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ANCILLARY COSTS IN THE PURCHASE OF HOMES

JOHN C. PAYNE*

The basic legal doctrine governing the transfer of land is relatively simple. Or, to be more accurate, it is not especially difficult to comply with the minimum requirements of the law. Theoretically, the grantor must merely execute and deliver a conventional document. In practice, however, land transfers are sufficiently complex to require the services of a number of persons besides the immediate parties. Real estate brokers, attorneys, mortgage lenders, public officials, and others play their parts and generally demand compensation. It follows that in the sale of land two distinct costs must be met: first, the gross purchase price; and second, the ancillary charges imposed on the buyer and seller by the other participants in the transaction. We have substantially reliable information about the first of these. But about the second, little or nothing satisfactory is known.¹ This hiatus is a matter of wonder in the light of the considerable practical significance of ancillary costs.² Although charges in individual transactions are frequently small in amount, relative to the sales price, estimates of the aggregate vary from one to three billion dollars per year. The totals given are the products of informed guesses, but it is suspected that error, if any, is the product of over-conservatism. Analysts disagree about what charges to consider and are apt to entirely ignore items of importance. It is impossible to determine the resulting margin of error, but enough money is involved to warrant at least some inquiry into the amount.

Even if the gross figure were only a matter of curiosity, costs in individual transactions are highly relevant in any discussion of how land transfers in general should be carried out. For almost a century it has been admitted that traditional conveyancing is inefficient and unsatisfactory. The search for a better method has occasioned a widespread debate. But the lack of reliable information about exactly what is taking place and what costs are being paid has prevented the protagonists from bringing this debate to a rational conclusion. Until we know the charges being exacted as part of traditional conveyancing and the implications of any change in the methods used, a consensus on what should be done is impossible. Conflicting subjective opinion abounds, but admitted objective fact is absent.

*Professor of Law, University of Alabama.

1. This generalization excludes, of course, conventional studies of interest rates.

2. The relatively small percentage of the over-all cost of the house represented by ancillary charges has traditionally caused most commentators to underrate their importance. E.g., REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING: TECHNICAL STUDIES 135 (1968).

Allowing such a situation to continue raises an insuperable barrier to intelligent and purposive action.

In recent years the practices adopted in the housing industry have magnified the importance of ancillary costs. Traditionally, housing has been the largest segment of the construction industry, in turn a major constituent of the national economic mix.³ Since World War II the gross purchase price of a house has played a decreasing role in the decisions of potential buyers. Purchasers have been less interested in long-term cost than in the amount they will have to pay at the time title passes and the financing charges per month thereafter. Until the current (and hopefully short-lived) credit crunch, sellers and mortgagees have demanded very low equities. When these conditions exist, the amount of ancillary costs may equal or exceed the first payment on the purchase price and, at the very least, will constitute a substantial portion of the buyer's initial outlay. It follows that the amount of ancillary costs may be determinative in making the decision to purchase⁴ and may have effects far transcending the convenience of the parties to an isolated transaction.⁵

Considering the importance of the matter, it is surprising that no substantial or sustained effort has been made to obtain the necessary information. In England, where legal fees and statutory costs are fixed by law and where potential mortgagees are small in number, conservative, and traditionalistic in practice, ancillary costs can be enumerated with a high

3. It follows that, as measured by net flows, the largest sector of the capital market has been the mortgage market. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, MORTGAGE LOAN GROSS FLOWS 5 (1969).

4. REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES 72 (1969), states, "The Commission believes that special attention should be given to the question of closing costs associated with mortgage transactions. These costs at times add significantly to the burden of acquiring a home since they come on top of whatever downpayment must be made." The Commission urges that the Congress call on the Department of HUD and the Veterans Administration to undertake jointly a special study exploring what additional steps might be taken to standardize and reduce such costs, and to report their findings by the middle of 1970. The Senate Committee on Banking and Currency has adopted this statement and recommendation. THE EMERGENCY HOME FINANCING ACT OF 1970; REPORT OF THE SENATE COMMITTEE ON BANKING AND CURRENCY, TO ACCOMPANY S. 3685, p. 18 (1970). The recommendation has been incorporated into THE EMERGENCY HOME FINANCE ACT 7 U.S.C. § 701(b) (1970), with the proviso that a report must be submitted within one year after the date of enactment, i.e., by July 24, 1971.

5. If A desires to buy a house for which he must establish a \$2,000 equity, and he can lay his hands on only \$2,200 in cash, he can proceed with the purchase only if closing costs do not exceed \$200. If the costs are \$500 and are, by definition, paid in advance, he must put off purchasing until a later date. At the present time we know nothing of the frequency with which potential sales abort because of the inability of buyers to meet closing costs. We do know that this sort of thing happens sometimes. If it occurs often a serious impediment is placed in the way of the home construction industry. C.f. SECONDARY MORTGAGE MARKET AND MORTGAGE CREDIT: *Hearings Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency*, (1970) 188-189 (hereinafter cited as SECONDARY MORTGAGE MARKET); THE EMERGENCY HOME FINANCE ACT OF 1970, *supra* note 4, at 18.

degré of certainty.⁶ Why then the paucity of information in this country?⁷ It would be naïve to attempt a simple answer to this question, but several significant factors immediately come to mind. For example, closing costs embrace a number of different kinds of charges, at least two of which fluctuate widely. Financing charges are the product of the money market and may vary from day to day. The cost of establishing title is also unstable depending in part on the demands of a mortgage lender, who may or may not insist on a survey, title insurance or the like. The other factor is the cost of strictly legal fees. The American bar is loosely organized and exercises a minimum of discipline over its members. Even if it were able to regulate legal fees, it has failed to do so. In some areas minimum fee bills have been adopted, but the provisions are recommendatory only and

6. *THE LEGAL SIDE OF BUYING A HOUSE* (1965); Newman, *A Typical House-Purchasing Transaction in the United Kingdom*. 15 AM. J. OF COMP. LAW 797 (1967).

7. In 1938 Professor Richard R. Powell, then at the height of his intellectual power and prestige, wrote a book about the Torrens system, *REGISTRATION OF TITLE TO LAND IN THE STATE OF NEW YORK*. It proved definitive, in the sense that, for practical purposes, it put an end to a controversy that had raged in lay and professional circles for half a century. The arguments advanced by the author convinced the great bulk of professional scholars and practicing lawyers that title registration is not suited to conditions in this country. In the ensuing years a number of rear guard actions have been fought in the law reviews. But no serious effort has been made to strengthen or make workable the primitive registration systems already existing in some states or to adopt the Torrens system de novo in any state where it had not been enacted into law prior to 1938.

We are not here concerned with the merits of the Torrens controversy. In retrospect a matter of paramount interest is that a careful review of Professor Powell's work shows he exhausted the then available sources but his conclusions were reached without benefit of reliable, country-wide information on how land transfers are carried out. In particular, crucial cost data was fragmentary, unreliable and inconclusive. Unfortunately, in the years which followed little or nothing has been done to remedy this lack of information.

The Housing and Home Finance Agency, The Federal Reserve Board and the Federal Home Loan Bank Board are better situated than any other official bodies to make meaningful studies of conveyancing costs and procedures. Unfortunately the latter two have shown no interest in the matter and the efforts of the former have been disorganized, fragmentary, and unusable for systematic study. E.g., Ducey & Berliant, *LOAN CLOSING COSTS OF SINGLE-FAMILY HOMES IN SIX METROPOLITAN AREAS* (prepared for the HOUSING AND HOME FINANCE AGENCY by the INSTITUTE OF URBAN LIFE) (1965); HOUSING AND HOME FINANCE AGENCY, *CLOSING COSTS AND SETTLEMENT PAYMENTS IN JACKSONVILLE, FLORIDA, MORTGAGE MARKET, FEBRUARY 15-AUGUST 15, 1950* (1952). See also *SETTLEMENT COSTS, Staff Report to the Subcomm. on Housing of the Senate Comm. on Banking and Currency 184th Cong. 1st Sess.* (1955); *REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES* (1969). In the spring of 1969 Senator Proxmire of Wisconsin instituted a staff study of costs for title examination and title insurance and for surveys in a number of representative cities throughout the country. He has kindly made his findings available to the writer. They have proved helpful for purposes of comparison but the scope of the undertaking was not broad enough to provide direct support of the conclusions reached in the present survey. The U. S. Department of HUD, in cooperation with the Veterans' Administration, is currently undertaking a study of costs in the purchase of homes; as part of its obligations under THE EMERGENCY HOME FINANCE ACT, *supra*, n. 4. As this is written it is not certain what the scope of the study will be or what methodology will be employed in analyzing data.

have no binding effect. They are intentionally and chronically disregarded by a large segment of the bar and there are many instances of both price cutting and price inflation. In part this may be the result of language so vague and ambiguous as to admit a wide variety of interpretation. A common minimum fee provision fixes the charges for examining titles at a percentage of the purchase price or mortgage indebtedness. Such a provision is generally followed by a scale of charges for enumerated services such as drafting or attending closings. Are these additional charges cumulative or does the percentage named cover all the work done if the attorney supervises the entire transaction? The fee bills give no inkling of the correct answer. Presumably, varying interpretations are given by lawyers, such variations being encouraged because the lawyer is unable to act alone. Two other leading participants are the real estate broker and the lending institution. Each may have its own idea about appropriate procedures and charges and may be in a position to exert pressure to obtain its own way. Since brokers and lenders are the principal channels through which business comes into the office of the modern conveyancer, if the amount of work passed on to an attorney by a single agency is substantial, he is generally willing to make necessary concessions to retain the business. Furthermore, conveyancing is a low visibility enterprise in which either price-cutting or price-inflation may go unnoticed. Even well-versed property lawyers may be uncertain as to the prevalence of particular practices in their own communities. In this unstandardized environment buyers, sellers, lenders, real estate brokers, and lawyers tend to look upon ancillary costs as a negotiable element in the bargain. The result is a great variety of practice, which cannot be pinpointed exactly.

Differences in conveyancing practice are further magnified by the varying methods used in proving title—methods which may *all* be used within a single community and which frequently differ from county to county in the same state. For example, in the author's home county commercial abstracts are universally used. In the next county north, local title insurance is relied on, while to the west and south personal search of the records is the method used. As soon as state lines are crossed, additional variations in method, tradition, positive law and institutional arrangements are prevalent. All these differences produce something akin to anarchy⁸ in the realm of title practice, a condition which, up to now, has discouraged the systematic collection of data. Adequate study would be expensive, difficult and exhausting, demanding the efforts of a large number of workers over many years. In the interim there is an insistent need for some infor-

8. Elsewhere I have taken the position that we may be moving toward a more or less standardized system of conveyancing. See Payne, *A Typical House Buying Transaction in the United States*, 30 *Convey.* (N.S.) 194 (1966). That thesis was set up prior to the present study. It is still tenable if we are thinking in long-range terms. However, the now discovered differences are so great as to support the conclusion that progress toward standardization will, at best, be prolonged.

mation sufficiently reliable to permit the development of preliminary working hypotheses on what is actually taking place from day to day.

This admitted need for "hard" data led to the launching of a small pilot project in 1968.⁹ The purchase of homes accounts for the largest volume—both in number and amount of money—of title transactions. It also raises the most serious problems about what services should be rendered at what cost. The pilot project was therefore designed to find out what occurs when people buy homes. Earlier probings had fallen short on one or more scores: (1) transactions of unlike kind had been compared; (2) transactions of a limited character, such as those in which FHA insured the mortgage, were considered to the exclusion of all others; (3) no proper classification of unrelated types of costs had been made;¹⁰ and (4) so small a geographical area had been encompassed that no general patterns could be deduced. In the present survey these shortcomings were avoided by positing a single standard transaction involving the sale of a \$20,000 house financed by a \$16,000 mortgage. Lawyers in representative cities in each of the states and the District of Columbia were then asked to specify the costs which would be entailed routinely in such a transaction in their communities. These costs were broken down into several categories to be described later. Additional rudimentary information as to local title practice was also solicited.

To secure this information a mailed questionnaire was designed¹¹ which eventually brought in 483 usable¹² returns. Admittedly the coverage is so thin that any findings are highly tentative. Each statement in this report should be preceded by the formula: "On the basis of the information obtained it would appear probable that . . ." For obvious reasons, the formula is omitted, but the reader is cautioned to consider this survey a scouting expedition—not a map drawn to scale from established coordinates. A special warning is required because findings are expressed in statistical tables and in percentages, which may be misleading unless they are understood at the outset. Appendix A tells why only one return was sought from each city. Actually duplicate returns were received from only a small number of communities, with the consequence that information

9. The project was sponsored jointly by the University of Alabama Research Committee and the American Bar Foundation. Insofar as the Foundation was concerned, its involvement was part of a larger project carried on elsewhere and designed to obtain further information about conveyancing. Statements made in this report are those of the author and should not be attributed to either of the sponsoring agencies.

10. For an illustration of the existing confusion in the classification of ancillary costs, see Mitchell, *Loan Costs and Usury*, 48 *Title News* 4 (No. 8, 1969).

11. For a description of the methodology used, see Appendix A.

12. In order to be "usable" a return did not have to contain all the data asked for. As examples, some informants gave data on transactions where only one type of lender was involved, while others ignored Section II, relating to title practices. In processing such returns as much information as possible was extracted, with the result that inconsistent totals were sometimes obtained under different headings.

from a large metropolis has no greater weight than that from a small town. The typical large city has a greater volume of real estate transactions than its smaller neighbor, but there are more small towns than big ones. No reliable data on the ratio of transactions between cities of various sizes is available. Thus, the survey responses cannot be properly weighted. Because the expression of medians, means, and the like contained in this report is in terms of the number of returns—not the number of transactions—it is therefore deceptive and creates a distortion never completely eliminated. Cross analysis, based on data from cities of several sizes, does something to reduce this bias but does not destroy it. At best, therefore, the statistics obtained are somewhat subjective and show patterns and trends rather than the exact economy of a typical title transaction.

INITIAL CLASSIFICATION OF COSTS

In any scientific study of ancillary costs, we must begin by admitting that conventional closing statements may be grossly misleading. They ordinarily embrace items irrelevant to the transfer process and omit items of crucial importance. Because those costs legitimately attributable to the transfer are diverse, they must be carefully separated for purposes of rational analysis.¹³ Most common among irrelevant costs are those attributable to ownership rather than to the transfer. Pro-rated taxes and premiums on casualty insurance are good illustrations.¹⁴ In like manner, money paid in the course of side deals, such as the sale of chattels found on the premises, must be ignored. Omitted items most frequently embrace costs already paid independently, as where the seller has employed his own attorney to draft the deed or has already paid the real estate broker his commission. Once the true costs of the transfer have been identified and all others eliminated, they should be broken down into several categories having no functional relationship to each other.

In the questionnaire no attempt is made to establish a closing statement. Instead, normal types of costs are listed under four headings: (1) selling; (2) financing; (3) establishing title and the security interest; and (4) meeting statutory charges. Room is left for writing in costs not generally encountered. Thus, the informant is compelled to list conventional costs and is permitted to make additions which may be peculiar to his community. The results thus obtained are thought to be more valid than would have been possible in an analysis of closing statements.

1. *Selling Costs*

The cost of selling the house is a legitimate part of the transfer but is generally ignored in discussing other expenditures. When paid, it is

13. The failure to segregate various types of "closing costs" has undoubtedly caused the public to blame the bar for charges which are actually imposed by lenders. See, e.g., *Why Housing Costs are Going Through the Roof*, TIME, Oct 31, 1969, at 82.

14. SECONDARY MORTGAGE MARKET 214.

universally the obligation of the seller and is received by the real estate broker.¹⁵ In the overwhelming bulk of responses to the survey, the broker's commission is stated as 6% of the price received for the house, or \$1,200 in the assumed transaction.¹⁶ In virtually every other case the commission is 5%, or \$1,000.¹⁷

2. *Financing Costs*

Virtually every house sale is attended by mortgage financing. The mortgagee charges for lending money and also demands reimbursement for the costs of establishing title. In practice different items under the two headings are included indiscriminately in closing statements. Occasionally, they are simply lumped together with all other charges under some such term as "processing fee," and cannot be isolated from each other by any system of analysis.¹⁸ In theory, they ought to be distinct but no completely satisfactory line of demarcation can be drawn. For example, if Lender A demands a survey and title insurance as a prerequisite to a loan and Lender

15. Occasionally some additional fees, such as those for a legally required termite inspection, are reported. Such reports are so infrequent as to be statistically irrelevant, and have been ignored in this report.

16. So great a uniformity would lead to speculation whether the real estate boards are engaged in conspiracies in restraint of trade. *See generally* U.S. v. National Association of Real Estate Boards, 339 U.S. 485 (1949); U.S. v. National Association of Real Estate Boards, 80 F. Supp. 350 (D.D.C. 1948); Grillo v. Board of Realtors of the Plainfield Area, 91 N.J. Super. 202, 219 A.2d 635 (1966). The findings of this survey would indicate that if price fixing conspiracies exist they operate at the local rather than at the state level. A uniform rate is reported in only seven states (Connecticut, Delaware, Illinois, Montana, New Mexico, Oregon, and Utah). In four additional states (Illinois, New Jersey, California, and Colorado), all but one community reported the same rate. In the remaining states there is greater variation. In another study it has been found that real estate brokerage is highly competitive, that the formal sales commission is more likely than not to be 5%, but that the actual rate is generally negotiated at a lower level. REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING; TECHNICAL STUDIES, 128-131. The Committee came to the conclusion that there was no evidence of collusion. *Id.* at 135. These findings should be weighed against newspaper reports circulated in December, 1969, that the Department of Justice has launched an investigation to determine whether the nation's real estate boards are conspiring to fix commissions in violation of the antitrust laws. These reports indicate that only one suit has been instituted and that it is directed against the activities of a single local board in Prince George County, Maryland, on the outskirts of Washington.

17. Scattered reports show no commission at all in small towns where no broker is found or attorneys ordinarily negotiate sales. At the other extreme a 10% fee, or \$2,000 is indicated. Between these poles occasional reports not falling into the 5% to 6% category appear, but they are insufficient to be statistically significant. Sometimes the same report shows different rates, depending upon whether the property is located in the country or in the city.

18. When the present study was begun it was assumed that such a practice is common among savings and loan associations. The returns, however, indicate that it is exceptional. An informant in the Miami, Florida, area states that savings and loan associations were, at the time of his report, charging 3% to 5% of the loan to cover all costs except those for abstracting and survey. Banks and mortgage and insurance companies, on the other hand, were charging a single 4% to 6% fee to cover all costs of financing and establishing title. An occasional report from other cities showed similar arrangements.

B does not, it may be argued that the fees ostensibly charged for establishing title are actually part of the cost of borrowing. Conventionally, however, a clear line of distinction is drawn between charges falling into one or the other of the two categories and such a distinction has been assumed in the course of this survey.¹⁹

Financing costs fall roughly under three sub-headings. Interest, *sub suo nomine*, is ordinarily paid after the loan has been made, is generally remitted at periodic intervals, and is computed on the basis of a percentage of the principal amount of the loan. It is not generally thought of as a closing cost. In the occasional cases where it is included in closing statements, it reflects prepayment of an obligation due thereafter and is paid by the borrower. Other financing charges, which may be made at the time the loan is consummated, are conventionally used to increase the real rate of return on the money loaned. Called by a number of names—"origination fees," "discounts," or "points"—they may be paid by either the borrower or the seller. Finally, the lender may demand reimbursement for money expended to assure the repayment of the loan. Fees for credit investigation, appraisals and mortgage insurance come within this sub-heading.

The true cost of borrowing money is difficult to determine under normal conditions. This survey was launched just as the current credit crunch was beginning, and it quickly became apparent that any effort to obtain valid data would be frustrated. In an extremely tight money market premiums exacted by lenders vary greatly in amount. At worst, all kinds of bizarre and even illegal methods are adopted by the unscrupulous and exigent. Under-the-table deals become common, so that any information obtained is suspect.²⁰ The time element furnished an additional obstacle to accuracy. The survey was conducted over a period of more than a year, during which time the price of money fluctuated widely. Comparisons could be made with fairness only if they were based on what was conventional on a given day, an obviously impossible control. These difficulties were such that it was decided early in the survey to abandon any attempt to determine

19. Scientific classification of "closing costs" has attracted little or no attention up until now. The pressure of interest rates on the ceilings created by usury statutes may necessitate an analysis acceptable to the courts. Mitchell, *supra* note 10. Unfortunately, the Truth in Lending Act, 15 U.S.C. § 1601 et seq. (1968), and the attendant Regulation Z have set back any effort toward rational classification. It is difficult to determine how attorneys' fees can be made a part of interest charges, but such a classification has been assumed. Jensen, *Effect of Federal Truth in Lending Act and Regulation Z on Real Estate*, 4 REAL PROP. PROB. & TRUST J. 11 (1969); Kratovil, *Truth-in-Lending and Mortgage Lenders*, 48 Title News 18 (No. 5, 1969).

20. See REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES (1969). A study carried out under somewhat similar circumstances by the Department of Housing and Urban Development for the Senate Committee on Banking and Currency, MORTGAGE DISCOUNTS (Committee Print. Feb. 12, 1967), is already out of date. In the REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES (1969), it was pointed out that not uncommonly financing charges may be hidden by the expedient of enlarging the purchase price. See also SECONDARY MORTGAGE MARKET 312-313.

financing costs. The section on such costs was retained in the questionnaire, however, in order to compel respondents to segregate this type of expense from that which could be subjected to coherent study.²¹

3. Cost of Establishing Title and the Security Interest

a. Gross Cost

By comparison with the charges for borrowing money, fees for establishing title and creating a security interest are considerably more stable. Although they may vary in accordance with the place and the parties, the passage of time affects them relatively little. They may be divided into two types: strictly legal fees, and charges for such items as title insurance and surveys. This is a matter of importance because of the public misconception that closing costs, or even that part of such costs relating to the establishment of title, are "what the lawyers get."²² This misconception has unnecessarily lowered the repute of the bar in the mind of the public and is unfair because lawyers are blamed for costs which are actually imposed by lenders.

With present methods of analysis it is possible to distinguish between financing and title security costs. Unfortunately, no satisfactory method of sub-categorizing the latter on the practical, as opposed to the theoretical, plane exists. Variations in cost depending upon how much title proof is demanded by the lender have already been alluded to. Both the amount and allocation of costs may further fluctuate, depending upon the kind of title proof employed. For example, in one area where titles are established by personal search of the public records, the entire attorney's fee may be determined by a percentage of the purchase price or amount of the mortgage and may be paid by the buyer. In another, where the same type of proof is used, charges may be made for each of the individual services performed—examination of title, drafting, supervising the closing, and the like—and may be paid in part by the buyer and in part by the seller. It is probable that even greater variety exists in areas where title proof depends on commercial abstracts.

The number of combinations of formal charges and the variety of their allocation to the parties is only limited by the law of permutations.

21. Certain charges are stable in amount and readily ascertainable. The rate on mortgage insurance is either that of the FHA or of a private company. Rapkin *et al.*, *THE PRIVATE INSURANCE OF HOME MORTGAGES* (1967); STATEMENT OF THE FEDERAL LOAN BANK BOARD (1964); Graaskamp, *Development and Structure of Mortgage Loan Guaranty Insurance in the U.S.*, 34 J. OF RISK AND INSURANCE 47 (March 1967); Wood, Struthers & Winthrop, *Basic Memorandum: Mortgage Guaranty Insurance Corporation* (mimeo., 1964). It may be substantial but requires no special analysis. On the other hand, costs for appraisals and credit information may vary considerably but are seldom substantial. (This is the general rule, subject to occasional exceptions. For example, the highest reported cost of an appraisal is \$200 and that for a credit report \$35. However, the usual cost for an appraisal is in the \$25 area and that for a credit report \$3 to \$7.)

22. *Why Housing Costs Are Going Through the Roof*, *supra* note 13.

In the face of this obstacle to rational analysis a somewhat arbitrary method was used in the course of the survey. In the survey form itself various charges are listed individually. But for purposes of analysis all charges for strictly legal services, all title insurance premiums, and all costs of survey are lumped together, whether paid by the buyer or the seller,²³ and are treated as the price made necessary by the legal system. This method is crude and, in some cases, injustice to the law may have resulted. But nothing more satisfactory is possible under existing conditions.

Analysis was further complicated by the fact that one of the purposes of the survey was to determine whether different types of lending institutions have different scales of costs. An initial working hypothesis is that they do.²⁴ This hypothesis has been tested by reporting all data in tripartite form, the first series of digits referring to whole dollar costs (in some cases percentages) attributed to transactions in which a mortgage or insurance company is the lender, the second to commercial bank transactions,²⁵ and the last to those carried out with a savings and loan association. Thus, if a cost is reported as being \$150/125/100, it means that \$150 is charged where the mortgagee is a mortgage or insurance company, \$125 where the mortgagee is a commercial bank, and \$100 where the mortgagee is a savings and loan association.

Using this method of reporting, costs for establishing title in the cities from which reports were obtained are as follows:²⁶

<i>Minimum</i>	<i>Maximum</i>	<i>Median</i>	<i>Mean</i>	<i>No. of Returns</i>
\$53/24/18	\$695/752/820	\$225/214/211	\$267/231/235	426/477/464

The minimums listed are so low as to invite skepticism among those accustomed to much higher fees. Although in some cases they may be the result of faulty reporting, they do not represent merely isolated instances. One of the surprises elicited by the survey is the large number of attorneys listing charges that are little more than nominal.²⁷ Most such reports come from what we will later find to be generally low-cost areas, but not all do.

23. The lender traditionally pays none of these costs.

24. See Appendix A.

25. Throughout this report for the sake of simplicity the expressions "mortgage or insurance company transaction," "bank transaction" and "savings and loan association transaction" have been frequently used. These expressions mean that a transfer has been carried out in which one or the other of these types of mortgagees has been the lender.

26. It has been stated that there has been a steady increase in closing costs, from a nationwide average of \$200 in 1954, to \$418 in 1968. *Closing Costs Study Urged by Commission, 1 FUND NOTES (Lawyer Title Guaranty Fund)* 6 (No. 7, 1969) (quoting from REALTOR'S HEADLINES, Sept. 1, 1969). Statements of this kind may or may not be true but they are irresponsible in that they fail to indicate the amount of the transaction involved and the items included in "closing costs."

27. These statistics do not take into consideration information received by the author from an attorney in far down New England. The writer of the letter failed to fill in the questionnaire form but indicated that if the abstract was of recent date, he would bring it down to the time of the sale (and presumably examine it) for a fee of \$7.50.

It is therefore apparent that conveyancing *may* be an extremely poorly paid occupation in almost any section of the country. Conversely, the maximums appear high, but, again, do not come from mere isolated reports. A substantial number of responses showing high costs come from most parts of the United States. The reported costs, then, range from a nominal sum to something more than 4% of the purchase price. More significantly, the national medians and means are slightly above 1%. In the discussion of methodology contained in Appendix A it is suggested that the real costs may be somewhat higher, but until more comprehensive information is available the figures given must be accepted for working purposes.

Although some variations in reports from different cities in the same state were anticipated, the range between maximums and minimums is larger than expected. Variations are least in transactions financed by mortgage and insurance companies. (See Table I.) Even here nine states show a ratio between maximum and minimum of 4 to 1 or more, and in Ohio the ratio is 5.8 to 1. In nine states the differences in money exceed \$300, with a maximum of \$520 in Florida. In only sixteen states, or approximately one-third of the total, is the highest ratio less than 2 to 1. Where bank financing is used, a ratio of 4 to 1 or more is reported from seventeen states, the highest being Louisiana's 14.6 to 1. (This ratio may be the result of poor reporting, for it is almost double the next highest, 8.5 to 1 in North Carolina.) In only ten states is the ratio less than 2 to 1. In eleven states the difference between maximum and minimum is more than \$300, the highest figure, \$588, again coming from Florida. Intrastate variations are greatest in transactions financed by savings and loan associations. Here, in eighteen states, a ratio of 4 to 1 or more is reported, with a high of 12 to 1 in Oklahoma. In nine states the ratio is less than 2 to 1. Spans between maximum and minimum of \$300 or more are reported from eleven states, the highest amount being \$592 in Pennsylvania.

Costs vary less where transactions are financed by mortgage or insurance companies, but they are higher than where other mortgagees are involved. This is true on the national level and is also true in virtually all the states. (See Table I.) The differences in some cases may be small but they are sufficiently consistent to sustain the thesis that mortgages headed for the national market must meet the demands of any lender and must be supported by maximum formal security. This security is expensive. By contrast, mortgages going into the portfolios of banks and savings and loan associations must comply merely with the demands made by the particular institution (and the bank examiners). Officials of these lenders consequently have wide discretion in dictating the formalities of the transaction and may, if they so elect, minimize expense.

The wide spread in charges for essentially the same services gives an initial impression of irrationality and chance in the pricing system used by the legal profession. Since such untidiness is repellent, it is normal to react by seeking correlations between costs and other factors that would

TABLE I
COST OF ESTABLISHING TITLE—BY STATES

State	Minimums	Maximums	Medians	Means	No. of Reports
Ala.	\$220/ 93/140	\$485/480/495	\$270/200/245	\$290/221/264	14/14/13
Alaska	\$326/256/231	\$331/258/326	\$328/257/278	\$328/257/278	2/ 2/ 2
Ariz.	\$328/328/328	\$388/388/388	\$368/352/368	\$363/358/363	4/ 5/ 4
Ark.	\$130/ 75/ 75	\$281/191/191	\$235/ 95/125	\$218/114/126	9/ 9/ 9
Cal.	\$193/172/172	\$500/500/500	\$245/242/242	\$259/255/255	18/18/18
Colo.	\$125/114/114	\$316/225/240	\$208/137/134	\$199/162/162	7/ 8/ 8
Conn.	\$200/200/200	\$686/530/530	\$385/292/302	\$394/347/349	9/10/10
Del.	\$320/320/320	\$420/420/420	\$325/325/325	\$355/355/355	3/ 3/ 3
D.C.	\$270/270/270	\$270/270/270	\$270/270/270	\$270/270/270	1/ 1/ 1
Fla.	\$165/ 97/ 97	\$685/685/685	\$311/274/280	\$348/287/308	12/12/13
Ga.	\$250/ 80/160	\$382/264/360	\$289/233/255	\$305/217/249	8/ 8/ 8
Haw.	\$339/160/100	\$339/269/304	\$339/214/202	\$339/214/202	1/ 2/ 2
Ida.	\$140/140/140	\$238/262/264	\$215/215/215	\$202/206/207	5/ 5/ 5
Ill.	\$105/ 95/101	\$486/486/486	\$187/127/137	\$234/190/199	12/14/14
Ind.	\$128/ 45/ 45	\$362/300/300	\$243/145/135	\$242/170/159	10/12/11
Iowa	\$ 85/ 60/ 60	\$260/260/260	\$145/110/110	\$150/133/124	11/13/13
Kan.	\$ 62/ 67/ 62	\$227/226/226	\$118/118/118	\$132/131/124	11/11/11
Ky.	\$150/ 33/100	\$280/197/194	\$169/131/157	\$194/133/147	9/ 9/ 9
La.	\$193/ 24/ 92	\$497/350/345	\$316/275/211	\$330/237/230	8/ 8/ 7
Me.	\$ 70/ 75/ 70	\$395/395/395	\$120/130/127	\$148/160/159	13/17/16
Md.	\$240/200/200	\$472/472/472	\$329/325/338	\$332/335/345	6/ 7/ 7
Mass.	\$190/175/175	\$315/300/300	\$215/227/285	\$234/239/252	5/ 8/ 7
Mich.	\$120/ 60/ 75	\$467/467/467	\$221/152/116	\$237/176/173	6/10/10
Minn.	\$ 55/ 55/ 55	\$290/215/258	\$148/135/109	\$166/138/139	8/ 8/ 8
Miss.	\$230/125/175	\$305/265/332	\$259/230/249	\$265/205/247	8/ 7/ 8
Mo.	\$ 53/ 50/ 50	\$208/203/208	\$160/120/120	\$142/117/113	8/ 9/ 9
Mont.	\$135/126/ 75	\$349/349/349	\$211/192/189	\$223/209/196	5/ 6/ 6
Neb.	\$ 92/124/ 92	\$236/236/236	\$124/132/125	\$147/151/141	5/ 5/ 5
Nev.	\$234/234/234	\$373/373/373	\$271/271/271	\$292/292/292	3/ 3/ 3
N.H.	\$ 55/ 55/ 55	\$276/276/276	\$157/100/126	\$162/124/145	3/ 8/ 4
N.J.	\$265/340/325	\$695/730/820	\$525/542/555	\$525/531/538	20/20/20
N.M.	\$ 56/ 56/ 56	\$293/334/330	\$210/293/251	\$186/227/222	3/ 3/ 4
N.Y.	\$218/218/180	\$685/752/685	\$486/436/446	\$493/439/436	18/28/27
N.C.	\$212/ 45/ 45	\$383/383/305	\$270/255/178	\$283/237/180	17/17/17
N.D.	\$ 65/ 50/ 65	\$113/101/110	\$ 91/ 68/ 73	\$ 90/ 71/ 83	4/ 5/ 5
Ohio	\$ 60/ 55/ 40	\$345/255/255	\$198/111/ 97	\$198/126/122	13/14/ 3
Okla.	\$108/ 33/ 18	\$260/220/220	\$164/108/108	\$167/103/103	7/ 7/ 7
Ore.	\$165/140/140	\$405/405/405	\$219/200/200	\$251/235/235	6/ 6/ 6
Pa.	\$180/ 90/180	\$412/412/772	\$340/255/270	\$329/263/325	12/13/13
R.I.	\$175/170/175	\$430/430/430	\$295/295/295	\$300/298/300	3/ 3/ 3
S.C.	\$170/180/ 68	\$402/360/300	\$303/217/210	\$296/239/211	13/13/13
S.D.	\$ 65/ 65/ 65	\$302/174/174	\$105/120/120	\$126/127/116	7/ 7/ 7
Tenn.	\$183/ 93/ 93	\$358/242/242	\$222/190/178	\$234/180/173	12/12/11
Tex.	\$ 98/ 98/ 98	\$418/408/408	\$250/240/235	\$262/242/250	14/13/14
Utah	\$214/214/214	\$288/288/288	\$230/227/230	\$244/243/244	3/ 3/ 3
Vt.	\$125/105/125	\$375/375/375	\$250/225/225	\$250/225/237	2/ 7/ 4
Va.	\$218/175/175	\$410/415/415	\$345/247/265	\$332/268/278	17/17/17
Wash.	\$140/133/133	\$328/326/326	\$240/218/218	\$243/224/218	11/12/11
W. Va.	\$238/153/153	\$390/386/386	\$283/235/235	\$295/246/243	6/ 7/ 7
Wisc.	\$108/ 69/ 69	\$297/297/297	\$238/136/135	\$223/158/158	9/12/12
Wyo.	\$105/ 55/ 55	\$145/145/145	\$127/132/132	\$126/118/119	5/ 6/ 6

explain the apparent disorder. The number of reports is insufficient to permit us to determine whether geography plays a part within a single state.

When we divide the country into regions a wider base is available and significant comparisons can be made. For purposes of testing, the states were divided into ten more or less conventional regions.²⁸ Minimum, maximum, median, and mean costs for each of these regions were then incorporated into Table II. This table indicates that costs are high in a belt of states running along the Atlantic seaboard and low in the north central and mountain states. An even clearer picture is produced by dividing the median costs for all states into upper, middle and lower thirds. When the results are plotted on Map A they show a small low-cost enclave in Maine and New Hampshire. Costs shade upward in Vermont and Massachusetts. Beginning in Rhode Island and Connecticut and extending south through Virginia, costs are consistently high. They are somewhat lower, though still fairly high, in North and South Carolina and Georgia. Florida, a boom area, has consistently high costs. In only one other area are uniformly high costs found: the belt composed of New Mexico, Arizona and Nevada—all states where a rapid influx of relatively affluent settlers has recently occurred. Medium-to-high-cost patterns, similar to those found in North and South Carolina and Georgia, are duplicated in the other southern states of Mississippi and Louisiana and, on the Pacific coast, in California.

TABLE II
COST OF ESTABLISHING TITLE—BY AREAS

<i>Area</i>	<i>Minimums</i>	<i>Maximums</i>	<i>Medians</i>	<i>Means</i>	<i>No. of Reports</i>
N.E.	\$ 55/ 55/ 55	\$686/530/530	\$200/200/200	\$244/218/232	35/53/44
Mid. Atl.	\$180/ 90/180	\$695/752/820	\$420/416/410	\$444/417/430	60/72/71
South Atl.	\$165/ 45/ 45	\$685/685/685	\$303/242/220	\$311/251/243	73/74/75
So. Cent.	\$130/ 24/ 75	\$497/480/495	\$253/180/190	\$256/183/199	60/59/57
S.W.	\$ 56/ 33/ 18	\$418/408/408	\$244/235/229	\$244/226/226	28/28/29
Pac.	\$140/133/133	\$500/500/500	\$241/231/231	\$252/241/240	35/36/35
Non-Con.	\$326/160/100	\$339/269/326	\$331/257/267	\$332/235/240	3/ 4/ 4
Mount.	\$105/ 55/ 55	\$373/373/373	\$212/182/182	\$205/190/188	28/31/31
N.W. Cent.	\$ 53/ 50/ 50	\$302/260/260	\$129/119/110	\$140/126/121	54/58/58
N.E. Cent.	\$ 60/ 45/ 40	\$486/486/486	\$215/132/128	\$225/163/162	50/62/60

By contrast, the principal low-cost area is the great mid-continent heartland. All of the northwest central states, i.e. North and South Dakota, Nebraska, Kansas, Minnesota, Iowa and Missouri, are included. To the

28. The regions used are the following: (1) Northeast: Me., Vt., N.H., Mass., R.I., and Conn.; (2) Middle Atlantic: N.Y., Pa., N.J., Del., Md., D.C.; (3) South Atlantic: Va., W.Va., N.C., S.C., Ga., and Fla.; (4) South Central: Ky., Tenn., Ala., Miss., Ark., and La.; (5) Southwest: Okla., Tex., N.M., and Ariz.; (6) Pacific: Cal., Ore., and Wash.; (7) Non-contiguous states: Haw. and Alas.; (8) Mountain: Ida., Mont., Wyo., Colo., Utah and Nev.; (9) Northwest Central: N.D., S.D., Neb., Kan., Minn., Ia., and Mo.; and (10) Northeast Central: Wisc., Ill., Ind., Mich., and Ohio. Odum in his *Southern Regions of the United States* (1936), has properly warned of the dangers of region making and the vagaries which result from arbitrary selection. The classification used undoubtedly creates some strange bedfellows, such as North Carolina and Florida, Maine and Connecticut, and Oklahoma and Arizona.

west, this area spills over into the mountain states of Wyoming and Colorado, and to the south into Oklahoma. Ohio appears as a low-cost pocket, but the intervening states, Indiana, Illinois, Michigan, and Wisconsin, are marked by costs which are low to medium. The same low to medium cost pattern prevails in the adjacent southern states of Kentucky and Arkansas.

Elsewhere the pattern is mixed. The non-contiguous states of Hawaii and Alaska are atypical for many reasons and yielded only very limited information. On the basis of the returns received they are tentatively classed as medium-to-high and high-cost states respectively.

This regional analysis produces results sufficiently consistent to be accepted until better data is available. The impression obtained is that, whatever local variations may be found, costs in different sections of the country follow generalized patterns—patterns that have no discernible cause and probably result from customs having no connection with modern economic reality. True, present economic conditions may sometimes be decisive. High costs in Florida, Nevada, New Mexico and Arizona, for example, may be the result of current boom psychologies, but no generalization can be based on this assumption. Texas, a medium-cost state, and California, where high costs prevail only in the case of bank loans, are also enjoying rapid economic expansion. By contrast, West Virginia, a distressed area, is marked by medium-to-high costs.

Because low costs are centered in the midwestern corn, hog, and wheat belt, and the highest costs in the nation are paid in the Boston to Richmond megalopolis, it might be assumed that there is some correlation between the charges made for establishing title and the kind of economy found in a region. But a moment's glance at Map A explodes any such assumption. If costs are lowest in the agrarian northwest central states they are relatively high in the equally agrarian south Atlantic and south central areas. Similarly, industrialized high-cost areas like New York and New Jersey can be compared with industrialized low-cost states like Ohio, Michigan, Indiana, Illinois and Wisconsin.

TABLE III
COST OF ESTABLISHING TITLE—BY CITY SIZE

<i>City size</i>	<i>Minimums</i>	<i>Maximums</i>	<i>Medians</i>	<i>Means</i>	<i>No. of Reports</i>
less than					
5,000	\$ 53/ 53/ 53	\$479/479/568	\$220/195/210	\$233/201/208	36/44/42
5,000-9,999	\$ 56/ 33/ 18	\$550/550/772	\$265/175/181	\$259/189/223	31/47/42
10,000-24,999	\$ 62/ 33/ 45	\$695/670/670	\$253/194/196	\$254/208/211	82/96/92
25,000-49,999	\$ 55/ 24/ 40	\$675/675/820	\$250/192/193	\$262/218/219	85/91/91
50,000-99,999	\$ 80/ 55/ 55	\$686/752/685	\$241/220/210	\$267/245/236	76/80/80
100,000-					
499,999	\$ 92/ 97/ 75	\$690/730/730	\$258/235/229	\$286/265/260	93/95/93
500,000-					
999,999	\$123/145/123	\$472/472/472	\$287/277/287	\$289/284/280	14/14/14
1,000,000 or more	\$226/206/206	\$635/546/661	\$435/424/423	\$425/401/436	9/10/10

Another possible expedient is to abandon the regional approach and determine whether urbanization, or city size, has any bearing on costs. In theory, the expense of establishing title should be in direct ratio to a city's population. The more people, the more land transactions; the more records to be examined, the greater the cost. Table III indicates that below the 100,000 population level the correlation between the size of a city and the cost of establishing title is negative. In cities in the 100,000 to 500,000 classification, a small but generalized increase is evident. This increase becomes substantially larger in cities boasting a half million to a million inhabitants and then soars when the million mark is passed. The danger of accepting this analysis at face value is that there are relatively few large cities and they are spaced unevenly throughout the country. Are high costs in these cities the result of geographic rather than demographic considerations? In this survey ten reports were received from five cities in the million or above classification. Half came from the New York metropolitan area in a state where average costs are second only to those in New Jersey. Another came from Philadelphia, located in the same general high-cost area. Los Angeles is in a medium-to-high-cost state and Chicago and Detroit are in low-to-medium-cost states. Of the fourteen cities in the half million to million classification from which reports were obtained, only one, St. Louis, is located in the great central, low-cost heartland. It is somewhat plausible therefore, to accept a geographic theory on title costs even where big cities are involved. Table IV, however, indicates considerably higher costs in such cities than is normal in the states in which they are located. The nineteen cities from which this data comes represent so substantial a portion of the nation's population and the data is so "thin" that any conclusion can only be hesitant until more comprehensive information is available. On the basis of what the survey shows, however, it is not unreasonable to adopt as a working thesis the following: that the size of the city has little bearing on costs at the lower levels; and that at some undetermined point above the 100,000 level, costs begin to rise in relation to population. The rise is not inevitable and is not necessarily uniform, but we can generalize by saying that big city conveyancing is expensive conveyancing.²⁹

b. The Method of Establishing Title and Its Relation to Cost

Outside Torrens enclaves, the three basic methods by which titles are established in the United States are: (1) Direct examination of the official land records by an attorney; (2) Examination by an attorney of a commercial abstract prepared by a layman or, in some cases, by another attorney; (3) Issuance of an insurance policy by a "local" title company, which sometimes has its own employees make a direct examination of the records but more

29. The use of only one return from a given city increases the probability of reporting errors in direct ratio to the size of the city. Any competent title lawyer in a city of 25,000 population will be familiar with practices prevailing there. By contrast, the big city lawyer's knowledge may be confined to the practices of his own associates and clients.

frequently resorts to its own "plant" (a duplicate set of the public records so indexed as to permit efficient search). A local company need not obtain an opinion from an independent attorney because its own salaried employees, either lay or professional, perform this function. Where an independent attorney makes a direct search or examines an abstract, his opinion may be buttressed by a title insurance policy issued by a "national" company, a company relying solely on his opinion and making no search of its own. Whether national title insurance is used will generally depend upon whether it is demanded by the mortgage lender, although in isolated cases buyers themselves request this coverage.

TABLE IV
COST OF ESTABLISHING TITLE IN MAJOR CITIES—
PERCENTAGE ABOVE OR BELOW MEDIAN FOR STATES IN WHICH
CITIES ARE LOCATED

<i>1,000,000 or more</i>		<i>500,000-999,999</i>	
Chicago	74%/243%/217%	Baltimore	43%/ 45%/ 40%
Detroit	2%/ 36%/ 78%	Boston	47%/ 28%/ 2%
Los Angeles (2 reports)	15%/ 17%/ 17%	Cincinnati	-38%/ 31%/ 50%
New York		Dallas	- 1%/-11%/-10%
Metropolitan (5 reports)	3%/ 15%/ 36%	Houston	67%/ 70%/ 70%
Philadelphia	21%/ 62%/ 53%	Milwaukee	14%/ 111%/ 120%
		New Orleans	12%/ 19%/ 42%
		Pittsburg	4%/ 39%/ 31%
		St. Louis	2%/ 36%/ 2%
		San Antonio	16%/ 10%/ 27%
		San Diego	11%/ 18%/ 19%
		San Francisco	- 6%/- 4%/- 4%
		Seattle	0%/ 111%/ 120%

Each of these types of title proof requires a different instrumental and institutional structure and in theory should result in different patterns of costs. On the questionnaire informants were asked, after they had shown typical costs in their communities, to indicate in percentages the estimated occurrence of the several types of proof. For purposes of analysis, whenever one type of proof was reported in 60%³⁰ or more of all cases it was assumed to be dominant and was used as the basis of the report on costs. Cost data where each type of proof was dominant were then reduced to Table V.

This table indicates that far and away the cheapest form of establishing title is the commercial abstract, provided that it is not supported by a national title insurance policy. Personal search, without benefit of national title insurance, is cheaper than local title insurance where bank or savings and loan association financing is used but slightly more expensive where the mortgagee is an insurance or mortgage company. Personal search alone

30. The 60% figure was used to allow for some margin of error. It was also convenient in machine processing. Percentiles were coded on a 10 point range. On this range a 50-50 division, where no form of proof was predominant, could not be segregated from a 59-41 division. However, the latter would be most unusual.

TABLE V
RELATION BETWEEN COST AND METHOD USED IN ESTABLISHING TITLE

<i>Predominate form of title proof (60% or more of all transactions in the city)</i>	<i>Minimum</i>	<i>Maximum</i>	<i>Median</i>	<i>Mean</i>	<i>No. of Reports</i>
Personal search alone	\$ 60/ 33/ 40	\$685/685/685	\$262/200/200	\$276/214/223	40/135/136
Personal search plus title insurance	\$150/140/178	\$695/675/670	\$296/295/325	\$303/334/340	114/ 31/ 29
Commercial abstract alone	\$ 53/ 33/ 18	\$610/685/685	\$126/125/125	\$170/167/168	66/138/143
Commercial abstract plus title insurance	\$117/125/125	\$645/645/645	\$265/334/330	\$291/361/344	45/ 15/ 19
Local title insurance	\$110/126/123	\$690/752/730	\$247/249/242	\$278/282/281	117/108/ 98

or local title insurance is cheaper than either personal search or abstract examination joined with national title insurance.

Can conclusions on the relationship between type of title proof and cost be taken at face value? We have already seen a geographical correlation. Do geography and type of title proof have any relationship to each other and to the element of cost? Table VI gives some idea of the geographical distribution of title practices. It is immediately apparent that the low-cost area embraced in the northeast central and northwest central states is that in which abstract practice is generally predominant. By contrast the states in which title insurance is predominant, the Pacific coast, Rocky Mountains and non-contiguous states, show ranges of costs from high to low. The middle Atlantic states, the area of highest cost, show a highly diversified pattern of practice. Elsewhere, in the northeastern states an overwhelming predominance of personal search combines with a cost pattern ranging from high to low. In the south Atlantic and south central states, where personal search is most commonly used (Florida excepted), costs show a mixed pattern from medium to high; and in the southwest the range is from low in Oklahoma, an abstract area, to high in Arizona, a local title insurance area.

TABLE VI
PERCENTAGE OF RETURNS SHOWING PARTICULAR FORMS OF TITLE
PROOF AS PREDOMINANT IN THE INFORMANT'S COMMUNITY

Area	P/S ¹	P/S/Ins. ²	Abst. ³	Abst./Ins. ⁴	Local Ins. ⁵
United States	9%/28/30	28%/ 9/ 6	15%/30/31	11%/13/ 4	29%/ 22/ 21
N.E.	67%/83/79	12%/ 2/ 4	9%/ 8/ 7	0%/0/ 0	6%/ 4/ 4
Mid. Atl.	11%/20/22	28%/14/16	14%/22/21	12%/9/10	27%/ 24/ 21
So. Atl.	4%/47/66	77%/32/12	1%/11/11	7%/1/ 4	2%/ 2/ 1
So. Cent.	10%/52/50	54%/ 5/12	3%/22/23	24%/2/ 3	5%/ 5/ 3
S.W.	0%/ 0/ 0	4%/ 0/ 0	7%/33/40	30%/8/ 8	52%/ 49/ 36
Pac.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/0/ 0	100%/100/100
Non. Cont.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/25	0%/0/ 0	100%/100/ 75
Mount.	0%/ 0/ 0	0%/ 0/ 0	6%/20/23	3%/3/ 6	79%/ 66/ 63
N.W. Cent.	0%/ 0/ 0	0%/ 0/ 0	67%/78/81	10%/4/3	16%/ 9/ 9
N.E. Cent.	6%/19/21	13%/ 2/ 0	25%/63/61	12%/2/2	25%/ 9/ 7

1. Personal search
2. Personal search, plus national title insurance
3. Abstract
4. Abstract, plus national title insurance
5. Local title insurance

The pattern of practices just described seems even more complex when we refer to Map B and Appendix B.³¹ On Map B, whenever any city shows

31. The only prior effort to show title practice in geographical terms is found in Russell & Bridewell, *Systems of Land Title Examination*, 14 J. of LAND & PUB. UTIL. ECON. 133 (1938). See also Baker, *The Different Methods of Operations of Title Insurance Companies*, 48 TITLE NEWS 20 (No. 6, 1969). The map Russell and Bridewell created is impressionistic and now out-dated. Designing an adequate

a dominant form of practice, that form is plotted by a capital letter for the entire state in which the city is located. Where "trace elements" (i.e., non-predominant practices) are reported, they are plotted by a lower case letter. In a majority of the states, practice is mixed, although it is possible to speak of California, Oregon and Idaho as "100% local title insurance," Virginia, West Virginia and North Carolina as "100% personal search," and Iowa, North Dakota and Oklahoma as "100% abstract" states. In general the Pacific Coast and western Rocky Mountain regions depend on local title insurance, the middle west on abstracts, and the southeast and northeast on personal search. The middle Atlantic states are too diversified for classification.

We now return to our original assumption that geography, rather than economics, is predominant in fixing title costs. This assumption is heavily reinforced in Table VII, which shows median costs where each type of proof is predominant in each area. Despite some variations, the patterns of costs here shown are similar to those for costs in general. What is more important, where the same type of title proof is used, costs differ radically in different parts of the country. For example, where local title insurance is dominant, the median costs of establishing title are \$472/472/469 in the middle Atlantic states but only \$162/160/160 in the northwest central states. Along the rest of the Atlantic seaboard the use of local title insurance is expensive,³² but so is conveyancing in general. By contrast, in the mountain states title insurance transactions follow the typical low-cost pattern of the region as a whole. Where abstracts are used, low-cost areas appear in the southwestern states (probably because most abstract communities are found in Oklahoma), the northwest central, the mountain, and the northeastern states. High-cost areas include the middle Atlantic and south Atlantic states. Personal search areas are difficult to compare because this form of establishing title is little used in large sections of the country. But where it exists it is least expensive in the northeast central and northeastern states and most expensive in the middle Atlantic states. It would seem safe to conclude, therefore, that within a given area the method used in proving title may influence the cost. On the other hand, if we look at the nation as a whole geography and custom appear to be of larger significance.

The conclusion that, within the limitations imposed by geography and custom, abstract practice results in the lowest costs, leads to speculation as to the future of title practice in this country. I have discussed this problem in a recent article³³ but will return to it here in the light of the

atlas of title practices would require many years of work. As a starting point, Appendix B to this report gives a state-by-state summary of findings made in the course of this survey.

32. High costs in New England are not necessarily typical since local title insurance is found only in Rhode Island. In the South Atlantic states local title insurance is generally confined to Florida and the city of Atlanta.

33. Payne, *Title Insurance and the Unauthorized Practice of Law Controversy*, 53 Minn. L. Rev. 423 (1969).

TABLE VII
MEDIAN COSTS OF PARTICULAR FORMS OF TITLE PROOF—BY AREA

Area	P/S.	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
N.E.	\$207/200/207	\$347/295/292	\$130/115/130	..../..../...	\$302/300/302
Mid. Atl.	\$481/272/355	\$329/412/381	\$460/427/427	\$532/450/450	\$472/472/469
So. Atl.	\$300/230/205	\$303/280/357	\$325/225/277	\$290/290/340	\$357/325/207
So. Cent.	\$255/155/175	\$242/236/235	\$148/125/172	\$264/258/268	\$295/235/258
S.W.	..../..../...	\$264/..../...	\$103/108/108	\$191/282/280	\$298/328/303
Pac.	..../..../...	..../..../...	..../..../...	..../..../...	\$241/231/231
Non-					
Cont.	..../..../...	..../..../...	..../..../100	..../..../...	\$331/257/304
Mount.	..../..../...	..../..../...	\$116/127/127	\$125/125/171	\$223/219/223
N.W.					
Cent.	..../..../...	..../..../...	\$110/110/107	\$258/180/146	\$162/160/160
N.E.					
Cent.	\$225/101/101	\$199/..../...	\$157/125/120	\$295/297/297	\$232/233/271

Note: Unless a particular form of title proof is predominate in at least one city in the area no median cost is shown. The reason is that costs are computed on a typical transaction, that is, what is typical for each community. Since a minority form is atypical its costs do not appear.

new data which has since become available. Ignoring for convenience such important questions as the services that can be demanded and given by the parties, the views of the courts on unauthorized practice, and the effect of solicitation by the title companies, it would seem rational to anticipate that low costs would cause an increase in abstract practice. In fact, it is generally presumed by most observers to be on the decline. The cause of this decline is that title insurance companies, through agency arrangements and outright purchase, are rapidly eliminating the abstracters as independent entities. The choice in the future therefore rests between personal search and local title insurance. If his certificate alone is relied upon, the independent attorney, at least outside the big cities, can compete on approximately even ground with the title insurance company insofar as cost is concerned. He might even compete in the large cities if an adequate system of public records were provided. If national title insurance is demanded in addition, his services are more expensive than those of the local company. In theory, different kinds of lenders require different kinds of title assurance, a theory strongly supported by the data in Table VI. Outside New England, an attorney's certificate, whether based on an abstract or a personal examination of the records, is generally unacceptable to a mortgage or insurance company unless it is supported by national title insurance. It follows that in order to compete *economically* the attorney must reform the title system to the point where he can furnish an insured opinion at less cost than would be charged by a local insurer. However, banks and savings and loan associations together account for the bulk of mortgage financing of homes,³⁴ and banks and savings and loan associations rely

34. STATISTICAL ABSTRACT OF THE UNITED STATES 451 (1969); REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES 18 (1969). Unfortunately data as to

primarily upon unsupported opinions of attorneys, except in the Pacific, non-contiguous, mountain, and possibly southwest areas, and in certain large cities. But banks alone account for a limited portion of the long term home mortgage financing.³⁵ Savings and loan associations rely increasingly on their own house counsel. Recent rumblings in the financial market indicate that the share of home financing enjoyed by savings and loan associations may show a radical rise in the near future. Other institutional lenders, faced by the specter of ever-increasing inflation, are showing greater and greater discontent with long-term, fixed-return investments. If they gradually withdraw from the mortgage market, the savings and loan associations will move into the void thus created.³⁶ Should this occur and the existing reluctance to enforce unauthorized practice principles against such institutions continue, the independent title attorney may eventually be forced out. But this is speculation having no place in a scientific study. For the moment we can simply notice that the independent attorney does not enjoy any particular advantage in economic competition for title work. It has long been known that inadequate records systems make his position impossible in large cities. It would now appear that, unless drastic reform is instituted, his competitive position may also deteriorate in smaller communities.

4. *Statutory Costs*

Statutory costs (transfer taxes, recording fees, and the like) are the result of government's need for revenue. They are fixed by law. Since they have no relation to other kinds of costs, they should be considered separately in any systematic analysis.

When the survey was initiated, statutory costs were included in the questionnaire not because they were thought to be particularly important but because adequate analysis required that they be segregated from other elements of over-all expense. Presumably they would be uniform for states as a whole and for transactions involving all kinds of lenders. The extent to which these expectations proved illusory is shown by Table VIII.

Except for the District of Columbia, from which a single report was received, only Nevada informants give uniform information. Variations in the reports from individual states range from the inconsequential (e.g.,

sources of mortgage financing have been somewhat rudimentary in the past. A much more satisfactory, though by no means perfect, method of compiling information is now being implemented. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, *MORTGAGE LOAN GROSS FLOWS* (1969).

35. A result of the current dearth of mortgage money, coupled with widespread fears of further inflation, has distorted conventional patterns of lending. Banks are now accepting a proportionately larger number of mortgages, and life insurance companies are said to be temporarily out of the business. Some of the latter have closed their mortgage departments. *SECONDARY MORTGAGE MARKET*, 113, 283, 235.

36. Nearly three-fourths of commercial bank residential mortgages and seven-eighths of those held by savings and loan associations are conventional loans. *SECONDARY MORTGAGE MARKET*, 268.

TABLE VIII
STATUTORY COSTS

<i>Area</i>	<i>Minimums</i>	<i>Maximums</i>	<i>Medians</i>	<i>Means</i>	<i>No. of Reports</i>
U.S.	\$ 2/ 1/ 2	\$426/422/422	\$ 30/ 28/ 28	\$ 58/ 57/ 57	426/477/464
N.E.	\$ 12/ 10/ 10	\$ 61/ 61/ 61	\$ 32/ 31/ 32	\$ 36/ 33/ 34	35/ 53/ 44
Mid. Atl.	\$ 19/ 19/ 19	\$426/422/422	\$112/113/113	\$159/155/153	60/ 72/ 71
S. Atl.	\$ 19/ 19/ 19	\$164/164/164	\$ 74/ 71/ 72	\$ 78/ 75/ 77	73/ 74/ 75
So.-Cent.	\$ 4/ 1/ 4	\$100/100/100	\$ 28/ 25/ 27	\$ 33/ 29/ 31	60/ 59/ 57
S.W.	\$ 4/ 4/ 4	\$ 44/ 42/ 28	\$ 11/ 10/ 10	\$ 15/ 14/ 13	28/ 28/ 29
Pac.	\$ 4/ 4/ 3	\$249/249/249	\$ 28/ 28/ 27	\$ 87/ 89/ 85	35/ 36/ 35
Non-					
Cont.	\$ 10/ 21/ 22	\$ 27/ 28/ 28	\$ 22/ 24/ 27	\$ 19/ 24/ 26	3/ 4/ 4
Mount.	\$ 3/ 3/ 3	\$ 31/ 31/ 31	\$ 9/ 8/ 8	\$ 10/ 10/ 10	28/ 31/ 31
N.W.					
Cent.	\$ 2/ 2/ 2	\$ 80/ 80/ 80	\$ 28/ 26/ 27	\$ 32/ 30/ 31	54/ 58/ 58
N.E.					
Cent.	\$ 4/ 3/ 3	\$ 34/ 58/ 58	\$ 25/ 25/ 25	\$ 18/ 18/ 19	50/ 62/ 60
Ala.	\$ 26/ 9/ 26	\$ 49/ 32/ 38	\$ 34/ 25/ 33	\$ 34/ 25/ 32	14/ 14/ 13
Alaska	\$ 10/ 21/ 22	\$ 22/ 22/ 28	\$ 16/ 21/ 25	\$ 16/ 21/ 25	2/ 2/ 2
Ariz.	\$ 6/ 6/ 6	\$ 28/ 28/ 28	\$ 6/ 6/ 6	\$ 11/ 10/ 11	4/ 5/ 4
Ark.	\$ 4/ 4/ 4	\$ 65/ 65/ 65	\$ 9/ 6/ 8	\$ 18/ 13/ 13	9/ 9/ 9
Cal.	\$ 23/ 8/ 8	\$ 88/ 28/ 28	\$ 27/ 26/ 26	\$ 30/ 25/ 25	18/ 18/ 18
Colo.	\$ 6/ 6/ 6	\$ 16/ 13/ 18	\$ 10/ 8/ 8	\$ 10/ 9/ 9	7/ 8/ 8
Conn.	\$ 36/ 35/ 32	\$ 46/ 44/ 44	\$ 38/ 37/ 37	\$ 40/ 38/ 37	9/ 10/ 10
Del.	\$220/220/220	\$422/422/422	\$419/419/419	\$353/353/353	3/ 3/ 3
D.C.	\$112/112/112	\$112/112/112	\$112/112/112	\$112/112/112	1/ 1/ 1
Fla.	\$ 89/ 89/ 89	\$164/164/164	\$145/144/145	\$140/139/140	12/ 12/ 13
Ga.	\$ 67/ 19/ 19	\$ 83/ 83/ 83	\$ 75/ 49/ 72	\$ 75/ 49/ 61	8/ 8/ 8
Haw.	\$ 27/ 27/ 27	\$ 27/ 28/ 27	\$ 27/ 27/ 27	\$ 27/ 27/ 27	1/ 2/ 2
Ida.	\$ 3/ 3/ 3	\$ 12/ 12/ 12	\$ 8/ 8/ 8	\$ 8/ 8/ 8	5/ 5/ 5
Ill.	\$ 26/ 26/ 26	\$ 34/ 58/ 58	\$ 28/ 28/ 28	\$ 28/ 30/ 30	12/ 14/ 14
Ind.	\$ 4/ 4/ 4	\$ 9/ 7/ 8	\$ 6/ 5/ 6	\$ 6/ 5/ 6	10/ 12/ 11
Iowa	\$ 25/ 25/ 25	\$ 30/ 28/ 30	\$ 28/ 26/ 28	\$ 27/ 26/ 27	11/ 13/ 13
Kan.	\$ 43/ 43/ 43	\$ 52/ 52/ 52	\$ 48/ 48/ 48	\$ 47/ 47/ 47	11/ 11/ 11
Ky.	\$ 27/ 27/ 27	\$ 30/ 28/ 28	\$ 28/ 27/ 27	\$ 27/ 27/ 27	9/ 9/ 9
La.	\$ 4/ 1/ 4	\$ 19/ 17/ 24	\$ 8/ 6/ 6	\$ 10/ 8/ 12	8/ 8/ 7
Me.	\$ 12/ 10/ 10	\$ 32/ 33/ 33	\$ 30/ 30/ 30	28/ 26/ 26	13/ 17/ 16
Md.	\$ 38/ 38/ 38	\$301/301/301	\$ 64/ 64/ 64	\$118/126/126	6/ 7/ 7
Mass.	\$ 58/ 54/ 54	\$ 61/ 61/ 61	\$ 58/ 55/ 55	\$ 59/ 56/ 56	5/ 8/ 7
Mich.	\$ 26/ 26/ 26	\$ 32/ 32/ 31	\$ 28/ 28/ 28	\$ 29/ 28/ 28	6/ 10/ 10
Minn.	\$ 72/ 72/ 72	\$ 80/ 80/ 80	\$ 74/ 74/ 74	\$ 74/ 74/ 74	8/ 8/ 8
Miss.	\$ 4/ 4/ 4	\$ 10/ 8/ 10	\$ 7/ 6/ 6	\$ 7/ 6/ 6	8/ 7/ 8
Mo.	\$ 5/ 5/ 5	\$ 8/ 8/ 8	\$ 6/ 6/ 6	\$ 6/ 6/ 6	8/ 9/ 9
Mont.	\$ 8/ 8/ 6	\$ 10/ 14/ 20	\$ 10/ 10/ 9	\$ 9/ 10/ 10	5/ 6/ 6
Neb.	\$ 21/ 21/ 21	\$ 30/ 29/ 29	\$ 28/ 27/ 27	\$ 27/ 26/ 26	5/ 5/ 5
Nev.	\$ 31/ 31/ 31	\$ 31/ 31/ 31	\$ 31/ 31/ 31	\$ 31/ 31/ 31	3/ 3/ 3
N.H.	\$ 27/ 20/ 20	\$ 32/ 34/ 32	\$ 27/ 27/ 27	\$ 28/ 28/ 26	3/ 8/ 4
N.J.	\$ 19/ 19/ 19	\$ 55/ 55/ 55	\$ 43/ 45/ 43	\$ 41/ 42/ 41	20/ 20/ 20
N.M.	\$ 4/ 4/ 4	\$ 8/ 8/ 8	\$ 4/ 4/ 4	\$ 5/ 5/ 5	3/ 3/ 4
N.Y.	\$ 95/ 52/ 76	\$133/132/132	\$113/113/114	\$114/111/113	18/ 28/ 27
N.C.	\$ 19/ 19/ 19	\$ 29/ 29/ 29	\$ 26/ 26/ 26	\$ 26/ 25/ 25	17/ 17/ 17
N.D.	\$ 2/ 2/ 2	\$ 8/ 7/ 7	\$ 6/ 5/ 5	\$ 5/ 4/ 5	4/ 5/ 5
Ohio	\$ 5/ 5/ 5	\$ 26/ 26/ 26	\$ 25/ 25/ 25	\$ 23/ 23/ 23	13/ 14/ 13
Okla.	\$ 26/ 26/ 26	\$ 44/ 42/ 28	\$ 28/ 27/ 27	\$ 32/ 29/ 26	7/ 7/ 7
Ore.	\$ 4/ 4/ 3	\$ 7/ 6/ 6	\$ 4/ 4/ 4	\$ 4/ 4/ 4	6/ 6/ 6
Penn.	\$210/210/141	\$426/421/421	\$413/412/412	\$398/397/377	12/ 13/ 13
R.I.	\$ 30/ 30/ 30	\$ 34/ 34/ 34	\$ 30/ 30/ 30	\$ 31/ 31/ 31	3/ 3/ 3
S.C.	\$ 53/ 53/ 53	\$ 74/ 74/ 74	\$ 67/ 67/ 67	\$ 67/ 67/ 67	13/ 13/ 13

Area	Minimums	Maximums	Medians	Means	No. of Reports
S.D.	\$ 2/ 2/ 2	\$ 27/ 25/ 27	\$ 24/ 23/ 23	\$ 18/ 16/ 18	7/ 7/ 7
Tenn.	\$ 67/ 62/ 62	\$100/100/100	\$ 76/ 76/ 76	\$ 77/ 76/ 77	12/ 12/ 11
Tex.	\$ 7/ 5/ 5	\$ 15/ 14/ 14	\$ 10/ 10/ 10	\$ 10/ 10/ 10	14/ 13/ 14
Utah	\$ 6/ 6/ 6	\$ 7/ 7/ 7	\$ 7/ 7/ 7	\$ 6/ 6/ 6	3/ 3/ 3
Vt.	\$ 30/ 11/ 24	\$ 34/ 34/ 34	\$ 32/ 26/ 27	\$ 32/ 25/ 28	2/ 7/ 4
Va.	\$ 83/ 83/ 83	\$114/114/114	\$106/103/103	\$101/ 99/ 99	17/ 17/ 17
Wash.	\$207/205/205	\$249/249/249	\$226/226/226	\$226/226/226	11/ 12/ 11
W. Va.	\$ 67/ 67/ 66	\$ 73/ 71/ 71	\$ 70/ 70/ 70	\$ 69/ 69/ 69	6/ 7/ 7
Wisc.	\$ 4/ 3/ 3	\$ 9/ 9/ 9	\$ 5/ 5/ 5	\$ 5/ 5/ 5	9/ 12/ 12
Wyq.	\$ 4/ 4/ 4	\$ 14/ 14/ 14	\$ 6/ 5/ 6	\$ 7/ 6/ 6	5/ 6/ 6

Hawaii and Utah) to the very substantial (e.g., Maryland). Between states, the range is from a minimum of \$1 to a maximum of \$426. In most states the amount is small, the national median being \$28 to \$30, an amount exceeded in only two regions, the middle Atlantic and south Atlantic states. The former is also the area of highest cost for establishing title, and in the latter title costs are above the national average. Using an arbitrary method of classification, six states (Delaware, Florida, New York, Pennsylvania, Virginia and Washington) and the District of Columbia are high-statutory-cost jurisdictions, in the sense that median fees reported in at least one instance equal or exceed \$100, or 1/2% of the value of the property transferred. All of these jurisdictions except Washington are located in the Atlantic coast high-title-cost area. By contrast, in nineteen states (Alaska, Arizona, Arkansas, Colorado, Idaho, Indiana, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Wisconsin and Wyoming) statutory costs do not exceed \$25. In these states title and statutory costs appear to bear no significant relationship to each other. However, it is notable that all but seven of the low-title-cost states fall within this group and of these seven, all but two have maximum median statutory costs of \$30 or less. It is tenable, on the basis of this analysis, to find a reasonably strong probability that high title costs show some tendency to accompany high statutory costs, and low title costs to accompany low statutory costs.

The differences reported from state to state can be explained by inequalities in the need for revenue, ingenuity of legislatures, tolerance of the people, custom, and the like. Reported differences within a single state require more detailed comment. Theoretically the amount in every response within a given state should have been the same. Furthermore, the correctness of the data furnished could have been checked against the statute law of each state. But some variations were expected in any event and it was impractical in the course of this limited survey to attempt exhaustive research into the law. The question to be asked is: why did competent real estate lawyers furnish such varying reports? Several valid reasons present themselves as well as others of a less acceptable nature.

The first is that in some cases the differences are real, substantial, and legitimate. The most outstanding examples occur in Delaware and Penn-

sylvania. Both of these states levy a basic transfer tax of 1% or \$200 in the transaction presumed. In Wilmington and in a large number of local government areas in Pennsylvania, authorities are empowered to impose an additional 1% tax. By comparison with other states, this system creates a very high minimum and a large gross spread between minimum and maximum. In terms of percentages, however, the spread is less than in some states where gross costs are lower. A second reason is that in some low-cost states the percentage of variation may be substantial because of differences in making estimates. For example, if the principle statutory costs are incurred when recording instruments, and if recording fees are based on the number of words or folios embraced in the document, different lawyers, thinking in terms of deeds and mortgages of different lengths, will disagree in their estimates of required fees. A third cause of reported differences appears to be the failure to keep in mind that in some states fees may vary according to the mortgagee. For example, the fee scale in bank mortgage transactions is often different from that used when another type of lender is involved. And finally, obvious forgetfulness on the part of some respondents, a type of error which may have been encouraged by the form of the questionnaire, accounts for some differences. After listing certain conventional costs, the form makes provision for "others," a last item which was generally ignored, although in a minority of cases extra charges, such as that for satisfying the existing mortgage, are listed.

WHO PAYS THE COSTS OF ESTABLISHING TITLE?

Allocating the total expense of a land transfer between the parties has some practical importance and deserves at least passing comment. The seller universally pays the broker's fee, normally 5% to 6%. In the present state of the money market, we do not know the amount of financing charges or who pays them. We can guess, basing an opinion on incomplete data and what comes down the grapevine, that they range anywhere from nothing to as high as 10% and are allocated to the parties on the basis of negotiation and local custom. Another guess is that in a normal market they range from 1% to 2% and are paid by the buyer/mortgagor. Statutory costs are normally so small that it was not felt worthwhile to make a detailed study of their allocation.

The apportionment of the expense of establishing title was investigated in a somewhat rudimentary fashion. All returns were separated into several categories, depending upon whether the buyer or seller pays all or a predominant portion of the cost,³⁷ whether costs are split evenly between the parties, or whether the nature of the division in any particular community differs from one type of lender to another.

For the nation as a whole, 27% of the returns indicate that the buyer

37. The charge for drawing the deed was ignored, since it is generally nominal and is almost universally paid by the seller.

bears the entire cost and 47% that he bears the greater part. The only other formula reported to any significant degree is that where the seller pays most, but not all, of the cost (16%). Area analysis shows considerable variation from the national pattern. In only four areas, the northeastern (44%), middle Atlantic (32%), south Atlantic (52%) and south central states (43%), do a substantial percentage of returns show a significant number of communities where the buyer customarily pays all of the expense of establishing title.³⁸ In each of these areas the percentage of communities in which the buyer pays most but not all of the costs is also high: 37%, 57%, 35% and 38%, respectively. Since these areas are also characterized by medium to high costs, it would be easy to generalize that high cost and high allocation of cost to the buyer coincide. Yet any such assumption is contradicted when we find that in the northwest central states, the lowest-cost area in the country, in 83% of the communities the buyer bears either all or most of the cost and that in the northeast central states, another low-cost area, the percentage is 75. In no case does the percentage of cities in which the seller pays all costs rise above 7 (south central states) and only on the Pacific coast does the seller pay either all or a majority of the costs in a majority of cities (75%). In the southwestern states the percentage is 50, but this is also the area reporting the greatest number of cities in which the division depends on the type of lender (17%). The mountain states show a somewhat similar division, although there the scales are tipped against the buyer, with 52% of the reports showing him paying most of the costs, and 39% showing the seller paying the majority.³⁹

When the allocation of costs is broken down by city size we find the most significant variations appearing in the allocation to the seller. In the very small towns, 5,000 population or less, the seller pays all or a predominant part of the costs in 30% of all reporting communities. This figure declines with some degree of regularity to a low of 12% in communities of 50,000 to 99,999 population. Thereafter there is a steady rise to the 60% level in metropolises of more than a million inhabitants. This phenomenon has not been explained, and it is possible that the allocation of costs is a product of chance local custom. One can speculate that, at the upper end of the scale, the use of local title insurance may have some casual relationship because local title insurance is the predominant method of proving title in big cities. Probably where it is employed the contract of sale tends to provide that the seller will furnish a policy of insurance. The premium on the policy will be a primary element of cost and will be paid by the seller.

38. The reports from the non-contiguous states were so few that they are not considered for the purposes of his analysis.

39. Reports from individual states follow as a whole the regional pattern shown above, although the spread is greater or smaller from one state to another and an occasional atypical allocation is to be found.

RELATION OF CITY SIZE TO MODE OF PROVING TITLE

A strong correlation exists between geography and the method used in proving title. Is there a similar correlation between size of city and method of proving title? Table IX is an effort to answer this question. It indicates, in percentages of returns, the extent to which various types of title proof predominate in cities of various sizes. Below the 100,000 population level personal search is used to a substantial but varying degree. The most noteworthy aspect of this kind of practice is that mortgage and insurance companies more often require national title insurance, whereas banks and savings and loan associations seldom demand this protection. In cities of 100,000 to 500,000 the amount of personal search declines, decreasing even more sharply in cities of the half million to million mark, and disappearing as a predominant form of title proof in cities of a million or more. The pattern for use of abstracts is similar, but mortgage and insurance companies demand supporting title insurance less often, and banks and savings and loan associations hardly ever.

TABLE IX
PERCENT OF CITIES OF VARIOUS SIZE CLASSES IN WHICH
PARTICULAR FORMS OF TITLE PROOF ARE USED IN
60% OR MORE OF ALL CASES

	<i>P/S</i>	<i>P/S + Ins.</i>	<i>Abst.</i>	<i>Abst. + Ins.</i>	<i>Local Ins.</i>
less than 5,000	11%/41/33	29%/ 4/9	37%/32/33	0%/0/0	20%/ 16/ 14%
5,000-9,999	13 /40/29	29 / 0/7	16 /36/42	13 /0/2	19 / 13/ 12
10,000-24,999	10 /34/34	32 / 9/8	18 /34/37	10 /3/3	18 / 15/ 15
25,000-49,999	9 /26/29	26 / 4/4	18 /37/36	12 /3/5	24 / 17/ 17
50,000-99,999	13 /29/35	28 /12/7	16 /30/30	12 /4/6	24 / 19/ 17
100,000-499,999	5 /19/27	27 / 8/5	8 /19/25	12 /5/4	37 / 31/ 29
500,000-999,999	0 / 7/21	7 / 0/7	0 / 0/ 0	7 /7/7	80 / 78/ 57
1,000,000 or more	0. / 0/ 0	0. / 0/0	0 / 0/ 0	0 /0/0	100 /100/100

All cities of a million or more report that local title insurance is used in 90% or more of all transactions, regardless of the lender. In cities in the half to one million rank, the overwhelming majority report local title insurance as the predominant means of establishing title where mortgage and insurance companies and banks are mortgagees. But where savings and loan associations are the lenders, this method of proof predominates in 57% of all cities, only slightly over a majority. Below the 500,000 level local title insurance is predominant in a minority of reporting cities. It is, however, a matter of some surprise that the use of local title insurance is reported in a substantial number of cities of all sizes, even the smallest. The volume of real estate transactions, and accompanying title insurance premiums, must be large enough to justify the rather large capital requirements for an insurance company. In theory local title insurance should be confined to large cities. It is probable therefore that where reports of

local title insurance come from a city of less than 100,000, an agency or branch office arrangement has been established.⁴⁰

FORMAL PROTECTION

Up to this point, the cost of transferring land and the allocation of that cost to the parties have been under study. But the amount paid can be viewed properly only in relation to the services received, so that in theory, the sum of the costs and the extent of the services should be in exact proportion to each other.

In the conventional transfer three major parties are involved: the seller, the buyer/mortgagor, and the mortgagee. Information sufficient to permit an entirely satisfactory analysis of the protection received by each of these parties could not be obtained in this limited survey, and it is somewhat doubtful if the labor involved in gathering truly adequate data would be justified. The seller requires only minimal protection, at least after the contract of sale has been executed. In England, he may be universally represented by his solicitor. But in most parts of this country it is assumed that he does not need the services of a lawyer and he employs one only in exceptional cases. The institutional mortgagee, on the other hand, is conventionally required by law to obtain either an attorney's certificate or a policy of title insurance attesting to the first-lien status of the mortgages in its portfolio. It is further in a position to demand whatever additional services it may feel it requires (although it does not pay for such services) and is highly sophisticated about its own needs. The buyer/mortgagor most often pays all or a major part of the costs of the costs of the transaction. He is also the party in most need of protection, for he is involved in a highly complex arrangement about which he has little or no technical knowledge. In view of these facts, it is safe to assume that the interests of the mortgagee will be adequately guarded. Whether the mortgagor will be similarly protected is a different matter. Because a common complaint against the present system of conveyancing is an assumed lack of protection for the mortgagor one of the purposes of the survey was to determine in some rough fashion whether this complaint is justified.

The buyer/mortgagor needs two principal forms of protection: (1) formal, in the guise of an attorney's certificate of title or an owner's title insurance policy; and (2) informal, through advice from and representation by an attorney employed by himself and responsible for his interests. It is not sufficient that the attorney represent the mortgagee, or that his certificate or the title insurance policy name only the mortgagee as beneficiary. The interests of the mortgagor and the mortgagee are not identical.

40. The well informed, if somewhat biased, Baker treats local title insurance as almost exclusively a phenomenon of the large city. Elsewhere, when title insurance is used he assumes it is issued on the basis of an "approved attorney's" report. *Supra*, n. 30.

These two parties require different protection running to each individually.

On the questionnaire the informant was asked to specify for each of the three major types of mortgagee the percentage of transactions in his community in which the buyer receives either an attorney's certificate of title or an owner's title insurance policy. Nationally it was found that in the several communities buyers are afforded formal protection in virtually all cases, or they are not afforded it at all. The responses were coded on a 10% scale and it was found that 90% of all buyers are protected in 42%/46/41 of the communities and that less than 10% are so served in 32%/29/33. It will be noted that the type of mortgagee seems of little significance at this point. We can generalize that in between two-fifths to one-half of all communities the buyer nearly always receives a title certificate or title insurance policy and in about one-third he virtually never gets such protection.

This national picture shows great regional variation. The largest amount of formal protection is given on the Pacific coast, where it is general practice for the seller to proffer the buyer an owner's title insurance policy in lieu of other title proof. In these states, the buyer receives formal protection in 90% or more of all transactions in 91%/94/94 of all reporting communities and protection in 10% or less of all transactions in 3% of all reporting communities, no matter what the type of lender. The next highest degree of protection is furnished in the mountain states, where the maximums are 71%/68%/65% and the minimums 0%/0%/6%. The Pacific coast is a medium-to-high-cost area and the mountain states are medium-to-low. The south Atlantic and the south central states present a somewhat comparable cost pattern. In these areas maximum formal protection is reported as 15%/2/8 and 10%/19/12 and minimum protection as 65%/67/68 and 68%/53/62. Comparing two other areas, the northwest central states, where costs are the lowest in the country, report maximum formal protection offered in 57%/66/59 of the communities and minimum in 15%/9/12. In the middle Atlantic states, the highest-cost area, maximums are 51%/57/52 and minimums 14%/16/16. Other areas come within these extremes and approach the national averages. Although returns from the several states show some variations from these regional patterns, none are sufficient to disturb the patterns themselves.

These data would lead to the conclusion that cost to the parties and the amount of formal protection received by the buyer bear no relationship to each other. A possible hypothesis is that the extent of such protection, like the amount of costs, is the outgrowth of geography and custom. Another potential hypothesis is that it depends upon the size of the city in which the transaction takes place. Table X shows the percentages in which maximum and minimum formal protection are reported from cities of various sizes. Positive correlations are difficult to establish below the 500,000 population level. Above that point the formal protection afforded dramatically increases. We have already seen that large cities are characterized by high

costs and the almost universal use of local title insurance. We have also seen that local title insurance does not per se account for dramatically high costs. We are therefore fortified in the provisional hypothesis that the high-cost pattern found in large cities is not the result of the method of assuring title. Rather it is the consequence of a formal and institutionalized transaction which, if more costly to the parties, on the whole offers greater formal protection to the home buyer.

TABLE X
PERCENTAGE OF MINIMUM AND MAXIMUM FORMAL
PROTECTION OFFERED BY CITY SIZE

<i>City Size</i>	<i>Minimum Protection</i>	<i>Maximum Protection</i>
under 5,000	26%/23/24	49%/59/52
5,000-9,999	45%/36/47	39%/44/42
10,000-24,999	33%/37/38	43%/42/38
25,000-49,999	43%/36/39	34%/47/43
50,000-99,999	31%/26/27	37%/40/38
100,000-499,999	27%/22/29	40%/41/34
500,000-999,999	8%/14/14	69%/64/64
1,000,000 or more	11%/10/10	78%/70/70

The abbreviated questionnaire did not furnish sufficient information to establish satisfactory correlations between the type of title proof and the degree of formal protection afforded the buyer/mortgagor. However, a rough approximation was obtained in the following fashion: all reports in which a particular form of title proof was shown as predominant (i.e., as used in 60% or more of all transactions in a community), were segregated. These returns were then analyzed to determine the number in which formal protection is offered the buyer in 60% or more of all transactions in the community. The results are tabulated in Appendix C,⁴¹ which is, admittedly, difficult to evaluate because of the narrow statistical base upon which it rests. Nevertheless, certain tentative conclusions can be reached. On the national level, the greatest degree of formal protection can be expected where local title insurance is used, considerably less where abstracts are predominant, and least of all where personal search is employed. The same pattern appears in all cities of less than 100,000 population. In cities of 100,000 to 500,000 local title insurance continues to furnish the highest degree of formal protection, the protection offered in the case of other types of proof showing some variation, depending on the lender. Above the million mark title insurance is universal and there is no basis

41. The statistical method used here is subject to a theoretical objection: it permits cases in which formal protection is given to be credited to the predominant type even though a minority type of proof was employed. However, the extent of error is thought to be minimal because in most cases protection is reported at the extremes of 90% or above or 10% or less. If a particular form of proof is shown to predominate, the percentage of formal protection is likely to apply to that form of proof. If this methodology is crude it is the best available for our purposes here.

for comparison. No satisfactory regional comparisons can be made because the number of transactions reported is too small and because methods of establishing title differ too much in various parts of the country.

INFORMAL PROTECTION

If formal protection is, at best, limited, to what extent do home buyers receive informal protection? Informants were asked to estimate in percentages the frequency with which loan closings in their communities proceed under the following circumstances: (1) with only a layman present; (2) with an attorney who represents only the lender; (3) with an attorney who represents the buyer; and (4) in some other manner. The answers to these questions show a good deal of confusion and are useful only as to (1) and (3). Since the series of tables analyzing the responses is too extensive to be included here, only their substance is given. According to the replies, the buyer is represented by his own attorney in 90% or more of all transactions in a given community in 15%/16/12 of all communities in the country. By contrast, representation in 10% or less of all transactions was reported in 47%/43/50 of all communities. In other words, representation comes as a matter of course in only one-eighth to one-sixth of all communities and cannot be expected at all in almost half. The buyer can thus anticipate a very much higher degree of formal protection than of personal representation and the latter appears to be becoming exceptional.

A regional analysis shows the same extreme variations from this national pattern as those exhibited for formal protection.⁴² Personal representation of the buyer in 90% or more of transactions is reported for no class of lenders in no city in the mountain states and representation of less than 10% in 70%/55/60 of the cities. Similar figures for the Pacific states are 3%/3/3 and 74%/72/74. In the southwest the percentages are 4/4/3 and 61/57/59. Other areas of low personal representation are the northwest central states (maximum 11%/10/9; minimum 39%/40/48) and the northeast central states (maximum 6%/16/8; minimum 33/31/38). Areas of highest personal representation are the northeastern states (maximum 82%/15/20; minimum 35%/38/43); middle Atlantic states (maximum 22%/24/21; minimum 15%/18/18); south Atlantic (maximum 22%/27/21; minimum 53%/46/59) and south central states (maximum 21%/19/9; minimum 57%/53/70). Note that the Pacific and mountain states, where a high degree of formal protection is offered, are also areas where informal protection is very low. Elsewhere, correlations between formal and informal protection are not clear. What is apparent is that areas where personal

42. Reports on formal protection showed a strong tendency, already noted, to indicate that it was always offered or never offered. Those on personal representation tended to show intermediate ranges to a greater degree (for example, 40%, 50% or 60%). This was not taken into account in the analysis which follows because clear-cut comparisons between the extent of the two types of protection were desired.

representation is prevalent are generally those where personal search is most common and that lowest representation is found in areas where local title insurance is predominant.

No clear correlation between cost and the degree of representation exists in any area except the middle Atlantic states, where both the highest costs and the highest degree of representation are found. A state-by-state analysis has been made on a somewhat different basis. All states have been classified as high- and low-cost states, according to whether median costs are above or below the national median. They have then been classified as high-and low-representation states, also in relation to the national median. Using this method, it is found that a positive correlation exists between high cost and high attorney representation in mortgage and insurance company transactions in thirty-three states, in bank transactions in thirty states, and in savings and loan association transactions in twenty-eight states. Taking the ten highest-cost states, seven have above average attorney representation in mortgage and insurance company transactions, five in bank transactions and six in savings and loan association transactions. In the ten lowest-cost states, eight show less than average attorney representation in all types of transactions. Table XI indicates the highest percentage of personal representation in the smallest (less than 5,000 population) and largest (more than 1,000,000) cities. Between these extremes no fixed patterns appear, although it is a matter of curiosity that the lowest percentages of representation are found in the cities having next to the highest population classification.

TABLE XI
EXTENT OF MAXIMUM AND MINIMUM REPRESENTATION
OF BUYER BY HIS OWN ATTORNEY—BY CITY SIZE

<i>City Size</i>	<i>Less than 10%</i>	<i>90% or more</i>
less than 5,000	38%/33/34	29%/30/27
5,000-9,999	55%/49/49	10%/ 6/ 9
10,000-24,999	57%/56/63	13%/14/ 9
25,000-49,999	50%/44/50	13%/15/13
50,000-99,999	47%/37/48	12%/15/ 9
100,000-499,999	36%/35/48	16%/17/13
500,000-999,999	57%/50/64	7%/ 7/ 7
1,000,000 or more	22%/20/20	33%/30/33

Correlations between types of title proof and personal representation of the buyer are shown in Appendix D. These tables can be criticized because as soon as we get away from the national level, the statistical base is too narrow to permit more than the most tenuous conclusions. Nevertheless, on the national level the data supports the hypothesis already suggested: that the buyer of a house is most likely to have his own attorney when personal search is employed and least likely when local title insurance is used.

A common complaint by informed observers is that title closings are carried out exclusively by laymen. Even where attorneys continue to examine titles they may not carry transactions to their conclusion, and vital

elements of the work may be done by non-professionals.⁴³ In an effort to determine whether these complaints are grounded on fact or fancy, informants were asked to estimate the extent to which lay closers are used in their communities. The replies show that exclusively lay supervision of closings is employed in 90% or more of all transactions in 24%/35/36 of all cities, and in 60% or more of transactions in 34%/47/48 of all cities. In other words, such a practice is exclusive in about one-fourth to one-third of our cities and predominant in one-third to one-half. This finding is possibly the most important made in the course of the survey because it indicates the extent to which conveyancing, in the full sense of the word, is becoming a lay activity.⁴⁴

MAXIMUM AND MINIMUM PROTECTION SITUATIONS

We have seen that the buyer may receive either formal protection, by way of a title certificate or insurance policy, or informal protection by way of personal representation of his own attorney. In practice he receives *either* in only a minority of cases. In a much smaller minority he receives *both*. The number of returns showing both formal and informal protection to the buyer in 90% or more of all transactions in the community is only 7%/9/6 of the total. In the relatively few cases where this maximum protection is reported costs are generally higher than the average for the country as a whole. Minimums are \$105/\$105/\$105, medians \$326/\$272/\$295 and means \$336/\$305/\$324. The maximum costs, however, are lower than

43. If lawyers view with alarm, they may have only themselves to blame. One informant, from Providence, Rhode Island, candidly states, "I find our services requested less and less in any capacity since the banks' employees in this particular area are most competent and, frankly, understand the nuances of closing better than the majority of lawyers in my opinion. Many lawyers who have attended the closings have found themselves superfluous."

44. A detailed analysis of the use of lay closers has not been reproduced here, for the tables are either too complex or add too little to what has already been said. Regionally, the incidence of lay closings is generally in reverse ratio to that of an attorney's representation of the buyer. The lowest percentage appears in the middle Atlantic states and the highest in the Pacific coast, the non-contiguous, the southwest and mountain states. In only fifteen states was there a positive correlation between high cost and above average lay representation when a mortgage and insurance company handled the transaction; in eighteen states when a bank controlled the transaction; and in sixteen for savings and loan association transactions. Among the ten highest-cost states three reported a high degree of lay representation for mortgage and loan company and bank transactions, and two for savings and loan association transactions. In the ten lowest-cost states the number of correlations with a high degree of lay representation were nine, eight and nine (of eleven responses).

An analysis by area and city size of the use of lay closers in connection with types of title proof was attempted, but the results add little or nothing to what has already been said.

The manner in which the original questionnaire was structured prevented developing formal correlations between the extent of lay closing and the degree of personal representation in individual cities. The same was true of lay closing and the degree of formal protection. Nor could correlations be computed between the amount of personal representation and the degree of formal protection.

those for the nation, being \$645/\$675/\$635. In other words, maximum protection would appear to be expensive, but a high price does not necessarily insure such services. Table XII shows the area distribution, by percentages, of cities from which maximum protection is reported. Some low cost areas, like the northwest and northeast central states, show a somewhat higher than average of maximum protection communities, whereas in the south Atlantic and south central states (medium-to-high-cost areas), the average is below that for the nation. The northeastern and middle Atlantic states together form the section where ideal protection is most widely extended. The former contains states in both the high- and low-cost brackets and the latter is the highest-cost area in the country. Little statistical comfort is obtained from examining the returns on a state-by-state basis. From thirty-one⁴⁵ states and the District of Columbia, approximately two-thirds of the total reports indicate no evidence of maximum protection. Only in Connecticut are such services shown in 50% or more of the returns, the percentages there, by lenders, being 56/50/50. The percentages for the two highest-cost states, New York and New Jersey are 24/19/19 and 11/17/11, respectively, above the national averages but hardly to the same extent as their costs. By contrast, in South Dakota and Iowa, two notoriously low-cost states, the percentages for maximum protection are 14/14/14 and 36/23/23.

Reference to Table XIII indicates that the size of the city seems to have limited influence upon maximum protection obtained by the buyer, except in metropolises of more than a million population, where a very considerable increase in services is noted.⁴⁶

TABLE XII
PERCENTAGES OF RETURNS SHOWING
MAXIMUM PROTECTION AND
REPRESENTATION—BY AREAS

N. E.	23%/12/14
Mid. Atl.	15%/18/13
So. Atl.	3%/ 6/ 4
So. Cent.	3%/ 5/ 0
S. W.	0%/ 0/ 0
Pac.	3%/ 3/ 3
Non-Cont.	0%/ 0/ 0
Mount.	0%/ 0/ 0
N. W. Cent.	11%/10/ 9
N. E. Cent.	7%/17/ 9

TABLE XIII
PERCENTAGE OF RETURNS SHOWING
MAXIMUM PROTECTION AND
REPRESENTATION—BY CITY SIZE

Less than 5,000	9%/14/10
5,000-9,999	3%/ 4/ 5
10,000-24,999	5%/ 9/ 3
25,000-49,999	7%/10/ 8
50,000-99,999	5%/ 8/ 6
100,000-499,999	9%/ 9/ 6
500,000-999,999	8%/ 7/ 7
million +	22%/20/20

The number of cases in which the buyer receives minimal protection, i.e., *neither* formal proof of title *nor* representation by his own attorney, is markedly higher than that in which he receives maximum protection. For

45. Alas., Ariz., Ark., Cal., Colo., Fla., Ga., Haw., Ida., Kan., La., Me., Md., Mass., Mich., Miss., Mo., Mont., Neb., Nev., N.H., N.M., N.D., Ohio, Okla., R.I., S.C., Tex., Utah, Wash., Wyo.

46. Efforts to correlate total service received and the type of title examination failed for lack of an adequate statistical base.

the country as a whole the percentage of returns showing such minimum protection is 19/16/21. This limited protection is accompanied by lower costs, the minimums running \$65/50/18, the maximums \$545/500/500, the medians \$255/175/156 and the means \$250/177/174. Just as maximum protection is generally, but not necessarily, associated with high cost, minimum protection is generally, but not necessarily, associated with low cost.

TABLE XIV
PERCENTAGE OF RETURNS SHOWING
MINIMUM PROTECTION AND
REPRESENTATION—BY AREAS

N. E.	16%/19/28
Mid. Atl.	2%/ 3/ 3
So. Atl.	41%/39/43
So. Cent.	45%/30/45
S. W.	21%/ 7/10
Pac.	3%/ 3/ 3
Non. Cont.	0%/ 0/25
Mount.	0%/ 0/ 3
N. W. Cent.	9%/ 7/10
N. E. Cent.	13%/15/24

TABLE XV
PERCENTAGE OF RETURNS SHOWING
MINIMUM PROTECTION AND MINIMUM
REPRESENTATION—BY CITY SIZE

Less than 5,000	9%/ 7/10
5,000-9,999	32%/28/33
10,000-24,999	24%/23/26
25,000-49,999	26%/19/22
50,000-99,999	19%/14/23
100,000-499,999	15%/ 9/18
500,000-999,999	0%/ 0/14
1,000,000 or more	0%/ 0/ 0

Like the incidence of maximum protection, that of minimum protection varies greatly by area and seems to have little relation to area cost patterns. (See Table XIV.) Minimum protection is found most in the south central states, where title costs range from low to high. The south Atlantic states, where costs range from medium to high, can boast of only a slightly higher protection rate. New England, which shows a high rate of maximum protection, also shows a high rate of minimum protection. Costs there range from high to low. On the other hand, the western states by-and-large show low rates of both maximum and minimum protection and low to high costs. The great heartland areas, where intermediate ranges of both maximum and minimum protection are reported, are low-cost areas.

As was true in the case of maximum protection, a state-by-state analysis of minimum protection shows no consistency. Seventeen states (Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Illinois, Maryland, Montana, Nebraska, Nevada, New Mexico, Oregon, Rhode Island, South Dakota, Washington, and Wyoming) have no city reporting minimum protection, but they have little else in common. Of the ten states where minimum protection was reported in 50% or more of the returns, six (Tennessee, North Carolina, Mississippi, Louisiana, Georgia, and Florida) are located in the southeast, but the other four (Oklahoma, North Dakota, New Hampshire, and Indiana) are widely scattered.

Variations in the extent of minimum protection in cities of various sizes show a reasonably consistent pattern. In the quite small communities the rate is low. It is highest in the next population range, that from 5,000 to 9,999, but thereafter steadily declines. Above the half million level no community shows minimum protection and representation, except in

building and loan association transactions in the half million to million level. (See Table XV.)⁴⁷

COMPULSION

A factor closely related to the degree of representation for buyer/mortgagors is the compulsion exercised by lenders as to who shall furnish formal proof of title. It can be argued that if the lender insists that examination be carried out by its own attorney or a title insurance company, borrowers will tend to depend on the lender's attorney. If the lender, on the other hand, will accept a certificate from the borrower's attorney, borrowers may increasingly employ attorneys of their own choice to represent them. Such an hypothesis would be extremely difficult to substantiate. Even if a lender does not insist on its attorney or local title insurance company it may suggest such a procedure or offer it at the request of the borrower. In other words, the lender may exercise a great deal of influence without actual compulsion. Within the limits of the present survey, the extent of such influence could not be proved.⁴⁸

In the questionnaire, informants are asked to estimate the percentage of transactions in their communities in which lending institutions insist that: (1) their own attorney make the title examination; and (2) the examination be made by a title insurance company maintaining its own plant. When the answers to the first part of the question are reduced to percentiles, it is found that in the overwhelming number of communities one of two practices is followed: the lender insists that its own attorney make the examination in virtually all cases or in virtually none. For this reason it is necessary to reproduce the findings only at the maximum and minimum levels, findings which have been summarized in Table XVI. At the national level a maximum demand for such an examination is reported in almost half of the savings and loan association transactions, and in about one-third of those carried out by banks and savings and loan associations.

At the regional level lending institutions demand examination by their own attorneys to the greatest extent in the northeastern and northwest central sections of the country. The apparent low level of such demand in the southwestern, Pacific, noncontiguous and mountain states is probably deceptive. In these areas title insurance is widely used and it makes little difference to the buyer whether the title examination is made by the mortgagee's attorney or by a representative of the title company. It would appear

47. An analysis of returns concerning minimum protection afforded where different types of title proof are employed proved unrewarding, either because it merely confirmed previous findings or because it had too narrow a statistical base to yield meaningful results.

48. I have suggested elsewhere that when the lender has its own attorney make the examination it may be illegally practicing law. See Payne, *Title Insurance and the Unauthorized Practice of Law Controversy*, *supra*, 53 MINN. L. REV. 423 (1969).

probable that the least coercion, along with the greatest personal representation and highest cost, is found in the middle Atlantic states.

TABLE XVI
PERCENTAGE OF RETURNS IN WHICH MINIMUM AND MAXIMUM DEMANDS
FOR TITLE EXAMINATION BY THE LENDER'S OWN ATTORNEY WERE INDICATED

<i>Area</i>	<i>Minimum (9% or less)</i>	<i>Maximum (90% or more)</i>
U. S.	43%/ 41/ 31	34%/31/45
N. E.	28%/ 28/ 29	47%/49/51
Mid. Atl.	47%/ 43/ 31	25%/34/38
So. Atl.	26%/ 34/ 20	33%/23/47
So. Cent.	38%/ 37/ 22	43%/34/64
S. W.	67%/ 57/ 48	7%/11/34
Pac.	100%/100/100	0%/ 0/ 0
Non-Cont.	100%/100/100	0%/ 0/ 0
Mount.	56%/ 50/ 37	11%/13/20
N. W. Cent.	12%/ 20/ 9	73%/52/64
N. E. Cent.	44%/ 30/ 22	40%/37/53
<i>Cities</i>		
Less than 5,000	29%/ 30/ 36	51%/45/56
5,000-9,999	33%/ 36/ 30	47%/38/53
10,000-24,999	45%/ 50/29	36%/33/50
25,000-49,999	41%/ 38/ 30	39%/29/40
50,000-99,999	39%/ 38/ 28	34%/27/38
100,000-499,999	33%/ 41/ 28	22%/23/45
500,000-999,999	64%/ 50/ 50	21%/21/43
1,000,000 or more	100%/100/100	0%/ 0/ 0

Is there any correlation between the amount of formal protection received by home buyers and the degree of insistence by mortgage lenders that their own attorneys examine title? In theory the amount of formal protection should vary inversely with the degree of compulsion. If the mortgagee's attorney makes the examination, he will feel relatively little obligation to the mortgagor. If, on the other hand, the mortgagor is permitted to employ his own attorney to make the examination, he will receive some sort of formal proof. This hypothesis was tested extensively, but the elaborate tables which resulted will not be reproduced. In general it can be said that they do not show any positive correlations sufficient to sustain the initial hypothesis. The amount of coercion seems generally to decrease as cities increase in size, and it disappears at the million population level. Undoubtedly the almost exclusive use of local title insurance in large cities accounts for this phenomenon.⁴⁹

49. An effort to determine the extent to which local title insurance, where available, is demanded by various types of lenders was unsuccessful. The returns show inconsistencies which can not be rationalized. The fault apparently lies in the inability of many informants to distinguish between national and local insurance. For example, it was not uncommon for a return to show only personal search or abstract examination, in either case coupled with national title insurance, as a source of title proof, but at the same time to record a high instance of insistence that local title insurance be employed.

CONCLUSIONS

Despite the small scale of the study and the defects in the methodology employed, some tentative, working conclusions have been reached. For conclusions as to methodology see Appendix A. Of the substantive findings, it can be said that they are of a highly tentative nature, although some of them, at least, show patterns sufficiently uniform to be relied upon until something better is available. If many of them merely reinforce hunches already indulged in, they give us a sounder basis for our assumptions and lay a foundation for more elaborate studies in the future. Possibly the greatest contributions made by the study is a more nationally oriented picture than has previously been available. In the past commentators have had a tendency to generalize on the obvious and the available, that is, impressions gained from investigations in a few large cities. This practice, which undoubtedly has distorted our understanding, should no longer be necessary.

In spite of the fact that the survey was carried out at a time when peculiar conditions in the money market made it impossible to measure the total ancillary costs entailed in buying a house, some conclusions as to cost are permissible. In normal times the largest single expense incurred is the broker's commission, at either the 5% or 6% level, but in the current market, financing charges are usually in excess of selling costs. At an informed guess they probably range from nothing to as high as 10% at the time of the closing, in addition to interest *sub suo nomine*. However, a more typical figure in normal times would probably be in the 1% to 2% range.

The cost of establishing title varies erratically from a nominal sum to something over 4%, with a national average of slightly over 1%.⁵⁰ Statutory fees are generally small but may be as high as 2%. On the basis of this information it is possible to anticipate ancillary costs of a particular transaction in a particular locality at as high as 20% or better. At the other extreme, they may be inconsequential except for the real estate broker's commission. In virtually no event will establishing title be the major element of cost. This last statement should be stressed because of the considerable public discontent over the amount of closing costs and the general assumption that the bar is responsible.

In some areas the cost of establishing title is undoubtedly too high. In others it is so unrealistically low as to encourage lawyers either to abandon title practice altogether or to offer deficient protection. In large cities, title practice is already disappearing, but probably for different reasons. Here, the volume of records has become so large that they cannot be examined economically without benefit of a title plant. As a consequence local title insurance companies have largely displaced the traditional conveyancer.

Disparities in the cost of establishing title, at both the state and na-

50. It has been pointed out that this figure may be something of an underestimate. Even if it is doubled, legal costs still remain well under those for selling and approximate those for financing in a normal money market.

tional level, present a serious question which the bar cannot in good conscience ignore. Can the legal profession defend pricing the same work and the same benefits at grossly disproportionate cost, depending upon the individual lawyer, the locality, or the lending institution involved? It is true that this question is one that cannot be asked about conveyancing alone. The legal profession has long resisted any realistic analysis of its economy, a fact upon which the public has grounds for legitimate complaint. This complaint will increase as our society becomes more mobile and has greater experience with legal fees in different communities.

High costs for establishing title in large cities are particularly important because they affect so large a sector of the population. If further cost studies are initiated they should probably begin in the cities with more than half a million inhabitants, but in order to be effective must include "controls" in smaller communities where costs are substantially less.

Geography and custom seem to play a larger part in determining the cost of establishing title than the means employed in the work. On an average, however, it appears that abstract practice results in the lowest cost. Title proof by direct search of the records is cheaper than local title insurance, but its cost rises above that of the latter if national title insurance is demanded by the buyer or mortgage lender. Such demands are widely made, and in view of the vigorous solicitation carried out by the insurers, can be expected to increase. If it is correct to assume that the independent abstracter is on the wane and is being replaced by agents for title insurers, the future of private title practice does not appear bright. As a matter of fact, perhaps the most important finding made in the course of the survey is the extent to which the lawyer is being displaced by laymen in land transactions. Members of the bar can retain their place as conveyancers by persuading the courts to invoke unauthorized practices doctrines against insurers and corporate lenders or by instigating wholesale reform of the conveyancing process. Up to now they have shown little desire to do either.

The position of the bar is weakened by the fact that it has permitted a system giving house buyers only limited formal protection and minimal representation. The lack of formal protection may be the more serious of the two deprivations insofar as immediate interest is concerned, but the failure of the buyer to have his "own" lawyer may, in the long run, create emotional reactions even more hurtful to the position of the bar. If he has been taught to insist on representation by his own lawyer, the buyer has a sense of rapport with the profession. If, however, the transaction is carried out by someone else, the buyer cares little whether the examiner and closer is lawyer or layman. It is easy for him to conclude that conveyancing is not "lawyer's work." When the bar demands a restoration of its traditional prerogatives, homebuyers will be so indifferent as to refuse needed political support.

If what has just been said is true, it is advantageous to the bar to convince the layman that personal representation and formal protection are

desirable and worth paying for. No effort to obtain such results has been made, and any attempted effort would be weakened by the showing that currently such services are generally a matter of chance, have no relation to cost, and are not looked upon by the bar itself as a part of its ordinary responsibility. Significantly the pattern of formal protection and personal representation follows no rational lines. What the home buyer gets depends upon local custom and bears little relationship to the price he pays.

The survey revealed fewer disparities between practices of different types of lenders than had been assumed at the outset. Geographical location appears to be much more determinative of practice than the kind of lender. However, limited generalizations seem justified. When mortgage and insurance companies are the lenders, costs are relatively high but relatively uniform, and title insurance, either local or national, is generally employed. Bank procedures are comparatively informal and inexpensive and title insurance is not customarily demanded. Savings and loan associations have a greater tendency to insist that their own attorneys make the examination of title and use little title insurance.

APPENDIX A

I. THE METHODOLOGY EMPLOYED

Because the expense of employing trained interviewers on a national scale was prohibitive and reliable printed sources were totally lacking a mailed questionnaire proved to be the only practical means of obtaining information. Using this basic methodology raised a number of problems, some of which were never solved to the complete satisfaction of those engaged in the survey.

The standard transaction assumed: One weakness of earlier studies was that they compared unlike things. In real estate transactions costs are most often geared to the price of the house or to the amount of the mortgage used in financing. Analysing costs of transactions in which the price of the house varies from \$10,000 to \$20,000 is therefore completely misleading. Nevertheless, in practice relatively few identical transactions take place. Since we are left with an insufficient statistical base to compare identical transactions which have actually occurred, we are forced to hypothesize a sale having uniform characteristics and then to ask informants what would be the normal charges for such a sale in their communities. To do this assumes that there is a normal set of charges in the particular city, a somewhat shaky hypothesis, but one which cannot be avoided.

The \$20,000 selected for the cost of the house was the round figure nearest the average cost of homes at the time of the inception of the study. Since then, inflation has increased the average to a substantial degree,¹ but not enough to affect the findings.² The \$16,000 proposed for the amount of the mortgage was the result of a compromise. One of the hypotheses the survey sought to test is that the amount of costs varies with the kind of lender who finances the transaction. Insurance and mortgage companies (the latter representing primarily a conduit through which funds of the former and mutual savings banks flow into areas deficient in capital) are generally interested only in mortgages that qualify for the national market. For these institutions which demand maximum formal assurance, it was assumed for testing that where they finance a sale relatively high cost will characterize the transaction. By contrast, commercial banks accept mortgages as a sideline, expecting to keep them in their own portfolios. They are familiar with the local bar, so it can be assumed that their formal demands are nominal and costs are small. Finally, savings and loan associations occupy a peculiar and special position. They are the largest single source of home mortgage financing.³ They generally operate on an exclusively local basis.⁴ Since the larger

1. *Real Estate Market in 1969*, Lawyers Title News 10 (Feb., 1969); *Why Housing Costs are Going Through the Roof*, TIME, Oct. 31, 1969 at 82. By 1970 in some large metropolitan areas housing units costing less than \$25,000 had become rare. SECONDARY MORTGAGE MARKET 15, 59, 100. The median price of conventionally built new houses offered for sale had risen to \$27,000. Practically no conventionally built new houses were available for less than \$15,000. Mobile homes have now largely preempted the low cost field. *Id.* at 100, 178, 264.

2. The expression "average cost of a house" in itself involves some ambiguity because the cost of erecting the same house varies radically depending upon location. *Why Housing Costs Are Going Through the Roof*, *supra* note 1.

3. On the national level in 1968, 40.4% of all residential mortgages outstanding were held by savings and loan associations, 29.9% by mutual banks and life insurance companies (from which most of the funds of mortgage companies originate), 13.9% by commercial banks, and 15.9% by other private lenders and the federal government. REPORT OF THE COMMISSION ON MORTGAGE INTEREST RATES 18 (1969). Compare STATISTICAL ABSTRACTS OF THE UNITED STATES 451 (1969); U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, MORTGAGE LOAN GROSS FLOWS (1969); THE EMERGENCY HOME FINANCING ACT, OF 1970: REPORT OF THE SENATE COMMITTEE ON BANKING AND CURRENCY 4 (1970). This mix may change radically from one city to another. For the temporary distortions caused by the 1970 crisis in credit, see note 35 of principal text.

4. I have been informed by a savings and loan association executive that, although this statement would have been true until quite recently, there is currently

institutions have a sufficient volume of business to justify employing house counsel, their practices and scales of costs may be significantly different from those of commercial banks, on the one hand, and insurance or mortgage companies on the other.

Informants were asked to report costs in a transaction involving each of these lenders. But where a mortgage was given to a mortgage or insurance company, it was assumed to be FHA insured, while a mortgage given to a bank or savings and loan associations was assumed to be conventional. This variation from the standard transaction was posited to determine the extremes in costs between the most formal and least formal transfers. To accomplish this end a mortgage amount was required that would be realistic for both FHA and conventional transactions. A 20% equity is historically somewhat high for FHA insured loans and somewhat low for conventional loans,⁵ but it is not entirely unrealistic in either case and the \$16,000 figure seemed a reasonable compromise. Unfortunately, the survey was carried out at a time when FHA had become generally unacceptable to lenders because of their low rate of return. An examination of the completed questionnaires led to the conclusion that, despite contrary instructions, a large number of informants were ignoring the FHA feature of the loan and were reporting simply the costs of a conventional mortgage or insurance company loan. This conclusion necessitated a good deal of editing and possibly some distortion of results. The principal items affected was the premium for title insurance. Initially it had been assumed that all FHA mortgages would be supported by either local or national insurance. A large number of informants, however, did not report an insurance premium in support of mortgage and insurance company mortgages. In order to equalize the information received, each return was checked to determine whether Part II reported that title insurance was demanded in a majority of mortgage and insurance company loans. If it was, the premium for title insurance was left in as an element of cost; if it was not, the premium was eliminated. Assuming that this treatment leaves us with insufficient knowledge of costs in FHA transactions per se, it still gives a reasonably reliable picture of maximum costs conventionally charged in the informant's community.

The form of the questionnaire: Ideally, a great deal of extremely detailed information about complex and varied transactions is needed. Practically, it is axiomatic that the rate of return from a mailed questionnaire is in inverse ratio to the length and detail of the form used. If the survey was to be successful, the cooperation of strangers all over the country would have to be obtained. It could not be expected that they would respond readily to all the questions needing an answer. Faced with this dilemma, those conducting the survey deliberately decided to attempt to obtain a maximum number of returns, rather than maximum information in single returns. Since the survey was exploratory in nature, an over-all if slightly distorted view was preferable to something more technically accurate but less comprehensive. As a result of this decision, the questionnaire form was shortened to the minimum deemed compatible with the purpose of the survey, a minimum which embraced under each of four headings the various specific costs entailed in the standard transaction set out above. If there were differences in these costs in transactions in which the three principal kinds of mortgage lenders are involved, they were to be noted. Whether the buyer or the seller paid the costs was also to be shown. Some knowledge of prevailing title practices being necessary in order to evaluate costs, the form contained questions in Part II thought sufficient to permit a rough knowledge of how land transfers are carried out in the informant's community.

A preliminary form was developed along these lines for testing in four states thought to be reasonably representative: Alabama, California, Iowa, and Massachu-

a tendency on the part of some large associations to channel excess funds into capital deficient areas where the highest interest rates can be obtained. In these instances their operations are like those of insurance companies and they deal through the medium of mortgage companies.

5. In some states a larger equity is required by statute in all bank loans. In these states informants were asked to report on an "as if" basis.

setts. Response to the test indicated that the questionnaire was still too long and that some of the questions lacked clarity, so the form was revised and then sent to potential informants in the remaining 46 states and the District of Columbia. (A copy of the revised form will be found at the end of this Appendix.)

Selecting potential informants: Two primary sources of information about title costs are available: practicing lawyers, and institutions like corporate commercial mortgagees and title insurers. In this survey almost total reliance was placed on the bar. This selection was based upon seat-of-the-pants judgment as to potential cooperation, relative freedom from bias, and the very plausible conclusion that leading property lawyers represent lending and insuring institutions in any event. Exceptions to the use of lawyer-information were made in California and the District of Columbia, where the whole work of conveyancing is ordinarily carried out by title insurers. In California the Title Insurance and Trust Company and in the District of Columbia Real Estate Title Insurance Company supplied most of the needed information.

Lists of lawyers to be approached were assembled in three ways. In some cases the membership roll of the bar's local property committee was used; in others, suggestions were made by those personally known to the author and knowledgeable of the bar in their respective states; and in still others, Martindale-Hubbell's Directory was consulted. None of these methods proved entirely satisfactory, it being necessary in every case to supplement the first two with the last. In general, when the Directory was used an attempt was made to locate informants with high professional ratings and experience, indicated by either noted specialties or client lists including potential institutional mortgagees. If this method did not insure either interest or expertise and eliminated all those who do not use some sort of self-advertisement, it can be justified only on grounds of necessity.

The attempted geographical spread: A major purpose of the survey was to obtain information on a nationwide basis. In a limited survey such as this one, the number of cities in the United States is obviously too large to permit soliciting information from every one, even if qualified informants could be found and induced to cooperate. Some method of selection was therefore required. The method used was somewhat arbitrary and pragmatic. In each state the cities with the greatest population were first chosen. Thereafter, a sampling of other cities was taken, in such a way as to give what appeared to be representation to all geographical areas and population size categories. The great diversity in title practice within a state and the total absence of any preliminary information on where lines of diversity run introduced a strong element of guesswork into the selection process—guesswork which was unavoidable. It is entirely possible that the actual selections are unrepresentative. However, the patterns produced by the survey returns are sufficiently consistent to indicate that the method used was about as good as possible until a great deal more is known about the title practices throughout the country.

Mailings and returns: Initial mailings were quite small. In some respects it might have been easier to spread the questionnaires broadside, but to do so would not have achieved the ends the survey was designed for. What was wanted was not a large but a representative return. For reasons indicated below, only one completed questionnaire from each community was desired (the New York City metropolitan area was made an exception to this general rule), but returns were wanted from enough different communities to be representative of an entire state. If large initial mailings were used, the return would necessarily be spotty and unrepresentative. To prevent such a result the small initial mailings were carefully followed up, first by a reminder after about 30 days, and then, after a decent interval, by a new mailing to other potential respondents in the cities from which no replies had been obtained. This process was repeated, sometimes over and over again, until the desired return was obtained or hope of achieving better results was exhausted. The procedure was troublesome and time-consuming but in the end proved highly effective. Information was secured from every state, the minimum being two returns from Hawaii and Alaska (one from the District of Columbia), and the maximum, twenty-eight from New York. Virtually all major cities were represented, although there were a few notable exceptions, including

Cleveland, Chattanooga, and Tucson. The spread by geography and city size was generally good. Some difficulty was encountered in states where the demographic pattern is such that the population is centered in one or two cities or, on the other hand, where there are no cities of considerable size. Representative of the first class are Hawaii, Delaware, Utah, and Nebraska, and of the second, New Hampshire and Vermont. In a few states, like Massachusetts, it was impossible to obtain optimum information even though the population is numerous and well distributed. As a consequence, the gross return from the entire survey would not meet exact mathematical criteria insofar as population distribution is concerned. However, it is thought to be sufficiently reliable to at least form a base for subsequent elaboration.

In all, 1,627 copies of the questionnaire were mailed, and 483 were returned in usable condition. This 30% return was lower than had been hoped for, but was higher than had been predicted by experienced survey experts. Both the sanguine expectations of those responsible for the survey and the relatively high rate of return in terms of ordinary experience can be attributed to three factors: (1) the professional competency and motivation of the attorneys asked for assistance; (2) the sponsorship of the prestigious American Bar Foundation; and (3) the vigorous follow-up methods already described.

Analysis of the data received: The bulk of the returns showed care in their completion, so that the information furnished is prima facie reliable. A limited number were obviously so carelessly filled in as to be unusable. A substantial intermediate group gave rise to troublesome questions when an attempt was made to process them. A few contained information that seemed questionable but not so outrageous as to warrant discarding them. More frequently, patent discrepancies between statements in different parts of the form occurred. In all such cases a letter should have been dispatched to the informant asking for clarification, a step that was sometimes, but not universally, taken. Failures to do so did not result from sloth but from the nature of the situation. The most common errors appear to have occurred because informants lacked knowledge of procedures alternate to those they employ in their own practice. Such respondents were unable to fill in the questionnaire exactly without benefit of a more extensive explanation than was practical. Furthermore, they generally refused to respond to requests for clarification, evidently upon the theory that they had a professional responsibility to answer once but not twice. In these cases, as well as in some others where patent ambiguities could easily be resolved by anyone familiar with title work, a good deal of editing of the returns was resorted to, but the resulting data is thought to be reasonably reliable. The important thing for the reader to remember is that, in case of doubt, costs were generally minimized. In actuality, costs may be somewhat higher than indicated by the summaries. Moreover this downward distortion has been increased by the method used in analyzing the data once it had been processed. I have already indicated that only one return was sought from a given city. The enormous range of city sizes makes such a procedure seem unrealistic. For example, the fourteen returns received from thirteen cities in Illinois show a low-cost area marked by great diversity of practice. But only one return came from Chicago, and it shows high costs and the almost universal use of local title insurance. A similar pattern is presumed to exist in the entire metropolitan littoral, which embraces a larger population than the other reporting cities combined. It is possible, therefore, to talk in terms of what is typical, using population as a base, and get quite different results from those obtained where area is the base. The former method makes better economic sense but had to be abandoned reluctantly. We have no data indicating the relative volume of land transfers in large and small communities. If we had, we have no satisfactory way of classifying cities for purposes of weighing land transfer practices. The modern large city is merely a center for a number of satellite communities, politically separate but economically and socially one. Title practice may or may not be influenced decisively by political boundaries. For example, Big City A may be large enough to support its own local title insurance company. The company is dependent upon its title plant which is based on a takeoff from the local county land records. This plant requires a minimum number of orders to justify its maintenance. If Satellite City

B is in the same county, the title plant can serve it too, even though the city itself generates relatively few transactions in addition to those taking place in City A. But if City B is located in another county no title plant may be available, and practice entirely different from that prevailing in City A may be found.⁶ These differences become exaggerated when we cross state lines within a single metropolitan area.⁷ Even without such divergences, however, each city must be carefully investigated to determine what distribution between various types of lenders is found in the mortgage market. Although the survey failed on an average to disclose as large a differentiation between the practices of different types of lenders as was anticipated, these differences do exist to a marked degree in certain communities and cannot be ignored if truly scientific work is attempted.

If it is impossible within the terms of existing knowledge and the terms of reference of this project to weigh properly the returns from different sizes of cities, all returns had of necessity to be treated equally and impressionistic information about styles and trends become the primary objective. Readers must keep this fact in mind when considering the findings. Here again, the methodology used undoubtedly reduced the average costs reported.⁸ When only the largest cities are considered, costs show a substantial but by no means uniform increase. Since these cities engender a disproportionate volume of real estate transfers, this increase in turn results in a larger gross economic burden than is revealed by over-all averages.

2. FUTURE METHODOLOGY

First, the survey has demonstrated that a questionnaire can be used to gather basic information about conveyancing practices. If the mailed questionnaire method is used again, however, a number of steps must be taken to increase its effectiveness. Most important, the system of selecting informants and of obtaining their cooperation must be improved, and the improvement must be both quantitative and qualitative. We are deeply indebted to those attorneys who donated their energies and expertise in making the survey a success. At the same time, it must be admitted that many more informants were needed, that it was frequently impossible to identify the best qualified persons in a community, and that many who seemed so qualified would not give assistance. Entirely reliable information can probably never be obtained until some joint endeavor is launched. The bar, financial and title insuring agencies, and federal government organizations such

6. Something of this sort has existed in Atlanta and Marietta, Georgia, at least until quite recently.

7. During the course of the survey Professor Dunham suggested the possibility that, since title practice is governed in part by the demands of mortgage lenders, uniformity of practice might be found in lending areas with little regard to political boundaries. This hypothesis was tested and abandoned fairly early. Stamford-New York City-Newark, Bethesda-Washington-Arlington, and Camden-Philadelphia-Wilmington regions, for example, illustrate strong lines of divergence in practice. Uniformity of practice may appear in a single megalopolis stretching across political lines but apparently it does not generally do so.

8. It was impossible to avoid receiving more than one return from one city. If duplicate returns had all been identical they would have presented no problem and all but one could have been discarded. However, in some cases the data they contained was at war. This was normally to be expected, as city practice is not homogeneous and different observers may reach varying conclusions. Ideally, when differing reports come in from the same city an exploration in depth to determine the true state of affairs should have been carried out. This was patently impossible. After some debate it was decided in such cases to combine these returns with the others as if they had come from separate cities. This procedure can be justified on two grounds. Impressionistic data, rather than firm statistics, were sought and each new point of view reflects value under those circumstances. The number of duplicate returns was also too small to seriously affect the conclusions reached, and in any event, since they generally originated in large cities, might do something to offset the small town bias which marked the survey.

as the Federal Reserve Board, the Federal Home Loan Bank Board and the Federal Housing Administration would all need to cooperate. Even then the effort will not be entirely successful unless those connected with the conveyancing process are made sufficiently aware of varying title practices to use discrimination in answering a questionnaire designed for national circulation.

Some agreement on how conveyancing costs and practices are to be classified must also be reached. Positing only a series of local studies, if each investigator used his own method, the data obtained from one community could not be compared adequately with that from other localities. In any national study, complete uniformity is imperative. Proper classification is a prime requirement if we are to identify the cause of what would appear to be excessive over-all costs in some areas. It is unfair to blame the legal system for what the financial institutions may be doing or the financial institutions for expenses the bar finds it necessary to exact. Likewise, the charges made by real estate brokers and public officials should be examined independently.

Second, whatever kind of investigation is attempted, every effort should be made to design a questionnaire which can be readily understood and will produce the maximum information. Since lawyers are not particularly adept at drafting questionnaires, the assistance of experienced polling experts should be enlisted.

For the moment, the findings contained herein will have to suffice, although the subject matter is of sufficient importance to warrant further study. Positing the cooperation of the proper agencies, a much more thorough study could be carried out at a direct expense which would not be prohibitive. I have suggested that the participants should be the bar, lending and title assuring companies, and agencies of the federal government. Whether such a team could be put into harness is not certain. An alternative to such a procedure would be the enactment of special Truth-in-Lending type of legislation, applicable to the mortgage financing industry, and providing for uniform categorization of title costs, with periodic reports to regulatory bodies. If such a system were employed and if lenders were required to report not only costs but other aspects of title practice, adequate data would soon become available.

3. THE QUESTIONNAIRE EMPLOYED

The following is a copy of the questionnaire employed in making the survey. This questionnaire was sent to potential informants with a covering letter explaining the purpose of the project and asking their cooperation.

THE TRANSACTION ASSUMED

IN ORDER TO MAKE MEANINGFUL COMPARISONS between costs in various parts of the country, it is necessary to assume one "standard" transaction, uniform in every community. The transaction assumed is one in which the buyer is purchasing a \$20,000 home and is simultaneously giving a \$16,000 mortgage. Three variations are provided for: (1) where the mortgage is given to an *insurance or mortgage company*; (2) where the mortgage is given to a *commercial or savings bank*; (3) where the mortgage is given to a *savings and loan association*. The financing in each case will be the same except that, in the case of the insurance or mortgage company, *F.H.A.* insurance will be required, whereas, in the other cases, a *conventional loan* will be assumed. (In some areas banks will not accept a 20% equity for a conventional loan, in certain states being forbidden to do so by law. In others an insurance company or savings and loan association might accept a conventional loan where a 20% equity was established. Since it is necessary to maintain uniformity of returns from all parts of the country, we ask you to assume that these impediments do not exist and that such loans could and would be made.)

In every case a "normal" situation is assumed, unaffected by the current fiscal stringency. No provision has been made in the form for "points" paid by the seller, since the number of points varies from day to day, depending upon the state of the money market.

In every case indicate what would be the ordinary costs in a *typical transaction in your own community*.

Assume that title insurance will be obtained only if conventionally required in the case of such loans in your community. Where used, show the full mortgagee rate (or combined rate, if an owner-mortgagee policy is issued). Title insurance premiums should be shown at the original, rather than the re-issuance rate. Do not show any charge for owner's coverage unless it is conventional for mortgagors to receive a policy in addition to the mortgagee's policy.

A mortgage includes a deed of trust or other similar security device.

Where an abstract is to be brought up-to-date, assume that the only new entries will be the next prior deed and mortgage, cancellation of the mortgage encumbering the property when it was purchased by the now seller, and the updating of tax liens.

Assume that the property is located in a subdivision which has already been surveyed but a special survey of the lot on which the house is located has not been previously made.

In Part II, you will be asked to give, in percentages, the likelihood of certain types of transactions occurring in your community. You will be expected to make only an informed estimate, but your considered opinion will be the best data we can obtain and will be highly useful.

A home buying transaction has been assumed in every case because it is the most common type of land transfer, involves the most standardized procedures, and raises the most problems as to costs, representation and protection of the parties.

NAME _____ CITY IN WHICH YOU PRACTICE _____

PART I. NORMAL COSTS IN TRANSACTION ASSUMED

(Please make all entries in Part I in terms of *dollars*, not in terms of percentages.)

	KIND OF MORTGAGEE					
	MGT./INS. Co.		BANK		S & L Assn.	
	Seller	Buyer	Seller	Buyer	Seller	Buyer
I. SELLING COSTS						
A. Real estate agent's commission	_____	_____	_____	_____	_____	_____
B. Other (specify) _____	_____	_____	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____	_____	_____
II. FINANCING COSTS						
A. Mortgage origination fee	_____	_____	_____	_____	_____	_____
B. Appraisal fee	_____	_____	_____	_____	_____	_____
C. Credit report	_____	_____	_____	_____	_____	_____
D. Initial F.H.A. insurance premium	_____	_____	_____	_____	_____	_____
E. Other (specify) _____	_____	_____	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____	_____	_____
III. COSTS OF ESTABLISHING TITLE AND SECURITY INTERESTS (NON-STATUTORY)						
A. Bringing abstract up to date	_____	_____	_____	_____	_____	_____
B. Examining abstract or original records and certifying or giving opinion of title	_____	_____	_____	_____	_____	_____
C. Title insurance (mortgagee only)	_____	_____	_____	_____	_____	_____
E. Survey	_____	_____	_____	_____	_____	_____

F. Attorney's fee for drafting deed	_____	_____	_____	_____	_____	_____
G. Attorney's fee for drafting mortgage and note or bond	_____	_____	_____	_____	_____	_____
H. Escrow fee	_____	_____	_____	_____	_____	_____
I. Attorney's fee for supervising closing	_____	_____	_____	_____	_____	_____
J. Other (specify) _____	_____	_____	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____	_____	_____

IV. STATUTORY FEES

A. Revenue stamps on deed	_____	_____	_____	_____	_____	_____
B. Transfer tax—deed	_____	_____	_____	_____	_____	_____
C. Transfer tax—mortgage	_____	_____	_____	_____	_____	_____
D. Recording fee—deed	_____	_____	_____	_____	_____	_____
E. Recording fee—mortgage	_____	_____	_____	_____	_____	_____
F. Other (specify) _____	_____	_____	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____	_____

PART II. ADDITIONAL INFORMATION REQUESTED

(Please make all entries in terms of percentages)

Where houses are sold for residential use in your community and a mortgage is given to an institutional lender, estimate to the best of your ability:

KIND OF MORTGAGEE
Mgt./Ins. Co. BANK S & L Assn.

I. The percentage of cases in which the transactions are carried out on the basis of the following types of title proof:			
A. Lawyer's opinion or certificate based on personal search of the records by the lawyer or one employed directly by him			
1. Opinion or certificate alone	_____%	_____%	_____%
2. Opinion or certificate plus title insurance policy	_____%	_____%	_____%
B. Lawyer's opinion or certificate based on commercial abstract			
1. Opinion or certificate alone	_____%	_____%	_____%
2. Opinion or certificate plus title insurance policy	_____%	_____%	_____%
C. Title insurance policy issued by a company which examines the record through its own salaried employees or relies on an opinion furnished by a commercial abstracter	_____%	_____%	_____%
II. The percentage of cases in which the following situation as to representation of the parties at the closing occurs:			
A. No attorney is present and the entire transaction is carried out by lay representatives of the lender, a title insurance company, or an escrow company	_____%	_____%	_____%

- B. An attorney is present who is either a salaried employee of or is retained by the lender, a title insurance company or an escrow company _____% _____% _____%
 - C. The buyer/mortgagor is represented by his own attorney _____% _____% _____%
 - D. Other (specify) _____ _____% _____% _____%
- III. The percentage of cases in which the buyer/mortgagor is furnished either an attorney's opinion of title, or an *owner's* title insurance policy, or both _____% _____% _____%
- IV. The percentage of cases in which the lender insists that title examination be carried out by:
- A. Its own attorney _____% _____% _____%
 - B. A title insurance company _____% _____% _____%

APPENDIX B

PERCENTAGE OF RETURNS IN WHICH PREDOMINANT FORMS OF TITLE PROOF ARE REVEALED BY THE SURVEY

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
Alabama	0%/ 50/ 32	50%/ 0/15	0%/ 21/ 23	36%/ 7/15	14%/ 14/ 15
	Personal search: Used both with and without supporting national title insurance. The most widely used form of title proof in the state. Commercial abstracts: Used both with and without supporting national title insurance. Local title insurance: Confined to Birmingham and Mobile, where all types of lenders demand it predominantly.				
Alaska	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Local title insurance: The only kind of title proof reported.				
Arizona	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Personal search: A trace reported in the case of bank and savings and loan association mortgages in Phoenix. National title insurance used in these cases. Commercial abstracts: A trace reported in the case of bank and savings and loan association mortgages in Phoenix. National title insurance used in these cases. Local title insurance: The predominant form of title proof reported in the case of all cities and all types of lenders. (Note: The American Land Title Association (ALTA) Directory reports numerous agents throughout the state. Only four returns were obtained from the state and whether personal search or abstracts are relied upon in unreported areas is unknown. The ALTA Directory is extremely difficult to interpret. Two types of symbols identify member companies. The first identifies what the company does, i.e. A equals abstracts, TI equals title insurance, G equals guarantees. The second gives information as to insurers represented. Where the symbol TI is used alone, it should indicate that the company issues its own policies. Where the symbol for the company appears alone, it would seem that a mere agency exists. An examination of the listings by anyone familiar with local practice leads to doubt as to their consistency and accuracy.)				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
Arkansas	0%/ 0/ 0	11%/ 0/ 0	11%/100/ 78	78%/ 0/ 0	0%/ 0/ 0
	Personal search: Used infrequently, and then supported by national title insurance				
	Commercial abstracts: Used predominantly. Mortgage and insurance companies most often ask for supporting national title insurance. Banks and savings and loan associations do not.				
	Local title insurance: None reported in Arkansas. (ALTA Directory reports one company in Little Rock issuing local title insurance.)				
Calif.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Local title insurance: Used exclusively. (<i>See generally</i> , CALIFORNIA REAL ESTATE SALES TRANSACTIONS, Sec. 1.1 and 1.2 (Lieberman ed.)				
Colo.	0%/ 0/ 0	0%/ 0/ 0	14%/ 38/ 51	14%/13/13	71%/ 38/ 38
	Personal search: None reported.				
	Commercial abstracts: Widely used, both with or without national title insurance.				
	Local title insurance: Used in a minority of reporting communities, except in cases of mortgage or insurance company loans, where it is used predominantly. At present title insurance companies and the Colorado Lawyers' Title Guaranty Fund are engaged in a bitter fight, with the outcome in doubt. For a discussion of practice in Colorado, <i>see</i> , King, <i>Current Practices In Examination of Titles To Colorado Lands</i> , 35 U. of Colo. L. Rev. 1 (1962)				
Conn.	67%/100/100	33%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Used exclusively. Sometimes supported by national title insurance, most commonly in the case of mortgage and insurance company financed loans. (ALTA Directory lists both abstract and local title insurance companies, but reports received indicate no practical impact on practice by these companies.)				
Delaware	0%/ 0/ 0	100%/99/99	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Used exclusively and ordinarily supported by national title insurance. (ALTA Directory lists both abstract and local title insurance companies. Reports received showed no practical impact by these companies on practice.)				
D.C.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Local title insurance: Reported used exclusively.				
Florida	0%/ 0/ 0	0%/ 0/ 0	8%/ 70/ 61	41%/ 8/23	16%/ 16/ 8
	Personal search: Traces found in some areas, either with or without national title insurance, but nowhere predominant.				
	Commercial abstracts: Appear to be most widely used method of title assurance in Florida. Whether support by national title insurance is demanded depends on the type of lender.				
	Local title insurance: A number of local title insurance companies operating in Florida. At present engaged in a bitter fight with the Florida Lawyers' Guaranty Fund, with the outcome in doubt.				
Georgia	0%/ 88/ 76	100%/13/13	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Predominant form of title assurance in Georgia. Used both with and without supporting national title insurance. Mortgage and insurance companies demand national title insurance in virtually all cases. Banks and savings and loan associations most frequently do not.				
	Commercial abstracts: Not used in Georgia.				
	Local title insurance: Used in the Atlanta area but reported not to be the predominant form of assurance even there. Reported not to be used to any appreciable degree in savings and loan association loans, the largest source of mortgage credit in Atlanta. (ALTA Directory				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
	lists a number of local title insurance companies, but reports received show no practical impact on practice by these companies outside Atlanta.)				
Hawaii	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 50	0%/ 0/ 0	100%/100/ 50
	Personal search: None reported. Commercial abstracts: Reported used in 100% of savings and loan association transactions in an outlying city. Local title insurance: In Honolulu, used exclusively. In an outlying city, used in bank loans.				
Idaho	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Local title insurance: Reported used exclusively.				
Illinois	0%/ 7/ 7	0%/ 0/ 0	42%/ 64/ 57	0%/ 0/ 0	24%/ 14/ 14
	Personal search: Used, but predominates in only a small percentage of communities. Where used, there is no report of supporting national title insurance. Commercial abstracts: Appear to be predominant method of title proof in a predominant number of communities. Supporting national title insurance generally not used. Local title insurance: The importance of local title insurance in Illinois is probably understated in this table. Used almost exclusively in Chicago and reported to be spreading rapidly from that center by the use of agency and branch office arrangements of the Chicago Title and Trust Co. The potential effect of the recently established Illinois Lawyers Title Guaranty Fund has yet to be determined. The situation in Illinois is so fluid at this time as to be difficult to evaluate.				
Indiana	0%/ 0/ 0	0%/ 0/ 0	33%/ 82/ 90	33%/ 0/ 0	11%/ 18/ 10
	Personal search: Reported once in connection with mortgage and insurance company loans, but then not as a predominant form. Reported as supported by national title insurance. Commercial abstracts: Predominant method of title proof in Indiana. Local title insurance: Reported only in Indianapolis. (ALTA Directory lists a number of other local title insurance companies in other cities.)				
Iowa	0%/ 0/ 0	0%/ 0/ 0	91%/100/100	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Not used in Iowa. Commercial abstracts: Exclusive method of title proof in Iowa. Title insurance companies forbidden to operate in the state but apparently some policies written in favor of out-of-state lenders who make loans in Iowa.				
Kansas	0%/ 0/ 0	0%/ 0/ 0	54%/ 54/ 63	9%/ 9/ 0	27%/ 27/ 27
	Personal search: None reported. Commercial abstracts: Primary method of assuring title in Kansas. Supporting national title insurance not much used. Local title insurance: Reported from several communities but appears to have its primary incidence in Topeka and Kansas City. (ALTA Directory does not list local title insurance companies outside these two cities.)				
Ky.	22%/100/ 89	44%/ 0/ 0	11%/ 0/ 11	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Predominant form of title assurance in Kentucky. Supporting national title insurance used only occasionally, except in the case of mortgage and insurance company loans. Commercial abstracts: Abstracts used relatively little, and when used, not supported by national title insurance. Local title insurance: Reported only from Louisville. Statistics for Kentucky are distorted by the fact that two of the nine responses came				

<i>State</i>	<i>P/S</i>	<i>P/S/Ins.</i>	<i>Abst.</i>	<i>Abst./Ins.</i>	<i>Local Ins.</i>
	from Louisville, where title insurance competes on an even basis with other forms of assurance and no form is predominant. (ALTA Directory lists local title insurance only in Louisville.)				
La.	22%/ 39/ 72	50%/ 0/ 0	0%/ 13/ 29	25%/ 0/ 0	13%/ 13/ 0
	Personal search: Predominant form of title assurance in Louisiana. National title insurance used chiefly in connection with mortgages given to mortgage and insurance companies. Commercial abstracts: Used in limited areas. Local title insurance: Used only in New Orleans (ALTA Directory lists local title insurance companies in New Orleans and Metairie in adjoining Jefferson County. It also lists a number of abstract companies.)				
Maine	82%/ 88/ 88	0%/ 0/ 0	9%/ 6/ 6	0%/ 6/ 6	0%/ 0/ 0
	Personal search: Used in the overwhelming bulk of transactions. Is virtually never supported by national title insurance. Commercial abstracts: Used only to very limited extent. (No commercial abstract companies listed in ALTA Directory for Maine.) Local title insurance: Not used in Maine.				
Md.	0%/ 33/ 34	80%/ 51/ 67	0%/ 0/ 0	0%/ 0/ 0	20%/ 17/ 0
	Personal search: Predominant method of title assurance in Maryland. National title insurance used extensively in support of attorneys' opinions. Commercial abstracts: Not used in Maryland. Local title insurance: Local title insurance predominates in Baltimore, except in the case of savings and loan association mortgages. Also used in cities in the Washington metropolitan area but the information obtained indicates that it is not predominant there.				
Mass.	60%/ 75/ 57	0%/ 0/ 14	20%/ 13/ 14	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Predominant method of assuring title in Massachusetts. National title insurance in support of attorneys' opinions very little used. Commercial abstracts: Used to a limited extent, ordinarily without supporting national title insurance. Local title insurance: Not reported as used in Massachusetts. (ALTA Directory lists a branch office of the Lawyers' Title Insurance Company as operating on a local basis in Boston. No evidence was received that it plays a substantial part in title practice.)				
Mich.	0%/ 0/ 0	0%/ 0/ 0	17%/ 70/ 80	17%/ 0/ 0	50%/ 10/ 10
	Personal search: Not used in Michigan. Commercial abstracts: Predominant means of title assurance in most of the state. Supporting national title insurance infrequently used. Local title insurance: Used to a limited extent. The predominance it appears to have in the case of mortgage and insurance company loans is the result of a distortion. Returns from ten cities were obtained, but in only six cases did they furnish usable information as to this kind of loan. (ALTA Directory also indicates a highly mixed system, with abstract companies and agents predominating.)				
Minn.	0%/ 0/ 0	0%/ 0/ 0	50%/ 75/ 88	26%/ 0/ 0	26%/ 13/ 0
	Personal search: Not used in Minnesota. Commercial abstracts: The conventional method of assuring title in Minnesota. National title insurance used to a substantial degree only in the case of mortgage and insurance company mortgages. Local title insurance: Used only in the Minneapolis-St. Paul area.				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
Miss.	13%/ 57/ 51	88%/29/38	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	<p>Personal search: Conventional method of assuring titles in Mississippi. National title insurance used extensively in support of attorneys' opinions where loans are obtained from mortgage or insurance companies.</p> <p>Commercial abstracts: Used to a small but not predominant extent in Gulfport and Jackson. (ALTA Directory also lists an abstract company in Greenwood. In the course of the survey no information was obtained from this community.)</p> <p>Local title insurance: Not used in Mississippi (ALTA Directory lists one local company in Jackson. The company operates predominantly on a national basis and no information was obtained indicating that it exerts any substantial influence on practice in Jackson.)</p>				
Missouri	0%/ 0/ 0	0%/ 0/ 0	51%/ 55/ 55	13%/11/22	13%/ 22/ 22
	<p>Personal search: Not used in Missouri.</p> <p>Commercial abstracts: Predominant form of title assurance in the state. National title insurance used to support opinions based on abstracts to only a limited extent.</p> <p>Local title insurance: Predominates in St. Louis and Kansas City. (ALTA Directory lists local companies in Independence, in the same county as Kansas City, and Platte City. No reports obtained from these two communities.)</p>				
Montana	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/20	100%/100/ 80
	<p>Personal search: Some minor instances of personal search reported.</p> <p>Commercial abstracts and local title insurance: Returns received biased in favor of local title insurance, if a highly reliable and well informed independent source can be believed. According to this source, the examination of an abstract by an attorney is still used in connection with many land sales in Montana. Only one title insurance company maintains its own title plant in the state. Abstracters acting for title insurance companies sometimes make their own independent investigation and certify the title to their principal. At other times they obtain the opinion of an attorney. It is the opinion of this informant that attorneys examine a majority of the titles passed in Montana. Undoubtedly, the unusual form of organization of the title insuring industry caused confusion in the answers given by those responding to the questionnaire.</p>				
Nebraska	0%/ 0/ 0	0%/ 0/ 0	60%/ 80/100	0%/ 0/ 0	20%/ 0/ 0
	<p>Personal search: Used in some cases but nowhere predominates.</p> <p>Commercial abstracts: The predominant method of assuring title in Nebraska. Opinions based on abstracts supported by national title insurance in some areas but nowhere to a predominant extent.</p> <p>Local title insurance: Largely confined to Omaha. Plays a minor role in at least two other cities. (ALTA Directory lists a local title insurance company only in Omaha.)</p>				
Nevada	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	<p>Personal search: Not reported from Nevada.</p> <p>Commercial abstracts: Not reported from Nevada.</p> <p>Local title insurance: Only three returns received from Nevada and all showed universal use of local title insurance. (ALTA Directory lists only title insurance companies and agents in Nevada. No abstracters listed. Presumably these agents function like local title companies. See note as to Montana practice.)</p>				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
N.H.	67%/ 75/ 75	0%/ 0/ 0	33%/ 25/ 25	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Predominant method of assuring title in New Hampshire. Not ordinarily supported by national title insurance. Commercial abstracts: Used to some extent. (Presumably they are prepared by lawyers, since no New Hampshire abstracting company is listed in ALTA Directory.) Opinions based on abstracts ordinarily not supported by national title insurance. Local title insurance: Not used in New Hampshire.				
N.J.	5%/ 5/ 10	20%/20/15	0%/ 0/ 0	25%/35/30	30%/ 25/ 25
	All forms of title assurance (except Torrens) used in New Jersey and the practice is highly diversified. Some form of title insurance, national or local, generally employed, although local title insurance predominates in only about one fourth of the communities from which information was obtained.				
N.M.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/33/25	66%/ 33/ 50
	Personal search: Reported in a small number of cases, with or without supporting national title insurance, but nowhere predominant. Commercial abstracts: Information for New Mexico based on four returns, of which only three could be used in the case of mortgage and insurance company and bank loans. Sampling too small to be relied upon as a basis for conclusions about the distribution of title assuring methods. This conclusion is fortified by the fact that ALTA Directory lists a large number of abstract companies and agents, with a few local title companies. (After this report was completed the author had access to a <i>Report On New Mexico Land Titles Study</i> (mimeo., 1970), prepared by Professor Walter E. Barnett. The latter report indicates a greater variety of title practice in New Mexico than shown by the survey. In particular, it shows that in the original Spanish and Mexican land grant areas conventional marketable titles are virtually non-existent and title practice is normally carried out by laymen.)				
N.Y.	13%/ 15/ 15	0%/ 0/ 0	50%/ 55/ 58	0%/ 0/ 0	25%/ 22/ 19
	New York State practice divided geographically into the New York City Metropolitan and the up-state areas. In the former, local title insurance is overwhelmingly predominant. In the latter the most diverse practices prevail. Personal search and commercial abstract practice predominate but in a few scattered cities local title insurance is important. A striking feature of New York practice seems to be the slight extent to which national title insurance is used in support of lawyers' opinions based either on personal search or the examination of a commercial abstract.				
N.C.	0%/ 13/ 88	100%/56/ 6	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Thought of as a 100% personal search area. National title insurance is widely used in support of attorneys' opinions. Commercial abstracts: Not used in North Carolina. Local title insurance: No use of local title insurance reported. (ALTA Directory lists companies in Raleigh, Greensboro and Charlotte. Reports from these communities indicate that these companies, if they do operate on a local basis, exert no substantial influence on practice.)				
N.D.	0%/ 0/ 0	0%/ 0/ 0	100%/100/100	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Not used in North Dakota. Commercial abstracts: Sole means of title assurance reported in North Dakota. Opinions based on abstracts not conventionally supported by title insurance issued by national companies.				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
	Local title insurance: Not used in this state. (ALTA Directory lists only abstract companies and national title insurance company agents. Ruemele indicates the number of title transactions in North Dakota is so small that title insurance is a marginal operation in the state. Where national title insurance is used it is issued on the basis of certificates of abstracter agents. <i>Title Evidencing in North Dakota</i> , 43 N.D. L. REV. 467 (1967).)				
Ohio	25%/ 77/ 85	50%/ 0/ 0	0%/ 8/ 8	0%/ 0/ 0	25%/ 0/ 0
	Personal search: Used predominantly in Ohio. Except in mortgage and insurance company loans, national title insurance used to only a minor extent.				
	Commercial abstracts: Not sufficiently used to predominate in many areas. In those areas not ordinarily supported by national title insurance.				
	Local title insurance: Not widely used. Principal use reported in Dayton, Columbus and Cincinnati. (ALTA Directory lists only a scattering of local title insurance companies outside the cities mentioned, and of these only Toledo and Cleveland were not represented in the survey.)				
Oklahoma	0%/ 0/ 0	0%/ 0/ 0	14%/ 86/100	85%/ 0/ 0	0%/ 0/ 0
	Personal search: Not used in Oklahoma.				
	Commercial abstracts: Dominant method of title assurance in Oklahoma. Use of national title insurance largely confined to mortgage and insurance company loans.				
	Local title insurance: Not used in Oklahoma. (ALTA Directory lists several local title insurance companies. The survey elicited no information that these companies play a substantial part in title practice in the state.)				
Oregon	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Local title insurance: Used exclusively in Oregon.				
Penn.	25%/ 54/ 53	41%/ 0/ 8	0%/ 0/ 0	0%/ 0/ 0	33%/ 31/ 25
	Personal search: In terms of communities, personal search seems predominant in Pennsylvania. Only in the case of mortgage and insurance company loans are attorneys' opinions largely supported by national title insurance.				
	Commercial abstracts: Used in some localities but nowhere predominantly. Sometimes supported by national title insurance.				
	Local title insurance: Came into existence in Philadelphia. It predominates there and also in some other urban areas.				
R.I.	0%/ 0/ 0	33%/33/33	0%/ 0/ 0	0%/ 0/ 0	66%/ 66/ 66
	Only three returns were obtained from Rhode Island, two of them from Providence. Local title insurance predominates in Providence, but the statistical returns may not be representative of the state.				
S.C.	8%/ 91/100	83%/ 8/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: South Carolina virtually a 100% personal search area. National title insurance used primarily in support of attorneys' opinions in the case of loans by mortgage and insurance companies.				
	Commercial abstracts: Only one commercial abstract company operating in the state and it does not play a dominant role in the city in which it is located.				
	Local title insurance: No local title insurance company in the state.				
S.D.	0%/ 0/ 0	0%/ 0/ 0	71%/ 85/ 85	14%/ 0/ 0	0%/ 0/ 0
	Personal search: Reported in scattered cases.				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
	<p>Commercial abstracts: Virtually all titles in South Dakota supported by commercial abstracts, generally without benefit of national title insurance.</p> <p>Local title insurance: No local title insurance company listed in ALTA Directory for South Dakota. A scattering of cases where this form of assurance was reported arose, it can be surmised, from the use of abstracter agents who make their own evaluation of title.</p>				
Tenn.	17%/ 67/ 75	75%/ 8/17	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	<p>Personal search: Used predominantly in Tennessee. National title insurance used to some extent, predominantly in the case of loans made by mortgage and insurance companies.</p> <p>Commercial abstracts: Used to a limited extent, but nowhere predominantly. When used, title opinions sometimes supported by national title insurance.</p> <p>Local title insurance: Largely confined to Memphis, where title practice is reported to be about equally divided between abstracts and local title insurance. (ALTA Directory lists a local title insurance company in Nashville but it appears to have little influence on title practice there. Another company is listed in Chattanooga, a city from which vigorous efforts elicited no information in the course of the survey.)</p>				
Texas	0%/ 0/ 0	8%/ 0/ 0	8%/ 25/ 31	15%/ 8/ 8	54%/ 58/ 64
	<p>Personal search: Used to only a limited degree in Texas.</p> <p>Commercial abstracts: Used to a limited degree. (ALTA Directory lists a large number of abstract companies. However, they are found primarily in smaller communities and an examination of the survey returns indicates that some distortion may be the result of an unintended bias in favor of the larger cities.)</p> <p>Local title insurance: Appears to be the predominant form of title assurance in Texas. This statement is subject to the same qualification set out above.</p>				
Utah	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	99%/ 99/ 99
	<p>Personal search: Not used in Utah.</p> <p>Commercial abstracts: Returns from Utah obtained only from the three largest cities. They indicate a slight amount of abstract practice. (ALTA Directory lists a number of abstracters and agents in smaller communities. The significance of these companies must be weighed against the concentration of population in the state in the three cities covered by the survey.)</p> <p>Local title insurance: At least in the larger cities, overwhelmingly dominant in Utah.</p>				
Vermont	100%/100/100	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	<p>Personal search: A 100% personal search area. National title insurance is used in support of lawyers' opinions only very rarely.</p>				
Va.	0%/ 48/ 53	100%/35/41	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	<p>Personal search: Known as a 100% personal search area. National title insurance commonly used in support of attorneys' opinions, almost universally in the case of mortgage and insurance company loans. (ALTA Directory lists several local title insurance companies but the survey elicited no information that these companies substantially affect local practice. I have previously referred to the difficulty encountered in determining the meaning of listings in the Directory. Virginia is a prime example of the danger of relying upon these listings indiscriminately. For example, the Lawyers' Title Insurance Company in several cities is listed as though it were acting as a local company. It</p>				

State	P/S	P/S/Ins.	Abst.	Abst./Ins.	Local Ins.
	is notorious that in Virginia the company acts as a national company and only through lawyers.)				
Wash.	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	100%/100/100
	Personal search: Traces in Washington. Local title insurance: Overwhelmingly predominates in the state.				
W. Va.	34%/100/100	67%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0	0%/ 0/ 0
	Personal search: Used exclusively in West Virginia. Supporting national title insurance used extensively only in mortgage and insurance company loans.				
Wis.	0%/ 0/ 0	0%/ 0/ 0	33%/ 92/ 92	22%/ 8/ 8	22%/ 0/ 0
	Personal search: Reported as a form of title assurance in only one community and there is does not predominate. Commercial abstracts: Predominant method used in title assurance in Wisconsin. Only in the case of mortgage and insurance company loans was there indication of substantial use of national title insurance. Local title insurance: Local title insurance reported as a predominant method in less than a fourth of the cities and then, curiously, only in the case of mortgage and insurance company loans. The cause of this apparent discrepancy has not been determined. (ALTA Directory lists a number of local title insurance companies in Wisconsin.)				
Wyo.	0%/ 0/ 0	0%/ 0/ 0	17%/ 50/ 50	0%/ 0/ 0	34%/ 17/ 17
	Personal search: Used in Wyoming only in scattered cases. May or may not be supported by national title insurance. Commercial abstracts: Appears to be the predominant form of title assurance in Wyoming. Relatively little national title insurance used in support of opinions based on abstracts. Local title insurance: Used most commonly in connection with mortgage insurance company loans.				

APPENDIX C

PERCENTAGE OF CASES WHERE BUYER RECEIVES FORMAL PROTECTION IN 60% OR MORE OF ALL TRANSACTIONS IN CITIES WHERE PARTICULAR FORMS OF TITLE PROOF PREDOMINATE

Area	Type of Proof	Percentages	No. of Returns
U.S.	P/S	32/ 25/ 23	40/135/136
	P/S/Ins.	24/ 48/ 48	114/ 31/ 29
	Abst.	55/ 54/ 47	66/138/143
	Abst./Ins.	36/ 67/ 53	45/ 15/ 19
	Local Ins.	84/ 91/ 90	117/108/ 98
N.E.	P/S	41/ 41/ 38	22/ 44/ 34
	P/S/Ins.	50/ 0/ 0	4/ 1/ 2
	Abst.	33/ 50/ 33	3/ 4/ 3
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	50/ 50/ 50	2/ 2/ 2
Mid. Atl.	P/S	50/ 57/ 53	6/ 14/ 15
	P/S/Ins.	75/ 90/ 82	16/ 10/ 11
	Abst.	38/ 33/ 27	8/ 15/ 15
	Abst./Ins.	84/ 71/ 57	6/ 7/ 7
	Local Ins.	80/ 94/ 93	15/ 17/ 14

<i>Area</i>	<i>Type of Proof</i>	<i>Percentages</i>	<i>No. of Returns</i>
So. Atl.	P/S	0/ 6/ 8	3/ 35/ 48
	P/S/Ins.	13/ 35/ 44	55/ 17/ 9
	Abst.	0/ 22/ 38	1/ 9/ 8
	Abst./Ins.	20/ 0/ 0	5/ 1/ 3
	Local Ins.	100/ 0/ 0	2/ 2/ 1
So. Cent.	P/S	0/ 10/ 11	6/ 31/ 28
	P/S/Ins.	12/ 0/ 14	32/ 3/ 7
	Abst.	50/ 46/ 23	2/ 13/ 13
	Abst./Ins.	0/ 0/ 0	14/ 1/ 2
	Local Ins.	67/ 67/100	3/ 3/ 2
S.W.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	0/.../...	1/ 0/ 0
	Abst.	0/ 33/ 27	2/ 9/ 11
	Abst./Ins.	38/ 50/ 50	8/ 2/ 1
	Local Ins.	86/100/100	14/ 13/ 13
Pac.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	97/ 97/ 97	35/ 36/ 35
Non.-Cont.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../ 0	0/ 0/ 1
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	0/ 25/ 0	3/ 4/ 3
Mount.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	50/ 67/ 71	2/ 6/ 7
	Abst./Ins.	100/100/100	1/ 1/ 2
	Local Ins.	96/ 90/ 89	23/ 20/ 19
N.W. Cent.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	64/ 73/ 63	36/ 45/ 48
	Abst./Ins.	60/100/100	5/ 2/ 2
	Local Ins.	63/ 84/100	8/ 6/ 5
N.E. Cent.	P/S	33/ 27/ 27	3/ 11/ 11
	P/S/Ins.	16/.../...	1/ 0/ 0
	Abst.	58/ 51/ 49	12/ 37/ 37
	Abst./Ins.	50/100/100	6/ 1/ 1
	Local Ins.	67/100/100	12/ 5/ 4
<i>City Size</i> less than 5,000	P/S	25/ 28/ 29	4/ 18/ 14
	P/S/Ins.	30/100/ 25	10/ 2/ 4
	Abst.	69/ 86/ 71	13/ 14/ 14
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	86/ 86/100	7/ 7/ 6
5,000-9,999	P/S	75/ 37/ 33	4/ 19/ 12
	P/S/Ins.	0/.../ 0	9/ 0/ 3
	Abst.	80/ 53/ 50	5/ 17/ 18
	Abst./Ins.	0/.../ 0	4/ 0/ 1
	Local Ins.	83/100/100	6/ 6/ 5

<i>Area</i>	<i>Type of Proof</i>	<i>Percentages</i>	<i>No. of Returns</i>
10,000-24,999	P/S	50/ 22/ 23	8/ 32/ 30
	P/S/Ins.	24/ 50/ 43	25/ 8/ 7
	Abst.	57/ 50/ 41	14/ 32/ 32
	Abst./Ins.	25/ 33/ 33	8/ 3/ 3
	Local Ins.	86/ 86/ 85	14/ 14/ 13
25,000-49,999	P/S	0/ 13/ 12	8/ 23/ 26
	P/S/Ins.	23/ 50/ 75	22/ 4/ 4
	Abst.	60/ 64/ 56	15/ 33/ 32
	Abst./Ins.	30/ 67/ 80	10/ 3/ 5
	Local Ins.	90/ 88/ 88	20/ 16/ 16
50,000-99,999	P/S	20/ 29/ 25	10/ 24/ 28
	P/S/Ins.	23/ 44/ 60	22/ 9/ 5
	Abst.	42/ 46/ 50	12/ 24/ 24
	Abst./Ins.	44/ 67/ 40	9/ 3/ 5
	Local Ins.	83/ 87/ 85	18/ 15/ 13
100,000-499,999	P/S	40/ 22/ 24	5/ 18/ 25
	P/S/Ins.	36/ 38/ 60	25/ 8/ 5
	Abst.	7/ 39/ 22	14/ 18/ 23
	Abst./Ins.	42/ 80/ 50	12/ 5/ 4
	Local Ins.	79/ 90/ 92	34/ 29/ 27
500,000-999,999	P/S	.../ 0/ 0	0/ 1/ 3
	P/S/Ins.	0/.../100	1/ 0/ 1
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	100/100/100	1/ 1/ 1
	Local Ins.	80/ 91/ 8	10/ 11/ 10
1,000,000 or more	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	89/ 90/ 90	9/ 10/ 10

APPENDIX D

PERCENTAGE OF CASES WHERE BUYER HAS HIS OWN ATTORNEY IN 60% OR MORE OF ALL TRANSACTIONS IN CITIES WHERE PARTICULAR FORMS OF TITLE PROOF PREDOMINATE

<i>Area</i>	<i>Type of Proof</i>	<i>Percentages</i>	<i>No. of Returns</i>
U.S.	P/S	33/ 30/ 23	40/135/136
	P/S/Ins.	32/ 52/ 45	114/ 31/ 29
	Abst.	20/ 21/ 15	66/138/143
	Abst./Ins.	22/ 40/ 37	45/ 15/ 19
	Local Ins.	10/ 10/ 11	117/108/ 98
N.E.	P/S	36/ 20/ 29	22/ 44/ 34
	P/S/Ins.	50/ 0/ 0	4/ 1/ 2
	Abst.	33/ 25/ 33	3/ 4/ 3
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	0/ 0/ 0	2/ 2/ 2
Mid. Atl.	P/S	50/ 50/ 47	6/ 14/ 15
	P/S/Ins.	56/ 80/ 73	16/ 10/ 11
	Abst.	38/ 33/ 20	8/ 15/ 15
	Abst./Ins.	67/ 57/ 57	6/ 7/ 7
	Local Ins.	33/ 35/ 43	15/ 17/ 14

<i>Area</i>	<i>Type of Proof</i>	<i>Percentages</i>	<i>No. of Returns</i>
So. Atl.	P/S	0/ 37/ 23	3/ 35/ 48
	P/S/Ins.	35/ 41/ 44	55/ 17/ 9
	Abst.	0/ 33/ 25	1/ 9/ 8
	Abst./Ins.	0/ 0/ 0	5/ 1/ 3
	Local Ins.	0/ 0/ 0	2/ 2/ 1
So. Cent.	P/S	33/ 29/ 7	6/ 31/ 28
	P/S/Ins.	19/ 0/ 16	32/ 3/ 7
	Abst.	50/ 15/ 15	2/ 13/ 13
	Abst./Ins.	29/100/100	14/ 1/ 2
	Local Ins.	33/ 0/ 0	3/ 3/ 2
S.W.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	0/.../...	1/ 0/ 0
	Abst.	50/ 22/ 9	2/ 9/ 11
	Abst./Ins.	0/ 0/ 0	8/ 2/ 1
	Local Ins.	0/ 0/ 0	14/ 13/ 13
Pac.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	3/ 3/ 3	35/ 36/ 35
Non-Cont.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../ 0	0/ 0/ 1
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	33/ 25/ 33	3/ 4/ 3
Mount.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	0/ 0/ 14	2/ 6/ 7
	Abst./Ins.	0/ 0/ 0	1/ 1/ 2
	Local Ins.	9/ 5/ 5	23/ 20/ 19
N.W. Cent.	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	16/ 16/ 15	36/ 45/ 48
	Abst./Ins.	20/ 0/ 0	5/ 2/ 2
	Local Ins.	0/ 0/ 0	8/ 6/ 5
N.E. Cent.	P/S	0/ 9/ 9	3/ 11/ 11
	P/S/Ins.	0/.../...	1/ 0/ 0
	Abst.	8/ 22/ 11	12/ 37/ 37
	Abst./Ins.	16/100/100	6/ 1/ 1
	Local Ins.	16/ 40/ 50	12/ 5/ 4
<i>City Size</i>			
Less than 5,000	P/S	75/ 44/ 36	4/ 18/ 14
	P/S/Ins.	40/ 50/ 25	10/ 2/ 4
	Abst.	23/ 29/ 29	13/ 14/ 14
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	0/ 0/ 0	7/ 7/ 6
5,000-9,999	P/S	50/ 32/ 42	4/ 19/ 12
	P/S/Ins.	33/.../ 33	9/ 0/ 3
	Abst.	0/ 6/ 6	5/ 17/ 18
	Abst./Ins.	0/.../ 0	4/ 0/ 1
	Local Ins.	0/ 16/ 20	6/ 6/ 5

<i>Area</i>	<i>Type of Proof</i>	<i>Percentages</i>	<i>No. of Returns</i>
10,000-24,999	P/S	25/ 32/ 16	8/ 32/ 30
	P/S/Ins.	28/ 25/ 43	25/ 8/ 7
	Abst.	14/ 22/ 6	14/ 32/ 32
	Abst./Ins.	38/ 67/ 67	8/ 3/ 3
	Local Ins.	7/ 7/ 8	14/ 14/ 13
25,000-49,999	P/S	25/ 9/ 12	8/ 23/ 26
	P/S/Ins.	23/ 50/ 75	22/ 4/ 4
	Abst.	27/ 27/ 22	15/ 33/ 32
	Abst./Ins.	10/ 0/ 0	10/ 3/ 5
	Local Ins.	15/ 12/ 13	20/ 16/ 16
50,000-99,999	P/S	20/ 50/ 32	10/ 24/ 28
	P/S/Ins.	45/ 78/ 80	22/ 9/ 5
	Abst.	8/ 5/ 4	12/ 24/ 24
	Abst./Ins.	11/ 33/ 20	9/ 3/ 5
	Local Ins.	0/ 0/ 0	18/ 15/ 13
100,000-499,999	P/S	40/ 39/ 12	5/ 18/ 25
	P/S/Ins.	28/ 38/ 20	25/ 8/ 5
	Abst.	21/ 33/ 22	14/ 18/ 23
	Abst./Ins.	33/ 40/ 75	12/ 5/ 4
	Local Ins.	9/ 7/ 7	34/ 29/ 27
500,000-999,999	P/S	.../ 0/ 0	0/ 1/ 3
	P/S/Ins.	0/.../ 0	1/ 0/ 1
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	100/100/100	1/ 1/ 1
	Local Ins.	0/ 0/ 0	10/ 11/ 10
1,000,000 or more	P/S	.../.../...	0/ 0/ 0
	P/S/Ins.	.../.../...	0/ 0/ 0
	Abst.	.../.../...	0/ 0/ 0
	Abst./Ins.	.../.../...	0/ 0/ 0
	Local Ins.	44/ 50/ 50	9/ 10/ 10



