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# ARTICLE

## TITLE GUARANTY FUNDS: SYMPTOM, CURE OR NOSTRUM?\*

JOHN C. PAYNE†

The law of property has always been considered the most conservative branch of our jurisprudence. This feeling undoubtedly has a good deal of truth in it. Even if the subject matter did not in itself breed an addiction to the status quo, the long duration of some interests in land, coupled with the system of proof of title by an indefinitely perpetuated record, causes the greatest hesitancy to alter substantive rules once they have been established. As a consequence, if we reflect upon the past century we find property law progressing at a glacial pace when compared with such innovative subjects as procedure, torts and commercial law.

When we focus upon the administrative rather than substantive side, an entirely different picture presents itself. Property practice has been marked by radical innovations, and the pace at which these changes are taking place is steadily accelerating. The most spectacular alteration has probably occurred in the field of conveyancing, where the individual lawyer is rapidly being displaced by corporations as the major figure in carrying the proceedings to completion and advising the various participants. This change has not progressed uniformly in all sections of the country or in cities of different sizes.<sup>1</sup> But, it is a nationwide phenomenon and, if unchecked, will ultimately eliminate the lawyer as a conveyancer, and thereby exclude him from what has traditionally been the foundation of the bar's property practice.

A number of different kinds of corporations—banks, savings and loan associations, mortgage companies, real estate agencies, and the like—have participated in this transfer of function from lawyers to the laity. However, the bodies which have been most systematically, consistently and successfully engaged in the practice have been the title insurance companies. A logical reaction has been for the bar to fight "fire with fire" and establish its own insuring agencies. In 1947 concerned practitioners in Florida established the Lawyers' Title Guaranty Fund. The Florida Fund has since operated on a highly successful basis. The

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\* This article is an adaption of an address given at a dinner held jointly by the Indiana Bar Title Insurance Corporation and the National Attorneys' Title Assurance Fund, as a part of the annual meeting of the Indiana State Bar Association, October 29, 1970.

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1. See Payne, *Ancillary Costs in the Purchase of Homes*, 35 Mo. L. REV. 455 (1970).

success achieved in Florida led to imitation in other states and similar ventures were undertaken in Ohio, Indiana, Colorado, Minnesota, Kansas, Illinois, Connecticut and Maine. Several of these funds now operate not only in their home jurisdiction, but also in one or more neighboring states.<sup>2</sup> Since 1961 the development of the funds has been encouraged by the American Bar Association's Special Committee on Lawyers' Title Guaranty Funds. In 1970 the Council of the American Bar Association's Section on Real Property Probate and Trust Law commended the Committee for its work in encouraging a national fund.<sup>3</sup>

With the exception of Florida and possibly Connecticut,<sup>4</sup> the various state funds have had to struggle for existence. An insuring venture, from its nature, requires large capital and an ample surplus. It must further have a constituency broad enough to generate a premium income sufficient to permit operations at maximum efficiency. Insurers doing business in limited areas have sometimes been successful, but generally, bigness, in terms of capital, constituency, and area served, is a prerequisite to effectiveness. For this reason, it was apparent from the outset that, if the fund principle were to prosper, some sort of national company was inevitable. The formation of a national company was delayed by the fact that the Florida fund, the largest and best financed of the existing organizations, is so organized that it cannot readily expand beyond the borders of the state. Despite this handicap, in 1969 the Indiana fund was used as the base for the organization of the National Attorneys' Title Assurance Fund and the means was established for the application of the fund principle throughout the entire country. The new company did not supersede the existing organizations in other states; thus the future relationship between the national and various state funds cannot be predicted with exactitude. However, many of the state funds contributed capital to the national body and, therefore, it is expected that the latter will furnish a center around which the existing state funds can organize

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2. The literature on the funds has been surprisingly sparse and has generally been more hortatory or polemical than factual. Probably the best short summary of the history of the movement is found in Vol. 1, Nos. 2 and 3, of the National Fund Newsletter of the National Attorneys' Title Assurance Fund. See also Lawyer's Title Guaranty Funds Newsletter, June 1970; Carter, *A New Role for Lawyers: The Florida Lawyers' Title Guaranty Fund*, 45 A.B.A.J. 803 (1959).

3. *Bar-Related Title Fund*, 5 REAL PROP., PROB. & TRUST J. 310 F (1970).

4. The Connecticut Fund has been in operation for such a short time as to force some hedging of bets as to its ultimate success. However, its premium income increased from 31,812 dollars in 1966 to 272,457 dollars in 1969. In the latter year its premium income was the largest of any title insurance company operating in the state. Connecticut Attorneys' Title Guaranty Fund Newsletter, Vol. 4, No. 1 (1970). In evaluating this achievement it must be kept in mind that title insurance has been relatively little used in the state.

and to which they can look for support and nourishment. It is safe to anticipate that their relations will be harmonious and fruitful. It is also expected that there will be no need to go to the trouble and expense of establishing any new state organizations, since lawyers in states where local funds are not presently operating will turn to the national body for services to their clients.

Although the funds have various forms of organization, they are all essentially cooperative ventures so designed to permit the individual lawyer to give needed protection to his clients without resorting to a commercial insurer which presently is, or which may potentially become, a competitor in the work of conveyancing.

A good deal of meaningless rhetoric has been wasted in the dispute between the commercial insurers and the lawyers promoting the fund idea as to whether the funds take the bar out of legal practice into business. It might be said simply that lawyers have been forced to enter business because the commercial insurers have insisted on practicing law.<sup>5</sup> It is significant that in states like Virginia and North Carolina, where the commercial companies have confined themselves strictly to the insuring function, there has been no substantial movement for a fund. On the other hand, the fund principle has had its most ardent advocates in states like Florida and Colorado, where the commercial insurers have unabashedly been attempting to take over the entire conveyancing process.

I am not here primarily concerned with any of the ethical problems raised. My principal concern is whether the funds can be successful in their avowed purpose of restoring the work of conveyancing to the bar, or whether, in the long run, they may do more harm than good. On this issue I am far from certain, and I have expressed this uncertainty in the form of a question: Are the funds a symptom, a cure or a nostrum? The great variety of practice and institutional arrangements throughout the country<sup>6</sup> make any answer to this question highly tentative. However, I believe enough generalizations are valid to permit some preliminary hypotheses.

Prima facie, it would appear that the funds enjoy enormous advantages over the commercial insurers. They are designed to permit the lawyer to give complete title service to his clients; they give the bar protection against the incursions of commercial insurers; and their rates are dramatically below those conventionally charged in the past.<sup>7</sup> Any

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5. The author has discussed this problem at length in *Title Practice and the Unauthorized Practice of Law Controversy*, 53 MINN. L. REV. 423 (1969).

6. See note 1 *supra*.

7. Rates charged by local funds are not uniform. The National Fund has announced rates of \$1.75 per thousand for owner policies and \$1.25 per thousand for mortgagee

such appearance may be superficial, however. Title insurance is demanded primarily by institutional lenders who, rather than the attorney, dictate the insurer. These institutions have no particular interest in protecting the bar, and the rate paid is of little importance, since the mortgagor, not the mortgagee, bears the expense. Furthermore, in areas where insurers have taken over the work of title examiners and rely on their own plants, potential users of the fund have no operational base for competitive activity.

It is necessary, therefore, to probe deeper if we are to predict, even tentatively, what the future of the funds will be and what effect they will have on title practice. The loss of title practice by the bar is not a mere accident. Although different causes have played a greater or lesser role in various parts of the country, six have been of universal and decisive significance.

First and foremost is the archaic and inefficient system of land records. This system, or lack of system, has been likened to the records of a country store of seventy-five years ago. Such a comparison may be unduly harsh upon the storekeeper. I have never inspected an old-fashioned rural emporium, but it is impossible to conceive of any business staying out of the hands of the receivers for thirty days if its books were kept in a fashion resembling that used in maintaining the public land records. The results of this inefficiency have not been uniform throughout the country, except that they have been consistently detrimental to the bar. In some areas, primarily east of the Mississippi and in the smaller communities, direct search of the records by lawyers continues to be the prevailing method of proving title. However, a title examiner takes an enormous number of hours in doing his work and if, as the American Bar Association contends, a lawyer must gross twenty-five dollars an hour in order to make an adequate living, personal search is becoming increasingly a luxury and title practice is less and less attractive. It is being argued that this economic pressure will ultimately cause the abandonment of this form of practice and that commercial companies will take over by default in all except the smallest towns. In large cities, where the volume of records makes direct search prohibitively expensive, the displacement of the bar by commercial insuring companies has already taken place.<sup>8</sup>

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policies. National Fund Newsletter of the National Attorneys' Title Assurance Fund, Vol. 1, No. 4 (1970). This compares with the national commercial rate of \$2.50 and \$3.50.

8. A broad generalization of this kind cannot be taken as literally true in every case. For example, in Boston personal search continues to be used almost exclusively. However, the author is informed that such search is largely carried out by para-legal personnel and is based primarily on private title plants maintained in the offices of a few law firms.

Intermediate between local title insurance and personal search is proof of title by abstracts. This system, which might seem strange to us if we were not accustomed to it, allows a private company to make a complete copy of the public records and then reindex these records to permit ready search. The company then retails abstracts of the documents affecting a particular piece of property to the vendor which are, in turn, examined by the vendee's attorney. The statement may seem like heresy to Indiana lawyers, but the fact remains that the invention of the commercial abstract has, in the long run, been a disservice to the public and the bar. Abstracts originally were a great convenience to lawyers, but they have blinded the profession to the defects in the recording system. More importantly, they have placed a practical monopoly of title information in the hands of laymen who have no necessary association with the bar. Long ago, in the larger cities, where capital was available and a volume of transactions sufficient to justify the required investment, abstract plants were transformed into title insurance companies. When this occurred, lawyers—already barred for practical purposes from direct access to the public records—were excluded from title examinations, the most profitable part of conveyancing. What was left to them was hardly worth keeping, and they rapidly relinquished this type of work to the laity.

Until relatively recently, this phenomenon has been confined to quite large metropolitan areas. But, it has now been discovered that, once the capital has been raised for a metropolitan title insurance company, the base thus established can be used to extend operations into the hinterland. By the purchase of abstract plants, or by agency agreements, a metropolitan insurer can carry its business into communities too small to support their own companies. It is safe to predict that the days of the traditional abstract company serving the bar are numbered. In its place we shall find the branch office or agent of the commercial insurer. Every lawyer now served by an abstract company might ask himself what he would do if tomorrow's paper announced that the company would discontinue issuing abstracts and would sell only title insurance policies based upon their own examination of their own records. This is not an idle question. What has just been described has happened in spectacular form in Florida and Colorado. More importantly, it is occurring quietly in community after community throughout the country. This movement can be expected to accelerate as the commercial insurers consolidate their position.<sup>9</sup> Sometimes the break with established custom is made less

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9. After a recent visit to abstract companies in 13 states, a reporter states that: "When asked about important changes they foresee in abstracting for the future, 36 titlemen said there will be growing influence of the title insurance method in title com-

abruptly, as where the company agrees to issue either abstracts or insurance policies. But this is like cutting off the dog's tail a little at a time to make it hurt less. The invariable consequence of dual service is that a title insurance policy can be issued in three days and an abstract in not less than three weeks. This differential in the length of time necessary to complete closings results in the destruction of abstract practice as effectively as if no abstracts at all are sold.

The key to the conveyancing problem is, therefore, practical access to title information. If such information is available only from laymen, these same laymen can bar lawyers from title practice. If it is available only from the public records, and these records are so inefficiently maintained as to make direct examination prohibitively expensive, lay control is an inevitable consequence. Until lawyers grasp these fundamental economic and institutional principles, they cannot hope to take effective action to stop the erosion of their practice.

At this point it is appropriate to interject a comment about computers. Beyond question, land title information can be stored in and retrieved from so-called land data banks. At present, however, no really workable system has been perfected.<sup>10</sup> Some experimentation is being carried on, but certain technical difficulties and the inevitable high cost will probably delay the development of a practical system for another twenty-five years. Meanwhile, conventional title practice will be lost to the bar, and the primary beneficiaries of computers will be the title insurance companies. The need for a simpler reform of the public records is insistent and immediate. Something must be done now, and it must be

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pany operation." Garrity, *Operations Grassroots Progresses*, 49 TITLE NEWS 4 (No. 10, October, 1970).

10. The leading exponent of the "land data bank" system of land records has been Professor Robert Cook. See Cook & Lombardi, *American Land Law Reform: Modernization of Recording Statutes*, 13 WEST. RES. L. REV. 639 (1962); Report of the Committee on Improvement of Land Records, PROC., A.B.A., SEC. OF REAL PROP. PROB. & TRUST LAW 94 pt. II (1964); *id.* 56, pt. II (1965); 1 REAL PROP., PROB. & TRUST J. 191 (1966); 2 REAL PROP., PROB. & TRUST J. 342 (1967). Professor Cook was also instrumental in organizing two conferences, at both of which he vigorously advocated his position. PROC., TRI-STATE CONFERENCE ON A COMPREHENSIVE UNIFIED LAND DATA SYSTEM (CULDATA) (1966); White, PROCEEDINGS OF A WORKSHOP ON PROBLEMS OF IMPROVING THE UNITED STATES' SYSTEM OF LAND TITLES AND RECORDS (Indiana-Purdue University at Indianapolis, 1968). The present author was, at one time, chairman of a committee of the National Conference of Commissioners on Uniform State Laws on a Model Simplification of Real Property Transfers Act. The work of the Committee was directed toward the development of an electronic retrieval system for land title information. It aborted not merely because of lack of funds but because there was no existing technology sufficient to meet the problem. Six cities, supported by grants of 12,000,000 dollars are now attempting to develop a prototype municipal information system. "How best to coordinate the geocoding with land title records and to make the data publicly available apparently have yet to be worked out." *Land Data Banks*, 5 REAL PROP., PROB. & TRUST J. 310C (1970).

done without the benefit of the computer. The bar has the choice of waiting—and risking the loss of its remaining practice—or acting to insure that lawyers can continue to serve as conveyancers. Relatively simple changes in the present system will make the public records accessible without the need for a computer. They should be instituted pending the future development of electronic technology.<sup>11</sup>

The second reason for the decline of traditional conveyancing has been the lack of an adequate theory of title. It is ridiculous to think we can continue to take every search back to the sovereign, or even to some period as remote as fifty years.<sup>12</sup> We must adopt a theory that will preserve notice of claims against land for a limited time only—a theory permitting the title examiner to ignore everything in the record antedating a comparatively short period prior to the time when search is made. A number of progressive states, including Indiana, have adopted marketable title legislation. This has been a long step forward, but not long enough. All of the existing acts contain so many exceptions that a limited search will not give protection to land purchasers. The acts must be drastically amended before they can be effective.<sup>13</sup>

The third cause for the decline of title practice is that traditional title opinions do not give the security demanded by a few buyers and many mortgage lenders. The recording system was never designed to permit positive proof of title. It gives notice of some, but not all, claims against land. This defect can only be remedied completely by the adoption of the system of registered title, an alternative unacceptable to the American people. It follows that some kind of ancillary protection by a responsible corporation, in addition to an attorney's opinion, is becoming indispensable to certain types of transactions.

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11. The author has elsewhere suggested one such system. *Continuity and Identity in Land Title Searches—a Perpetual Self-Indexing System*, 16 ALA. L. REV. 9 (1963). The proposal was not necessarily designed as a model, but more as an exercise to determine how simple changes could make the present system workable.

12. Some readers may be surprised to learn that in England a 30 year limitation on the period of search has been considered intolerably long and has recently been reduced to 15 years, in the absence of stipulations by the parties. Law of Property Act, 1969, ch. 59, sec. 23.

13. The author has elsewhere pointed out that even the Model Marketable Title Act proposed by Professor Simes and Mr. Taylor is fatally defective. Payne, *In Search of Title (Part II)*, 14 ALA. L. REV. 278 (1962). As this is written the author is the reporter for a project of the Alabama Law Institute which includes the drafting of a group of statutes embracing the marketable title principle, and at the same time avoiding the deficiencies of the Model Act. No existing act has proved suitable as a model in a state where abstracts are available in only a few cities and where large scale mining activities are a major element in the economy. A report containing a technically effective group of acts has been reported to the Council of the Institute. Whether the proposals will be politically acceptable to the Legislature cannot be predicted.



A fourth reason why lawyers have been losing their title practice is that they have been unable either to advertise individually or to solicit business. By contrast, title insurance companies have been permitted to engage in vigorous promotional campaigns. The bar is placed at a hopeless disadvantage and cannot compete unless either the activities of the companies are suppressed, or the lawyer, or his surrogate, engages in a program of publicity which lets the public know the advantages of lawyer representation.

A fifth cause for the bar's predicament has been the failure to enforce the rules forbidding lay practice by corporations. The reasons for this failure are in part historical, but equally important has been the unwillingness of leading property lawyers to alienate prime clients. This reluctance has been encouraged by the rationalization of the bar's lay competitors, that they are simply examining a risk they propose to assume, and that self-representation is permitted. The argument is specious, as is evident from the most casual analysis.<sup>14</sup> The leading case on the subject was decided within the past decade by the Supreme Court of Kentucky. In *Kentucky State Bar Association v. First Federal Savings and Loan Association*,<sup>15</sup> the defendant savings and loan association, in the course of its lending activities, charged what it called a "service fee" and made its own examination of title. When accused of practicing law, it invoked the self-representation doctrine. The court rejected this contention and said:

It is apparent that the title examination is not made exclusively for the benefit of respondent. A clear title is one of the conditions upon which it will make a loan. The examination is made primarily for the benefit of the borrower so that he can comply with this essential condition. The fact that a charge is made simply confirms the fact that the legal service is being rendered for him.<sup>16</sup>

The court further pointed out that the defendant profited by the transaction, that there was a complete lack of professional relation between the borrower and the defendant's attorney, and there was no question but that:

A title examination (which includes an analysis of recorded interests in land coupled with an opinion as to its legal status)

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14. See note 5 *supra*.

15. 342 S.W.2d 397 (Ky. App. 1961).

16. *Id.* at 398.

is a legal service which lawfully can be performed for others only by a licensed attorney.<sup>17</sup>

If applied generally, this doctrine would dramatically affect title practice although, admittedly it would not cure all of the difficulties encountered by lawyers in serving their clients. Whether the courts can be persuaded to apply it, will be discussed later.

Finally, lawyers have to accept a great deal of the blame for the present situation. They have been incredibly dilatory and pedantic in their work, and have frequently blocked badly needed reform. While the world has been modernizing itself, the bar has been oblivious to the functional changes taking place in society. Businessmen have been demanding an efficiency which lawyers have been unwilling to exercise. It is no wonder the public has been turning away from the attorney to those who are willing and able to give them the service they need and feel entitled to.

If I am correct in the analysis thus far stated, there are six major causes for the disease from which we are suffering. I use the word "disease" intentionally and in the pejorative sense. When corporations become in fact conveyancers of our land, buyers are deprived of the representation and advice they must have if their interests are to be protected. If the buyer is to get the services he needs, he must receive them from an independent attorney of his own choice. I am, therefore, committed to the principle that corporations should be excluded from the practice of conveyancing.<sup>18</sup>

At this point it is appropriate to return to the question, asked earlier in this article, whether the title guaranty funds can assist the lawyer in regaining his traditional role in the land transfer process. We have seen that the loss of the lawyer's title practice has resulted from six major causes. Of these, the guaranty funds solve only one: the lack of protection, in addition to a lawyer's certificate of title. The same function is served by the commercial insurers, and if the funds have nothing to offer except insurance, their future does not appear to be particularly bright. The funds can be effective only insofar as the lawyers they serve are effective. The effectiveness of the practicing attorney depends upon his increasing his efficiency and his ability to be of service. If he is unable

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17. *Id.*

18. This conviction is subject to certain limitations I have discussed elsewhere. See note 5 *supra*. In all fairness, it should be pointed out that if the buyer has an independent attorney he is not necessarily assured of the services he needs. See note 1 *supra*. However, if the transaction is carried out by a corporation it is quite certain that he will not receive these services.

to do so, he has little future. If he has little future, neither have the funds, which were established exclusively to serve the bar and the bar's clients. The officials of the funds would undoubtedly prefer to engage only in insuring. However, unless they take a position of leadership in instituting the reforms needed to make lawyer dominated conveyancing practical, their companies may not be able to survive. They are wedded to reform, not from choice, but from necessity. This is the challenge faced by the funds. Unless their executives can meet it successfully, the entire fund principle is likely to die on the vine.

If we are to maintain a proper perspective, we must keep in mind that the movement for lawyer controlled assurance funds is not an isolated phenomenon. Rather, it is only one aspect of a much larger movement directed toward removing the abuses found in traditional practice. In recent years a great deal of reform legislation has been enacted in the several states. Severally, this legislation has been unobjectionable. However, it has not been sufficiently systematic to make title practice efficient. We have seen in this legislation an example of the adage that small reform is the enemy of large reform. What is imperative is large-scale, systematic legislation sufficient to remove the impediments we have suffered in the past. A major reason why adequate reform has not been adopted is that proper leadership has been lacking. Leading property lawyers are generally so closely aligned with existing institutional structures that they hesitate to alienate prime clients or offend fellow members of the bar connected with such institutions. The title guaranty funds suffer from no such embarrassment and are in a position to afford the leadership necessary to frame adequate legislation and press their program through the several state legislatures.

Statutory reform in itself will not be enough. I have pointed out the disadvantage lawyers suffer because they cannot advertise or solicit. The perfection of their practice will not suffice unless the public can be made aware of the advantages of lawyer-conducted and lawyer-insured title transactions. The funds can conduct a public relations campaign. They must do so if they are to counter the propaganda and hard-sell tactics of the commercial insurers. Buyers of real estate must be made to understand that they need their own lawyer to advise them and that they need the formal protection of a fund policy running to themselves, not merely to the mortgagee.

A third function the funds can serve is the vigorous prosecution of unauthorized practice charges against lay institutions acting as conveyancers. The principle must be established that anyone who purports to give an opinion as to title is practicing law. Lay institutions give such

an opinion when they issue a title insurance policy based on their own investigation or when they assure a mortgagor or buyer that a proper investigation of title has been made. Here again, the individual attorney is embarrassed by his close association with the very institutions requiring prosecution. Only the funds are insulated from such influences and can act for the conveyancing bar as an entity.

At this point a word of warning is appropriate. The courts have been reluctant to enforce unauthorized practice principles against lay institutions because the legal profession has failed to offer a satisfactory alternative. If I were a judge and a title insurance company were charged in my court with unauthorized practice, I would hesitate to issue an injunction, even though I was convinced of the defendant's guilt. My reason would be the quite practical one that lawyers in the community where the company operated were probably not willing or able to render proper title service. For this reason, widespread reform must be a predicate to the successful prosecution of charges of unauthorized practice.

I again return to the question used in the title of this article: Are the title guaranty funds a symptom, a cure, or a nostrum? They are undoubtedly a symptom of widespread uneasiness on the part of the bar. Lawyers are losing their practice to commercial title insurers. A logical reaction was to form their own insurance company, but reaction and cure are two distinct matters. A reaction, even a logical one, may be no cure at all. If the funds offer only insurance, they do nothing more than duplicate services which can be performed adequately by lay companies. If they are to help the lawyer regain or retain his traditional practice they must go forward and offer a means by which the other reasons for the decline of that practice can be removed. They must become the spearhead for a wide program of reform far transcending their work as insurers. They are in no sense a cure for the disease, but they can become the medium through which a cure can be obtained. If they do not accept this fact, and encourage the bar to believe they are a cure in themselves, they undoubtedly should be classed as a nostrum.

In conclusion, it might be well to comment about the future of all forms of title insurance. The commercial insurers and abstracters are joined in a trade organization known as the American Land Title Association. The Association gives an outward, monolithic appearance to the "industry." In fact, its membership embraces persons and organizations sometimes having little in common and not infrequently representing interests which are actually hostile. The industry is rapidly evolving, so that its future cannot be accurately predicted. Some of the insurers will undoubtedly oppose any effective reform measures. However, there is an

intimation that at least a few other insurers are beginning to analyze their costs and are concluding that their primary profit comes from insuring, rather than from title examination. The expense of maintaining title plants is becoming almost prohibitive.<sup>19</sup> An executive of the American Land Title Association has gone so far as to suggest that the companies join in a massive effort to obtain adequate public land records to replace their private title plants.<sup>20</sup> If this suggestion and other needed reforms are adopted, the commercial insurers may withdraw from conveyancing and confine themselves exclusively to insuring. Such a contingency would remove the primary need for the funds and might settle once and for all the dispute about the roles to be played by the bar and the commercial companies.

Another factor which cannot be ignored is the source of future mortgage funds, without which the construction industry cannot exist. The current credit crunch has seriously affected construction,<sup>21</sup> but this condition cannot be expected to continue. The industry is too important to our economic and social life and in the future a massive injection of money into the construction sector can be expected. The primary source of this money will be the federal government. However, significant changes may take place in the way in which it is channeled into industry. In the past, the major sources of mortgage money have been the commercial and savings banks, the life insurance companies, and the savings and loan associations. Of these, the banks and life insurance companies have a good deal of choice as to the nature of their investments. The specter of inflation has now become so pervasive as to discourage their putting money into long-term fixed return securities. It is probable, therefore, that savings and loan associations will be the channel through which the great bulk of mortgage money will be directed in the near future.<sup>22</sup> Savings and loan associations have tended to be purely local

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19. This is particularly true where several commercial companies operate in the same city. I am informed that in Birmingham, Alabama, a city of slightly less than 300,000 population, seven distinct title plants are being maintained, in addition to the public land records.

20. Ptak, *Discussion—A Systems Analysis Approach to Titles and Land Information*, PROCEEDINGS OF A WORKSHOP ON PROBLEMS OF IMPROVING THE UNITED STATES' SYSTEM OF LAND TITLES AND RECORDS 109 (Indiana-Purdue University at Indianapolis, 1968).

21. No reliable data as to title insurance company operations are available. However, a highly informed observer insists that the volume of title insurance underwriting has declined much less than would have been expected during the current cutback in construction. Jensen, *ALTA Research Indicates Firming Trend in Underwriting Business*, 49 *TITLE NEWS* 7 (No. 10, October, 1970).

22. A prediction as to the future of the savings and loan associations is necessarily tentative. They are currently facing a number of new problems and a rather rapid evolution in their mode of business will undoubtedly be necessary if they are to survive.

organizations with a high volume of title work. They are accustomed, more than other lenders, to rely on house counsel and have made minimum use of title insurance.<sup>23</sup>

It is plausible to anticipate a decline in the gross market for all forms of title insurance. In such case, the funds will find themselves attempting to gain lodgment in a contracting market. This speculation is predicated upon the assumption that the Kentucky doctrine as to unauthorized practice will not be adopted in a substantial number of other states. If it is adopted elsewhere, the work now being done by savings and loan associations' house counsel will be turned over to independent practitioners, who, in turn, will be potential customers of the funds. The commercial companies will find themselves in something of a dilemma. If they oppose the spread of the Kentucky doctrine, they may see their market narrowed. If, on the other hand, they support the Kentucky doctrine, they risk the courts' limiting their own activities to include only insuring. In the light of these uncertainties, the future of not only the funds but of all forms of title insurance appears to be unpredictable. The only certainty is that all aspects of title practice are in a state of evolution, and the future role of both commercial insurers and the title guaranty funds is yet to be determined.

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Wilson, *S & L Industry Undergoing Renovation*, 31 THE EXCHANGE 1 (November, 1970).

23. See note 1 *supra*.

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