P U B L I C H E A R I N G

before

REAL ESTATE TITLE INSURANCE STUDY COMMISSION
(Created by Assembly Concurrent Resolution No. 77)

Held:
May 10, 1973
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Assemblyman William J. Hamilton, Jr. (Chairman)
Assemblyman Philip D. Kaltenbacher
Assemblyman Michael M. Horn
Senator Joseph A. Maressa
Kenneth R. Stein, Esq.
Frank J. McDonough, Esq.
Kenneth L. Walker, Jr.

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Index (Continued)

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Letters from:

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ASSEMBLY CONCURRENT RESOLUTION No. 77

STATE OF NEW JERSEY

INTRODUCED APRIL 10, 1972

By Assemblymen HAMILTON, H. D. STEWART, BURSTEIN, RUSSO, REID, SPIZZIRI, FAY, RYS, KOLODZIEJ, BORNHEIMER, FROUDE, DEVERIN, KLEIN, PERSKIE, COLASURDO and FLORIO

Referred to Committe on Insurance

A CONCURRENT RESOLUTION creating a special legislative real estate title insurance study commission and prescribing its powers and duties.

WHEREAS, The real estate title insurance industry is not within the spectrum of services subject to the responsibilities of the State Commissioner of Insurance and there is no means to enable the public to ascertain the true costs of title insurance; and

WHEREAS, The premium factor charged by the various companies is, at best, an arbitrary one, and the charge for basic examination of title varies from county to county within the State; and

WHEREAS, It would appear that an in depth study of the practices and operations of the real estate title insurance industry would serve the public interest; now, therefore

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. There is hereby created a commission to consist of nine members, three to be appointed from the membership of the Senate by the President thereof, no more than two of whom shall be of the same political party and three to be appointed from the membership of the General Assembly by the Speaker thereof, no more than two of whom shall be of the same political party, and three to be appointed by the President of the Senate and the Speaker of the General Assembly jointly, one whom shall be a licensed real estate broker of the State, one, a representative of the real estate title insurance industry of the State actively engaged therein in a managerial capacity, and one an attorney at law of the State specializing primarily in real estate practice, who shall serve without

compensation. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the commission.

3. It shall be the duty of said commission to study the real estate title insurance industry and all aspects of its practices and operations within the State, including, without limination, the payment of fees and commission in connection with the placement of orders for title insurance, the methods and considerations involved in establishing premium rates and title examination charges, the feasibility of establishing a rating bureau for the industry, and consideration of the need for the licensing and regulation of the industry including the possible need for licensing abstract companies.

4. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be avaible to it for said purpose, and to employ such expert, stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made avaible to it for said purposes.

5. The commission may meet and hold hearings at such place or places as it shall designate during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

ASSEMBLYMAN WILLIAM J. HAMILTON, JR. (Chairman): This public meeting will please come to order.

This is a public hearing of the Legislative Real Estate Title Insurance Study Commission, which is constituted under ACR 77 of 1972. The Commission has been empowered to study the real estate title insurance industry and all aspects of its practices and operations within the State: the payment without limits of orders for title insurance, the methods and considerations involved in establishing premium rates and title examination charges, the feasibility of establishing a Rating Bureau for the industry, and consideration of the need for the licensing and regulation of the industry, including the possible need for licensing abstract companies.

I am Assemblyman William J. Hamilton, Jr., Chairman of the Commission. Seated with me are: Senator Joseph A. Maressa on my far left; Mr. Kenneth R. Stein, a member of the New Jersey Bar, to my left; Assemblyman Michael M. Horn, a member of the General Assembly and an attorney-at-law, to my right; Mr. Kenneth L. Walker, Jr., of the New Jersey Association of Realtor Boards, of Shrewsbury, to Mr. Horn's right; Mr. Frank J. McDonough, Second Vice President of the New Jersey Land Title Insurance Association, to Mr. Walker's right; and Assemblyman Philip D. Kaltenbacher, who also happens to be Chairman of the Assembly Insurance Committee, at my far right.

Not with us at the present time are Senator Richard R. Stout and Senator John L. Miller, also members of the Commission.

I have a list of those persons who have already indicated a desire to testify today. If there are any other persons in attendance in the Chamber who wish to testify, please register with Mr. Peter Guzzo, who is seated here at Reverend Woodson's chair, who is serving

as Secretary to the Commission.

As each participant is called, we ask that he sit at this desk where Commissioner McDonough is now, to my left here, and speak in the microphone. We also ask that you first identify yourself by stating your name, your address and your organization, if any, that you represent. If you have prepared statements, we request that you make copies available to the Secretary, Mr. Guzzo, for distribution to the Commission members, the Hearing Reporter and the press.

Any prepared statements that you have need not be read in full. You may request that your statements be made a part of the record and they will be considered by the Commission and by the Legislature.

After each participant has made his statement, the Commission may have some questions and we trust that you will make yourself available to answer those questions if we should have any. No questions may be directed to members of the Commission from the audience. However, if anyone wishes, you may submit questions in writing to me through Mr. Guzzo for consideration by the Commission.

Our only purpose is to provide for the convenience of each participant and the Commission in conducting this hearing.

Let me say at this point that we are in a somewhat unusual position with respect to this particular public hearing. I have already given you our mandate in ACR 77. You all, or at least most of you, know that there is pending in the New Jersey General Assembly a bill A 1393 which would regulate in some manner the title insurance industry. That bill can only be approved and released for a floor vote and can only be amended by a standing reference committee of the General Assembly, in this case, the Insurance Committee. As most of you

know, the Assembly is now in recess. And with the blessing of Mr. Kaltenbacher, the Chairman of the Committee, our Commission has been considering in some detail possible amendments to A 1393 as introduced.

This will not be the last public hearing that we have under our mandate in ACR 77. We do envision it as the one public hearing on A 1393. There is only one version of A 1393 - I had an inquiry from someone earlier - and that is the version in which the bill was introduced. It has not been amended by the Insurance Committee. It cannot be amended, as such, by our Commission. But I am confident that the Committee will give great weight to the proposed amendments and the suggested amendments that we will produce as a result of our study to date and as a result of the input that you ladies and gentlemen are going to make to us here today and that we will consider again after this public hearing has been ended.

I did want to make that clear - there is only one version of A 1393. We have other work sheets that we are talking about. There is nothing "official" about the proposed action that we have been talking about and we have not reached any final decision with respect to those recommendations that we will make to the Insurance Committee.

At today's hearing, we are especially interested in comments on the practice of title insurance companies or agents paying commissions to attorneys and real estate brokers for the placing or procuring of title insurance for a client with a particular title insurance company.

We are interested too in the permissible scope of business activities that are engaged in by title insurance companies, which from our present knowledge may vary considerably from the south to the middle to the northern part of New Jersey, and also the method of achieving rate regulation of the title insurance industry, that

is, prior approval or file and disapproval.

With that opening statement, I would like to call on Commissioner Richard McDonough of the State Department of Insurance for such comments as he may desire to make. Mr. McDonough.

R I C H A R D C. M c D O N O U G H: Thank you. I assume that you have copies of my statement, but I will read it if you don't mind.

Mr. Chairman, members of the Legislative Real Estate Title Insurance Study Commission, representatives of the New Jersey Bar Association, and other invited speakers and members of the general public:

My name, as has already been indicated, is Richard C. McDonough and I am the Commissioner of Insurance for the State of New Jersey, and I am grateful for this opportunity to appear before you today to offer my support and the support of my Department to secure passage of Assembly Bill 1393, a very worthwhile and needed piece of legislation.

The purchase of a home is probably the largest single investment of time and money that a person makes in a lifetime. Generally, it is an event that is looked forward to with interest and excitement, but the investigative processes and the preliminary checking and calculating necessary to determine the best time, the best place, and the best way to buy soon begins to bewilder even the most enthusiastic consumer. Impatience and a general reluctance to show ignorance added to this eventual bewilderment forces most people who buy property to rely upon others to guide and protect them in the final analysis.

The opportunities for business and the responsibilities for public service that arise out of this situation are obvious. All persons engaged in businesses and professions involving real estate services are vested with

both an opportunity and a responsibility to see that the uninformed and the inexperienced purchaser is properly and honestly served so that the dream of home ownership does not bring in its wake both heartache and serious financial loss.

Title insurance companies are said to contribute to the security of home ownership and to the peace of mind of the prospective home owner. By means of a title insurance policy, a prospective property owner receives assurance from the title insurance company that he will receive good title when he acquires real estate, that no claims of previous owners or errors in the records or acts of fraud or the legitimate interest of other parties will rise from the past to threaten his present possession or cause him to lose any part or all of his investment in the property. But who insures that the title insurance company is willing or more importantly is able to make such assurances?

Since the passage of Public Law 15, the McCarron Ferguson Act of 1945 exempting the insurance business from various federal anti-trust and similar regulatory acts to the extent that the business is affirmatively regulated by the states, insurance regulation has increased but not in all areas of insurance and not to the same degree, depending upon the particular state examined.

Presently, New Jersey does not have adequate regulatory control of the title insurance industry. This situation is not the result of a lack of need for such control or because of any agency struggle for the authority to regulate and most surprisingly, not because of industry opposition.

Rather than spending a great deal of time exploring possible reasons why New Jersey lacks this control, I think it would be worthwhile to identify some reasons for acquiring the needed authority.

Insurance has been said to be, together with banking, the most highly regulated form of American business. It is interesting to note the reason why this is and should be so. The failure of an insurance company has wide and serious repercussions because insurance is "vested with a public interest" by reason of the fact that it has charge of other people's money and because thousands of people rely upon it for their future security. Regulation promotes policyholder security and insurer solvency. Examples are in the regulation of policy provisions, to see that they are clear and fair; in regulation for solvency or its equivalent, to see that the promise can be performed if and when it becomes due; in regulation of the relationship between insurer and policyholder, to see that the promise is indeed performed fairly and that the buyer's reasonable expectations as to what he bought are not too rudely disappointed.

Another reason for regulation of the title insurance industry is that the contract is one, which if fullfilled, will be fullfilled in the future. The fact that insurance companies sell a commodity for possible future delivery means that abuses and mis-management may more easily creep in undetected than in the case of a product sold for immediate consumption. Most persons are unaware of the meaning of insurance terms and, therefore, cannot protect themselves against the so called "fringe element" of the real estate title business which does not always act in the best interest of the public.

The prospective home purchaser today, considering the very complex legal, financial, insuring and engineering procedures surrounding real estate transactions is usually confronted with a maze of items and costs to be considered. Each and every one should be evaluated carefully. Anyone purchasing a home should be prepared to secure and pay for the very best professional services

covering all aspects of the transaction. But when all the items and costs for each are identified many people are barred from ever consumating the transaction. Many individuals can afford the monthly payments required to own a home, but they cannot scrape up enough money to pay for all the closing costs such as the title search, title insurance, tax escrow, transfer taxes, and real estate commissions.

Closing costs which include many of the business activities engaged in by title insurance companies, vary within the state as well as country-wide. The variance is usually determined by what has come to be known as the "customs of the area". For example, in northern New Jersey title insurance companies and their agents, for receiving business, pay forwarding fees to approved attorneys while in southern New Jersey these fees are paid to real estate brokers with no regulation as to cost or cost consistency. If passed, Assembly Bill 1393 would prohibit approved attorneys and real estate brokers from accepting a commission for procuring title insurance in a real estate transaction thus eliminating a charge that appears to have been supported by nothing more than "custom".

I might add, that is an affirmative statement by me, but the bill has not been amended, as I understand it. I am sorry. I thought the bill had had some amendments already proposed. So I would support that position and not say it as I say it here as if it is a fait accompli.

ASSEMBLYMAN HAMILTON: To clarify that, Commissioner, there is substantial sentiment for amending the bill in exactly the form you have just addressed yourself to.

COMM'R MC DONOUGH: I assumed it was done. The copy I had looked to me like it had already been worked up. So I apologize. But I would support that position.

In preparing this statement, I have considered other alternatives for regulating this segment of the industry. The only alternative that I consider a viable one is control of the industry by the federal government, an alternative that is not foreign to or warmly received by State regulators.

The federal government, through a federal insurance administrator in the Department of Housing and Urban Development, is in the insurance business of writing subsidized flood insurance and in the business of reinsuring against the riot and civil disorder peril and in the business of writing crime insurance. Soon, it may be in the title insurance business in those areas effected by a proposed HUD imposition of maximum settlement costs. These areas of government involvement resulted directly from the inability or unwillingness of the private sector and state government to provide the coverages at a reasonable rate.

Title insurance can and should be a valuable tool to ameliorate the unavoidable problems that sometimes arise in real estate transactions and to aid the innocent, the inexperienced and the uninformed consumer. Generally, this role can be filled by the private sector with proper regulatory control provided by the State Insurance Department. Only when the industry and the state fail to rise to the need, should federal action be considered.

New Jersey has a title insurance industry that is not only not opposed to but has encouraged regulation and a State Insurance Department that has the ability and desire to provide the necessary control. The existing legislation pertaining to title insurance together with the supplementary regulatory controls provided in A-1393 can satisfy the requirements of the McCarron-Ferguson Act thus giving New Jersey the autonomy necessary to avoid federal interference for another day.

In conclusion, and with particular reference to Assembly Bill No. 1393, I would like to stress three (3) areas:

1) Rates for title insurance should be subject to "prior approval," which is standard, with few exceptions, in ratemaking in New Jersey. This in essence means that rates can only be used with the approval of the Commissioner of Insurance, based upon credible statistical submissions supporting rate adjustments due to experience. This may be accomplished most expeditiously by amending the existing rating statute by deleting title insurance from those kinds of insurance excepted from the rating law in 17:29A-25.. Title insurance rates are not as dramatically affected by inflation and other cost factors which show an immediate impact upon more widely marketed areas such as private passenger insurance, thus defeating any pleas for "open competition".

2) So that the statistics pertaining to title insurance filed with the Department would be large enough to be credible, it would be desirable to encourage the establishment of a title insurance rating bureau, subject to the licensing qualifications of the department. Again, this would be compatible with the provisions of the McCarron-Ferguson Act and would facilitate the compilation of proper statistics through one source.

3) This bill provides for regulation of fees for title searching and abstract companies. While not directly a part of title insurance, these costs are very significant to the purchaser and seller of real estate. A schedule of fees should be promulgated after a public hearing in which all interested parties have an opportunity to be heard.

Aside from my statement, one other observation I would like to make is that in reading once again the bill, I was impressed with the fact that there is a considerable amount of material covered in the bill that is already covered in other sections of Title 17.

It is not my purpose to say that this shouldn't be passed as is. I am only questioning whether a lot of it couldn't be incorporated by reference to other sections of the statute that exist today, such as the Rating Bureau sections, the sections on mergers and consolidations and so on down the line. I only offer that as a comment.

ASSEMBLYMAN HAMILTON: That is something that we are well aware of, Commissioner.

COMM'R MC DONOUGH: I see that posed as a question on the last page.

ASSEMBLYMAN HAMILTON: That's right. Whether we should repeat everything or make reference to things that are adopted, or just be silent and let other sections pick them up are the three alternatives.

COMM'R MC DONOUGH: I am perfectly aware of the fact that Title 17 is a maze in and of itself. But perhaps some day we will get to the task of trying to straighten that out. There is an awful lot of material that is in this bill, this proposed bill, that is already, I think, adequately handled in the other portions of Title 17.

ASSEMBLYMAN HAMILTON: That is primarily house-keeping and not substantive. While the people who are here to testify ought to be aware of that, I don't think we ought to dwell at length on that.

COMM'R MC DONOUGH: I just thought I would make the observation if you don't mind.

ASSEMBLYMAN HAMILTON: Are there any questions of Commissioner McDonough by members of the Commission?

ASSEMBLYMAN HORN: Not a question, just a comment, to thank the Commissioner for bringing to my attention and, I guess, the attention of the entire Commission some very important information. One of the new points that was made that I wasn't aware of before was the interrelation between the Federal regulation and State and private, and especially the comments on page 4 of your statement, where if the State governments and the private sector fail to act, then you are inviting Federal regulation, which may not be desirable.

COMM'R MC DONOUGH: This is only one piece of the big picture because you know what is happening in no-fault and we acted in no-fault. But there is still strong talk of national standards which can only be borne out because so many other states are not acting. It is unfortunate. I don't think we need Federal regulation here. I think we can handle it ourselves and our Department is certainly ready, willing and able to assist in that regard.

ASSEMBLYMAN HAMILTON: That's a very good point. Commissioner, we would also like to express our thanks to date for the tremendous assistance that Mr. Shumake has been to us and that Miss Fern has been to us in our deliberations to date. I am sure you are going to let them continue to work with us when we need them.

COMM'R MC DONOUGH: Any other questions?

ASSEMBLYMAN HAMILTON: Thank you very much for your time and your statement, Commissioner.

COMM'R MC DONOUGH: Thank you.

ASSEMBLYMAN HAMILTON: The next witness who has indicated he would like to testify is Angelo Mastrangelo, Esq., who is speaking on behalf of the New Jersey State Bar Association's Special Committee of the Real Property, Probate and Trust Law Section on Residential Legal Fees and Practices.

A N G E L O M A S T R A N G E L O: Thank you, Mr. Hamilton.

Members of the Commission, there is now being passed out a statement which I would like to have incorporated in the record of these proceedings. I will not read the statement, but merely touch on the highlights of it, so that you will be aware of what the position of our committee is.

(Written statement submitted by Mr. Mastrangelo can be found beginning on page 68A.)

Our committee was formed in 1972 as a result of proposed HUD regulations to regulate closing costs in the United States on residential real estate properties. The regulation published in the Federal Register clearly indicated that Congress had the authority by virtue of the fact of the insurance provisions under FDIC and so forth. We will not get into the legal problem there, but let's assume that the Federal government had jurisdiction.

The proposed regulations limited not only attorneys' fees but also title insurance fees or premiums. I believe the regulation indicated a $2 charge for title insurance per thousand.

As a result of this, the Essex County Bar Association and myself, as Chairman of the Real Property Committee, conducted a very intensive investigation. We explored the bill, the proposed regulation, and the legislation introduced, Chapter 9, the Housing Act of 1972. Further on, Mr. Haines, President of the New Jersey Bar Association, asked us to form a special committee under the Real Property Probate Section to review the legislation and also how to improve the handling of real estate practice in New Jersey. As a result, this committee became two-fold: one, a review of the HUD regulation; and, two, a review of Assembly Bill 1393.

You will hear from Mr. Arthur S. Horn, Secretary of our Committee, who will give you the recommendations

of our committee concerning 1393. I have also picked up one or two others which I would like to call to the attention of the Commission now which are not contained in my prepared remarks.

I would like to direct the Commission to page 36 of the bill - that is Section 30 - where Assemblyman Horn has suggested that the bill be presented to a purchaser of real estate concerning the title insurance.* I would suggest that that be further amended to provide "purchaser or mortgagor". In many instances, you would have a recast of a mortgage without a purchaser being involved. It is merely a technical provision, but I would call that to your attention, that if this proposal is acceptable, it also include a mortgagor as well as a purchaser.

Again on the question of commissions, which appears on the next page - and Mr. Horn will address himself to this - my own feelings are identical with those of Commissioner McDonough. No commission should be paid to anyone for procuring title insurance. But I do point out perhaps something not in my province but only in my experience, that there are many title insurance companies that do pay a commission to a full-time employee of a title insurance company. This is his means of direct remuneration. I am not sure whether Section 33 would prohibit the payment of a commission to a full-time employee of a title company. I leave that to the title companies. Perhaps it does; perhaps it does not. I point it out because it does raise a question in my mind. So much for the bill as to those aspects.

More importantly, I would like to briefly comment on what is a title insurance policy. It is nothing more than a contract between an insurer and a purchaser, guaranteeing certain things. The title binder is not an insurance contract. A binder issued by a fire company, a liability company, is a contract. A binder merely

* Reference is here made to copy of A 1393 amended for Commission purposes.

says that, as of today, this is the status of the title. What happens between the binder and the policy? Many things can occur. What happens to a purchaser or mortgagor who has no independent counsel in reviewing the title binder? Well, very honestly a title company is in the business of selling title insurance. We agree with that concept. A title company is a party to the contract and, if a purchaser has no independent advice, I wonder about the arm's length transaction between contracting parties. There is none.

I point out certain problems in real estate transactions, such as easements, restrictions, reverters, various searches and also the distinction between an insurable and a marketable title. An insurable title may not be a marketable title. A marketable title is one where there is nothing on the public record which impinges upon the validity of the particular chain. An easement across one's property renders a piece of property unmarketable. The title is unmarketable. It is insurable, but unmarketable.

The title company is interested in insuring titles which are insurable. Does a purchaser know the difference? Obviously, no. A purchaser cannot know the difference.

Other provisions of the ALTA model policy always have intrigued me. One of them, of course, is sub-surface conditions. It appears in many policies. There is an exception to subsurface conditions. This means, very frankly, that the title company does not insure anything that is underground. Now you would say to me, "We don't have oil and mineral rights in New Jersey." Well, in some areas we do, such as sand and so forth. But, more importantly, as I point out, what about the sewer line that runs across someone else's property? If the policy contains the usual exception, then the poor man doesn't have a sewer.

I point out that we are involved in such a situation today. If I had represented the purchaser, I would have insisted that the subsurface clause be taken out and it can be taken out. But this is a question of negotiation. This is a question of advocacy. A title company is not expected to advocate a position which could be contrary to it. This is why our committee is very strong on the point that title companies shall not engage in the closing of real estate transactions. An attorney is the one who represents a party to a real estate transaction, not the title company.

Another point that is usually raised is insurance against the forcible removal of a violation of a restriction. A title company will insure against for the benefit of a mortgagee almost automatically, depending upon circumstances, but will it insure against as to a purchaser? Only if someone advocates a position. Again, they are underwriters. They evaluate a risk. And if an attorney who knows what a title policy is and what the policy reads advocates a position, it is like any other contract; it is negotiable.

These are minimal reasons why our committee has taken a very strong position against the so-called "South Jersey practice." I don't really think it is the South Jersey practice. I think it has grown up as a result of perhaps attorneys and others letting someone else do the job. Well, I am from North Jersey, from Newark. We think that attorneys are obligated to represent individual purchasers and mortgagors in real estate transactions for the reasons I have pointed out.

The title insurance company is prohibited from practicing law. The giving of advice on a title question is the practice of law. We do not think that a title insurance company should conduct the closing and act as the arbitrator of particular problems between various people. We do think that the title company should be

permitted to act as a depository of funds for the purposes of clearing certain problems.

I will give an example. A judgment appears of record. The seller says, "I have paid it off." The judgment search clearly says, it is not. You are at the closing. The judgment is $2,000. The title company says, "If you will deposit $4,000 with us and then produce proof of the cancellation of the judgment, we will refund it." No objection. They are merely acting as a depository. The same with a mortgagee who fails to appear with the proper cancellation of the mortgage. Attorneys can do this in their own office. But many a lender will require indemnification. So, therefore, the title company will indemnify, and that is a permitted practice.

We do not think that the title company should act as "escrow agents". That has many meanings. In the title industry in the United States as I know it, from California, Florida and many other jurisdictions, an escrow closing is where the moneys are deposited with the title company, the documents are deposited with the title company, and after everything is done and the title company makes an evaluation, a closing takes place without the presence of parties. We don't think this should be permitted in New Jersey. We do think the title companies should be permitted to be a depository.

In the examination of titles to real estate, there is an expertise involved. The expertise cannot be gained except through the knowledge of the law of real estate, estates, contracts, commercial transactions, which is law; it is not an underwriting function. A title company, if it is in the true sense an insurance company, is an underwriter. And I prefer to think of a title company as an underwriter.

Our committee feels that the regulation of title

companies in New Jersey is long overdue. The rapport between attorneys and title companies has been good. There are abuses. That is the purpose of this legislation. I think that by a bill such as this, with the various amendments which have been proposed and which will be commented on, the consumer, the person to whom this legislation is directed who will be protected, will be protected.

Again, as Commissioner McDonough said, if we don't do it, someone else will. I firmly advocate on behalf of myself as a practioner, on behalf of our statewide committee, that this Assembly Bill 1393, with the proposed amendments, be adopted and that regulation be in effect in New Jersey.

I wish to thank the members of this Commission for permitting me to address you at this time. I am, of course, available to answer any questions at this time or in the future that you may wish to ask me. Thank you.

ASSEMBLYMAN HAMILTON: Mr. Mastrangelo, thank you for coming down and giving of your time. And, as a representative of the State Bar, I would like to commend the State Bar for its recent action in establishing a Legislative Review Committee to assist the Legislature in commenting upon proposed legislation. I think this is perhaps a long-overdue step, but one that is a tribute to the members of the Bar.

I would say that the public members of this Commission have been outstanding in their performance. It is always gratifying to see the public taking an interest, not always from a selfish point of view, in proposed legislation.

I wonder if there are any questions of Mr. Mastrangelo. Mr. Kaltenbacher?

ASSEMBLYMAN KALTENBACHER: Yes. I want to join, as sponsor of the bill and as Chairman of the Insurance

Committee, in thanking you for your comments. I think they have been very constructive. And, of course, I appreciate your support.

Just one part of your comments, page 2, last paragraph, I wanted to explore a little more deeply. You say, and I quote, "The title company is interested in writing an insurance policy and, of course, is attempting to limit its liability. We have no quarrel with this as it is a business practice."

As sponsor of this bill, I can tell you that I would have a quarrel with this. One of the problems I have with this is that we are trying through this legislation, at least I am, to get the cost down to the reasonable range and certainly to protect the consumer so his title policy is less chancey and his protection is less dependent on whether or not he has a top-flight attorney, such as yourself, and his protection is geared more into the protection that the Insurance Commissioner would give him by regulating the forms of policy.

I would wonder if you really have any quarrels with the power in this bill that is given to the Insurance Commissioner to regulate the forms of policy which, when extended, would take out those contract clauses which unfairly limit liability in the judgment of the Insurance Commissioner.

One more comment: Of course, this is not going to be a "get the title insurance company" thing. If a form change is indicated, there is going to be a risk factor involved that is increased for the title insurance companies and the Insurance Commissioner must take this into account in regulating rates. I would just like to hear your comments on whether you think this is fair for us to have in the bill, the power to regulate forms, and if you do think it is fair, whether you think that your group can give some input to the Insurance

Commissioner on how to have a fairer form of title insurance.

MR. MASTRANGELO: Yes, I do. When I say I have no quarrel with the business practice, I am directing myself to the present ALTA policy. This is a product of the American Land Title Association which is universally used. I am not necessarily in favor of all of the provisions of that policy as I point out, but it is an underwriting function.

The title companies have a right, through regulation, to decide what is an underwriting situation. I agree that the policy must be uniform. But real estate is not like a fire insurance policy. Every tract of land is different. Every chain of title is different. Every one-family house at a $30,000 range is insurable at x dollars and for liability or fire purposes can easily be judged in a policy.

The question of the standardization of the policy itself is going to cause some serious problems. Yes, our committee would be very willing to give input to a standard form of policy. Because there are provisions in the ALTA policy which I personally disagree with and have been successful in having deleted. Again, when I use the word "quarrel," I am directing myself to the existing situation and again it brings itself down to the question of contract.

I will quarrel with a title company if I disagree with the specific provisions of the policy. Input is absolutely necessary for uniformity. But I don't think we can have complete uniformity on a title policy.

ASSEMBLYMAN KALTENBACHER: But you do agree that we might be able to improve the bare-bone skeleton of the standard policy?

MR. MASTRANGELO: Yes, without question.

ASSEMBLYMAN HAMILTON: Any other questions of Mr. Mastrangelo?

Mr. Mastrangelo, in looking at our present list of witnesses, I don't see any attorneys from any further south than Mount Holly. But I am sure that there are going to be some title company representatives that are going to comment upon the so-called South Jersey practice. What is the strongest case in your mind that can be made for the South Jersey practice, as you understand it?

MR. MASTRANGELO: Let me do it the other way around. Part of our Committee has met with counsel from South Jersey, Camden, Gloucester, and Cape May, and we have talked. We have had meetings with them. We have had meetings with title company representatives from South Jersey. Surprisingly enough, the South Jersey practice is not really any different from ours. The attorneys in South Jersey do want a prohibition upon payment of commissions, without question. They don't want the real estate broker to get the commission. I know the real estate broker gets it. I know that the real estate broker steers the business - I will use that phrase for want of another - to a title company. The real estate broker takes the purchaser to the title company. We do not like this practice, nor do the South Jersey attorneys.

The South Jersey attorneys say a purchaser should have independent representation. The South Jersey attorneys do not like to see the title company take over the business of practicing law, of actually closing a title without an attorney being present, because again they have said to me and to our committee, nobody is protecting the individual. The title company is performing a settlement service, but they are actually doing more.

The title company representatives in talks with my committee have indicated that they too do not want

to conduct settlements, to be the arbitrators. They will make their physical facilities available. Mr. Horn will give you in his prepared statement the resolutions of our committee to that effect.

The practice in South Jersey has been that the broker will take the contract to the title company. The title company will issue the binder to the broker and to the mortgagee or the mortgagee's attorney. The purchaser never has an attorney. The broker tells the seller he doesn't need an attorney. A deed is drawn by some attorney for the seller at a nominal charge, and perhaps the only one who shows up is the mortgagee's attorney. The mortgagee's attorney is only representing the mortgagee.

We do not like this practice because it is the consumer who is being hurt. That is my understanding of the South Jersey practice and the attorneys there don't like it.

ASSEMBLYMAN HAMILTON: Mr. Mastrangelo, I don't mind saying that I am in rather substantial agreement with your feelings about the practice. Yet I am concerned that we have some legislation here that may affect that practice without having a real input from people who are engaging in the practice. And I find it hard to believe that there isn't someone who can say something good about it if it is going on. If the lawyers don't want it and the title companies don't want it, why is it happening? That is what I am trying to get to the bottom of.

MR. MASTRANGELO: Fine. My own personal opinion is that it developed out of the so-called Pennsylvania plan. South Jersey in a sense - and we always kid about it - since New Jersey is between Philadelphia and New York and that is how it is known, some influence of Pennsylvania practice has perhaps gotten into the South Jersey counties, Camden especially. I think

that the real estate brokers, whom I admire and have worked with many times, perhaps have done the work unbeknowns to themselves outside the scope of attorneys without really understanding what a real estate transaction is. They are interested in selling. They are really not interested in the legal documentation that goes with a mortgage.

We have talked to the South Jersey attorneys; we have not talked to the real estate brokers. My answer, of course, is no, we have not. We have met with the Camden County people. We have written letters to the various Bar Associations in the eight or nine southern counties. The input we got from them after a good discussion, it was quite clear to me, was that they don't think title companies should practice law. They don't think title companies should engage in the practice. They don't think title companies should conduct settlements. They don't think brokers should get commissions. And they don't think anyone should get commissions. This is from a representative group of South Jersey attorneys.

ASSEMBLYMAN HAMILTON: You mentioned the practice of steering, and I think you attributed that to real estate brokers. Would you in any way advocate that attorneys be required to give a home purchaser a choice of title insurance companies if they are going, under the present practice, to make the selection of who is going to write the title policy?

MR. MASTRANGELO: No, I do not for this reason: We have under the approved attorneys' plan, the privilege or the right of going to a title company and obtaining a back title certificate. If Chelsea Title had insured the previous title, I would go to Chelsea; and let's say it is only a five-year run down. Chelsea would give me a back title certificate and I could get a run down made for perhaps $25 or $40.

If the client said, oh, no, you must use Lawyers Clinton that didn't have a back title, I would have to make a 60-year search, which would probably cost $100.

I don't think that the client has the expertise to determine what is best for him. As long as we prohibit the payment of commissions, which is absolutely essential, gentlemen, absolutely essential, the attorney is going to get the best break possible for his client and that is an insurable title from no matter what company, at the best possible cost. Again it is that, how far back do you have to go? Our statute says 60 years. With back title certificates, we can go back 2 years, 3 years, 5 years.

The savings come about also in your judgment searches. Instead of going for a 20-year search, you only have to do a 5-year search. All of these factors are very, very important. You don't have to get corporate status reports at $10 if there was a corporation that changed title if it has been previously insured. If there is prior insurance, I say we should use the prior insurance.

ASSEMBLYMAN HAMILTON: Did you have a question, Senator?

SENATOR MARESSA: I don't think you have answered the question. As I recall, the question was: Should purchasers or clients be given a list of title companies to make a selection? Wasn't that your question?

ASSEMBLYMAN HAMILTON: I think what he said, Senator, is that once you take the commission factor out, the attorney is going to have no motivation, no possible motivation, other than to get the best possible service and price for his client.

MR. MASTRANGELO: I can give you an example if I may. It is not unusual, and I am sure I am not speaking out of turn, where an attorney can negotiate with a title insurance company today as to a rate which is less

than the so-called net $3.75 per thousand. Now this is a matter of negotiation. Naturally he is going to use that title company as often as he can and the attorney hopefully is going to pass the savings on to his client. But what he is doing is getting better service from the title company. Service is most important. A title company must give service.

Now I certainly have preferences as to title companies because I get service from them. That is why I like to use them. If a title company doesn't give me service, I don't want to be obligated to that title company. It is service to the attorneys that the title company is giving. Perhaps that may be the answer. It is not really service to the insured. It is an insurance policy to the insured. But it is service to the attorneys that is so important in title work.

I do not think a client should have the prerogative of selecting a title company. I do not think so. That is my opinion. I am not speaking for the State Bar or my committee because that has not been the scope.

SENATOR MARESSA: I would like to make a statement, Mr. Mastrangelo. As a Camden County attorney practicing for some twenty years, I agree wholeheartedly with the position that you have taken and all of the other attorneys that I come in contact with on a daily basis with whom I have discussed this problem also agree with you.

I would like to ask a question though that is not altogether clear in my mind concerning the payment of commissions. Somewhere in this bill - and I can't just lay my finger on it - it says that full-time employees of title insurance companies would be legally paid commissions. That hasn't been amended or anything, has it? Is that still in the bill?

ASSEMBLYMAN HAMILTON: We have talked about that, Senator, but, of course, we can't adopt any amendments and we are trying to be careful of the language to

make sure that we don't allow a subterfuge to continue the present practice and yet we don't want to prohibit the payment of a salary or compensation in lieu of salary to someone who is in essence an employee, and that language hasn't been finalized.

SENATOR MARESSA: I was going to ask what your opinion was with regard to that.

MR. MASTRANGELO: That is why I brought it up before because I have a full-time employee - and I referred to Section 33 on page 37 involving commissions. It left me a little confused - I wasn't sure whether one provision would conflict with the other. We must be practical. A title insurance company sells and gets a commission for writing a policy the same as any other insurance policy - a fire liability or automobile. To prohibit a salesman, a full-time salesman, one who is employed by the company, from earning a commission because he is good at going out and getting a tract so he is going to insure that title or his company will insure it -- I think that is competition. I would not want to stifle competition. I think we need competition among the title insurance companies.

So my own personal opinion is I don't think there should be a prohibition on the payment of commissions to a full-time employee of the title company within the rate structure itself.

SENATOR MARESSA: What about that same full-time salesman taking brokers out for lunch and the movies and the ball game and the like?

MR. MASTRANGELO: We again get involved with that broker situation. If we are going to eliminate commissions to full-time employees - I am not one to speak to this actually - what would be the effect on title insurance companies? I don't know if they need them. I don't know. That is perhaps more of a question for the title

insurance companies. I have a personal opinion perhaps because it is the market place as usual. Do they need salesmen? That is up to the title companies.

ASSEMBLYMAN HAMILTON: Let's let the industry address, as you suggest, what is more appropriate for them.

MR. MASTRANGELO: Yes. I have a personal opinion as I have expressed.

ASSEMBLYMAN HAMILTON: Mr. Mastrangelo, have you heard of the practice of some mortgage companies of purporting to require title insurance to be written by x or y company? And if you are familiar with it, would you want to comment on that? It is a little bit beyond the present scope, but we will be going on past A 1393.

MR. MASTRANGELO: I am unalterably personally opposed to a mortgagee designating a title insurance company. Even today under the ALTA form of policy, the mortgagee is fully protected, that is, his interest. The mortgagee should not either control directly or indirectly the title insurance company. This must be independent. I can anticipate abuses where a mortgagee conceivably would designate a title insurance company. I am opposed to it personally and I think my committee would also be opposed to it.

ASSEMBLYMAN HAMILTON: How do you feel that that problem ought to be addressed in order to adopt the position that you have taken?

MR. MASTRANGELO: Well, I guess in a sense it probably comes under the regulations of the Department of Banking where that provision should come into play that a lender or an organization under the control of the Department of Banking and perhaps private mortgage lenders would be prohibited from designating specific title insurance companies. I can't see how it could work in the reverse within 1393. I just don't see

how we could say in 1393 a title insurance company is prohibited from accepting business from a mortgagee. It seems a little awkward.

ASSEMBLYMAN HAMILTON: I think it clearly belongs in other legislation or perhaps in some regulation from the Department of Banking or otherwise.

MR. MASTRANGELO: But it must also cover private mortgage companies, originators of mortgages. Merely to have it affect the regulated banks, which don't do this, by the way-- I assume you are talking about a mortgage originator which is not a commercial lender or a banking institution. There are tie-ins where the mortgage company owns the title company. I don't think that they should allow the tie-in where they must do it. Put it that way. If it so happens the title company has a back title and can do it cheaper, fine. But it has to go a little further than the Department of Banking perhaps. It must also direct itself towards the mortgage originator.

MR. STEIN: I assume, although you would advocate a prohibition against somebody who is developing mortgage business or a lender designating a title insurance company, that that could be modified where --- Or I call your attention to the fact that there may be instances in which the amount of the loan requires a title insurance company of certain financial responsibility. For instance, on a ten-million-dollar loan, it may be that the bank wants to scrutinize the title insurance company or wants to require some co-insurance or something of that sort. I assume that your objection to designating a particular title insurance company would permit some investigation of the financial stability or the financial worth, shall we say, of the particular company involved.

MR. MASTRANGELO: Mr. Stein, I am glad you brought that up because I, myself, representing a lender on

commercial transactions involving large sums of money do investigate the title company to be sure they are strong enough to insure. We do retain the right to approve of the title company. I think by the lender retaining the right to approve of a title company - and it has to be reasonable - basically it is the financial stability of the title company -- The commercial lender, the big lender of the $10 million loan must retain that right. I would have no problem - not to sell anybody - with Chelsea Title. It is a big company. Lawyers Clinton is a big company - that's the old Lawyers Clinton - Lawyers of Richmond. I know who they are. I know their financial stability. But if XYZ Title Company walks in with a policy, I don't know who they are and I have to make an investigation.

Yes, the lender must retain the right to approve, but not to designate. I think that's the distinction I would like to make.

ASSEMBLYMAN HORN: In answer to your question, Chairman Hamilton, I think the quickest way to put a stop to the practice of lending institutions designating a title insurance company is to notify the Attorney General's Office. I would say that that would be a violation of the State Anti-Trust Laws. Perhaps it should be covered elsewhere in legislation, but I think it is a violation of the State Anti-Trust Laws.

Question for Mr. Mastrangelo: We have touched upon possible savings to the consumer by the elimination of the commissions. Would you give us the benefit of your experience on what you estimate this might be on an average homeowner?

MR. MASTRANGELO: I would say informally in my talks with various title company representatives that the elimination of commissions could result in a reduction of 30 to 40 per cent of the $5 premium. I'll be conservative. Let's say 30 per cent. That

means that a policy could issue at a rate of 2/3rds of $5 - I am a lawyer, not an accountant - or approximately $3 and some odd cents, which would be almost a $2 saving per thousand, based on the present rate structure. Now the rate-making function, as Commissioner McDonough said, is still to be discussed. It can on a $20,000 house mean a savings of $40 to $50, at least.

ASSEMBLYMAN HORN: There are very few $20,000 houses now.

MR. MASTRANGELO: That's correct.

ASSEMBLYMAN HORN: So it could go $80 to $100.

MR. MASTRANGELO: Normal North Jersey transactions run anywhere from $30,000 to $50,000. On a $50,000 house, you are talking over $100 savings.

ASSEMBLYMAN HAMILTON: Do any of the other members of the Commission have any questions of Mr. Mastrangelo? (No response.)

Again, Mr. Mastrangelo, thank you very much for your time and your interest in our work.

MR. MASTRANGELO: Thank you very much, gentlemen.

ASSEMBLYMAN HAMILTON: Mr. Arthur S. Horn of Nutley, New Jersey, whom I understand is the Secretary of the Committee that Mr. Mastrangelo heads, also the brother of Assemblyman Michael Horn.

A R T H U R S. H O R N: Mr. Chairman, members of the Commission, Assemblyman Kaltenbacher and members of the public:

Since I am appearing specifically as a representative of the special statewide committee and communicating to you specific resolutions adopted by the committee, I will basically read this statement.

Since Mr. Mastrangelo has covered what I was covering on the first page, I will begin on page 2.

Basically I will divide my talk into three parts. First, I would like to outline for you our review of Assembly Bill 1393. Then I will make a few remarks on

the question of the payment of commissions to attorneys and real estate brokers. And, thirdly, I will discuss our opinion of the permissible scope of business activities engaged in by title companies.

(Following is the complete statement of Mr. Horn.)

I. THE SPECIAL STATE-WIDE COMMITTEE:

In the summer of 1972, the Congress of the United States began to consider the Housing and Urban Development Act of 1972. Title IX of that Act proposed to grant to the Department of Housing and Urban Development the power to set maximum attorney's fees in all sales of residential real estate, including conventional as well as federally insured mortgages. The permissible fees initially proposed by HUD regulations were so arbitrary and low that the proposed legislation and the regulations evoked more critical response than anything ever published in the Federal Register. The response came not only from bar associations and individual attorneys but also from the American Land Title Association.

In response thereto, the New Jersey State Bar Association in October of 1972 formed the Special State-Wide Committee on Legal Fees and Practice in Residential Real Estate Transactions. Its members include 32 attorneys active in real estate from all parts of New Jersey. Its goals are two-fold: (1) to coordinate the New Jersey attorneys' response to the proposed Federal legislation and (2) to study and recommend to the New Jersey State Bar Association a series of proposals which would serve to improve our

system of handling real estate transactions and to eliminate certain unsatisfactory practices. It is under the latter charge that the Committee began a study of Assembly Bill No. 1393.

On February 27, 1973, the committee discussed, at length I might add, portions of the Bill which directly affect attorneys. Subsequently on March 28, 1973, I, as a representative of the Committee, attended a meeting with John Weigel, Esq., Executive Secretary of the New Jersey Land Title Insurance Association, which was also attended by Frank J. McDonough, a member of this Commission and Second Vice-President of that Association and President of the West Jersey Title and Guaranty Company, Herbert H. Lumley, Executive Vice-President of Chelsea Title and Guaranty Company, John J. McDermitt, Esq., State Legal Counsel for Commonwealth Land Title Insurance Company, and William H. Woodward, Esq., Manager of the Camden Office of Lawyers Title Insurance Corporation, former President of the New Jersey Land Title Insurance Association. Again the portions of Assembly Bill No. 1393 which affect the practice of law were discussed. Finally, on April 25, 1973, the entire committee met with these and other prominent members of the New Jersey title insurance industry as well as with members of the bar from Southern New Jersey to discuss the specific problem of the permissible scope of business activities engaged in by title insurance companies.

II. PAYMENT OF COMMISSIONS TO ATTORNEYS AND REAL ESTATE BROKERS:

Section 33 of Assembly Bill No. 1393 specifically provides that:

> "A title insurance company or agent of a title insurance company may pay a cash commission to an attorney at law in good standing, or a licensed real estate broker for procuring title insurance for a client in a real estate transaction."

The Supreme Court of New Jersey has held that attorneys may accept these commissions from title companies so long as the attorneys disclose the fact of the receipt to the client. For example, the gross charge for an owner's policy of title insurance is $5.00 per thousand dollars of consideration. This is, of course, the present rate and that is the basic charge, $5.00 a thousand. This includes a commission of $1.25 per thousand payable to the attorney so that the net charge is actually $3.75 per thousand. I may add here that quite often - and I think this ties in with several questions that were asked of Mr. Mastrangelo - quite often the reason we try to get a back title certificate from a certain company is that we will get what we call a reissue rate. That reissue rate means that if the prior owner had title insurance and we go to the same company and get a back title certificate, not only do we save money by having to do maybe a 10- or 12-year search or a 5-year search, but we also get a better rate. We get a rate of $2.50 per thousand on the amount of that prior policy. So if the house is selling for $30,000 and an owner 10 years ago used this title company and has a policy of $20,000, the first $20,000 of the new policy will be written at the rate of $2.50 per thousand and the other $10,000 will be written at a rate of $3.75 per thousand. Getting back to my example, forgetting about the reissue rate for the moment, without that on the purchase

of a $30,000 home, the gross cost of title insurance is $150.00, the net charge i commission is $37.50. Many attorneys charge the clear disclosure to the client. Many attorne commission and the client thus pays only the title insurance.

The Committee is of the opinion that this has resulted in a lack of uniformity with regard to charges paid for title insurance coverage by the client. The effect of this is confusion on the part of the public with regard to this significant element of closing costs. We feel that legislation prohibiting anyone from receiving commissions or rebates from title insu specifically allowing attorneys to charge clients work done with regard to obtaining title insuranc have the salutary effect of making billing more u the state and thus result in a fuller disclosure to the public of actual closing costs. In addition, Section 33 allows title companies to pay commissions to licensed real estate brokers in violation of Opinion 11 of the New Jersey Supreme Court Committee on the Unauthorized Practice of Law. I will discuss that in more detail in a little while.

The following resolution was adopted by the Committee on February 27, 1973:

> "BE IT RESOLVED, that this Committee is in favor of the deletion of Section 33 from the pending Assembly Bill No. 1393 regulating title insurance companies and recommends in its place a specific prohibition against the payment of

> commissions or rebates to anyone by a title insurance company. However, the Committee further recommends that the section make clear that it in no way prohibits attorneys from charging legal fees for work performed with regard to obtaining title insurance coverage for clients."

III. PERMISSIBLE SCOPE OF BUSINESS ACTIVITIES ENGAGED IN BY TITLE INSURANCE COMPANIES:

In considering this problem, one extremely important factor to bear in mind by this Legislative Real Estate Title Insurance Study Commission is the Constitutional power of the New Jersey State Supreme Court to regulate the practice of law in this state.

Article 6, Section 2, Paragraph 3 of the New Jersey Constitution reads as follows:

> "3. The Supreme Court shall make rules governing the administration of all courts in the State, and subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."

Pursuant to this Constitutional power, the New Jersey Supreme Court has appointed the Unauthorized Practice of Law Committee which periodically renders opinions on this subject on matters which come before it. The Unauthorized Practice of Law Committee in its Opinion number 11 published in the New Jersey Law Journal on December 28, 1972, held that it constitutes the unlawful practice of law for a title or abstract company to issue a policy of title insurance or provide an abstract of title or search affecting New Jersey land to a person other than the present owner, a prospective buyer, or an attorney for a party interested in the

premises. It further held that a title or abstract company is guilty of the unlawful practice of law when it conducts real estate settlements on its premises without the presence of an attorney for any of the parties to the transaction.

Copies of Opinion 11 have been provided for the members of this Commission. However, the Minutes of your meeting of April 5, 1973 refer to this opinion as "a December 28, 1972, New Jersey Law Journal article entitled the 'unauthorized practice of law'." This designation is inaccurate; Opinion 11 is the formal opinion of the duly authorized and appointed New Jersey State Supreme Court Committee on the Unauthorized Practice of Law. William H. Wells, Esq., of Mount Holly, a member of the Unauthorized Practice of Law Committee and the author of Opinion 11 is present today and will speak to you shortly in more detail with regard to Opinion 11 and its significance for Assembly Bill 1393.

The original Model Title Insurance Code which is, I believe, Assembly Bill 1393 was drafted by the American Land Title Insurance Association in the early 1960's. I believe it bears the date of 1964. The following three provisions are objectionable as applied to the State of New Jersey because they improperly and unlawfully infringe on the practice of law by attorneys, and I am referring here to sections and pages in Assembly Bill No. 1393:

1. Section 10,. Page 9:
"10. Power to insure titles to real estate. Every title insurance company shall have the power to do the kinds of business defined in paragraphs a. and b. of section 1 of this act, and to provide any other services related to the land title business." (Emphasis supplied)

That last clause is objectionable.

2. Section 30(b), Page 25:
"A title insurance agent may engage in the business of handling escrows of real property transactions..."

3. The words "settlement and closing fees" in Section 1(f), page 4.

In early 1972, after the proposal of Title IX of the Housing and Urban Development Act of 1972, which Mr. Mastrangelo covered in his presentation, the chief effect of which would be to deprive consumers of the right to be represented by counsel, the Model Title Insurance Code was revised by the American Land Title Association to seek even broader legislative sanction for title insurance companies to perform legal work with regard to real estate. This can best be illustrated by comparing the revised versions of the aforementioned sections 10 and 30(b).

1. Section 10 which allowed title companies to "provide any other services related to the land title business" became Section 110 of the Revised Code which reads as follows:

"Section 110. General Powers:
Every title insurance company shall have the power to:
(a) do the kinds of business defined in subsections (a) and (b) of Section 101 of this Act;

(b) do any act, directly or through a title insurance agent, incidential to the making of a contract or policy of title insurance, including, but not limited to, the conducting or holding of any escrow, settlement or closing of a transaction, and,
(c) provide any other services related or incidental to the sale and transfer of real or personal property."

2. Section 30(b) of Assembly 1393, which allowed an agent to engage in the business of handling escrows of real property transactions, became Section 132(b) which reads as follows:

"(b) A title insurance agent may engage in the business of handling escrows, settlements and closings in connection with the business of title insurance..."

This is clearly an attempt by the American Land Title Association to be responsive to the attitudes of HUD and Congress as to the role of attorneys in real estate transactions and to secure legislative sanction for title companies to take over the functions of attorneys in the event that the proposed Congressional legislation is passed and attorneys are thereby forced to withdraw from the representation of purchasers and sellers of residential real estate.

This next section is something I want to stress.

Despite the attitude of the national organization, the American Land Title Association, it is my opinion that the title insurance companies in New Jersey do not desire to take over or attempt to take over the functions of attorneys in real estate matters. I have been practicing law for 12 years and I have always

been impressed with the sensitivity of New Jersey title companies to the functions of the attorney. This attitude on the part of title companies in New Jersey can best be summarized by a quotation from a letter which I received from Mr. Walter A. Sprouls, President of New Jersey Realty Title Insurance Company, in September of last year, in response to a letter of mine to HUD which was published in the New Jersey Law Journal:

> "We are also in agreement with you that the title insurance companies should not usurp the functions and duties of the attorneys for the seller and buyer in a real estate transaction. The functions of the title insurance company should be to provide services to the attorney in the form of title searches, certifications, and insurance policies."

This attitude of the title insurance industry in New Jersey has been confirmed for me by my meetings with Mr. Frank J. McDonough, Herbert H. Lumley, John H. McDermitt, Esq., and William H. Woodward, Esq.

The following 4 resolutions were adopted by the Special State-Wide Committee on Legal Fees and Practice in Residential Real Estate Transactions on February 27, 1973:

> 1. BE IT RESOLVED that this Committee recommends the deletion from Assembly Bill No. 1393 of the words "settlement and closing fees" in Section 1(f), the words "and to provide any other services related to the land title insurance business" in Section 10, and the words "A title insurance agent may engage in the business of handling escrows of real property transactions..."

and the following language in Section 30(b)(1) and (2), and any language in any subsequent bill or proposed bill which would give to title insurance companies and their agents the express or implied power to conduct real estate title closings or to perform other legal work.

2. BE IT FURTHER RESOLVED, that the Committee recommends that Assembly Bill No. 1393 be amended to add an affirmative prohibition against the conducting of title closings or the performance of any other legal services by title insurance companies and their agents.

3. BE IT FURTHER RESOLVED, that the Committee is of the opinion that the penalties provided by Section 48 of the Bill are nominal and inadequate and recommends that more stringent penalties be levied against any title insurance company or agent which violates the above provision against the practice of law.

4. BE IT FURTHER RESOLVED, that this Committee fully endorses Opinion Number 11 of the New Jersey Supreme Court Committee on the Unauthorized Practice of Law which was published in the New Jersey Law Journal in its issue of December 28, 1972, which opinion held that a title or abstract company is guilty of the unlawful practice of law when it conducts real estate closings on its premises without the presence of an attorney for any of the parties to the transaction. The Committee further recommends that copies of the opinion be mailed to all title insurance companies and their agents and to all real estate brokers in New Jersey and that the State and County Bar Associations take affirmative action to enforce the provisions thereof.

After the passage of these resolutions, it was brought to the attention of the Committee that a unique system is in effect in the Southern New Jersey Counties of Camden, Burlington, Gloucester Salem, Cumberland, Atlantic, and Cape May, wherein many closings

are held at the offices of title companies at the request of attorneys. This led to the Committee meeting of April 25, 1973, to which were invited prominent members of the New Jersey title insurance industry from Southern New Jersey as well as members of the bar from that area. After lengthy discussion, it appeared that there was little or no difference of opinion as to the function of the title companies, even in Southern New Jersey. The title company representatives informed us that they made little or no profits from furnishing closing facilities, did so only for the convenience of attorneys, and had no desire to practice law. The attorneys from that area, in marked contrast to attorneys from the northern counties, stated that they desired that closings be held at title company offices.

The Committee then adopted the following resolutions:

> 1. BE IT RESOLVED, that this Committee recommends that Assembly Bill 1393 be amended to provide that neither title insurance companies nor their agents shall engage in any way in the practice of law or participate in the closings of title, provided, however, that nothing herein shall be construed as prohibiting title companies and their agents from furnishing the physical facilities for said closings.
>
> 2. BE IT FURTHER RESOLVED, that this Committee recommends that Assembly Bill No. 1393 contain a specific prohibition against real estate brokers or approved attorneys acting as agents of title insurance companies.

Those of you who are not attorneys may be wondering why there should be any great concern on your part at the prospect

of large title insurance companies taking over the functions and duties of the attorney in residential real estate transactions. In my opinion, this would be a severe disservice to the public for two main reasons:

1. It would result in the loss to the purchaser and seller of a home of a personal counsellor to assist them through an often difficult and confusing period. As Commissioner McDonough said in his remarks, for most people, the purchase of a home is the largest single financial transaction of their lives. Under the present system wherein people are free to choose an attorney to represent them in all phases of the transaction, the attorney often establishes a close and friendly relationship with the clients and assists them in not only the strictly legal but also the non-legal practical problems that arise in the course of purchasing or selling a home. A title insurance company dealing with a large volume of transactions would not be able to give the efficient, personal service which the individual independent attorney does. To deprive the public of this personal relationship would be a serious disservice to the very people you are attempting to serve. To put it simply, if you are purchasing or selling a house, would you rather consult your family attorney or would you prefer to have the transaction handled by Mr. X at the Y title insurance company in Newark, Hackensack, New Brunswick, or Camden?

2. Beyond the personal level, <u>on a professional level only the attorney is qualified to represent parties to a real estate transaction</u>.

I know that several of the members of the Commission are attorneys. So I would like to omit the reading of the functions of the attorney for the purchaser and the detailed listing of the functions of the attorney for the seller in real estate transactions, which go down through subsection (f) of page 11 and request that they be incorporated by reference by the stenographer.

(Following are the sections which Mr. Horn did not read:)

You may be asking just what services the attorney performs in a typical transaction. In representing the purchaser of a home, the New Jersey attorney spends on the average of 10 to 12 hours performing the following services:

a. Preliminary conference with client regarding the transaction.
b. Preparation or revision of contract, including conference with broker or attorney for seller through signing of contract.
c. Preparation or review of mortgage application including processing same and obtaining mortgage commitment.
d. Ordering the necessary searches, and survey, including back title certificates.
e. Review and analysis of searches or title reports and removal of title objections.
f. Preparation of preliminary title insurance certificate.
g. Preparation of mortgage, note, affidavit of title and other documents for closing.

h. Conference with attorney for sellers, scheduling of closing, and resolution of problems relative to occupancy, repairs, etc.
i. Obtaining rundown searches, preparation for and attendance at closing of title, including making necessary adjustments between the parties, preparation of closing statements, and disbursement of funds.
j. Post-closing submission of papers to mortgagee and recording of deed and mortgage.
k. Payment of and cancellation of existing mortgages and liens.
l. Obtaining cover searches, preparation of final title insurance certificate for submission to title insurance company, and ordering of title policies.
m. Reviewing title insurance policies and forwarding relevant documents to mortgagee, purchasers, and seller's attorney.

In representing the seller of a home, the New Jersey attorney spends on the average of 6 hours performing the following services:

a. Conference with clients and broker and preparation of contract of sale.
b. Communications with attorney for purchaser and supervision of signing of contract of sale.
c. Clearing of title objections.
d. Communications with attorney for purchaser with regard to closing of title and agreement on closing figures.
e. Drafting of deed, affidavit of title, and other relevant documents.
f. Preparation for and attendance at closing of title.

(End of portion not read.)

My conclusion of that enumeration was that only attorneys are qualified by training and experience to perform these services and to assume the responsibility therefor. This is the reason that the Supreme Court of New Jersey and the Unauthorized Pracice of Law Committee are so concerned that these legal functions continue to be handled by attorneys.

It is the opinion of the Special Statewide Committee that adoption of these recommendations by this Commission and ultimately by the Legislature of this State will permit title insurance companies in New Jersey to engage in those business activities for which they are established and qualified while at the same time making certain that they will not be engaged in the unauthorized or unlawful practice of law. In such event, the public will be the beneficiary.

ASSEMBLYMAN HAMILTON: Mr. Horn, thank you very much for your comments.

I am going to beg your indulgence. I am sure there are going to be some questions by members of the Commission to you. But on the schedule handed to me the next speaker must leave by Noon and I wonder if you would defer your questioning until we can let Mr. Walter Ensor, the State President of the Title Abstractors Association of New Jersey, testify.

W A L T E R P. A. E N S O R, J R.: Gentlemen, I have rather a brief statement to make.

First, I deem it a great honor and privilege to appear here and participate in these proceedings.

I shall begin my remarks by admonishing you that there is much more at stake here and in subsequent actions than the mere regulating of premiums, fees and charges for services rendered in the acquisition of real estate. Whatever you do in the future will have a profound effect upon the stability of titles in New Jersey.

For instance, it would be an absurdity to reduce these fees and charges to such a low amount so as to discourage the participation in title activity of dedicated, intelligent and skilled personnel, to discourage the investment of clean capital in favor of fly-by-night operations.

I represent the Title Abstractors or searchers, and as I look around this room, I can quite confidently assert that there is not a successful title insurance operation or law practice represented here that does not owe its success to the diligence and skill of the title abstractor.

Titles in New Jersey have a history of stability. The incidence of defects in real estate titles was startlingly low even before the general acceptance of title insurance. It is still low largely due to the proficiency of my professional colleagues and constituents.

A searcher must have a knowledge of surveying, a great smattering of law as it relates to real estate proceedings. He must have a rudimentary knowledge of variations in names. He must be dogged, persistent and have the constitution of an ox. He must work long hours. He must have the sixth sense which warns him of title trouble.

He must have a sense of dedicated responsibility because in the ultimate sense, the buck in every title trouble stops at him.

For these attributes and for these responsibilities, the searcher must be allowed to make a fee for his search that will adequately compensate him. If this is not allowed, you will turn the title insurance and searching business over to persons ill-equipped to handle it.

Regardless of title insurance and the skill of the lawyer real estate specialist, the most secure basis for every title is a search made by a skilled professional searcher which adequately and correctly reflects the

record in so far as a particular piece of property is involved.

Therefore, as the duly-elected representative of the New Jersey State Title Abstractors, I make the following recommendations:

First, that a licensing bill be adopted that would require an abstractor to demonstrate his professional skill before he receives his license to search and make a report which will be the basis of title closings and used as a prelude to the issuance of title insurance. It is my recommendation that those searchers who have heretofore practiced the art for a certain period of time prior to the passage of the bill be admitted as licensed searchers upon their presenting proof of such required practice.

Licensing should be based upon the skill, experience and knowledge of the searcher and not upon the ability of anyone to collate a plant by means of the application of capital.

Every searcher should be required to carry errors and omissions insurance and any licensed abstract companies should be required to carry errors and omissions insurance covering the searchers employed by it.

Such a licensing bill need not be costly to the taxpayer nor necessitate the setting up of a perpetually growing bureaucracy.

The Title Abstractors Association of New Jersey represents from one-half to two-thirds of the abstractors in New Jersey. We have in the past been fortunate in our membership. To endow this organization with the power, under strict legislative guidelines, to conduct tests and to generally advise the commissioner as to the admission and capability of applicants and members, would not burden the taxpayer and would place the entrance and disciplinary procedures in the hands of those who know

the business.

The total cost would be borne by the dues assessed against the members.

Second, we recommend that the premiums for title insurance be set at a level that will insure the title insurance companies of a fair return for the great risks that they take. At the same time, we recommend that the activity of such companies be regulated so that the amount charged for premiums will not be dissipated in ruinous competition in which insurance funds are wasted in supplying searches and lawyers for everyone involved in bargain-basement blanket deals.

Third, we recommend that steps be taken by the Legislature to make the record clear so that in the long run the search will cost less. For instance, there is no clear statute of limitations covering certain liens of record, such as reimbursement agreements, institutional liens, and others. This Association has a bill in the Legislature now that would make the indices a part of the record. It is bogged down in the Senate. Until this bill is passed, every searcher and every homeowner can be seriously hurt by items on record which have not been properly indexed.

In closing, I would like to make this observation as to the reimbursement of the title searcher. In my County of Union, the fee for a normal sixty-year title search is $65. This compares to some 25 or 30 years ago when the same search cost $30. At that time, I think Assemblymen and Senators were making something like $500 a year or $1,000 a year for their services. But besides the fact that our rates have not really increased in relation to the cost of living, this works out to be the sum of $6.50 a year for a homeowner who contemplates living in his house for ten years. I wonder at times what other item in the homeowning budget costs less than $6.50 a year. The search fee itself is the lowest cost in the entire closing procedure. Yet it represents

the most work and the assumption of the greatest and ultimate amount of responsibility.

I thank you.

ASSEMBLYMAN HAMILTON: Thank you, Mr. Encor, for your comments which I think expand our horizons beyond A 1393. I wonder if there are questions from members of the Commission.

Are you aware, sir, of any licensing bill that may have passed other state legislatures with respect to title abstractors that at least we might get as a reference for our own study?

MR. ENCOR: I believe the State of Minnesota has a licensing bill in which abstractors are licensed on a personal basis. I believe Indiana has too. I can furnish the Commission with that information.

ASSEMBLYMAN HAMILTON: If you would direct any of that information to Mr. Guzzo, who is our Secretary, I would be very appreciative.

I think your comments are very much appreciated and very much in order and they do expand our horizon. As I have indicated, this is only our first public hearing specifically on this bill and we may well have another public hearing and perhaps might want to hear further from you with respect to these matters which go beyond the present bill.

MR. ENSOR: Thank you.

ASSEMBLYMAN HAMILTON: Mr. Horn, if we can get you back up at bat and see if there are any questions for you.

A R T H U R S. H O R N, recalled.

MR. WALKER: Mr. Horn, I represent the real estate industry, the licensed real estate brokers, on this Commission and, of course, the general public.

I should preface my question to you so you don't take it wrongly by saying that the New Jersey

Association of Realtor Boards on May 1st passed a resolution supporting this legislation and elimination of commissions.

I do want to ask you whether the State Bar has taken any survey, especially in South Jersey where the practice is quite different than in North Jersey, as to the impact on the general public of removing the mode of operation in the title company's handling, per se, the closings, as compared to the situation if the individuals have to obtain individual counsel for their representatives at closing. Are there sufficient attorneys in Cape May, Salem, and Gloucester that can take care of the needs of the general public?

MR. HORN: I know of no such st
would perhaps be an interesting subject

Let me turn that around. If you
that there aren't enough attorneys in th
cover any expanded duties which they may
way of any change in legislation, this m[illegible] the effect of the way things are now. In other words, if closing functions representing purchasers and sellers in real estate are not handled by attorneys down there, obviously over the course of years there would be fewer attorneys.

MR. WALKER: I am not intimating anything really. I am trying to discover for my sake and also that of the Commission whether or not this would impose a possible hardship if the mode of practice was changed overnight in South Jersey in the counties specifically that I mentioned.

MR. HORN: You mean the mode of practice of the real estate brokers in effect taking a more active part?

MR. WALKER: No, more in the elimination of the title companies that are presently handling the closings in consort possibly with the real estate brokers.

MR. HORN: There is no such study. What we are suggesting though in our recommendations is not to

force the consumer to go to the office of an attorney; we are only suggesting that the title insurance company can still provide the facilities. I think they are happy to do it and the attorneys don't seem to mind.

But I think your question goes beyond that. You are saying if the attorneys receive more responsibility, what impact will this have on the general picture of the Bar down in South Jersey. And I really don't know. But, as I say, it is interesting and perhaps we can get to it.

MR. WALKER: Thank you.

ASSEMBLYMAN HAMILTON: There might be another aspect of that. I am not really knowledgeable about the South Jersey practice. But if in fact it has been the general rule that attorneys have not been playing an active part, we might find that a lot of titles become unsettled the first time an attorney moves into the picture, depending, of course, on the level at which the title companies have allowed things to pass or not pass. If there is to be any further study of the subject by the Bar, you might include that if Mr. Walker would take that as an amendment to his question.

MR. WALKER: Definitely.

ASSEMBLYMAN HAMILTON: Mr. Michael Horn.

ASSEMBLYMAN HORN: I would like to ask you one question. On page 3 of your statement where you discuss attorneys charging a commission, and you were very kind, you said, "Many attorneys charge the commission and make disclosure to the client." Then you said, "Many attorneys do not charge the commission and the client just pays only the net charge."

Isn't it also true that there are - I don't know whether it is many, some or few-- there are attorneys who charge the commission and don't disclose it to the client?

MR. HORN: The answer to that question is yes, and the word "disclosure" is an interesting word. There are many ways to disclose things to clients at a closing. You can make very full disclosure before a closing or during a closing ı are charging a commission or you losing statement and wave it under tl say, "These are the closing cos fined by some attorneys as disclo y in my opinion that is not full di ld say that is a not uncommon practice which we would really like to see eliminated.

ASSEMBLYMAN HORN: One of the suggested changes to the bill would be the requirement that the attorney provide the client with a copy of the bill from the title insurance company, which certainly would make it clear in terms of what the charge is from the title insurance company. Would you be in favor of that?

MR. HORN: It seems to me that the title insurance bill is part of a list of disbursements. Most at divide the closing costs into two parts. One is attorney's fee and that tells the client how much is paying the attorney for his services and that entire amount of remuneration that is received by attorney so that the client knows. In the other should be what I call reimbursement for disburseme my payment to the county searcher for his search, disbursements to the municipality for municipal and tax searches, to the judgment search company for doing judgment searches, to the register for recording the document, to the surveyor for making the survey, and finally to the title insurance company for the net premium on the title insurance policy.

I don't show the bills to my clients because I feel that I am on my honor in making this presentation to them in a closing statement that they are actually

true to the very penny.

I think it many be a little burdensome and awkward. I think that members of the Bar are under a very strict ethical code and I think that if you include the provision in the statute that nobody can charge any commission whatsoever -- I think from my knowledge of the members of the Bar that that would be sufficient without anything further.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN HAMILTON: It is refreshing to see that the brothers Horn don't completely agree on this matter.

Are there other questions of Mr. Horn?

I got so caught up in the dialogue between you and your brother that the one I had escapes me at the moment. I will have to catch you later, Mr. Horn.

SENATOR MARESSA: While you are thinking. I'll take over. I am not sure but has your investigation or study gone into the fees or charges, however you want to describe them, that are made by title companies for things other than title insurance?

MR. HORN: No, we haven't.

SENATOR MARESSA: Is it the North Jersey practice to charge a settlement room fee and fees to remove certain exceptions to report of title, etc.?

MR. HORN: No. There are two ways of doing things in North Jersey. One way, and the way I do it, is to order the searches on my own, to actually send out a request to a searcher to do a county search, send out a request to a town for those searches, and to the judgment company searcher for those. They then send the reports back to me and I put these into a preliminary certificate of title which I submit to the title company and then it is countersigned and sent back to me. This way I have much more control over it.

Some attorneys, and I think an increasing number of them, will just send a letter to a title company and say, "Please do the search on this." They will have the search done by the abstractor and all that. And instead of submitting the individual searches to the attorney, they will submit a binder and this will have the exceptions in it.

Of course, they do charge extra for the search and things like that. As far as your specific question about removing exceptions, they don't do it. They say to the attorney, "That's your job." Then the attorneys for the purchaser and the seller get together and it is handled that way.

As far as a cost or a fee for furnishing the facilities, I think there is one. But it is very rare, I think, in Northern New Jersey that the title closing takes place at the title company office. I would say in 98 per cent of the cases, it is in the offices of the attorney for the mortgagee and/or the purchaser. But we haven't gone into any of the charges made by them for these various searches or the cost of furnishing the facilities for the closing. I think they are probably fairly reasonable and competitive with the individual searches.

SENATOR MARESSA: Actually I guess what you are saying is that the attorney in North Jersey charges what the title company would be charging at a settlement in South Jersey for the settlement room and the removal of exceptions, etc.

MR. HORN: I think if you added up the cost to a purchaser from North Jersey and the cost to a purchaser in South Jersey, there would be very little difference, the difference being that the purchaser in North Jersey has the benefit of a professional whereas that is not always the case in South Jersey.

SENATOR MARESSA: I think it is a question of a professional as opposed to an expert, right?

MR. HORN: A professional as opposed to what we consider laymen.

ASSEMBLYMAN HAMILTON: Mr. Horn, it occurred to me what I wanted to ask. I am one of the attorneys who charges a net premium. However, it strikes me that in those cases where an attorney's fee is perhaps the most difficult to earn, a VA or an FHA closing, you are limited by Federal rules or regulations as to what you can charge. You are not so limited with a conventional loan. While I make no distinction about charging the net premium, was any thought or consideration given by the members of your committee to allowing that to be done because of what I consider rather unreasonable rules and regulations imposed by Uncle Sam in that area?

MR. HORN: No, frankly, we did not. I am just wondering whether that is really fair to the consumer. In a way, I think, it is evading the Federal law, no matter what we think of that Federal regulation or Federal regulations on government-insured mortgages. I do a fairly large volume of real estate work and I really don't like FHA's or VA's. I would be just as happy for the people to go elsewhere because of the tremendous amount of paper work involved. But I really think it wouldn't solve the problem by allowing attorneys to charge extra fees by way of title insurance to compensate for a lower fee that they could charge by law.

ASSEMBLYMAN HAMILTON: I agree with you and I know there are many attorneys who don't want to handle VA's and FHA's. There was reference earlier within the title insurance industry to a fringe element. Unfortunately any profession or any business has its fringe element. I wonder if many people who have to go VA or FHA don't end up in the fringe element of the

Bar and get less than what should be a wholly professional job. And if that does happen, what thought, if any, has your Committee given to trying to resist, or at least make an input, to the Federal government with respect to their unrealistic rules that they have adopted?

MR. HORN: We have been specifically dealing with the Federal government with regard to proposed regulations that you probably know about, which would limit attorneys' fees in all closings, be they conventional or government-insured. And we have had quite extensive correspondence with Washington. Mr. Mastrangelo visited Washington late last summer to speak to the people at HUD with regard to their regulations. I think they were proposing regulations basically on a national basis and they didn't have anything to do with New Jersey.

We are now in the process of writing a brief for submission to HUD and Congress. We have taken a study, made a survey, of attorneys in New Jersey. It was published in the New Jersey Bar Journal several months ago and we are now collating the results and sending them to Congress. Now an off-shoot of this may be that the FHA and VA would perhaps come up with more reasonable rate schedules.

ASSEMBLYMAN HAMILTON: Thank you very much.

Are there other questions of Mr. Horn? Thank you very much again, Mr. Horn, for your work and the work of all the members of your Committee and I know you are representative of them here today.

MR. HORN: Thank you.

Mr. Lawrence Salameno of Stuart Title Guaranty Company, Morristown, or Mr. George Piccola, President of Stuart Title Guaranty, or perhaps both.

G E O R G E P I C C O L A: Gentlemen, my name is George Piccola and I am President of Stuart Title Company of New Jersey. There is a mistake on here. I am not President of the Guaranty Company. I wish I was,

but I am not.

I am an agent for Stuart Title Company in New Jersey and I guess I am probably the first one to express some of the title companies' or agencies' views on the bill.

As to the various parties who have just spoken prior to me, I concur wholeheartedly with their remarks. I only have a couple of remarks that I would like to bring out.

Mr. Mastrangelo mentioned about steering of title work into title companies. It has been our experience as agents that there is steering through various sources of banks, lending institutions, mortgage companies, controlling who the title company would be designated to write the insurance.

I have a suggestion that I would like to make to the committee that can be studied. I think one of the reasons why it is geared in and designated as to what title company can be used is that the bank or lending institution does not pay the premium for the insurance. The consumer pays it. The mortgage policy on a simultaneous issuance is only a $10 charge, which the consumer pays.

I suggest that the attorney have the right to choose whatever title company he wants for whatever reason he wants, for service, for back title information or whatever it might be. If the mortgage company denies this title company, I think the mortgage company should have the right to select their own title company but pay the premium themselves for their own policy and for their own protection and not let the consumer be the one to pay the premium for the mortgage company. In most cases, what happens is, it doesn't necessarily mean that the consumer is going to get the best protection.

I have had a specific instance where I had had back title, but I was not approved with a specific

lending institution. The title search itself was close to a thousand dollars. They would not accept our back title or would not accept our title policy. They forced the consumer to go to another title company. I was gracious enough to give the attorney the title so that the consumer didn't have to pay the exorbitant cost on this. But to duplicate the search would have cost him roughly a thousand dollars.

Another item that was brought up that I would like to comment on: I think personally - and I have only been in the business since 1962 - that some of the title companies have created some of the problems in regard to commissions, etc., paid to the attorneys. I know for a fact there are some bills that show a gross commission rate. On the bottom it shows the commission to the attorney with the net premium with a perforated edge which can be torn off. So when the consumer comes in, you show him exactly what the title charges are but he never sees what the commission is back to the attorney.

In addition to that, one attorney might do a greater amount of real estate work than another attorney. Based upon volume, they say, "This attorney is entitled to a commission, a greater commission, a two fifty rate or even lower than that in certain cases." Actually what they do is they almost make the attorney an agent for the company.

As an agent myself, it is impossible for me to compete because I have to submit back to Stuart Title Company a commission that I have to pay for my insurance. What it does is sort of ties in a situation whereby certain attorneys can only deal with one company because of the rate that is involved.

I personally would like to see a standard and stabilized rate that the attorney would pay for his consumer with no commission. I would also like to see

it go even a step further to protect the agent, that the agent would have a specific rate that he would pay for his policy to the title company if he is appointed an agent and runs an actual office, a branch office concept, with employees doing typing of the binders, doing the title search work, etc.

I feel this protection not only would benefit the industry but also the consumer. I think what it does is once again opens the door to something that we have been lax in having, and that is service to the consumer. Instead of price, I believe in service. I feel that if a company can compete and the price is all the same, the consumer is the one who is going to benefit. A specific title company or agency will work a little bit harder to produce the package that much faster and be that much more thorough because now the only thing he has to sell is his expertise.

I guess I covered the points I wanted to cover. Everything else that I wanted to present has been presented before and I don't want to burden the Commission with just repetition.

ASSEMBLYMAN HAMILTON: Thank you very much, Mr. Piccola. Are there questions by members of the Commission?

MR. WALKER: I have a question. Is it my understanding that you would like a set commission fee for the agents of the title company?

MR. PICCOLA: That's correct.

MR. WALKER: And you don't feel this should be a negotiation between the title company itself and the general agent?

MR. PICCOLA: What happens once again in my opinion is that - of course, the big will always survive - the one that is not regulated in a certain state as to a certain type of commission that can be paid, the bigger

title companies can give the greater commissions to their agents. The bigger the commission to the agent, the more power he has over the little guy.

MR. WALKER: I see. Thank you.

ASSEMBLYMAN HORN: Maybe I am somewhat naive. You are the second witness now who has brought, I think thankfully, to the attention of the Commission the practice of steering by financial institutions, or requiring that certain companies handle the title insurance. Again I am naive. What would be the motivation for getting size and financial stability? What would be the motivation of a financial institution saying, "You use X Title Insurance Company"?

MR. PICCOLA: I have my suspicions as to what the motivation is, but I honestly can't tell you.

ASSEMBLYMAN HORN: I have suspicions too and I am not sure myself. I don't know.

ASSEMBLYMAN HAMILTON: On that, I know of one situation that I had and it involved a mortgage company, not a conventional bank, in which I was told that I had to use Title Insurance Company A or Title Insurance Company B, which I did. And at the closing, for the first time - I believe it was a VA - there was presented to me a certification for my client to sign in which it stated that I had a choice of whatever title insurance company I wanted. I showed that to my client and I said, "You are being asked to sign something that is not so." He said, "What shall we do about it?" I said, "Let's send it back unsigned and see what happens." That is what we did and nothing has happened yet. Anyone who has closed a VA loan knows that frequently you get a paper back because the "t" wasn't crossed or the "i" wasn't dotted. But apparently the particular company involved was just as aware of the very, very questionable practice they were engaging in as I was and they weren't going to make an issue out of the fact they did not

get a certification back.

In my own mind it would be interesting to know whether that was certified to by someone else or was forged and then sent on, and I have no way of knowing that.

But is your suspicion that there is some additional money available with respect to commissions that might be paid to a lending institution or some kind of a mortgage company in the three seventy-five that is left of the net premium? Is that what you are talking about, Mr. Piccola?

MR. PICCOLA: There is a possibility that that can exist. Also I think possibly it just might be a situation of just rapport with a specific title company. But basically what it does do is creates a hinderance to someone else who is trying to make a living.

I think Mr. Mastrangelo mentioned restraint of trade. Without a doubt, in my opinion, it falls in that category. But once again, this is a practice that has been going on.

One other thing Mr. Mastrangelo mentioned that I would like to bring a point out about was the approval of a title company as being an underwriter. I think all title companies if they come under State regulation should be approved. I think the approval should be the amount of insurance that they can write. I don't think they should be prohibited from writing a $20,000 policy. I don't know of any company that can't write a $20,000 policy or $50,000. Maybe when you get up into a $10 million bracket, that might be the case, but no title insurance company that I know of keeps all $10 million anyway. They usually have participation or reinsurance or something of that nature.

ASSEMBLYMAN HAMILTON: Are you quarreling with any of the provisions of 1393 as it is written,

understanding that there is substantial sentiment to amend Section 33 with respect to payment of commissions?

MR. PICCOLA: I guess basically the biggest gripe I had was the commission arrangement and the commissions being paid.

ASSEMBLYMAN HAMILTON: I haven't heard anyone speak in favor of commissions yet. So I think if we were going to do this democratically, at least at the moment, we wouldn't be having commissions in the future.

I think Senator Maressa may have a question.

SENATOR MARESSA: Mr. Piccola, I just wanted to say that it seems that nobody quarrels with the present practice --and I am, of course, only familiar with what happens in my locality - no, I am not - I have had some settlements in North Jersey and it also happens there -- that when you go to a lending institution, the institution's attorney prepares the mortgage papers and the purchaser or the borrower pays the attorney's fees.

Now I don't know why the lending institution would not also have the right to choose its own title company if it has the right to choose its own attorney and have the borrower also pay for that service. But that is just my own personal observation.

I would like to ask you what your understanding of an agency is.

MR. PICCOLA: My understanding of an agency is the way I run mine. Basically it is no different than an actual title company in function. We primarily do exactly the same thing that a title company does. We order the title search. We read the title search; prepare the title binder; in certain cases, countersign and solicit attorneys through sales people. So basically the function of my operation is the same as a title company.

When you say "agents," there are certain agents that work out of the various court houses. And the only function that they do might be a title search, but do not actually prepare any of the preliminary reports of title. At certain times, an attorney will come in with a binder and the so-called agent will just countersign the binder. He represents the title company as an authorized signature, but does not actually get involved in the preparation of the title papers themselves, the title binder, ordering of the tax searches, etc. That is my thought as to what an agency is.

SENATOR MARESSA: In South Jersey there is a prevalent practice today of having offices, so to speak, in various parts of the county in the southern part of the State wherein an employee of the title company is in this office and settlements are held there. The reports of title are prepared back at the home office, so to speak, and mailed out. Actually it is, you might say, a satellite office. That in your mind would not be an agency?

MR. PICCOLA: No. Actually all the people that work for me are employed by me and are not paid through Stuart Title Guaranty Company. I pay their salaries, etc. It is a separate entity in its entirety. I have a contract with Stuart Title Company appointing me as an agent for them with specific provisions as to what I am to remit back to them in premiums, etc. Even our hospitalization is paid through our company. So we are in fact a separate entity.

ASSEMBLYMAN HAMILTON: Do you support the concept of licensing of agents as one of the suggestions to this Commission as far as 1393?

MR. PICCOLA: Correct.

MR. MC DONOUGH: I am interested in your comment about a uniform agency rate. Don't you think that there

should be certain differentials based upon the ability of the agent to produce, for instance, a greater volume of business than possibly someone with a lesser potential?

MR. PICCOLA: Yes, I agree with that. When I say "regulated," it would be regulated to a schedule of commissions to be paid. If an agent is only writing, for the sake of argument, $100,000 a year in total insurance and there is someone writing $2 or $3 million a year, I think there should be a sliding scale for the agent - the more that the agent writes, the better arrangement he has with the underwriter. This also inspires the agent and it protects the underwriter as well.

MR. MC DONOUGH: Thank you.

ASSEMBLYMAN HAMILTON: Does that answer your question?

MR. MC DONOUGH: Yes.

ASSEMBLYMAN HAMILTON: Anyone else? (No response.) Thank you very much, Mr. Piccola. We appreciate your comments and, if you have anything further that you want to submit, certainly feel free to do so through Mr. Guzzo.

MR. PICCOLA: I just wanted to tell you that Mr. Salameno is not here.

ASSEMBLYMAN HAMILTON: We are going to deviate just a little bit from the script which had us scheduled now for a luncheon break and take Mr. Harold Donohugh, President of County Abstract Company of Moorestown, New Jersey.

Then we will be breaking for lunch and coming back somewhere around 1:30, depending upon how long we talk to Mr. Donohugh.

H A R O L D D O N O H U G H: Thank you, Chairman Hamilton and members of the Commission.

As progenitor of this Commission, I am going to

have to read something that I did not intend to read. It has to do with the prior SCR 2025, with which you gentlemen are familiar.

I very patiently listened to the proselytizing done here today by the New Jersey Bar Association. But before I read this item, I will have to expose myself for what I am. I am a layman. I am in the title industry. I am an agent of a highly reputable title insurance company nationwide. I will not do what Mr. Mastrangelo did and commercialize my association nor name the name of my own company if it has not yet been mentioned.

Senator Maressa said something that caused me to break out in cacophony, I guess it was, because I am working under duress here today with a serious cold, but we won't need a doctor, Senator.

He assailed one of our speakers - Assemblyman Horn, was it? - and used the word "expert" and I believe he meant - and he would have the right to so advise me otherwise on questioning me - a lay expert because I heard kind of a subdued repartee, "Why you mean layman." Well, you are looking at a layman with 34 years of experience in the title field who does not consider himself to be an expert.

I only know one expert in real estate. I only know of one total expert that I have ever heard and I listen to this man too very patiently and I do so every Sunday as religiously as I would go to church, and that is a man by the name of Bernard Meltzer. Some of you must have heard of him. He calls himself out to be an expert in many, many fields and he is a layman in so far as law is concerned.

So you may know that "The Latter Day Saints" - and I put that in quotes - who come forth now with these proposals, and that would include 1393-- A layman has caused you - and I reiterate this - to sit here today and

hear this.

This afternoon you will have the benefit of an Association that purportedly and reputedly represents the title industry in the State of New Jersey. That is the New Jersey Land Title Association. Largely they do represent the industry. But I will very affirmatively tell you this, that they do not represent the agents whom they appoint because that is how we do it in New Jersey. We are appointed by the title insurers. We have no representation whatsoever. The title abstractors' organization would welcome us into their midst. I do not demean that organization. But after 34 years of dealing with this field and having, if you will, the opportunity -- And I probably will not have the benefit of any immunity and, quite frankly, I am not interested in immunity. You gentlemen, with the exception of Mr. Walker and Mr. McDonough all have your immunities.

The attorney coming into the practice of law, immediately leaving law school, is certainly qualified to practice in New Jersey if he goes through the requirements of the rules of the Supreme Court, takes the Skills and Methods, and then enters the field. I question if this makes that young man an expert in the practice of real property law. Why I question that is because I have had the opportunity in my lifetime in this field to assist many, many of your colleagues in discovering and determining what the law of real property actually means in so far as title is concerned, title to the property.

We had a commentator in Philadelphia some years ago who died and he said that he was opinionated but lovable. Well, I'm not lovable. I have no opinions, but I am opinionated.

We have worked very closely over the years in South Jersey much like a good bottle of milk, homogonously, with the local counsel. It is true that inspirationally

South Jersey is influenced by Metropolitan Philadelphia. Now I don't know if it is true, but I suspect that this other state, North Jersey, is influenced then by New York and its atmosphere.

ASSEMBLYMAN HAMILTON: Mr. Donohugh, perhaps some of the prior speakers went off 1393. But I would appreciate it if you would get some comments in on 1393. That is what we are primarily interested in.

MR. DONOHUGH: I certainly will.

I'll tell you what I'll do - I will forego reading this - but I am going to give this to Mr. Guzzo and I would like the Commission to read it, if they will, and let the Commission know while you are sitting there that this layman created this study. The Bar Association did not create this study; I did.

ASSEMBLYMAN HAMILTON: So you will be aware and so the members of the audience here today will be aware, you are referring to a prior Senate Concurrent Resolution that was adopted on January 11, 1972. Because that was the last day of the old Legislature and the first day of the new Legislature --

MR. DONOHUGH: That's right.

ASSEMBLYMAN HAMILTON: (Continuing) -- and members were to be appointed to that Commission after the New Legislature had been sworn in. It never became effective.

It is for that reason when I introduced ACR 77, it was a carbon copy of what went in before. I put it in and used the same language that I think Senator Smith had used, if I have the right Senator.

MR. DONOHUGH: That's right.

ASSEMBLYMAN HAMILTON: It is here not because of any one individual's feeling that it was necessary but because there is in fact a problem that we are all trying to address ourselves to.

MR. DONOHUGH: Admittedly that is so, Chairman

Hamilton. But how else would the Commission have been formed? I didn't know of any prior inspiration.

The reason the Commission was formed was I had knowledge that 1393, the bill that you want me to get to, would be first. I thought, how can you possibly go into a title code without first investigating the industry itself. Now would you take exception to that, sir?

ASSEMBLYMAN HAMILTON: I would say to you, sir, that any legislator has the right to introduce any piece of legislation that he desires. Mr. Kaltenbacher told me while ACR 77 was pending and had not been voted on that he was going to put in 1393. I told him I would withhold pushing ACR 77 at that time because it might be that 1393 was a complete answer to the problem.

I think he and I both agreed after he put the bill in, while it was certainly an answer, it was probably not the whole answer. For that reason we went ahead with ACR 77. The Senate saw fit to adopt it. And we are here today and would like to hear your comments about the bill.

MR. DONOHUGH: 1393 has no real import to the agent of a title insurance company, except this - it will burden the agent for additional accounting expenses in the event of an examination, for example. Now without any kind of representation or any group or any form of lobby to let you know this -- That's one of the reasons I came here. We were never consulted at any time by our insurers directly to see if we had any interest in this bill.

There are probably other agents here today from South Jersey. I don't know whether they are listed as speakers or not.

The title commission is not a new thing. That has been done before here too. I don't think the title commission or the prohibition of the title

commission will work against this evil because you have to figure whether or not some other thing of value or advantage will supplant that evil.

ASSEMBLYMAN HAMILTON: Would you tell us what the particular problems are that would be presented to the agents if 1393 or something roughly comparable to it is enacted and how you would propose to change it, sir?

MR. DONOHUGH: I don't think 1393 as it is now would have a great impact on the agent, except in so far as additional burdensome accounting expense. The rating organization that you talk about in the plural sense "rating organizations" or "rating organization" or a single bureau -- Throughout this bill, it is pluralized in many places. I don't quite understand that. Is there to be one rating bureau? As you gentlemen know, this is only the copy of the Pennsylvania bill that Larry Zerfing was responsible for helping the Association here in New Jersey formulate.

ASSEMBLYMAN HAMILTON: What would you propose, sir, with respect to a rating organization or rating bureau?

MR. DONOHUGH: A rating organization, as I have attempted to establish in my original proposal would be an office ex officio under the guidance, but not direction, of the Insurance Commissioner. The rating bureau should be paid for by the title industry. In Pennsylvania, this is how that works. I didn't hear that explored at all. There is an employee, who by the way is an attorney and I think is salaried in the neighborhood of $15,000 a year. He works with Commissioner Dennenberg. And the title companies in registering their rates and in the amelioration of their problems work through this gentleman. There is only a single unit.

Territorially, of course, the five-county Metropolitan Philadelphia area might have different filings

than, say, Bradford County or Erie County or Allegheny County. But this one man is the liaison between the industry and the Commissioner.

This bill confuses me as to "rating organization." Where you come to that section of the bill where it relates to that, you will find it quite a common reference. I would like that explained if the Commission is able to or anyone here might be able to.

ASSEMBLYMAN HAMILTON: I think we have already set up the ground rules.

I take it that you are not opposed to regulation of rates of title insurance policies.

MR. DONOHUGH: Regulation of rates?

ASSEMBLYMAN HAMILTON: Yes.

MR. DONOHUGH: The filed rates by approval? Is this what you mean?

ASSEMBLYMAN HAMILTON: There are, of course, many ways in which the Commissioner might set rates. One would be file and use; another would be, file subject to approval, and what have you.

As a concept of regulation, I have taken from your remarks so far that you are not opposed to the concept of regulation. You might differ with the approach in 1393 as to how that regulation ought to be achieved. Is that a fair statement?

MR. DONOHUGH: I think that is more than fair. I think I explained that amply and ably. It should be an office ex officio by a man named by the industry, with the approval of the Insurance Commissioner, and paid for by the industry.

ASSEMBLYMAN HAMILTON: You also made a comment with respect to commissions and you said that you didn't think eliminating commissions would necessarily solve problems. Would you amplify in your comments there with respect to the payment of commissions?

MR. DONOHUGH: I don't suppose that was a question that would be naive and I do not expect

that it would be one that would be loaded.

I have to dwell on experience. I can recall of incidents many, many years ago where title commissions by a major company in Philadelphia were at a minimum of 10 per cent of an examination or premium or however they arrived at it.

One of the first agencies in Pennsylvania -- I can do better than that. There was no rating bureau in this age. "Why not you, George Builder, utilize my charge, we will say, at Morvels," which may not have then existed, or any clothing or haberdashery store, or any facility that I have. This is a favor. This is an advantage, is it not, in lieu of cash? What better than to have you outfitted in a $300 suit, any good suit, Louis Roth - they look nice on people.

ASSEMBLYMAN HAMILTON: Mr. Kaltenbacher, we are going to try to get back on the point here.

ASSEMBLYMAN KALTENBACHER: I wish the speaker would talk on 1393 and give us something specific on whether he is for or against it or has suggested amendments.

ASSEMBLYMAN HAMILTON: His position is against 1393. I certainly think that is a responsible position. However, I would like to know how you would like to have it changed.

MR. DONOHUGH: I am not against 1393. I am against the burden placed on the agent without agent representation.

ASSEMBLYMAN HAMILTON: Well, we are trying to get an input now from any segment, the consuming public or anyone else, as to things that may be wrong with this bill or that you may feel are wrong with this bill. That is the whole purpose of this public hearing.

MR. DONOHUGH: I am saying we are deceiving ourselves if we think we can prohibit and preclude the payment of a title commission in one form or another. I have only heard the North Jersey view and I see an

absence of understanding for the South Jersey view. We have lived with this many years.

ASSEMBLYMAN HAMILTON: Is the payment of a commission necessary in your view, sir?

MR. DONOHUGH: No, it isn't. In my business ---

ASSEMBLYMAN HAMILTON: Not your business, but in your view in drafting good legislation should we allow the payment of a commission to continue or should we prohibit it?

MR. DONOHUGH: I say if you can prohibit the payment of a title commission or other thing of value or favor, then do it, but you'd better have a big police force.

Most of my clientele is attorney oriented. I have very little broker steerage. I think that would be the the word. Up until 1971, I was almost unwilling to pay title commissions and I paid it at a rate of 15 per cent. My competitors thought this was quite a joke. They were all paying 30 and 35. Consequently I am a much smaller company. The deprivations of some of the things suggested that might be added to this bill by the New Jersey Bar, a right to close, not to practice law.- I don't think we any longer are interested in practicing law. We did this. Any truthful practioner in the title insurance industry not an attorney will say what I said here earlier and which I suppose didn't come off too well in your minds. It is unfortunate that it didn't. It is quite clear in mine. We just consider ourselves able - opinionated, maybe.

ASSEMBLYMAN HAMILTON: You are saying in effect that in the past you have practiced law and that you don't care to do it.

MR. DONOHUGH: I did not say that I practiced law. I said "we." That's a Lindberghese.

ASSEMBLYMAN KALTENBACHER: Your points were that you didn't think that the prohibition against paying commissions would work.

MR. DONOHUGH: Well, I don't know how it would work, sir. I would like it to work very much because, if some of our other income is negated, it is very important to us that there be no title commission paid. Isn't that a sensible reaction? Yes, let's do away with the title commission, but protect us from our enemy avarice.

ASSEMBLYMAN HAMILTON: So we are not talking about any problem with respect to Section 33 as it would be amended to prohibit the payment of commissions. You suggested that that order include not just commissions but other things of value. And that is certainly something that we can think about.

MR. DONOHUGH: -- or advantages given. I see that you appreciate our position. This is the first opportunity that South Jersey has had to place its voice before you.

The agency as described by the prior gentleman is nothing as it would relate to my agency, for example. My agency and most agencies in South Jersey are run entirely differently. We have great expenses. We operate much like a title company but, of course, not exactly because we are not a title company.

ASSEMBLYMAN HAMILTON: Would you mind describing the scope of the activities that you feel are appropriate for a title insurance company or a title insurance agent because that is one of the principal areas that we wanted to address ourselves to at this hearing?

MR. DONOHUGH: I see no reason why a title insurance agency cannot exist in concert with the rest of the real estate industry, including the Bar or the law field.

We do have our own settlement personnel which most of our attorneys are glad to utilize.

ASSEMBLYMAN HAMILTON: Do you see any chance of conflict of interest when there is someone who has not been licensed to practice law or someone who has perhaps not been selected by the home purchaser who is the guiding hand to the consumer through the transaction?

MR. DONOHUGH: Would you repeat that because that was just a little bit twisted for me? It was probably quite clear to you.

ASSEMBLYMAN HAMILTON: I was asking - do you see any problems, actual or theoretical, in the consumer being guided through a transaction by someone who either (a) is not licensed to practice law, assuming there are legal questions that arise, or (b) is not selected by him as his own representative for the purposes of that transaction?

MR. DONOHUGH: Positively. I would suggest that in more than 90 per cent of my closings that are held within the confines of my company offices attorneys are present. They are encouraged to be there. We can't employ an attorney for a broker's prospective purchaser. That is up to the individual to select his own attorney. But there is no way that I would discourage the presence of an attorney because I hold -- well, I would be flattering or buttering you up --

ASSEMBLYMAN HAMILTON: Don't do that.

MR. DONOHUGH: I hold the average man in high esteem. Therefore, attorneys are also within the spectrum of that description.

No, I would not discourage attorneys. And that is not a demeaning remark, Assemblyman.

ASSEMBLYMAN HAMILTON: Would there be any infringement then upon your conception of the proper scope of your own activity were the amendments to be adopted that were discussed by earlier speakers to say that you could not hold closings, but there would be nothing

that would prohibit closings from being held in the offices of title insurance companies?

MR. DONOHUGH: Well, with proper elaboration. If counsel means that our facilities would be utilized by the attorney with his representative to make the closing, I can't say that I could object to that. But I dare say that it would result in our providing more than the facilities, a personage to hold that closing. Our people have been trained over the years to get through a closing with a certain promptitude and on heavy days or busy days we are able to do it efficiently and competently. I don't say that an attorney would not.

ASSEMBLYMAN HAMILTON: Are those persons called closers? Is that what you call them?

MR. DONOHUGH: No, they are not. We have a name for them. We call them settlement clerks. Now if you get to be anything else in the company, they even call some of them settlement officers. But they are competent people. They are well trained and they have been for years. There is nothing new that I know of in the industry. Here the attorney is a closing attorney.

ASSEMBLYMAN HAMILTON: How are the settlement clerks reimbursed? Is it by salary from the title company?

MR. DONOHUGH: Oh, yes. In my operation, it is all by salary. There are no other remunerative contributions made to them. We do not and I do not permit my people to accept any kind of gratuities and to my knowledge none of them ever have. If they would, then they no longer would be employed by me.

ASSEMBLYMAN HAMILTON: Mr. Donohugh has indicated to the Commission that he has a prepared statement, of which I guess he has at least one copy to give to Mr. Guzzo for reproduction.

MR. DONOHUGH: I have copies, sir, if I may interject.

(Information submitted by Mr. Donohugh can be found beginning on page 73A.)

ASSEMBLYMAN HAMILTON: Do the members of the Commission have any questions?

ASSEMBLYMAN HORN: On the 10 per cent where there are no attorneys present, what happens when the purchaser has a question?

MR. DONOHUGH: Do you mean do we then sit in and advise? If you mean it is a question of how much it is going to cost ---

ASSEMBLYMAN HORN: No. "I see on this paper, Mr. Settlement Clerk, something about an easement. What is an easement?"

MR. DONOHUGH: Let's say that prior to Opinion 11, I can only suggest what other companies might have done. They may have made an effort to make an explanation. I don't know. I offer no explanations or opinions. If an attorney asks me - this is not directly answering your question - for an opinion, I will give it to him.

ASSEMBLYMAN HORN: That wasn't my question.

MR. DONOHUGH: I know it wasn't your question. I can't answer for other companies. I think it is a general question, is it not?

ASSEMBLYMAN HORN: Answer it either way.

MR. DONOHUGH: No, I do not engage in that kind of answer because I live within a small community in South Jersey and operate in just two counties and I want to live with everyone in those two counties. I told you my clientele would be attorney oriented. Now one does not cut one's own throat and survive too long.

ASSEMBLYMAN HAMILTON: What happens to the question that is unanswered by the home purchaser if you don't endeavor, as I think is proper, to give him an answer?

MR. DONOHUGH: I think maybe -- Well, there is no one here from the Real Estate Board that I see

or know who has been at closings in South Jersey. I don't know if Mr. Walker is familiar with what his colleagues might enter into. That might be asked of one of your own commissioners. I can't answer that.

ASSEMBLYMAN HAMILTON: In other words, the question in essence either goes away or is pretty much left unanswered or it is answered by someone other than your own personnel.

MR. DONOHUGH: Not in my office, the question does not go away. If it is a problem, I immediately suggest if it is brought to my attention that that person, if represented by a real estate broker, be advised that a lawyer should be engaged, and that is a fact.

ASSEMBLYMAN HORN: I know it is late, but I do have a couple of other questions.

Who prepares the closing statement?

MR. DONOHUGH: In the agency or the title companies in South Jersey?

ASSEMBLYMAN HORN: Yes.

MR. DONOHUGH: Our personnel. Lay personnel.

ASSEMBLYMAN HAMILTON: Is that it, Mr. Horn?

ASSEMBLYMAN HORN: One more question.

ASSEMBLYMAN HAMILTON: Is there anyone else who has a question while Mr. Horn is gathering his thoughts together?

SENATOR MARESSA: Is it your opinion, sir, that in the given development-type situation where you search the title on 100 or 200 acres and five or six hundred homes are built that in each instance there should be a complete new separate title charge for each piece of ground?

MR. DONOHUGH: Well it's kind of loaded, Senator, and I know exactly what you mean. You asked if it is my opinion. I will have to say it's a great hardship on the consumer. Again I will have to throw that question back to Mr. McDonough who might discuss that with the

Commission. He knows just as well as I do the obviousness of that. To answer it, there would have to be a great elaboration and I don't think you have too much time.

SENATOR MARESSA: Let me ask another question. At the same settlement, would it be your opinion there should be attorneys at the 500 settlements?

MR. DONOHUGH: Why, not? Yes.

SENATOR MARESSA: Why?

MR. DONOHUGH: Why not? There may be a question. The fact that a developer - it is not a unique question - has received a title that is allegedly perfect -- And I have to say "allegedly." Otherwise we wouldn't be in business. We didn't start this year; we started in 1876. The fact that Joe Builder conveys time and time again each individual lot doesn't mean that he has satisfied all of the blanket mortgages in the background or that some problem of title was not omitted some way. I am not talking about at the closing; I am talking about the abstracting of it, the examination or the reading of it.

SENATOR MARESSA: We have to assume there is a couple of million dollars construction mortgage.

MR. DONOHUGH: There could be a number of them, Senator. There could be several outstanding mortgages that have been released. We have mortgages, and I am sure you do, in this area and North Jersey where 30, 40, 50 releases are on the record and your property has not been released and it has been sold several times. Three or four title companies have insured it. Then the last title company, hoping that it is prudent, does pick that up as a lien and prescribes that it be considered as an exception to the title. Hopefully, it will then be taken care of or otherwise you will not close.

So I can't see the difference between a lawyer being present at one of those 500 closings or the initial closing with the builder.

ASSEMBLYMAN HAMILTON: Assemblyman Horn has another question and then in the interest of keeping more or less on schedule, we will break until 1:30. Assemblyman Horn.

ASSEMBLYMAN HORN: On the 90 per cent of the closings that take place where there is an attorney present - it's really a multi-part question - are you talking about the attorney representing the purchaser?

MR. DONOHUGH: He could represent the purchaser or the seller.

ASSEMBLYMAN HORN: So there may be closings where only a seller's attorney is present or one where only a purchaser's attorney is present?

MR. DONOHUGH: That's right. The buyer is not always represented.

ASSEMBLYMAN HORN: When the buyer is represented, who normally selects that attorney?

MR. DONOHUGH: When the buyer is represented, to the best of my knowledge, the buyer would select that attorney. Who else, sir?

ASSEMBLYMAN HORN: It has been suggested by certain testimony that the real estate agent selects the attorney.

MR. DONOHUGH: That's a question again for your Commission. Mr. Walker ought to be prepared to answer that, not me. It's not an evasion, sir.

ASSEMBLYMAN HAMILTON: Thank you, Mr. Donohugh.

(Recess for Lunch)

(Afternoon session)

ASSEMBLYMAN HAMILTON: I would like to call the public hearing back into order for this afternoon.

Since there are at least a few faces that I did not see here this morning, I won't go through all the statements made this morning but I would like to identify the Commission members who are still with us. To my left, Mr. Kenneth Stein, an Attorney from Newark, New Jersey, who is one of the public members of the Commission; I am Assemblyman Bill Hamilton, Middlesex County; to my right, Assemblyman Michael Horn of Passaic County; to Mr. Horn's right is Kenneth Walker, New Jersey Board of Realtors, one of the public members of the Commission; and to Mr. Walker's right, Mr. Frank J. McDonough of the Title Insurance Industry, also one of the public members of the Commission; and in attendance, although not with us at the moment, is Assemblyman Phil Kaltenbacher of Essex County. Senator Maressa of Camden County was here earlier and had to leave, and our other two Senators were not able to be with us.

Very, very briefly, pursuant to the mandate that was contained in ACR 77, this Commission has been studying the title insurance industry, the need for regulation, and particularly a bill, A-1393, which was introduced after our Study Commission was proposed, by Assemblyman Kaltenbacher. We've been using that as a jumping-off point of our deliberations.

This Commission is without power to amend A-1393 but Assemblyman Kaltenbacher is the Chairman of the Insurance Committee. I am sure that the proposals and suggestions that we make, and recommendations that we might make with respect to A-1393, will at least be carried back to the Insurance Committee with some expectation that they will receive serious consideration and perhaps release from that Committee for a vote by the Assembly and ultimately by the Senate.

We've requested, I think, in our invitation some specific areas of comment with respect to the payment of commissions. I would say to you, if you weren't here this morning, the general sentiment has been that those commissions ought not to be allowed. We have also invited comment on the permissible scope of activities by title insurance companies and the type of regulation, if any, which might be in order. We don't intend to limit anyone with respect to your comments. We would state that if you have prepared statements, you need not read the prepared statement. We would be perfectly happy to have you submit it to Mr. Guzzo, our Secretary, who is seated over here, and comment on any particular matters that you may care to. Of course, if you want to, please feel free to read your statement.

We will probably be propounding questions to some of you who speak. Our ground rules are that you can't ask us questions. We can ask you questions but we are trying to get an input.

With that preliminary explanation, I would like to call on Mr. William H. Wells, Esq. of Mount Holly, New Jersey, who is our first scheduled speaker for this afternoon.

W I L L I A M H. W E L L S: Members of the Commission: It is certainly a great pleasure I take in being able to present the thoughts which I have developed over the period of the years.

By way of identification - William H. Wells, a member of the firm of Wells, Hillman and Wells, with offices in Bordentown and Mount Holly, both in Burlington County. I have been practicing some 35 years and over that period of time have had a rather intensive activity in the real estate field. In addition to that, I represent several abstract companies in the Township of Mount Holly. Our firm, for a period of time, - and I will mention this later - did own an abstract company.

I have served as Chairman of the Unauthorized Practice of Law Committee in Burlington County and am serving in that capacity. I am Chairman of Part D of the Committee on Authorized Practice as appointed by the Supreme Court of this State. Part D is concerned primarily with the southern part of the State. And that I think is significant because much of the problems that we are going to talk about today, I think, are rather peculiar to the southern part of the State of New Jersey.

Now by way of comment, first addressing myself to the question of the regulation of title charges, fees or commissions - whatever term we want to use.

Over the period of years I have always been somewhat amazed at the spread in title fees or commissions. I am aware of the fact that they can be charged all the way from $5.00 a thousand down to 87½¢. It has been a mystery to me, the basis for any charges of title companies. I am not aware of the basis of risks involved as they would cost analyze it out. It is not based on any term period, any period of an exposure. The charge for one year as for infinity. And this seems to be, in the insurance business, a factor, to wit, time that should be involved. The nature of the risk itself, whether it has been assured and reinsured and reinsured, again does not seem to be a factor which is taken into consideration by the title company. It seems to be, gentleman, an evil which lends itself, unfortunately, in the trade to many practices which we will get into in a minute which will be the major thrust of my remarks, that by having such a latitude in their fees and charges it almost makes a cut-throat situation in the trade. And let me say in the beginning that by and large I would say a great number, a great majority of the legitimate title companies in this State are a very splendid group of companies. They practice properly, they do things properly and they want to do things properly. As a matter of fact, without knowing it, I would

guess in my conferences and conversations with them that they would welcome regulation. It's the cut-throat person here that primarily is causing many of the problems in this title field.

Another concern to those of us who represent the public - and I must say here, and I am sure we all have this touchstone, that I am not appearing here as to what's best for the lawyers or what's best for the title company, I think we all share it's what's best for the public. But I must say, as a Lawyer who represents clients, that when we have to pick a title company I do it with my fingers crossed for I haven't the slightest idea whether they are really solvent or not. Just by guess and by God and by faith over the period of years I just count on them. Which, interesting to me, brings out the question of their fees and commissions because strangely, also in my practice over the years, I have never had a claim against a title company which makes me also wonder just how risky the business is. Time is the great cure-all for most title insurance.

And let's also make the point clear that insurable title is not necessarily marketable title. Marketable title, which is the touchstone to the lawyer, is not one and the same - I am sure you know that - as insurable title. Insurable title, one might say, goes further and picks up the facts off the record, while the marketable title is that which is a matter of the public record. On the other hand, insurable titles can be something lesser than marketable titles if one can negotiate with the title company to waive certain exceptions. And they have practices that sometimes for the mortgage holder they will waive certain exceptions which they will not waive for the fee holder, such as infringement encroachments because there is the element of time which one of the statutes of limitations, twenty, thirty or sixty year statutes, will correct.

But solvency is certainly a problem with all of us who have dealt with insurance companies, and I say fortunately it hasn't been a major problem because they haven't tended to go into insolvency. However, in the early days, in the thirties, I had this unhappy experience with a title company that had gone insolvent. And then you are really left swinging because where one has an abstract of title, which is the normal basis on which insurable title is based, at least, no matter what happens to the abstractor, you at least have that search. When a title company goes bad and you only have the title policy, you have nothing but that one or two page paper which says that they guarantee it; you have no evidence whatsoever of a marketable title. And in this case we had to start all over again.

What really concerns me the most I think stems from these other two aspects which I am sure you've had more evidence on and more presentations here than I'm prepared to give - but what really concerns me most of all is the fact that, in such an industry where the charges are apparently without too much rhyme or reason except as competition states it, we have found that in order to produce the fringe benefits, to produce the come-all that the title companies have engaged in policies or programs here of these fee rebates, the commission rebates to insurance agents, to lawyers - which, incidentally, we now know is unethical for a lawyer to keep such rebates unless they are disclosed - to realtors, and I'm not sure whether to builders. There is a custom with many title companies that they will do free title research or title abstracts for a builder if he will in turn bring the business to them for all the title policies that are going to be issued out. And I will say a word later as to these tie-ins which I also object to.

But what concerns us is the fact that over a period of years, in the southern part of this State, as

a plague which basically crept over from Philadelphia, is the fact that today - and this is on the testimony of the title people themselves from Southern Jersey - the lawyer is a unique, almost an absent person in most settlements that take place in this State; that between the realtor who, as soon as the contract is signed and sometimes before the contract is signed, because he's on a rebate basis, has ordered the title policy - and I remember just about a month ago in my office, as soon as the agreement was signed the realtor turned to the purchaser and said, "I've ordered your title policy for you." Well, he didn't even at that posture have the contract. I asked him about it later and he said, "Well, we have an agreement that if it doesn't go through they wash it off. There's no charge whatsoever."

By that technique and then the setting up of the settlement, particularly where a builder is concerned, they tell me that rarely do they see a lawyer for either the buyer or the seller.

Now, perhaps some members of the public think this is good, this saves us money, we have no charge here, after all the title company is going to take care of us. And in the opinion which we have prepared, Opinion 11, we feel that a certain false sense of security has been given to the public in believing that if you have a title policy you have a good title. Well, gentlemen, you can have 47 exceptions in that title policy that may make that so riddled that it isn't the roof over your head. It may be a roof with hundreds of holes in it. The title company is perfectly honest in this. They can recite it and say we will insure you except for these four mortgages, these thirty-two judgments, all these encroachments, these easements. But the average layman who is relying on this comes to it and he says we have a nice title policy, you can rest yourself - I won't say in Allstate but put yourself safely in our hands and all comes out nicely.

Gentlemen, it isn't that simple. Inevitably there are problems which arise in connection with the title. The public, in my opinion, is entitled to the protection, and the title company is entitled to the protection that there is somebody there who interprets that title policy. Conveyancing is the oldest form of the law, in the Anglo-Saxon law, that there is. It goes way back, as we know, to almost 1066. It is the basic part of the practice of law.

So in Opinion 11 we have stated, first of all, that a title company which is part of a scheme or part of a picture, part of an impression given, wherein the realtor goes in, gets the title policy with a rebate and then processes it himself right through to the very end. This is the unauthorized practice of law.

We has a parallel decision in this case having to do primarily with the builders. No legal charges - this was their advertisement. Well this wasn't in fact true, gentlemen. The legal charges were there. They were cost analyzed, cost fixed into other parts of the charges. I can wager this as a fact because I'm sure that if the Internal Revenue Service audited them and asked for their expenses they wouldn't say this was a gift to the various buyers or sellers involved. We know that it was included and the Supreme Court of this State has said in the Northern Mortgage Case that these charges, while they're not on the face of it given, are in fact reflected in the costs of the title companies.

We have also pointed out that the practices where the realtor and the title company, without lawyers, conducts a settlement - and again, gentlemen, this is the most basic of the practice of law, the tender of the deed, the payment of the consideration is one of the most fundamental elements of the practice of law. And the practice which they have set up which in fact discourages the lawyer - and why do they discourage the lawyer? This

is their own statement, "He makes trouble. He holds up the deal. We can work these problems out among ourselves but the lawyer he delays things. He just causes us trouble. He's expensive."

I think many a layman, of course, is alerted by this fact but, unfortunately, many a person who is lulled into security is carried on into the picture.

This is what gives us a concern and I am convinced - not to oversimplify it, but if we were to stop the rebates, - that the enthusiasm for the realtor and working this out with the title companies would be cut almost to zero.

ASSEMBLYMAN HAMILTON: Mr. Wells, I don't want to cut you off in an area that you are so well prepared in but I would advise you, since you weren't here this morning, that it has been the feeling of everyone who has spoken that commissions ought to go. So I don't think that you have to spend any more time than necessary --

MR. WELLS: I don't have to beat that horse.

ASSEMBLYMAN HAMILTON: We haven't heard any realtors yet but I think I sense the same feeling from them, that commissions are not a necessary part of the business.

MR. WELLS: Very good. The only point was that from there was flowing the evils which I've stated.

One last point, and that is the tie-in. I think that in one of our Bar Committee meetings, especially appointed for this matter, it was the feeling that if we do not also prevent the tie-ins - because I think if we were to come up with legislation of this nature that immediately we would find a lot of realtors setting up their own little abstract companies, and perhaps lawyers too. I think the abstract companies should be regulated, as well as title companies. And I think that there should be laws to prevent the conflicts of interest, not only with the realtors but with the banks, savings companies -

there are too many situations where you come in and if you get into a certain channel, you pick this title company, you pick this fire insurance, you pick the whole package, it's a package deal. I think in this case the public is ill-served because I think what should be the criterion is what is the best not just what is the most lucrative for that particular group.

Therefore, I would feel what should be reflected in this legislation is some prohibition on tie-ins, or approaching it another way, a more positive way, that a regulation of abstract companies under the proper rules and regulations would prohibit tie-ins or self-interest, conflicts of interest, self dealing, or whatever you want to call it.

These are the points, gentlemen, that I basically wanted to make and I certainly thank you for the chance to express them to you. I will be very happy to answer any questions.

ASSEMBLYMAN HAMILTON: Mr. Wells, you are obviously very knowledgeable in the area and we appreciate your taking the time to come and speak to the Commission.

Are there questions from members of the Commission?

Mr. Walker.

MR. WALKER: I just respectfully have a comment or two. The New Jersey Association of Realtor Boards, I reported this morning, has on May 1 approved supporting this legislation and the dropping of commissions.

Secondly, you referred to realtors, and every licensed real estate broker is not a realtor. I think you mean brokers.

MR. WELLS: Right.

MR. WALKER: Thank you.

MR. WELLS: Thank you.

ASSEMBLYMAN HORN: I would just like to thank Mr. Wells for again bringing to our attention something that the Commission had not specifically discussed in all

of our prior meetings and that is the situation of the tie-ins. We explored this a little bit this morning. It hadn't been discussed by us. And We hope, or at least I personally would like to see something in the bill which will take care of the tie-in situation, and I appreciate that.

ASSEMBLYMAN HAMILTON: Mr. Wells, there is at least one other witness I think this afternoon who may have some knowledge of prior legislation that was proposed but not enacted to regulate the abstractor or to license the abstractor. Do you have any personal knowledge of any past efforts in that area and what seems to have been the problem that we don't have such legislation at the present time?

MR. WELLS: No, I do not. But I do know, having owned an abstract company, that we felt, as attorneys, that this did put us in an untenable position of a conflict of interest. It might have been it was so widespread because, I say, so many people had little abstract companies and it didn't take much to have an abstract company, you just said it. I am not aware of why we haven't had legislation but I know that the two companies I represent would welcome regulation of abstract companies as well as title companies.

ASSEMBLYMAN HAMILTON: Are there other questions of Mr. Wells?

Mr. Wells, I want to thank you again very much for your comments and we appreciate your taking the time to come here and give them to us.

MR. WELLS: Thank you very much.

ASSEMBLYMAN HAMILTON: Next, Mr. John McDermitt, Counsel for Commonwealth Land Title Insurance Company of Philadelphia and a former President of the New Jersey Land Title Insurance Association. I understand that Mr. McDermitt has with him Mr. William Woodward, Manager of the Camden Office of Lawyers Title Insurance Corporation, Richmond, Virginia, and a former President of NJLTA; and

Mr. Raymond Buckman, Manager of the Atlantic City Office of Commonwealth Land Title Insurance Company, and the current President of NJLTA.

Are you going to be the spokesman for all three, Mr. McDermitt or are you going to break your presentation down so that you will all be speaking to us?

MR. McDERMITT: I think I'm the only speaker, sir. But I'm not talking about a monolithic, single-minded organization. We have our disagreements which I will advert to.

ASSEMBLYMAN HAMILTON: Well apparently they are content to have you present all aspects of it and we will enjoy hearing your comments.

J O H N H. Mc D E R M I T T: I will not read the entire statement which I have prepared. You can understand, I am sure, that in a desire not to impinge on the time of the Commission it was somewhat difficult to put in such narrow compass as a half-hour presentation some of our feelings and views on this question of regulation of our industry.

I am John H. McDermitt and my offices are at 140 Market Street in Paterson. I have spent most of my almost 25 years in the practice of law in and around the title industry.

The Land Title Insurance Association of New Jersey was formed in 1922 by eight title insurance companies, all of them domestic.

The industry has changed, especially since the war, and the Association now is composed of 15 companies only 3 of which are domestic companies; the others are national. The large aggregations of capital necessary to support the large insurance transaction today is the chief explanation for it.

I will attempt to touch the important points that I made in my statement without reading them fully and then get to this commission question which seems to be

a very sore point.

You spoke in your Secretary's letter of April 24th of alternatives to title insurance and I would not want that overlooked gentlemen. I regret that the Bar Association did not see fit to refer to the land identification systems which are the subject of intensive research now by the American Bar Association in cooperation with the American Land Title Insurance Association.

The most well-established system which is an alternative to title insurance has to be acknowledged to be the Torrens land title registration system.

I would like without arrogating to myself any expertise in this field, because my experience is in New Jersey, to touch on that. The Torrens system, while it could be and was very successfully applied in Australia because it was applied at a time when the population was small and parcels of land were comparatively few, would be extremely difficult of application in an urban state like New Jersey. Essentially the Torrens system calls for registration of a particular parcel of land by description. And it can only be effective as the judgment of a court of competent jurisdiction determines that the title is vested in the applicant for registration.

For the benefit of the members of the Commission who are not Attorneys, we're involved, once you would go into that system, with essentially filing a bill to acquire title on every parcel of land to be involved in the registration, service of process on possible defendants, - and we are, of course, talking about a state in which land titles go back 300 years and the Federal Constitutional requirements of service of process would have to be met. And only then would you have a sound registration system. Any other method is impossible. We must act within the framework of the United States Constitution and none of us

I am sure, would want to do otherwise.

But to consider the entry of a judgment in a bill to acquire title against the hundreds of thousands of parcels of land in the State of New Jersey, just to state the problem is an indication of the years and years of work involved and the millions of dollars involved. I submit that alternatives such as a land identification system and especially a land identification system based on grid coordinates which are a part of the present statutory setup in New Jersey would present a useful step forward in simplifying transfers of title.

Without wishing to go into the conflict that may exist between individual title agencies and title companies and the Bar at large, I think I must at least advert to the opposition expressed by the organized Bar to the language of Section 10 of 1393 and their notion to insert in Section 12 words which would bar title companies from specific conduct which would amount to the practice of law. A similar amendment is to be put forward as to Section 30 - we do not have the language of either of those proposals as yet.

As Mr. Horn quite accurately pointed out this morning, gentlemen, under Article 6, Section 2, paragraph 3 of the Constitution, the Supreme Court has jurisdiction over the practice of law and the discipline of persons admitted. I would call the Commission's attention to Winberry vs. Salisbury. Arthur Vanderbilt, who was the architect of the Constitution under which we now live and, of course, of the rules of court, spoke very forthrightly in refusing to acknowledge any legislative right to mandate the Supreme Court in its regulation of the practice of law.

So that it seems to me, in all deference to my brothers in the general practice of law, that they ought to give serious thought to the desirability of incorporating in the legislation definitions of what is and what is not the practice of law.

The Supreme Court is zealous in defending the practice of law and in protecting laymen from the unlawful practice. And I submit that's the forum in which this difficult and convoluted problem should be fought out, if it must be done.

As to the scope of our business, gentlemen, perhaps I misunderstood the thrust of your question. After hearing your questions this morning, I take it that you are not concerned about title insurance companies desiring to move into other areas of real estate. Your question as to the scope of our business involves what would be proper practice.

ASSEMBLYMAN HAMILTON: I don't think we would want to stop any comments you have along that line, Mr. McDermitt. I think the main concern has been the so-called South Jersey practice and whether or not and to what extent that ought to be limited. But if you have some other comments, we don't have any particular walls built around us. We have a mandate but we are willing to expand that as we think necessary in the context of what's proper to do the job we've been given to do.

MR McDERMITT: I see, Mr. Hamilton. Fine. My comments only were to the effect that none of the title companies in New Jersey really engage in any other business than title insurance. We are barred from guaranteeing mortgage certificates, which is one of the best pieces of legislation the industry ever had. And the historic practice prior to 1940 of title companies serving as adjuncts of banks has fallen into disuse with the enormous growth in the market. While several, in fact most of the title companies doing business in the State are the subsidiaries to mortgage brokerage houses or in much the more common case are members of conglomerates with banks, yet the element of controlled business in this area is extremely small. Most banking institutions are so busy competing in their own mortgage market that they would

impede in their experience the flow of their mortgage loans if they specified title insurance companies.

And on that point, bankers don't need John McDermitt to defend them. But in 24 years in the practice, in which I've probably closed 300 loans at least on my own account and probably another 300 or 400 on account of companies by whom I am employed, I have never - repeat, never, - been solicited by any lending institution for any rebate of commission in any way, shape or form. I feel very strongly about this. I see no reason why anyone speaking to this Commission who knows the title insurance business would attempt to tar the mortgage bankers of this State with the brush of unfair rebates. There are straightforward commissions paid in some areas of the State. But as to any kickback or secret rebate between a title company and a mortgage lender, in my experience it just doesn't happen, Mr. Chairman.

You have been most concerned about commissions and perhaps I could talk to that and then try to field your questions.

As to the direct payment of commissions by title insurance companies or by agents to persons who place business with that company or agent, there would appear to be substantial agreement among the previous speakers and apparently on the Commission also.

The title companies do not feel the necessity of arguing a case in favor of commissions. The title insurance industry is a service industry. We supply a vital function in the real prpperty economy. And as long as we continue to do so, the industry will survive. We don't need commissions. We don't need the ability to pay commissions to survive. But it seems to me, gentlemen, that, unless you go beyond the simple forbidding of commissions and consider the regulation of the agency relationship, 1393 will be more shadow than substance.

The Land Title Insurance Association has its disagreements. We've had some sanguine discussions about this code. We make no apologies for it. It was promulgated initially when I was President of Land Title Association, with the assistance of Lawrence Zerfing of the Philadelphia Bar. It certainly is, in large measure, based on the Model ALTA Code originally published in 1960. Equally there is little question that historically the Model ALTA Code stems from that which was drawn to protect the Pennsylvania Title Insurance industry.

We think the Code, as originally submitted, while it was a good one in many areas, is also incomplete in some respects. A great many members of the Association, but not all, feel that Assembly Bill 1393 should be amended to include at current Article 39 the language of section 138 of the current Model Code, which deals with controlled business.

Gentlemen, unless there is a controlled business provision in any legislation enacted, then the provision of the Code barring commissions will simply foster the development of agencies, so-called, which are more shadow than substance.

The title industry does not feel that the customer or the industry would be well served by agencies which are formal agencies only and which do not form or perform a constructive function.

ASSEMBLYMAN HAMILTON: Mr. McDermitt, while you're on that point, - now we haven't been interrupting people but, of course, the definitions that are contained in the early part of the bill were our thoughts, our present thinking, as to how we could avoid the sham situations that I think you're alluding to. Do you find that inadequate to accomplish what we apparently both want to accomplish?

MR. McDERMITT: No, sir. I think the proposed amendments to the definitions under, I believe, Section 1, item i and --

ASSEMBLYMAN HAMILTON: Yes, sir.

MR. McDERMITT: Fine. They will go a long way toward curing the problem. But it seems to many of us, and again I repeat not the whole Association, that there should be provision in the Code which would bar controlled business and payments of rebates to an agency for controlled business. As a consequence to the agency operation in which the only function is solicitation and placement of business you will find, and it has been the experience in Pennsylvania and in New York that agencies are formed which have, in effect, sweetheart deals with particular persons who control title insurance business. Specifically, already in the southern part of the State and in the central part of the State agencies have been formed for title insurance companies which agencies are owned and controlled by real estate brokers or by lawyers who are going to use the agency framework to exact the commissions that they were formerly paid as rebates. A controlled provision in the act would prevent this from happening, at least as to any of that particular agency's business which constitutes more than 25% from a single source.

Ultimately you gentlemen are concerned about the consumer and it seems to me that I must, in fairness, say that there is a substantial few that looks on the regulation of agencies with some doubt because they feel that the agency form of business fosters competition.

You heard this morning from an agent for Stuart Title. Stuart Title is a large and well-regarded national company. They have just come into New Jersey in about the past eight months. They are a member of our Association. For Stuart Title, or any company, to come into the State and open an office means a very substantial capital investment. On the contrary, however, their organizing in New Jersey with agencies means less capital investment and less operating costs. They see only the net dollar but it's a net dollar earned with practically no capital investment. So that the agency system is not to be entirely denigrated,

gentlemen. It forms a proper and viable function in the title insurance industry. But the whole problem of agencies is pointed up too in Commissioner McDonough's view that there are substantial portions of the general insurance code which, with minor alteration would reach the title insurance industry. But there are provisions which are seriously adverse or outside of the title insurance industry's experience in the general insurance code.

The general insurance code, for instance, is drafted to reflect a structure which includes not only agents for insurance but also solicitors and brokers. The last thing in the world this Title Insurance Industry needs, that the consumer of title insurance in this State needs, are solicitors or brokers.

Your definitions, gentlemen, as you point out, Mr. Hamilton, are designed to prevent that.

The title insurance industry, title insurance as such is a very different dish of tea from casualty or liability insurance.

I hope I don't sound parochial when I say that the industry generally feels that it needs separate treatment. We are not insuring against ongoing events. Title insurance is loss prevention insurance. It is our function to establish a proper, suitable title as of a date. We are concerned with past events not with future events. So that we're different, I repeat, from liability and casualty insurance, and thus feel that a title insurance code, separate and apart from Title 17, is necessary.

My statement includes substantial discussion of current practices. I would be glad to read it but you have heard so much from other speakers about the practice, it is so heterogeneous, is the only word, it's more than varied from one part of the State to another that I would hesitate to read it. I would rather answer questions that you might have.

May I point out, though, two errors in the statement which I filed with Mr. Guzzo. On page 3, talking about plant operations, I say that there is a common takeoff in Atlantic County. I am mistaken in that there are two separate companies which each make their own total takeoff of the land records in Atlantic County.

Additionally, in Mercer County one title insurance company does a total takeoff of the land title records in Mercer County.

The other mistake is on page 8. In citing Winberry vs Salisbury it is reported in 74 Atlantic 2d, not 74 Atlantic page 406.

ASSEMBLYMAN HAMILTON: Mr. McDermitt, I think it's obvious from the presentation you have already given us that all of the members of the Commission are going to read with some care your statement, and we appreciate your not reading those parts that you haven't read. I am sure there are going to be some questions.

Mr. Horn?

ASSEMBLYMAN HORN: I'm sorry. This may be answered in your statement itself but on the chance that it might not be, I would like to ask this question.

I do appreciate your comments on the bill with regard to the Winberry Case. It's something that I think we may have even briefly discussed in one of the meetings of the Commission. But what I would like to know is, is it the method of going about it that you think may not be correct - and I tend to agree with you - or is it the policy of trying to separate out from title insurance companies those practices that constitute the practice of law?

MR. McDERMITT: It's the former, Mr. Horn. We have no problem with some common meeting ground with the Bar, with the County Bar Associations or with the State. As you probably know, the senior title man in this State,

Maurice Silver, has been a member of the Board of Consultants from the State Bar from almost time immemorial. And while it may look as though everybody in the title industry is a lawyer, many of them are but not all of us.

We would welcome further dialogue with the Bar as to the practice. We have some pretty strong feelings about this as obviously lawyers do and should.

ASSEMBLYMAN HORN: Are they contained in this statement?

MR. McDERMITT: Perhaps not at the length you might like. I do defend what has been referred to here today as the practice of title companies settling titles and I think it can be defended. And I think further that the consumer is markedly benefitted by the South Jersey practice.

ASSEMBLYMAN HAMILTON: Mr. McDermitt, I asked Mr. Horn to yield to me because I was trying to generate someone who would be an articulate spokesman for that practice this morning because we have something of a concensus, more or less, against it, and I think before we were to jump to that conclusion we ought to hear the best case that can be made for the so-called South Jersey practice. So if you would try to develop that just a little bit.

MR. McDERMITT: Certainly, I would be glad to, with the understanding that my experinence is largely in the northern part of the State but I have been active throughout the State, and am, on behalf of my company.

One must start from an understanding that the practice of law and the conduct of the real estate title insurance business and the practice of real estate brokerage exist to serve the economy in which they function. There is not any part of the whole which has a right to arrogate to itself complete control of an economy.

You heard Mr. Wells speak in blunt fashion about

the attitude some brokers express that lawyers will impede the facility of closing. And it seems to me something more than the simple populous notion of opposition to lawyers.

The history of our State indicates that in the 18th Century there was a move to bar lawyers absolutely. Lawyers have always functioned as an essential part of our economy. And many people resent the necessity for lawyers. This is historically so. Dickens writes about it. He hated us. But the real function of the practice, as far as real estate is concerned, just as the function of brokerage is concerned, is a service to the public.

Gentlemen, lawyers have seen the trust practice drop out of their hands in the last fifty years. It's a rare case to find any lawyer who is sufficiently talented to really handle a living trust, for instance.

The practice in South Jersey has a very important place in the functioning of the South Jersey economy because titles can be passed promptly and efficiently. It has been the experience in South Jersey that lawyers are not essential. It may be painful to have to say it but it's true. I see claims - one of my principal functions in my company is to process claims and I see them, in truth, as frequently in North Jersey as I do in South Jersey. I cannot, of course, speak for every buyer of land in South Jersey but as a general observation buyers of land are well served.

If lawyers have any real opponent in this situation, it is, first of all, in their own willingness in that area to let go the real estate practice. Northern New Jersey is very much under the influence of New York City but the practice in New York City has never taken hold in Northern New Jersey. It has been resisted by the members of the Bar there. And the title insurance industry and the real estate industry lives with that and they live with it quite efficiently.

But you didn't hear any of the speakers this morning go to the heart of the issue. Lawyers must be concerned at the inception, at contract. This is where they have to be involved and their fight has got to be before the Supreme Court to protect, if they can obtain it, themselves under rule of the Supreme Court so that people cannot go to contract without advice of counsel because it's the contract that's the heart of the matter. And because the contract is the heart of the matter, once it is signed the legal issues are pretty well established and the conveyancer, the settlement clerk, the reader - who is not a lawyer but who is experienced - can function adequately.

ASSEMBLYMAN HAMILTON: I think that's very well stated. On the other hand, we did leave up in the air a question - I think it was to Mr. Donohugh - with respect to what happens if it is a transaction in South Jersey without an attorney and the purchaser raises a question about the meaning of an easement or about some other matter that comes up in connection with the title or in connection with the closing. Isn't there an unauthorized practice situation there? Isn't there the need for someone whose function it is solely to render advice of a legal nature to that particular person?

MR. McDERMITT: This assumes, Mr. Hamilton that a lawyer must appear in every real estate transaction and this I think is not the law of our State.

ASSEMBLYMAN HAMILTON: No, sir, and it probably shouldn't be. But you can only protect people insofar as they are willing to allow themselves to be protected. The question arises, if someone arrives at a transaction and is confronted with a question that is legal in nature, not a matter of arithmetic or something of that sort, and they pose the question, I would like to think, as I think Mr. Donohugh said, that they suggest that they may want to consult with counsel. Now at that point there may be

a reluctance to do so but certainly at least the option is left open to them. On the other hand, if that question in any way is attempted to be answered by someone who does not have the professional responsibility, although they may have the utmost of good will, I think there's a real problem.

MR. McDERMITT: I would agree. So far as clearance of exceptions on a title report or description of exceptions which are going to appear in the policy when it issues, there is no question about it. I submit, sir, that this is in part ameliorated by the fact that normally the buyer and the mortgagee see a reported title or binder of title well before the day of closing.

ASSEMBLYMAN HORN: What about the deed? Who reviews the deed on behalf of the purchaser?

MR. McDERMITT: I would think in most cases in South Jersey the purchaser.

ASSEMBLYMAN HORN: Himself.

MR. McDERMITT: Yes, sir.

ASSEMBLYMAN HORN: And he comes to a phrase that says subject to X Y and Z and he doesn't know what X Y and Z means or what it might hold for him in the future if he finds there is an encroachment or whatnot. Who protects him? Who has the knowledge to tell him that there may be something in that "subject to" clause that's improper or not in accordance with the contract that was reviewed by the attorney?

MR. McDERMITT: I can only respond, Mr. Horn, the same God that protects drunks and fools. I don't believe you'll find that title companies do it. We instruct our people not to.

ASSEMBLYMAN HORN: And yet you're advocating a policy of removing the one person who can protect them from the stage where he's needed to protect them.

MR. McDERMITT: No, sir. I'm not advocating the removal. I'm suggesting that this Commission recognize

the economic facts of life in South Jersey.

ASSEMBLYMAN HORN: You're advocating a practice which will, in most cases, insure his removal.

MR. McDERMITT: That may be a consequence, yes.

ASSEMBLYMAN HAMILTON: Is there anything in the provisions of 1393, as you've had a chance to see them, Mr. McDermitt, with respect to the elimination of commissions that is going to result, in your judgment, in realtors and others that would be involved at another step in the purchase of real property likely to be suggesting to people that they get the advice of counsel for that very first important step, the negotiation and execution of the contract from which almost everything else flows?

MR. McDERMITT: Again, Mr. Hamilton, the economic facts of life dictate that that's not going to happen, I'm afraid. To be realistic about it, money is the point. Micawber talked about how if you made twenty pounds and spent twenty pounds, one shilling, the result was disastrous, and if you made twenty pounds a year and spent 19 pounds 19 shillings you were a rich man.

In real estate transactions today, realistically the broker is the man who moves the property. His concern is getting the parties bound. Why? Because if the parties are bound the title will close and he'll be paid. This is what the lawyer must, in my view, stop if he can. But to expect that it would be easy, I think would be wrong, because there is too much at stake for too many people for this system not to be defended very strongly.

ASSEMBLYMAN HAMILTON: I think whether we agree with you or not, certainly your analysis of it is very cogent.

Mr. Stein.

MR. STEIN: Let me make sure I understand what is meant by the South Jersey practice. We keep referring to it without putting it on the record as such.

Are you envisioning a closing in which - or does it envision a closing in which neither the buyer nor the seller are represented by an attorney? Is that a possible situation?

MR. McDERMITT: Yes, it is, a quite common one.

MR. STEIN: Now in that situation, who draws the deed?

MR. McDERMITT: In our experience, the broker takes the title report to an attorney and has him prepare the deed.

MR. STEIN: And who pays that attorney for preparing the deed?

MR. McDERMITT: Ordinarily the attorney is paid, in my experience, immediately by the broker who is reimbursed by the seller. This is outside the closing process, prior to the settlement process.

MR. STEIN: In other words, prior to the closing process the broker has the deed drawn by an attorney who represents or who is paid by the seller. Is that correct?

MR. McDERMITT: Yes.

MR. STEIN: Now then we get - and the title closing statement is drawn by who?

MR. McDERMITT: The closing statement will be drawn by the settlement clerk of the title company.

MR. STEIN: A title company employee.

MR. McDERMITT: Yes.

MR. STEIN: Now I suppose the next step in the process is the closing.

MR. McDERMITT: Yes.

MR. STEIN : Now, at the closing then no attorneys are present in the situation you've just described.

MR. McDERMITT: That would be so.

MR. STEIN: So the deed is tendered by who at that point?

MR. McDERMITT: The broker or the seller.

MR.STEIN: And given to the buyer.

MR. McDERMITT: Yes.

MR. STEIN: And who reviews the deed and the affidavit of title?

MR. McDERMITT: The deed would be reviewed by the title company reader or examiner for its acceptability for recording. But I don't know of any review that would be conducted of the affidavit of title.

MR. STEIN: Then who reviews the title closing statement for the benefit of the purchaser?

MR. McDERMITT: The purchaser has an opportunity to review it and does. Normally a borker would explain the details of it.

MR. STEIN: The broker would explain the details of the --

MR. McDERMITT: The arithmetic involved in credits and debits.

MR. STEIN: I see. Now one more question. Then who reviews the title policy or the binder, whatever you have at that point, for the benefit of the purchaser?

MR. McDERMITT: Where the purchaser isn't represented by an attorney, only the purchaser.

MR. STEIN: The purchaser himself reviews it.

MR. McDERMITT: Yes.

MR. STEIN: And if the purchaser then has a question - I may be stepping on another question - if the purchaser says, "What does it mean that there is a right-of-way over my property?" or "What does it mean that there is such-and-such a restriction on my property?" who explains that to them?

MR. McDERMITT: Believe me, Mr. Stein, especially since the North Jersey Mortgage Company cases the title companies shun and abhor and refuse and run when they are asked to explain to a proposed insured what a particular easement or restriction means. We will not even participate,

an individual who is not an attorney, in connection with clearance of title questions.

MR. STEIN: I'm not accusing anybody, I'm just asking a question. And the answer I suppose is - what you're saying is, whoever does explain it it is not the title company.

MR. McDERMITT: Absolutely. I just mean to be really honest in responding, that's all.

ASSEMBLYMAN HAMILTON: Well certainly that situation and that system facilitates, if it does not require, an environment where the purchaser may be left without explanation of some of the very fundamental parts of the transaction. And, of course, you say that it's up to the Bar, which ought to be protecting the public interest and not just its own economic interest, to get in at the first stage as far as the drafting of the contract. But wouldn't the elimination of the South Jersey practice change the environment to some extent and perhaps promote the desirability of having personal counsel or what-have-you there at the time of closing to answer questions that might arise?

MR. McDERMITT: Well this is one of the difficulties I had with Opinion 11, Mr. Hamilton. Yes, if it were possible to by statute forbid the conduct of what we have been talking about as a settlement in a specific location, that is the title insurance company office, you might be encouraging attorneys to become involved in land title transfer.

ASSEMBLYMAN HAMILTON: And even though that might cost money, in your experience would that be socially good or socially bad? I hate to use those broad terms. I'm talking about the protection of the consumer.

MR. McDERMITT: Mr. Hamilton, I'm a member of the Bar and I'm as proud of it as I am of being an American. It means a great deal to me. There is no doubt in my mind,

personally, that attorneys ought to be involved in land title transfer. It is so unique a thing for most people. Land itself is so unique a thing that it ought to be carefully protected. And its transfer should be carefully supervised. But I think we have to live within the framework of life as we find it. But there is no question it would be a social good if attorneys could be present at land title transfers. Just as last night I went out and bought my wife a car because it was our 24th wedding anniversary and I would have loved to have had somebody there who would really explain to me why mechanically the car I bought was better than the one I didn't buy.

ASSEMBLYMAN HAMILTON: Are there any questions? I don't think Mr. Stein and I meant to dominate this.

MR. McDERMITT: I was kind of hoping that I was carrying the view pretty well for the other members of the Commission.

MR. STEIN: Does the title company in the South Jersey practice review the contract to see that at least titlewise the terms of the contract have been complied with?

MR. McDERMITT: No, sir.

MR. STEIN: So that what the title companies really do is search the particular piece of property involved and report on it without relating it specifically to the title provisions of the contract.

MR. McDERMITT: That's right. The person who took in the order would look at "same as" clause and the description in order to give him a base on which to begin his search and run the search back. But so far as the desirability of some specific clause in the contract, as to a buyer, being for his benefit or not for his benifit, no, sir, we would not.

MR. STEIN: I wonder if I could go into one other thing.

ASSEMBLYMAN HAMILTON: Certainly, Mr. Stein. You

have the floor for as long as you want it, sir. I didn't mean to interrupt before.

MR. STEIN: Let's assume that we could, by reference to the ALTA Model Code, the '73 Model Code, work out a system where the agents were agents in fact rather than what you call I think "shadow" agents. Do you think A-1393 should go further regulating the relationship between the title companies and their agents, including such matters as licensing or financial arrangements, matters such as the agent's authority or the agent's financial responsibilities? In other words, is this principal agency area sufficiently covered by A-1393 or is something more needed?

MR. McDERMITT: The Association has no unanimous view on this. There is a strong minority group which feels that the agency - company relationship must be quite extensively regulated. There is another minority view that a title insurance code ought not involve itself in the agency - company relationship, that there should be flexibility in what a company can rebate to its agents, and so on. But, in effect, Mr. Stein, some of us feel that it should be closely regulated and others do not. I can't express a majority view. My own opinion is - maybe I'm simpleminded, but I feel that it should be regulated quite closely, that we're going to have premium abuses if it is not.

MR. STEIN: Are there "evils" which have been noted in the agency - company relationship which could directly affect the consumer or which could react to the detriment of the consumer?

MR. McDERMITT: Yes. This is really the problem, bad money in the classic economic sense is involved in this commission and rebate situation, unproductive money. You can rule out commissions and find you've cut out some of the bad money that's involved in real estate title

closing. But in my personal view, unless you closely regulate the company-agency relationship, you will still have a substantial piece of "bad money" in that settlement cost.

MR. STEIN: What then could be done to avoid this so-called "bad money"? In other words, what is the "evil" and what can be done to avoid what you characterize as "bad money"?

MR. McDERMITT: All right. Initially, there was no agency operation by title companies, other than through established title abstractors, men of the caliber of Mr. Wells and employees of his. There are a number of those still in existence. But with the gross inflation of the real estate market since World War II, and because premiums were not regulated, there is in the industry today such a variety of agency relationships as almost to defy description.

On behalf of my company, I've had a conference, within the week, with an attorney who runs an abstracting company, and his idea of a proper agency-company relationship was the payment of a 25% commission to the person who brought the business into his shop and then a 50-50 split after the 25% commission was paid.

Now at first glance - I'm assuming you understand, you gentlemen obviously do understand something about title abstracting and reporting. At first glance this is not bad, right? He goes on to tell me that on that basis his abstracting company will employ solicitors on a commission basis at $20 per title. Now this, gentlemen, in my opinion, is classic "bad money". But further to that, his proposition in which he would pay the 25% commission and then split the premium with the carrier involved not him doing the work. He would settle the title, the search, the certification of the title, the recording and the issuance of policy would be the company's baby. Now here is bad money with a vengeance. Business he controlled,

because he was a lawyer, would be placed through his agency and of the $5 a thousand involved in premium charge a $1.25 would go out to a stranger who simply produced the business and then of the $3.75 left, $1.875 would go to him for doing nothing. This is bad money. And this is the sort of agency that, in my view, will continue to harass the industry if we do not regulate the agency relationship.

MR. STEIN: Well if that is in fact an evil, what do you suggest that the bill do to combat that evil?

MR. McDERMITT: Incorporate this section 138 of the 1973 Model Code which involves controlled business. This would, in concert with the definitions which the Commission proposes to make, go a long way toward preventing that. If additionally title companies were required to justify agency payments as well as premiums, it would come close to solving it.

This again is my personal view, Mr. Stein. There are other very competent title company representatives here who may feel otherwise.

ASSEMBLYMAN HAMILTON: You would require justification to the Commissioner of what, in addition to premium charges, your agency payouts?

MR. McDERMITT: Reality dictates that sooner or later we come to that, yes.

ASSEMBLYMAN HAMILTON: Would this, all other things being equal, tend to reduce the cost to the consumer of title insurance?

MR. McDERMITT: Mr. Hamilton, I hope I won't sound disrespectful but I cannot resist saying that whatever saving occurs is not going to equal the fee for the three attorneys who are going to be involved if we get that done. But, yes, it would in fact reduce the fee. I'm not trying to be --

ASSEMBLYMAN HAMILTON: I understand that but I wanted to have it specific.

MR. McDERMITT: It would in fact have the impact - once we are forced to justification of our rates and in that justification is included justification of premium payments, I think it would have some effect in reducing title insurance cost. Yes. Title insurance costs are about 12 or 13% of net settlement costs, Mr. Hamilton.

ASSEMBLYMAN HAMILTON: Mr. McDonough?

MR. McDONOUGH: I have no questions.

ASSEMBLYMAN HAMILTON: Mr. Walker?

MR. WALKER: Just one question, Mr. McDermitt. I might say, by the way, I have enjoyed your testimony. I think you have covered the subject very well. You mention that for your company your territory is the full State of New Jersey and you have experience as to the losses within the State. Looking at it from the public's interest, of course cost is a big item and also, of course, quality of the title policy and the work delivered certainly is another one.

From your experience - I think you testified that in South Jersey the losses weren't any greater than in North Jersey. Is that correct?

MR. McDERMITT: That's so. I have no statistical analysis to justify it. It's just the feeling I have after three and a half years of handling claims all over the State for Commonwealth.

MR. WALKER: From reviewing or your knowledge of closing statements in both North and South Jersey, would you say closing costs are higher in North Jersey or lower?

MR. McDERMITT: I really couldn't compare the two, sir. I'm sorry. They are too nearly similar. I don't think there is any great difference. There might be four or five percent difference at the end result. But a South Jersey buyer will pay for a number of things that North Jersey buyers do not. For instance, removal of certain exceptions are a cost item in South Jersey and

are not in North Jersey. And there is customarily in South Jersey a minor charge for the use of settlement rooms. I know of no company in North Jersey that would make any charge for the occasional closing that some attorney wanted to have in their office.

MR. WALKER: One other question. On the Torrens System, you alluded to a study that was being made by the American Bar and the American Land Title Association. Have there been any interim reports or anything from that Committee that you know of at the present time?

MR. McDERMITT: Not that I know of, no, sir. I wouldn't want to overlook, Mr. Walker, - this Commission might want to consider the advisability of the use of the metric system. I'll say no more than that. But this Country is a long way behind the rest of the world in its measuring system.

MR. WALKER: Thank you.

ASSEMBLYMAN HAMILTON: Mr. McDermitt, you indicated that the cost factor in North and South Jersey would run pretty close and you added that there are a lot of extras in South Jersey that are not extras in North Jersey. Who does that money go to, the removal of exceptions and the closing rooms, and so forth?

MR. McDERMITT: That's paid to the title company, sir.

ASSEMBLYMAN HAMILTON: Thank you, sir.

MR. McDERMITT: That goes to removal of an exception, general exception as to surveys, for which a charge is customarily made. And, Frank, correct me if I am wrong, the other is for insurance as to --

MR. McDONOUGH: Prospective assessments.

MR. McDERMITT: That's right. That has been reserved and passed on in the South Jersey practice - I guess we charge it but do it first.

ASSEMBLYMAN HAMILTON: Well, what does the title company do in order to clear those two exceptions,

the two that you mentioned, the survey and the prospective assessment?

MR. McDERMITT: One of the parties to the transaction submits a current survey, under seal, to the company and the company considers it. And if the survey is satisfactory and shows no encroachments, it will remove that item.

ASSEMBLYMAN HAMILTON: Who pays for that customarily, the buyer or the seller?

MR. McDERMITT: The buyer.

ASSEMBLYMAN HAMILTON: Well that's the same as in North Jersey.

MR. McDERMITT: Yes. It's a matter of timing really, Mr. Hamilton, because in North Jersey certainly the survey would be paid for by the buyer. Now in North Jersey we would not make a charge separately for removing the item. If you submit a binder to us that includes the survey, we mark it out.

ASSEMBLYMAN HAMILTON: Are you saying one of the effects is a much faster closing in South Jersey and some of these things are picked up after closing, after settlement?

MR. McDERMITT: No. No. It's wrapped up at settlement in both cases.

ASSEMBLYMAN HAMILTON: Mr. Stein. And may I turn this microphone over to Mr. Horn for just a few minutes.

MR. STEIN: There seems to have been some discussion before as to a lender designating a particular title insurance company as the company that would insure the lien of its mortgage. What, other than the financial condition of a title company, what, other than that one factor, exists to justify a lender designating a particular title company. In other words, is there any justification for such a designation? There may not be any. I'm not implying that there is, but if there is any I would like

to hear about it.

MR. McDERMITT: I would like to believe that there really is some justification for lenders and for purchasers of fee title insurance selecting a particular company over another one. There isn't any doubt in my mind that at least some lenders are selective in the sense that they will tell a borrower that they want one of two, three or four companies. And in some situations lenders tell borrowers that they will not accept a particular company. But it has been my experience that it's on the basis of service, and service alone, that they do it. They see a particular company handle a matter more expeditiously and get their policies into that lender's file faster they see a fairer and more prompt acceptance of claims responsibility in one company than it does in another.

Mr. Picolla's experience is one indication of that, gentlemen. Stuart, as I said, came into this State only six or eight months ago. And you are going to hit resistance among loan officers in banks who will say, "Who is Stuart Title?" You know this happens. This will be overcome with a man of George's persistence. He'll make Stuart Title known and they will be accepted. But at the present time you might well hit a lender who just didn't want Stuart because they didn't know who they were.

ASSEMBLYMAN HORN: Just by way of information, I refreshed my recollection during lunch, I asked almost the same question this morning and I can recall one of my experiences where - this was not a bank or a savings loan association, it was a mortgage company that did grant the mortgage and I was told by a representative of the company "the title insurance will be placed through X company." And I later found out that the reason for wanting it produced through X company was because an

officer of the mortgage company owned stock in X title insurance company. And I may also add that I opposed it vehemently on the basis that the company that had the existing back title on it, which by accident happens to be Commonwealth, had performed such amazing services for me on that particular title that I refused to allow that. I think it points out the example that although there may be valid reasons for designating a company or refusing a certain company, there can also be invalid reasons.

MR. McDERMITT: Oh, absolutely. One of the great loss experiences - not one, not two but about five of the title companies had up in Essex County was with a tie-in proposition where the mortgage broker just went sour, and we all got up fifteen or twenty thousand dollars apiece to buy the loans into a protected position. This definitely, Mr. Horn, happens.

ASSEMBLYMAN HAMILTON: Mr. McDermitt, I would like to thank you very much for your very penetrating analysis of this and your help to us. I don't know that we're in complete accord on everything but that's not to be hoped for either, and I think that your comments have been very helpful to us in our analysis.

To your Mr. Woodward and Mr. Buckman who are with you, we would at least like to say hello and thank them for their assistance to you and for their interest.

MR. McDERMITT: Yes, sir. Mr. Buckman, Mr. Woodward.

ASSEMBLYMAN HAMILTON: Yes, sir. What we're going to do is take a very brief break to accommodate Governor Cahill who has a large group of senior citizens who are here for the signing of a bill. It will take about ten minutes. If your comment is going to be on the order of two or three minutes, we'll break at three o'clock.

R A Y M O N D B U C K M A N: My name is Raymond Buckman. I am Vice President of Commonwealth Land Title, Manager of the Atlantic City Office, and the present President of the New Jersey Land Title Insurance Association.

This morning we heard discussed the North Jersey method of doing business and the South Jersey but I did want to call to the attention of the Commission that we have another system which is the daily take-off plant operation. Mr. McDermitt touched on it.

We have two title plants in Atlantic City, one in Trenton. It's a costly operation today but yet, under this operation, the actual fees to the consumer have been less. We take the good with the bad.

And I heard comment this morning that where you have that title the cost saving is passed along to the consumer. This is not true in a daily take-off plant operation. I say, we take the good with the bad.

ASSEMBLYMAN HAMILTON: In a thumbnail, what is the daily take-off?

MR. BUCKMAN: We copy the public record and store it geographically for convenience to us. In other words, we can give you an instant title report. And we've had the occasion in other areas where, because of the cost of doing business, we needed to go back to rating bureaus for increases. Although we are low now, in the foreseeable future we are going to be - whether we can continue the operation or not, I don't know.

ASSEMBLYMAN HAMILTON: Thank you very much, Mr. Buckman. I would ask you to wait until after the break and if there are some questions we will call you back. In fact, we will start with you back in the chair there.

I have been promised that this won't take more than ten minutes. I think we ought to allow fifteen and

get back in at a quarter after three. I am sure that anyone who wants to can stay for the signing of the bill, I don't think you will be excluded from the Chambers.

(Recess)

(After recess)

ASSEMBLYMAN HAMILTON: I would like to reconvene the Real Estate Title Insurance Study Commission. If you didn't have a rookie Chairman here, I might have known that fifteen minutes wasn't going to do it. I am sure you all enjoyed that lesson in democracy and I am sure that it was well appreciated by all the people who came down to witness the signing of the bill.

If we can then resume with Mr. Buckman who - I don't know whether I cut him short on his statement or whether he was at the point where he was going to respond to questions. I wasn't quite sure whether I cut you off or not, Mr. Buckman. If you have something more in the way of a statement, please feel free to go ahead, sir.

MR. BUCKMAN: I have another statement but it's not related to this different style of doing business. But I just wanted to point out, we do have a daily take-off plant in Atlantic County. I found out today, for the first time, we have one in Mercer. And it is a different style of doing business. I think the general public profited by a lot of our historical background and work and as a result we can get out title reports cheaper. But I think that trend is going the other way.

ASSEMBLYMAN HAMILTON: Are there any questions with respect to the daily take-off?

If you will go ahead with whatever else you may have, then, Mr. Buckman.

MR. BUCKMAN: The other comment that I wanted to point out to the Commission is the role that a title company plays as being the neutral third party. In my experience, making large closings they will direct, they want a representative of the title company there, they

don't want the approved attorney.

Many times in closings - and I quote from someone this morning who said 98% of the closings are conducted by the attorney for the mortgagee. Where is the attorney for the seller? Where is the attorney for the buyer?

In my experience in the South Jersey practice, the attorney for the mortgagee will come in and make known to these people that he is not representing them, he is representing the mortgagee.

ASSEMBLYMAN HAMILTON: Well, if that's a commercial transaction I doubt that it's that inherent, the same problem, in a single residential.

MR. BUCKMAN: I'm talking about the residential, the average residential transaction.

We are neutral and in fact, quoting from someone this morning they said that in case of a judgment or an unsatisfied mortgage they will be willing to put money in escrow in order to complete the closing; if they're neutral we will hold the money and make sure the closing can go through.

ASSEMBLYMAN HAMILTON: Well, as I understood the representative of the Bar Association, they had no objection to that particular feature, they did have an objection to being in escrow where there was no closing but a deed delivered by one person and a check later delivered by someone else with, I suppose, an approval at that time and the closing statement. But I don't think that's something that gives us a great deal of difficulty. We are going to have to be careful in making recommendations with respect to amendments here as far as authorized and not authorized. Would your attitude with respect to closings be that you would like to continue to participate with the use of - I assume you use settlement clerks?

MR. BUCKMAN: Yes.

ASSEMBLYMAN HAMILTON: And I would assume that your position is that you find that a way that has worked out satisfactorily.

MR. BUCKMAN: Very much so, yes, sir.

ASSEMBLYMAN HAMILTON: You are aware that there are those who have agreed with you and those who have disagreed, rather.

MR. BUCKMAN: Yes.

ASSEMBLYMAN HAMILTON: Are there any other questions of Mr. Buckman about any part of his testimony?

Mr. Buckman, thank you very much.

ASSEMBLYMAN HAMILTON: The next speaker gives me a great deal of personal pleasure because he is someone with whom I deal, if not on a daily basis certainly on a weekly basis, and he is known to most of you in the industry, Mr. Patrick Kehoe of New Brunswick who is an Agent for the United States Life Title Insurance Company and a past President and current Trustee of the New Jersey Title Abstroctors Association.

Mr. Kehoe is going to meet some people he didn't know before. They know him by reputation and by voice but they've never seen him, at least one member of the Commission so advised me. Mr. Kehoe.

P A T R I C K K E H O E: Thank you, Mr. Chairman, and members of the Commission.

I have given the Commission a resume of what I intended speaking about. The hour is late. There is one thing I do not think the Commission has considered, at least I understand they have not, and that is the business of abstracting. And, as I point out in my resume, it's like the song "Love and Marriage" you can't have one without the other. And the cost of abstracting, of course, must be taken into consideration.

I am talking from the point of view or I would like to address my remarks from the viewpoint of an Agent of a title company and the expense involved. Your

Commission has there quite - well it's a five-page item, and many times the costs must be taken out of the premium because of the large cost of searching the title or upper court searches or other such things that go into it. And I don't want to take any more of your time except for two things that I would like to bring to your attention.

One is the fact that you have large title companies which buy up smaller title companies and agencies and they force a title agent out of business. You have the other point where a small company comes into the State of New Jersey, and so far it has been a foreign company, and to get business they use people who sometimes have been salesmen of one kind or another but have never been involved in the title industry for more than a year or two. This isn't always true but it has happened. And I think your Commission should look into this, or I suggest to the Commission that you look into the point of protecting the agent who has given his life to this business and is knowledgeable in it.

I have nothing else to say, Mr. Hamilton and members. I am open to any questions.

ASSEMBLYMAN HAMILTON: Are there questions of Mr. Kehoe concerning his remarks or concerning his prepared statement that you have been able to see?

Mr. Kehoe, you heard Mr. McDermitt's remarks about his belief that there ought to be a controlling of the agency relationship. Is that really what you're talking about here?

MR. KEHOE: Yes, I believe that that is a necessary thing. And I might tell you that our agency, together with all the U. S. Life Agencies was - I won't say audited but visited by auditors from the New York Department of Insurance, and they have initiated immediately a sequestering of all premium funds which are due to the title company, so that we can no longer co-mingle our funds, we must set them aside. And I think

this is a very good thing. It protects the company and it protects, of course, the public.

One of your members, I know, had an unfortunate experience with an agent that handled insurance for him, title insurance in his area, and he just never bothered remitting, from what I understand. And I understand too that it was not possible to get all of the copies of the title policies that were issued out of that office. And I can see it happening in an agency office.

ASSEMBLYMAN HAMILTON: So you would say that there is need to regulate the agency relationship as well as some of the other things that have been spoken about here today.

MR. KEHOE: Oh, yes.

ASSEMBLYMAN HAMILTON: The abstractors.

MR. KEHOE: I think they should be licensed, sir, very strongly.

ASSEMBLYMAN HAMILTON: There was a comment also by Mr. McDermitt about requiring a justification for payment to the agency as a part of the over-all regulatory power of the Commissioner with respect to ratemaking. Would you concur in those remarks?

MR. KEHOE: Yes, I think the whole business should be regulated in ratemaking, and a limit as to the charges to the public, a limit as to the benefits that accrue to the agent. Of course you have in this State two different things with agencies. You have, on the one hand, what I suggested with one title company that may have an agent in a town or in an area and then they open their own office and force their own agent out of business. That happens sometimes. And I think the agent should be protected as much as the company. And in those cases I don't know exactly how it would work out but I have seen in New Brunswick three agents with the same title company and one making a deal that another one isn't making. I don't think this is proper, even in the industry.

ASSEMBLYMAN HAMILTON: Would you care to comment on the testimony that we've heard about the South Jersey practice of settling titles?

MR. KEHOE: Yes. I heard Mr. Wells and I agree with him. My practice, of course, has only been in the Northern end of the State, as I set out there, and I do business only with attorneys. And, frankly, I'm very happy that's the way it is because sometimes --

ASSEMBLYMAN HAMILTON: We're bad enough?

MR. KEHOE: Not all of you. But at least we speak the same language and certainly I have a great respect for the Bar. But I agree - I disagree - well, I can't say I agree or disagree - I don't care for the way it operates in South Jersey.

ASSEMBLYMAN HAMILTON: Are there any statements or questions by Mr. McDonough?

MR. McDONOUGH: No. Mr. Kehoe operates on an entirely different basis than we do down there.

ASSEMBLYMAN HAMILTON: Mr. Walker?

MR. WALKER: No.

ASSEMBLYMAN HAMILTON: Mr. Kehoe, thank you for coming and thank you for your patience while we visited with the senior citizens.

MR. KEHOE: It was a pleasure.

ASSEMBLYMAN HAMILTON: Thank you.

Mr. Arthur Bushkin, Cobra Products, Inc., of Willingboro, New Jersey.

I would ask that there be made a part of the record the transmittal that Mr. Bushkin made which I understand was a claim problem on a title policy and a reissue problem that he had that was resolved by the Commissioner of Insurance and I think we ought to consider it. But I don't think there is any necessity to read that into the record. (See page 89 A)

Mr. Werkman. You were very patient. You were added late but we are happy to reach you. Mr. William

Werksman, New Jersey Title Abstractors Association.

W I L L I A M W E R K S M A N: I personally am a Lawyer of the State of New Jersey since 1929, Counsellor-at-Law, and a member of the Title Abstractors Association of New Jersey of which I am Bulletin Publisher. With me here is our Executive Vice President, Mr. Forlenza, and a Past President, Robert Woardell. Mr. Kehoe is also a member and Past President. Mr. Kelly was here. He also is a Past President of the Association.

Now when five men, including three Past Presidents come down to give their views to a legislative commission, they think this is an important Commission, and I do.

We have in our Association over 300 independent title abstractors. These are the men on the firing line. They are the men who examine the records. They are the men who make the report on which subsequent title insurance is placed. And they are the backbone and the sinew and the bones and meat and blood of this - I prefer to call it profession rather than an industry as most of the men have called it this morning.

We need your protection. We need a licensing bill which will give a simple recognition to men who are constantly dealing with legal documents, their interpretation and their vast importance in the industry and profession of title insurance. And, as one speaker pointed out this morning, not every title policy supports a marketable title. However, I think the title companies are necessary and I have no grievance with them except that I think you men should see that if a rate is established that we are protected.

I really feel very upset that your Commission, which is very patient and very understanding, does not have on it at least one title abstractor because we are the men - if there have been small losses in this State because of a few title losses, it is because we as good abstractors through years of experience have made that

possible.

Now our organization - and here I speak as an individual too - is the only agency in the State that sets a standard of competence. Everybody else talked about money. Here I talk about competence. We do not accept as a member of our organization anyone who hasn't had at least five years of experience in the field. And that insures the title companies that if they obtain the services of an abstractor who is a member of our Association, they will not only eventually get a good insurable title but will also get a good marketable title.

And may I pass this on, that I think the $5 rate, considering the value of the commodity involved, is not a high rate. For actually for $1900 you can obtain, under the present rate, close to a million dollars of title insurance. And that I think is very important.

But we do need your help, as I said at the outset, and that is to advocate and to recommend a licensing bill, one which could very well have a grandfather clause in it so that anybody who has been in the field for five or more years will not have to take an examination. But today, unfortunately, through agencies of title companies, men are in the field, young people without the experience, they don't know what an appendum clause is; and salesmen on the road, if you ask them what a writ of scire facias was they would think it was some form of Mafia operation; if you said something about true consideration or whatever else it is that makes up legal titles, they would know nothing about it.

Therefore, I say that if this Commission, which should have on its representation at least one of the title abstractors, if not more, will recommend the adoption of a bill which will license abstractors - incidentally, a bill of that kind was introduced years

ago, was supported by the Legislature and failed of passage by only one vote. And if the bill was then justified and the law was then justified, as I say it was then, it is more important today because today we have involved transactions involving condominiums, we have questions of air rights that weren't so important, in South Jersey we now have the marshland situation where the law is being interpreted and re-interpreted every day, and, therefore, I think that it behooves this Commission to recommend the enactment of a law which would regulate searchers and set minimum standards.

Now you can't get a job with the State as an abstractor unless you take their Civil Service examination. I took that examination recently and I found that I had to answer questions that related to title insurance which were basic to the issuance of policies because the State does insure its policies, it does insure its acquisitions.

Now if this is an important industry, as it has been represented it is, we need men who are qualified and those minimum standards should be laid down to insure the public that the public will be getting not only an insurable title but a marketable title as well.

ASSEMBLYMAN HAMILTON: Mr. Werksman, let me say to you, sir, that I think you are entirely correct with hindsight that there should have been an abstractor as a public member of this Commission which easily could have been a twelve-member commission. I would say to you, by way of defense, and it's not much of a defense, that ACR-77 is in essence SCR-2025 which passed on the last day of the last session. There was very little independent thought that went into the structure. It was there as a vehicle that had already had sufficient support to pass both Houses. It looked to me, I would say on superficial

examination, as though it did the job. And I apologize to you, I do think there is a segment of the industry, or a segement of the profession - I will use your word, sir, - that is not represented at this table. I want you to know though that we appreciate you and the members of your Association coming here today and we are certainly prepared to let you make any input you want to here today or at any other time.

I would say to you too, I was going to ask you about those bills that had been introduced before and apparently failed narrowly of passage, whether or not you have or can get access to the bills that were previously introduced so that we might at least take a look at them and make some kind of a recommendation in the report that we ultimately render after we have completed all of our work. If you could do that in the near future, or if it takes a little longer, submit them to Mr. Guzzo, who is our Secretary, and we will be happy to consider that.

Are there any other questions of Mr. Werksman?

MR. WERKSMAN: If there are any questions, I would be glad to answer them.

ASSEMBLYMAN HAMILTON: Would you go along with the contents of those bills that were previously introduced as far as the specifics of the regulation? I understand that you want licensing and you would prefer some kind of a grandfather clause.

MR. WERKSMAN: Yes. I think that the State is in a better position now to handle this than it was when they were originally introduced because you now have - if the Civil Service Commission prepares a form of examination for Title Searchers for the State then they would be in a position to at least formulate the type of questions they felt were necessary. And we think it needs to be done to protect the public, to protect the insurance companies, and to give us standings as professional men

which we really are.

ASSEMBLYMAN HAMILTON: Was there any substantial opposition to that legislation when it was proposed before?

MR. WERKSMAN: There was a thought that maybe a monopoly might be created. In other words, I won't mention the judge's name, he has now lived to recant and every time he sees me he's so sorry he ever thought that way -- they thought that maybe there might be some kind of a monopolistic result if you gave these men a certain status, professional status. But I say, today it's necessary. Certainly we're not monopolistic. We have 350 members throughout the State which represents the greater bulk of the better searchers, I would say, - the man that takes the trouble to qualify, after five years of experience, to become a member of an association and to interest himself, as we do, in proper indexing, in keeping the records in shape so that they will be best suited for analysis, assisting the county clerks and the registers of deeds in their problems, and doing the work that is really the professional basis, the examination of a title from an original record.

ASSEMBLYMAN HAMILTON: You have certainly made a strong case, Mr. Werksman. I would say to you, speaking only for myself at the moment, that my initial reaction is that there ought to be such legislation but that we ought not attempt to graft it onto A-1393, that we ought to go back perhaps and pick up your bill and as a Commission take the position that this is either a necessary area and perhaps this is a vehicle, or that this is not a necessary area, or something along those lines.

The other members of the Association that you brought along, do they just want to endorse your views or do they have statements they wish to make?

R O B E R T F O R L E N Z A: My name is Robert Forlenza. I am Executive Vice President of the New Jersey Title Abstractors Association. I would like to make a couple of brief comments in reference to the qualifications of abstractors.

I started, personally, in this business approximately 13 years ago and it took two years for me to get the sick feeling out of my stomach that I had because of the extremely high responsibility that I realized I had when I was evidencing titles.

I was handling, right in the beginning practically, $50,000 deals, $200,000 deals, you name it, practically any figure at all. The Company I was with was fortunately a very ethical company and they were very strict and the training was very good. Unfortunately, now you find very little of this type of thing going on.

Today, with the kickback and with the bribes - to me it's a bribe when somebody gives a real estate agent money to get him to give business to a title insurance agent, it's no different than a bribe in any other context. But this has caused a lot of problems which have resulted in poor work from the abstractor and from all points of view because naturally the title insurance agent or the title insurance company is not getting the same kind of return from the policy that they would be getting because they are paying these bribes or these kickbacks, or whatever you want to call them, and at the same time --

ASSEMBLYMAN HAMILTON: Why does the company tolerate less than a qualified person to go out and do the job for them, because it's going to cost them money in the long run, isn't it? Eventually there is going to be a claim on the policy.

MR. FORLENZA: Not necessarily a claim because, as I think Bill broght out and some of the other members

of the Association, title evidencing in the past has always been very good. So the problems are not going to show up necessarily today but they may show up five or ten years from now. But as these bad practices come into the business, they will eventually show up.

One situation that I can give an example of - this is an actual situation. An attorney from another state was disbarred and he came into the State of New Jersey to get rich in the title business because he thought it was a very lucrative business. He then went into one particular county and he got an agency from a title insurance company and he knew nothing about title evidencing in New Jersey. He probably had some knowledge of it from the previous state that he was in. But he and a colleague of his came into the record room and started trying to learn to search on their own. They couldn't do it that way so they tried to hire a good searcher to teach them how to abstract. Well, nobody would do it because they felt it was not ethical because here was somebody that was going into a business that had an extreme responsibility to it and this was unethical, this wasn't done. Well, anyway, they gradually did learn to do title evidencing. Now, I don't know how good their work is or anything but they still exist today.

They went out and got - I think the whole thing was inspired from the beginning by the fact that this particular ex-attorney had an inside with a large real estate firm with five offices in the county, and by giving a kickback to the real estate brokerage, he obtained all of their work.

ASSEMBLYMAN HAMILTON: What part of the State? I don't want you to identify any county, sir, but are we talking about other than the North Jersey practice, as we call it, or --

MR. FORLENZA: Central Jersey.

ASSEMBLYMAN HAMILTON: Go ahead.

MR. FORLENZA: So he then proceeded to do this work and went around soliciting work.

Now the same people started to solicit work in the county and they were using the names of legitimate title abstractors. They would go into an attorney and say that so-and-so abstracts for me, because some of these attorneys would say, well who do you have on your staff. Some of them had enough prudence to ask who was doing the work, who was examining the titles. And the result was that the solicitor would give the name of a legitimate title abstractor who was well known.

Well I, at the time, was President of the County Guild and these things were brought to me by the searchers because they said their names were being used by this particular outfit and they had nothing to do with them, they didn't want to be classed with them because in case anything happened in their titles they didn't want to have their names smeared as a result.

Well, they changed their procedures after some threats and so forth on my part in reference to the fact that they were using the names of these people.

ASSEMBLYMAN HAMILTON: Are you suggesting, Mr. Forlenza, that if the abstractors were licensed and you had your own professional code of ethics, even though it might not violate state statutes that in effect you would be able to correct that kind of situation?

MR. FORLENZA: Well I believe so. I think one thing that would be very prominent would be that if someone went to an attorney to solicit business, whether it was a title abstractor or an insurance company, the attorney would ask them how many licensed searchers are on your staff or who is actually going to do this work or is he a licensed searcher and what's his name. In this way it would be something to rely on.

So this company is still in business and is

still operating but I've heard through the grapevine that they're having difficulties with profit and loss because of the fact that they are paying this kickback. And in this type of business sometimes it takes a period of time before you can see just how much you're going to make in the way of profit. But under these circumstances the profits are not there. So what they've done is cheat themselves out of a profit and at the same time cut down on the market for a legitimate company to do business with that particular firm, that brokerage. But these are the types of things that are going on right now.

ASSEMBLYMAN HAMILTON: Do any members of the Commission have any questions of Mr. Forlenza?

Thank you very much, sir, for your testimony and for your appearance here today.

The other gentleman, whose name I missed.

R O B E R T W O A R D E L L: My name is Woardell. I was President immediately following the illustrious Mr. Patrick Kehoe in office in the Association, and just before Mr. Walter Ensor, who spoke this morning.

I am speaking briefly just to accept the courtesy of the Commission to so do and to add just a bit to Mr. Forlenza's remarks that mainly our purpose for coming here this morning was that amongst the suggestions of the Commission was regulation of fees. And our title abstractors not being mentioned, we should, in other words, be included in those to be regulated however the means to bring it forth. That was mainly the purpose of our coming here, on this fee basis proposition. We make searches for money. If there are to be regulations, we would like to be included and not be low men on the totem pole and eliminated.

And also, as Mr. Forlenza brought up, the inadequacy in fees and things like that bring up the old

adage: Go out in the world and make a pound of good soap, not a good pound of soap.

ASSEMBLYMAN HAMILTON: Perhaps you will be able, along with Mr. Werksman, to come up with copies of that legislation or even identification of that earlier legislation and communicate it to Mr. Guzzo and we can at least take a look at that.

MR. WOARDELL: We shall do so.

ASSEMBLYMAN HAMILTON: Are there any questions? Yes, Mr. Horn.

ASSEMBLYMAN HORN: I appreciate all the comments about another bill which might license abstractors but I am also concerned about Assembly Bill 1393. Is there a concern that Assembly Bill 1393 may adversely affect abstractors?

MR. WOARDELL: Yes.

ASSEMBLYMAN HORN: And that will result from the regulation of rates paid to abstractors by --

MR. WOARDELL: Correct, my title company, all lending agencies, whoever is authorizing the search to be made. We have a variation in this State. We have salaried abstractors who work for title companies who would, therefore, have a minimum of responsibility. They do their work in the court house, and so forth, submit their work to the officers which is judged by the next process up the ladder, the readers of the title who then make the reports and pass them on to the closing attorneys.

The independent abstractor is more or less a direct agent for the attorney. He makes his report and reports it to the attorney and it is practically, in many cases, a legal opinion.

ASSEMBLYMAN HORN: Now this bill doesn't affect that relationship.

MR. WOARDELL: No.

ASSEMBLYMAN HORN: We agree on that. But you're

saying it may affect the relationship between the title company which hires an abstractor to do the work for it.

MR. WOARDELL: That's right.

ASSEMBLYMAN HORN: I don't think that this bill does this and if it does do it, I agree we should look at it carefully to make sure - you know, some of my best friends are abstractors and they are entitled to a decent living like anyone else. I agree with you, they perform an invaluable function. My reading of the bill was that the only rate regulation with regard to searches was the rate that the company charges the purchaser.

MR. WOARDELL: The company's rates are based on what they have to pay for searches.

ASSEMBLYMAN HORN: But what you're saying is that indirectly there may be some affect on that.

MR. WOARDELL: Correct.

ASSEMBLYMAN HORN: I agree that you should be concerned. I would suggest that - of course, the rate making will be done after notice of public hearing by the Department of Insurance, I would assume.

MR. WOARDELL: I concur with that entirely.

ASSEMBLYMAN HORN: And at that time it certainly would be very important. I understand what you're saying. Thank you.

MR. WOARDELL: Thank you very much for your courtesy.

MR. FORLENZA: Can I comment on that?

ASSEMBLYMAN HAMILTON: Mr. Forlenza, yes, sir.

MR. FORLENZA: There is a relation between what the abstractor gets and the title insurance price. Now we had the price of $5.00 a thousand, which is a starting price; $3.75, which is the actual price, per thousand, and then it goes down from there, down to 90¢ a thousand in some cases. Now this is a fact. It depends on the deal. If you're talking about a $15 million deal, then you're

talking about the 90¢ per thousand category, everything else in between. But it averages out so, I don't know, maybe $2.50 or $2.75 a thousand with all this competition and everything else. This does not leave enough profit for the title insurance company. It just doesn't. Therefore, they have to cut costs. And when they cut costs, they look at the title abstractor, the guy who takes all the responsibility for the whole transaction because in the final analysis, if something is missed, they're going to go to one guy, the title abstractor. Even the examiner is scot-free because he can say, if it wasn't there how could I tell. So it goes right back to the guy who is in that record room making that search.

ASSEMBLYMAN HAMILTON: Well, I think it's Assemblyman Horn's position, and it has been borne out today, that there has been very little testimony about the variation in rates except as it might affect the commissions that we talked about. Clearly if the Commissioner is given that power, there would be hearings, it would go the route of file and approval before you can use them. Clearly there would be an input or an opportunity for input by anyone who might be affected in any way before the rates were established. And they might be too high, they might be too low. I do know that there is public pressure for them to be lower. But just knocking $1.25 off $5.00 is going to help that. And there may be other economies that can be added. There has been some suggestion by some of the witnesses that you came with that that really is a pretty good bargain. And that's really going to be for the Commissioner rather than this Commission to decide.

MR. FORLENZA: Right.

ASSEMBLYMAN HORN: I might also add that if the feeling of the Commission is borne out ultimately in the legislation that commissions ought to be banned,

I think an indirect effect of that might be that there would then be less pressure on the title insurance companies - well, it would be banned, they wouldn't have to pay attorneys and real estate brokers and whatnot and, as a result, there might be less pressure to cut on the abstracting and that type of thing. Their costs will be known and it might ultimately have a beneficial effect on the relationship between the abstractors and the companies.

MR. FORLENZA: Right. See when the pressure of the competition cuts down the price of the insurance, they would look to save money elsewhere and it winds up on the search. And a lot of the companies - I know one company in particular has about 25 employees and one out of the 25 has over five years of experience and the rest of them are passing titles and everything. And I don't think there are many of them that have more than two years. And the real troublesome part is the volume, the big volume of work turned out, that a large number of transactions are being done by people with less than six months because these are the continuation searches, these are the searches where - and they're the ones given to those with the least experienced people. So your biggest volume of the actual real estate transaction is being handled by these people.

The difficult things, the meadows and farmlands which haven't been searched in seventy years, they are the ones that are given to the really experienced searchers and that work is not productive, moneywise, because when a good searcher does a search on those he never gets paid for his plotting, he never gets compensation for pulling two or three hundred books in the search. He has to think in terms of what the transaction will bear. So that the experienced searcher is not getting his just due at the same time there is too much emphasis on the experienced person, as far as handling too many

transactions.

ASSEMBLYMAN HORN: One more question. Is there a trend for more and more attorneys to be giving all of the title work to the title companies instead of using the back title certificate and hiring their own abstractors?

MR. FORLENZA: I'd say yes. I think definitely that the attorneys - the bulk of the work is going this way. There is a large segment of the market that's going to attorneys that handle their own examinations, they have a searcher. But the biggest accounts are going through the company directly because they have some special arrangement. And that gets back to some of the things we've been talking about where either the attorney gets a kickback or the mortgage company or the real estate, but the insurance company or the agent is kicking it back in order to get that business. And what's happening, it's eroding the profit out. And when you get lower profits then they start getting unqualified people because they can't keep these people. I know some very excellent searchers who have left the business in recent years, after putting four or five years into it saying it's not worth staying in.

ASSEMBLYMAN HORN: I agree with what you say. I think that this bill as amended will have a beneficial effect on that trend.

ASSEMBLYMAN HAMILTON: Thank you very much, Mr. Forlenza.

Before going on to the last speaker that I have registered, - Mr. Weigel, I have your name here and I don't know whether you were to be a speaker or whether you were to accompany Mr. McDermitt. The way it's listed, you are here to accompany him. Would you care to comment?

MR. WEIGEL: I am here to offer the assistance of the Land Title Association in any matters that the Commission may have which would require the kind of

competence that the Association or Board of Governors might have.

ASSEMBLYMAN HAMILTON: Thank you very much. That was Mr. John R. Weigel, Executive Secretary of the New Jersey Land Title Insurance Association.

Mr. Rudolph J. Rossetti, Rossetti, Rose and Cucinotta, Cherry Hill, also President of Fidelty Title Abstract Company.

R U D O L P H J. R O S S E T T I: Gentlemen, thank you for the opportunity to speak here today. I did not come prepared to speak but there has been so much said about the South Jersey practice that I think a lot needs clarification with respect to what it is.

As to my endeavors, I am actively engaged in the practice of law. The bulk of my practice is real estate. I am also associated with and part owner of the Fidelity Title Abstract Company which is a title insurance agency. So one might say I have the best of all possible worlds. I don't know.

In any event, I think the Act, as I read it, especially the elimination of commissions, will go a long way toward ridding the industry of a lot of the evils and problems that it has.

I would like to address myself primarily to South Jersey. I think it's essential that we understand first a few of the terms which have been thrown around that I am not sure are fully understood.

An abstractor, as I understand it, with respect to South Jersey is typical of the gentlemen who just spoke, and these are persons that work in the court house, persons that do a search which results in an abstract title. And for the most part they are employed by title insuring companies or agencies or they work on a so-called free-lance basis being paid on a per-case basis. And they are, in and of themselves, one category. We then have title abstract companies and/or

title insurance agencies, and these are companies that are agents of title underwriters who are actively engaged in the full spectrum of the title insurance business from the solicitation to the closing, to the issuance of the policy. And, of course, the last is the title insurance company or the underwriter.

With respect to South Jersey, there is really no distinction between the day to day operation of an agency or an abstract company and a title underwriter with the exception that when it comes time to issue a policy the agency without the license issues the policy but his underwriter and the company issues its own policy. But with respect to the day to day competition for the business, the conducting of settlements and everything else that's involved, up to and including the issuance, the operations are identical, for the most part.

So I think any legislation that's going to treat the area must bear that in mind and must treat these two from that point of view. So that the only distinctions might be in those areas where we speak of policy form or claim adjustment or those kinds of things that would refer only to underwriters. But with respect to the rest it should be the same for agencies and for companies.

Concerning South Jersey, I would suggest to you that the system is not as different in North Jersey as one might believe after sitting here all day and listening to testimony. The typical situation in South Jersey begins with the ordering of a title search by someone, either an attorney, a broker, a mortgage company, someone has to begin the process. The order is received by a title insurer or a title company - and I refer to "title company" meaning both the underwriter type company and the agency type company - and then they conduct a search of the title in the court house, after

which they issue their interim binder or report of title or whatever you choose to call it.

Now as I understand and as was just said, the trend in North Jersey seems to be to hire the title insurance company to do more and more for the lawyer. And at that juncture at least we have not differed a great deal. Many lawyers will order a search from a title company and will have the title company issue its interim binder for the benefit of the lawyer.

We then move on to the preparation and the settlement. In South Jersey no title company prepares any documents. By that I mean deeds, mortgages and documents of that type. No title company, I don't believe, engages in giving legal advice to any persons present at the closing or involved in the closing. The title company will have a person sit there and conduct the arithmetic, make up the closing statement. I don't honestly believe that anyone seriously feels that this is the practice of law to make up a closing statement and take care of the arithmetic. They will collect or retain the money to pay off existing mortgages, which I don't feel either is the practice of law. I don't believe the lawyer conducting the settlement is actually doing all this himself. I think today we are all talking more and more of the paralegals and of having more and more lay help and I think, when all is said and done, we may be only talking about who these people should work for and that is whether they should work for a lawyer or a title company. But, in any event, the title company will complete the closing statement, will collect these funds, will physically take these documents to the court house.

So it seems that we're left only with that situation where someone says, what is the legal effect of this easement. I do not believe that title companies in South Jersey answer those questions. So what then

are we talking about?

I think we're talking about two areas. The first is, who is answering these questions. And there seems to be a reluctance on the part of everyone to talk about the people that I have the impression everyone is out to stop engaging in these practices, and that's the real estate broker. I agree with anyone that says that the person should be represented by counsel at a settlement. I do not agree that the way to accomplish it is to put title companies in South Jersey out of business. I do not agree that the way to accomplish it is to make the title company do it. If we are lawyers and we have an obligation to the public and that obligation includes stopping persons from engaging in the practice of law without a license, then we should stand up and take on our obligation. I don't think we can, through legislation, stick it on an industry that is not able to do it.

The other possibility then is what we're saying, that we should legislate compulsory representation by persons in a real estate closing. And that might be a good thing. And I don't think anyone in this room or in the title insurance industry would quarrel with that. It would probably be better than what is anywhere.

I have other problems with Opinion 11 and with some of the things that have been said today concerning the practice in North Jersey and that is, in my understanding of my obligations as a lawyer I cannot function in a vacuum. And if I am in a closing I am representing someone. Opinion 11 would seem to indicate that if we put a body in that room which body has a license, we will satisfy Opinion 11. I don't think that's what it's about. I think if we go that route we need not one lawyer but three or four. We need a lawyer to represent the buyer, we need a lawyer to represent the seller, and

perhaps one to represent the mortgagee.

I don't think that I can ethically walk into a settlement and represent a buyer and a mortgagee. I think there is or would appear to be a conflict of interest as between those two persons or entities, and I don't think ethically I could pretend to represent them.

If we look at page 10 of the Legislative Real Estate Title Insurance Study Commission, the statement of Arthur Horn and go through the many tnings he has illustrated to be what the attorney does in representing a buyer, we will find that many of them would include representation of the mortgagee, of the title company, and of the buyer, and that in effect, gentlemen, if we do what is being done in North Jersey, we are representing three parties to the real estate closing which I do not feel, in terms of my understanding of our ethical code, we can do in good conscience.

On the other hand, it seems to me that there is a greater and greater tendency in South Jersey for lawyers to become involved in closings. I think people are a little more affluent, a little more sophisticated, and they have a little more money, so they are hiring lawyers more than they had been. So it appears to me that perhaps the North is meeting the South somewhere midway. North Jersey seems to be hiring title companies to do more and more and it would appear that more and more lawyers are getting involved in South Jersey closings.

So I would like to suggest the elimination of commissions is good. I don't think it should be the function of this legislation to attempt to legislate compulsory representation of persons in a real estate closing, anymore than we should legislate that a man cannot represent himself in court because we know he can.

Also it should be realized that the result of that kind of thing will be to put every title company

in South Jersey out of business or that they will have to go out and hire a body with a license. And I don't think this is in the best interest of our profession either. I think what we really need is better education of the public so that they will engage the services of lawyers and that they will engage them hopefully to represent their interests and not to be put in a situation of conflict.

ASSEMBLYMAN HAMILTON: You made two references, Mr. Rossetti, and I want to let you finish your statement, if you haven't - you made two references to putting the title companies in South Jersey out of business. Would you address yourself specifically to those things that you think would result in that happening?

MR. ROSSETTI: Well, in my reading of Opinion 11, which apparently has found favor with some of the people that spoke today, --

ASSEMBLYMAN HAMILTON: We can't do anything about Opinion 11 - of course you recognize that - whether we like it or whether you like it.

MR. ROSSETTI: Right. But I have the impression that this is what some people are advocating in the way of legislation.

It would not permit the title insurance company to conduct a closing or to hold a settlement. It would not permit a title insurance company to accept an order for a title search and/or policy from anyone other than a lawyer.

Now in South Jersey the lawyers are just not that involved in the industry. So if title companies cannot hold settlements, cannot engage in closings, and cannot accept orders from anyone other than a lawyer or a purchaser, then for all intents and purposes they are halfway out of business.

ASSEMBLYMAN HAMILTON: Well, people are still going to buy houses. It may take a publicity campaign

by somebody, the Bar Association or by title companies or someone else, to steer people in the right direction, but I don't see that you're going to dry up a source of business. It may come from a little different source but is it really going to dry it up and put you out of business? if it were enacted.

MR. ROSSETTI: Until the adjustment is made, yes.

ASSEMBLYMAN HORN: Aren't the banks going to still require title insurance? Somebody is going to have to place title insurance with the title insurance company.

MR. ROSSETTI: Yes, I would certainly think so.

MR. STEIN: I was going to make the same point. There is a certain volume of title business in South Jersey and as a result a certain volume of mortgage business and requirement that there be a title policy. So regardless of who is present at the closing, it would still appear to me that the volume of title insurance business is not going to drop, although there might be some change in the matter of practice. I wanted to emphasize what Bill said, not that he didn't state it clearly, but I am not giving anybody a legal opinion, but Opinion #11 exists. It wasn't promulgated by this particular Commission, it exists, and if the effect of Opinion 11 is in fact to prohibit some sort of a practice or some sort of a procedure, then that effect exists regardless of what we may think.

MR. ROSSETTI: I understand that. I thought one of the considerations today was whether that or something like that should be included in the legislation.

ASSEMBLYMAN HAMILTON: We did request that you address yourselves, collectively, to the permissible scope of activities by a title company. So to that extent you are right. That is a matter that has been under active

consideration, to what extent should some of the amendments that were specifically spoken about, I think, by Mr. Arthur Horn and some of the others, - should they be adopted, should they be made more stringent, less stringent or what-have-you. So that's an area that we definitely want to have comments on. I think your comments are appropriate. I also think that, regardless of what we might legislate, Opinion 11 is going to be sitting there regardless of what we say in another context.

MR. ROSSETTI: Yes, I understand that.

ASSEMBLYMAN HAMILTON: You made reference also to claim adjustments and that's something that no one has spoken about today, and I just wonder, if you have any comments about that, is that an area that seems to be working pretty well. Are most of the title companies reasonably responsive when a claim is made to try to work the claim out, settle it, pay it off, or whatever is necessary in the context of a particular claim. No one, except Cobra Products, Inc., that did not appear, had a problem and theirs, as I recall it, wasn't so much on a claim as it was on a reissue rate, and not really a claim.

Maybe I'm asking the wrong one but since you're the last speaker we have, Mr. Rossetti, if you have any comments we will be happy to have them.

MR. ROSSETTI: Well, my experience has been from both sides because I have been fortunate enough to represent Commonwealth in some claim adjustments, and a few other underwriters. And my experience has been nothing but good in terms of their meeting their responsibility under the policy and paying when its time to pay. I would love to have that kind of a relationship in the other areas of insurance.

ASSEMBLYMAN HAMILTON: What about the exceptions? Certainly if the exception is written a company might

deny payment of a claim but they might be entirely within their legal right to do so. Do you feel that exceptions generally are fairly incorporated, particularly in those contexts where you don't have lawyers participating in the closing?

MR. ROSSETTI: Yes, and primarily because of the mortgage company involvement and the fact that they will only take a certain title and nothing less. So perhaps it has been indirect but it's been there.

MR. McDONOUGH: Mr. Rossetti, maybe you want to comment on the fact that in South Jersey I feel that perhaps the mortgage companies expect a little more of the title companies than they do in North Jersey, particularly where they send a letter of instructions in and are not represented by counsel.

MR. ROSSETTI: Well, that's absolutely true. It would appear that we are at the point where a great many of the settlements are not attended by the mortgagee or the lender and he merely sends a letter of instruction with all his papers and documents and instructs the title company as to what it is to obtain or not obtain, forward or not forward, and the title company ends up, of course, with most of the responsibility concerning the closing on behalf of the mortgagee.

ASSEMBLYMAN HAMILTON: A frequently incomprehensible letter of instructions, based upon my experience.

MR. ROSSETTI: I'll go along with that.

MR. McDONOUGH: This I think may put the title company in the gray area with respect to the practice of law and one which I would like to see eliminated. I would be much happier if counsel was there and acted for the mortgagee rather than relying on the settlement clerk's ability to understand that letter of instructions.

MR. ROSSETTI: I think we're all of one mind that we would all be happy to have counsel there

representing everybody. It seems to me the only issue is how are you going to make it happen. And I can't overemphasize that the way is not to put the onus on the title company. I think there has to be a better way.

ASSEMBLYMAN HAMILTON: By putting the onus on, you mean prohibiting them from doing perhaps some things that they do now.

MR. ROSSETTI: Yes.

ASSEMBLYMAN HAMILTON: Mr. Rossetti, thank you very much, sir, for your comments. You have been very helpful.

I would thank again everyone who has appeared. Those of you who came to listen and not to speak perhaps we're especially grateful to.

The Commission, of course, will be meeting again to consider what recommendations it will make with respect to A-1393. We would expect that probably, but not certainly, to have a later public hearing on other matters within our general cognizance and I would say that some of the people who testified here today have certainly started us thinking about some of those other areas, about things that are not specifically within the ambit of A-1393 as it might or might not be amended.

I thank you all for your patience and for you help to us in trying to perform our responsibility.

I declare the public hearing closed.

(Hearing adjourned)

STATEMENT OF ANGELO A. MASTRANGELO, ESQ. OF NEWARK, NEW JERSEY, CHAIRMAN OF THE SPECIAL STATE WIDE COMMITTEE ON LEGAL FEES AND PRACTICE IN RESIDENTIAL REAL ESTATE TRANSACTIONS OF THE REAL PROPERTY PROBATE AND TRUST LAW SECTION OF THE NEW JERSEY STATE BAR ASSOCIATION AT PUBLIC HEARING HELD ON MAY 10, 1973:

1. THE SPECIAL STATE WIDE COMMITTEE:

In the Summer of 1972, the Department of Housing and Urban Development of the United States Government submitted its recommendations, which were duly published in the Federal Register, as called for by Congress in the Housing Act of 1971, concerning the regulation of legal fees and closing costs in residential real estate transactions involving all residential mortgages.

As a result of the notice of publication, I, as Chairman of the Real Property Committee of the Essex County Bar Association, commenced a thorough review of the proposal and the subsequent legislation introduced in the United States Congress.

The Housing Act of 1972, more particularly Title IX, concerned itself directly with the regulation of closing costs. Part of the proposal was to limit the amount that a mortgagor purchaser could pay for title insurance.

As a result of the activities in conjunction with the New Jersey State Bar Association, a State Wide committee was formed under aegis of the Real Property Probate and Trust Law Section of the New Jersey State Bar Association. As Chairman of this committee, I have had the opportunity of reviewing thoroughly the proposed Assembly Bill 1393. One of the functions of the subcommittee of which I am Chairman, was to study and recommend to the New Jersey State Bar Association, a series of proposals that would serve to improve the handling of real estate transactions and to eliminate certain unsatisfactory practices.

You will later hear from Mr. Arthur S. Horn, Secretary of my committee, who will go into detail concerning some of the recommendations the committee has in connection with the pending ligislation.

2. THE TITLE INSURANCE CONTRACT:

I would like to bring to the attention of the Commission the fact that a title insurance policy is a contract. It is different from the ordinary fire insurance policy of liability insurance policy with which we are all familiar. A fire insurance policy will insure a person the moment it is signed, or the moment a binder is issued. To the contrary, a title insurance binder will not do the same thing. A title insurance binder is an examination of the title to real estate to determine what there is of record concerning a particular parcel. The title company or an independent searcher reports this information, and it merely discloses what there is on the public record concerning the property in question.

The function of an attorney in a real estate transaction is to determine whether or not title to the real estate is marketable and/or mortgagable. It is not the function of the attorney to determine if it is insurable. I make this distinction because marketable and insurable are not the same.

A marketable title is one where there are no restrictions whatsoever or easements covering the mentioned property. We would ordinarily term this as a clean binder or a clean title.

This is not the usual case. The usual real estate transaction involves the review of easement agreements, restrictions, reverter clauses, corporate franchise tax reports, real estate tax reports, municipal assessment reports and the many other items which affect title to real estate.

If one reads the model form of the ALTA title insurance policy, you will note that it contains many printed exceptions. The title company is interested in writing an insurance policy and, of course, is attempting to limit its liability. We have no quarrel with this as it is a business practice. We do state, however, that attorneys who represent purchasers or mortgagors of real estate are much more competent to advise their client concerning the status of the title and the items mentioned above than a title company. The title may not be marketable, but it may be insurable. We, then must determine, after reviewing the title binder

and the proposed title policy, those objections which the client can accept and those which, in good faith, we would have the client not accept.

As an illustration of the foregoing, I would like to point out that there is usually a restriction covering a piece of property. Basically, we could assume that the restriction is violated. The restriction does not contain a reverter clause, but does provide for injunctive relief. Normally a title insurance company, if requested by a mortgagee, will insure the mortgagee against forceable removal of the violation of the restriction. This could come about where a house is one or two feet beyond the set back line. Not so, however, with an individual fee owner. Unless an attorney were present to argue for the fee owner, an exception would appear in the policy to the fee owner. We do not quarrel with the title companies as this is a matter of underwriting. Perhaps it is also a question of advocacy that only a partisan person could obtain for his client.

Another item of interest appearing in title policies is that concerning subsurface rights as excepted from insurance. This, at first blush, would seem to indicate that the title company does not guarantee that there is or is not oil beneath the ground. That is not necessarily the case. I, in my own practice, am only now handling a matter involving a title policy, which was issued on a rather substantial one-family dwelling. The title policy contained the usual exception stating that there was no insurance concerning subsurface rights. Fortunately, I did not represent the purchaser at the closing. It subsequently developed that the client's home did not have independent sewer lines to the street, rather the sewer line ran across his neighbor's property. As a result of the exception, we are now busily engaged in a potential law suit to determine whether or not my client has the prescriptive right to go over another person's property. It is a rather interesting legal question, but perhaps, if I were representing this client initially, it never would come up as we would have eliminated subsurface conditions from the policy.

I state these minimal examples as a reason why title insurance companies should not engage in the actual closing of titles. A title insurance company is an underwriter. It is interested in selling title insurance, and we approve of the practice of title insurance. It facilitates the transfer of title, and also guarantees many other things which you are all aware of.

The title insurance company, acting as an underwriter, cannot independently advise a purchaser or proposed mortgagor concerning the various exceptions and restrictions appearing in a title policy. It would be unfair to ask the title company to remove all of its objections as honestly, some must appear in a policy. The attorney representing the mortgagor or purchaser is in a much stronger position, having knowledge of the law, to determine what does actually affect the property. The attorney is required to review the various documents with a title company to determine those items which are insurable and those items which will appear as an exception.

I repeat, once again, that a title insurance policy is a contract entered into between the title insurance company and a purshaser. Who represents the purchaser? Certainly not the other party to the contract. This would naturally appear rather ridiculous on its face as it could not be an arms-length transaction. The purchaser must be represented by independent counsel who is able to explain to the purchaser the various risks incumbent upon him in accepting the particular title policy.

It is for all of these reasons that the committee, of which I am Chairman, is strongly opposed to any provisions in the Bill, which would permit title insurance companies to close titles or in any way to advise purchasers or mortgagors concerning the status of a particular title. There is a definite expertise in reviewing a report of title or a chain of title and there is also expertise involved in reviewing a title insurance policy. This expertise is gained through knowledge of the law, and the practice of real estate law.

Our committee is in favor of regulation of title insurance companies and feels that it is long over due in the State of

New Jersey. The rapport between attorneys and title insurance companies has always been good, and we do feel that the proposed legislation will only permit the consumer to be better protected by permitting the consumer to employ his own attorney to represent him in a real estate transaction.

I wish to thank the members of the Commission for permitting my this time, and am available to answer any questions that you may desire to ask me.

SUBMITTED BY HAROLD DONOHUGH

Copy to Al. Smith

SUBJECT: FORMATION OF A COMMISSION TO STUDY THE TITLE INSURANCE INDUSTRY, RELATIVE TO THE PAYMENT OF MONETARY, OR OTHERWISE, FORMS OF COMMISSIONS FOR THE SECURING OF BUSINESS, AND THE AFFECT SUCH PAYMENTS HAVE UPON THE CONSUMER OF THE SERVICE.

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(1) Although it may not be public knowledge, it is the practice of title insurance companies and/or their representatives, i. e., agents, sub-agents, and approved attorneys to pay a fee, in the form of a commission arrangement unto the party or parties who order a policy of title insurance. The class of receipient includes, but is not necessarily limited to the following sources of such business; real estate brokers, builders, mortgage lenders, banks (a representative thereof) and attorneys at law.

(2) Generally, with few exceptions, the title commission is a percentage of the basic examination and premium charges made upon the consumer of the service, the payment of which is not usually disclosed to the said consumer. At best it is an esoteric practice.

(3) Since the receipients of such payments rarely have an agency relationship with the title companies, it would appear that the practice can almost be classified illegal - were this a casualty type of insurance, it most assuredly would be, since it would relegate itself to the "kick-back" category.

(4) Further, there is no rating bureau in the State of New Jersey, where a citizen may determine the true costs of his title insurance. Unfortunately, it does not enter the spectrum of services included in the responsibilities of the Commissioner of Insurance of the State of New Jersey. The premium factor charged by the various companies, is at best, an arbitrary one - and the charge for basic examination of the title also varies from county to county within the State of New Jersey. Therefore, it would seem that the public interest is poorly served, since the legal connotation of the services rendered is of an insurance nature.

(5) Any study should include the possible need for licensing the abstract companies, which are not title insurance companies, but rather operate on a principal-agent (usually a written contractual agreement) arrangement. Thus, their sole responsibility is to the insuror. It is understood that private enterprise, if it is to survive, must be given certain freedom, but some uniformity should exist from a regulatory point of view.

(6) The Commission should utilize the services of individuals totally familiar with the needs of the industry, as it relates to the needs of the public. Included in the formation of the Commission, it is suggested that the following individual categories be considered:

(a) Attorneys at Law of the State of New Jersey;

(b) Active managerial employees from the title industry of the State of New Jersey;

(c) Licensed real estate brokers of the State of New Jersey.

The Commission should consist of nine (9) members, with not more than three (3) members of the foregoing categories serving, since to do otherwise would possibly create an imbalance of valid views in the formulation of the study.

SUMMARY:

The essenance of the Commissions study should be to determine, if possible, whether or not the title commission is a disservice to the public and therefore, not in the public interest, as hereinbefore suggested. Secondly, the Commission should endeavor to ascertain the feasibility of the establishment of a rating bureau - this bureau can be self-sustaining with monetary assistance from the title industry. Any such bureau should not be operated as a political entity, and therefore, there would be no necessity for State financial aid. It could be ex-officio under the guidance (not direction) of the Commissioner of Insurance of the State of New Jersey. Finally, consideration should be given to the licensing and regulation of the title insurance agencies in this State, with the guarantee to the agents that their right of free enterprise will not be usurped.

STATEMENT BY JOHN H. McDERMITT, ESQ., ON BEHALF OF NEW JERSEY LAND TITLE INSURANCE ASSOCIATION AT PUBLIC HEARING MAY 10, 1973 BEFORE LEGISLATIVE TITLE INSURANCE STUDY COMMISSION

Mr. Chairman, Commissioners, I am John H. McDermitt and appear before you today as spokesman for the New Jersey Land Title Association. I am New Jersey Counsel for Commonwealth Land Title Insurance Company and have spent almost my entire professional career in and around the title insurance industry. The New Jersey Land Title Insurance Association was formed in 1922 by eight title insurance companies, all of them domestic. The title insurance industry itself is less than 100 years old having originated in Philadelphia in 1876. The member companies were then largely subsidiary to major banks in the State. The industry essentially served mortgage lenders. The impact of the depression of the 30's on the title companies was enormous particularly since they had engaged in the practice of guaranteeing yield on mortgages. This resulted in a substantial alteration of company structures and specifically statutory prohibition against such insurance. The trend since World War 11 has been consistently toward larger title insurance companies organized on a national basis and against smaller domestic companies. In 1963 of twelve member companies, seven were domestic and five national. In 1973 of fifteen companies which are members of the Association, only three are domestic companies. The Association is composed of fifteen companies at the present time, giving recognition to the merger of one of the last four domestic companies into a third company. There are two title insurors writing in this State who are not members of the Association. With a view to being of as much assistance as is possible I propose: 1.) To present an overview of the title insurance industry in New Jersey today; 2.) To respond to Mr. Guzzo's letter of April 24th to the Association; 3.) To discuss the Assembly Bill 1393 and amendments which the Association feels would be useful and lastly to touch on alternative methods of facilitating land transfer. Here let me emphasize that the Association does not consider itself the one true fount of knowledge and wisdom in this field. We are a service industry and realize our limitations.

Understanding that there will be other persons addressing the Commission I shall attempt to observe the half hour time limitation allowing time for questions. Should it seem more efficient to any of you gentlemen please feel free to interrupt me. As a starting point it would be well to define title insurance and distinguish it from other more commonly known forms of insurance. Essentially, title insurance is "preventive". It is a contract of indemnity protecting a named insured against loss or damage by reason of defects existing at the date of the policy. Thus it looks to conditions effecting the title as of a specific date. The element of ongoing time and the events occurring therein is a conspicuous element of casualty insurance but is absent from title insurance. That is to say, that while casualty insurance protects against matters that may arise during a stated period after the issuance of the policy, title insurance protects the insured from damage through defects, liens or encumbrances which effect the title at the time the insured acquires it. It furnishes this protection for a single - one time only premium - so long as the insured owns the title or lien and, in some cases, long after

an owner has parted with ownership. Thus, Title Insurance should be given separate statutory treatment. Historically title insurance came into being as a device to protect buyers and mortgagees in the real estate market from loss occasioned by the inability of those who individually certified the title to respond to damages. It is this philosophy, widely prevalent in the industry which minimizes areas of conflict with the organized Bar. In effecting the end product, a policy of title insurance, two major methods can be discerned. The first is generally referred to as Company examination. This type of business is done entirely by company employees from initial application through policy. Thus company employees examine the land records with occasional variation involving use of independent county level searchers, company employees order what are generally referred to as side searches for judgments, taxes, etc., company employees read the title, prepare report of title and forward it to the customer. When requested to do so a company employee attends the closing of title (settlement) on behalf of the title company, marks up the title report to bring it current and, on occasion, will record the instruments. Thereafter company employees continue the various searches and issue policy. This is the time honored method and until about 1939 was the only method used in New Jersey. At that time a foreign title insuror introduced the approved attorney method to the New Jersey practice. The company which introduced this system established very high standards for the qualification of attorneys to their approval list and continues this strict standard to date. Under the approved attorney system an attorney having a client who needed title insurance caused the necessary searches to be made or in fact occasionally made the searches himself and reported the condition of the title on forms printed and distributed to their approved attorneys by the company to the company. The report of title or binder as it came to be known was submitted to the title insurance company so that an employee would specifically endorse it assuming liability by the company on the attorney's certification. Thereafter, the attorney proceeded to close the matter, do the necessary search work to cover the closing of the transaction and reported the title for policy to the company. Thereafter, the company issued the policy. So far as money is concerned this type of operation involved a billing issued by the title insurance company at the time the binder portion of the preliminary report of title was signed and the remission to the company by the approved attorney of the net premium when he reported the matter for policy. The title company as such was not involved in any other charges for the abstract work or survey and so forth. The attractions of this method or procuring title insurance was widely seen and by 1950 all of the companies doing business in the State were prepared to and did insure on an approved attorney basis. The advantage to their clients, and thus to the attorneys, lay in the area of closer control by the attorney and more efficient processing of real title transactions from contract to passage of title. The title insurance industry must be understood in the context of it being essentially a mortgage insurance business until quite recently. Mortgage title insurance applications were placed by counsel for lending institutions and the rare fee title insurance policies issued by the companies generally were incidental to mortgage insurance. It was a rare and sophisticated borrower who called for insurance of his fee title. However, N.J. 46:10A-3 has changed all of this. Since its passage in 1964 it is a rare situation in which both fee title and mortgage lien are not insured with premium charged on the fee title amount and the lien insured for a flat additonal charge - usually $10.00. In that framework the five dollars per

thousand gross permium has existed almost since the birth of the industry. The practice early on originated to pay a 25% commission and thus there came about the $3.75 per thousand charge which is so widely spoken about and so much honored in the breach rather than the observance in the industry today. The company examination method of insurance which for a time in the 50's and 60's represented only a very small portion of the market has in the past five years experienced a resurgence. It has always been the practice in large parts of southern New Jersey particularly Atlantic and Camden counties. Its defects arise from the weight of numbers. It often involves too much time between order and report, it requires segmented sequential operations as compared to the individualized attention which can be applied to an isolated transaction by an approved attorney. Whether the real estate industry can function on a piece meal basis is to be doubted. There are few if any of the "bad money" commission problems in the general run of company examination business because there are fewer parties to the insurance transaction. It is in the proliferation and expansion of the "approved attorney" concept that the industry has met many of the difficulties which beset it at the present time. The enormous growth of the real estate market in New Jersey in the post World War 11 years have attracted many foreign title insurors to the State. Going into business in a new area in a free economy is seen as a function of investment of money as against yield. For example, a branch office involves substantial capital investment by a title insuror as well as continuing salary and rent costs whereas the establishment of the agency offices involves comparatively little capital investment and practically no continuing expense. Thus despite large commissions or share of premium dollar payable to agents the net dollar to the title insurance company makes this route most attractive to newcomers to the title insurance industry in New Jersey. The practice has arisen of establishing individuals more or less skilled in real estate conveyancing and/or searching as underwriting agents. Control of some title insurance business is the guide. As the agency system developed it is clear that what is in effect a double commission has arisen. Thus in order to procure business the sales element, be it company employee or agency employee undertakes to pay a commission in return for an order. Thereafter, where the business was obtained by an agency a split of the premium dollar after commission paid to the source of business is involved.

An incidental effect of the wide use of agency methods has been a weakening of the company title plants system. On a company examintation basis a clear history of a particular parcel is immediately at hand. On an agency basis routinely the only data available to the insuror on a prior insurance is the policy which, in the past five years has not contained a description of the property. While on the question of plant operations I should point out to the Commission that at this stage of the industry's development there is no common plant operation among the title insurance companies in any County of the State known to me. There is I believe, a common total takeoff of land records in Atlantic County by the two principal companies doing business in that County. However, the "total takeoff" method of maintaining a plant has become unbearably expensive for any company except in Atlantic where the joint takeoff companies control practically all of the market. These two companies are now facing

serious competition for the first time. The plant operation of any title company is, of course, important. With the ultimate goal of earning premium dollars as promptly and inexpensively as possible the fact of prior insurance on a parcel permits substantial economics of time and money. Normally the ultimate consumer is the beneficiary. Quite early on in the post War period title companies commenced to issue what are variously called "starter certificates" or "certificates of prior insurance". In a less competitive market these certificates of prior insurance were issued to approved attorneys and formed the basis for their continuing the title search, with consequent saving to the client and application to the company which issued the certificate of prior insurance for the title insurance on the new transaction at a reduced premium. The competition for the premium dollar and the development of the agency method of examination and certification quickly eliminated any ethical considerations from the handling of certificates of prior insurance. It is now at the point wher a company issuing a certificate of prior insurance can expect the current transaction to return to them for insurance about one third of the time. Never doubt that the agent stealing the certificate of prior insurance gives the reduce premium rate automatically. Considered as a back-up of attorney's certification of title with the weight of reserve money and assets the industry is necessarily predicated on a sound determination by intelligent title examiners that title to a particular parcel is adequately defined and stated at the time of a particular insurance transaction. Unrestricted agency operations in some areas have reached the point where this is no consideration at all in the insurance of title. In the competition for the premium dollar some agencies are engaged in casualty insurance rather than loss-prevention insurance. General overall statistics on the experience of the companies are difficult to come by. However, you must understand that losses do occur in the title insurance industry. In the hurly burly pressure to produce work as promptly as possible and at minimum possible dollars errors are bound to occur. The growth of the industry has necessarily involved a dilution of the experience of many employees in the companies at all levels. As a rough measure one company in the industry writing approximately 20% of the total liability annually in New Jersey had pending as of February 1, 1973 some 72 claims of various types ranging from taxes omitted to be reported on municipal tax certifications through alleged total failure of title. They involved from one third to one half of the time of an employed attorney and his secretary. Their work is backed up by a home office staff of eleven people as well as a trial counsel in litigated matters. I am sure that analysis of the reports to be submitted by the Department of Insurance would yield more detailed data.

In the Secretary's letter of April 24th it was indicated that you were interested in the practice of title companies or agents in paying commissions to attorneys and real estate brokers. It is the general view of informed attorneys that professional ethics require disclosure to the client of any commissions received. It is further generally believed that no such stricture binds real estate brokers. At one time it was a widespread common practice for title underwriters to issue two bills, one indicating the gross title insurance premium and the other, a carbon, indicating the gross, a commission payable, and a new premium which latter the applicant for the insurance generally remitted directly. This practice has become less widespread as

it has been publicized. Most attorneys today instruct the insuring company to issue only a net bill and if they do not, they disclose the situation to their client and collect and remit only the net premium. In the northern part of the State the practice of paying or crediting a 25% commission on the five dollars per thousand premium is very nearly universal. The simple cost of doing business exerts substantial pressure on title companies to hold its net premium dollar at $3.75. However, in areas of the State in which title insurance business is written on the application of others than attorneys the 25% commission is merely historic. Where business is controlled by persons other than attorneys and particularly where they can place a large volume of title insurance it is common for commissions of 40% to be paid and a 50% commission payable to the individual who places the business is not unheard of. In this situation, where, before any productive effort in connection with issuance of the policy is undertaken the net dollar is cut in half, the pressures to economize at the expense of sound "preventive" insurance are all too obvious. It is in this area that the searching and examining procedures have been driven to the breaking point. Agents frequently rely on any company's prior title policy or report, omitting entirely to make an independent search of the pertinent records and consequently avoiding any sound consideration of the abstract or brief of title by persons skilled in the trade. Obviously, a title insuror or title agent who will not be paid for doing a proper job, will not do the work.

As to the permissible scope of business activities engaged in, no company doing business in New Jersey seeks to engage in any other activity than title insurance. This involves, of course, performance of all of the work antecedent to issuance of policy short of the practice of law. As I indicated above we are barred by statute from guaranteeing mortgages. While it is true that some of the title underwriters in the State are in fact subsidiaries of banks or insurance underwriters engaged in other fields of insurance yet in New Jersey the title companies as such operate with a very high degree of autonomy. Because title insurance represents so small a part of the overall profit picture in mortgage transactions it is rarely worthwhile for a large bank or insurance company to attempt to control business. Quite the contrary as has been indicated by the historic trend of the Savings and Loans in the State to open up their lending practice to permit any attorney to represent them on a mortgage closing so also it is to the best interest of a bank or institutional lender. Even where it may, through stock ownership be part of a conglomerate, with a title insurance company, generally the lender finds that the performance of its principal function would be impeded rather than helped by controlling title insurance business. The title companies in this State generally believe that an efficient operation of this essential part of the real property economy requires: a) that they be authorized to conduct searches at the county, state and municipal level; b) that where their insurance is concerned they be enabled to attend closing of title or as it is otherwise called, settlement of title in order to adequately state the contract of insurance between the insuror and the insured and that; c) where the needs of a particular customer dictate that a title company be allowed to engage in escrows pending clearance of title and to effect the recording of documents. Particularly since the North Jersey Mortgage

Company cases (32 N.J. 430, 161, A2d 257) title companies have shunned the preparation of instruments. We understand that this is the practice of law and as such is barred to any persons other than licensed attorneys. Candor impels me to say that in some of the southern counties it is a common practice for settlements to be held at the title insurors offices. In other locations in the State a closing room will be furnished without charge as a facility to customers but the request is very rare. As to the business activities engaged in by agencies and the owners and personnel involved in such agencies I will have further comment to make later on.

Lastly, in reference to the letter of the 24th it is the general feeling of the Land Title Association that rate regulation had best be achieved through prior approval. The initial establishment of a rating bureau and rate regulation necessarily involves a period of time on the order ot two or three years. Even standardization among the companies in reporting will be no small problem. There will always be those companies who will wish to achieve an improved competitive position by avoiding filing or by qualifying its filings in some fashion. Thus the very desirable goal of regulation will be delayed of achievement. The Association defers to Deputy Commissioner Shumake's expertise in devising appropriate language to implement provisions requiring prior approval in promulgating title insurance rates. The rating bureau, as the Association sees it, will be member financed and will function as a clearing house for rate formulation, rate justification and rate submissions to the Commissioner. It will be a buffer, for the Commissioner if you will, so that he is not faced with the consideration of company by company submissions by all the insurors qualified in New Jersey.

You gentlemen quite properly have concerned yourselves with the matter of commissions. I have attempted to be as candid as possible about it in my comments today. The Title Association is prepared to accept the amendment of Section 33 of Assembly Bill 1393 to absolutely bar commissions to attorneys or licensed real estate brokers. To the degree that commissions are paid for no function other than the placing of title insurance they can hardly be justified. Experience in other states and discussion of the use of the agency framework as a disguise for payment of commissions in Association meetings prompts a substantial number of the member companies in the Association to recommend that the Commission consider adoption of the controlled business provisions of the proposed model title insurance code promulgated by the American Land Title Association in March of this year and specifically the language of Section 138. Even before the adoption of this title insurance code as the law of our State, agencies are being formed by persons who control placement of title insurance business. The sole purpose of these agencies, which are totally unproductive, except for placement, is to secure by a circuitous route the money heretofore paid as commissions to them as persons controlling placement of title insurance business. The Association, despite lengthy discussions is unable to state even a majority view on this point. The questions of "controlled" business, definition of "agent", and "examination" and the "grandfather" clause versus "amortization clause" will be the principal topics at a meeting of the Association on May 31, 1973. We would hope to be able to express at least a majority view after that meeting. I might point out that the Commission's proposed amendments of Section 1 concerning definitions and particularly item "i" which defines title

insurance agents in such fashion as to eliminate agents whose only function is to solicit insurance and further to provide that not only are banks and trust companies barred from acting as agents but also real estate brokers goes to the same point. Essentially the title insurance industry is a service business. To the degree that the ultimate consumer is required to pay nonproductive dollars to procure that service, title insurance is too costly. Section 138 of the 1973 Model Code is a definition of "controlled" or "personal" insurance. It bars the payment of rebates to an agent where controlled business is more than 25% of that particular agents business. It is the Pennsylvania experience that the abolition of commissions results in proliferation of so called agencies whose only function is the delivery of an order for title work to a company. The insuring company performs all of the production steps, reports through the agency. The agency bills the customer and pays a reduced charge to the company. Thus what is in name an agency of a title insuror is in fact simply a solicitor of title insurance and a purchaser of title insurance pays unproductive dollars. Fairness dictates that not every controlled business agency does or would function in this fashion. Clearly, it is a useful competitive device for entry of new title insurance blood into the competitive situation and to that degree is worth encouraging.

The Association acknowledges that the bill as it stands does not adequately treat the subject of agents. We understand the Commission's proposal to add some appropriate language to Section 29 of A-1393. To the degree that N.J.R.S. 17:22-6 et seq imposes a licensing requirement on agents and provides for examination and qualification of such persons under the control of the Commissioner, the Association is in entire accord. I respectfully point out to the Commission the provisions of R.S. 17:22-6.6 which provides that "any person not now engaged in the insurance business in this State as agent....." etc. A considerable number of the companies in the Association feel that in so technical and esoteric a field as title insurance there ought be no place for a "grandfather clause" such as this. We strongly urge that consideration be given to imposing a true agency structure on the title insurance industry in this State by requiring <u>all</u> persons engaged in the business as agents to be licensed with an amortization clause which would permit persons unable to achieve qualification to liquidate their investment over a reasonable period of time. To that end, many but not all of the members of the Association feel that the Commissions Section 29, a, (3) should be deleted and the following substituted: "any agent or agency created prior to July 1, 1972 shall have a three year period from that date in which to meet the controlled business provisions and licensing provisions of this Act". R.S. 17:22-6 looks to the existence of insurance solicitors and brokers. In such a relatively small industry as title insurance they can serve no useful function and the code should so state. Again justice dictates that I advise the Commission that this is not the unanimous view of the Association. The Association has met frequently and discussed seriously and at length a number of these provisions designed to eliminate invidious payment of commissions or rebates. The problem of achieving this within a proper competitive situation is not easy of solution.

There is one further area of A-1393 to which I must advert. As the Bill has been publicized and as this Commission has carried on its meetings it appears that there is concern among some members of

the Bar that this attempt to codify the title insurance law of the State would be improved by explicitly forbidding conduct which constitutes the practice of law. I refer to the opposition expressed to the language of Section 10 and the intent to insert language in Section 12 which would in words bar title companies from conduct which would amount to the practice of law. We have not yet seen the language which is proposed. Further it would appear that in Section 30 there is some purpose to amend the statute to require that any billing by a title company be through an attorney for a customer and/or that the customer or ultimate insured be referred to his attorney for billing. Gentlemen, Article 6, Section 2, paragraph 3 of the Constitution of our State gives the Supreme Court jurisdiction over the practice of law and the discipline of persons admitted. In one of the landmark decisions of his tenure as Chief Justice the late Arthur Vanderbilt speaking for a unanimous Court held that the rule making power of the Supreme Court is not subject to overriding legislation, I refer to Winberry vs. Salisbury, 5 N.J. 240, 74Ad 406. Lawyers have nothing to fear from title insurance companies. Service to our insureds is in very large measure supplied through the hands of attorneys. I respectfully suggest to the Commission that they would be well advised to avoid establishing by legislative definition what is and what is not the practice of law. The Supreme Court is most zealous in protecting laymen from the unauthorized practice and practitioner. As to the propriety of the inclusion of Section 10 in the Act, the Association believes that it is of a piece with the whole concept of separate codification of title insurance from the general field of casualty and liability insurance. Title insurance <u>is</u> different and should be so treated, desirable as uniformity certainly is. As to its expression of powers we would point out that the word "title" is a part of that sentence.

The mandate of this Commission requires it to consider alternatives to title insurance and in fact alternatives to the present system of transferring title to real estate. We have no hard historical data to submit at this time. Certainly the Torrens system is functioning in several areas of this Country. May I call to the Commission's attention some of the difficulties involved, with the request that should it seem useful to the Commission, the Association be permitted to submit detailed material. The registration of title to any particular parcel of land essentially involves the entry of a judgment in an action to quiet title. In order to be effective within the U.S. Constitutional requirements the action has to name any party who conceivably might have an interest in the property. The search work involved in any single parcel to define all of the necessary parties in interest can be enormous. The application of the act by its originator in Australia was capable of being done because at the time it was imposed there were relatively few parcels of land in a very sparcely populated area with a very brief history. We are dealing with the most densely populated State in the Courty with a history going back more than 300 years. I respectfully submit that there are so may hundreds of thousands of parcels of land in our State that the entry of judgments to register the title to each represents a task which would involve decades of time and millions of dollars. Further the usefulness of a Torrens system extends only as far as the jurisdiction of the land court established to enforce it. In the district of south Middlesex County in Massachusetts where this system is in use the Federal Courts and, to the degree that they impact land in that district the decrees of the

Courts of other states function entirely outside of and parallel to the Torrens system. The fact of the matter is that in todays business the Torrens system in that district function side by side with title insurance. Within my very limited knowledge the state of Utah imposed a land registration system for a period of time and within a few years of its origination it was bankrupt by reason of actuarial insufficiency of the monies required to be deposited as titles were registered so as to establish a fund from which claims could be paid. The only other state within my personal knowledge is New York. Originally designed to overcome the problems of tax delinquency the system is in effect in Suffolk and Monroe Counties. In both these sections of the State title insurance continues to be an essential tool in the development of real estate. The Association would be pleased to investigate the matter further and submit data on the concept of a state regulated land registration to your research people, if that would seem suitable.

I appreciate on behalf of the Association the opportunity to express our vies to you, I shall be glad to answer any questions that you may have, to the limit of my ability. In closing I say again that the New Jersey Land Title Insurance Association feels that this Code cannot fail to benefit our ultimate customer, the consumer, by stabilizing the market and by eliminating hidden and unnecessary costs, submitting the industry to appropriate regulation by the State.

Mr. Chairman and Honorable Committee

My Name is Patrick J. Kehoe, from Middlesex County. I am an active member of the American Land Title Association and have been for quite a few years. This organization represents Nationally the Title industry as well as Title Abstractors and Title Companies. There are presently 14 active members in New Jersey as well as 9 Associate members. The New Jersey Roster ranges from Counsel to two of the domestic life Insurance Companies down to independent free-lance Searchers. I am Past President of the Title Abstractors Guild of Middlesex County, Past President of the Title Abstractors Association of New Jersey and present Trustee, I have taught title abstracting at the New Brunswick Rutgers Extension Division, am President of Equitable Title and Abstract Company based in New Brunswick, which holds an Agency for writing title insurance for USLife Title Insurance Company of New York.

I understand the business of this Committee is to investigate the Title Insurance Industry and consider the matter of a rating Board for recommendation to the Legislature.

In considering the business of Title Insurance one must also consider the business of title abstracting , sometimes called title searching. As the song "Love and Marriage" goes, you can't have one without the other. These Para Professionals throughout our State perform yoeman service for the public in their reports to Title Companies and Attorneys. In my view they should be licensed to protect the public from the poorly prepared, incompetent and financially irresponsible. So far as Agents for title companies are concerned some method of supervision should be instituted so those who have no regard for the ethics of the business or interest in the welfare of the public but simply are in the business as a Livelihood or investment are eliminated.

I have no doubt that exhibits and testimony of the Title Companies have been introduced showing the margin of profit for an industry which has not raised its premium from the $5.00 per thousand dollars of insurance which was instituted in 1903 or thereabouts. I will not go into this phase of the business.

I am particularly interested in addressing myself to the matter of conducting a title insurance agency such as the small one we operate. We have no tie in with any financial institution, Attorney or mortgage company where the requirement is that our Agency be used exclusively. We make no deals, offer no kickbacks, do not cut rates.

We compete for business on the basis of the strength of our underwriter, our expertise in title work, our service and our personal interest in our clients. It is a matter of pride that we retain as clients some Attorneys who have been with us for upwards of 30 years.

As an integral part of our business we must employ, from time to time independent searchers. The fees they charge vary from $60 for a 60 year search to double that amount for one chain of title. By that I mean where the property being insured devolves partly from one tract of land and partly from another, being located at the point of contiguity of the two (or more) parcels. I have one residential lot now which comes out of three separate 60 year searches. I was charged $145.00 for the search, which, considering the work involved was not out of line. When you consider the wages and fringe benefits paid the truck driver, the iron worker, the mechanic, etc, the fees charged by the competent searcher are moderate.

May we point out that on the basis of the abstractors work the lender or purchaser invests considerable sums of money. interestingly enough those searchers who command the highest fees are many times those who are the poorest qualified. They happen to be available while the established abstractors have a regular clientel and have more than enough work for which they charge a more moderate fee. The work of the searcher does not end with the quitting whistle as it does with the mechanic or blue collar worker. As is the case with most professionals he takes his work home and plots, reads titles or fits a jigsaw puzzle of families or descriptions together, as well as setting up those questions of law which may be involved. There is no premium overtime pay for this work. When you consider the extreme urgency under which the searcher works, the physical exertion involved and the mental stress we have no particular quarrel with his fee, generally.

Unfortunately we are unable to pass on to the Attorney a charge of $150.00 or so which represents the searchers charge of $125.00, a fee of $5.00 each for the tax and assessment searches, $9.00 for a corporate status report and the result of an upper Court search which runs from a minimum of $3.00 to a figure of no limit. I paid $76.00 for a search of some persons named "JOHNSON". The average is about $10.00 to $15.00.

I believe most title companies, in the northern part of the State, charge from $75.00 to $90.00 for the examination and certificate of title. It is my experience that between this range, which is set by competition, we are lucky to break even. At the lower figure we must absorb some of the costs in our title insurance premiums.

To this point we have set out only our search expense. There are other costs which enter the picture, which is not inconsiderable. Typewriters are not inexpensive either to rent or purchase, neither is office furniture, duplicating machines, files, telephones and the other impedimentia necessary to run the office. Salaries of office help, title readers and rent all combine to add anywhere from $15.00 to $25.00 per certificate of title.

Another service offered by most title companies, and we are no exception, is time consuming and expensive. It is to assist Attorneys in determining what is required, where lands which are peculiarly circumstanced, either by location, ownership, vague or improper description, marital situation, hiatus in title or other odd or unusual condition, for the issuance of a title policy. These inquiries require much research and man hours to conclude to the satisfaction of the client. This also must be absorbed by the title insurance premium.

My intention is to bring to the attention of this Honorable Committee the problems faced by the Title Company Agent in the local area. May I parenthetically state that my observations concern only that portion of the State lying north of Mercer and Ocean Counties. South of those counties my understanding is that the Attorney plays little part in the title closing. The realtor and Title Insurance Company almost exclusively handle all the work concrened with the title. In my area I do business only with attorneys.

The local agent employs from one to 15 or more persons, he purchases locally, he is part of the community. He resides in the area. Upon what your committee recommends depends his employees and his welfare.

Our office has avidly pursued those sophisticated systems involving computers and microfilm both in the area and from exhibitions at American Land Title Association conventions and meetings but have been unable to find any workable system or method which would be more accurate or less expensive than the old human method of abstracting. An example of just one of the difficulties in computerizing titles is the present question of the areas presently claimed by the State as having been flowed by tide water. Whatever had previously been fed a computer concerning these areas would now have to be reprogrammed. The result depends on what is fed the machine, poor or incompetent programming could cause havoc. In closing may I respectfully suggest to your honorable committee:

1. Establish a premium rate with some punitive measures for violations thereof.
2. Permit Attorneys a fee for certifying title to a Title company based on the amount of insurance involved, providing this is not in conflict with the rules of the Court.
3. Except for paragraph 2, prohibit the payment of any Company or agent, to any person, Corporation, partnership or agency for initiating, recommending or soliciting title Insurance, except for salaried employees of Title Companies.
4. Recommend the indices become part of the record so that where errors, or omissions occur in the indexing of a deed, mortgage or other encumbrance, the Title Abstractor or Title Company is not liable and the public is protected against loss where no title insurance is involved.

May I thank the Committee for their kindness in permitting my appearance and hearing my thoughts.

COBRA PRODUCTS, INC.

P.O. Box "O" - Willingboro Industrial Park Willingboro, New Jersey 08046

April 25th, 1973

Mr. Peter P. Guzzo
Committee Secretary-New Jersey Realty Title Insurance Study Commission
State House
Trenton, New Jersey 08625

Dear Mr. Guzzo:

We believe that Real Estate Title Insurance Companies should be regulated. We recently increased the mortgage on our property and wound up in a controversy with the Title Insurance Company as to what was a proper fee for bringing down the search and insurance for the additional amount. The attitude of Title Insurance Company was that it was a new mortgage and wanted a fee as if it had been an original placement. We complained to the State Insurance Commission and did receive satisfaction.

However, the consumer in Realty Title Insurance normally does not know who to go to and generally gets no satisfaction because the percentage cost of Title Insurance is such a small portion of the mortgage proceeds that neither the mortgagor or the attorney for the mortgagee believes its important enough to properly represent their clients in terms of the cost of the insurance.

I am enclosing a copy of the correspondence which was engaged in this particular instance for presentation to the Commission and hopefully for your necessary legislative action to be taken to protect those people that pay for Title Insurance.

Sincerely,

COBRA PRODUCTS, INC.

Arthur Bushkin

AB:als

Enclosed-correspondence

COBRA PRODUCTS, INC.
P. O. BOX 0
1 IRONSIDE COURT
WILLINGBORO, N. J. 08046

JUNE 29, 1972

MR. ANTHONY LOPOPOLO
CITY TITLE INSURANCE COMPANY
230 LEVITTOWN PARKWAY
LEVITTOWN, PENNSYLVANIA 19054

DEAR MR. LOPOPOLO:

I RECEIVED A COPY OF YOUR LETTER TO MR. MARSHALL REQUESTING AN ADDITIONAL $150.00; HOWEVER, AS STATED IN MY LETTER TO YOU I AGAIN REQUEST THAT THE POLICIES TO BE ISSUED AS PER OUR ORIGINAL AGREEMENT ARE AS FOLLOWS:

1. ADDITIONAL MORTGAGE INSURANCE POLICY PAYABLE TO THE NEW JERSEY NATIONAL BANK $50,000.00

2. ADDITIONAL OWNERS TITLE INSURANCE POLICY FOR $20,000.00 PAYABLE TO COBRA PRODUCTS, INC.

3. A COPY OF THE RECORDED MORTGAGE TO BE SENT DIRECTLY TO THE NEW JERSEY NATIONAL BANK TO THE ATTENTION OF MR. ALBERT ENGEL.

THE FULL FEE FOR THE ABOVE REQUESTED ITEMS HAS ALREADY BEEN PAID.

YOUR PROMPT ATTENTION TO THIS MATTER AND COOPERATION WILL BE APPRECIATED.

SINCERELY,

COBRA PRODUCTS, INC.

ARTHUR BUSHKIN

AB/ALS

August 14, 1972

Tel. 292-7053 (Real Estate)
- 5075 (Abstracts)
- 5316 (Complaints) 5632
- 6311 (Surplus Lines)
- 6087 Miss Fern Cattern 5458

Superintendent of Insurance
State House
Trenton, New Jersey 08625

ATTENTION: Mrs. I. DeVyver

Dear Mrs. DeVyver:

I am enclosing for your information copies of the letters and correspondence I have had with the City Title Insurance Company.

Our company had City Title Insurance on its premises and a mortgagees policy to the New Jersey National Bank.

On May 20, 1972 the mortgage was refinanced and increased at that time by $50,000.00. Prior to the closing we contracted with the City Title Insurance Company to bring down the search to date and to issue two additional title policies as follows:

1. To the mortgagor, the New Jersey National Bank, for an additional $50,000.00 bringing the total Title Insurance to $170,000.00

2. An additional Owners Title Policy for $20,000.00 increasing that insurance to $170,000.00.

Our agreement with Title was only for the additions to the existing policies and the fee of $231.00 (copy of cancelled check here enclosed) was agreed upon. Subsequently, City Title insisted that the mortgage policy was a completely new policy for $170000 and claimed an additional fee for $150.00. The Title Company has absolutely no additional or further risk on the mortgage or the Owners Title other than the additions to the original policies and therefore, would not be entitled to a fee based upon no risk.

City Title to date has neither sent the recorded mortgage or the additional policies in spite of repeated requests, to the bank or to us.

Mrs. Francesco Perantoni

Mrs. Zuccarello

Mrs. DeVyver, the bank is entitled to the policy and the recorded mortgage and so are we. We are writing to you for recommendations as to our next action to have City Title perform their part of the agreement.

Your early response and assistance will be greatly appreciated.

Sincerely,

COBRA PRODUCTS, INC.

Arthur Bushkin

AB/als

Enclosed-letters to Mr. Lopopolo and the cancelled check

cc- Mr. Alvin B. Marshall

August 14, 1972

Mr. Anthony Lopopolo
City Title Insurance Company
230 Levittown Parkway
Levittown, Pennsylvania 19054

Dear Mr. Lopopolo:

Reference is made to our letter dated June 29, 1972, a copy of which is here enclosed. I have recently been in touch with our mortgagor, the New Jersey National Bank, and according to Mr. Engle of the mortgage department, they have not as yet received either the recorded mortgage or the additional $50,000.00 policy referred to in the attached letter.

Today is August 14, 1972 and almost three months have elapsed since the closing which should be more than sufficient time to record the mortgage and issue the agreed to policies for which the fees have already been paid.

Please let me know by return mail the date on which you will send the recorded mortgage and policy to Mr. Engle and when we may expect to receive the additional owners title policy for $20,000.00

A stamped self-addressed envelope is enclosed for your convenience.

Sincerely,

COBRA PRODUCTS, INC.

Arthur Bushkin

AB/als

Enclosed-copy of June 29 letter and self-addressed envelope

cc- Mr. Albert Engle, Mr. Alvin B. Marshall, and Mrs. I. DeVyver

COBRA PRODUCTS, INC

NUMBER 5228

May 11 1972 55.73

PAY TO THE ORDER OF Fidelity Insurance Company $231.45

Two Hundred Thirty-one 45/100 DOLLARS

NEW JERSEY NATIONAL BANK

⑈0312⑈00731⑈ ⑆105660⑈ ⑈00000231⑆00⑈

State of New Jersey

DEPARTMENT OF INSURANCE

W. MORGAN SHUMAKE
DEPUTY COMMISSIONER

TRENTON 08625

(609) 292-5374

October 17, 1972

Mr. Anthony Lopopolo
Second Vice President
City Title Insurance Company
City Title Building
230 Levittown Parkway
Levittown, Pennsylvania 19054

Re: P33625 - Cobra Products, Inc.
Parcels 10 and 11
Willingboro Industrial Park
Willingboro, New Jersey

Dear Mr. Lopopolo:

Per our telephone conversation last week regarding the above-captioned, I am requesting that you issue the requested title policies in the following manner:

(1) To the mortgagor, New Jersey National Bank, a policy for an additional $50,000 bringing the total exposure of the mortgagee policy to $170,000. As indicated, this action has been discussed with and is acceptable to the mortgagor.

(2) An additional owner's policy for $20,000 bringing the total exposure of the owner's policy to $170,000.

Since there is no additional or further exposure on either policy other than the requested additions, I assume the cost for the addition to the mortgagee policy will be $80.00 for examination plus $2.50 for each additional $1,000 coverage or $205.00 total and $10.00 for the addition to the owner's policy.

I would appreciate your completion of this transaction as soon as possible and I would ask that you forward the additional policies to the respective parties with a note to me confirming same.

Thank you in advance for your cooperation in resolving this matter.

Yours very truly,

Kathryn Fern

Ms. Kathryn Fern
Assistant to the Deputy Commissioner

KF:mf

cc Mr. Arthur Bushkin

OCT 18 1972

TELEPHONE: WINDSOR 6-2800

MEMBER OF THE PENNSYLVANIA LAND TITLE ASSOCIATION

CITY TITLE INSURANCE COMPANY

CHARTERED UNDER THE INSURANCE LAW OF THE STATE OF NEW YORK

CITY TITLE BUILDING
230 LEVITTOWN PARKWAY LEVITTOWN, PENNSYLVANIA 19054

October 17, 1972

Cobra Products, Inc.
P. O. Box o
Willingboro Industrial Park,
Willingboro, New Jersey 08046
Att: Arthur Bushkin

Re: Title No. P32740-B
Premises: Willingboro Industrial Park

Dear Mr. Bushkin:

Enclosed herewith are the following in connection with the above captioned premises:

Endorsement to Policy P32740-B covering additional Insurance.

Kindly acknowledge receipt of same by signing and returning to us the enclosed copy of this letter.

Very truly yours,

CITY TITLE INSURANCE COMPANY

Anthony V. Loropolo
Title Officer
Second Vice President

AVL/mj
Encs. 1

OFFICES

Home Office
32 Broadway
New York, New York 10004
Whitehall 4-5900

City Title Building
153 Remsen Street
Brooklyn, New York 11201
Main 4-5400

City Title Building
6 Grand Street
White Plains, New York 10601
White Plains 6-4500

City Title Building
1051 Franklin Avenue
Garden City, L.I., New York 11530
Pioneer 7-0100

Raymond-Commerce Bldg
1180 Raymond Boulevard
Newark, New Jersey 07102
Market 4-7800

City Title Building
230 Levittown Parkway
Levittown, Pennsylvania 19054
Windsor 6-2800

Mosby Building
10560 Main Street
Fairfax, Virginia 22030
Phone: 591-4098

OCT 19[illegible]

TELEPHONE WINDSOR 6-2800

MEMBER OF THE PENNSYLVANIA LAND TITLE ASSOCIATION

CITY TITLE INSURANCE COMPANY

CHARTERED UNDER THE INSURANCE LAW OF THE STATE OF NEW YORK

CITY TITLE BUILDING
230 LEVITTOWN PARKWAY LEVITTOWN, PENNSYLVANIA 19054

October 18, 1972

Cobra Products, Inc.
P. O. Box o
Willingboro Industrial Park
Willingboro, New Jersey 08046
Att: Arthur Bushkin

Re: Title No. P32740-B
Premises: Willingboro Industrial Park

Dear Mr. Bushkin:

Enclosed herewith are the following in connection with the above captioned premises:

Revised endorsement on the above captioned premises. Kindly note addition of Item #18 under Schedule B.

Kindly acknowledge receipt of same by signing and returning to us the enclosed copy of this letter.

Very truly yours,

CITY TITLE INSURANCE COMPANY

Anthony V. LaPopolo
Title Officer
Second Vice President

AVL/mj
Encs.

OFFICES

Home Office
32 Broadway
New York, New York 10004
Whitehall 4-5900

City Title Building
153 Remsen Street
Brooklyn, New York 11201
Main 4-5400

City Title Building
6 Grand Street
White Plains, New York 10601
White Plains 6-4500

City Title Building
1051 Franklin Avenue
Garden City, L.I., New York 11530
Pioneer 7-0100

Raymond-Commerce Bldg
1180 Raymond Boulevard
Newark, New Jersey 07102
Market 4-7800

City Title Building
230 Levittown Parkway
Levittown, Pennsylvania 19054
Windsor 6-2800

Mosby Building
10560 Main Street
Fairfax, Virginia 22030
Phone: 591-4099

THE ONLY TITLE COMPANY SERVING LAWYERS EXCLUSIVELY

CITY TITLE INSURANCE COMPANY

CHARTERED UNDER THE INSURANCE LAW OF THE STATE OF NEW YORK

CITY TITLE BUILDING
230 LEVITTOWN PARKWAY, LEVITTOWN, PENNSYLVANIA

October 18, 1972

Cobra Products, Inc.
84 Junius Street
Brooklyn, New York 11212
Att: Ronald Moss, Vice President

RE: P32740-B
Willingboro Industrial Park

Dear Mr. Moss:

This letter is to be considered as forming part of Title Policy P32740-B which is to be attached thereto, in Lieu of an endorsement and replaces our letter dated May 12, 1972.

PAGE 1

The amount of the Policy is changed from $150,000.00 to $170,000.00.
The date of the Policy is changed from April 13, 1970 to May 12, 1972.

PAGE 2 - SCHEDULE A

The amount of Insurance is changed from $150,000.00 to $170,000.00.
The date of issue is changed from April 13, 1970 to May 12, 1972.

Said Policy P32740-B is amended as follows:

SCHEDULE B Item 8 is deleted therefrom and replaced with:

8. 1972 Taxes - 3rd and 4th quarter.

SCHEDULE B - The following items are added thereto as follows:

15. Mortgage made by Cobra Products, Inc., to New Jersey National Bank, in the sum of $170,000.00 dated May 11, 1972, recorded May 12, 1972 in the County Clerk's Office of Burlington County, at Mt. Holly, New Jersey, in Mortgage Book 1053 page 729.
16. Water and Sewer rents from July 4, 1972. Any excess water and sewer rents since May 8, 1972.
17. Secured Transavtion: Debtor: Cobra Products, Inc., A New Jersey Corporation, Secured Party: The Bank of New York 530 Fifth Avenue, New York 10036, filed 12/14/71 in the Office of the County Clerk of Burlington County, Mt. Holly, New Jersey #22009 covering all machinery, equipment, Furniture and fixtures, etc.
18. Electric and Gas Agreement recorded in Deed Book 1730 page 1173 and Easement as in Deed Book 1745 page 741.

Nothing herein contained shall be construed as extending or changing the effective date of said policy unless otherwise expressly stated.

Very truly yours,
CITY TITLE INSURANCE COMPANY

Anthony V. LoPopolo
Second Vice President

AVL/mj

OFFICES

Home Office
32 Broadway
New York 4, New York
Whitehall 4-5900

City Title Building
153 Remsen St.
Brooklyn 1, New York
MAin 4-5400

6 Grand Street
Opposite The Courthouse
White Plains, New York
White Plains 6-4500

234 Old Country Road
Opposite The Courthouse
Mineola, New York
Pioneer 7-0100

City Title Building
224 West Main Street
Riverhead, New York
Park 7-0200

Raymond-Commerce Bldg.
1180 Raymond Boulevard
Newark 2, New Jersey
Market 4-7800

City Title Building
230 Levittown Parkway
Levittown, Pennsylvania
Windsor 6-2800

Norfolk Office
Suite 906 Maritime Tower
Norfolk 10, Virginia
Madison 2-3259

NOV 10 1972

NEW JERSEY NATIONAL BANK

ONE WEST STATE STREET · TRENTON, NEW JERSEY 08603 · (609) 989-7700

EUGENE A. VON GONTEN
ASSISTANT VICE PRESIDENT

November 8, 1972

Mr. Anthony V. LoPopolo, Second Vice President
City Title Insurance Company
230 Levittown Parkway
Levittown, Pennsylvania

Dear Mr. LoPopolo:

On May 3, 1972, the City Title Binder No. P33625 was issued to support a request by Cobra Products, Inc. for a mortgage of $170,000.00. This title binder did not indicate any prior liens other than an existing mortgage held by New Jersey National Bank. Based on this title policy and oral bring down, Alvin B. Marshall of Lipkin, Stutzman, Marshall and Bohorad, Pottsville, Pennsylvania advised New Jersey National Bank that our mortgage in the amount of $170,000 was a first and valid lien.

There was negotiating in regard to the title policy, and because of these negotiations, we finally received, on October 18, 1972, an endorsement showing coverage in the amount of $170,000. Your letter contained an endorsement to recite secured transactions with the Bank of New York on all machinery and equipment on December 14, 1971.

Since this did not appear on your title binder, and since this does not affect the real estate, I ask that you remove Item #8 under Schedule "B" from the title policy.

If you have any questions, please call me.

Sincerely,

E. A. Von Gonten

E. A. Von Gonten
Assistant Vice President

VG:sf

cc: Alvin B. Marshall
Arthur Bushkin

THE ONLY TITLE COMPANY SERVING LAWYERS EXCLUSIVELY

CITY TITLE INSURANCE COMPANY

CHARTERED UNDER THE INSURANCE LAW OF THE STATE OF NEW YORK

CITY TITLE BUILDING
230 LEVITTOWN PARKWAY, LEVITTOWN, PENNSYLVANIA

May 12, 1972

Cobra Products, Inc.
84 Junius Street
Brooklyn, New York 11212
Att: Ronald Moss, Vice President

RE: P32740-B
Willingboro Industrial Park

Dear Mr. Moss:

This letter is to be considered as forming part of Title Policy P32640-B which is to be attached thereto, in Lieu of an endorsement.

PAGE 1

The amount of the Policy is changed from $150,000.00 to $170,000.00
The date of the Policy is changed from April 13, 1970 to May 12, 1972.

PAGE 2 - SCHEDULE A

The amount of Insurance is changed from $150,000.00 to $170,000.00
The date of Issue is changed from April 13, 1970 to May 12, 1972

Said Policy P32740-B is amended as follows:

SCHEDULE B Item 8 is deleted therefrom and replaced with:

8. 1972 Taxes - 3rd and 4th Quarter.

SCHEDULE B - The following items are added thereto as follows:

15. Mortgage made by Cobra Products, Inc., to New Jersey National Bank, in the sum of $170,000.00 dated May 11, 1972, recorded May 12, 1972 in the County Clerk's Office of Burlington County, at Mt. Holly, New Jersey, in Mortgage Book 1053 page 729.

16. Water and Sewer rents from July 4, 1972. Any excess water and sewer rents since May 8, 1972.

17. Secured Transaction: Debtor: Cobra Products, Inc., A New Jersey Corporation Secured Party: The Bank of New York 530 Fifth Avenue, New York 10036, filed 12/14/71 in the Office of the County Clerk of Burlington County, Mt. Holly, New Jersey #22009 covering all machinery, equipment, furniture and fixtures, etc.

Nothing herein contained shall be construed as extending or changing the effective date of said policy unless otherwise expressly stated.

Very truly yours,
CITY TITLE INSURANCE COMPANY

Anthony V. LoPopolo
Second Vice President

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGIONAL OFFICE
26 FEDERAL PLAZA, NEW YORK, NEW YORK 10007

REGION II

MAY 9 1973

IN REPLY REFER TO:
2G

Mr. Peter P. Guzzo, Secretary
Real Estate Title Insurance Study Commission
Legislative Services Agency
State House
Trenton, New Jersey 08625

Dear Mr. Guzzo:

We acknowledge receipt of your letter dated April 24, 1973 and thank you for your invitation to appear before the Real Estate Title Insurance Study Commission on May 10, 1973. Since I will be unable to attend, I submit this letter as my statement on behalf of this Department with regard to your study.

You indicate that you have the report entitled "Report on Mortgage Settlement Cost" prepared and issued by this Department in January 1972. This report does make the following statement as one of its findings (pg. 4):

> "State regulation of title insurance and other title related costs is essential but presently is largely ineffective."

Since your study is the first step leading to effective regulation, we applaud it.

Your attention is directed to Chapter VI of the report, particularly Section B, entitled "Recommendations for State Action." The recommendations appear clear and need no further explanation.

In addition, we enclose a copy of the Department's proposed regulations relating to "Maximum charges, fees or discounts" published for comment in the Federal Register on July 4, 1972. Comments have been received and are now under evaluation.

I have asked our Regional Counsel, Mr. Thomas P. Loftus, to insure that your office is kept informed of any new developments within this Department relating to the subject matter of your study.

Sincerely,

S. William Green
Regional Administrator

Enclosure

AREA OFFICES
BUFFALO, NEW YORK · CAMDEN, NEW JERSEY · NEWARK, NEW JERSEY · NEW YORK, NEW YORK · SAN JUAN, PUERTO RICO
Insuring Offices
Albany, New York · Hempstead, New York

earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of a State. All grantees other than a State, as so defined, must return all interest earned on grant funds to the Federal Government.

(2) *Royalties.* Royalties earned from publications or similar material produced from a grant must first be used to reduce the Federal share of the grant funds expended to cover the costs of publishing or producing the materials. Royalties in excess of the costs of publishing or producing the materials shall be distributed as in subparagraph (3) of this paragraph.

(3) *Other income.* Other income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in Chapter 1–420 of the Department of Health, Education, and Welfare Grants Administration Manual as determined by the Secretary in the grant award.

(d) *Grant closeout*—(1) *Date of final accounting.* A grantee shall render, with respect to each approved project, a full account, as provided herein, as of the date of termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any credits for material on hand as provided in paragraph (b) of this section;

(iii) Any credits for earned interest pursuant to paragraph (c)(1) of this section;

(iv) Any other settlements required pursuant to paragraph (c) (2) and (3) of this section.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by set-off or other action as provided by law.

§ 51.214 Records, reports, inspection.

(a) *Records and reports.* Each grant awarded pursuant to this part shall be subject to the condition that the grantee shall maintain such progress and accounting records, identifiable by grant number, and file with the Secretary such progress and fiscal reports relating to the use of grant funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. All records shall be retained for 3 years after the close of the budget period. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified by the end of such 3-year period, such records shall be retained (1) for 5 years after the close of the budget period or (2) until the grantee is notified of the completion of the Federal audit, whichever comes first. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions.

(b) *Inspection and audit.* Any application for a grant under this subpart shall constitute the consent of the applicant to inspections at reasonable times by persons designated by the Secretary of the facilities, equipment and other resources of the applicant and to interviews with principal staff members to the extent that such resources and personnel are, or will be, involved in the project. In addition, the acceptance of any grant under this subpart shall constitute the consent of the grantee to inspections and fiscal audits by such persons of the supported activity and of progress and fiscal records relating to the use of grant funds.

§ 51.215 Additional conditions.

The Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of such award when in his judgment such conditions are necessary to assure or protect the advancement of the project, the interests of public health, or the conservation of grant funds.

§ 51.216 Early termination of grant or withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the Act or with the terms of the grant, including the regulations of this subpart, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the Act and the regulations. Noncancellable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

[FR Doc.72-10146 Filed 7-6-72;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner (Federal Housing Administration)

[24 CFR Part 203]

[Docket No. R-72-197]

MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Maximum Charges, Fees or Discounts

Pursuant to section 701 of the Emergency Home Finance Act of 1970, 12 U.S.C. 1430 note, 84 Stat. 450, 464, the Secretary of Housing and Urban Development is authorized to establish standards governing the amounts of settlement costs allowable in connection with HUD insured mortgage transactions. Such standards are to be based on the Secretary's determination of a reasonable charge for necessary services.

Pursuant to this directive, it is proposed that § 203.27 of the regulations of the Assistant Secretary for Housing Production and Mortgage Credit be revised as set forth below. The maximum standards will be established by the Secretary for specific areas where the Secretary determines that excessive fees and charges are being collected from mortgagors and sellers in connection with the mortgage transaction. Special provisions will be added for areas where these maximums are established. Existing provisions in § 203.27 will be retained for the remainder of the country. Standards for 6 metropolitan areas are being published for comment in this issue of the FEDERAL REGISTER and it is further contemplated that standards will be set in the near future for additional areas in which the Secretary deems the setting of such standards to be advisable.

No change is proposed at this time in the amount the mortgagee may collect as an origination fee. HUD and VA are jointly studying the question as to what is a reasonable amount to be allowed the mortgagee for originating and closing the mortgage loan. In this study we are considering the question as to whether to allow the collection of a separate "Closing Fee", as included in our proposed schedule of maximum settlement charges, or whether this fee is to be absorbed by the mortgagee from the origination fee.

The maximum settlement charges to be fixed have been derived from cost data produced by a comprehensive survey of all HUD and VA loan closings during March of 1971. Statistical and economic analyses were performed on this data, and additional information concerning the nature of the services rendered for various charges was collected. Proposed maximums were then developed and were reviewed by personnel of the HUD Insuring Offices in the areas in question. The maximums appearing in this issue of the FEDERAL REGISTER were then established.

In addition, it is proposed that a uniform "Settlement Cost Reporting Form" be submitted to HUD by the mortgagee following the settlement of each loan to which § 203.27 applies. A copy of the form proposed for this purpose is reproduced in this issue of the FEDERAL REGISTER. Comments on the proposed amendment, "Settlement Cost Reporting Form" and settlement cost maximums are solicited from mortgagees, mortgagors, persons who supply services in connection with real estate settlements, public interest groups and all other interested parties. Interested parties are also requested to comment on whether the proposed maximums should also apply to mortgages on individual dwelling units insured under sections 213(d) and 234 of the National Housing Act.

Inasmuch as certain of the proposed revision constitutes substantive modification of the existing regulation, the Department is providing an opportunity for comment with respect to the proposal before adoption of a final rule.

Interested persons are invited to participate in the making of the proposed rule by submitting such written comments or suggestions as they may desire. Communications should identify the subject matter by the above title and area affected and should be submitted in triplicate to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10256, 451 Seventh Street SW., Washington, DC 20410. All communications received on or before July 31, 1972 will be considered before taking action on the proposal. The proposals contained in this notice may be changed in the light of comments received. A copy of each submittal will be available for public inspection during business hours at the above address.

Accordingly, we propose to revise § 203.27 to read as follows:

§ 203.27 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees, or discounts:

(1) The application fees provided for in this part.

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater; or

(ii) $50 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

(iii) If the mortgage involves repair or rehabilitation, and the mortgagee meets the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, the charge prescribed in subdivision (ii) of this subparagraph may be collected in connection with that portion of the mortgage applied to such repair or rehabilitation. The charge with respect to any part of the mortgage not applied to repair or rehabilitation, or any part of the mortgage so applied which does not meet the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, shall be limited to that provided in subdivision (i) of this subparagraph.

(3) Except as provided in paragraph (b) of this section reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any; and

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts if the mortgagor is:

(i) A builder constructing houses for sale who executes the mortgage in his own name;

(ii) Constructing a dwelling for his own occupancy; or

(iii) Refinancing an existing indebtedness secured by the property owned by the mortgagor.

(iv) Purchasing the property from a governmental agency or municipal corporation which is precluded by statute from paying the discount.

(v) A builder or realtor who is purchasing a dwelling from an owner-occupant.

(b)(1) Where the Secretary determines that excessive fees and charges are being collected from mortgagors and sellers in connection with mortgage transactions involving property located in specific geographic areas he shall establish, from time to time, by publication in the FEDERAL REGISTER, dollar limitations on the combined amounts that may be charged the mortgagor and seller by the mortgagee or any other person or entity for each of the following services, as defined by the Secretary, which are rendered in connection with a mortgage on property located in such areas:

(i) Credit Report.
(ii) Survey.
(iii) Title Examination.
(iv) Title Insurance.
(v) Closing Fee.
(vi) Pest and Fungus Inspection.

(2) Where limits on fees and charges prescribed in a geographical area pursuant to subparagraph (1) of this paragraph, no other amounts shall be collected from the mortgagor or seller in connection with the making of a mortgage loan or a purchase financed by such mortgage loan except principal and interest payments required to be paid under the terms of the mortgage and amounts for prepaid expenses, premiums for hazard and mortgage insurance, recordation and transfer fees and taxes, real estate brokerage commissions, mortgage discount points that may be charged the seller, charges for additional structural inspections, certifications or warranties requested by the mortgagor, fees for legal or financial advice in connection with the transaction that may be paid by the mortgagor to an attorney or other advisor selected by the mortgagor, and charges authorized under paragraph (a) of this section.

(c) [Reserved]

(d) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner, on the form prescribed by the Commissioner, a listing of all charges, fees, and discounts paid by the mortgagor and by the seller of the property, if any, and certified as accurate and complete by the mortgagor and the seller, if any, and by the closing agent. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees, or discounts.

(e) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

Issued at Washington, D.C., June 28, 1972.

EUGENE A. GULLEDGE,
Assistant Secretary for Housing Production and Mortgage Credit, Federal Housing Commissioner.

[FR Doc.72-10127 Filed 7-3-72;8:46 am]

[24 CFR Part 203]

[Docket No. R-72-198]

MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Proposed Maximum Settlement Charges

Pursuant to section 701 of the Emergency Home Finance Act of 1970, 12 U.S.C. 1430 note, 84 Stat. 450, 464, the Secretary of Housing and Urban Development is authorized to establish standards governing the amounts of settlement costs allowable in connection with HUD insured mortgage transactions. Such standards are to be based on the Secretary's determination of a reasonable charge for necessary services.

Section 203.27 of 24 CFR pertains to "Maximum Charges, Fees or Discounts". Inasmuch as the proposed revision of § 203.27 that is being published in this issue of the FEDERAL REGISTER constitutes a substantive modification of the existing regulation, the Department is providing an opportunity for comment with respect to the proposal before adoption of a final rule.

Interested persons are invited to participate in the making of the proposed rule by submitting such written comments or suggestions as they may desire. Communications should identify the subject matter by the above title and area affected and should be submitted in triplicate to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10256, 451 Seventh Street SW., Washington, DC 20410. All communications received on or before July 31, 1972 will be considered before taking action on the proposal. The proposals contained in this notice may be changed in the light of comments received. A copy of each submittal will be available for public inspection during business hours at the above address.

The following maximum charges for settlement services are proposed in accordance with the revised 24 CFR 203.27 in the following specific geographic areas:

MAXIMUM SETTLEMENT CHARGES

I—CLEVELAND SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	$50.
(3) Title examination	$100.
(4) Title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 of coverage for owners policy. $3 per $1,000 plus $15 for a lenders and owners policy issued simultaneously.
(5) Closing fee	$60.
(6) Pest and fungus inspection	$20.

II—NEWARK SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	$60.
(3) Title examination	$130.
(4) Title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 of coverage for owners policy. $3 per $1,000 plus $10 for a lenders and owners policy issued simultaneously.
(5) Closing fee	$50.
(6) Pest and fungus inspection	$15.

III—SAN FRANCISCO-OAKLAND SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	A separate charge for this service is not permitted in the area.
(3) Title examination and title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 of coverage for owners policy and owners and lenders policy issued simultaneously. An additional $75.00 for a CLTA policy or an additional $100.00 for a lenders or lenders and owners ALTA policy issued simultaneously.
(4) Closing fee	$60.
(5) Pest and fungus inspection	$25.

IV—SEATTLE-EVERETT SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	A separate charge for this service is not permitted in the area.
(3) Title examination and title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 of coverage for an owners policy. $3 per $1,000 plus $12 for a lenders and owners policy issued simultaneously. An additional $90.00 for a ALTA lenders or lenders and owners policy issued simultaneously.
(4) Closing fee	$60.
(5) Pest and fungus inspection	$30.

V—ST. LOUIS SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	$50.
(3) Title examination	$90.
(4) Title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 plus $15 for a lenders and $3 per $1,000 for owners policy. owners policy issued simultaneously.
(5) Closing fee	A separate charge for this service is not permitted in the area.
(6) Pest and fungus inspection	$15.

VI—WASHINGTON, D.C. SMSA

(1) Credit report	The charges for a credit report are to be in accordance with the current HUD contracts in the SMSA covering credit report fees.
(2) Field survey	$55.
(3) Title examination	
District of Columbia	$90.
Maryland and Virginia	$130.
(4) Title insurance	$2 per $1,000 of coverage for lenders policy. $3 per $1,000 of coverage for owners policy. $3 per $1,000 plus $10 for a lenders and owners policy issued simultaneously.
(5) Closing fee	$50.
(6) Pest and fungus inspection	$15.

The following proposed "Settlement Cost Reporting Form" would be used in connection with the proposed revision of 24 CFR 203.27.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING PRODUCTION AND MORTGAGE CREDIT

SETTLEMENT COST REPORTING FORM

NOTE: This form Itemizes actual costs incurred and paid for settlement services regardless of whether they are actually paid at, before, or after the closing.

Lender's Name and Address	Closing Agent's Name and Address
FILE NO.	FILE NO.
Location of Property (Street Address, City, State and ZIP Code)	☐ New ☐ Existing ☐ New Subdivision No. of Lots:	Sales Price $	Mortgage Amount $
Date of Settlement / Place of Settlement	Sec. of National Housing Act	HUD Case No.

ITEM	PAID BY BUYER	PAID BY SELLER	TOTAL COST	AREA MAXIMUM
I. TOTAL SETTLEMENT COSTS				
II. TOTAL CLOSING COSTS				
A. TOTAL PRIVATE COSTS				
1. Credit Report				
2. Application Fee				
3. Field Survey				
4. Title Examination				
5. a. Title Insurance (Lender's Policy)				
b. Title Insurance (Owner's Policy)				
6. Attorney Fees				
7. Origination Fee				
8. Closing Fee				
9. Termite Inspection				
10. Structural Inspection				
B. TOTAL PUBLIC COSTS				
1. Recording Fees				
2. Transfer Taxes				
III. LOAN DISCOUNT PAYMENT ____ %				
IV. TOTAL PREPAID ITEMS: (ESTIMATED ANNUAL AMOUNT)				
A. REAL ESTATE TAXES				
B. MORTGAGE INSURANCE				
C. HAZARD INSURANCE				
D. SPECIAL ASSESSMENT (If applicable)				
V. BROKER'S SALES COMMISSION ____ %				

DO NOT SIGN UNTIL ALL ENTRIES ARE COMPLETED ON THIS FORM. DO NOT SIGN IN BLANK! READ AND UNDERSTAND ALL ENTRIES FIRST.

BORROWER – PURCHASER

I have received and read a completed copy of this disclosure statement. To the best of my knowledge and belief all the entries on this form are true and correct and the "settlement charges" listed hereon represent actual costs incurred on my behalf and paid by me in order to complete the transaction depicted on the form. Furthermore, I have not paid any charges or fees for settlement services other than those itemized and listed on this form.

Purchaser (Signature) _____ Date _____ Purchaser (Signature) _____

(Address) _____ (Address) _____

SELLER

I have received and read a completed copy of this disclosure statement. To the best of my knowledge and belief all the entries on this form are true and correct and the "seller's settlement charges" listed hereon represent actual costs incurred on my behalf and paid by me in order to complete the transaction outlined on the form. Furthermore, I have not paid any fee or charges or received any remuneration in the form of a rebate or discount for settlement services other than those itemized and listed on this form

Seller _____ Date _____ Seller _____

Address, Firm Name, and Title (if applicable) _____ Address, Firm Name, and Title (if applicable) _____

WARNING: Section 1010 of Title 18, U.S.C., "Department of Housing and Urban Development and Federal Housing Administration transactions provides: "Whoever, for the purpose of . . . influencing in any way the action of such department, makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years or both.

(Closing Agent's Certification on Reverse)

CLOSING AGENT

1. To the best of my knowledge and belief all the entries on this form are true and correct and represent the total number of actual costs incurred for actual services rendered.

2. In addition, I have obtained and retain in my possession certifications from those parties who provided the settlement services listed in Section II and Section V of this form listed in Section II and Section V on this form and sworn to under penalty of perjury that the costs reported by them were actually incurred and that none of these parties has paid or received a fee, commission, stipend, gratuity, or other form of remuneration in relation to this transaction not specifically authorized by HUD and listed as an allowable charge on the face of this form.

3. Furthermore, _____ *(Closing Agent)* **being duly sworn, swears, deposes and says that he (it) has not paid or received a fee, commission, stipend, gratuity, or other form of remuneration in relation to this transaction not specifically authorized by HUD and listed as an allowable charge on the face of this form.**

_____ *Closing Agent*

Date _____

_____ *Address, Firm Name, and Title (if applicable)*

Date _____

_____ *Notary Public*

_____ *Address*

The following definitions of maximum charges for settlement services shall be used in connection with the proposed revision of 24 CFR 203.27.

DEFINITIONS OF MAXIMUM CHARGES FOR SETTLEMENT SERVICES ALLOWED IN CONNECTION WITH HUD INSURED SINGLE FAMILY MORTGAGE TRANSACTIONS

1. *Credit Report Fee.* A credit report is a report of the prospective mortgagor's financial and credit standing. It gives the credit record of the prospective borrower and shows how well he has handled past and present obligations. The charges for a credit report are to be in accordance with the current HUD contracts covering credit report fees.

2. *Field Survey Charge.* A survey is the process by which a parcel of land is measured and its contents ascertained. It will usually include a legal description of the property's boundary lines, dimensions of the property, locations of buildings, fences, and other improvements. Charges for this service must involve an actual measurement of the property made on the premises.

3. *Title Examination Fee.* A fee charged for a search of the records relating to a specific piece of property which was performed to determine the status of the title with regard to its marketability and to ascertain whether any liens, easements, encumbrances and possible "clouds" on the title exist.

4. *Title Insurance Charge.* A fee charged for the issuance of an insurance policy to the mortgagee or owner as a protection against loss in the event title to the mortgaged property is found to be defective. A mortgagee's policy protects only the lender's interest! An owner's policy can be purchased at an additional charge.

5. *Closing Fee.* This is a fee paid to an attorney, title insurer, mortgagee or some other third party for handling the settlement or acting as an independent escrow agent. At closing the parties to the sale sign the necessary documents, determine the amounts to be exchanged and make the appropriate payments. Where escrow agents are utilized, they act as independent fiduciaries charged with holding the evidence of the transfer in trust for the parties until all the steps of the transfer are completed according to the terms of the sales contract.

6. *Pest and Fungus Inspection Fee.* This is a fee paid for the inspection of the property and certification of its condition as is customarily required by lending institutions in the locality with respect to possible damage by termites, other structural pests, dry rot or similar perils. It does not include a warranty against future infestation.

Issued at Washington, D.C., June 28, 1972.

EUGENE A. GULLEDGE,
Assistant Secretary for Housing Production and Mortgage Credit, Federal Housing Commissioner.

[FR Doc.72-10128 Filed 7-3-72;8:46 am]

JUN 17 1985