

First Supplement to Memorandum 80-92

Subject: Study H-250 - Revision of Real Property Law (Comments on Professor Blawie's Study)

Memorandum 80-92 notes that two law professors suggested that the Commission consider adopting a title registration system of land title assurance. The memorandum points out that such a system would not have a reasonable chance of enactment because of its impact on the title insurance industry and because of California's unfavorable experience with title registration. We suggest in the memorandum that the Commission may nonetheless wish to investigate the possibility of a title registration system by scheduling a presentation of opposing viewpoints concerning its feasibility and desirability. We have received communications that raise the question whether it would be desirable to devote any resources to consideration of this matter at this time.

Attached to this supplementary memorandum is a letter from Arvid G. Erickson of Title Insurance and Trust Company containing personal thoughts and comments on a title registration system and the role of title insurance companies. The staff has also received a letter from William J. McDonough of TICOR indicating his personal view that a title registration system will be strongly opposed, not only by the title industry but also other allied real estate industries.

We also have been advised that a student law review note for the U.C.L.A. Law Review proposing adoption in California of a title registration system is in draft form and should be published in 1981.

The staff recommends that any further consideration by the Commission of a title registration system be deferred until we have the published law review note available for study.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

TITLE INSURANCE
AND TRUST

December 15, 1980

The California Law
Revision Commission
4000 Middlefield Road
Room D-2
Palo Alto, CA 94306

Gentlemen:

After reviewing Professor James L. Blawie's Study H-250, prepared for The California Law Review Commission, and Memorandum 80-92 dated October 14, 1980, prepared by Nathan Sterling, Assistant Executive Secretary, I felt it incumbent to forward by observations and comments, particularly as they relate to the upcoming meeting of the Commission which has scheduled a presentation of the pros and cons concerning a Title Registration System.

I am a long-term employee of the Title Insurance and Trust Company and a member of the Board of Governors of the California Land Title Association; however, my thoughts are entirely personal and do not represent either my Company's position or that of the CLTA, although there is likely a strong compatibility of thought.

I recognize you may view this letter as biased and self-serving, but as you review its content, please consider it from a broad perspective of what I believe is the most important consideration--how will the public be best served. In my opinion, the parties to a transaction involving the transferring or encumbering of real property must have a service available to assist them which responds to their needs quickly, accurately, and at an affordable cost. The title industry today provides a necessary service in a real estate transaction and at a very reasonable cost. Title insurance companies, although technically classified and regulated as an insurance industry, is primarily a service industry. A title insurance policy is the ultimate, final product, but the elements of the services provided, leading up to the recording of the transaction, is uppermost in importance in a real estate transaction. The industry trains nonprofessionals (as opposed to attorneys) to search and examine recorded (and now with recent expanded industry insurance) and unrecorded documents to ascertain the condition of title to a parcel of land. They do so under strict and specific guidelines established by Underwriting Counsel, although ultimate risk decisions rest with admin-

istrative managers. Although the system used by title companies may not fully satisfy the "professional excellence of a title lawyer" referred to on Page 92 of Professor Blawie's Study, it has been shown that the public readily accepts the degree of expertise the title industry offers, particularly in light of the service "sense" that is instilled in the title company employees and whose expertise is backed up by insurance, or in the case of attendant escrow services, quick response and payment for losses which may arrive by errors causing loss to the parties to the transaction.

What impact would a Title Registration System have on the title industry? Would it cause the demise of the title industry as we know it today? Would the services rendered by the title industry be adequately performed by others at affordable prices? Is it needed? Should a government-sponsored system replace a private-enterprise-provided service? If it did, would it train employees to be "customer" oriented? Would it back its errors with quick-claim service? Would it be self-sustaining or a burden upon taxpayers? These are questions (and there are too many to fully enumerate) which would have to be addressed and answered prior to any recommendations to expend any significant sum of money on the development of a Title Registration System.

I would like to offer my view as to the possible answers:

1. What impact would a Title Registration System have on the industry? I believe it is obviously a negative impact. It would go far beyond Mr. Sterling's comment that, "This is primarily a question of politics. (Will the title insurance companies feel a major source of revenue is being taken away?)" The provisions of the statute would determine the degree of negative impact.
2. Would it cause the demise of the title industry as we know it today? The answer is yes, if such registration was mandatory rather than optional. If it was truly optional and had no governmental subsidy, it would likely fail from its own lack of viability, just as the California Torrens System failed. It could not effectively compete with the service and low price of the title industry. But if it was mandatory, the title industry would not survive in any context as we know it today. The title industry has expended enormous sums to build effective title plants with readily retrievable data to support a title search. Recent innovations in computer technology, combined with the title industry realization that joint plant participation is becoming the key to low cost and accurate storage and retrieval systems, is allowing for even better title service. A Title Registration System would be tantamount to condemnation of a valuable private asset without compensation. If the Title Registration System was mandatory, a

charge to the public would be required, reducing the dollars available to the title industry for services that by necessity would be changing. Who would search the records--attorneys, private individuals, or title company employees? What would be the incentive for a title company to remain in business?

3. Would the services rendered by the title industry be adequately performed by others at affordable prices? The individual services performed by a title company are too numerous to reiterate in this letter, but suffice it to say that its services could, of course, be performed by others, but not at current charges or in the very acceptable service-oriented manner in which they are now provided. Sheer competition forces good service and reasonable prices in the title industry. A Title Registration System would be noncompetitive. Auxiliary services surrounding the actual retrieval of data from a title plant would probably be performed by attorneys (as is true in many Eastern states), but not in either the same manner or price. I am not either condemning or endorsing the lawyer's function, which would likely evolve to primarily supplant the service of the title industry. It should be clearly understood, however, that such a Title Registration System must serve the public better--that the new system would not be self-serving to the group sponsoring such a statute.
 - a. Is it needed? My very strong opinion is NO. My opinion, however, does not go so far as to make a statement that a revision in the Grantor/Grantee Index System to a county-wide (as opposed to state-wide) change in the method of indexing documents should not be made. Over a period of time on a go-forward basis, it would greatly reduce the requirements of the title industry to expand their investments in title plants, but it would not cause ruination that potentially would be caused by a Title Registration System. Probably the most fundamental issue to the entire matter is condensed into this single question, "Is it needed?" From all information which I have read or have personal working knowledge, I can find no legitimate need, although it would certainly satisfy certain theorists and other individuals or groups that feel the title industry is a greedy monopoly. It is not. There must be an overwhelming and compelling reason to be able to say, "It is needed."
4. Should a government-sponsored system replace a private-enterprise-provided service? Absolutely not, provided private enterprise meets the needs of the public. The title industry meets that need.

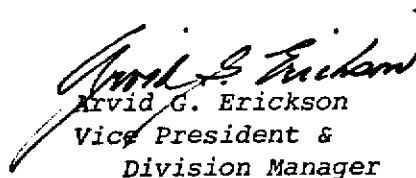
December 15, 1980

5. If it did, would it train employees to be customer oriented? Again, I sincerely doubt that the government-agency employee who would have to provide part of the service now rendered by a title company employee, could be instilled to maintain the courtesy, willingness, and attitude to "bend over backwards" to satisfy a customer's need. In the title industry, the employee so responds or is disciplined. Would that happen in government?
6. Would it back its errors with quick-claim service? The title industry is chastised by the unknowing for paying out 10% or less of their premium income in losses. It is the basic concept of the title industry to price its product, the title policy, on the basis of preexamination of matters affecting title up to the date of recording the transaction to prediscover title defects and cooperate in their correction prior to recordation. Title companies' employees do make errors and title insurers assume risks, but they pay for the errors. How effective a claims service would a Title Registration System offer? What liability would it be willing to assume? Could the State of California be sued like an insurer if settlement could not be reached?
7. Would it be self-sustaining or a burden upon taxpayers? To be acceptable, it would have to be self-sustaining.

I can readily foresee that if a Title Registration System was created with any major degree of mandatory use, the title insurance industry would find itself in the position of being needed and wanted for assisting in transactions requiring their considerable expertise, but bypassed on a typical home-sale transaction. We would be offered only the chafe and no gravy, and we would go bankrupt. Since our pricing is based on equal pricing for similar assumption of liability, though similar transactions of same liability may require different degrees of research and thus a different actual cost, it is the average cost which is borne by each customer. If we were fed little or no gravy, we could not charge enough for the chafe to stay in business.

I sincerely believe it is not the intention of the Commission to eliminate the title insurance companies from their earned position as a viable and needed industry providing an essential service. Recommendation and adoption of a Title Registration System would be a forceful step in that direction. Would it be just? Would the public stand for it if they fully understood it? Is it needed?

Yours truly,


Arvid G. Erickson
Vice President &
Division Manager