

The Rise of Land-Title Insurance in California

By John Briscoe

Insurance of land titles did not originate in California, although it attained its greatest purchase as an industry in this State. The story of title insurance in California begins with the State's early attempts to fashion a title registration system.

California's first legislature met in San Jose in 1850 a few months before statehood, and there adopted the recording system for land titles. Under the Mexican regime, California had only the crudest land-title registration. (There were, after all, only some 700 valid private land-titles in the State, together with a spattering of mission and pueblo lands.) The recording system gave the soon-to-be State of California the benefits of an American device that had proven its usefulness in searching land titles and making land transfers simpler.

However simple such a system might have seemed to that first legislature of a new American possession (California, before it became a state, never attained the status of an official "territory"), it was not simple enough. The world had rushed into California with the Gold Rush of 1849. The population of San Francisco grew more than a hundredfold in that year. The average person uneducated in the niceties of common-law conveyancing, perpetuities, and the like, could not make efficient use of the recorder's office. Thus grew up whole industries – conveyancers, abstractors, attorneys and experts who would furnish "certificates of title," and, in due course, companies that insured land titles.

It is, if not enlightening, at least entertaining to get some sense of those early days in California, land-title-wise. In 1852, the San Francisco City Directory carried this advertisement for Theodore Payne & Co.: “Real Estate Business in all its branches, for the conducting of which they esteem themselves peculiarly qualified by having given it their especial attention for over two years past, and made themselves familiar with all questions affecting titles, etc., etc.” The San Francisco City Directory for 1856 lists four “searchers of records and conveyancers.” They were Joseph Clement, C. V. Gillespie, Gunnison & Parker, and G. W. Waugh. Gunnison & Parker, who identified themselves as “attorneys and counselors at law” asserted, “We have prepared books containing a chain of title to every lot of land in the City and County of San Francisco, with maps of each subdivision and owners. We will give Abstracts of Title at the Shortest Notice.” Waugh claimed to be a “Searcher of Records and Examiner of Titles,” asserting that he had “compiled more information and is better equipped than any man in the City in reference to the Validity of Titles in the City and County of San Francisco.”

With the explosion in volume of public land records, in real-estate transfers and hence of the business of conveyancing, the conveyancer or title lawyer often delegated the job of researching and assembling information regarding title to others. These persons became skilled as “abstractors” and in time established their own offices, and submitted the results of their searching to attorneys for written opinions before advising customers. The “abstract of title” thus came into use. The abstract was simply a written history of the recorded transactions affecting a particular parcel of land. The abstract did not originate in California, however. It had been used in the first part of the 19th century in other states.

The abstract of title is almost never used in California today, but at least until a few years ago it was still in some use in other parts of the United States, especially in the Midwest. In California, the abstract in time gave way to the "certificate of title," which proved a shortcut for persons buying and selling land. The abstract of title was often as ponderous as a San Francisco or Los Angeles directory of the time. An abstract comprising the whole of Rancho San Jose in Pomona Valley, Los Angeles County, required 37 large volumes, and yet the only part that was of importance to the parties to the transaction was the attorney's opinion attached. In the fullness of time, the attorney's opinion was all that the purchaser was interested in seeing, and the abstractors retained the voluminous fruits of their labor in their own offices.

"Certificates of title," giving in one or two sheets of paper the results of a title examination, did not originate in California either, but their use here began as early as the 1870s. One such certificate was issued in Los Angeles on January 23, 1875, by the "Office of Judson and Gillette, Examiners of Titles." It was written informally on a letterhead bearing the names of "A. H. Judson, Att'y at Law" and "J. W. Gillette, County Recorder." Its terse statement reads:

The title of NE ¼ SE ¼ Sec. 16 Tp. 2 S. R. 13 W. is vested in N. I. Orme, discharged of any & all liens or encumbrances. The only defect we discovered is in the signature of Mrs. Schluter to the deed to Orme, the name "Manilla" having been substituted for "Manuella" As names are entirely different we would suggest a rectification of the error by a new deed from Mr. & Mrs. Schluter."

The Judson and Gillette firm, later to become Judson, Gillette and Gibson, were pioneers in the Los Angeles title field, ultimately forming one of the State's first two title-insurance companies.

A real estate boom in 1886 and 1887 in Los Angeles provided a major impetus for a new industry of title insurance. Once again, the concept did not originate in California, but rather this time in Philadelphia, eleven years earlier, in 1876. A Pennsylvania court, a few years prior to that year in a case called *Watson v. Muirhead*, had found a conveyancer and abstractor not liable for failure to report certain money judgments in an abstract, judgments that constituted liens on the property in question. The court decision so disturbed the real estate community in Philadelphia that it sought and got enacted a bill in the Pennsylvania legislature permitting a corporation to engage in the business of insuring titles. In 1876 the Real Estate Title Insurance Company was organized in Pennsylvania.

In California ten years later, in February of 1886, the California Title Insurance & Trust Company was incorporated with offices in San Francisco, with a capital stock of \$250,000. In that same year Judson, Gillette and Gibson incorporated the Abstract and Title Insurance Company in Los Angeles. The San Francisco Company, later renamed the California Pacific Title Insurance Company, issued its first policy of title insurance on March 17, 1887.

In that same year of 1887 the California Civil Code was amended to specifically recognize California corporations engaging in the business of insuring titles to land. A new section enacted that year required those corporations to set apart a certain percentage

of their premiums as a surplus fund for the security of property holders. (The office of Insurance Commissioner had been created in 1867, and any corporations doing insurance business were obliged to obtain a certificate of authority from the Commissioner. In 1907 the Legislature defined and further regulated the various kinds of insurance, including title insurance. In 1935 all insurance provisions of the former Civil and Political Codes were incorporated in one new code, the Insurance Code.)

I mentioned that in 1886 Los Angeles saw the organization of the Abstract and Title Insurance Company, which was the same year that the California Title Insurance and Trust Company was organized in the State, with headquarters in San Francisco. The Abstract and Title Insurance Company later merged with the Los Angeles Abstract Company to become, in December of 1893, Title Insurance and Trust Company. As we know, Title Insurance and Trust Company later acquired California Pacific Title Insurance Company; Chicago Title Insurance Company acquired TICOR; and Fidelity acquired Chicago.

Thus, California's title insurance was pioneered by California Pacific Title Insurance Company in San Francisco, and Title Insurance and Trust Company in Los Angeles. Interestingly, TI was most likely the originator of the "escrow," unquestionably an essential device for the buying and selling of land.

"Escrow agents" have probably been functioning under one name or another since the historical beginnings of commerce in real estate. In California, escrow service seems to date from the 1890's. The late L.J. Beynon, an official of Title Insurance and Trust Company told of the beginnings of escrow service in these words: "One day in 1895 a

man came into the office of the Company and left an order for a certificate of title. He said he was obliged to leave town for a few days and asked if the order clerk would take his executed deed, deliver it to the buyer, together with the certificate of title, and collect from him the sum of \$1,000. This simple transaction was our first escrow." Not long afterwards Title Insurance and Trust Company opened an escrow department.