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Optimizing Land Title Assurance Systems

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There is little unanimity of viewpoint concerning the complex and controversial subject of real estate settlement costs. The diverse interests and pressure groups seem to agree, however, that the public land title records of most jurisdictions are disarrayed, complicated, and inefficiently organized. This observation has been made with such frequency and conviction that it appears beyond dispute, and it will not be contested here.

Yet thinking of title records systems as ends in themselves, or assuming that somehow "modernizing" the records will inevitably result...
in lower settlement costs, can be misleading, since the records are simply one component of a larger system of title assurance. Any effort to improve the records without understanding the larger matrix into which they fit is likely to end in disappointment. Indeed, the principal fault of most public title records systems, and the reason that they are virtually unused in many localities, is that they were designed to respond to often artificial statutory criteria and standards, rather than to the needs of a well planned system of title assurance.

**Goals of Title Assurance Systems**

Perhaps the problem will be clarified by a discussion of a generalized title assurance system. The description offered here is broad enough to encompass all of the diverse methods of title assurance in use in the United States and in most other industrialized nations. It proceeds from the view that the system is in reality a combination of four subsystems that are expected to work in harmony to provide the desired result.

One subsystem must exist to record, retrieve, and aggregate data disclosing legal interests in the property in question. It is referred to below as the "data subsystem." In the United States, this subsystem is typically operated and maintained by lawyers, abstracters, or title companies, working in cooperation with the local custodians of public records. Another subsystem interprets the data and makes judgments about the current state of the title in question. Lawyers and title insurers usually perform these tasks, although officials of local government may also be involved. A third subsystem of law and custom must exist to allocate risks which result from the existence of legal interests that are collateral to the record, and therefore outside the data subsystem, but may affect the validity of title, or


4. The order listed in the text is not necessarily the order in which the subsystems perform their tasks. For example, in a "Torrens" or title registration system, a good deal of data interpretation and judgment as to the legal effect of instruments is done at the time they are placed in the public records, rather than later when they are retrieved. See sources cited note 92 infra.

5. A comprehensive discussion of rules of interpretation is found in Bayse §§ 4, 11-45. Often the processes of data gathering and data interpretation are not distinguished by analysts and sometimes not by the persons actually performing the tasks. For example, the attorney who personally searches the public records is likely to scan each document that appears superficially relevant while he is in the courthouse, but to make copies or notes of only those documents that he judges to be important. The collection and interpretation processes are thus highly integrated.

6. These problems arise when, for example, forgery or duress earlier in
from any errors in the processes of recordation, retrieval, aggregation, and interpretation of the data. A final subsystem indemnifies persons whose legal interests are impaired by the risks allocated by the third subsystem. It includes title insurance, recovery from negligent abstracters or attorneys, and Torrens indemnification funds.

All systems of title assurance used in the United States contain some form of each of the subsystems described above, but variations in the performance of individual subsystems result in differences in the overall effectiveness of title assurance systems from place to place. Before improvements in existing systems can be intelligently designed, the "effectiveness" of a title assurance system must be more carefully defined. To aid in this definition, the following goals are offered as relevant to any title assurance system.

The goals are general, and are germane whether the particular system we wish to evaluate or improve is based upon the services of attorneys, abstract companies, title insurance firms, title registration officials, a combination of the foregoing, or perhaps upon some methods not yet invented or operating.

1. The system should function rapidly, facilitating the speedy consummation of land title transactions.
2. The cost of obtaining title assurance should be low.
3. The system should be publicly operated or publicly regulated to ensure that both public and private users have access to it.
4. The data subsystem should contain information on all or nearly all types of legal interests, so that the possibility of "off-record" title defects is minimized.
5. Both the data and interpretation subsystems should operate with a high level of accuracy.
6. The risk-indemnification subsystem should have adequate financial responsibility and fully inclusive coverage of all "off-record" title defects and all errors in data collection and interpretation.

The recognition that broad coverage and high accuracy are distinct from one another is important. Breadth of coverage implies a policy that will not permit purported interests to affect title unless they are entered in the data subsystem. For example, under the current laws of many jurisdictions, such interests as mechanic's liens, rights of the chain of title might affect the present title. See text accompanying note 10 infra.

8. A different set of objectives, with a somewhat more technical focus, is given in Bayse § 2.
9. The proposed HUD regulation, note 1 supra, was explicitly addressed to the goal of lower title assurance and other settlement costs. It is possible, however, that pressures to reduce costs would result in greater efficiencies (better records, mergers of functions now fulfilled by several providers), and that speed and accuracy might also be improved.
spouses or heirs, and adverse possession may be undisclosed by the records. Additionally, problems arising from nondelivery of instruments, forgery, incapacity of a party, duress, undue influence, or fraud may not appear from the records, yet may impair an innocent purchaser's title. Even perfect accuracy in data recordation, retrieval, aggregation, and interpretation will not solve these problems. A well designed title assurance system, however, would minimize such lapses in coverage of the data subsystem or would avoid them entirely.

The financial responsibility of the indemnification subsystem is not an adequate substitute for breadth and accuracy of coverage. Perhaps money is an acceptable proxy for land to a lending institution, but it is likely to be far from acceptable to a homeowner, who may be displaced from neighbors, community, and familiar and attractive surroundings as a result of a claim against his title. In this sense, real property is truly unique, and a title assurance system should lay great stress on assuring the possessor's title rather than compensating him for its loss.

The goals listed above present a series of perplexing problems familiar to all systems designers, for in the real world solutions to multiple goals tend to be inconsistent. For example, a modification that tends to lower costs of operation in an existing system usually results in an increase in response time, a reduction in coverage, a higher error rate, or some other undesirable side effect. In the main, systems designers must accept trade-offs and compromises in an effort to optimize the results that flow from various design decisions. Yet from time to time innovations are made that may bring one or more goals much closer to achievement with few or no negative results. The very process of articulating the goals makes such innovations more probable.

**Title Assurance Systems in Operation**

Which of these general goals do American title assurance systems meet, and which do they not satisfy? Speed of operation is not generally a problem; accuracy of data retrieval and interpretation would have to be rated as very good; and access to private users is quite

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satisfactory for those who can afford to pay for it, although such public users as local and state governments must sometimes hire private firms to give them data from their own public records. Both breadth of coverage and adequacy of risk indemnification leave a good deal to be desired, but the most severe criticism which can be levied against our title assurance systems is their excessive cost. Our systems have given us relative safety and stability of title, but the price is high.

**Title-Related Costs**

The March 1971 survey of home loan settlement charges by the Federal Housing Administration (FHA) and Veterans Administration (VA) showed title-related costs for homes in the $20,000 to $28,000 bracket ranged from an average of $49 in South Dakota to $588 in New York. The median charge for title-related services for these homes was $226, about one percent of the price of the property. When the costs of title services are added to other settlement charges paid by both buyer and seller, the totals are striking. The HUD/VA survey showed that total settlement charges ranged from 6.08 percent of the sale price in Louisiana to 17.21 percent in Pennsylvania, with a median rate of 9.81 percent. Title-related charges thus accounted for somewhat more than one-tenth of all transaction costs of FHA and VA home sales. Whether title expenses are “excessive” may be a matter of opinion, but they are certainly not trivial and plainly constitute a significant barrier to property ownership.

Indeed, the very fact that there are real estate title assurance expenses of appreciable magnitude is itself arresting. For many types of goods, market and legal institutions are so structured that charges for title assurance are trivial or nonexistent. The costs of title assurance on marketable securities, automobiles, appliances, and other consumer goods, for example, are minimal. Conceding the unique characteristics of land—which include its indefinitely long past history, the complexity of possible legal interests, and the frequency with which possession and ownership are separated—a cost of $226, much less $588, to ascertain the state of the title and to transfer a small residential property still appears exorbitant.

It is easy, but fallacious, to assume that the sole key to the reduction of these costs is reorganization of title records. Even in such high

(Remarks of Senator Proxmire). While not conclusive, this data suggests that a high accuracy standard is maintained by title insurers.

13. At least one company has computerized county data in its private plant and then resold some of the data, in processed form, to the county. Interview with David McKinley, President, ABSCO, Inc., of Orlando, Fla., in Washington, D.C., Sept. 6, 1972.


17. Id. at 76.

18. See id.

19. Id. at 99.
cost states as Maryland, Virginia, and New Jersey, where the public records are as archaic as any in the nation, one can reasonably estimate that the process of searching and abstracting the records for a single residential parcel requires an average of not more than three and one-half to four hours and is often performed by a layman at a cost not exceeding $75 to $90. The remaining title-related charges are attributable to the cost of a survey, the preparation of documents, examination of the title search results, the acquisition of necessary financial information, the actual settlement process, disbursal of funds, recording the papers, and obtaining title insurance. The risk premium for title insurance alone typically accounts for about one-third of the title-related charges in cases where insurance is obtained, although the actuarial value of the risk assumed by the title underwriter is but a tiny fraction of the premium charged.

20. These estimates are the product of a number of interviews and discussions by the author with attorneys in the states in question and of an analysis of the comments filed by attorneys with HUD in response to the proposed regulation, see note 1 supra. It must be remembered that even if a 60-year search is considered “standard” (as it is by many attorneys in these states), the average search will be shorter because in some cases the attorney’s firm will have searched the title for a previous transfer, or the title insurance company will have previously insured it. In such instances, only a “down-date” of the earlier search is necessary. In Whitman, Transferring North Carolina Real Estate, supra note 3, at 421, it was noted that some 200 attorneys surveyed estimated a median time for preparing and examining an average abstract of title at 3.6 hours. In WUNDERlich, TITLE EXAMINATION IN VIRGINIA (1972), it is reported that a sample of Fairfax County, Virginia, attorneys estimated a median time of 3.5 hours and a mean of 3.9 hours. A radically different estimate, 15.08 hours, is given in ALTMAN & WELt, INC., LEGAL WORK IN RESIDENTIAL REAL ESTATE TRANSACTIONS IN NORTHERN VIRGINIA 24 (1972), a report prepared for the Virginia State Bar and submitted to HUD as a part of the Bar’s comment on HUD’s proposed regulation of settlement costs. This study, however, included nonresidential as well as residential cases; its results are also open to question on grounds of self-interest. See also Leary & Blake, Twentieth Century Real Estate Business and Eighteenth Century Recording, 22 AM. U.L. REV. 275, 289-91 (1973).

21. Attorneys tend to emphasize that title search and title examination are separate functions, and this is technically correct. Lawyers who personally perform record searches, however, in effect examine as they search, while those whose searches are performed by laymen need only spend a brief time examining the search results in the average case; an estimate of 5 to 10 minutes is given in ONTARIO LAW REFORM COMMISSION, REPORT ON LAND REGISTRATION 100 (1971), although this assumes a 40 year search and relatively better land descriptions than are found in some eastern seaboard jurisdictions in the United States. In all events, examination of search results is not a time-consuming enterprise. Note, however, that clearing title defects, as opposed to identifying them, may be quite a lengthy and involved process, although not properly considered a part of a system of title assurance.

22. The usual risk premium in areas in which title companies utilize approved independent attorneys for title examination is $2.50 per thousand coverage for a lender’s policy and $3.50 per thousand for an owner’s policy, with simultaneous issuance available at the owner’s rate plus $10 or $15. Thus the total risk premium for a $25,000 house is approximately $100. See, e.g., LAWYERS TITLE INS. CO., TITLE INSURANCE RATES (1962). The premium schedule is remarkably uniform over time and among various companies.

23. See note 12 supra. The 1971 reports to state insurance commissioners of Virginia, North Carolina, South Carolina, and Georgia (in which states
Techniques for Cost Reduction

It is generally assumed that two relatively simple reforms in the way public title records are maintained would go a long way toward reducing title-related charges. These reforms are, first, the introduction of an indexing system based on tracts or parcels of land as well as names of parties, and second, the bringing together into one office of all records relating to land titles. A recent study of title search operations in the Canadian province of Ontario, where records of nonregistered land are indexed by tract and a 40 year search is considered standard, estimated that the average search time per case was 167 minutes, not much less than the search times in the admittedly inefficient American public records. Records modernization alone, therefore, appears to be a superficial response to the need for lower title assurance costs. Observation of the nation's title systems suggests that a variety of additional reforms will be necessary to achieve a significant reduction in overall title costs.

Inefficient deployment of personnel in title work should be corrected. The use of attorneys to search records and conduct settlements cannot be justified. Many attorneys have begun to recognize this as an inefficient use of their time and to train lay persons for such work. In addition to the use of overskilled persons, in some jurisdictions a multiplicity of providers of title services is employed in the typical transaction, thereby unnecessarily increasing both costs and the probability of error. Centralization of these services would be helpful. Electronic data processing could readily be used, not only for the maintenance of title records but also for the computation and

virtually all title insurance charges are pure risk premiums since the companies operate almost exclusively under the “approved attorney” system, under which searches are performed by independent attorneys for a separate fee) disclose that the underwriters paid out in claims only 1.88 percent of their premium income. As to form of title proof in these states, see Payne, Auxiliary Costs in the Purchase of Homes, supra note 15, at 503-08.

24. A tract index permits more efficient searching because (1) all recorded instruments relating to the land in question are indexed on a single page or set of pages and (2) it is unnecessary to examine many instruments out from a single grantor, such as a subdivider, merely to determine whether they affect the land being searched. See Note, The Tract and the Grantor-Grantee Indices, 47 IOWA L. REV. 481 (1961). It should be noted that, despite the advantages of a tract index, it is not always obvious that conversion from a name index would be cost-justified. At least one computerized title search firm has based its operations on name indices. Interview with James Cosby, President of Titlesearch, Inc., of Charlottesville, Va., in Washington, D.C., Nov. 29, 1972.

25. In most jurisdictions a number of indices, often maintained by different officials (e.g., the recorder of deeds, the clerk of court, the tax collector, the secretary of state) must be examined to complete a title search. One Cleveland, Ohio, title insurer listed 76 separate sources of information in 16 public offices. HUD/VA REPORT, app. A.

26. REPORT ON LAND REGISTRATION, supra note 21, at 99.

27. See note 20 supra and accompanying text.

28. Some of these reforms were proposed in the HUD/VA REPORT 128-37.

29. See ALTMAN & WEIL, INC., LEGAL WORK IN RESIDENTIAL REAL ESTATE TRANSACTIONS IN NORTHERN VIRGINIA 19 (1972).

30. For a description of the role of lawyers, lenders, title searchers, title insurers, and brokers in the Washington, D.C., area see Burke, Conveyancing in the National Capital Region, supra note 3.
preparation of settlement statements and other forms. Equipment that can perform these tasks is already available. Duplication in the maintenance of records must also be eliminated. Costs are obviously escalated when several public and private title records systems are maintained in the same jurisdiction, or when each successive title search on a given parcel of land must retrace de novo the steps of the previous search.

Perhaps most important is the need for reform in the marketing of title services. The fundamental reason for the inefficiencies and high costs described above is the essentially noncompetitive nature of the title assurance market in terms of price. Effective competition or regulation is essential to prevent price-fixing and excessive price leadership by suppliers. Public education and advance notice to consumers of lenders’ requirements and probable costs would also facilitate shopping for price and quality of title services.

Although some of these reforms have actually been implemented in a few localities, none of them has been adequately dealt with on a national scale. In order to see how they might be implemented, one must take a closer look at the way present title assurance systems work.

Title Assurance Methods

Five methods of title assurance are used in the United States. The oldest method is search of the public records by an attorney, who then prepares an opinion or certificate stating his conclusions as to the state of the title. This method predominates only in New England and in some areas of the Southeast, and even there some attorneys use lay employees to perform the actual record searches. A second method, used in several midwestern states, involves production of an abstract of title by a comercial firm and examination of the abstract.

32. See text accompanying notes 39-50 infra.
35. See HUD/VA Report 86-88; Payne, Ancillary Costs in the Purchase of Homes, supra note 5, at 469. The descriptions in the text are general, and many local variations exist. In Florida, for example, attorney searches, abstract companies, and private plants operated by title insurers all operate in various sections of the state. Interview with Paul J. Stichler, President, Lawyers' Title Guaranty Fund of Florida, in Washington, D.C., July 24, 1972.
36. In the sense used here, an abstract is a book or file containing summaries or full copies of all recorded instruments affecting title. A sample is reprinted in CRIBBIT, FRITZ, & JOHNSON, REAL PROPERTY 844 (2d ed. 1966). The abstracter may obtain his information from a private title plant or, less commonly, from the public records.
bstract by an attorney who prepares an opinion or certificate as in the first method described. The third method couples either of the first two described above with title insurance written by a company operating under the “approved attorney” system.\textsuperscript{37} Most of the Atlantic seaboard and Southeast uses the attorney search plus the title insurance method, while most of the Midwest uses the commercial abstract plus the title insurance method. A fourth method involves the ownership, maintenance, and search by a title insurance company of its own private records as the basis for the issuance of its title insurance policies. This method is used from the Rockies westward to the Pacific coast, and in Texas, Illinois, Michigan, New York, and the District of Columbia.\textsuperscript{38} Finally, some areas use the title registration or “Torrens” system, under which an agency of state or local government avers the state of the title and indemnifies the losses resulting from its errors. This method is used only in scattered localities, including Cape Cod, Minneapolis-St. Paul, Chicago, and Hawaii.\textsuperscript{39}

As this list of methods indicates, various title assurance systems use both public and private records. Public records are usually maintained by county governments or other local jurisdictions.\textsuperscript{40} Where private records are used, they are usually maintained by title insurance companies or abstract companies or, to a limited extent, by lawyers.

Systems that utilize private records maintained by abstract companies appear to have the lowest price levels. Even when accompanied by title insurance, these systems appear to result in lower costs than any others under which title insurance is issued,\textsuperscript{41} probably because they avoid duplication of past title searches each time property is transferred. In jurisdictions utilizing the abstract method, a seller of land will usually transfer the abstract he obtained when he bought the land to the new buyer. One party or the other will merely pay to have the abstract brought “down to date.” Pages are added for all instruments recorded since the last previous transfer. A typical charge for this service might be as low as $20 plus $5 for each new document.\textsuperscript{42} The system avoids the necessity for a retrieval of the entire file of past title data when a transfer occurs; only new data must be retrieved.

\begin{itemize}
\item \textsuperscript{37} The “approved attorney” system means that the title insurer maintains no title records or staff of searchers, but relies instead on searches by independent lawyers.
\item \textsuperscript{38} See Powell & Rohan, Real Property 1059-69 (Rohan ed. 1968).
\item \textsuperscript{39} See id.
\item \textsuperscript{40} Title registration or “Torrens” records technically fit this category, but they are not widely used and are kept in a much different format. See sources cited note 92 infra.
\item \textsuperscript{41} HUD/VA Report 87-95. This method is used in many states that have marketable title legislation and may account, to some extent, for its lower costs. This legislation attempts to shorten the search period by cutting off record title defects appearing prior to some fixed point in time. See sources cited note 56 infra.
\item \textsuperscript{42} See HUD/VA Report, Supplement prepared by American University, III-C-34, III-C-48, III-C-57; Bowers, Can You Justify a Microfilm Abstract Plant? 51 Title News, June 1972, at 7.
\end{itemize}
The remainder of this article will leave aside the abstract system and concentrate on ways in which the effectiveness of the other common American title assurance systems might be improved. The thesis here is that there are three feasible, not necessarily mutually exclusive, approaches to this task: Improvement of public records, improvement and consolidation of private title plants, and implementation of a publicly operated land title registration system. The following discussion will show that each of these approaches may be attractive in certain environments; that each has the capability to meet the goals of the assurance systems; and that, when refined and optimized, each becomes very similar to the others.

Improvement of Public Records

In localities without large private investments in title plants a program of improvement of the public records may be the most attractive route to reform. The improved records would presumably be used by attorneys or their lay employees as title searchers in roughly the same manner as existing public records are used in the eastern United States. This section will describe the ultimate form which such an improved system might assume. An ideal public system would produce all available information affecting the title to the land within its jurisdiction. It would respond to a single inquiry or a simple set of inquiries from a single terminal,\(^4\) phrased in terms of either a land parcel identifier or the name of the person believed to be the current owner. Since many matters affecting land titles cannot be indexed by parcel identifier,\(^4\) the system should be capable of automatically providing the names of all persons who appear to have held title to the land during the relevant period as determined by statutes of limitations, and disclosing any interests which may be indexed under their names.

Public Data to be Aggregated

More specifically, the system should respond to an inquiry with all relevant data of the following types:

\(^4\) Documents recorded in

43. "Terminal" is used here not necessarily to refer to a teletypewriter or other input/output device for a computer system, but refers more generally to a single point of inquiry, whether electronic or manual.

44. For illustration, see items 2 and 3 in the text accompanying note 37 infra. One highly desirable reform would be to minimize or eliminate matters that can affect land titles without being indexable by parcel identifier. For example, there is no justification for the rule prevailing in many states that makes a judicial judgment a lien on all of the defendant's land within the county. See 3 Powell, REAL PROPERTY \(\|\|\) 477-82 (1970). At a minimum, recordation in the land records of an abstract of judgment containing a land description should be required.

45. The list given is merely illustrative. In any specific jurisdiction other types of data not mentioned in the text would, no doubt, need to be integrated.
the public records and identifiable by parcel description, including deeds, mortgages, releases, grants of easements, mechanic's liens, etc.; (2) documents recorded in the public records, but not identifiable by parcel description, including powers of attorney, federal tax liens, partnership agreements, and other miscellaneous matters, depending on the jurisdiction; (3) court records affecting title to land, but not recorded in the public land records, including notices of pending litigation, judgments that are liens on the defendant's land, or other decrees that affect title, such as those entered in divorce, probate, intestate administration, quiet title, and partition actions; (4) tax and assessment information from all relevant taxing authorities—counties, cities, and special taxing districts; (5) "police power" information, including current and pending zoning actions, the existence of outstanding building permits, other construction approvals, or occupancy permits, the existence of subdivision approval if a subdivision is involved, the existence of officially mapped streets or other planned public improvements that encroach upon or abut the property, and notices of violation of building or housing codes; (6) pending or planned eminent domain actions, including urban renewal, public works, or highway acquisitions.

**Elimination of Search Duplication**

In addition to the foregoing information, which is unquestionably "public" in nature, a truly efficient system would also record, reveal, and make public certain data traditionally regarded as private, including all previous title searches, title opinions or certificates, title insurance policies prepared by attorneys or title insurance companies, and all surveys of properties prepared by licensed surveyors or registered engineers. This suggestion is admittedly somewhat radical. It proceeds from the premise that duplication should be avoided in the production of title evidence. Once a title has been searched, the work should not need to be repeated in the future by another searcher, except in unusual circumstances. Instead, the new search should simply begin as of the date the preceding search was completed. Past policies and preliminary title reports, called "starters," are already shared by groups of title companies in some localities, and in a few cities attorneys have made limited arrangements to share title certificates with one another. Obviously, the success of such disclo-

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46. Proceedings taken pursuant to the state's police and eminent domain powers have usually been regarded as not affecting title. See Hocking v. Title Ins. and Trust Co., 37 Cal. 2d 644, 234 P.2d 625 (1951); Clay v. Landreth, 187 Va. 169, 45 S.E.2d 875 (1948).
47. This information will frequently be in the possession of city governments. If the title records are maintained by some other jurisdiction, such as the county, it will be necessary to create some form of linkage to transfer the information to the records.
48. See text accompanying notes 87-88 infra.
49. Such a system in Charlotte, North Carolina, is described in Whitman, *Transferring North Carolina Real Estate, Part II: Roles, Ethics, and Reform*, 49 N.C.L. Rev. 593, 613 (1971). A similar proposal was seriously considered.
sures in reducing duplication of title searches depends upon each insurer or attorney having confidence in the accuracy of the searches done by his colleagues. For this reason, criteria of accuracy and search coverage need to be standardized within the jurisdiction in question. If this is done, and if searchers are required by law to record the results of their searches and to make them available to other professionals, a great deal of needless work can be eliminated. Some firms, especially older law partnerships or title companies with very extensive back title files, will no doubt resist such a proposal. Their resistance might be softened by requiring that only searches performed after the effective date of such a rule be recorded.

In localities where title insurance is issued on all or nearly all title transfers, another technique, which would be even more effective in eliminating duplication of title searches, is available. Owner's title insurance policies, which normally terminate when an inter vivos conveyance occurs, could be required by law to be assignable whenever property is transferred. Because a title insurance policy insures the state of the title only as of the date of its issuance, a further title


51. One northern Virginia lawyer reported to the author that in Richmond, Virginia, title insurance companies commonly give "back title" letters to lawyers on land that the companies have previously insured; it is then necessary for the lawyer to search only from the past policy date to the present. When title companies in northern Virginia began to adopt this practice, however, they reportedly were quickly discouraged by several large law firms having extensive title files, which threatened not to send any more business to companies that engaged in this practice. The use of "back title" letters tends to reduce the competitive advantage of firms having large title files. Such letters are also used in northern New Jersey. Telephone interview with Arthur J. Horn, Member N.J. Bar, called in Nutley, N.J., Nov. 9, 1972. A somewhat different technique for reducing duplication of search has been developed by AMI Title Co. of Raleigh, North Carolina. The company has obtained examinations from approved attorneys of all major residential subdivisions in the area, and when it insures a lot transfer in one of these subdivisions, it requests a title search only from the date of subdivision to the present—typically 15 to 20 years or less. The results include a sharp reduction in attorney's fees, greater ability of young practitioners to compete for title business, approval by real estate agents and home buyers, and disapproval by other title companies and established law firms. Letter from Herbert L. Toms, Jr., to Dale A. Whitman, Sept. 5, 1972. Although these techniques are innovative and helpful, they do not offer the flexibility and options of the method described in the text.

Some theoretical opposition to the proposal in the text may be expected on the ground that it violates the attorney's right to communicate confidentially with his client. To forestall this argument, the proposal might be phrased "merely" to require that no deed purporting to convey a fee simple would be eligible for recordation unless accompanied by a title certificate or title insurance policy. A similar requirement is now made in Iowa with respect to the recordation of subdivision plats. See 21 IOWA CODE ANN. § 409.9 (Supp. 1973).
search would still be necessary for the period from the issuance of the former policy to the time of the current transfer. The usual search period under this proposal would often be quite short, however, since the average holding period for residential real estate in urban areas is probably on the order of six or seven years.\textsuperscript{52}

The actuarial risk of increased losses to title underwriters under this proposal would be trivial; most losses under the present system are reported to occur within the first five years after policy issuance, and the risk factor is only a tiny element in the cost of title insurance.\textsuperscript{53} Reliance on prior title policies would not fully protect a present buyer or insurer, since rising property values and improvements would require larger dollar coverage in most cases, but most claims are for much less than full coverage.\textsuperscript{55} The coverage of earlier policies should usually be sufficient to justify reliance on them in lieu of a complete new title search. The enactment of an effective marketable title statute to reduce the necessary total search period to, for example, 30 years,\textsuperscript{56} combined with a requirement that title policies be assignable to subsequent owners for 30 years from the date of issuance, would almost wholly eliminate duplication of title searches.\textsuperscript{57}

The compulsory recordation of surveys would be of assistance in areas where mortgagors or title companies typically require a survey when a new mortgage loan is made.\textsuperscript{58} In most cases, the old survey, accompanied by an affidavit from the previous owner or owners that

\begin{itemize}
  \item \textsuperscript{52} No direct data that distinguishes homeowners from renters appears to be available. The overall national rate of residence change is about 20 percent annually, including renters and owners. \textit{See generally} PACKARD, A NATION OF STRANGERS (1972). The anticipated life of FHA-insured home mortgages is about 12 years, but in many cases this includes loan assumptions by subsequent owners.
  \item \textsuperscript{53} \textit{See} Deatly, \textit{One Man Looks at Public Regulation}, 42 \textit{Title News}, March 1963, at 5, 9.
  \item \textsuperscript{54} \textit{See} notes 12 and 23 supra.
  \item \textsuperscript{55} Senator William Proxmire's 1971 survey of some 41 underwriters disclosed an average claim of only $1,479, according to unpublished data (on file at \textit{The George Washington Law Review}).
  \item \textsuperscript{56} The literature on marketable title legislation is extensive, \textit{see}, e.g., BAYS §§ 171-89. See also the innovative work of Professor John Payne for the Alabama Law Institute, described in Payne, \textit{The Alabama Law Institute's Land Title Acts Project} (pts. 1-2), 24 ALA. L. REV. 175, 647 (1972).
  \item \textsuperscript{57} This concept assumes that state governments will regulate aggressively in the title insurance field; however, only a few states appear to do so at present. According to an unpublished study by Chicago Title and Trust Co., in only three states, Texas, Florida, and Oregon, do insurance commissions take an active role in title insurance rate-setting. Ohio is reported to be gearing up for a major title insurance regulatory program, and interest is growing in several other states. Telephone interview with Irving H. Plotkin, Arthur D. Little, Inc., called in Cambridge, Mass., Dec. 10, 1972. Dr. Plotkin is a consultant to the Ohio Director of Insurance on this matter.
  \item \textsuperscript{58} There is tremendous variation in this practice. The comments received by HUD on its proposed settlement cost regulations disclose that in the eastern United States, many title insurers require a survey in every case, yet write policies containing survey exceptions. In contrast, California and Washington title insurers will write policies without survey exceptions on the basis of rather simple inspections of the property by employees who are not surveyors; surveys are required in perhaps only 5 percent of all cases. The practice in the East is an illustration of the use of "overskill," with resultant higher costs to the consumer.
\end{itemize}
no changes had occurred in the locations of improvements, would be sufficient to obviate the need for a new survey. This saving is theoretically possible under the present system, but there is usually no provision for ensuring the availability of the old survey when the property is transferred again, and surveys are frequently lost, or buyers do not think to ask about them. A requirement that surveys be recorded would solve this problem, and would also assist planning agencies or other public bodies in creating accurate detailed maps and assigning geocoded identifying numbers to all land parcels.59

*Automation of Data Input*

A further refinement that should be made to create an ideal and comprehensive records system involves the indexing of instruments. The great majority of documents filed for record in the typical county courthouse fall into several routine categories: warranty deeds, quitclaim deeds, deeds of trust, mechanic's liens, and other similar items. In most jurisdictions it is likely that 80 to 90 percent of the recorded documents could be written on roughly two dozen standardized forms, with little or no variable material except the date, names of the parties and other identifying data, land description or identifier, and designation of which standard form was being used.

The suitability of land title instruments to standardization could be used to great advantage in making title searches more efficient. Under the traditional procedure, the searcher first consults an index based on either the names of the parties or the description of the land in question in order to identify which documents appear to relate to the title of the property in question. The searcher then locates and reviews full copies of the documents themselves, usually in microfilm or paper form, to see that they are in fact relevant and that they are in proper order to accomplish what they purport.60 It is possible, however, to construct a records system in which the index itself supplies the searcher with all of the information he needs about the vast majority of documents. This is an especially attractive possibility if the index is computerized, since then the original document could be used to provide direct input to the computer, which could readily be programmed to create automatically indices based on tract or parcel identifier numbers as well as names.

59. Interview with Marvin Scher, U.S. Geologic Survey, in Washington, D.C., Sept. 6, 1972, concerning federal efforts to establish uniform land parcel identifiers.

60. See CRIBBET, FRITZ, & JOHNSON, PROPERTY CASES AND MATERIALS 209-12 (2d ed. 1966).
For example, a standard warranty deed might take this form:

<table>
<thead>
<tr>
<th>DATE</th>
<th>STATUS</th>
<th>IDENTIFIER NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>09 01 73</td>
<td>MM</td>
<td>756-84-8375</td>
</tr>
<tr>
<td></td>
<td>W</td>
<td>649-54-9465</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GRANTOR(S)</th>
<th>GRANTEE(S)</th>
</tr>
</thead>
<tbody>
<tr>
<td>John B. Doe</td>
<td>Harry S. Brown</td>
</tr>
<tr>
<td>Mary E. Doe</td>
<td>John D. Brown</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COTENANCY</th>
<th>PARCEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>TC</td>
<td>5878-5534-01</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REMARKS</th>
<th>CONSIDERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reserving an easement for a driveway over the western ten feet.</td>
<td>$8600</td>
</tr>
</tbody>
</table>

The reverse side of the document would contain the standard "boilerplate" language of conveyance and warranties, as well as space for the signatures of the parties and the usual notarial acknowledgments. Although only the information within the outlined rectangles would be placed in the land recording system's index, this would be the only information needed by a title searcher for most documents. If a requirement were imposed that documents be typed with typewriters having machine-readable type, the standard forms could be arranged in a format that would be readable by an optical scanner, eliminating the risk of human error. The index itself would contain all of the information thus read from the original instructions. Microfilm copies of the full documents would be maintained, but would only occasionally be referred to by title searchers.

A full set of form documents should be developed with formats similar to the one shown for the standard warranty deed. Devising these documents could be a cooperative project of state bar associations, title companies, and associations of county clerks or recorders. In most cases a single set of roughly two dozen forms could serve an entire state. The recent development of the Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) standard mortgage forms will facilitate this process, since many banks and savings and loan associations across the United States are now utilizing these forms and are much more likely to sup-

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61. It would also be necessary to have a recording clerk check the signatures and acknowledgments to determine that they were in order and agreed with the body of the instrument. A simple code could be placed in the index to indicate that this had been done.

62. Standard, self-indexing forms could also be used to great advantage in manual, noncomputerized records systems.

port local standardization of title documents than they would have been a few years ago.

Parcel Identification Systems

Much of the theoretical work in the automation of public records, including the impressive efforts of Professor Cook and the American Bar Foundation, has been devoted to developing and debating the merits of various systems of parcel identification. This effort is important, since no tract index system can function unless provision is made for accurate parcel identification, labeling, and boundary changing. Moreover, a parcel identifier system which is accepted, not merely for title records, but for all of the functions of government—transportation, land use planning, public facilities, and law enforcement, to mention a few—could be a tremendous aid to the operations of cities and counties. If the parcel identifier system were based on a complete program of surveying and mapping existing parcels, it could rationalize and correct erroneous and ambiguous legal descriptions that would otherwise continue to be perpetuated in recorded instruments. An ideal parcel identifier system should, as its proponents argue, identify the position of the land on the earth’s surface according to some geographic coordinate system.

Despite the benefits of these refinements, they are not essential to an improved or automated system of public land title records, even if the system relies on tract indices. Private title plants, including those which have computerized their operations, do not depend upon extensive resurveying or aerial mapping, nor upon geographic coordinate systems. Instead, they usually employ lot and block numbers to identify parcels in platted subdivisions and use either arbitrary numbers or the numbers assigned by the local tax assessor for parcels outside platted subdivisions. Until a system based on geo-

65. The Foundation sponsored a workshop entitled Compatible Land Identifiers—The Problems, Prospects, and Payoffs (CLIPPP) on Jan. 20-22, 1972, in Atlanta. A publication summarizing the discussions and conclusions is said to be forthcoming.
66. See sources cited notes 64 and 65 supra.
68. Maps of reasonable accuracy are, of course, necessary and are being developed by growing numbers of property tax officials.
graphic coordinates is developed, a public title records improvement program can usually rely upon the assessor’s maps and numbering system. Any new computer program should have the capability of substituting a set of parcel identifiers based on geographic coordinates when such a system is developed. It would, however, be unwise and unnecessary to delay the improvement of public land records until such a coordinate system is fully available, since arbitrary coding will adequately support a parcel index in the meantime.

**Flexibility in Searches**

A public records system must be capable of flexible operations that public agencies might not find important if it is to meet the needs of the private title industry adequately. Assuming adoption of the proposals above for recording of “starters” and surveys and for direct-input standard forms, the public records system should contain a number of capabilities. It should be able to search an entire subdivision or selected lots within a subdivision in order to locate applicable “starters.” It should be able to select certain types of documents, such as deeds or mortgages, when searching either parcel or name indices. It should be able to select ranges of recording dates and retrieve particular information, such as the names of all single persons or business partnerships, from a range of documents.

The system should be able to search for names which are similar, but not identical, to the name of the party in a particular search. For example, “Robert Jones” should be read by the system as automatically including Bob Jones, Rob Jones, and Bobby Jones. A number of systems, the most widely known of them called “Soundex,” have been developed by private title companies for accessing similar names. This feature should be incorporated into a public system to minimize the possibility that a searcher will miss a relevant variant of a name. Some systems even incorporate various levels of similarity, and give the searcher an option to select the most appropriate degree of coverage. All names of persons and entities should be accompanied on all legal documents with identifying numbers. Use of social security numbers for individuals and Internal Revenue Service (IRS) tax identification numbers for businesses would minimize the possibility of misidentification and would greatly speed name searches.

**Institutional Changes**

Improvements in public records must be viewed in the context of the

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69. Some or all of the features listed in the text are generally found in private computerized title plants. See, e.g., Security Title Insurance Co., Security Title's Computerized Title Plant—System Highlights (undated).


complete title assurance system: Who will use the data output, and with what results? The records system described above may be most attractive in localities where attorneys or their lay employees search titles in the public records. This suggests that other institutional changes are needed in addition to mechanical improvements in public records. A truly effective marketable title act is needed to reduce the search period to more manageable proportions, perhaps 20 to 30 years. The shortening of the search period should be accompanied by a thorough revision of those laws which permit the existence of claims not shown by the public records. Perhaps the most serious problem in this area comes from mechanic’s liens, which in many jurisdictions will relate back to bind an intervening good faith purchaser, even if they are filed or recorded several months after work is done on property. Tax liens or other claims of the state or its subdivisions should be binding only if shown on the record. Claims derived from adverse possession should also be recordable by law, and in some circumstances recordation should probably be required to perfect such claims. The records should be strengthened by the addition of some rather simple statutory provisions making the recording of an instrument presumptive evidence of its validity and the capacity of its makers, as well as conclusive evidence of its delivery. The elimination of certain technical defects, including absent or improper seals and acknowledgments, could be accomplished by curative legislation applying automatically to all instruments when they have lain of record for a specified period of time.

Lay personnel should be utilized to a much higher degree than at present to perform searches of the records and evaluate the resulting data, and attorneys should exercise only such minimal supervision as is necessary to satisfy the demands of liberalized unauthorized practice concepts. Minimum fee schedules and other price fixing techniques by attorneys and title companies should be eliminated. Uniform title standards should be developed so that attorneys and title companies will become willing to rely upon each other’s “starters.” Title insurance should be widely used to provide full indemnification.

72. See sources cited note 56 supra.
73. See Fiflis, Land Transfer Improvement supra note 10.
74. See IV AMERICAN LAW OF PROPERTY 227 (Casner ed. 1952); BAYSE § 140; Comment, Mechanic’s Lien and Surety Bonds in the Building Trades, 68 YALE L.J. 138 (1958).
76. See generally, BAYSE §§ 201-364.
78. See note 50 supra and accompanying text.
for losses resulting from recording and search errors and inadequacies in coverage of the records, and should be combined with vigorous governmental regulation to reduce title insurance premiums and to compel the use of broad-form policies.\textsuperscript{79}

With these institutional changes and an improved public records system of the type described above, a jurisdiction utilizing personal search by attorneys can approach quite closely the goals set forth earlier in this article. At the same time, automation of public records can make them immeasurably more useful for a variety of non-title-related functions, such as improving the efficiency of property taxation and the planning of housing needs, land use, transportation, recreation, law enforcement, and other public facilities and services.\textsuperscript{80} These functions, however, will require certain linkages and design modifications not necessary for a system which produces title-related data alone. Designers of improved public records systems must not become so mired in attempting to create a records system to serve all conceivable functions that they delay implementation of a system for title functions. A title-records system is an excellent starting point; other functions can be designed and added later.

\textit{Improvement and Consolidation of Private Title Plants}

In most of the United States from the Rocky Mountains westward, and in certain other large metropolitan areas, the prevailing system of title assurance depends on private title records systems maintained by title insurance companies.\textsuperscript{81} Searches in these records are usually performed by lay employees of the title companies. In most localities where private title record systems predominate, the ultimate product for which the company assumes liability is the title insurance policy. Preliminary reports or certificates may be issued as a convenience to brokers, surveyors, or others, but they typically disclaim liability and

\textsuperscript{79.} Matters that should be, but are infrequently covered now, include mechanic's liens, matters of survey and other defects discoverable by visual inspection, zoning, and access. \textit{See generally} Johnstone, \textit{Title Insurance}, \textit{66 Yale L.J.} 492 (1957). \textit{See also} notes 52-57 \textit{supra} and accompanying text.

\textsuperscript{80.} The federal government's Urban Information Systems Inter-agency Committee has made a number of grants for the implementation of integrated urban computer systems or portions of such systems. To date grants have gone in nearly all cases to city governments and have not directly involved land title records. Some title-related matters, however, such as property taxation and aerial photography, have been affected by some of the grants. \textit{See} HUD, \textit{Municipal Information Systems, The State of the Art in 1970; City Hall's Approaching Revolution in Service Delivery, Nation's Cities, Jan. 1972} at 10. An appropriate federal role respecting title records would be the provision of a number of relatively small grants to perform feasibility studies of records improvement in various jurisdictions, and perhaps limited grants for implementation of new systems. Hopefully, a few such grants could build local momentum for reform. \textit{Cf.} Burke, \textit{Conveyancing in the National Capital Region, supra} note 3, at 574.

\textsuperscript{81.} The HUD/VA REPORT, Supplement Prepared by American University, III-D-17 to III-E-48 (1972), contains detailed descriptions of title plant operations in San Antonio, Los Angeles, Denver, and Seattle.
are provided with the expectation that an order for a final policy will follow.

Most companies that maintain and use private title plants must depend on “take-offs” of information, usually daily, from the public records, including not merely those records handled by the recorder or register of deeds, but also court records, tax assessment records, and, to some extent, zoning and planning records. The private plants are usually organized, to the maximum extent feasible, on the basis of tract or parcel indices,82 thus making the creation of a chain of title a very rapid process. In many localities where these sophisticated private plants exist, the public records are virtually unused except for title company “take-offs” and occasional inquiries for copies of specific documents whose relevance is already recognized.

In recent years a number of title insurance companies have computerized their records. Most frequently the computer programs have involved only the “general index,” which includes records indexed by the names of persons or entities rather than those indexed by parcel or tract.83 A few companies, however, have taken steps to computerize their tract indices as well, and have indicated that they are satisfied with the results thus far.84

In many localities where private title plants are operated, several such plants may compete with one another. The creation and operation of the plants are, of course, very costly,86 and a well-designed title plant can accommodate high volumes of business and large numbers of searchers without overloading.86 Since these plants are essentially duplicates of the public records, it is uneconomical for competing plants to operate within a single jurisdiction. The situation is much like having several electrical utility companies serving the same territory. The economies of scale resulting from plant consolidation are impressive, and title companies in a number of jurisdictions have

82. See Zerwick, The Title Plant ... Creation and Maintenance, in PROSPECTIVE: AMERICA’S LAND TITLE INDUSTRY 26 (Am. Land Title Ass’n ed., updated).

83. Two of the largest companies, Title Insurance and Trust Co. of Los Angeles and Chicago Title and Trust Co., have computerized their general indices. They continue to experiment with computerized tract indices, but neither has adopted them for regular use. See Balocca, Perspective: Plant Computerization, 49 TITLE NEWS, Dec. 1970, at 4.


86. For example, prior to the past few years, Title Insurance and Trust Company insured more than half of all title transactions in Los Angeles County, while using a single manual plant; the volume of recordings in Los Angeles County is on the order of one million per year, one of the highest in the nation. Henley interview, supra note 67; Vorhies interview, supra note 67.
recognized this fact and have responded by creating consolidated plants.87

Joint plants differ widely in pattern. Searches may be performed by personnel hired by the jointly owned entity, or each member company may send its employees into the plant. The degree to which computers are used varies. Some joint plants are entirely manual, while others have computerized general indices. At least one joint title plant has a computerized parcel index; it is worth describing, since it relies upon unique institutional relationships as well.88 The plant is owned by Security Title Insurance Company and is located in Los Angeles County, California. It provides machine-readable input for its own computer system, in which three other companies participate, and also for a somewhat older computer system, in which five other companies are involved. Only two major companies in the county, Title Insurance and Trust Company and Transamerica Title Company, remain outside this joint operation, and attempts are being made to enlist them as well. All documents filed in the Los Angeles County Recorder's Office are microfilmed upon recordation, and each night the day's recorded documents, along with judicial and other matters affecting land titles, are indexed by keypunch operators and fed into computer storage. Thus, at the beginning of business the following day, all records from the previous day backward are instantly available at any of the companies' computer terminals. Since both computers are dedicated, on-line systems, access time is extremely fast. Each company also obtains daily microfilm copies of all records so that a title searcher may refer to them as necessary.

An important feature of this system is the storage in computer memory of references to all “starters,” title insurance policies and preliminary title reports previously issued by any of the nine participating companies. As a general practice, when a company receives an order for a new title policy, it searches back only to the point when the last previous policy or search was made by itself or by one of the other member companies. In this way a great deal of potential duplication is avoided. Even greater savings would be possible if all title companies in the country belonged to the system. In some cases the companies feel they must go behind a search previously made by another company, particularly if the earlier search was made some years ago or was made by a company in which less than full confidence can be placed. The computers index matters only for approximately the past ten years. If no “starter” is found within that period, a company is obliged to resort to its manual title plant to carry the search back to its own previous policy or, if none is found, to the beginning of the available records.

88. See Billman, An Investment in the Future supra note 84; McCreary, Joint Plant Profitable Venture supra note 87; Henley interview, supra note 67; Vorhies interview, supra note 67.
The absence of a parcel coding system based on geographic location has not proved to be a barrier to the development of the Los Angeles system. Of all documents recorded in Los Angeles County that contain legal descriptions, about 85 percent describe land by reference to lot and block numbers in recorded subdivision plats, and these numbers are used by the computers. The remaining 15 percent of recorded instruments generally utilize either metes and bounds descriptions or references to the government survey system, and these parcels are identified in computer storage by an arbitrary numbering system identical to the tax map numbers developed and used by the County Assessor’s Office.

Even with the advanced technology in use in the Los Angeles system, additional institutional changes are necessary to optimize systems in areas where title insurance and private plants predominate. One obvious change would be to incorporate all title insurers into a single computer system and to provide for full sharing of “starters,” by legal compulsion if necessary. The enactment of marketable title legislation would be irrelevant in any jurisdiction which provides for full sharing of computerized “starters,” because all title searches in these jurisdictions would extend back only to the most recent insured transfer or financing. The recommendations relating to legal changes needed to strengthen the weight and coverage of public records, which were offered earlier in this article, would be equally desirable in the context of private title plants, and would further reduce the already small actuarial risk involved in insuring titles. Vigorous regulatory action or a significant realignment of competitive market forces would be necessary, however, to assure that the savings resulting from electronic technology, legal improvements, and the sharing of back title data are translated into lower charges paid by the consumer.

**Land Title Registration Systems**

Even with the improvements discussed above, persons using the conventional public records or private title plants would continue to examine publicly recorded documents and to infer from them a conclusion as to whether the present title is vested in the person who purports to hold it. In many other nations, and in a few areas of the

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89. See notes 73-76 supra and accompanying text.
90. Title registration systems in Canada, Great Britain, Israel, and Puerto Rico are described in the HUD/VA REPORT, Supplement prepared by American University, IV. See also Phillips, The Development of the Land Titles Systems in New Zealand and the Australian States, N.Z.L.J. (pts. 1-3), 608, 628, 653 (1969); Schmidt, Report from Weisbaden—European Response to a Speech on Title Insurance, 51 TrTaNEws, Jan. 1972, at 49.
United States, a registration, or "Torrens" system, is used instead. Under this system the state, for a modest fee, issues certificates of title much like those widely used for automobiles. The title is initially brought into registration when an owner presents evidence of his title to an administrative or judicial officer who reviews the evidence and verifies that title is as alleged. After appropriate notice is given to potential claimants against the title, a registration certificate is issued by which the state affirms that the title is as shown on the face of the certificate. This affirmation is conclusive against any adverse claims. A guaranty fund, made up of fees collected by registrants, is provided to indemnify any persons whose rights are cut off as a result of the registration process. Those whose rights have been abridged by the process may get money, but their interests in the land are foreclosed. In general, no subsequently created interests in the land are valid unless they are officially endorsed on the title certificate itself. Thus at any time one can examine the certificate and documents filed with it and know everything of importance about the title to the land. No historical search of prior ownerships or instruments is necessary.

This system was widely introduced in the United States in the early part of this century. It remains available in about 11 states but is rarely used in most of them. Its principal defects were the inadequacy of the guaranty funds, which resulted in losses without sufficient indemnification for those whose interests were cut off by registration, and the high cost of initial registration. In the American version of the system, a special judicial proceeding was necessary for registration, and the registrant was usually required to be represented by an attorney. Title companies and attorneys fought the system vigorously and successfully during the 1920's and 1930's because they assumed that its wide acceptance would deprive them of their roles in real estate transactions.

Although the Torrens system of title registration has had an unhappy history, development of a registration system which does not

91. See Powell & Rohan, REAL PROPERTY, supra note 38.
92. Many descriptions of the system have been written, see, e.g., Hudak, Registration-of-Land-Titles Act: The Ohio Torrens Law, 20 CLEV. STATE L. REV. 617 (1971); Patton, The Torrens System of Land Title Registration, 19 MINN. L. REV. 519 (1934).
94. Powell relates the saga of the California fund, which was wiped out by a single claim in 1937. Repeal of the statute quickly followed. 6 Powell, REAL PROPERTY ¶ 921 (1968).
95. See Fiflis, Land Transfer Improvement, supra note 10.
96. The coup de grace was Powell, REGISTRATION OF TITLE TO LAND IN THE STATE OF NEW YORK (1938), which mounted a vigorous, ill-reasoned, but ultimately successful attack on registration as an institution for American usage.
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contain the defects of the earlier Torrens acts is entirely possible. The adequacy of state guaranty funds could be assured by a system of federal reinsurance that would provide adequate compensation for any conceivable loss. The Federal Housing Administration, with its extensive experience in mortgage insurance, would be an appropriate vehicle for reinsurance of state Torrens funds. Authorizing legislation and an initial appropriation or borrowing power would, of course, be needed. The high initial cost of registering land titles could be reduced to a nominal level by a system of administrative rather than judicial registration, and by the use of existing title insurance policies and lawyers' title certificates as the basic evidence from which registration would proceed.97

In substance, a title registration system shifts to public agencies several of the functions customarily performed by the private sector under conventional recording acts. Under a title registration system, the aggregation of title data, the determination of the state of the title, and the indemnification of parties whose interests are "unfairly" terminated by the system are no longer handled by attorneys or title companies. The system obviously requires a somewhat higher level of skill and judgment on the part of public officials than does the operation of an ordinary county recorder's office. Critics of the registration systems have implied that such systems are a "socialization" of a previously private business. Yet this criticism fails to consider either the long-term costs and quality of service we are likely to experience under a registration system or the relative costs and benefits of the conversion process. Economies of scale could be achieved by combining groups of counties, or perhaps entire states, for purposes of operating registration offices. These economies would be even greater if the capabilities of electronic data processing equipment are fully utilized in connection with registration.

A real need exists for the development of a model registration statute which will meet modern needs. Students of conveyancing would do better to write a new Torrens statute instead of writing about Torrens.98 If such a new statute were developed and the prestige

97. Other faults in the system could also be cured. For a discussion of additional issues to be resolved in the design of a modern registration system, see ONTARIO LAW REFORM COMMISSION, REPORT ON LAND REGISTRATION (1971).
98. The development of a new statute would be a substantial undertaking, and its draftsmen would need to consider a number of issues which past Torrens acts have not satisfactorily resolved:
1. Is it feasible and constitutional to register titles on the basis of ordinary lawyers' searches or title insurance policies not made at the behest of the registering authority?
2. To what extent are official maps needed? What accuracy should they have?
3. To what extent will the system affirm the location of boundaries?
4. Who will bear the risk of errors or defalcations by the registrar and his employees?
of important institutions, perhaps including the federal government, were placed behind it, the new system could be widely adopted despite the opposition of vested interests with old arguments. The most fruitful jurisdictions for such an effort would be those in which neither lawyers nor title insurers have fully preempted the market, and in which local government is known for honesty and competence.

**Conclusion**

Three possible approaches to improvement of title assurance systems have been discussed: reform of the public records, reform of private title plants, and institution of title registration. As these three approaches are brought closer to optimum rationality and efficiency, however, they tend to become so similar as to be almost indistinguishable. After all, it is not especially important whether we make duplication of historical title searches unnecessary by mandatory recordation of title certificates, by exchange of “starters” among title insurers, by requiring that title insurance policies be assignable, or by issuing a new state-backed certificate with every property transfer. The point is that one title searcher should not have to repeat the work of another. Similarly, the need for full indemnity for those whose interests are terminated by the operation of a title assurance system does not have to be met by any one approach. If the coverage is equally adequate, costs are comparable, and administration is just, whether indemnity is secured from title insurance companies or government-operated title registration funds matters little. Attorneys alone are unable to provide adequate coverage or financial responsibility, even with malpractice insurance. Although the evidence tends to suggest that title insurance is a costly format for indemnity, and that governmental expertise in risk underwriting is expanding, the only general conclusion we can draw is that adequate indemnity must be provided, whether by the public or private route.

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5. Is federal reinsurance of the indemnity fund feasible? What federal legislation and administrative action would be necessary to institute it? Would it be worthwhile?

6. What treatment would be given to adverse possession, boundary-line agreements, intestacies, and other nondocumentary transfers?

7. What off-certificate interests, if any, should be permitted: Tax and assessment liens, rights of state or federal governments, short-term leases, mechanic’s liens, judgments? Can (should) registration of federal tax liens be made obligatory?

8. As of what point in time will values be established for purposes of operating the indemnity fund? What coverage will be provided for appreciation of values, interest, or improvements?

9. To what extent, practically and constitutionally, can registration be made mandatory?

10. How will fraud, forgery, and theft of certificates be handled?

11. Is registration of “possessory titles” feasible? See note 85 supra.

Because of the scope of the undertaking, federal funding of preparation of a modernized title registration statute would be appropriate. Although the completed statute might be voluntarily enacted by many states, serious consideration should also be given to possible federal preemptive enactment, at least for transactions involving federally insured loans.
Other needed innovations could also be achieved through conventional public records, private plants, or a registration system. Computerization would be equally applicable and probably about equally costly, although in specific localities one approach might display greater economies of scale than another. The use of standardized, machine-readable forms would greatly benefit any system, as would a thorough revision of the law relating to off-record claims and the legal weight of the record itself. A flexible program for searching the general index for names similar, but not identical, to the name with which a searcher is concerned would be a valuable adjunct to any title assurance system in which some claims were allowed to be filed by name rather than by parcel.

Viewed in the light of possible reforms to competing systems, even the "radical" Torrens system does not seem so unique. We ordinarily think of Torrens as characterized by a government affirmation about the state of the title to land, in contrast to conventional recording systems in which affirmations are made only by private parties, usually land buyers or sellers or their representatives. Yet only a very "pure" form of Torrens system would require the government to answer all conceivable questions about a title. "Intermediate" Torrens systems are possible, in which only the ownership of the fee, and perhaps the existence of common claims such as mortgages, easements, and tax liens, would be affirmed by the state, while other types of claims would be eligible for recordation on the certificate without a government affirmation as to their validity or effect. Intermediate systems, however, may not necessarily be attractive or optimally efficient in the United States. If the government registration system guaranteed only certain interests, and private title insurance were necessary to supplement the coverage and satisfy the demands of lenders and purchasers, the result might well be more costly than either pure Torrenization or the present title insurance system standing alone. The optimal approach will not be the same everywhere. The presence of substantial investments in title plants, public records, and other less tangible holdings will affect the reformer's viewpoint.

99. Other variations are possible. Professor Fiflis, for example, notes the English practice of registering "possessor titles," which remain subject to all defects existing prior to registration; subsequently created interests in the land, however, must conform to the registration statute and be noted on the title certificate. In effect, the land is registered "as is." A very cursory and inexpensive form of initial title proof is required. The title may later be converted to an absolute title. Fiflis, English Registered Conveyancing: A Study in Effective Land Transfer, 59 Nw. U.L. Rev. 468, 483 (1964).

100. For example, it is possible that in some jurisdictions the county recorder might enter into a contract with a private title or abstract company, under which its records would become the public records, fully accessible and better organized than those formerly maintained by the public officials.
of government and private enterprise may influence the way title assurance work is allocated, although to date neither the public nor the private sector has compiled an enviable record for passing on cost savings to the consumer.

A caveat about computers is also in order. Title records systems do not require very much "computing," in the mathematical sense. Rather, they involve the accurate storage and retrieval of large amounts of data, most of it in textual rather than numeric form. Electronic data processing may be a helpful adjunct to this type of operation, but its usefulness can only be determined after a careful analysis of methods, volume of records, user needs, costs, and other factors on the local level. A great deal of improvement, especially in existing public records, can generally be made without electronic assistance. On the other hand, computerization may be extremely attractive in some situations; no general rule exists. The purpose of this article has not been to urge a specific strategy, but simply to suggest the validity of goals and techniques that can be incorporated in any program of title assurance systems improvement.