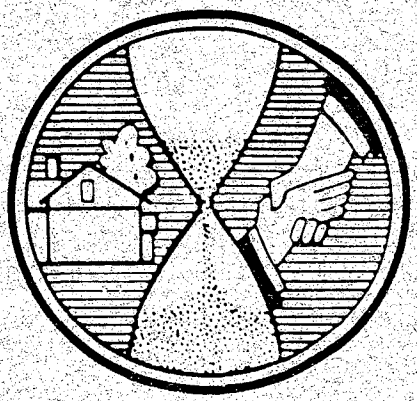
American Bar Association
Section of Real Property, Probate and Trust Law



Critical Trends in Land Transactions

Tuesday, August 7, 1990
Chicago, Illinois

8:45 A.M. - 10:15 A.M.
Promenade Ballroom B
Hotel Nikko Chicago

Moderators:
H. Bishop Dansby
Flora Schnall

AMERICAN BAR ASSOCIATION
SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW

CRITICAL TRENDS IN LAND TRANSACTIONS

HOTEL NIKKO CHICAGO

Moderators: H. Bishop Dansby
Flora Schnall
Speakers: Kraettli Epperson
Charles Jacobus
Marvin Garfinkel
Bernard Rifkin

#28

CRITICAL TRENDS IN LAND TRANSACTIONS

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TAB A

JOINT ABA/OBA/OCU T.E.S.
RESOURCE CENTER PROJECT

INTERIM RESULTS OF SURVEY

May 21, 1990

BY THE STATE CUSTOMS AND PRACTICES SUB-COMMITTEE
OF THE
CONVEYANCING COMMITTEE
OF THE
REAL PROPERTY DIVISION OF THE
REAL PROPERTY, PROBATE AND TRUST SECTION OF THE ABA

CHAIRMAN: Kraettli Q. Epperson
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LAWRENCE, LAUDICK & MORGAN
6440 Avondale, Suite 200
Oklahoma City, Oklahoma 73116
(405) 840-2470

AND

VICE CHAIRMAN: Kevin A. Sullivan
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5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
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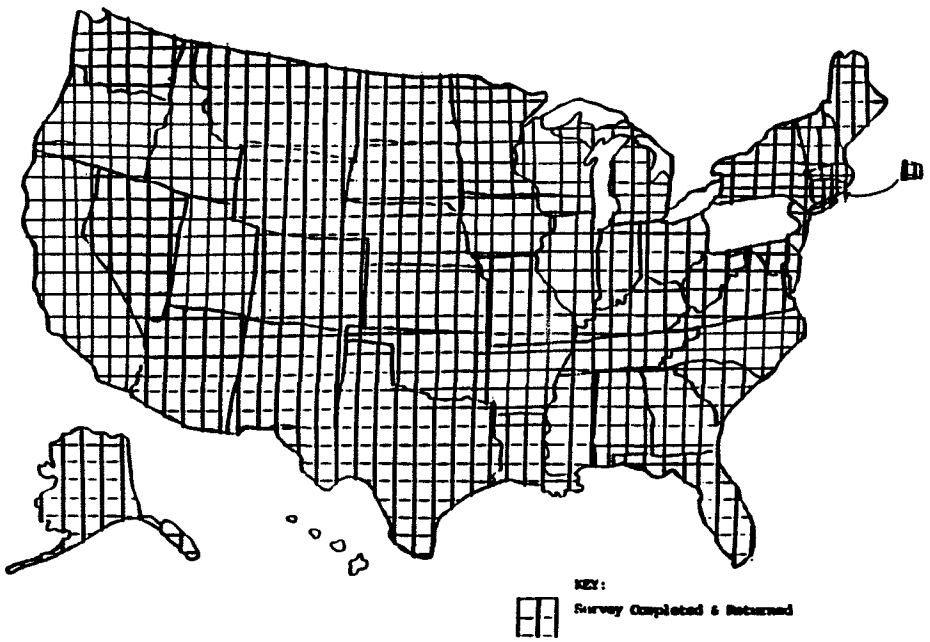
1. T.E.S. SURVEYS COMPLETED AND RETURNED
Joint ABA/OBA/OCU T.E.S. Resource Center
Project Interim Survey Results
(May 21, 1990)



JOINT ABA/OBA/OCU T.E.S. RESOURCE CENTER PROJECT

Interim Status Report (As of May 21, 1990)

TABLE OF CONTENTS

INTRODUCTION

In order to facilitate multi-state conveyancing transactions and to encourage greater uniformity in nationwide conveyancing standards, the State Customs and Practices Subcommittee of the ABA* distributed a survey to all 50 states (1) to determine which states had Title Examination Standards and related materials, and real property related state bar committees, and (2) to collect copies of such materials and such information in a central place accessible to real estate attorneys and other real estate professionals nationwide.

This idea originated in August, 1987, and the endorsement and the financial assistance of the ABA Real Property Division and the Oklahoma Bar Association Real Property Section was enlisted. The Oklahoma City University ("OCU") School of Law agreed to act as the depository for the materials being collected.

Since August, 1987, completed surveys have been received from 48 of the 50 states, Title Examination Standards have been received from all of the 20 states with such Standards. Other related materials have been received from one other state, and all these materials have been deposited with the OCU School of Law library in a collection known as the "Title Examination Standards Resource Center". The effort to collect additional survey information and materials is continuing and the documents already received are now accessible by visiting the Resource Center in Oklahoma City, Oklahoma, or by calling the Resource Center at (405) 521-5062 and having the materials telecopied to the requesting party for a nominal charge. Such telecopy service is currently available to attorneys nationwide.

It is hoped that the availability of these materials will assist states which are developing Standards dealing with old issues or with new issues such as titles affected by the FDIC, the FSLIC, the RTC, environmental liens, drug enforcement liens, etc. Eventually the Resource Center will help advance national efforts to update the 1960 University of Michigan School of Law Model Title Standards, and to encourage further research and seminars on the subject of evidencing title transfers. A comparative analysis of all 20 States' Standards is also underway as a project of the ABA State Customs and Practices Subcommittee.*

* Officially known as the State Customs and Practices Subcommittee of the Conveyancing Committee of the Real Property Division of the Real Property, Probate and Trust Section of the American Bar Assocation.

The following report is hereby respectfully submitted and it summarizes the current results of our survey and Standards collection activities. Suggestions and assistance on this project from all attorneys and other real estate professionals are hereby heartily encouraged.

Kraettli Q. Epperson
Co-Chairman, ABA Conveyancing Committee
Chairman, ABA State Customs and Practices
Sub-Committee
Co-Chairman, OBA Real Property Section
Title Examination Standards Committee

JOINT ABA/OBA/OCU T.E.S.
RESOURCE CENTER PROJECT

STATUS OF SURVEY COMPLETION AND T.E.S. COLLECTION EFFORTS (As of May 21, 1990)

A. 48 of the states (96% out of 50) have completed and returned the ABA's T.E.S. Survey (see Map 1); only Pennsylvania and Hawaii have not completed it.

B. The following 27 states (54% out of 50) either had T.E.S. in 1960 according to Clearing Land Titles, Bayse, or have adopted T.E.S. since then according to the 46 completed surveys:

1. Colorado
2. Connecticut
3. Florida
4. Georgia**
5. Idaho*
6. Illinois*
7. Iowa
8. Kansas
9. Maine**
10. Massachusetts**
11. Michigan
12. Minnesota
13. Missouri
14. Montana*
15. Nebraska
16. New Hampshire
17. New Mexico*
18. New York
19. North Dakota
20. Ohio
21. Oklahoma
22. Rhode Island**
23. South Dakota
24. Utah*
25. Washington*
26. Wisconsin*
27. Wyoming

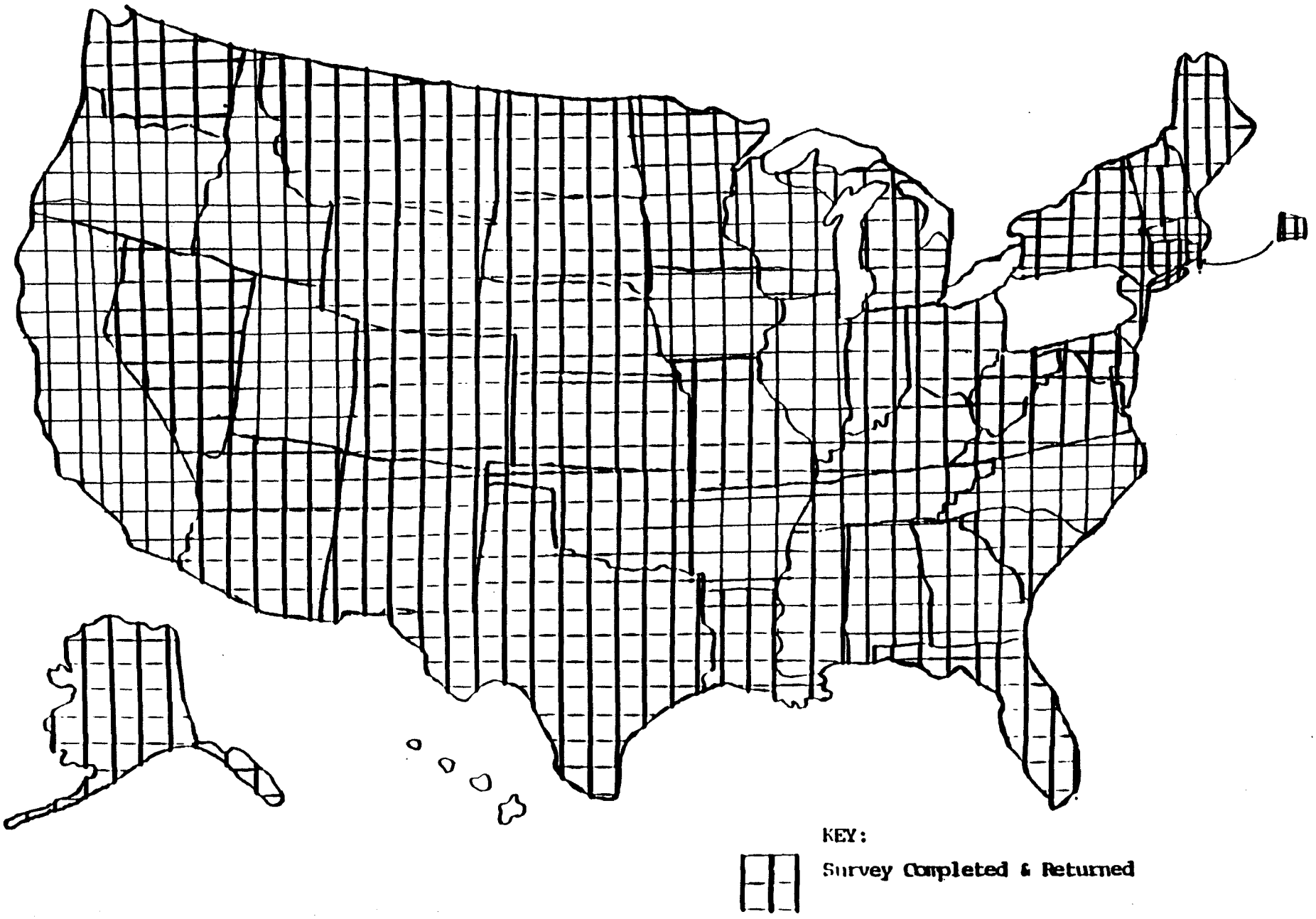
*States which have abandoned their T.E.S. since 1960
**States which adopted their first set of standards since 1960

C. Copies of "confirmed current" T.E.S. for the following 20 states are available in our Resource Center (see Map 2):

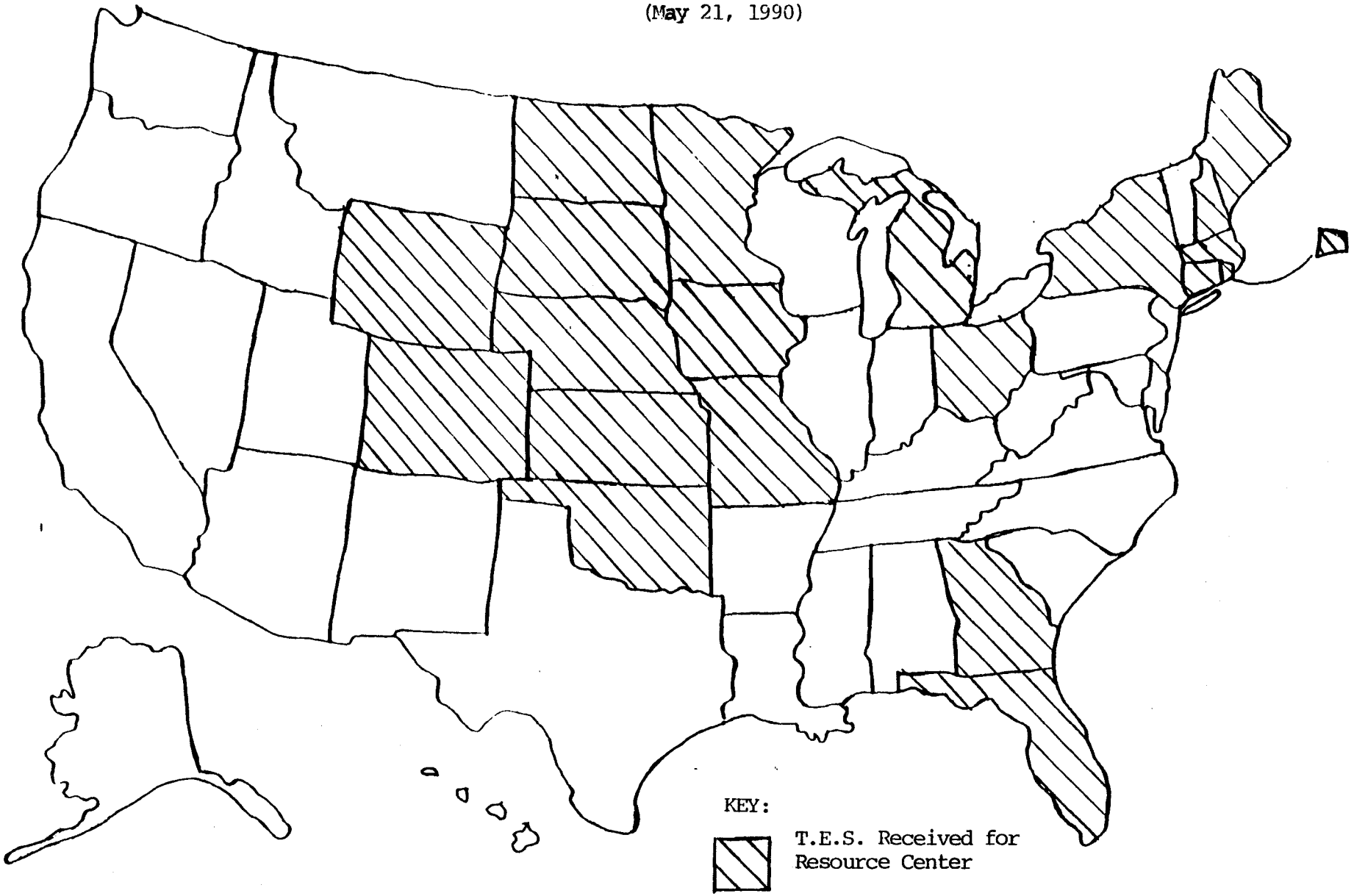
1. Colorado
2. Connecticut
3. Florida
4. Georgia
5. Kansas
6. Iowa
7. Maine
8. Massachusetts
9. Michigan
10. Minnesota
11. Missouri
12. Nebraska
13. New Hampshire
14. New York
15. North Dakota
16. Ohio
17. Oklahoma
18. Rhode Island
19. South Dakota
20. Wyoming

1. T.E.S. SURVEYS COMPLETED AND RETURNED

Joint ABA/OBA/OCU T.E.S. Resource Center
Project Interim Survey Results
(May 21, 1990)



2. T.E.S. RECEIVED FOR RESOURCE CENTER
Joint ABA/OBA/OCU T.E.S. Resource Center Project Interim Survey Results
(May 21, 1990)



JOINT ABA/OBA/OCU TITLE EXAMINATION
STANDARDS RESOURCE CENTER PROJECT

INDEX FOR TITLE EXAMINATION
STANDARDS MATERIALS AVAILABLE AT OCU
(As of May 21, 1990)

	BOOK NO.*	STATE, MATERIALS	EFFECTIVE DATE Total Revision	Partial Revision
1.	6A1	COLORADO, TES	1/1/87	
2.	7A1	CONNECTICUT, TES	Fall, 1987	
3.	9A1	FLORIDA, TES	1981	11/89
4.	10A1	GEORGIA, TES	1972	
5.	15A1	IOWA, TES	9/85	8/89
6.	16A1	KANSAS, TES	1986	
7.	19A1	MAINE, TES	12/7/83	1985
8.	21A1	MASSACHUSETTS, TES	1989	
9.	22A1	MICHIGAN, TES	1988	
10.	23A1	MINNESOTA, TES	1988	
11.	25A1	MISSOURI, TES	1970	1980
12.	27A1	NEBRASKA, TES	1987	1989
13.	29A1	NEW HAMPSHIRE, TES	1/1/88	
14.	32A1	NEW YORK, TES	1/1/88	
15.	34A1	NORTH DAKOTA, TES	12/88	12/7/89
16.	35A1	OHIO, TES	1/89	
17.	36A1	OKLAHOMA, TES	11/89	
18.	39A1	RHODE ISLAND, TES	11/85	
19.	41A1	SOUTH DAKOTA, TES	7/1/88	
20.	49C1	WISCONSIN, Other materials pertaining to 1979 Abstracting Standards	1979	
21.	50A1	WYOMING, TES	7/1/80	

****

*KEY:
a. The first symbol is a number which represents the state; e.g., "6" equals Colorado, which is the sixth state alphabetically.
b. The second symbol is a letter which represents the source of the material; i.e.: A - State, B - Local, and C - Other
c. The third symbol is a number which represents the order of receipt; e.g., "35A1" means the material is from Ohio, from the State level and it is the first item received from that source in that State.

****

FOR MORE INFORMATION CONTACT:

Librarian
Judy Morgan
OCU Law Library
23rd & Blackwelder
Oklahoma City, OK 73106
(405) 521-5062

Project Chairman
Kraettli Q. Epperson
Ames, Ashabranner, Taylor,
Lawrence, Laudick & Morgan
6440 Avondale Drive, Suite 200
Oklahoma City, OK 73116
(405) 840-2470

JOINT ABA/OBA/OCU TES Resource Center Project

INTERIM RESULTS OF T.E.S. SURVEY

(As of May 21, 1990)

No.	State	1. Survey Completed		2. TES Exist		3. TES Received		4. TES Last Updated (Year)
		YES	NO	YES	NO	YES	NO	
1	Alabama	X			X		X	
2	Alaska	X			X		X	
3	Arizona	X			X		X	
4	Arkansas	X			X		X	
5	California	X			X		X	
6	Colorado	X		X		X		1987
7	Connecticut	X		X		X		1987
8	Delaware	X			X		X	
9	Florida	X		X		X		1989
10	Georgia	X		X		X		1972
11	Hawaii		X					
12	Idaho	X			X		X	Note 1
13	Illinois	X			X		X	
14	Indiana	X			X		X	
15	Iowa	X		X		X		1989
16	Kansas	X		X		X		1986
17	Kentucky	X			X		X	
18	Louisiana	X			X		X	
19	Maine	X		X		X		1985
20	Maryland	X			X		X	
21	Massachusetts	X		X		X		1989
22	Michigan	X		X		X		1988
23	Minnesota	X		X		X		1988
24	Mississippi	X			X		X	
25	Missouri	X		X		X		1980
26	Montana	X			X		X	Note 2
27	Nebraska	X		X		X		1989
28	Nevada	X			X		X	
29	New Hampshire	X		X		X		1988
30	New Jersey	X			X		X	
31	New Mexico	X			X		X	Note 3
32	New York	X		X		X		1988
33	N. Carolina	X			X		X	Note 4
34	North Dakota	X		X		X		1989
35	Ohio	X		X		X		1989
36	Oklahoma	X		X		X		1989
37	Oregon	X			X		X	
38	Pennsylvania		X					
39	Rhode Island	X		X		X		1985
40	S. Carolina	X			X		X	
41	South Dakota	X		X		X		1988
42	Tennessee	X			X		X	
43	Texas	X			X		X	
44	Utah	X			X		X	Note 5
45	Vermont	X			X		X	
46	Virginia	X			X		X	
47	Washington	X			X		X	Note 6
48	W. Virginia	X			X		X	
49	Wisconsin	X			X		X	Note 7
50	Wyoming	X		X		X		1980
TOTAL		48	2	20	28	20	28	

Note 1: IDAHO: Only title examination standards were in the early 40's. A copy could not be located. 99% of all title work is done by title companies in Idaho.

Note 2: MONTANA: Title examination standards are no longer in existence. They were last published in 1961. Outdated; out of print; no movement to revise.

Note 3: NEW MEXICO: TES formulated in 1950s, never updated.

Note 4: NORTH CAROLINA: Proposed, but not adopted.

Note 5: UTAH: No longer used, under revision.

Note 6: WASHINGTON: No TES or abstract standards according to contact in Washington.

Note 7: WISCONSIN: Has 1979 abstract standards, but no TES.

JOINT ABA/OBA/OCU TES Resource Center Project

INTERIM RESULTS OF T.E.S. SURVEY

(As of May 21, 1990)

No.	State	5. Real Prop. Section			6. Other Committees			7. Centralized Local TES Location			8. TES Updated (No. Years)
		UNK	YES	NO	UNK	YES	NO	UNK	YES	NO	
1	Alabama		X				X			X	
2	Alaska		X				X			X	
3	Arizona		X			X				X	
4	Arkansas		X				X			X	
5	California		X			X				X	
6	Colorado		X			X				X	As needed
7	Connecticut		X				X			X	Periodically
8	Delaware		X				X			X	
9	Florida		X			X			X		Periodically
10	Georgia		X			X				X	Unknown
11	Hawaii	X			X			X			
12	Idaho			X			X			X	
13	Illinois		X		X					X	
14	Indiana		X			X				X	
15	Iowa		X				X			X	As needed
16	Kansas		X				X		X		As needed
17	Kentucky		X			X				X	
18	Louisiana		X				X			X	
19	Maine		X			X			X		Periodically
20	Maryland		X			X				X	
21	Mass.		X			X			X		ANNUALLY
22	Michigan		X			X				X	Periodically
23	Minnesota		X			X			X		ANNUALLY
24	Mississippi		X			X				X	
25	Missouri		X			X				X	Infrequently
26	Montana			X			X			X	
27	Nebraska		X			X			X		As needed
28	Nevada			X			X			X	
29	New Hamp.		X			X				X	ANNUALLY
30	New Jersey		X			X				X	
31	New Mexico		X				X			X	
32	New York		X			X				X	Infrequently
33	N. Carolina		X			X				X	
34	N. Dakota		X			X				X	Irregularly
35	Ohio		X			X				X	Periodically
36	Oklahoma		X			X			X		ANNUALLY
37	Oregon		X			X				X	
38	Penns.	X			X			X			
39	Rhode Island			X		X			X		Unknown
40	S. Carolina		X				X			X	
41	S. Dakota		X			X			X		ANNUALLY
42	Tennessee		X				X			X	
43	Texas		X				X			X	
44	Utah		X				X			X	
45	Vermont		X				X			X	
46	Virginia		X				X			X	
47	Washington		X			X				X	
48	W. Virginia			X			X			X	
49	Wisconsin		X			X				X	
50	Wyoming			X		X				X	Irregularly
TOTAL		2	42	6	3	28	19	2	9	39	

JOINT ABA/OBA/OCU TES Resource Center Project
INTERIM RESULTS OF T.E.S. SURVEY
(As of May 21, 1990)

No.	State	9. Use of Resource Center ("Yes") a. List	b. Contacts	c. Center	d. Contents	e. Loaner	f. Computer	g. Other	h. None
1	Alabama	X	X		X	X	X		
2	Alaska	X	X		X		X		
3	Arizona	X	X	X	X	X	X	X	
4	Arkansas	X	X			X	X		
5	California	X	X						
6	Colorado					X	X		
7	Connecticut	X	X		X	X	X		
8	Delaware	X	X						
9	Florida	X	X		X	X	X		
10	Georgia	X						X	
11	Hawaii								
12	Idaho	X	X			X			
13	Illinois								
14	Indiana	X	X		X	X	X		
15	Iowa								
16	Kansas	X	X						
17	Kentucky	X	X			X	X		
18	Louisiana	X	X		X	X	X		
19	Maine	X	X		X	X	X		
20	Maryland		X		X	X	X		
21	Massachusetts								X
22	Michigan								
23	Minnesota								
24	Mississippi								
25	Missouri	X	X		X	X			
26	Montana								
27	Nebraska	X	X		X	X	X		
28	Nevada								X
29	New Hampshire	X	X						
30	New Jersey								
31	New Mexico	X	X						
32	New York	X	X			X	X		
33	N. Carolina								
34	N. Dakota						X		
35	Ohio							X	
36	Oklahoma	X	X	X	X	X	X		
37	Oregon	X			X		X		
38	Pennsylvania								
39	Rhode Island								
40	S. Carolina	X	X			X			
41	S. Dakota	X	X		X	X	X		
42	Tennessee								
43	Texas								
44	Utah	X							
45	Vermont								
46	Virginia	X	X		X		X		
47	Washington	X	X			X	X		
48	W. Virginia								
49	Wisconsin	X	X		X		X		
50	Wyoming	X	X		X	X	X		
TOTAL		29	27	2	17	20	22	3	2

JOINT ABA/OBA/OCU T.E.S.
RESOURCE CENTER PROJECT

PROPOSED TELECOPY INFORMATION NOTICE
& INFORMATION REQUEST FORM

OCU OFFERS LIBRARY SERVICE

O.C.U. Law Library, and other academic law libraries in this region, now possess telefax equipment which allows rapid transmission of exact copies of library materials via telephone lines. O.C.U. Law Library is thus able to obtain materials not in its collection from other law libraries, in a short period of time. This service is available to attorneys at a minimal fee: $3.00 handling charge, $0.15 per page and long distance charges.

The Oklahoma Bar Journal

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5 -- 9 Cases	$7.50 service charge	+ 20¢ per page
10 + Cases	$1.00 per case	+ 20¢ per page

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Date _____

Request Taken By: _____

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WYOMING: Jerry M. Smith
2020 East D Street
Torrington, Wyoming 82240
(307) 532-2121

TAB B

Critical Trends in Land Transactions

Real Estate Brokerage

Charles J. Jacobus
August 7, 1990

Pertinent Brokerage Cases

Discrimination

Refusal to grant special use permit for people with AIDS may constitute a Fair Housing violation.
Baxter v. City of Belleville, Ill., 720 F.Supp. 720 (S.D. Ill. 1989).

Special outreach program in black neighborhood to attract white purchasers violated Fair Housing Act.
South-Suburban Housing Center v. Greater South Suburban Bd. of Realtors, 713 F.Supp. 1068 (N.D. Ill. 1988).

"Testers" still alive and well in Fair Housing Act. "Steering" issues.

Schimkus v. Shaffer, 143 A.D.2d 418 (N.Y. 1988).

"We don't allow blacks" comment in sale of a coop is a violation of Fair Housing Law. *Pinchback v. Armistead Homes Corp.*, 689 F.Supp. 541 (D.Md. 1988).

Disclosures

Condition of property
Owner/Seller/Broker held to a higher duty of care
Leflore v. Anderson, 537 So.2d 245 (La.App. 1988)
Wagner v. Conn. Real Estate Comm'n, 559 A.2d 999 (Pa.Commwlth 1989)

Relied on other inspection, broker is not liable.
McMullen v. Joldersma, 435 N.W.2d 428 (Mich. App. 1988)

Can't buy from principal without full disclosure.
Johnson Realty, Inc. v. Hurd, 377 S.E.2d 176 (1988)
Goldstein v. Dept. of State, 144 A.D.2d 463 (N.Y. 1988)
Boyne, U.S.A. Inc. v. Mallas, 769 P.2d 1235 (Mont. 1989).

Dual Agency

Can't.
Goldstein, supra (N.Y.)
Coldwell Banker v. Wilson, 700 F.Supp. 1340 (N.J. 1988)

Can
New Texas Statute (full knowledge and consent) art. 6573a §15.C.
"While extremely delicate", permissible when parties have full knowledge and consent. "cognizant disclosure"

Seller liability for broker's misconduct. Seller responsible for broker's misconduct.

- if within "apparent scope of authority"
Denlinger v. Mudgett, 559 A.2d 661 (Vt. 1989)
- if Seller benefits from misrepresentation
Century 21 Page One Realty v. Naghad, 760 S.W.2d 305 (Tex.App. 1988).

Caveat Emptor

Listing agent doesn't owe duty to disclose absent a confidential relationship.
Blackman v. First Real Estate Corp., 529 So.2d 955 (Ala. 1988)
although broker can't misrepresent or fail to disclose a health/safety defect
Cornelius v. Austin, 542 So.2d 1220 (Ala. 1989)

A REGULATORS GUIDE TO

FEDERAL REAL ESTATE APPRAISER REGULATION

Key Terminology

Appraisal Foundation ("Foundation") - nonprofit corporation of the appraisal industry consisting of eight private appraisal trade organizations (*American Institute of Real Estate Appraisers, American Society of Appraisers, American Society of Farm Managers and Rural Appraisers, International Association of Assessing Officers, International Right of Way Association, National Association of Independent Fee Appraisers, National Society of Real Estate Appraisers, Society of Real Estate Appraisers*), and six real estate related organizations. It is directed by a Board of Trustees which appoints two independent Boards: the *Appraisal Standards Board (ASB)* and the *Appraiser Qualifications Board (AQB).* The Federal Appraisers Act delegates to the Foundation the authority to (1) promulgate minimum qualifications criteria for State **certified** (but not State **licensed**) appraisers, (2) promulgate minimum appraisal standards for State certified and (presumably) licensed appraisers, and (3) issue or endorse an examination for State certified appraisers. Federal financial institutions must adopt appraiser qualifications criteria and appraisal standards which are at least equivalent to those promulgated by the Foundation and may adopt higher standards.

Appraisal Standards Board (ASB) - independent board of the private Appraisal Foundation responsible for promulgating minimum appraisal standards for appraisals performed in connection with federally related transactions. The *Uniform Standards of Professional Appraisal Practice* adopted by the Board are not subject to the approval of the Foundation's Board of Trustees.

Appraisal Subcommittee ("Subcommittee") - subcommittee of the Federal Financial Institutions Examination Council responsible for administrating the Federal Appraisers Act. Its chairperson and members are appointed by the Council and they must be knowledgeable in appraisal matters; its officers and staff are employed by the chairperson. The Subcommittees' functions include (1) approving and monitoring State licensing and certification programs, (2) monitoring the activities of Federal financial institutions regulatory agencies with regard to appraisal matters; (3) monitoring the activities of the Appraisal Foundation, and (4) maintaining a national registry of State licensed and certified appraisers. The Subcommittee may establish advisory committees. (Note: The Subcommittee also has a member appointed by the *Department of Housing and Urban Development,* which brings its total membership to six.)

Appraiser Qualifications Board (AQB) -independent board of the private Appraisal Foundation responsible for promulgating minimum qualifications criteria for State

certified real estate appraisers and issuing or endorsing a Uniform State Certification Examination. Qualifications criteria adopted by the Board are not subject to approval of the Foundation's Board of Trustees.

Circular A-129 (Rev.) - See "Office of Management and Budget."

Conference Committee Report - report of House/Senate Conference Committee which resolved the differences between the House and Senate versions of the Financial Institutions Reform, Recovery and Enforcement Act ("Savings and Loan Bailout Act"). Expresses the intent of the Conferees with regard to certain provisions in the Act, including that provision in Title XI (Real Estate Appraisal Reform Amendments) concerning the monitoring of State agencies. Although Title XI does not specifically address the subject, the Conferees stated their intent that decisions concerning the licensing/certification and regulation of real estate appraisers should not be made by the same *state officials* who license and regulate real estate agents, and that if these separate functions are, in fact, performed in the same *department*, then "adequate safeguards" must be established to avoid any conflicts of interest.

Federal Financial Institutions Examination Council (FFIEC, pronounced fi'fi-ec) - body composed of the heads of the following Federal financial institutions regulatory agencies: the *Board of Governors of the Federal Reserve System,* the *Federal Deposit Insurance Corporation* (insures funds on deposit in national banks and thrift institutions), the *Office of the Comptroller of the Currency* (charters and regulates national commercial banks), the *Office of Thrift Supervision* (charters and regulates national thrift institutions and replaces the former Federal Home Loan Bank Board), and the *National Credit Union Administration* (charters and regulates federal credit unions). Appoints the chairperson and members of an Appraisal Subcommittee which will administer the Federal Appraisers Act.

Federal Financial Institutions Regulatory Agencies - See "Federal Financial Institutions Examination Council."

Federally Related Transactions - transactions which require the services of a State licensed or certified real estate appraiser. Each Federal financial institutions regulatory agency, the *Federal National Mortgage Association (FNMA),* the *Federal Home Loan Mortgage Corporation (FHLMC),* and the *Resolution Trust Corporation (RTC)* must determine by August 1, 1990 which transactions will require the services of State licensed appraisers as opposed to State certified appraisers. Transactions include the sale, lease, purchase, exchange, financing, refinancing, etc. of real property which a Federal financial institutions regulatory agency, FNMA, FHLMC or RTC engages in, contracts for, or regulates. [*Note: Estimated to encompass approximately 85% of all real estate transactions.]*

Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA, pronounced *fi-re'a*) - so-called "Savings and Loan Bail-out Act") - *Title XI (Real Estate Appraisal Reform Amendments)* contains provisions requiring the use of State licensed or certified appraisers in federally related transactions after July 1, 1991 and puts in place the mechanism for approving and monitoring State appraiser licensing and certifying programs.

Office of Management and Budget (OMB) - Federal agency in the Executive Office of the President with jurisdiction over certain operating procedures of the Federal Housing Administration (FHA), the Veterans Administration (VA), the Farmers Home Administration (FmHA), and various other departments and agencies not covered under the Federal Appraisers Act. In November, 1988 issued *Circular A-129 (Rev.)* requiring Federal agencies under their jurisdiction to utilize the services of either State certified or licensed ("registered") appraisers after July 1, 1991. Agencies must also identify those real estate transactions in which State certified as opposed to State licensed appraisers must be used, and to establish qualifications criteria and practice standards for such appraisers which are at least equivalent to those promulgated by the Boards of the Appraisal Foundation. (Note: The FHA has elected to participate in the regulatory system established by Title XI of FIRREA and HUD has a representative on the Appraisal Subcommittee.)

Qualifications Criteria - education, experience and examination criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation which must be satisfied in order to become a State certified (but not State licensed) appraiser.

Real Estate Appraisal Reform Amendments - See "Financial Institutions Reform, Recovery and Enforcement Act."

Registry - roster of State licensed and certified real estate appraisers who are eligible to perform appraisals in federally related transactions. Requires that qualified appraisers pay a $25-$50 annual fee collected by the State regulatory body and remitted to the Appraisal Subcommittee.

Resolution Trust Corporation (RTC) - Federal agency which will manage the disposition of bankrupt thrifts and their real estate holdings. Its directors are the board members of the Federal Deposit Insurance Corporation.

State Certified Appraiser - individual who has satisfied the requirements for State certification in a State whose certification program has been approved by the Appraisal Subcommittee. Such program must provide for qualifications criteria (education, experience, examinations) and appraisal standards at least equivalent to those promulgated by the two Boards of the Appraisal Foundation. Entitles the individual to perform appraisals of all types of real estate (regardless of size or complexity) in federally related transactions.

State Licensed Appraiser - individual who has satisfied the requirements for State licensing in a State whose licensing program has been approved by the Appraisal Subcommittee. Entitles the individual to perform, in federally related transactions, appraisals of single family residential properties consisting of 1 to 4 units (unless the size and complexity of the appraisal requires a State-certified appraiser). State licensed appraisers are not subject to the qualifications criteria promulgated by the Appraiser Qualifications Board, but the Appraisal Subcommittee must approve the adequacy of the State's licensing requirements in order for State licensed appraisers to be eligible to be included on the Federal Registry.

Title XI (Real Estate Appraisal Reform Amendments) - See "Financial Institutions Reform, Recovery and Enforcement Act."

Uniform Standards of Professional Appraisal Practice (USPAP) - standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for the performance of real estate appraisals.

Key Dates

November 25, 1988 - Issuance of Circular A-129 (Rev.) by the Office of Management and Budget requiring the use of State licensed or certified appraisers in FHA, VA and certain other transactions after July 1, 1991.

August 9, 1989 - Enactment of Financial Institutions Reform, Recovery and Enforcement Act requiring the use of State licensed or certified appraisers in federally related transactions after July 1, 1991.

February 9, 1990 - Deadline for Federal financial institutions regulatory agencies and the Resolution Trust Corporation to propose rules identifying those transactions requiring the use of State-licensed as opposed to State-certified appraisers, and establishing appraisal standards which must be satisfied in connection with their appraisals.

August 9, 1990 - Deadline for Federal financial institutions regulatory agencies and the Resolution Trust Corporation to adopt final rules identifying those transactions requiring the use of State-licensed as opposed to State-certified appraisers, and establishing appraisal standards which must be satisfied in connection with their appraisals.

July 1, 1991 - After this date, all appraisals in connection with federally related transactions (including those involving the FHA and VA) must be performed by State licensed or certified appraisers unless the State is granted a six-month extension or a "temporary waiver".

Key Players

Appraisal Foundation ("Foundation") - 1029 Vermont Ave., NW, Suite 900, Washington, DC 20005 - 3271 (202/347-7722) FAX: (202) 347-7727.

David S. Bunton - Executive Vice-President
David W. Craig - Chairman of the Board of Trustees
John J. Leary - Chairman of the Appraisal Standards Board
Klopfenstein, James W. - Chairman of the Appraiser Qualifications Board

Appraisal Subcommittee (of the Federal Financial Institutions Examination Council) -

Blakely, Kevin M. - Chairman. Deputy Comptroller for Supervision, Office of the Comptroller of the Currency (OCC), 490 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20219 (202) 447-1711.

Baker, Edwin - Member. Chief of Valuation and Technical Support Branch, Office of Single Family Development Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410 (202) 755-6720.

Hornbrook, Timothy P. - Member. Director, Department of Supervision, Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20006 (202) 682-9645.

Miailovich, Robert F. - Member. Assistant Director, Office of Policy, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429 (202) 898-6918.

Short, Mary C. - Member. Deputy Director of Supervision Policy, Office of Thrift Supervision, 801 17th Street, NW, 12th Floor, Washington, DC 20006 (202) 331-4575.

Spillenkothen, Richard - Member. Deputy Associate Director, Division of Banking Supervision and Regulation, Federal Reserve Board, 20th & C Street, NW, Mail Stop #185, Washington, DC 20551 (202) 452-2594.

Mitchell, Dixon - Staff Assistant to Mr. Blakely. (202) 447-1711.

Congress - (Capitol Switchboard: 202/225-3121)

Barnard, Doug - Congressman (D-Georgia), Chairman of the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Government Operations Committee. Subcommittee studied and made recommendations regarding failed savings and loan and other thrift institutions. Drafted the Real Estate Appraisal Reform Act of 1987 which evolved into Title XI (Real Estate Appraisal Reform Amendments) of the 1989 Financial Institutions Reform, Recovery and Enforcement Act. U.S. House of Representatives, Room 2227, Rayburn House Office Building, Washington, DC 20515, (202) 225-4101.

Peterson, Richard W. - Staff Director of the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Government Operations Committee. U.S. House of Representatives, Room B 377, Rayburn House Office Building, Washington, DC 20515 (202) 225-4407.

Federal Financial Institutions Examination Council (FFIEC) - 1776 G. St., NW, Suite 701, Washington, DC 20006.

Lawrence, Robert - Executive Secretary. (202) 357-0177.
Todd, Keith J. - Assistant Executive Secretary and Coordinator for SLL Activities. (202) 357-0181. FAX: (202) 357-0191.

National Association of Real Estate License Law Officials (NARELLO) - Stephen J. Francis, Executive Vice-President, P.O. Box 129, Centerville, Utah 84014-0129 (801/298-5572).

National Association of REALTORS (NAR) - License Law, State and Municipal Division, 777 14th St., NW, Washington, DC 20005-3271 (202/383-1097).

Office of Management and Budget (OMB) -

Donahue, John F. - Senior Management Analyst and contact person for information regarding Circular A-129 (Rev.). New Executive Office Building, Credit and Cash Management Branch, Room 10236, 725 17th St., NW, Washington, DC 20503 (202/295-3066).

- Prepared by
Phillip T. Fisher, Executive Director, North Carolina Real Estate Commission
Vice-Chairperson, National Association of Real Estate License Law Officials (NARELLO)
Appraisal Oversight Committee
3/1/90 - Revised 5/22/90

States now requiring disclosure of who agent represents:

ARIZONA

CALIFORNIA

COLORADO

DISTRICT OF COLUMBIA

FLORIDA

GEORGIA

HAWAII

IDAHO

ILLINOIS

INDIANA

KANSAS

LOUISIANA

MAINE

MASSACHUSETTS

MINNESOTA

MISSOURI

NEBRASKA

NEVADA

NEW YORK

NORTH DAKOTA

OHIO

PENNSYLVANIA

SOUTH CAROLINA

TENNESSEE

TEXAS

UTAH

VERMONT

WASHINGTON

WISCONSIN

MEMORANDUM OF COOPERATION

AMERICAN BAR ASSOCIATION

AND

NATIONAL ASSOCIATION OF REALTORS®

The American Bar Association and the National Association of REALTORS®, recognizing that there are areas of joint concern in reference to matters affecting various forms of real estate transactions, and further that it is the duty of all real estate practitioners to protect the interests of their clients and the public and to serve them in a knowledgeable and professional manner in real estate matters, hereby agree that a joint liaison committee shall be formed between the American Bar Association and the National Association of REALTORS® for the following reasons and purposes:

1. Encourage the enactment or modification of legislation and regulations on a federal, state and local basis relative to matters affecting real estate transactions that would constructively benefit or protect those persons involved.

2. Study, analyze, and encourage affirmative action against existing or pending legislation and regulations on a federal, state, and local level deemed unproductive, unfair, excessive, or unnecessary for those persons involved in real estate transactions.

3. Examine regulations adopted or proposed by administrative bodies of all levels of government relative to real estate ownership and real estate transactions to determine, after thorough study and analysis, whether or not they conform to the intent and purpose of the enabling legislation that generally or specifically authorized their creation and enforcement. If it is determined that any such regulations or the enforcement of them is not within the intent or purpose, affirmative action should be encouraged to eliminate or improve them to the general benefit of the public.

®Registered Trademark

4. Encourage state and local bar associations and state association of REALTORS® and local boards of REALTORS® to establish liaison committees and to encourage them to undertake similar activities in their respective jurisdictions.

5. Encourage clients, customers, and other persons involved in real estate transactions to seek qualified representation and advice.

This agreement of liaison when adopted by the appropriate bodies of the American Bar Association and the National Association of REALTORS® shall nullify and rescind any and all former agreements between the two associations.

The name of the liaison committee shall be the National Conference of ABA Lawyers and REALTORS®.

The National Conference shall encourage the state and local conference committees to use the same name with the appropriate names of the respective organizations to be substituted.

The National Conference shall consist of five (5) individuals from each association, ten members total, each association to appoint its respective members on a basis deemed appropriate by the respective association. It is suggested, however, that appointments be made, when possible, for a minimum of three years for purposes of continuity and experience.

There shall be an annual meeting of the National Conference and such additional meetings as the National Conference may determine.

Each association shall be responsible for any cost incurred by its respective members.

Approved by the ABA Board of Governors, April, 1982.

STATEMENT OF PRINCIPLES BY THE STATE BAR OF TEXAS

.001. Statement of Principles by the State Bar of Texas and the Texas Real Estate Commission.

Whereas, under modern business practices and procedures, the practices of attorneys at law (hereinafter referred to as "lawyers") and the practices of real estate brokers and salesmen (both of whom are hereinafter referred to as "brokers") are, in certain instances, interrelated and interdependent; and,

Whereas, it is in the interest of the public, lawyers, and brokers that the services and efforts of both professions be coordinated; and,

Whereas, there should be a clear understanding in the minds of the practitioners of these professions as to their respective fields of endeavor and the functions to be performed by each in relation to matters in which there is an interdependence; Now, Therefore,

Be It Resolved by the State Bar of Texas and the Texas Real Estate Commission as a Statement of Principles in a joint effort to serve better the Texas public in regard to the coordination of the said functions of the members of these professions:

Article I

The Lawyer

It is the function of lawyers to give all legal advice required by the principals to or broker in a real estate transaction. It is not the function of lawyers to negotiate the sale, exchange, purchase, rental or leasing of real estate or the terms thereof, unless expressly employed by a principal or broker to perform that function. The lawyer may prepare the contract or agreement if employed to do so by one of the principals to the real estate transaction or by the broker therein.

In order to accompish his functions, the lawyer shall be governed by the following principles:

1. The lawyer who is employed in such a real estate transaction shall use his best efforts to proceed diligently to the conclusion of that transaction, and, if his availability or work load does not permit a prompt conclusion of the same, he shall inform his principal prior to accepting such employment or, thereafter, if at such later time his work load would prevent a prompt conclusion.

2. The lawyer shall not minimize the value of the broker's services nor participate or attempt to participate in the broker's commissions.

3. The lawyer, representing any principal to a real estate transaction, shall not give his opinion on the physical condition or the market value of the real estate involved in the transaction unless expressly employed by the principal to perform that function. However nothing herein shall be deemed to limit the fiduciary duty of the lawyer to disclose to his principal all pertinent facts which are within the knowledge of the lawyer, including such facts which might reflect on the physical condition or market value of the real estate.

4. The lawyer shall not accept employment by or compensation from the broker to represent any principal to a real estate transaction.

5. It is the responsibility of the lawyer who has been employed by a principal to a real estate transaction to prepare documents to be used in the real estate transaction, which documents the broker is not himself authorized to prepare.

6. A lawyer shall not represent, in the same transaction, more than one of the principals nor the broker and a principal except in those situations where the applicable canons of ethics clearly permit representations of conflicting interests by a lawyer after full and complete disclosure of the conflict of interest to those desiring such representation and upon the express consent of same.

7. Where a lawyer is also a real estate licensee, he shall not advertise or hold himself out as being able to handle a real estate transaction less expensively or better because he is such licensee as well as a lawyer nor should he act as a lawyer for any principal in the same transaction in which he proposes to act, is acting, or has acted as a real estate licensee, unless he is expressly employed by a principal in the capacity of a lawyer after a full and complete disclosure of the conflict of interest is given and expressly consented to by the principal in accordance with the applicable canons of ethics.

Article II

The Broker

It is the function of the broker to negotiate the sale, exchange, purchase, rental and leasing of real estate for his principal(s). In accomplishing such result the broker shall be governed by the following principles:

1. The broker shall not practice law, offer, give nor attempt to give advice, directly or indirectly; he shall not act as a public conveyancer nor give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate; he shall not give opinions concerning the status or validity of title to real estate; and he shall not attempt to prevent nor in any manner whatsoever discourage any principal to a real estate transaction from employing a

lawyer. However, nothing herein shall be deemed to limit the broker's fiduciary obligation to disclose to his principals all pertinent facts which are within the knowledge of the broker, including such facts which might affect the status of or title to real estate.

2. The broker shall not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. However, in negotiating real estate transactions, the broker may fill in forms for such transactions, using exclusively those printed forms which have been approved by the State Bar of Texas and the Texas Real Estate Commission and promulgated by the Texas Real Estate Commission as the required standard forms to be used by all real estate licensees. When filling in such a form, the broker may only fill in the blanks provided and may not add to or strike matter from such form, except that brokers shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the principals. Nothing herein shall be deemed to prevent the broker from explaining to the principals the meaning of the factual statements and business details contained in said instrument so long as Paragraph 1 above relating to the offering or giving of legal advice is not violated.

3. Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the broker should advise the principals that each should consult a lawyer of his choice before executing same.

4. The broker shall not minimize the value of the lawyer's services nor participate or attempt to participate in the lawyer's fees

5. The broker shall not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which he, the broker, is acting as an agent. The broker may employ and pay for the services of a lawyer to represent only the broker in a real estate

transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transaction.

6. A broker shall advise the principals that the instrument they are about to execute is intended to be binding on them.

7. Where the broker is also a lawyer, he shall not advertise or hold himself out as being able to handle the complete details of a real estate transaction, including the preparation of documents other than the filling in of the blanks on standard forms approved and promulgated by the Texas Real Estate Commission as provided in Paragraph 2 above, or as being able to handle the transaction less expensively or better because he is also a lawyer. Also, he shall not act as a lawyer for any principal in the same transaction in which he proposes to act, is acting, or has acted as the broker, unless he is expressly employed by a principal in the capacity of a lawyer after a full and complete disclosure of the conflict of interest is given and expressly consented to by the principal in accordance with the applicable canons of ethics of the State Bar of Texas.

Article III

Permanent Organization

1. There is hereby created a continuing organization which shall be designated as the Texas Real Estate Broker-Lawyer Joint Committee, which shall be constituted and have those functions as hereinafter in this article set forth.

2. There shall be twelve members of this Committee, six appointed by the Texas Real Estate Commission and six appointed by the State Bar of Texas, appointed by each agency in accordance with its own procedures but with due regard and emphasis being placed on experience and expertise in the real estate field. The initial members shall be appointed, two from each agency, for a term of two years, two from each agency for a term of four years, and two from each agency for a term of six years. Every two years thereafter, members of the Committee shall be appointed to fill the expiring terms for six year terms.

Vacancies on the Committee shall be filled for the unexpired term by the agency which originally appointed the person whose absence created the vacancy.

3. The Committee shall:

(a) At all times act in the interest of the public.

(b) Consider and promote such changes in procedure and in laws relative to real estate transactions, while preserving the respective roles of the broker and lawyer, as will benefit the public, subject to the approval of the agencies approving this Statement of Principles.

(c) Promote and encourage understanding and cordial relations between brokers and lawyers throughout Texas to the end that both professions may more effectively and efficiently serve the people of Texas in real estate transactions.

(d) Consider any controversies between brokers and lawyers which may be referred to it involving any alleged violations of the principles set forth in Articles I and II hereof, inclusive, and attempt to resolve the same.

In cases where there appear to have been violations of such principles by either a broker or a lawyer and the resultant controversy cannot be resolved by the Committee, it shall refer the matter to the Texas Real Estate Commission if a broker's conduct is involved or to the State Bar of Texas if a lawyer's conduct is involved.

(e) Draft and revise uniform types of standard contract forms for use in the respective areas of the State of Texas, which forms will provide blanks for filling in strictly factual and business detail only, will expedite real estate transactions and reduce controversies to a minimum while containing safeguards adequate to protect all principals to real estate transactions, and will be capable of becoming the customary form or forms of contracts in use in the community. Such forms shall be subject to the approval of both the State Bar of Texas and the Texas Real Estate Commission and to promulgation by the Texas Real Estate Commission.

4. Cooperate with the respective organizations, as may be requested by them, in the joint dissemination to brokers, lawyers and the public of information on the conduct of real estate transactions. Promote and encourage the joint education and training of both brokers and lawyers in the real estate field through seminars, continuing education, research and development, and other related means as requested and funded by the respective organizations.

Article IV

This Statement of Principles shall be in full force and effect after having been approved by the Board of Directors of the State Bar of Texas and the Texas Real Estate Commission, at which time the Texas Real Estate Broker-Lawyer Joint Committee shall undertake the drafting of the standard real estate contract forms referred to in Article II, Paragraph 2, hereof, which forms, when approved by the Board of Directors of the State Bar of Texas and approved and promulgated by the Texas Real Estate Commission, shall become a part of this Statement of Principles as fully as if set forth herein word for word.

402.04.02. Standard Contract Forms

.001. Use of Standard Contract Forms TREC No. 1-0 and TREC No. 2-0. After March 1, 1976, all Texas real estate licensees must use standard contract forms TREC No. 1-0 and TREC No. 2-0, where applicable, for residential assumption of loan transactions, except in situations where the services of a lawyer are used to prepare the instrument for a particular sale.

Real estate brokers may supply themselves with the forms for their use in any way they desire. Copies may be purchased from the Commission at a price of $2.50 per pad of 50 copies of form TREC No. 1-0 and $2.50 per pad of 50 copies of form TREC No. 2-0. Such price includes sales tax. A $1.00 mailing and handling charge must accompany each order. Payment should be made in the form of a cashier's check or money order made payable to the Texas Real Estate Commission.

For those who desire to reproduce the form in volume, "slick proofs" are available from the Commission at a price of

$45.00 per three-page set (both forms). Such price includes sales tax. A $1.00 handling and mailing charge must accompany each order. Payment should be made for the proofs in the form of a cashier's check or money order made payable to the Texas Real Estate Commission. All "slick proofs" will be separately numbered for the purpose of control of reproduction. The control number on each proof must appear on all forms reproduced. When reproducing the form, additions or changes are prohibited except that brokers, organizations or printing services may add their name and/or logo at the top of the front page, outside of the border surrounding the form itself. Also, the real estate broker's name may be inserted on the front page of the form in the blank space provided in Section Number 10 after the words BROKER'S FEE and the broker's name and license number may be printed in the signature section on the back page.

STATE BAR OF TEXAS

July 7, 1982

Office of the General Counsel

Texas Real Estate Commission
1101 Camino LaCosta
Austin, Texas 78752

Re: Agreements With Other Occupational Groups

Gentlemen:

On June 29, 1982, the Board of Directors of the State Bar of Texas formally abrogated all agreements or statements of principals with the Texas Bankers Association, the Texas Society of Certified Public Accountants, the Texas Title Association, the Texas Land Association, Title Underwriters of Texas, Inc., the Association of Independent Insurance Adjusters of Texas, and the Texas Real Estate Commission.

I am enclosing a copy of the certified copy of the board resolution.

Very truly yours,

STATE BAR OF TEXAS

Jerry L. Zunker
General Counsel

JLZ/am

Enclosures

JUL 1 1 1982

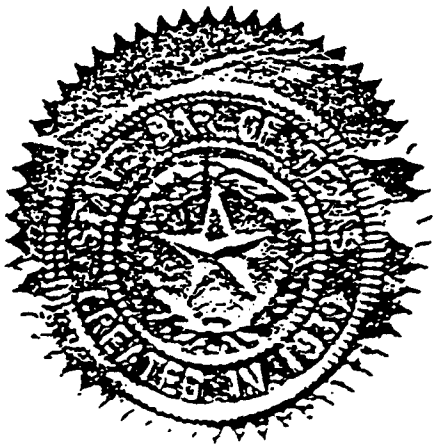
cc: AJ
WC
MAM
Comm. Members

Resolved that all agreements and/or Statements of Principles heretofore existing by and between the State Bar of Texas and the Trust Section of the Texas Bankers Association, the Texas Society of Certified Public Accountants, the Texas Title Association, the Texas Land Title Association and Title Underwriters of Texas, Inc., the Association of Independent Insurance Adjusters of Texas and the Texas Real Estate Commission be and they are hereby abrogated.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the State Bar of Texas at a regular public meeting, after due notice, a quorum being had, on the 29th day of June, 1982.

A true copy, I certify this 29th day of June, 1982.

W. Reed Quilliam, Jr.
Executive Director



Professional Agreements and Standard Contracts
§537.2

The Texas Real Estate Commission adopts the repeal of §537.2 with no changes in the proposed text published in the August 5, 1983, issue of the Texas Register (8 TexReg 2998).

The repeal terminates the existence of the agency's Special Advisory Committee on Standardized Contracts, which has been replaced by a statutory committee known as the Texas Real Estate Broker-Lawyer Committee.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6573a, which authorizes the Texas Real Estate Commission to make and adopt all rules and regulations necessary for the performance of its duties.

This agency certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 28, 1983.

Mark A. Moseley
Legal Counsel

TEXAS REAL ESTATE COMMISSION

MAM:dl

Special Advisory Committee on Standardized Contracts

22 TAC §537.2

The Texas Real Estate Commission proposes to adopt new §537.2, relating to creation of an advisory committee on standardized contract forms.

Since 1974, the Texas Real Estate Broker/Lawyer Joint Committee has developed and recommended earnest money contracts and addenda to the Texas Real Estate Commission for adoption. The joint committee has been composed of attorneys appointed by the State Bar of Texas and real estate brokers appointed by the Texas Real Estate Commission. The joint committee was created as part of a statement of principles by the State Bar and the Texas Real Estate Commission; the abrogation of the statement of principles by the State Bar in June 1982, and the proposed repeal of §537.1 by the Texas Real Estate Commission creates a need for another committee to assist the commission in the development and revision of standardized contract forms for use by real estate licensees.

The proposed rule provides for the existence of the advisory committee, provides for membership requirements and organizational matters, and sets forth the functions of the committee.

Mark A. Moseley, legal counsel, has determined that for the first five-year period the proposal will be in effect there will be no additional fiscal implications to state or local government, since the advisory committee will replace the Texas Real Estate Broker/Lawyer Committee. In 1981, $16,739 was expended for professional services and per diem to joint committee members. Expenditures of approximately $20,000 are estimated for the proposed new advisory committee for each of the first five years the proposal is in effect. No fiscal implications to units of local government are involved.

Mr. Moseley has also determined that for each year of the first five years the proposal will be in effect the public benefit anticipated as a result of enforcing this proposal will be assistance provided to the Texas Real Estate Commission by real estate licensees and attorneys who have developed special experience and expertise in the real estate field. Work on standardized contract forms for real estate transactions will continue. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The new rule is proposed under Texas Civil Statutes, Article 7563a, §5(e), which authorizes the Texas Real Estate Commission to make and enforce all rules necessary for the performance of its duties.

§537.2. Special Advisory Committee on Standardized Contracts.

(a) The Texas Real Estate Commission shall appoint a standing advisory committee known as the Special Advisory Committee on Standardized Contracts which shall be composed of six members. Members shall be chosen on the basis of their experience and expertise in the real estate field. The legal counsel of the Texas Real Estate Commission shall be an ex officio, nonvoting member of the advisory committee.

(b) The committee shall elect from its own membership a chairman, vice-chairman, and secretary to serve a term of one year. Each member of the committee shall be present for at least ½ of the regularly scheduled meetings held each calendar year by the committee. The failure of a member to meet this requirement automatically removes the member from the committee and creates a vacancy on the committee. A quorum of the committee consists of four members.

(c) Two of the initial members of the committee shall be appointed for a term of two years, two for a term of four years, and two for a term of six years. Every two years thereafter, members of the committee shall be appointed to fill the expiring terms for six-year terms.

(d) The committee shall at all times act in the interest of the public.

(e) The committee shall draft and revise uniform types of standard contract forms for use in the State of Texas, which forms will provide blanks for filling in strictly factual and business detail only, will expedite real estate transactions and reduce controversies to a minimum while containing safeguards adequate to protect all principals to real estate transactions, and will be capable of becoming the customary form or forms of contracts in use in the state. Such forms shall be subject to the approval of the Texas Real Estate Commission.

(f) The committee shall promote and encourage the education and training of persons engaged in business in the real estate field through seminars, continuing education, research and development, and other related means as requested by the Texas Real Estate Commission.

(g) The committee shall, on the request of the Texas Real Estate Commission, perform such other functions as are not inconsistent with the foregoing.

(h) The committee shall, not less than quarterly, report to the Texas Real Estate Commission its progress on the functions set forth herein.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 14, 1982.

TRD-827253 Mark A. Moseley
Legal Counsel
Texas Real Estate Commission

Proposed date of adoption: October 25, 1982
For further information, please call (512) 459-3342.

Standard Contract Forms

22 TAC §537.11

The Texas Real Estate Commission proposes to amend §537.11, relating to use of standard contract forms. The proposed amendment is intended to replace Ar-

TAB C

THE NEW RESTATEMENT OF THE LAW THIRD PROPERTY - SERVITUDES THE TIME HAS COME[1/]

By Marvin Garfinkel

Under the diligent and dedicated guidance of Professor Susan French of the University of California, Los Angeles School of Law, the American Law Institute's Restatement of the Third Property - Servitude project has for the past three years been working on a new Restatement of the law of servitudes which will unify[2/] and rationalize an area of real property law which is vital to today's land use practices.

Servitudes are burdens or benefits relating to the possession or ownership of estates in land. They include easements, restrictions, covenants and profits. It is rare today for a new real estate development, whether commercial, industrial or residential, not to involve some form of servitude. The "common interest community" such as the group of homes under the umbrella of a homeowners' association implemented by the recordation of a Declaration of Cross Easements, Restrictions and Covenants - all of these are servitudes. Easements and Restrictions are used to protect the historical significance of properties and encourage environmental conservation. Utilities demand on easements to provide the legal basis of their right of way facilities. Federal and state residential financing agencies and the secondary markets often require that insured properties be subjected to specified building and use restrictions. The list of today's uses of servitudes is endless.

[1/] "The time has come to cut through the tangles of ancient doctrine to create a modern law of servitudes." French, *Toward a Modern Law of Servitudes: Reweaving the Ancient Strand,* 55 S. Cal. L. Rev. 1261, 1319 (1982).

[2/] "Unification" is intended to eliminate" ... unnecessary or irrational differences in the rules (as in privity of estate at law) but "...maintain the variance... " in those many areas where the law, as it has evolved, is supported by sound policy and community expectation. C. Berger, *Unification of the Law of Servitudes,* 55 So. Cal. L. Rev. 1339, 1343 (1982).

The development of this new Restatement may be traced to a symposium on the law of servitudes published in 1982 by the Southern California Law Revew.[3/] This preparation of the Restatement will probably take eight to ten years of effort by The Reporter, Professor Susan French, her advisors and the American Law Institute Council, staff and members. At this relatively early stage of the project it appears clear that this cohesive and systematic approach to the law of servitudes will eliminate a good deal of legal clutter that has accumulated over the past four hundred years and has little relevance to modern practice.

In May of 1989, portions of Chapter 2 of the proposed Restatement dealing with creation of servitudes was presented to and approved by the members of the American Law

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[3/]Among the articles included in this Southern California Law Review symposium were the following:

French, *Toward a Modern Law of Servitudes: Reweaving the Ancient Strands,* 55 So. Cal. L. Rev. 1261 (1982).

C. Berger, *Some Reflections on a Unified Law of Servitudes,* 55 So. Cal. L. Rev. 1323 (1982).

Epstein, *Notice and Freedom of Contract in the Law of Servitudes,* 55 So. Cal. L. Rev. 1353 (1982).

Jacob, *The Law of Definite Elements: Land in Exceptional Packages,* 55 So. Cal. L. Rev. 1369, (1982).

Dunham, *Statutory Reformation of Land Obligations,* 55 So. Cal. L. Rev. 1345 (1982).

Reichman, *"Toward a Unified Concept of Servitudes",* 55 So. Cal. L. Rev. 1177 (1982).

Other recent articles relevant to the clarification, reform and unification of Servitudes law include:

Berger, *A Policy Analysis of Promises Respecting the Use of Land,* 55 Minn. L. Rev. 167 (1970) (one of the first modern commentaries to take a functional approach).

Cross, *Interplay Between Property Law Change and Constitutional Barriers to Property Law Reform,* N.Y.U.L. Rev. 1317, (1960);

Newman & Losey, *Covenants Running with the Land, and Equitable Servitudes; Two Concepts or One,* 21 Hastings L.J. 1319 (1970).

Sterk, *Freedom from Freedom of Contract: The Enduring Value of Servitude Restrictions,* 70 Iowa L. Rev. 580 (1985);

Korngold, *Privately Held Conservation Servitudes: A Policy Analysis in the Context of in gross Real Covenants and Easements,* 63 Tex. L. Rev. 433.

Institute at the Institute's 66th annual meeting.[4/] From this draft[5/] it is clear that the new Restatement will avoid the 19th and early 20th century mumbo jumbo and archaic concepts which have heretofore confused the Law of Servitudes and confounded law students and practitioners. Public policy issues and community expectations will be dealt with directly rather than indirectly by way of archaic doctrines such as "Touch and Concern" and "Horizontal Privity".

On the basis of the drafts of the Restatement prepared to date for the advisors, for the Institute Council and for the members at the May meeting of the American Law Institute, it would appear that the following are among the approaches which will taken by the new Restatement:

1. The "Touch and Concern" Doctrine - The "Touch and Concern" Doctrine whatever it may be, will be relegated to its rightful place - it will, one hopes, be buried, although the considerations implicit in particular prior application of the doctrine will be dealt with as appropriate in the Restatement. This so-called "doctrine", which goes back at least 400

[4/]The following Sections of Chapter 2 on Creation of Servitudes were presented to the Institute members in May of 1989:

§2.1 Creation by Contract or Conveyance
§2.2 Intent to Create a Servitude
§2.3 Necessary Parties to Creation of Servitude
§2.4 No Horizontal Privity Required
§2.5 Estates Burdened and Benefited
§2.6 Servitude Beneficiaries
§2.7 Formalities Required
§2.8 Failure to Comply with the Statute of Frauds
§2.9 Exception to the Statute of Frauds
§2.10 Creation by Estoppel
§2.11 Servitudes Created by Implication
§2.12 Servitudes Implied from Prior Use
§2.14 Servitudes Implied from General Plan
§2.15 Servitudes By Necessity

[5/] Each working draft of a Restatement under preparation has the following notice on its inside of its front cover: "The bylaws of the American Law Institute provide that no restatement, model code, or recommended revision of the law shall be published as representing the position of the Institute unless authorized by the membership of the Institute and approved by the Council. Each portion of an Institute project is submitted initially for review to the project's Consultants or Advisers as a Memorandum, Preliminary Draft, or Advisory Group draft. As revised, it is then submitted to the Council of the Institute in the form of a Council draft. After review by the Council, it is submitted as a Tentative Draft, Discussion Draft, or Proposed Official Draft for consideration by the membership at the Institute's Annual Meeting. At each state of the reviewing process, a Draft may be referred back for revision and resubmission."

years to Spencer's case[6] but has been significantly modified in application over the years, may be simply stated to be that affirmative covenants to be enforceable against successors must "touch and concern" the land. The doctrine does not apply to so called "negative covenants" - better known today as "restrictions".

The concept of the doctrine is simple if one understood what is meant by the term "touch and concern". The meaning of the term "touch and concern" has become a moving target over the years or perhaps always has been a moving target and was intended to be just that. The meaning of the term "touch and concern" has never been clear and this lack of clarity has permitted courts for four hundred years to relieve successors of the burden of affirmative covenants where the court did not believe that the subject matter of an affirmative covenant should appropriately run with the land. If it worked the doctrine would be a great device to cushion the ebb and flow of changes in the society, although at the expense of certainty which one would consider to be particularly important to real property law. To accommodate the twentieth century the concept of what "touches and concerns" the land has been broadened to include for instances covenants to join and pay dues to a homeowners associations.[7]

Thus one would hope that the courts generally have broadened the meaning of the term "touch and concern" so as to avoid the doctrine being an impediment to utilization of innovative approaches to land development. At the same time the doctrine does probably preclude burdening a successor with an affirmative obligation that such would not reasonably anticipate to be applicable to it. This is the notice function of the doctrine. The doctrine also serves to ascertain the intent of the parties as to whether the covenant is intended to run with the Land.[8]

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[6]77 Eng. Rep. 72 (KB 1583). Dictum in this case indicates that although the assignee of a lease would be bound by the tenant's obligation to build a wall on the demised premises the original tenant's successor would not have been bound to build the wall had the covenant required the tenant to build the wall on land not subject to the demise.

[7]*Kell v. Belavista Village Property Owners Association,* 258 Ark. 757, 528 S.W. 2d 651 (1975); *Neponsit Properties Owners Association v. Migrate Industrial Savings Bank,* 278 N.Y. 248, 15 N.E. 2d 793 (1938). *Four Seasons Home Owners Association, Inc. v. Sellers,* 62 N.C. App. 205, 302 S.E. 2d 848 (1983).

[8]French, *Toward a Modern Law of Servitudes,* 50 So. Cal. L. Rev at 1289. Krasnowicki, *Townhouses with Home Association: a New Perspective,* 123 U. Pa. L. Rev. 711, 718 (1975), *Sellers,* 62 N.C. App. 205, 302 S.E. 2d 848 (1983).

2. Horizontal Privity

Section 2.4 of the New Restatement as approved at the May 1989 meeting of the institute flatly states that "No privity relationship between the parties is necessary to create a servitude". The consensus is that this is a reflection of American law as it exists today.[2/]

3. Easements and Other Covenant Benefits in Gross

An interest in gross provides benefits to the holder of such interest without regard to possession by such holder of an interest in land. An individual or entity need not have interest in any land in the vicinity to benefit from an interest in gross. Easements and other covenant benefits in gross are commonly recognized as being valid in this country and to bind successors of the burdened land. It has not been clear that such benefits of a non commercial nature are alienable. Accepted practice though includes the creation of commercial easements in favor of utility companies and the granting of historical preservation and environmental easements in favor of environmental and historical preservation organizations.

The new Restatement will in all probably be liberal in its treatment of easements in gross while at the same time either providing for or proposing procedural approaches to assure that land titles are not clouded by inability to located the possible holders of such rights. It is obviously more difficult to locate the holders of a benefit in gross than the owner of a dominant tenement. This problem may be approached by registration and registration renewal requirements or other procedural devices. Real estate tax procedures tend to eliminate phantom holders of appurtenant easements.

4. Creation of Servitudes

Chapter 2 of the new Restatement deals with creation of servitudes. The first fourteen sections of this Chapter deal with creation by contract or conveyance (there is no particular verbal formula requirement since it is a matter of intent), the application of the Statute of Frauds, creation by estoppel, creation by implication, creation by prior use (prescription), servitudes implied by map, general plan or boundary reference and servitudes by necessity.

5. Organizational Structure; Categories, Classifications and Vocabulary of the Restatement

The reporter notes in the Introduction to Tentative Draft No. 1 that "The draft reflects a modern, analytical perception that all the servitude devices are fundamentally similar, and that for the most part they are, or should be governed by the same rules." With

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[2/]The cases in support of the view are cited by the Reporter in the Reporter's Notes to Section 2.4 of Tentative Draft No. 1 (April 5, 1989), This changes the rule of Section 534 of the first Restatement. Interestingly enough, although other provisions of the draft were actively debated by members of the Institute at the May, 1989 meeting, the demise of horizontal privity did not even fetch a moment of silence for the departed.

the elimination of the Horizontal Privity Doctrine and with the practice of American equity courts to enforce affirmative covenants, there is no real distinction between equitable servitudes and real covenants, and so it may be assumed that these terms will not be used in the new Restatement. Negative easements are now restrictive covenants, the so-called irrevocable licenses are treated as affirmative easements. Thus the Restatement will deal with four categories of servitudes -- Restrictions, Affirmative Covenants, Easements and Profits. The latter is the right to remove physical substances from the subservient tenement. The working outline for the Contents of the new Restatement, included by the Reporter in Tentative Draft No. 1 is attached as an appendix to this paper.

APPENDIX

Introduction

Chapter 4: Interpretation and Construction

A. Servitude interest intended
   1. Appurtenant
   2. In gross
   3. Personal

B. Intended benefited and burdened parties and parcels
C. Duration of servitude
   1. Expressly created
   2. Created by implication
   3. Created by estoppel
   4. Crated by prescription

D. Location
E. Scope or extent
   1. Maintenance responsibilities
   2. Rights granted
   3. Rights of servient owner
   4. Rights to change use or character of servitude
   5. Rights to change land burdened or benefited

Chapter 5: Succession

A. By succession to land of original party
   1. Benefits
      a) Apportionability
         (1) Physical division of land
         (2) Temporal division of ownership (vertical privity)

   2. Burdens
      a) Apportionability
         (1) Physical division of land
         (2) Temporal division of ownership (vertical privity)

B. By assignment
   1. Assignability
   2. Severability
   3. Divisibility

C. By Assumption

Chapter 6: Property Owners' Association

A. Standards governing conduct of board
B. Rule-making powers
C. Assessment powers

Chapter 7: Modification

A. Amendments to governing documents
B. Modification by exercise of rule-making power
C. Changes in assessments

Chapter 8: Termination

A. Release
B. Merger
C. Abandonment
D. Severance of appurtenant benefit
E. Expiration
F. Statutory termination
G. Condemnation
H. Prescription against servitude use

Chapter 9: Enforcement

A. Standing (Interst required to enforce servitude
B. Defenses
    1. Notice (recording act)
    2. Statute of limitations
    3. Waiver or laches
    4. Estoppel
    5. Misuse of servitude
    6. Changed conditions
    7. Impossibility
    8. Frustration of purpose
    9. Obsolescence
C. Remedies
    1. Damages
    2. Injunction
    3. Specific performance
    4. Lien
    5. Denial of privileges of association membership
    6. Modification

TAB D

Report to the Real Property Division of the Section on Real Property, Probate and Trust Law of the American Bar Association

The delegate of the United States of America to The Hague Conference on Private International Law joined the delegates of 30 other Governments on October 20, 1988, in approving and agreeing to submit to their respective Governments a Draft Convention on the Law Applicable to Succession to the Estates of Deceased Persons, (hereinafter the "Convention"). The United States delegate, Professor Eugene F. Scoles, has prepared a supporting 13 page commentary on the purposes and contents of the Convention, together with a shorter article entitled "Planning for the Multinational Estate" published in the May/June 1989 issue of Probate & Property, Vol. 3 No. 3, at pages 58 and 59. A 30 page Memorandum by Professor Jeffrey Schoenblum as Chairman of the Committee on International Property, Estate and Trust Law, dated April 10, 1989, criticizing and objecting to the Convention has also been furnished to the Council of the Real Property, Probate & Trust Law Section. Both the Scoles Commentary and the Schoenblum memorandum are scholarly well-written pieces that deserve careful consideration.

This report is more limited and expresses the point of view of the American lawyer who must deal with the practical problems encountered in certifying the title to United States real estate as marketable or insurable after the death of the owner. This certification is usually required in connection with any sale, mortgage, lease or other transaction that requires an accurate determination of the persons in whom the title is vested.

The Convention does not directly affect the transfer of title upon the death of the owner who leaves a valid will or by reason of joint tenancy, tenancy by the entirety, or the application of community property principles in those jurisdictions that have adopted community property. The Convention does, however, eliminate any existing differences between the succession to real

property and personal property. The Convention would treat them both alike. Under the Convention the law applicable to the validity of wills, and in the absence of a will, a disposition of the decedent's estate by intestacy would, in most cases, be governed by the law of the State of the decedent's "habitual residence" and/or nationality. Reference to a "state" usually means a country, rather than a state within the United States. The situs of the real property would become of no consequence whatsoever in determining the persons who succeed to the title by reason of the intestacy. Title examiners would have to apply foreign law in almost every case where a non-United States national died owning United States real property.

When applied to the intestate succession to real property, the Convention is totally contrary to existing law in all of the states in the United States, in each of which the law of the situs of the real property is the law applicable to its succession upon the death intestate of the owner.

Under Articles 3 and 5 of the Convention the applicable law would be that of the State in which the deceased at the time of his death was "habitually resident", if he was then a national of that State. If he was not a national of that State, the law of the State in which the deceased at the time of his death was habitually resident would still apply if the residency had continued for a period of no less than five years immediately preceding the death. Otherwise, the law of the State of which the deceased was a national at the time of death would apply, "unless at that time the deceased was more closely connected with another State, in which case the law of the latter State applies." Further complicating the determination of which law would apply to the devolution of the title are the provisions of Article 5 Paragraph 1 which permit a person "to designate the law of a particular State" to govern the succession of the

whole of the estate, provided that the designation is of a State of which that person, at the time of his death was either a national or where he had his habitual residence.

In their desire to achieve uniformity with respect to the disposition of both real and personal property the drafters of the Convention would revolutionize existing law in each state of the United States with respect to the applicability of the law of the situs to all aspects of the transfer of real property, and substitute therefor a set of complex standards that could be extremely difficult to apply.

The law of nationality is extremely complex. A number of States do not recognize the attempted surrender of nationality by any of its nationals. In other cases, the accident of the location of birth during travel or otherwise to nationals of foreign countries, results in a dual nationality. What would the nationality be of a child born in the United States to a mother who is an Italian national and a father who is a Saudi Arabian national? How many years of litigation would it take to determine the nationality of that individual, particularly if the law of each of those countries would produce a different result as to who the heirs of the decedent would be?

Similarly, how do we determine the State of which a decedent was a "habitual resident"? Many people, particularly persons of wealth, have residences in many countries. An individual could habitually be resident in Palm Beach 2 or 3 months each year, a habitual resident of France another 2 or 3 months of each year, a habitual resident of Australia another 2 or 3 months of each year, and then habitually spend a few months of each year in Japan. Would that individual be a habitual resident of each of those countries or of only one of them? Again, how long would it take to determine which law was applicable

to the intestate succession? Isn't it also possible that differing results might be obtained in different jurisdictions involving the same estate? We have certainly had several notable examples in this country of where different states within the United States have claimed an individual as having been a resident of that state for the purposes of collecting estate taxes, and where the diverse decisions of at least two of the states were each subsequently upheld by the United States Supreme Court.

Compare the foregoing with the present simple method of determining the applicability of the law of the situs to a determination of which states' intestate laws apply to the devolution of title. If the property is in the State of New York, the law of the State of New York applies to the intestate succession, irrespective of the nationality of the decedent and irrespective of where or in how many places that the decedent may have been habitually resident.

If the Convention is adopted by The United States of America, it would automatically become the law of each and every one of the states by reason of the fact that treaties when duly adopted become the supreme law of the land.

The comments of Professor Scoles indicate that the goal of the Convention is for "predictable rules for determining the applicable law to avoid the costly 'confusion and delay' incident to settling estates of decedents who die leaving assets in different countries." However, there is a common simple maxim that states: "If it ain't broke, don't try to fix it." What is wrong with the present United States system which makes the law of the situs of the real property, the law applicable to its transfer, including its transfer by the intestate death of its owner? The law of the situs applies to every other form of the voluntary and involuntary transfer of real property. Why should transfer by death and intestacy be different? What could be more "predictable" than that

the law of the situs of the real property will apply to its transfer at the death of the owner intestate? More particularly, since the Convention provides for several different standards to be applied, based upon nationality, habitual residence and certain combinations thereof, there would almost certainly be a lack of predictability in many situations.

The transfer of title upon the death of an individual owner has enough complications even under existing law. First, it has to be established that the owner really is dead, not always an easy matter, particularly in the case of mysterious disappearances. Next, it becomes necessary to determine whether or not the decedent left a valid will. Once intestacy is established under law, it becomes necessary to determine the identity and capacity to take of all of the individuals who are entitled to take under the law of the state of the situs of the real property. In many cases this involves the determination of the validity of marriages, the legitimacy of children, the effectiveness of adoptions, and numerous other incidental problems.

The law applicable to the transfer and other disposition of real property has always been the law of the situs of that property both under the English common law and under American common law. The state has a legitimate interest in determining the persons and the extent of the interest that would devolve to each of the persons who are in the intestate chain. The state also has an interest by reason of possible escheat in the event of the failure of heirs or distributees. To change such a long established principle in favor of one that would permit the law of Japan or Saudi Arabia to determine who would succeed to the property located in New York, but owned by a national of one of those countries, would seem to be most undesirable.

What about "confusion and delay?" The present system is simple and quick. If there is no will, the law of the situs of the real property applies to the devolution immediately. The laws of intestacy of the situs state are easily determinable, and can be applied immediately. Compare that with having to determine the nationality of the deceased owner, where the decedent was "habitually resident," and the State or States with which the deceased was more closely connected. Many people have dual or triple nationality. Many more have multiple residences, or are possibly so transient that they are not "habitually resident" anywhere. How long could it take to determine the nationality, habitual residence and "close connections" of the decedent? What if different courts in different countries come to different conclusions as to any one or more of these standards?

Perhaps the basic fault of the Convention is its attempt to treat real and personal property in the same manner. Real estate <u>is</u> different - and will always be treated differently from personalty. One can also quarrel with Professor Scoles in his lumping together as "an immovable" (real property) all "interests in real estate investment trusts, oil or gas royalties, commercial investments in limited or general partnerships, leases, mortgages, mortgage investment pools, as well as time-share interests in condominiums and the like." We would submit that practically all of these "interests" are personal property, and not real property or an "immovable" under most law. In any event local state law on the subject is easily determinable. If it is a real property interest, why should anybody be "repelled by the idea," as Professor Scoles is, that the laws of the situs of that real property interest will apply to its devolution upon the death of the owner? If the owner wants the real property to go other than by intestate succession, the simple solution is to make a valid will or hold the property

other than in an individual name. There are alternatives to owning property in one's individual name.

Conclusion:

If adopted by the United States, the Convention would create unacceptable uncertainty in the determination of the succession to ownership of real property through intestacy. Instead of simply applying the law of the State (and in the United States, the state within the United States), where the land is located, under the Convention it would be necessary to determine with accuracy (i) the nationality of the deceased - a fact not available from the public records; (ii) the State or States where the deceased was a "habitual resident" - a fact not available from the public records and (iii) the extent and nature of the deceased's "connections" with other States - facts also not available from the public records.

No title insurance company would be prepared to insure, and no lawyer would be willing to certify a title coming through an intestacy under the Convention without a binding judicial determination of heirship -- and that only after in personam jurisdiction had been obtained over all persons who could possibly claim an interest under the laws of any State whose laws might possibly apply to the determination of the true heirs.

The Real Property Division should recommend to the Council that it voice its disapproval of the Convention and actively oppose its adoption by the United States of America. Whatever benefits are foreseen by its proponents are heavily outweighed by its potentially devastating effect on the transferability of the title to real property after the death of the owner intestate.

Respectfully submitted,

James M. Pedowitz
Section Liaison,
American Land Title Association

September 11, 1989

Concurrence:

Joseph Forte, Chair, Committee C-1, Conveyancing
Edward Sterling, Chair, Committee C-4, Title Insurance
Bernard M. Rifkin, Chair, Committee C-8, Uniform Acts Concerning Land Transfers and Transactions
Lawrence D. Cherkis, Chair, Committee I-6, Enforcement of Creditors Rights and Bankruptcy

TAB E

REQUIREMENTS OF THE SECONDARY MORTGAGE MARKET RELATING TO MORTGAGE LOAN SURVEYS

Harlan J. Onsrud, LS, PE, Attorney
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ABSTRACT

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide secondary markets for conventional residential mortgages. They provide a link between primary mortgage originators and the general capital markets. That is, stocks in Fannie Mae and Freddie Mac are sold in general capital markets such as the New York Stock Exchange whereas individual mortgages are sold to Fannie Mae and Freddie Mac.

In order for banks and other lending institutions to sell mortgages on the secondary market, requirements set forth by Fannie Mae and Freddie Mac must be met. Requirements of these institutions in regard to survey matters have evolved into a product being delivered by surveyors commonly referred to as a "mortgage loan inspection", "house location survey", or similarly named product.

Few real estate lawyers or surveyors realize how this entity came to proliferate across the nation. Fewer yet are knowledgeable regarding the matters relative to surveying which the secondary market contractually obligates lending institutions to meet. Mortgage loan surveys have caused massive confusion across the country and the resultant work products vary drastically from state to state, community to community, and surveyor to surveyor. This paper explains why there is a great diversity of opinion on the information mortgage loan surveys should contain. Statewide attempts at standardization will be cited and possible means of addressing the problem on a national basis will be presented.

BACKGROUND

Banks and other lenders are contractually obligated to Fannie Mae and Freddie Mac to meet certain requirements prior to reselling conventional residential mortgages on the Fannie Mae and Freddie Mac secondary mortgage markets. Banks expect the surveyor's mortgage loan

survey to provide a title insurance company or an attorney inspecting the title with enough information to determine whether or not they have met many of these requirements. However, few surveyors realize that this contractual relationship between the bank and the secondary mortgage markets exists and fewer yet are aware of the content of the specific provisions relating to survey matters.

1. Fannie Mae Selling Guide

Some of the provisions of interest to surveyors in Section 105 of the Fannie Mae selling guide (version dated 6/30/90) are as follows:

> The title evidence must assure full title protection to (Fannie Mae)....Title evidence consists of a mortgage title policy on a standard form approved by us, and which is issued by a title insurance company that is satisfactory to us....
>
> The title to the property that secures the mortgage must be good and merchantable and free and clear of all liens and encumbrances.... We will not purchase or securitize a mortgage that has an unacceptable title impediment....
>
> For conventional mortgages we will not question title that is subject to the following conditions, which are minor impediments:
>
> - Customary public utility subsurface easements--as long as they do not extend under any buildings or other improvements--that were in place and completely covered when the mortgage was originated;
>
> - Above surface public utility easements that extend along one or more of the property lines for distribution purposes or along the rear property line for drainage purposes--as long as they do not extend more than 12 feet from the property lines and do not interfere with any of the buildings or improvements or with the use of the property itself;
>
> - Mutual easement agreements that establish joint driveways or party walls constructed on the security property and on an adjoining property--as long as all future owners have unlimited and unrestricted use of them;
>
> - Restrictive covenants and conditions, and cost, minimum dwelling size, or set back restrictions--as long as their violation will not result in a forfeiture or reversion of title or a lien of any kind for damages, or have an adverse affect on

the fair market value of the property;

- Encroachments of one foot or less on adjoining property by eaves or other overhanging projections or by driveways--as long as there is at least a ten foot clearance between the buildings on the security property and the property line affected by the encroachment;

- Encroachments on adjoining properties by hedges or removable fences;

- ....

- Variations between the appraisal report and the records of possession regarding the length of the property lines--as long as the variations do not interfere with the current use of the improvements and are within an acceptable range (for front property lines, a 2% variation is acceptable; for all other property lines, 5% is acceptable);

- ....

- Minor discrepancies in the description of the area--as long as the lender provides a survey and affirmative title insurance against all loss or damage resulting from the discrepancies;

2. Freddie Mac Selling Guide

Section 1704 (dated 6/30/89) of the Freddie Mac Selling Guide sets forth a list of acceptable minor encumbrances similar to those above. That list is more extensive and detailed. It's length precludes its inclusion here but a check list at the end of this article summarizes the provisions it contains.

3. Ramifications

By defining which minor encumbrances are acceptable, the secondary mortgage market provisions of Fannie Mae and Freddie Mac also define which encumbrances are unacceptable. Surveyors should be particularly aware of and identify those physical situations which fall outside the limits established by the minor encumbrance provisions. Because many lenders want the option of reselling qualifying residential mortgages on either secondary market, the survey should presumably meet the requirements of both markets.

Few surveyors are aware of the Fannie Mae and Freddie Mac provisions relating to surveying matters. Because the requirements have not been widely distributed to surveyors or made readily accessible to them, the typical information contained on mortgage surveys prepared by surveyors in significant portions of the country is insufficient to determine many of the items required by Section 105.05 of Fannie Mae and Section 1704 of Freddie Mac.

THE PROLIFERATION OF MORTGAGE LOAN SURVEYS

Another portion of Section 105.05, *Fannie Mae Selling Guide* (dated 6/30/90) states as follows:

> Two of the more common *unacceptable* impediments to title are unpaid real estate taxes and survey exceptions.
>
> • Real estate taxes must be shown as being current or as being future taxes that are not yet due and payable. Any situation in which taxes are not current is not acceptable.
>
> • Survey exceptions are not acceptable. If surveys are not commonly required in particular jurisdictions, the lender should provide us with an ALTA 9 endorsement, or its equivalent (and, if the regional office requests it, a CLTA endorsement 116). If it is not customary in a particular area to supply either the survey or an endorsement, the title policy must not have a survey exception. If the title company will not issue a policy without a survey exception, we will not purchase or securitize the mortgage in most instances. ....

In the past, for a title insurance company to remove the survey exception to a title policy, it normally required a licensed surveyor to complete a full blown property line survey and fill out an extensive report. These surveys are often referred to as "title insurance surveys" or "land title surveys". Typically, each title insurance company sets forth their own requirements and uses their own reporting forms. The recently prepared "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" is an attempt to provide a nationwide standard for these types of surveys which all title insurance companies will accept and regularly use. Whether they will do so remains to be seen.

The Fannie Mae Selling Guide indicates that survey exceptions are not acceptable yet on its face it does not explicitly require that a survey must be accomplished to remove survey exceptions. Although CLTA endorsement 116 makes reference to "...the map attached...",

neither the ALTA 9 endorsement or CLTA endorsement 116 make any reference to a survey.

The Freddie Mac Sellers and Servicers Guide contains provisions similar to those of Fannie Mae. In addition to title insurance, Freddie Mac will accept an attorney's opinion of title as an alternative if certain conditions are met. However, again in both instances, survey exceptions are unacceptable while surveys are not explicitly required. (See Sections 1702(e) and 1703, dated 6/30/89).

Although it never required surveys, up until approximately a year ago Freddie Mac set forth explicit requirements for the minimum information to be contained in the survey if a survey was actually carried out (See Section 1808, dated 10/31/85). These provisions were extensive but inevitably conflicted with other published standards for surveys. Those provisions have recently been replaced (See Section 1808, dated 6/30/89) and the section now reads as follows:

> If the title company insuring the mortgage or the attorney rendering the opinion of title requires a survey to remove exceptions to survey matters, the Seller must provide a survey of the mortgaged premises. The survey must conform to
> • the title company's or attorney's standards and
> • any community or local laws or standards relating to surveys

In effect, both of the secondary mortgage markets leave the decision with title insurers or attorneys providing title opinions to determine whether a "survey" is needed in order to remove the survey exceptions and to determine what constitutes an acceptable survey. Few local communities or states currently have minimum standard laws for surveys which explicitly cover mortgage loan surveys. Although many state surveying societies and surveyor licensing boards are actively pursuing such laws, the advisability and long term effectiveness of such laws are questionable and are discussed later.

In any particular real estate transaction, three obvious actions which the title insurer or attorney might consider in removing survey exceptions from their title policy or opinion of title are:

(1) require a current "survey" of the property

(2) require an inspection of the property by a surveyor and an "update" of any survey document which might already exist for the property

(3) bear the risk for the "no survey exception" clause without the benefit of any form of survey documentation for the property

In the first two options, a licensed land surveyor is almost always employed. The tasks involved to accomplish either of these options are included within typical state regulatory definitions of "survey work" and therefore often may be accomplished only by a licensed land surveyor (e.g. See William J. Dempsey et. al. vs. Chicago Title Insurance Company, #990600 Consent Decree and Journal Entry, Court of Common Pleas, Cuyahoga County, Ohio). In the third option, the title insurer or attorney may determine from its current documentation regarding a specific parcel that matters of survey are likely to constitute little risk. Therefore, the title insurer or attorney bears the risk without benefit of surveyor involvement. However, even if a title insurer foregoes the requirement for some sort of documentation by a surveyor, the insurer is likely to require an affidavit from the seller of the real estate stating that the seller knows of no existing encroachments and all improvements on the property have been in place for a minimum time period.

Although the common practice of title insurers in years past had been to require a very extensive survey before they would remove survey exceptions from title policies, both lenders and title insurers perceive a lack of need to carry out an extensive land title survey for each and every property sold on the secondary market. They view the costs and time delays to do so to be highly unreasonable and economically inefficient. They argue that some real estate transactions warrant such treatment but certainly not all.

Similarly, title insurers have been unwilling to insure the typical parcel with no visit to the property at all by a surveyor. Gathering the information to assess a particular parcel reasonably requires at the very minimum a physical inspection of the property by a knowledgeable individual.

The work products supplied by surveyors to meet the secondary mortgage market needs have typically been more than "windshield inspections" but less than what has qualified a work product as a "survey" under traditional standards of surveying practice. It should be noted that the use of these quick cursory "mortgage loan surveys" has spread throughout virtually all areas of the country due to the nationwide impact of the secondary mortgage markets.

CURRENT PRACTICES

In theory, the requirements of the secondary mortgage markets relating to surveying matters appear reasonable. The secondary markets have left it up to title insurers and attorneys to determine on a case by case basis whether a survey is required and, if required, what physical data should be gathered and what survey standards, if any, should be applied. The intent of this approach presumably is to promote flexibility and economic

efficiency.

From their perspective, the majority of lenders and title insurers are taking a logical and reasonable approach in meeting the survey requirements of the secondary mortgage markets. They want a survey at reasonable cost which provides them with the information to be able to determine whether the conditions determined by their contractual arrangements with the secondary mortgage market have been met as well as meeting their own needs for ensuring the security of the real estate. If they required every home purchaser to have an ALTA/ACSM Land Title Survey or even a property survey meeting the minimum state standards for such surveys, the claim is that this might highly minimize any likelihood of future loss from title and survey defects but would substantially slow down real estate transactions, increase closing costs, and result in substantial loss of banking business.

However, in practice, the flexible requirements of the secondary mortgage market in regard to survey matters have caused considerable problems; particularly for the surveying profession. Surveyors have been receiving requests for mortgage loan surveys primarily through intermediaries such as general practice real estate attorneys or property owners. Typically, neither surveyors or general practice attorneys have been aware of or had ready access to the secondary mortgage market regulations relating to surveying matters and therefore generally have been unaware of the specific requirements which the survey work presumably is intended to satisfy. Surveyors are being told what should be included in their surveying work products by those who are unfamiliar with the surveying complexities and the needs for further investigation which may arise in specific instances. Surveyors themselves probably are best able to judge what tasks are required to provide the necessary information to satisfy the mortgage market requirements relating to surveying matters.

It also is evident that at least some lenders and title insurers appear to be more concerned with the form of the surveyor's work product rather than the substance of the product. Because price often has been the dominant and overriding determinant in selection of surveyors to provide mortgage loan surveys, lenders and title insurers appear to be little concerned with whether the product delivered by the surveyor actually provides enough information to determine whether the conditions set forth in the secondary mortgage market requirements can be satisfied.

Some title insurers and lenders have been known to require only a "drive-by windshield survey" by the surveyor with a quick sketch of the property from the existing records. These insurers and lenders perhaps believe that the increased losses they may suffer in the future from such cursory observations of real estate are more than adequately offset by the increased profits they are able to generate over time by moving real estate quickly and keeping transaction costs down. Thus, insurers and lenders in such instances are

essentially engaged in an actuarial exercise.

PROBLEMS WITH THE EXISTING MORTGAGE MARKET SURVEY REQUIREMENT ARRANGEMENTS

Substantial problems exist with the current arrangement. If a surveyor provides a work product that fails to meet the requirements of the secondary mortgage market relating to surveying matters (perhaps because the surveyor was unaware of the requirements) and that work product eventually results in damages to a homeowner, the lender is contractually obligated to Fannie Mae or Freddie Mac to make good on any loss to that agency. By acquiring title insurance for the mortgaged amount, the lender's exposure is largely transferred to the title insurance company. However, the title insurer in providing a policy with no survey exceptions (or alternatively, the lender in the case where it chooses to sign one of the alternative endorsements in lieu of acquiring title insurance) always has the surveyor to fall back on in case they suffer a loss due to matters which an accurate survey would have exposed. This situation, combined with a high emphasis by lenders and attorneys on minimizing survey costs has resulted in accusations by surveyors that title insurers, lenders, and title opinion attorneys are primarily interested in having another party to point a finger at if damages occur and are little concerned with the substance of the survey results provided by the surveyor.

Joining the surveyor in a damage suit actually affords the lender, title insurance company, or title opinion attorney little backup protection for damages since " cheap surveys" are most often carried out by very small firms with minimal assets. Thus, from a practical perspective, none of the parties including the surveyor are protected from the losses caused by "cheap surveys".

The other party who is at considerable risk is the homeowner who may have invested significant amounts in the property in excess of the insured mortgage amount. In addition, even though no survey exceptions are contained in the homeowners policy, title companies have taken the position that they should pay only those losses which would have occurred even if an "accurate survey and inspection of the premises" had been accomplished. They argue that they insure risks only beyond this threshold. If a survey is found to be defective, incomplete, or otherwise inadequate and but for the inadequacy the loss would not have occurred, insurers have taken the position that the homeowner should sue the surveyor directly and the title insurer has no obligation to pay the claim. If the title insurance company prevails in its assertion, the homeowner is at considerable economic risk since their only alternative then is to sue the surveying business which may be very

small with minimal assets. (For an instance in which the title company assertion fails, see Walker Rogge, Inc. v. Chelsea Title & Guaranty Co., 562 A.2d 208, 116 N.J. 517 (1989).)

It makes sense that surveyors and real estate attorneys should be able to read and interpret the survey requirements of the secondary mortgage requirement for themselves. For that reason a sampling of those requirements have been included with this paper.

Even with direct access to the survey requirements, the requirements are in such general language that they give little guidance to surveyors as to what specific survey tasks should be carried out. Therefore, surveyors are likely to interpret conservatively the Fannie Mae and Freddie Mac requirements language to protect themselves from liability exposure. This eventually may raise mortgage loan survey costs higher than they would otherwise be if the secondary mortgage markets provided specific standards by which surveyors could gauge their work.

I often suggest the following experiment for surveyors. When the surveyor is next asked to carry out an inexpensive "mortgage loan survey" in the manner in which they are currently being done in the surveyor's area, I tell the surveyor to send the form contained at the end of this article to the lending institution or lawyer requesting the survey. The surveyor should request that they fill out, sign, and return the form. If the lending institution or lawyer fails to return the form or fails to initial any of the items on the form, this is probably a good indication that the items listed should be completed if the surveyor wants their mortgage loan surveys adjudged complete, accurate and proper when tested by the legal system in the event of a dispute.

It is unlikely any attorney or lending institution would actually initial all the items and sign the attached form. However, the form provides a basis for coming to an understanding between the surveyor and those employing the surveyor as to which standards might be applied and which standards should be applied in a particular instance. Common sense business practices suggest that any agreement between the surveyor and a client, lender, attorney, or land owner to provide mortgage loan survey services should be in writing.

POTENTIAL SOLUTIONS

A few years ago, the surveyor licensing board in Virginia declared that since the purpose of a mortgage loan survey was to locate physical structures in relation to property lines, property line work was a significant component of the work in accomplishing a "mortgage loan survey" and therefore such surveys must meet the state minimum standards for

property line surveys. When this administrative ruling took effect, real estate transactions in Northern Virginia were on the verge of coming to a halt due to the inability of surveying practitioners to keep up with the work load. Emergency legislation was introduced by real estate interests into the state legislature with the result that the licensing board's interpretation was negated in Northern Virginia but remained in effect throughout the rest of the state. Thus, the state definition of a "mortgage survey" remains muddled in that state and varies depending on location within the state.

One of the problems with requiring " mortgage surveys" to meet state minimum standards for property surveys is that licensing board standards vary considerably from state to state. Some information required by state surveying standards may be far in excess of that required by the secondary mortgage market and cause unwarranted expense to the purchaser. Yet, concerning other aspects, the information required by state property line surveying standards may be inadequate or incomplete for the purpose of ensuring security of mortgages which are sold in the secondary markets.

Other states, such as the State of Maine, have constructed explicit definitions for what a "mortgage survey" should consist of and have distinguished them from "property line surveys". Here the attempt has been to take the common practices of surveyors in carrying out mortgage loan surveys and place the practices in writing as a minimum standard for all surveyors to follow. This has the advantage of offering at least some protection to the surveyor from liability exposure due to the existence of a written standard which surveyors are able to judge their work against. In a dispute over the adequacy of the surveyor's work, the surveyor is able to point to the written standard to show what is intended when a lender or some other party orders a "mortgage survey" in that state. Drawbacks of this approach include the following:

° Standards may be developed by looking to common current practices rather than to what the client (i.e. the homeowner and the secondary mortgage market) actually needs. For instance, even though the secondary mortgage markets require under some circumstances a "survey", the work product provided by surveyors in Maine is referred to in the state licensing board regulations as a "mortgage loan inspection" because it obviously doesn't meet the common criteria which would warrant calling it a survey.

° If state licensing board standards for mortgage loan surveys are substantially less stringent than those set forth by the secondary mortgage market, the standards will be highly subject to allegations that they resulted from patronage and protectionism by the licensing board towards vested surveying interests in the state. Therefore, such standards might be subject to ready invalidation by the courts.

° There may be a tendency by licensing boards in some states to error on the side of requiring far more information and accuracy than the secondary mortgage markets require or intended.

° The definition of a mortgage loan survey will vary from state to state even though the secondary mortgage markets are national in scope

° Passing state or local standards for "mortgage loan surveys" could be largely ineffectual if the Freddie Mac regulations are altered to state that standards for mortgage loan surveys are entirely at the discretion of title insurers or title opinion attorneys and surveys for secondary mortgage market purposes need not meet any local level standards. If state standards for such surveys become over burdensome, this outcome is not unlikely.

CONCLUSION

Although surveyors in some parts of the country have been making cursory checks of physical improvements on real estate for the banking industry for many years, "mortgage loan surveys" did not become common on a national basis until the evolvement of Fannie Mae and Freddie Mac requirements which required resort to a site inspection of matters relating to surveying to determine whether the requirements had been met. Mortgage surveys have caused considerable consternation throughout the surveying, banking, and title insurance industries. Lawsuits concerning mortgage surveys have now had some time to work their way through the appellate process and, as a result, the liability exposure of surveyors in carrying out these surveys has become much more visible over the past few years. The problem, of course, is that even though these work products generated by surveyors might be labeled as "mortgage loan inspections" or "house location sketches" or contain notices that they are "not surveys", they were prepared by surveyors, they look like surveys, property owners believe they paid for a survey, all parties refer to them as surveys, and they have the common characteristics of surveys such as labeled dimensions and graphical depictions of the property lines and improvements. A rose by any other name still smells the same and therefore in the event of damages resulting from the surveyor's work product, the courts are likely to apply traditional legal standards of professional competence in judging the quality, correctness, and comprehensiveness of that work; i.e. was it an accurate "survey"?

A solution to the mortgage loan survey problem is not simple. If Fannie Mae and Freddie Mac simply alter their requirements to require a survey before survey exceptions are

removed from title insurance policies or attorney title opinions, a very substantial slowdown in real estate transactions is likely to occur in many areas of the country and closing costs could skyrocket. If they leave the determination of whether a survey is necessary to the title insurer or title opinion attorney but require the ALTA/ACSM land title survey standards be met or the minimum standards for property line surveys in each state be met in those instances in which surveys are deemed necessary, the same results could occur. If the secondary mortgage markets leave their current regulations as they stand, we are likely to see a proliferation of conflicting state and local regulations establishing standards for mortgage loan surveys promoted by surveyors followed by counterthrusts by the banking and title insurance industries.

One step towards a solution for all parties involved is to establish direct communications between secondary mortgage market administrators and surveyors and real estate attorneys. Any time the secondary mortgage market regulations effecting surveying matters are altered by those institutions, the new regulations should be widely distributed to state and national professional surveying societies and real estate attorney associations. To date, only the banking and title insurance industries have had effective access to the regulations.

The long term solution from the surveying professionals perspective would appear to be the development of a nationwide set of surveying and reporting standards for mortgage loan surveys. Such standards should be flexible to respond to case by case needs yet provide enough consistency and minimum guidance for surveyors' contractual arrangements such that all parties and the legal system could reasonably gauge the extent and quality of the surveying work products generated. Knowledgeable representatives from the surveying profession, title insurance industry, lending industry, and real estate bar should come together with representatives from Fannie Mae and Freddie Mac to develop consistent and workable surveying requirements. Once developed, the standards should be adopted by the secondary markets. Alternately, the standards might be held out as a model for states to enact as minimum standards for surveyors when doing this type of work.

MORTGAGE LOAN SURVEY
AGREEMENT

(Instructions to Lending Institution / Home Purchaser's Attorney: Please initial those items which apply.)

This is to certify that (Name of Surveyor or Surveying Business) has been hired to perform a survey in conjunction with the acquisition of a loan by (Name of Home Purchaser) to purchase a residence currently owned by (Name of Current Owner) at (Address, City, State) and the acquisition of a first mortgage by (Name of Lending Institution).

I.

We further certify that for this survey:

___ The surveyor is not required to meet the minimum standards for property line surveys set forth by the Board of Regulation and Licensing of Surveyors in (Name of State)

___ The surveyor is not required to meet the minimum standards for mortgage loan surveys set forth by the Board of Regulation and Licensing of Surveyors in (Name of State) (NOTE: Such standards may not exist in your state.)

___ The surveyor is not required to meet the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys".

II.

The following indicated provisions are relevant to or paraphrased from Section 1808 of the Freddie Mac Sellers' & Servicers' Guide.

We further certify that for this survey:

___ The surveyor is not required to meet the standards of (Name of Title Insurance Company) as set forth by (Title or Number for the Company's Standard Form for Land Title Surveys) or any other published standards by that company

___ If a title opinion by an attorney is involved, the surveyor is not required to meet any expressed standards of that individual except those explicitly provided in writing prior to the field investigation by the surveyor

___ The surveyor is not required to meet any additional community or local laws or standards relating to surveys.

III.

We further certify that for this survey the surveyor is relieved from meeting the following indicated provisions paraphrased from Section 1704 (6/30/89) of the Freddie Mac Sellers' & Servicers' Guide:

___ Showing the limits of subsurface public utility easements of record
___ Showing the limits of surface public utility easements of record or visible
___ Showing the limits of visible encroachments on public utility easements
___ Showing the locations of structures in relation to property lines for the purpose of

determining whether setback restrictive covenants or agreements are violated

___ Showing the limits of mutual easement agreements of record that establish a joint driveway or part wall

___ Showing the limits of fence misplacements from property lines

___ Showing the limits of encroachments on the mortgaged premises by improvements on adjoining property to determine whether encroachments touch any improvements or interfere with the use of the mortgaged premises

___ Showing the limits of encroachments on adjoining property including eaves and driveways

IV.

We further certify that for this survey the surveyor is relieved from meeting the following indicated provisions paraphrased from Section 105.05 B of the Fannie Mae Selling Guide:

___ Showing the limits of utility subsurface easements of record or physical evidence of such easements

___ Showing the limits of above surface public utility easements of record or physical evidence of such easements to enable determining whether they extend more than 12 feet from any property lines and whether they interfere with use of the property, buildings or improvements

___ Showing the limits of mutual easement agreements of record that establish joint driveways or party walls or physical evidence of such easements

___ Showing the limits of visible encroachments on adjoining property including but not limited to eaves, other overhanging projections, drives, and fences to determine whether they exceed one foot from the property line

___ Showing the lengths of the property lines in possession

___ Showing discrepancies in the description of the parcel

___ Showing the area of the parcel

Signatures:

Name of Lending Institution Officer	Signature	Date
Name of Home Purchaser's Attorney	Signature	Date

TAB F

BIOGRAPHIES OF SPEAKERS

H. Bishop Dansby is a senior partner in the firm of Dansby and Reed, Harrisonburg, Virginia. He attended Davidson College (Physics), the University of Florida (B.S. Engineering Science, with an emphasis in Operations Research), Oxford University, and Florida State University (J.D.). Prior to his law career, he worked as an engineer for IBM, Martin Marietta Corporation and the U.S. Army Corps of Engineers. Mr. Dansby serves as the Virginia State Bar representative on the Advisory Commission to the Virginia Division of Mapping, Surveying, and Land Information Systems. He is Chairman of the Committee for Improvement of Land Records of the Real Property, Probate and Trust Section of the American Bar Association. He serves on the URISA Committee on the Modernization of Land Records, and is a member of the American Congress on Surveying and Mapping, and the American Society for Photogrammetry and Remote Sensing (ASPRS). He is the ABA Real Property Section liaison to the the Institute of Land Information. Mr. Dansby is the author of a number of legal and engineering publications, including: "Automation of Title Search and Examination," URISA 1987 Proceedings; "The Geographic Info System-A Map for the Future," Probate and Property, Jan/Feb 1989; "Survey of Lawyers' Current Role in the Title Insurance Process," Probate & Property, Sept/Oct 1989.

Kraettli Q. Epperson is a partner with the law firm of Ames, Ashabranner, Taylor, Lawrence, Laudick & Morgan, located in Oklahoma City, Oklahoma. He received his law degree in 1978 from the Oklahoma City University School of Law. He is currently Co-Chairman of the ABA Conveyancing Committee, and the current Co-Chairman of the Oklahoma Bar Association Title Examination Standards Committee. He now serves as Adjunct Professor for Property II (conveyancing) and Oklahoma Land Titles at the Oklahoma City University School of Law. Mr. Epperson has authored numerous papers on title examination standards and their use, including "Oklahoma Title Examination Standards and Curative Acts Relating to Oil & Gas Interests", 24 Tulsa Law Journal, 548 (Summer 1989).

Charles Jacobus is a partner in the firm of Jacobus, Boltz & Melamed in Houston. He holds a B.S. and J.D. from the University of Houston. Mr. Jacobus is a member of the Houston Bar Association, the State Bar of Texas, the American Bar Association and the American College of Real Estate Lawyers. He is author of Texas Real Estate Law, 5th edition; Texas Title Insurance; Texas Real Estate, 5th edition and Real Estate Principles, 5th edition.