

## HOUSEKEEPING

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## HOUSEKEEPING

- Coming soon: due to technical difficulties this past month, the PowerPoint and audio for the November **“Changes in the Title & Real Estate Industries . . .”** webinar is not yet available. It will be posted as soon as the technical issues have been resolved.
- For Escrow Officer Credit please email password and attendees names to [ken.wrider@stewart.com](mailto:ken.wrider@stewart.com) for certificate (Please do this as soon as possible. Certificates will not be produced after the start of our next webinar)
- Attorneys e-mail bar card number to Ken Wrider for CLE credit
- Send to your training administrator if applicable
- We are now recording!

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## THICK AND THIN (TITLE PLANTS THAT IS)

Stewart Title Guaranty Company  
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### Why Do We Need Title Plants Anyway?

- In Texas, the public records are maintained on a grantor-grantee index. This means that each document filed with the county clerk's office is recorded based on the names of the grantor (seller, borrower, lessor, claimant, affiant, etc) and on the name of the grantee (buyer, lender, lessee, defendant, etc).

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### Why Do We Need Title Plants Anyway?

- Some people buy one or two properties in a lifetime. To research their activities, a searcher would need to go down every entry of every page of the grantee records until the person's name appears. The searcher would then flip over to the grantor records and look for the person that sold the property to their grantee.
- You would be looking at every record for many, many years.

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### Why Do We Need Title Plants Anyway?

- The situation is probably worse when you have an active seller or buyer or lender in the county. Not only do you have to bounce back and forth between the grantor and grantee indices, but then you have tens or hundreds or thousands of entries which you then have to wade through to see what property the document covers.

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## The Genius Of The Title Plant

- Lost in the mists of time, some incredible mind realized that indexing documents by legal description was easier to work with than grantor-grantee.
- That genius or another one also realized that it was much easier to create the index when only small time periods passed between indexing efforts.

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## The Genius Of The Title Plant

- Depending on the amount of real estate activity in the jurisdiction, monthly, weekly or even daily indexing is required. The more documents filed, the shorter the time needs to be in order to keep up and not be overwhelmed.

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## The Genius Of The Title Plant

- Once you begin to index your records by legal description, it is a much easier task to search title to A piece of property. You “simply” go to your record for the property and review the documents you have posted to that property. Rather than looking through all the records all the time, the records have already been put there for you.

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## The Weakness Of The Title Plant

- The only real weakness of a title plant is posting errors.
  - If you don't properly index a document, it cannot be found.
  - A bad legal description in a document can cause a posting error. So can 2 pages sticking together.
  - Worse still is a properly indexed document that gets put in the wrong place. Prevalent in card plants.

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## Types Of Title Plants

- The earliest known Texas title plants were kept in bound volumes known as **tract books**.
- Since Texas titles all originate with a sovereign (Spain, Mexico, France, Republic of Texas, State of Texas or Confederate State of Texas or back to State of Texas) which issued deeds now called patents, a title plant starts with that document. Whenever a new tract is conveyed from the state, a new patent is created and a new entry is made into the tract book.

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## Types Of Title Plants

- Tract books provide a systematic ability to carve large tracts into smaller tracts.
  - Since the books belong to the title company, it is easy to make notations as to which book contains the newer tracts and then the sub-tracts.
- They do require careful and meticulous handwriting.
  - A skill lost on most of us today.

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## Types Of Title Plants

- **Card plants** apparently came next
  - Like the tract book, cards were created for every document and placed physically behind the cards as the tracts were segregated
  - So you would have a divider for the XYZ Survey Abt 91 and then behind that all the documents for the survey.
  - When tracts were sold, they go their own divider and then cards for their documents were put in order behind that divider.

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## Types Of Title Plants

- As more divisions were made, more divider/sections were created until for example actual platted subdivisions were created. At that point each block and lot got their own set of dividers and cards.
- So when you were needing to search Lot 1, Bk 14 of the Adams Atomic Acres, you just pulled the plat, the subdivision base and the cards for your lot and block.
- A very efficient way to maintain the records.

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## Types Of Title Plants

- **Copy flow** plants were a 1970s-1980s technological leap forward. They were a combination of card plant and document library.
  - Reduced copies of the documents were placed into the card plant and took the place of the cards.
  - Reduced the time to examine because the documents were right there to review. Instead of the cards referring to a recorded document.

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## Types Of Title Plants

- **Microfilm plants** were rough contemporaries of the copy flow plant.
- In these plants, a greatly reduced image of every document was created and indexed.
- To search a property, you went to the index and found the roll and place on the roll where your documents were found and then used a reader (reader-printer) to view the images.
- An advantage of microfilm plants is size. A small county can be stored in a shoe box! And the price to reproduce a copy is phenomenally less than cards or tract books. The index is a crucial element here.

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## Types Of Title Plants

- The currently preferred title plant is the **computerized plant**.
  - Computer plants take the information from the county records or from one of the other types of plants and creates 2 sections: the index of documents and the film library.
  - Computer plants can be maintained on site or remotely or in a shared environment.
  - Effort to index is the same but once done, cards don't get lost. On the other hand, one posted incorrectly the error is indefinite.
  - The film library is crucial to the computer plant since it allows one person to search, copy and examine sequentially.

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## Types Of Title Plants

### Strengths of the computer plant

- Index searches are much faster than "human" searches
- Less handling of physical assets means they don't get lost or worn out. No heavy books to manhandle around.
- Easier to share
- Easier to have safety copies
- Easier to copy
- Once index is done it is done (but can still be changed to correct errors or add missed documents)

### Weakness of computer plants

- easier to share and copy means more plants and more competition
- Errors are permanent unless caught and corrected ( of course in a joint plant the errors are common and less likely to be caught by a competitor!)
- Initial cost of equipment and time to copy and index
- Continual legislative fights with clerks over access to and cost of daily takeoffs (although this is really a problem for all plant owners)

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## Thick Or Thin Plants?

- Let's start with a working definition
  - Thick plant: a typical title plant that has been indexed geographically and maintained over a period of time.
  - Thin plant: a form of computer plant that contains all records and which searches those records each time to find the ones that apply to a specific legal description.

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## TDI Definition

- a. An abstract plant used as the basis for issuance of title insurance policies in the State of Texas shall *consist of fully indexed records showing all instruments of record affecting lands within the county* for a period of at least 25 years immediately prior to the date of search (Beginning not later than 1-1-1979 by 1-1-14). The indices pertaining to land shall be arranged in geographic order (i.e.: Lot and Block for subdivided lands, and by Survey or Section Number for acreage tracts). Miscellaneous alphabetical indices shall be maintained according to name. Said indices, land and miscellaneous, may be stored in a computer, and as to land, be subject to retrieval by reference to description of the property under search. The records of the abstract plant shall be maintained to current date, and shall include, but not be limited to, plat or map records, deeds, deeds of trust, mortgages, lis pendens, abstracts of judgment, federal tax liens, mechanic's liens, attachment liens, divorce actions, wherein real property is involved, probate records, chattel mortgages, attached to realty and financing statements relating to items which are, or are to become, attached to realty, if available for indexing from the office of the County Clerk of the county which is covered by said plant.

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## TDI Definition

- b. **Leased Abstract Plants:** A lessee is not necessarily excluded from the phrase "owning and operating an abstract plant" as used in Article 9.30 of the Texas Title Insurance Act - 1967, but will be so excluded unless in actual, exclusive, physical possession and control of an abstract plant meeting the requirements of paragraph "a" above, operating it under the terms of a bona fide lease agreement, which places the lessee in exclusive possession and control of such abstract plant facilities for a determinable period and for a fixed rental.
- c. **Joint Abstract Plants:** Two or more Companies may combine their operations into a single abstract plant for the purpose of increasing the efficiency and speed of producing title evidence for examination purposes. In such event, if the base plants owned or leased by the individual participants are not merged into a single plant, then the base plants and the joint abstract plant, when considered as one, must meet all the requirements of an abstract plant as set forth under paragraph "a" above. Ownership of such joint abstract plant may be by corporate ownership, joint venture or partnership agreement, but ownership must rest with the Company participants.

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## Does A Thin Plant Meet The TDI Definition?

- The key phrase in answering this question is the term "geographically index".
- A thick plant is geographically indexed when the daily documents are merged into the existing records. So it is always geographically indexed. And clearly is within the TDI definition.
- A thin plant as it sits in the computer is not geographically indexed. HOWEVER, it does index a specific property by "looking at" every document in its database and creating a report of every document that matches the legal description of the property being searched.

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## Does A Thin Plant Meet The TDI Definition?

- P-12 does not make a distinction between permanent indexing and indexing "on the fly". It simply says that the plant must contain the records and must be fully indexed. It doesn't say when the indexing is to be done. 2 years ago or when I push the enter button?
- TDI has been licensing thin plants for several years using the P-12 definition.
  - Apparently that issue has been decided. Indexing can be done either way.

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## Advantage Of Thin Plants

- If the programming is good, it is easier and faster to insert legal descriptions into the plant than to create an index and a film library.
- Less up front time and effort equates to a less expensive maintenance of the indexing.
- A thin plant can be built much faster than a thick plant.

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## Disadvantages Of A Thin Plant

- Because a person has not done the indexing or even reviewed the document before it is placed in the database, the indexing is done via the computer on a case by case basis. This means that a substantial amount of documents that a human might have eliminated will be included in the search printout.
- This means that in an acreage situation, you may have more documents to examine that you would in a thick plant.
  - Proponents of thin plants point out that a little more information is safer than not enough information.
- Lot and block searches will be almost identical.
- Ease of entry and lessen cost of maintenance leads to diminished plant value of existing plants and potentially more competitors.
  - TDI and OPIC have mixed feeling about this. They like competition but don't think consumers should have to pay for competition. And, they don't like the fact that consumers have to pay the expenses of more than one title company in an area.

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## Underwriting A Thin Plant

- Since lot and block legal descriptions are much easier to read and understand, a computer has a much easier time with these descriptions. It can also read the subdivision name and recording information and pull up the information on the subdivision. Perhaps the examiner may have to review more "blanket easements" or similar issues, but for the most part, the information will be the same as for a thick plant.
- A reasonably skilled abstractor/examiner can examine lot and block transactions reliably and quickly.

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## Underwriting A Thin Plant

- Acreage legal descriptions are more complicated than lot and block descriptions. Many documents that affect a 2 ac. tract will also affect the 20 ac tract that it comes from and the 142 acre tract that the 20 acres come from.
- To get all the documents, the computer will have to generate a larger number of documents than would the abstractor using a thick plant since the indexing of the thick plant would have "up front" reduced the number of documents.
- This means more documents to review to be safe.

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## Underwriting A Thin Plant

- It takes a more seriously talented and/or experienced abstractor to use a thin plant on acreage tracts.
- It also takes some additional time to weed out the documents (sometime duplicate entries) that apply to multiple tracts.
- But the time used here is offset by the reduced time done to create the geographic index of the thick plant.

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## Underwriting A Thin Plant

- Stewart's position is that the type of plant is essentially up to the agent. However, we reserve the right to review the experience of the abstractor and examiners which the agent will be using (has hired or will hire).
  - We will be interested in seeing significant experience, primarily in the local market, when the agent chooses to go with a thin plant.

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## Underwriting A Thin Plant

- Quality: the quality of the title plant will be tested by TDI when they do their audits of an agent (usually within 3 months for a newly created agent). They will pull anywhere from a few documents to several dozen and see if the plant can find them. If so, you pass. If not you will have a while to fix the problem.

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## Investing In A Plant

- Things to consider
  - Do you want to do the work yourself?
  - Do you have the ability to index daily?
  - Will your clerk allow reasonable access to the courthouse records?
  - Do you have room for tract books, card files?
  - Do you want to be able to sell copies of the plant?
  - Do you want a physical asset to be able to touch, pet, see and feel?

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## Investing In A Plant

- Who will create your index?
- How much experience do they have?
- How much does it cost (up front, monthly)
- Who owns the equipment? Who maintains it?
- Do you need microfilm readers?
- Is there a film library? How far back does it go?
- Does the plant and library go back far enough to cover minerals in your county?
- Do you need a file sharing program like Sureclose? How do you get copies of instruments to your customers along with the commitment?

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## Investing In A Plant

- Do you need, is the plant compatible with the examination programs such as those offered by Stewart?
- What turn times do your customers expect? Can you provide them with the plant being offered?
- Who is responsible for plant indexing errors? Can they pay for your losses?

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## Local Vs. Offshore/Out Of State

- Providers exist in several locations that offer to do searches and examinations overnight (most of them are in different time zones for Texas) at a very low price.
- Things to remember:
  - They must have access to a Texas licensed title plant for the information to be adequate for title insurance.
    - Can you allow them access to your plant? Physically? Under a lease or joint plant agreement?
  - Who is responsible for errors? Can they afford to pay? What jurisdiction will you have to sue in? How can you collect— especially if off shore?

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## Local Vs. Offshore/Out Of State

- Can you understand the people you will be working with?
  - Most speak English but some have heavy accents no matter where they are located. Is this a problem for you?
- What is their track record? Do they make mistakes? What is the frequency and severity? What is your underwriter's experience with them?
- Have you spoken with their references?
- What would be the view of your customers if they knew you weren't doing the work locally with their neighbors?
- How much would you save per file?

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## Joint Plants

- Joint plants can often save agents money since there can be fewer people maintaining the plant than there would be if the agents were maintaining their plants separately.
- There are a number of things to keep in mind if considering a joint plant.

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## Joint Plants

- Is the joint plant a separate entity or does one company do the work for both?
- What are your rights to the information if the joint plant ceases to exist?
  - How expensive would it be to make copies?
  - Is the information in some generic form so it can be dumped into any system.
- Will you have a separate abstracting staff and examination staff or will you buy from the joint plant?

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## Joint Plants

- Before entering to a joint plant agreement, you should get antitrust advice about the ability of other parties to “buy into” the joint plant.
  - You will want to be careful not to “freeze out” competitors.
  - This is not a topic that underwriters can help with much other than raising the issue.

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## Solvency Under HB 4338 (2009)

- The solvency legislation passed by the 2009 Legislature decided to discount the value of title plants in determining capitalization of agents.
  - Plants have much value but if used as capital have limited immediate cash value
  - TDI financial wanted much higher numbers if plants were included
  - Selling your plant puts you out of business.

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# THANK YOU!

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