area with which we are here concerned was formally annexed to the Mississippi Territory. 2 Stat. 734 (1812). Therefore, the Acts of Congress of March 3, 1819, May 8, 1822, and May 28, 1830 are of no force and effect, for such title to these lands as may ever have been held by the United States was effectively and irrevocably granted to the State of Mississippi on the occasion of statehood in 1817.

Having established the extent of the federal grant to the state, the court then addressed the question of whether those boundaries today are the same as those fixed and surveyable, in theory, in 1817. Noting that once title vested in the state in trust, the state is governed by state law as any titleholder. *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel*. Citing *H. K. Porter Co., Inc. v. Board of Supervisors*, 325 So. 2d 746 (Miss. 1975), the court stated that with regard to public trust tidelands, title to tracts not in existence at the time of the federal grant but formed subsequently by deposits of silt and soil from a river is, through accretion, held by the state, as are gradual deposits formed by the natural inland expansion of the tidal influence. The court therefore held that where the forces of nature—gradually and imperceptible—have operated to expand or enlarge the inland reach of the ebb and flow of the tide, the new tidelands so affected accrete to the trust. Therefore, the surveyable outer boundary of the trust is today's mean high water line, subject only to one exception.

The exception to the court's holding is that those artificially created water courses, inlets, slips, marinas and the like which may become tidally affected do not become a part of the

public trust but remain titled, as do the beds beneath, in the record titleholder. Therefore, the court held that the two lakes dredged by the state and therefore tidally affected do not belong to the public trust. To include them would be equivalent to a taking within the fifth and fourteenth amendments to the United States Constitution and article 3, Sec. 17, of the Mississippi Constitution of 1890.

Because of the complexity of the case and the need for the establishment of the precise outer boundaries of the public trust properties today, the court remanded to the chancery court for further proceedings the determination of these boundaries through interaction between counsel, surveyor and other experts, and the court. Affirmed in part, reversed in part and remanded.

* * *

Petitioners, the owners of vacant parcels of land designated as tidal wetlands, sought to fill in the land and develop the properties. The Department of Environmental Conservation decided that the construction of residential housing was an "incompatible use," and denied the petitioner's application. An Article 78 proceeding was commenced, and the lower court upheld the denial of the permits but directed a hearing to determine whether the regulations constituted an unconstitutional taking. The appellate division affirmed the lower court's determination, holding that compliance with the agency's requirement would result in a "substantial reduction" in the number of lots proposed and would constitute a significant decrease in the value of the area. Therefore, the decision concluded, the petitioners could pursue their claims of an unconstitutional taking. *de St. Aubin v. Flacke*, App. Div. 2nd Dept. 492 NYS2d 766.

Zoning

Michael R. Bell, et al v. City of Elkhorn, et al., 122 Wis 2d 558 (1985)

A corporation intended to build a drive-

through restaurant on a city street intersection. Three corners of the intersection were previously zoned B-3 (commercial-shopping). Zoning of the target property was R-4 (multi-family). The corporation applied for a rezoning of the desired corner and a public hearing followed. Despite the protests of the plaintiffs (owners of property in the vicinity), the ordinance was amended and a building permit issued the corporation.

Plaintiffs contend that the amendatory zoning ordinance was invalid because the city had not adopted a comprehensive plan; that the amendment amounted to spot zoning and that the original ordinance establishing B-3, commercial-shopping district was unconstitutional because it lacked proper standards.

At issue: whether the existence of a formal comprehensive plan was a condition precedent to the adoption of the rezoning.

Majority rule: a zoning ordinance itself may satisfy Sec. 62.23(2), Stats., the requirement that zoning be in accordance with the comprehensive plan.

Minority rule: planning legislation requires the preparation and adoption of a separate comprehensive plan document and that the adoption of such a document is a prerequisite to enactment of a zoning ordinance.

The court, reasoning that the purpose of a comprehensive plan is to provide an orderly method of planned use regulation by the community, found the majority opinion more persuasive. There was no need for a separate document labeled, "comprehensive plan."

With respect to the allegation of "spot zoning," since the other three corners were already zoned commercial, the court saw no evidence of granting special privileges to a single parcel inconsistent with the use of the adjoining properties. The ordinance itself was also found to be constitutional, despite less than perfect draftsmanship, because the presumption of validity that the ordinance enjoyed was not overcome by the plaintiff's argument.

Chicago Title Expands New Jersey Operations

Chicago Title Insurance Company has announced the purchase of selected assets of Chelsea Title and Guaranty Company in 12 north and central New Jersey counties and will operate 10 branch offices in those areas, according to Vice President Joseph Santosuosso, CTIC northern New Jersey area manager.

The branches are in Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex and Union counties. They now operate as the Chelsea Division of Chicago Title.

The branches are in Belvidere, Conrad Huston, Jr., manager; Freehold, John J. McDonough, manager; Hackensack, Helen Cuttita, manager; Newark, James J. Egan, manager; New Brunswick, John Trojan, manager; Newton, Mary Ann Amari, manager; Paterson, Thomas Dolan, manager; Princeton, Bessie Nevis, manager; Westfield, Beatrice Seymour, manager; and Toms River, Philip Grant, manager.

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ALTA Group Insurance: Major Benefit

Robert M. Beardsley

Membership in ALTA is more valuable than ever because of the many services which are offered. One of the most important benefits is the Association group insurance package.

This activity began modestly in 1957, with the concept developed by the late Morton McDonald, Lawyers Title Group, Inc., Deland, Florida (an ALTA Past President 1955-56, and an ALTA Honorary Member), when members of the Association were offered group rates on life insurance only. Since then,

this program has grown and today includes life, medical, hospital, major medical, dental, long-term disability, and accidental death and dismemberment coverage. They afford title

people superior fringe benefits at very competitive rates. The coverages are available to small and large member companies. Currently, there are over 1,000 participants in the program.

The insurance program is run by the ALTA Group Insurance Trust. The following serve as trustees: William J. McAuliffe, Jr., American Land Title Association, Washington, D.C., secretary; Robert B. Scherer, Chicago Title Insurance Company, Chicago, Illinois, treasurer; Arthur L. Reppert, Clay County Title Company, Liberty, Missouri; and William T. Seitz, Northeastern Division, Ticor Title Insurance Company, New York, New York,



Beardsley

Author Beardsley is chairman of the ALTA Group Insurance Trust and is president of Douglas County Title Company, Roseburg, Oregon.

Continued on page 46

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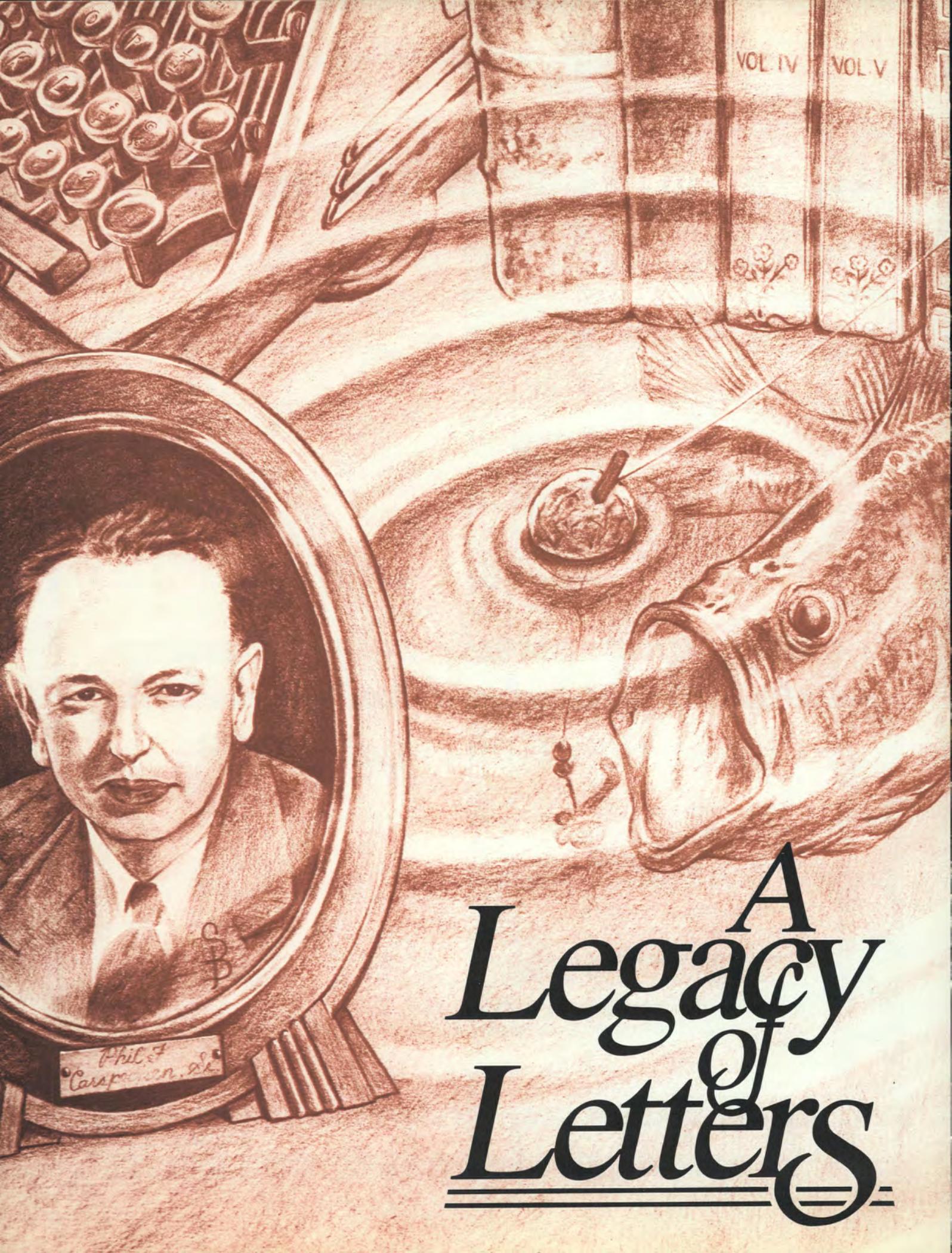
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VOL. IV

VOL. V



Phil &
Caspary, n. s. s.

A Legacy of Letters

A powerful agent is the right word.—Mark Twain

Jack Carspecken is a third generation Iowa abstracter with a unique treasure among his family heirlooms.

His most cherished possessions include a bound volume with the modest title, *Fishin' Poems and Others*, which was published in 1922. Between its covers is a heart-warming collection of verse written by his grandfather, Phil Carspecken, who in 1911 founded Des Moines County Abstract Company, Burlington. Jack, a past Iowa Land Title Association regional vice president and current member of the ILTA Abstracting Standards Committee, heads the firm as president. Phil remained active in the business until his death in 1971.

In *Fishin' Poems and Others* is refreshing insight from an admired title professional who

in his life-
time won
well-de-
served respect
as philosopher,
fisherman and, of
course, as a writer.

As Jack recalls, Phil also was an abstracter who thought ahead of his time. Working closely with the county bar association, Phil was able to help secure passage of a 50-year root of title resolution by that organization; the Iowa legislature did not enact the state's 40-year marketable title law until 1971. Phil also was instrumental in winning county bar association approval of a resolution (passed in 1939 and amended in 1951) allowing ancient mortgages to be omitted in abstracts.

The essence of Phil's wit and wisdom is found in his writing, which brings a welcome reminder that good literature is always enjoyable.

In a published interview during Phil's lifetime, Van Garrison of *The Burlington Herald* wrote:

"Very few folks, even here in Phil Carspecken's home city, realize what a beautiful writer he is. Had he so elected, he could have been nationally—even internationally—famous in this field. This is not alone my

The Abstract of Title

*Making abstracts is a dry, prosaic calling, well we know,
Delving daily into records made a century ago,
Tracing wearily the title from the Patent down to date,
Thru the maze of suits and transfers that obscure and complicate;
Yet for me there's fascination in thus working in the past,
And on all the seeming drudg'ry there's a kind of glamour cast,
For there's poetry and romance running thru the tangled chain,
And there's written in the record much of human joy and pain.
For, like Gibbon and Macaulay, we're Historians, in our way,
And we bring to light transactions of a gone, forgotten day,
True, we only sketch the outline, but behind it all there lies
Quite a bit of human interest that our fancy well supplies;
And I love to let that fancy freely roam and weave a tale
About every deed and mortgage, into each judicial sale;
For the records deal with pioneers and homestead farms and homes,
And we garner many heart-throbs from those dry and musty tomes.
For in every grim foreclosure lurks a heart-ache, and we sense
In the Bankruptcy Assignment human misery intense;
There is grief in every tax sale, and we seem to hear the wail
Of the widow and the children robbed of home by Sheriff's Sale.
Delving thru the Court proceedings we find interwoven there,
Couched in formal, legal lingo, much of sorrow and despair,
And we live again thru all the trials of folks of long ago—
Running thru the chain of title there's a deal of human woe.
The estate files, torn and tattered—there's a certain something there
That is sacred, and we handle them with reverence and care,
And they help us to determine how the owner's life was spent,
For he often bares his soul in his Last Will and Testament.
And in running thru Partition Suits there plainly will be seen,
In the squabbles of the children, much that's grasping, low and mean,
For in fighting for a dead man's wealth the baser feelings breed—
Running thru the chain of title there's a deal of human greed.
And in poring o'er the records that pertain to real estate,
Setting forth the imperfections that impair and complicate,
Comes the thought of my soul's record, and the mess I've made of it,
And I long to change some things that the Recording Angel's writ;
And I wonder, when the tangled chain is done, and I have died,
And the Abstract of my Life is duly closed and certified,
And the Great Exam'ner scans each fatal flaw and grave defect,
Will He waive those imperfections in my record—or reject?*

—Phil Carspecken

opinion. I have talked about it with veteran newspaper men who have read his stuff. They agree, wholeheartedly. Whatever it is, that intangible spark that generates greatness, he has it.

"What will you have? Humor, pathos? He can make you roar with laughter or dampen the eyes and bring a lump to your throat. He can make you shake your head, pensively, and say, 'If I could only write like that . . .'"

ALTA members in attendance at the Abstracter (now Abstracter-Agent) Section meeting during the Association's Annual Convention in Chicago on October 29, 1948, must have agreed with Garrison. His delivery of a commentary entitled, "The Romance of the Records," at that meeting was followed by what was described as "thunderous" applause.

"Wordsworth once remarked that it would be an enlightening thing if the land could speak and relate the history of those who trod its surface and lived intimately with it," Phil said in his Convention address. "It might here be said that, if the land does speak, it is only through the abstract of title."

Phil concluded his Convention address by reciting one of his poems, entitled, "Caveat Emptor," which reads as follows.

*I am the Title—a faltering thing;
Buyer beware! for I've taken my fling.*

*Linked with the land as the soul with the clod,
Strange and diverse were the paths I have trod;
Searchers, who followed my trail, were aghast,
Raking the leaves of my dissolute Past.
Spotless no more as these stanzas are sung;
By-ways alluring and wayward and wild
Led me astray—but was Man who defiled.*

*Men have relentlessly trifled with me,
Seeking to hold and enjoy me in fee—
Pawed me and clawed me and soiled me with shame,
Muddied my record and sullied my name.
Mine was the fate of a glittering toy,
Sought for and fought for like Helen of Troy;
Bankrupts have yielded me (not without smear)—
Bankers have eyed me with lecherous leer.*

*I've been the plaything of schemer and knave,
Sold on the block like Circassian slave—
Torn by dissension, partitioned in shares,
Flung to a parcel of clamorous heirs,
Lawyers have toyed with me, tossed me about,
Jumbled me, fumbled me, sown me with doubt,
Wronged me with Error, and cast me away
Blotched with disease like a Dorian Gray.*

*Linked with the land, as the soul with the clod,
These were the devious paths I have trod.—
"Unclean!" the cry when my record was known—
(Who but a lawyer to cast the first stone!
Who but a lawyer to marshal my flaws,
Pleading the purge of the Curative Laws!)
Judges have sighed—and, with flourish of pen,
Made me a virtuous creature again.*

*I am the Title—a penitent thing;
Buyer, forgive!—though I've taken my fling.*

Another of Phil's poems on his profession, "The Abstract of Title," accompanies this *Title News* article. As an introduction when it was published in *Fishin' Poems and Others*, he wrote: "A friend chided me one day upon being engaged in so prosaic a calling as abstracting titles, and characterized my profession as 'dull, stale and unprofitable.' I agreed with him as to its being unprofitable, but I contended it was neither dull nor stale, and to prove it I wrote the following verses."

Phil was a native of Pittsburgh and found his formal education ended while he was in the sixth grade because of rheumatic fever. But a desire for knowledge and love of literature provided the drive for his becoming self educated. He mastered shorthand and became a court reporter while still in his teens, and he moved to Burlington as a young man to study law while working in the office of a local judge.

After he became interested in the abstract profession, Phil turned from the study of law to found Des Moines County Abstract. Different members of the family have worked in the business over the years; those currently active besides Jack are Sharon, Jack's wife, and three of their daughters, Ann Carspecken, Julie Carspecken and Joan Carspecken.

Although Phil's earnings were slender in his early years, his son, Phil Carspecken, Jr., recalls that the senior Carspecken began to acquire what eventually became an extensive library of English and American literature. Among his favorites were Shakespeare, Keats, Shelley, Byron, Dickens and Twain.

Phil's prominence as a writer grew after he began a newspaper column, "Verse and Worse," in Burlington and served as editor of the local Rotary Club newsletter. Family members recall that his verse was appreciated by Rotarians throughout the world. Later, he spent a period of time as editor of the ILTA publication, *Iowa Land Title News*. On one of many memorable occasions during his literary career, Phil penned a poem, "The Battle of the Levee," for his home town paper, which described the situation when flood waters broke through the levee north of Burlington in the spring of 1922. His poem and the newspaper story describing the flood were picked up by other papers across the nation.

As the title of his book suggests, Phil was an avid fisherman and an impressive part of his verse was devoted to the subject. Some of his most enjoyable times were spent along the sloughs, inlets of the Mississippi, in quest of bass, crappie, sunfish or catfish. The philosopher is seen in the fisherman through this part of his poem, "Quiet Waters":

*And in pensive meditation came the message from afar,
That 'twere best to do my fishing where the quiet waters
are.*

*Oh, I know the fish are smaller there, but sweeter far to me.
Than the ones the more adventurous catch in river, lake or sea,
And I'd rather fish for sunfish in the quiet nooks of life,
Than for "big fish" in swift waters where the soul is worn
with strife.*

Phil Carspecken, Jr., also recalls this prose narrative from his late father: "I have spent many a night rolled up in a blanket by a campfire, lulled to rest by nature's symphony of frogs and owls and insects—a lonely, God-forsaken place when the shadows fall. When you awaken in the wee small hours of the morning, and the fire is flickering low, and a ghostly mist is hovering over the slough, and the silence is broken only by an occasional fish flopping out of the water, sending a little shiver down your spine, and the owls tune up and the bullfrogs are booming—your thoughts are far from frivolous . . ."

Phil's creative talents once were stirred by the garfish, a bait-stealing nuisance for many fresh water anglers, and the result was a poem, "The Fable of the Billy Gar," which reads, in part:

*And brooding there, the Devil, with the sole intent to mar,
Produced that foul abortion that we call the Billy Gar!*

*He took a slimy snake, and with a deft and devilish skill
He fastened on some fins and then a long and saw-toothed bill;
Then breathing in its gaping jaws the instincts of the shark,
And the snarling, snapping malice of the cur without its bark,
He added the repulsiveness and horror of the bat,
And a skillful, subtle blending of the vulture and the rat;
Then spat upon his handiwork—a loathsome, foul array,
And cast it in the waters there to lurk and prowl and prey.*

*And hence it is when you and I seek out that fishing hole,
Its calm and peaceful waters hide a snare that frets our soul;
Those sly and slinking Billy Gars are prowling everywhere,
To steal our bait and snarl our lines and make us tear our hair.
We yank them out upon the bank and watch them writhe
and squirm,
But a million more are waiting for our minnow or our worm;
And every time our rippling oaths go forth to rock the earth,
The Devil's there behind a tree all doubled up with mirth!*

Although much of his poetry was concentrated on fishing, Phil actually focused his writing on a variety of subjects—including his family. This poem, entitled, "Star Dust," is indicative of his scope and skill.

*My little girl approached one day and told me of her woes,
And pointed out some freckles that were scattered o'er her nose,*

And asked me how they came there, and she bitterly complained

That freckles were so "common," and a thing that she disdained.

I took her gently on my lap, and sought within my brain
To conjure up some soothing thought to ease the trifling pain;

Then came the inspiration that brought laughter in her eye-

"Those freckles, dear, are star dust that has fallen from the sky!"

I find a wealth of pleasure in the flowers of my yard,
But most of all I love to see a smooth and verdant sward,
And in the spring of every year my heart to ire inclines
To wake and find my well-kept lawn ablaze with dandelions.

And with a spleen akin to hate I labor by the hour
To banish from my pampered lawn this "common" little flower—

But once when I was thus engaged, my little girl came nigh
And whispered, "'tis but star dust that has fallen from the sky!"

Yes, sunshine brings the dandelions, and breeds the freckles, too,
And just because they come unbid, they cause us much ado;
But many lowly things of life so "common" that they swarm,

If viewed aright will greet the sight with some celestial charm.

And in each plodding soul that never felt religious fire,
And in each sluggish intellect that grovels in the mire,
Yes, even in the grinning fool that dumbly slouches by,
We find a dash of star dust that has fallen from the sky!

In the memory of Phil Carspecken, Jr., his father never lacked for buoyant humor, witty conversation and reflections on life and its meaning. His optimism was always present, even during the Great Depression.

The senior Carspecken cast these lines philosophically from, "When The Bullfrogs Are A-Booming Up The Slough":

When my fishing days are over, and my soul is wafted hence

To the better land, I hope I'll have some fitter recompense
Than the harps and robes and streets of pearl that some folks call to mind

When they try to picture Heaven—such to me would be unkind.

But I know there is a Heaven that is radiant and fair,
And I know the kind Creator answers all our longings there,

And the Paradise I dream of, where I hope to rest my soul,
Will include among its pleasures a Celestial fishing hole.

Following Phil's death, in keeping with his wishes, his ashes were scattered at one of his favorite camp sites along a Mississippi slough.

Comments Phil Carspecken, Jr.: "There could be no more fitting resting place for an abstracter/poet/philosopher/fisherman/father who so profoundly shaped our lives, and who will continue to inspire us to the end of our days."

Independent Agency For Title Resources

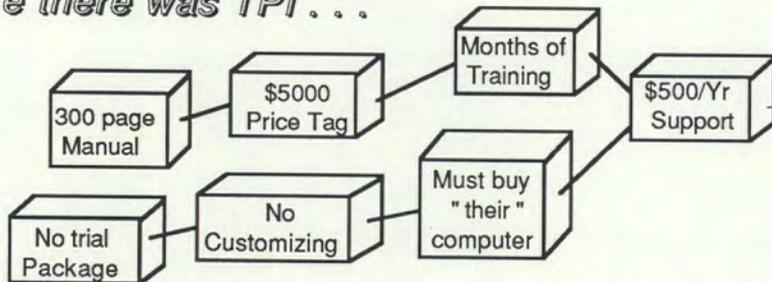
Title Resources Corporation has opened its eighth title office in a joint venture with Turley, Inc. The new office, "Title Resources/Midlothian," is the second office opening in Ellis County, Texas, and is the first independent title agency in Title Resources Corporation's history.

The staff includes Corry R. Turley, II, president and treasurer of Turley, Inc.; Janice Street, executive vice president of Turley, Inc., and closing officer/office manager for Title Resources/Midlothian; Cindy Andersen, escrow secretary; and Amy Grisham, receptionist/secretary.

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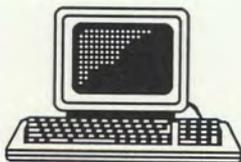
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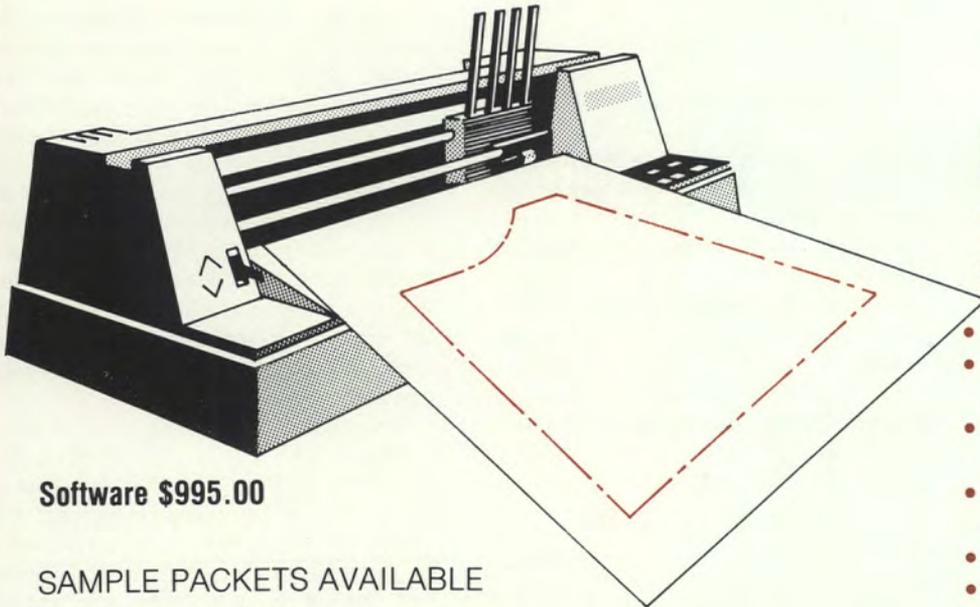
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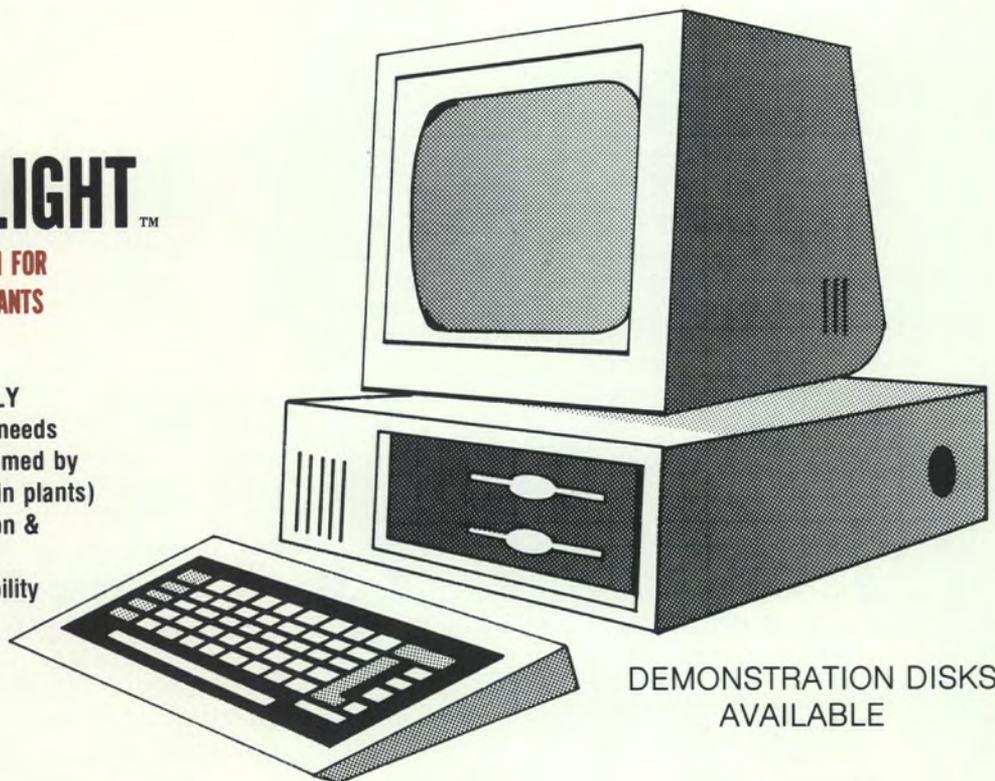
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Title Management Question

What elements are most important in a successful business development strategy for a local abstract/title company?



Robert J. Swadey, president, Midland Title Security, Inc., Cleveland, Ohio:

What is your market area? It is important that you first decide the geographical area that your company will cover, and this depends upon how much territory

you can effectively service. Remember that crossing county lines for occasional business tends to diminish your company's overall service capability.

Who controls the placement of business? You should know your customer base. Does it include attorneys, brokers, developers, lenders and escrow companies? Which ones are most significant in your market area? Concentrate your efforts on them.

Develop service capability. Service includes flexibility. Your company must be willing and able to adapt to different personalities and circumstances and to assist technically in solving title problems. Remember that there is no substitute for specialized knowledge, and expertise that can be provided by your own staff. Also, be sure you have adequate personnel. In any case, you must make the widge before you can sell it.

Service must be consistent. Be aware that good service must be ongoing and that spotty, seemingly satisfactory effort won't build a superior performance image for your company. The customer must feel confident that you will perform up to speed in each and every transaction.

Include incentives in the compensation of sales people. Once a selection is made, the compensation package should include incentive dollars based on sales performance.

Develop specialization among sales staff. Where possible and practical, try to tailor your sales effort to the special needs of each customer group. For example, lenders, brokers or builders or commercial vs. residential selling, etc. Specialization brings greater knowl-

edge of customer requirements, enabling your company to better meet these requirements.

Promote a team approach. Convey to your support personnel the meaning of service and the need to perform as a team with the outside sales people. Remind inside people regularly that what they say to customers and how they say it can make a difference between good and bad customer relations.

Join community and trade organizations. Get your company involved in local organizations. Don't just be members, but be *active* members. Involvement of your people in meaningful organizations enhances your company's image.

Go that extra mile. Customers do remember when a company goes above and beyond in servicing a transaction. By all means, however, keep the customer informed if there are special problems or unusual circumstances in a particular deal. The customer will always know your company cares.



*Nicholas J. Copeland, Manager, The Montrose County Abstract Company, Montrose, Colorado—*The elements that I feel are most important in a successful business development strategy for a local abstract/title company are a knowledge

of the community where you do business, an active participation in that community, and a method of educating the community as to the services your company has to provide.

Knowledge of your community can come from many different sources. The local newspaper is an excellent example, as well as membership lists from organizations like the chamber of commerce. Another method is simply to spend some time driving through the community and observing how people make their living.

Participation within the community can come in many different forms, service clubs such as Rotary and Lions, for example. Volunteering for, and serving on the many different school committees is an excellent way to learn about the community and at the same time show that you are interested and willing to help.

Volunteering or agreeing to give a program to local clubs and professional organizations is an excellent way to educate your community as to the different services that your business is able to provide. Distributing printed material and small, open house gatherings are other methods that will work. One-on-one tours of

your office and title plant for Realtors and lenders will work to show them the process that is used to provide the product that they are purchasing.

Of course, all communities are different, so different methods will be used, but I believe the one most important thing that you can do to accomplish your business development strategy, is to demonstrate your willingness and ability to serve the community.



Gerald L. Lawhun, President, Lawyers Title of Northern Nevada, Inc., Reno—

Motivated people with a desire to serve the public are fundamental. The performance of our people is the sole item that distinguishes our services

and products from those of our competitors. Without proper motivation, people will perform at a level of mediocrity. Mediocre performance will not enhance a business development program.

Credibility is vital to the sales program. The customers must know that they can count on the accuracy of everything we do, whether it be issuing a title policy, closing an escrow or the answering of a simple question. Customer confidence in our word, our opinion, and our work, is an important element of the sales program.

Imagination and willingness to help solve problems is important. That, coupled with a reputation for doing things right, creates an atmosphere where customers and title company work comfortably together.

Consistency of action, whether it be in the speed of issuing commitments, the regularity of sales calls, the returning of telephone calls, or any other matter, is important. Consistency is a part of being dependable, and that aids the sales effort.

The price of our product is an important factor. *The lowest price will not get the job done!* With a low price, you cannot afford to attract and retain the calibre of employees needed to provide excellence of service. The price must be fair, and consistent with the quality and quantity of service delivered.

It is essential that the message about the service, and products available, be tastefully packaged and delivered by competent sales people, who understand the needs of the cus-

Continued

tomers and are constantly looking for additional ways to provide a more worthwhile and meaningful service to them.



Robert R. Croley, President, Tennessee Valley Insurance Co., Knoxville, Tennessee—It is important to recognize that a successful business development strategy for a local abstract/title company involves much more than advertising,

business development calls, give-aways and entertainment. To be successful, the entire organization must be involved and the strategy or plan must have the active support and participation of all employees. In the highly competitive environment that many local abstract/title companies operate in today, the primary goal should be to provide prompt and courteous service to the client. If the firm fails to deliver an acceptable, reasonably-priced product in a timely fashion, then money spent on advertising and business development is largely wasted. A strong, service-oriented marketing strategy will enhance the firm's reputation in the community and will develop referral business. The best advertisement and the best source of business may very well be the recommendations and referrals of business by satisfied clients.

To attain the primary goal of service, the firm must analyze and target the market that the company wants to serve. This second element of the strategy helps to identify the client, its needs, and how the firm can best meet those needs.

Location is another important element in any marketing strategy. Offices for conducting closings and meeting the public should be in a location that is convenient for real estate brokers and lenders. Adequate parking should be provided and the furnishings and decor should project a competent, businesslike image.

Thirdly, the marketing strategy should include participation by as many firm members as possible in the organizations and activities of the local real estate board and the local mortgage bankers association, as well as membership and participation in civic and charitable activities, such as the chamber of commerce, theater, arts, symphony, and civic clubs.

Fourthly, after the market has been clearly identified and the firm and its employees are focused on the primary goal of prompt and

courteous service to the client, advertising and business development calls can be used to increase volume by reminding the client of the firm's services and availability. Give-aways such as pens, note pads, and similar items with the firm name imprinted on them can help keep your name before the client. Occasional newspaper publicity about the company or individuals affiliated with it, and paid advertising designed to reach your targeted market, also are useful.

Lastly, an important element in a successful marketing strategy is flexibility. The title industry is dependent on the ebb and flow of the economy, interest rates, competition, the local job market, and many other factors. A marketing strategy that is successful when the economy is expanding may be a failure during recessionary periods, and changes in tax laws and interest rates may necessitate a shift in marketing strategy.

The successful local abstract/title company of tomorrow will be today's service-oriented firm with the flexibility to adjust to changes in the marketplace.



John J. Roney, Jr., President, Grand Traverse Title Co., Traverse City, Michigan—In order to answer the question posed, I believe we must look at at least two areas: 1) Internal organization or structure and 2) The image we wish

to project to our customers.

Under No. 1, all of the elements of sound business practices should prevail. We must have a handle on our expenses; we should reasonably project our income; we must have qualified personnel to perform the work; we must have access to accurate court house records or have an in-house plant available; and we should be aware of whatever outside forces might exist which could affect our business and be prepared to deal with them to the extent we can. The most important of these would be local or federal legislation.

As for No. 2, we should project to our customer a professional image and be prepared to offer and give good, consistent service. I don't believe it is necessary that one be an attorney to display professionalism. The manner in which we conduct ourselves and the level of our business ethics and ability will determine that. I do believe that the product produced by the abstract/title company must be accurate, understandable, and be produced in such a way that is usable by our customer be he/she a lay person or attorney.

The good, consistent service must extend not only to the issuance of the commitment but also to the issuance of the owners and/or mortgage policy. Our professional customers tend to follow the transaction through to its conclusion and that comes only when the policy is in their possession.

If we offer escrow services, such as real estate closings, they, too, must be handled in a professional manner, not only for the protection of the customer but also for our own protection.

Finally, in the column of things not to do: 1) Do not attempt to buy your customers loyalty and business, earn it; 2) Stay away from gimmicks. They only tend to diminish the professional image you wish to portray; and 3) Do not promise to perform services that you know you do not have the ability to provide. You may get the business initially but you will lose it in the long run.

There very well may be other elements that should be considered such as office location, the proper time to start a business, the number and quality of competitors, etc., but the ones I have elaborated on are the ones that to me seem most important.



T. Raymond Pearson, Regional Vice President, Security Title and Guaranty Company, Stamford, Connecticut—The foundation of a successful title insurance company operation rests on four cornerstones.

Although there are other foundation stones, I am pleased to share with you my choices. The first cornerstone on which a title company may rise or fall is quality control. Quality control is risk elimination through strict supervision or overview of every step in the issuance of title policies.

Oh, we have all heard the excuses (too rushed, too hectic, overloaded, couldn't take the time, didn't see it, etc.) used by everyone from the examiner to the reader, from the typist to the proof reader, when an error unfolds.

It is true it helps to have a title nose, or be semi-clairvoyant, to sense something amiss. Maybe that extra question must be asked, or that extra proof should be obtained, or an extra exception carefully drafted to cover a nebulous situation. Unclearly marked binders are an abomination to the industry.

When a report shows two or more existing mortgages and only one "OMIT" appears, actual confirmation must be done as to whether

or not the "OMIT" covers one or both mortgages. Someone must check it out. One must never assume anything. Whether in house or outside searchers, the track record of the abstracters must be carefully followed and, like a garden, weeded diligently of those who are careless, lazy or negligent in their work. The training of all staff to be aware of and take part in quality control makes it possible to catch possible errors before the policy or policies are issued.

Sales orientation of the entire staff is the second cornerstone. From the operator/receptionist, to the president of the company, everyone is a sales person who must be concerned and helpful to client needs. All accomplished, however, without *giving* away the company store by lowered underwriting standards. Too often, one hears of company staff having a "why bother me?" attitude. The attitude carries the day and can destroy not only a company's reputation but lose a great deal of future revenue in the process.

Never mislead a client. Never say it's in the mail when it won't be for another week. Never promise what can't be delivered, but do prom-

ise a reasonable time and then deliver. Don't "wing" an answer to a problem. If unsure, tell them you'll check it out with counsel or a supervisor, then make sure you get back to them expeditiously.

If a problem occurs, hit it square on. Don't hesitate, don't bury it; call the client, lay it out, with the possible solutions. If a title report is delayed, let them know as soon as possible why and when at least an oral report would be available. If a title problem occurs, attempt to have the possible solution on hand and bring it immediately to the client's attention.

The above merely touches the subject. Personalized service to the client through straightforward, concerned interaction creates a lasting relationship. Finally, sales orientation does not mean weakening or lowering company underwriting standards, but assisting in finding ways for the closing to proceed without opening the company to unnecessary risk.

The third cornerstone is a talented pool of personnel. It is a manager's duty to train all personnel to the utmost of their individual ca-

pabilities. In doing so, the employees become extremely company-conscious and, because the company believes in them and tries to help their personal growth, they in turn will strive to do their best with their work and the company clients. Everyone wins: the company, the clients, the employees, and, yes, the company's bottom line. Quality control is policed by everyone; everyone becomes sales and production oriented.

An employee who perceives himself or herself to be a piece of office equipment won't care for anything. A manager who fails to train personnel to the utmost of their capabilities may be afraid of personal competition and may secretly feel inferior to one or more of the lower-level staff. It is up to his or her boss to recognize this weakness in management and to take such steps as may seem advisable.

The fourth and last cornerstone is professionalism. The advent of many newcomers into the industry and the dearth of old-timers in the business, have changed the orientation of the title insurance industry.

Continued

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A loss of understanding is seen as to what title insurance is. This lack of understanding of what separates title insurance from casualty insurance has created a mine field into which we all—some being dragged, some pushed and others jumping in with both feet—have increasingly placed the title industry. By flirting with casualty-insurance-type risks under various guises, we place the title industry in an ever-increasingly, dangerous position. Hazardous waste is a good example. Title coverage for hazardous waste in Connecticut is now banned by the insurance commission but, while it was being done, one company went so far as to issue hazardous waste endorsements on fee policies in a state that conveys by warranty deed. Good luck to them!

Professionalism is not knocking the competition, not violating the state insurance laws, not violating rate filings. It is not insuring risks that neither the home office would never condone, nor could be justified by the inadequate

protection from the company offered by those who would gain by the transaction.

Professionalism is the art of doing that which is right, not just the expedient. Professionalism is being able to say *no* when all legal and appropriate methods to solve a problem prove inadequate. Professionalism is understanding that our business is risk elimination, not risk assumption. Lastly, professionalism is the delivery of the best product we can through good underwriting principles and practices.

In conclusion, it is a team effort. May all the cornerstones be yours.

Minneapolis Unit Opens For Commonwealth Land

Commonwealth Land Title Insurance Company has opened a new national title service office in Minneapolis, Minnesota. Michael Fonder is Commonwealth's NTS representative in Minneapolis and also is Commonwealth's Minneapolis state agency representative.

Commonwealth Land also has relocated its Florida and Caribbean regional office to Orlando, Florida. Senior vice president Wayne Levins is the regional manager.

Dichiera Named Manager For New CLTIC Branch

The opening of a new escrow branch in San Francisco has been announced by Commonwealth Land Title Insurance Company.

Joanne Dichiera has joined the company as manager of the new office.

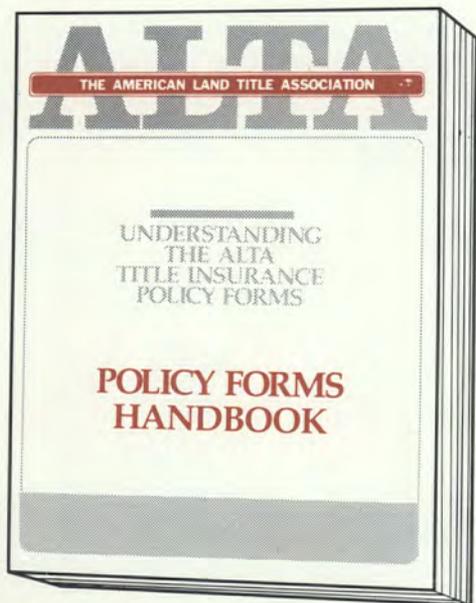
Ohio Bar Title Names Burch to Regional Post



Burch

Thomas Burch has been named northeast regional office manager for Ohio Bar Title Insurance Company, which has opened a new office in Akron.

Now Available



ALTA Title Insurance Policy Handbook. Containing all current title insurance policy forms adopted by ALTA, including new forms scheduled to go into effect June 1. This extremely useful Handbook contains the full course discussion papers prepared by the faculty for use at the recent ALTA seminars, "UNDERSTANDING THE NEW ALTA TITLE INSURANCE POLICY FORMS." The Handbook is in a 3-ring binder format and will permit periodic updating. For a limited time only, this updating service will be included in the purchase price.

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Since the title company in this example has essentially the same added labor cost whether processing the forms in its shop, or having the work done by a service company, the labor cost for "going outside" could be eliminated to further reduce the total outlay. And, the in-house computer can be put to other cost-effective uses. In the example mentioned, the computer is used only about 40 hours per year for the IRS function, leaving some 51 weeks of "free" computer time for real estate closings, processing title commitments and policies, accounting work and word processing, etc. (additional hardware and software probably will be needed for all these).

Important Questions

Here are some of the important questions to be asked before deciding which road to take in 1099-B processing.

- Who pays the fine if the IRS reports are incorrect?
- Who is responsible for explanations and, if necessary, a defense, should problems arise?
- If a service company is used, are duplicates to be made of all material sent for processing and, if so, what about the cost? And, is the title company going to inspect

the finished product before it is sent to IRS?

- Will the service company used have filed the necessary IRS forms to qualify as an intermediary?

There still is time to weigh these and other important factors before deciding how to handle the 1099-B function. Reports will not be due until after the first of the coming year.

Columbia Title Acquired By First American



Schembri

First American Title Insurance Company has announced the acquisition of Columbia Real Estate Title Insurance Company, Washington, D.C. President of the new acquisition is Anthony P. Schembri, First American regional vice president for the Mid-Atlantic area.

Columbia Title was chartered in 1881. The company does business in the District of Columbia and has offices in Maryland and Virginia, and is qualified to do business in Ohio.

Columbia Title now operates as a wholly-

owned subsidiary of First American.

If a service company is retained, *carefully weigh the advisability of a long-term contract* before entering into any agreement. More than one service company can be used if desired, and a careful advance check should be made on the reliability of any considered.

A *promising opportunity* to look at what is available in 1099-B processing, and talk with vendors, will be presented during AUTOMATION SYMBIOSIS 4, the well-known exposition to be held this year as part of the ALTA Annual Convention in Seattle October 18-21. Those who attended the Association's Mid-Year Convention in Albuquerque also were able to visit with exhibitors offering 1099-B capability.

In addition, it is expected that more vendors will continue to submit information on what they have in terms of 1099-B processing, for inclusion in the ALTA Vendor Automation Software Library. This resource was developed through the Association Land Title Systems Committee, and offers copies of specific file categories at \$5 each (see the advertisement elsewhere in this May-June *Title News*). Any 1099-B offerings will be included in the library's "Miscellaneous" category for the present; if interested in 1099-B, please mention this by name in written request accompanying check made payable to the Association.



How do I educate my title company employees when there's so little time available during the work day?



Hmmm... that's a tough one—might as well stand on my head!



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company.

The second trust deed, which is exception number 5, is handled the same way. All the comments about the first trust deed apply to the second trust deed. Keep in mind the differences between a Chapter 11 or Chapter 13 setting and a Chapter 7 setting. If there were a Chapter 7 bankruptcy, the debtors have been duly discharged and the case has been closed and the debtors are free to deal with the property in whatever manner they choose.

With Chapter 11 and Chapter 13, you have to go back and see what the plan does or does not authorize. Sometimes the debtors will come into your office and want to refinance this second trust deed with a local lender. Make sure, if you are dealing with an 11 or 13, that the debtor has that right.

If they don't, then you may have to go back and, if it's an 11 plan, have the plan modified or amended. If it's a 13, you probably will be able to get by with just the consent of the trustee, particularly if the payments are being made outside of the plan, rather than through the Chapter 13 trustee.

In a Chapter 13, I want to emphasize again that there is always a trustee. Chapter 13 debtors cannot go through bankruptcy without getting a trustee. Also, in a Chapter 13 situation, the debtor is really a consumer with fairly small debts and a regular source of income. The large majority of consumer debts are handled through a 13, unless it's a 7, because the person is so far in debt that they will never get out from underneath it. In that context, at least in Oregon, they are extremely flexible with consumers, and therefore they would bend over backwards to rearrange their obligations in a way that would allow them to satisfactorily resolve any kind of debt obligations they may have.

The next series of exceptions are judgments. In Oregon, we have a statute which says that, when you docket a judgment in the circuit court records, and in this case I'm assuming all these were docketed, then the judgment automatically becomes a lien against all real property of the debtor in the county in which the real property is located. Other states' rules may vary.

If you are in a state where they have to do something affirmative, like in California where you have to record an abstract or a report of an abstract in order to create a lien against real property, then, of course, you're dealing with a little different situation. But, here in Oregon at least, all you have to do is have the judgment docketed in the circuit court.

Once that happens, then the lien attaches to real property for a period of 10 years, and you can renew the lien for an additional 10-year period. Under bankruptcy law, these judgment lien creditors are unsecured creditors because their liens are judicially created. Fur-

thermore, the debtor can be discharged from the obligation of the judgment. In our example, there is no reason at all why the debtor can't be personally discharged from the obligations of 6 and 7.

However, exception number 8 is for child support judgment, which is not a dischargeable debt under bankruptcy law. Alimony is also a nondischargeable debt.

Notwithstanding the order of discharge, underwriters show these judgment liens as exceptions to the title of the property, and the debtor is saying, "But, I was discharged in bankruptcy." And that's always the big fight in this state. Following bankruptcy, there are two types of statutory procedures that you can go through in this state to discharge judgment liens that attach to your real property.

If this is homestead property, there is a case in Oregon which says that you can use the homestead discharge statutes, which is ORS 23.280, et seq. There is another statute, ORS 18.420, but it is not used too often because the courts uniformly say you can't use it for one reason or another. Furthermore, a recent case held that ORS 18.420 can only be used for post-petition judgments. That is a real odd result. Why go through a bankruptcy if you have post-petition judgments?

Betty talked extensively about exemptions. Let me explain a little more about exemptions, and the concept of bankruptcy law. The idea of bankruptcy is that a debtor gets a fresh start in life. Congress decided from a public policy standpoint, "Okay. You screwed up. You didn't pay your debts properly. Therefore, you're going to get a fresh start."

Congress said, "We're going to give you an opportunity to have a fresh start by allowing you to keep certain pieces of property. You can come out of the bankruptcy court with something in your hand." It is not only real property that you own and use as your usual abode, that you can retain. Also, you keep "tools of the trade," your clothing, that type of thing. These little things give you a little helping hand, pat you on the back and say, "Go out and try it again. We have a capitalist society. We're going to give you a fresh, new opportunity to live the good life."

In the process of doing that, if you have exempt property, that's property your creditors are not going to be allowed to reach. That's your fresh start.

In the context of your homestead, it's a sum of money, a sum of equity in your real property, which is not subject to execution by your creditors and which sum you are able to retain if your property is sold. The equity is the sales price less your trust deed, the costs of sale, et cetera. In Oregon, the upward amount of equity not subject to execution is \$20,000, if you own property jointly. In Oregon, you used to have to file a little form that said, "I claim a homestead exemption." But, the legislature changed that just about the time the Bank-

ruptcy Code was changed in 1978.

The Oregon legislature changed it and said, "You get your homestead exemption automatically. You don't need to do anything. If you live in this house and you meet the statutory tests and it's not over a certain number of acres, you automatically get it. Your creditors can't sell that house if you have \$20,000 or less, if you're married. If you're single, it's \$15,000 or less."

The Bankruptcy Code incorporated the concept of a homestead when it provided for exemptions. Homestead is an old concept. The concept initiated in Texas. When the debtor petitions the bankruptcy court, the debtor can claim that homestead, in effect, as the debtor's exempt property.

The debtor states the property is exempt. The debtor puts it in Schedule B-4. If nobody objects to the claimed exemption within 30 days after the first meeting of creditors, the exemption automatically happens.

In order to have a homestead in Oregon, the debtor must only meet the statutory requirements and it is automatic. But, in order to obtain an exemption, the debtor must specifically ask for the exemption by listing it in the schedules. If the property is exempt, and the title company is in a post-discharge situation, the debtor receives the \$20,000 equity free and clear of the judgment when the debtors sell the homestead property. However, because the judgments are liens, a title company will tell the debtor to follow the 23.280 procedure. In other words, Oregon decided, "We'll give you a statutory procedure to clear the judgment liens by saying, 'I went through bankruptcy. I claim this property as exempt. Nobody objected, and therefore I need to extinguish these judgments.'"

A debtor can do that, and if the creditor who is given notice of the hearing doesn't object to the extinguishment, then the debtor's property is freed from the lien. How many debtors do that? One in a million, until they come to you as the title company. If there is going to be any excess of money, such as \$2,000, then the court discharges the liens in court, and the creditors are entitled to any amount in excess of the homestead. You could do it as the debtor or seller.

Of course, if the debtor waits until the debtor sells the property and it goes up in value, then the debtor's equity will be more. Therefore, a debtor should seek a discharge of liens right after the discharge is granted by bankruptcy court.

Under the Oregon statute, there is a provision that says, if you sell this property, the homestead exemption follows the \$20,000 for a year. So you can take that \$20,000 down to the bank and put it in there. If you intended to buy a piece of real estate, that would again become your homestead. The creditors couldn't touch that \$20,000 for the one year provided I read that statute, and I thought the

one year applies only to the proceeds. Furthermore, ORS 23.280 states that the debtor or the transferee of the debtor can apply to have the liens extinguished. It says, "At any time."

Well, at any time to me means at any time. It doesn't mean within that year. Our Oregon Court of Appeals came along and said, "Hey, if there is no homestead, and the year has passed, you can't do it. You can't discharge that lien." So, we have an interesting thing in Oregon now. So, title companies, beware. Don't eliminate judgment liens, because the guy didn't get the 20 grand out or he got a little bit more, and you say, "Oh, heck. It's no big deal, because we can use that 23.280 procedure any time we want." If this case is right, then the procedure should be used before a title company insures the title without the liens.

STAPLETON: What is that case?

MAGNUS: It's *Bourgeois v. Grenfell*, 72.

MEMBER OF THE AUDIENCE: Do you know anything about Chapter 12?

MAGNUS: Yes, I do know about Chapter 12. It was just signed into law. It's going to cover farms, and I received a copy that was delivered to my office.

It has to do with farms, but small farms. I'm not sure about the figure. It's like half a million dollars or something like that. There's going to be a new farm—a special chapter for farms in the bankruptcy code.

MEMBER OF THE AUDIENCE: Turning to—or getting back to the five criteria under which the property can be sold free and clear of liens, are you aware of any cases that explain what a couple of these conditions mean if the loan is discharged under non-bankruptcy law, or if the lien claimant can be compelled to accept money for his claim? I know what consent means, I think, so that's one that is good. It almost never happens that the property is going to be sold for an aggregate value, so that's, practically speaking, off the list. Nullified dispute, if they are just arguing about the appeal, I don't know if that really gets to the question of whether the lien is good or not. So your level with consent, and these two are unintelligible to me, reasons why the court might authorize the sale free and clear of liens, but you see it happening.

MAGNUS: Yes. I have some cases. Do you want the case title? *Missouri v. U.S. Bankruptcy Court*, 647 F2d 68, talks about the fact of, "Hey, if there is no substantial asset, that's under Section 363f."

As far as I can tell, it's possible that the judge, if there is going to be some equity out of the property, that the creditors can utilize—especially in a Chapter 7 concept, or a Chapter 11 liquidation plan, in those kind of contexts, the judge is free, if he has a piece of property where the judge thinks that this a good solid buyer, that they can liquidate the property and they are going to get a fair amount of money, a

judge will authorize that sale free and clear of liens. They do that often here locally, but I can't speak for how the Washington state bankruptcy works.

SCHALL: They do it the same way.

MAGNUS: For example, let's say I have a trust deed on a piece of property. Under our state law in Oregon, as creditor, I am required to accept the payments and the money. Now, if the property is worth 100 grand and my trust deeds are only worth 30 grand, then there is \$70,000 of equity for all those unsecured creditors. In that case, a judge will force a sale, even if the secured creditor objects, there is no reason why the secured creditor should get a windfall. So, if a debtor pays you your money under state laws, you have to give the debtor a satisfaction of the mortgage. So that would be, to me, one of those kinds of situations under section 363(f) where the creditor could be compelled in a legal proceeding to accept the money.

If you have similar laws in your state, I surmise that's what the court's going to do when they are determining applicable state law. In other words, a creditor is probably not able to stop a sale free and clear of liens, especially when the proceeds can benefit a lot of other creditors.

SCHALL: Most of the things that Michael said concerning when you can be forced to accept money to satisfy your claim, are from a title insurance standpoint. The most frequent situation with a monetary lien is that the creditor will be forced to accept money in satisfaction of it.

QUESTION FROM THE AUDIENCE: How about county taxes?

MAGNUS: Well, they are liens.

QUESTION FROM THE AUDIENCE: And they go to a warrant?

MAGNUS: When they go to a warrant, then they are liens against the property. So I handle them just like any other liens, in the sense that there may be a discharge from that personal obligation, but I don't think so. I would treat county warrants like other tax liens.

As I understand it, if a county has a legitimate lien for a tax that they have assessed, then it is nondischargeable. There may be some taxes which can be discharged but a title company would be well advised not to remove them as exceptions unless they are paid or released.

SCHALL: I agree.

MAGNUS: It's a tax, nondischargeable. You handle them like a federal or state tax lien.

QUESTION FROM THE AUDIENCE: If your debtor is a vendee on a real estate contract, you have a sale, and an order authorizing a sale free and clear of encumbrances, what does that do to the vendor? Do you still require a deed? I would think you would. Is that the same type of encumbrance as a deed of trust?

MAGNUS: Yes, at least in our state. Of course, in Washington law, it's a little different. But, here in Oregon, the vendor in a contract merely has the right to receive proceeds as money, and they only hold the naked legal title as security for that obligation, to receive the money, so my attitude is, "Sure, you could."

STAPLETON: Michael, I wanted to ask you about child support as not dischargeable in bankruptcy.

It is my understanding there is a property situation, and there is a lump sum judgment in that connection that it would be dischargeable; is that true or not?

MAGNUS: You know, I've talked with my bankruptcy lawyer friends and I often get the response, "Well, even though it says it's just a lump sum, it's other things. It's probably alimony, and probably not dischargeable."

If you go in, and you're the wife, and you have a \$50,000 judgment, and the guy's trying to argue it is dischargeable because it's a lump sum settlement as opposed to an alimony

Continued on page 46

Lewis to Presidency Of Missouri Association



James E. Lewis, Pettis County Abstract Company, was elected president of the Missouri Land Title Association at the Association's seventy-ninth annual convention in St. Louis.

Other officers elected are

Lewis
Cara L. Detring, St. Francois County Abstract Company, first vice president, and Richard A. Mason, Lawrence County Title Company, second vice president. Newly-elected members of the board of directors, each for two-year terms, are James R. Drake, Drake Land Title Company, Robert D. Lutz, Commonwealth Land Title Insurance Company, and James A. Staton, Staton Abstract and Title Company.

First Vice President Detring is an ALTA governor and is chairman of the ALTA Education Committee.

Lloyd J. Wurdack, Franklin County Title Company, was elected to fill a one-year, unexpired director term. Immediate past president is Frances Morris, Audrain County Abstract Company, who was named new MLTA secretary.

Jerry Tabb, Hight and Associates Land Titles, Inc., was named MLTA Young Title Person for 1986.

Guest speakers included 1985-86 ALTA President-Elect John R. Cathey, The Bryan County Abstract Company, Durant, Oklahoma and William J. Koman, Sr., real estate developer and former linebacker with the St. Louis Cardinals football team.

Names in the News



Jordan



Evans



Schittina



Reilly



Samsonas



Guidry

Lawyers Title Insurance Corporation has elected **Russell W. Jordan III** senior vice president, general counsel and secretary, Richmond, Virginia. He is a member of the ALTA Title Insurance Forms and Title Underwriter Counsel committees.

G. William Evans has been elected Lawyers Title vice president, Universal City, California; **Mark A. Schittina**, vice president and Vermont state manager, Burlington, Vermont; **Peter F. Reilly**, branch manager, Toms River, New Jersey; **Gregory O. Drummond**, branch counsel, Summit, New Jersey; and **Kelly G. Rogers**, senior claims attorney, Dallas, Texas.

Lui J. Samsonas has been named president of First American Title Company of Hawaii, Inc., a wholly-owned subsidiary of First American Title Insurance Company. He also was appointed vice president and state manager of the parent company, with responsibility for all the islands in the state of Hawaii.

Samsonas is a director of the recently-reactivated Hawaii Land Title Association.

Thomas D. Guidry has joined the Mid South Regional office of First American Title Insurance Company as Louisiana State Counsel, New Orleans, Louisiana.

First American Title Insurance Company of Arizona has promoted **Bob Lemons** to Maricopa County manager; he remains senior vice president and state manager, Phoenix, Arizona. **Owen F. Childress** has been named senior vice president and regional sales administrator for the company's new regional sales division, with offices in Phoenix.

Title USA Insurance Company has appointed **Craig E. Dunbar**, president of Fort Worth Title Company, a wholly-owned subsidiary of Title USA.

Title USA Company of Houston has announced the following promotions: **Charles Edward Bach**, senior vice president-title operations; **Gloria J. Wells**, vice president-production services; **Susan Fischman**, Bering office branch manager.

Robert J. Mogley has been promoted to president and chief operating officer of Automated Closing Services, a wholly-owned subsidiary of Ohio Bar Title Insurance Company, and remains vice president and director of marketing of the parent company, Columbus, Ohio; **Viola Heavrin** has been named pro-



Lemons



Childress



Mogley



Heavrin



Zabkar



Senn



Smith



Zimmerman



Auge



Allen

duction supervisor; and **Paul Stickel**, title officer.

Ohio Bar Title has named **William J. Zabkar** vice president and general underwriting counsel.

Western Title Insurance Company has promoted **Cynthia M. Senn** and **Gregory C. Smith** to vice president and county manager in San Jose and San Francisco, California, respectively. Western Title also has appointed **Richard D. Nott**, branch manager, Oakland, California; and **Gerald Lew**, Montclair branch manager, Oakland.

LaNette Zimmerman has joined Chicago Title and Trust Company as vice president and director of human resources, Chicago.

Chicago Title also has announced the following appointments: **Larry A. Green**, assis-

Continued on page 46

Life with Barney at The Wall Street Journal

Vermont Royster

It can be interesting to read how academics and others who have never managed anything think chief executives should manage their enterprises, just as it can be to read commentators say how a U.S. president should run the Oval Office.

But to me the more interesting of these *Journal* features are those that tell how actual managers manage. And reading these accounts always brings to mind memories of the late Bernard Kilgore, one-time chief executive of Dow Jones and architect of the modern *Wall Street Journal*. His was a very personal style rarely seen.

Barney was barely 35 in 1943 when he became *de facto* chief executive due to the long illness of his predecessor (he would shortly gain the formal title). His previous managerial experience was limited; he had been chief of the *Journal's* Washington bureau and, briefly, managing editor.

Perhaps his youth had something to do with his style, for though he was supremely confident of what he wanted to do with the newspaper and the company, he had to deal with subordinates who were much older. In any event he hardly ever called any department head to his office. Instead, he made a daily practice of going to see them.

After the morning's paper work, he would start from his eyrie on the top floor and walk down through the building, floor by floor. On the way he would stop off at the office of the advertising director, the circulation manager, the comptroller, the editor, managing editor

and other key people. If they were busy, he might wave and pass on. If not, he would stop and ask them what was going on in their area, what plans they had and so forth. If he had questions, he asked. If he had thoughts, he would express them, more often phrased as suggestions rather than orders.

Along the way, he also would stop to chat with secretaries, clerks or copyboys. These journeys would end in the basement where the printing presses were located. There, too, he would talk not only with the production manager but also with linotype operators and pressmen, many of whom he knew and all of whom knew him. Only the newest employee ever called him Mr. Kilgore. To everyone else he was Barney.

It was all informal and seemingly unstructured. But by day's end he would have a clearer idea of the company's affairs than he would ever get from memos or reports. Very little escaped him.

His method was the same with other company offices. He would often drop in unannounced in San Francisco or Dallas and follow the same routine as in New York. This gave everyone the feeling "attention was being paid" to whatever he was doing.

Dow Jones did, it's true, have something called a management committee on which the department heads were nominally members, but it rarely met more than once a year. That was, supposedly, to finalize the budget. But in fact Barney already had the figures and had approved them, so the business was quickly concluded.

For the *Journal* itself, for which he already had visions as a national newspaper, his method was equally unorthodox. Every morning he gathered with key editorial people in what became known around the shop as the "kaffee klatsch." Sometimes these gatherings were post-mortems on the morning paper, which Barney had read thoroughly and about which he would have comments of both praise and criticism. At other times there would be seemingly desultory conversation about the state of the world and what developments

might be worth future stories.

Everybody was expected to join in, and anybody who disagreed with Barney was expected to say so. I have a vivid memory of once saying one of his ideas was "stupid" and then gulping at using the word to my boss, stammering an apology. He merely chuckled, shrugged his shoulders and said, "Not to worry. I'm the one person around the shop who can't afford to get mad."

Nonetheless, there was never any doubt about who was the boss. When he said something had to be done, it was best done quickly. When he said "no" to a project, that was it. But such direct orders were rare. He always preferred persuasion.

Even as the newspaper grew and the company expanded into new activities, Barney retained his personal style, even though the time inevitably came when he couldn't have the same personal contact with everyone on the much larger staff. "Creeping bureaucracy" was his phrase, always uttered with a touch of sadness. But he never ceased trying for the personal touch. When we moved into larger (and more sumptuous) quarters, his office door remained open to passersby. To see Barney you didn't need an appointment.

His method of choosing key people was equally personal. To a large extent, especially in the beginning, he had to choose from among people already on the staff, and that was always his preference. When he needed a new managing editor or editor, he would choose, in part, by past performance—but also in part by his intuitive feeling of whether the person could deal with larger responsibilities. In that way he was remarkably successful.

His immediate successor, William F. Kerby, had been with the paper for many years as a managing editor, executive editor and as a corporate vice president. I remember when Dow Jones bought the *Chicago Journal of Commerce*, Barney did all the preliminary negotiations and then sent Bill Kerby to Chicago

Calendar of Meetings

May 3-5

Iowa Land Title Association
The Lodge
Okoboji, Iowa

May 6-9

California Land Title Association
Hyatt Regency Monterey
Monterey, California

May 7-9

New Mexico Land Title Association
The Inn
Farmington, New Mexico

May 7-10

Oklahoma Land Title Association
Excelsior Hotel
Tulsa, Oklahoma

May 21-23

Virginia Land Title Association
Kingsmill on the James
Williamsburg, Virginia

June 4-7

Texas Land Title Association
Hyatt Regency Hotel
San Antonio, Texas

June 7-9

Pennsylvania Land Title Association
Seven Springs Mountain Resort
Champion, Pennsylvania

June 10

ALTA Board of Governors
Stouffer Concourse Hotel
Denver, Colorado

June 11-12

Southwest Title Insurance Executives
The Broadmoor
Colorado Springs, Colorado

June 11-12

South Dakota Land Title Association
Game Lodge, Custer State Park
Custer, South Dakota

June 11-14

Colorado Land Title Association
Keystone Lodge
Keystone, Colorado

June 18-21

Illinois Land Title Association
Pheasant Run Resort
St. Charles, Illinois

June 21-23

New Jersey Land Title Association
Concord Resort Hotel
Kiamesha Lake, New York

June 25-27

Oregon Land Title Association
Rippling River Resort
Welches, Oregon

June 25-27

Tennessee Land Title Association
Radisson Reed House
Chattanooga, Tennessee

June 25-28

New England Land Title Association
Smuggler's Notch Inn
Vermont

July 9-11

Utah Land Title Association
Sun Valley Resort
Sun Valley, Idaho

July 16-18

Michigan Land Title Association
Grand Hotel
Mackinac Island, Michigan

August 6-8

Montana Land Title Association (joint)
Wyoming Land Title Association
The Outlaw Inn
Kalispell, Montana

August 6-9

Idaho Land Title Association
Sun Valley Resort
Sun Valley, Idaho

August 6-9

North Carolina Land Title Association
Shell Island Resort
Wrightsville Beach, North Carolina

August 13-15

Minnesota Land Title Association
Holiday Inn
Bemidji, Minnesota

August 27-30

Kansas Land Title Association
Marriott Hotel
Overland Park, Kansas

August 30-September 2

New York State Land Title Association
Hotel Hershey and Country Club
Hershey, Pennsylvania

September 10-13

Missouri Land Title Association
Kansas City Marriott
Kansas City, Missouri

September 13-15

Ohio Land Title Association
Quail Hollow Resort
Painesville, Ohio

September 17

ALTA Regional Seminar
Westin Hotel
Boston, Massachusetts

September 17-18

Wisconsin Land Title Association
The Landmark
Door County, Wisconsin

September 17-19

North Dakota Land Title Association
Airport International Inn
Williston, North Dakota

September 23-26

Dixie Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

September 26-29

Indiana Land Title Association
Holiday Inn at Union Station
Indianapolis, Indiana

September 30-October 2

Nebraska Land Title Association
Ramada Inn
Kearney, Nebraska

October 2-3
ALTA Regional Seminar
Little America Hotel
Salt Lake City, Utah

October 18-21
ALTA Annual Convention
Westin Hotel
Seattle, Washington

October 18-21
Washington Land Title Association
Westin Hotel
Seattle, Washington

November 12-14
Arizona Land Title Association
Doubletree Inn
Scottsdale, Arizona

November 15-18
Florida Land Title Association
Hilton at Walt Disney World Village
Orlando, Florida

December 2
Louisiana Land Title Association
Westin Canal Place
New Orleans, Louisiana

1988

January 18
ALTA Board of Governors
The Breakers
Palm Beach, Florida

March 11-13
ALTA Mid-Year Convention
The Westin La Paloma
Tucson, Arizona

October 16-19
ALTA Annual Convention
Toronto Hilton Harbour Castle
Toronto, Canada

1989

January 9
ALTA Board of Governors
Desert Springs Resort
Palm Springs, California

April 5-7
ALTA Mid-Year Convention
The Mayflower-A Stouffer Hotel
Washington, D.C.

October 15-18
ALTA Annual Convention
Hyatt Regency Embarcadero Center
San Francisco, California

Fidelity Title Expands San Diego Operations

Fidelity National Title Insurance Company has opened its ninth title unit in San Diego, California, which is headed by Pam Kreis. The division is offering services to mortgage lenders.

Fidelity National Title Agency, Inc., a subsidiary of Fidelity National Title Insurance Company, has announced the opening of its sixth facility in Tucson, Arizona. Steve Dodrill is branch manager and Brenda Sugden is escrow officer.

SAFECO County Units Acquired by Fidelity

Acquisition of the SAFECO Title Insurance Company operations in the California counties of Alameda, San Mateo and Contra Costa has been announced by Fidelity National Title Insurance Company. The purchase includes escrow branches in Hayward, Concord, Danville and Menlo Park.

Existing Fidelity operations in San Mateo and Contra Costa counties will absorb the units acquired there. Laurence E. Calinda heads the new Alameda operation as vice president and county manager.

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tant vice president and remains manager, Roseland, New Jersey; **Robert J. Narucki**, assistant vice president and remains manager, East Brunswick, New Jersey; **Robert J. Zinn**, assistant vice president and remains manager, Union, New Jersey; **Ronald J. Vitale**, assistant vice president and remains accounting manager, Carle Place, New York; **Phyllis D. Hall**, title operations officer, Fairfax, Virginia; **Richard M. Hall**, senior title officer, Fairfax; **Diane Romaniuk**, assistant counsel, Chicago; **Eileen Van Roeyan**, assistant title officer, Chicago; **Barbara Shelby**, construction escrow officer, Chicago; and **Susan Jane Tomlin**, escrow officer, Dayton, Ohio.

Fidelity National Title Insurance Company has named **James G. Auge**, vice president and controller, Scottsdale, Arizona; **James M. Allen**, vice president and associate counsel, Scottsdale; and **Rich Saul**, corporate sales representative, Santa Ana, California.

Fidelity National Title Agency, Inc., has promoted **Judy L. Clarkson** to escrow officer and branch manager, Tucson, Arizona. Fidelity also has added **Janet L. Tomlin** as sales and marketing account executive, Tucson.

Maureen T. Kelly has joined United Service Abstract Corporation as vice president and manager of production facilities, Garden City, New York.

American Title Insurance Company has



Kelly



Fuller



Garton



Bice

named **Nancy J. Fuller** compensation/benefits manager and assistant vice president, Miami, Florida.

David A. Garton has been appointed general counsel and director of personnel of The Title Office, located in Holland, Michigan.

Industrial Valley Title Insurance Company has promoted the following: **Michael A. Spadaccini, Jr.**, branch manager, Philadelphia; **Millie C. Korn**, account executive, Philadelphia.

Carol A. Bice has joined Commonwealth Land Title Insurance Company as assistant branch manager, Chestnut Hill, Pennsylvania.

Coming In Title News



Seattle—Convention City

Seattle, Emerald City on the shores of the Pacific Northwest, is the site for the 1987 ALTA Annual Convention at the Westin Hotel October 18-21. A special Convention preview will describe fascinating attractions that await attendees, and will introduce a sparkling lineup of guest speakers.

Pyramid of Success

John Wooden, the only man ever elected to the Basketball Hall of Fame as both a player and a coach, will share his philosophy on winning that is applicable throughout competitive endeavor. Now retired, he produced 27 consecutive winning seasons as UCLA basketball coach. In his last 12 years at UCLA, his teams won 10 national championships—seven of those in succession.

This—and much more—in the July-August issue!

trust advisor. The trustees and trust advisor meet at least once a year to make policy decisions concerning operation and administration.

Members are encouraged to visit with broker representatives who will be available to answer questions concerning the programs at the ALTA Group Insurance Trust booth in the exhibit area at the Association's 1987 Annual Convention in Seattle. Further information concerning the insurance programs can be obtained by calling 1-800-346-ALTA (in Illinois, call 1-312-922-5000).

For information about joining ALTA, contact William J. McAuliffe, Jr., Senior Vice President, American Land Title Association, 1828 L Street, N.W., Washington, D.C. 20036, telephone 202-296-3671.

payment, if your lawyer's on the ball, you're going to go in and say that it was an alimony.

STAPLETON: The problem is you don't know the facts.

MAGNUS: You want to be real careful about allowing things to slip by. I mean, I don't ever really think that, in any given context, you can always say that, because of tax representation, and in a lot of contexts that that lump sum is done for tax purposes. I would recommend against the elimination of any judgment arising out of a divorce unless there is a release or a specific court order.

to complete the deal while he himself went off on vacation. That was his way of showing trust in and putting a challenge to Kerby. When that challenge was met, Kerby was thereafter marked to be the next chief executive.

I'm well aware that this style wouldn't suit every chief executive and every organization. Barney's personal style grew out of the kind of man he was, a visionary who was too shy to go about barking orders. Anyway, I leave the business of giving managerial advice to MBA professors and others who know better than I how organizations should be run.

But wouldn't it be refreshing someday to see even a president of the United States who got out of the Oval Office now and then, instead of letting someone else choose his visitors? Who simply wandered around the Executive Office chatting with secretaries and popping in unannounced on subordinates in the White House basement?

That might at least keep him from being surprised at what some of this people are up to.

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- Prepares and mails all reports required by IRS in whatever magnetic format specified. (With copy to you).
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Take a hard look at what other reporting services are really offering.

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*Landata customers with AIM (Automated Information Management) Closing Modules are receiving this software program and instruction with our compliments!

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Proceeds From Real Estate, Broker, and Barter Exchange Transactions

2b CUSIP no. _____

VOID CORRECTED

1a Date of sale/closing _____
MMDDYY

1b Real estate \$ _____

2a Stocks, bonds, etc. \$ _____

3 Bartering \$ _____

4 Federal income tax withheld \$ _____

Gross proceeds less commissions and option premiums

Principal residence
Other real estate

Profit or (loss) on 12/31/86 _____

For machine print PAYER'S name, street address, city, state, and ZIP code

LANDATA, INC.
Real Estate Information

For additional information, phone or write the office nearest you.

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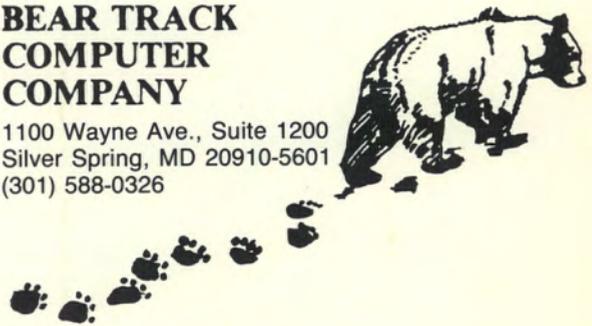
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