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Business Trusts Organized to Protect Public by Having Legal Services Performed by Lawyers

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A business trust has recently been created under the laws of Florida for the purpose of guaranteeing opinions of titles to real estate, rendered by Florida lawyers who are members of the organization. A brief reference is made to the plan in the Florida Law Journal for May, 1947, Vol. XXI, No. 5. The plan appears to have been originated by the Orange County Bar Association under the leadership of George B. Carter, Esq., and the purpose of the plan is to enable qualified lawyers to give title opinions guaranteed by the lasting financial ability of a well-organized fund managed by a board of trustees and participated in entirely by lawyers. It is believed by the lawyers who conceived the idea that the plan will go far toward curbing the unauthorized practice of law by title companies. According to Raymond E. Barnes, Executive Secretary-Treasurer of the fund, an investigation of the experience of title companies reveals the startling fact that in those states where they are regulated, the legal reserve of these companies is only 3% of the gross premium income and the loss ratio averages less than 1%. Apparently these companies have grown and prospered because they have sold the public on the idea that the average lawyer is financially unable to assume his responsibility to the public with the result that these companies are obtaining a virtual monopoly of title work in many places.

Under the plan proposed the bar will be able to assure the public of a financial backing sufficiently strong to afford ample protection against any mistakes that lawyer members might make in the examination of titles while at the same time making it possible to charge reasonable fees for title work because of such assurance.

The plan has received the approval of the Florida Junior Bar Section but will not be presented to the entire bar association until it has been in operation for at least a year. A full board of trustees representing each judicial circuit has been formed. The Attorney General of Florida rendered an opinion to the chairman of the Florida Securities Commission under date of December 12, 1946, to the effect that the declaration of trust of the Lawyers' Title Guaranty Fund is not a "security" within the meaning of sec. 517.02 (1) of the Florida statutes, and it is considered by lawyers who have

studied the plan that the fund alone will be liable for losses sustained under guaranteed opinions except that the attorney furnishing the opinion will still be subject to his common law liability, if any, either to the client or the fund. The proposed form of guaranteed opinion contains a provision to the effect that in accepting the guarantee the client accepts the same as a contract of the Lawyers' Title Guaranty Fund as a pure trust and not as a partnership.

While it would be impossible in the space available to set forth all of the terms of the declaration of trust, attention is here called to some of the more noteworthy features.

Membership is limited to persons residing in and licensed to practice law in Florida and are members of the Florida State Bar Association in good standing and who have been accepted for membership. Memberships terminate when any of the foregoing qualifications are no longer met, or if a member fails to remit contributions due the fund. Membership may also be terminated for fraud, negligence or incompetence after hearing.

A standard form of opinion is set up in the articles of the declaration of trust and each member agrees to charge the following minimum fees:

<i>Declared Value</i>	<i>Fee</i>
Up to \$1,500.00.....	\$25.00
2,000.00.....	27.50
2,500.00.....	30.00
3,000.00.....	35.00
3,500.00.....	40.00
4,000.00.....	45.00
4,500.00.....	47.50
5,000.00.....	50.00

\$5,000.00 to \$10,000.00—1% of amount of declared value.

For next \$15,000.00—\$7.50 per thousand.

For next \$25,000.00—\$6.50 per thousand.

For next \$50,000.00—\$6.00 per thousand.

For any amount over \$100,000.00—\$5.00 per thousand.

In order to build up the fund each member agrees to remit 25% of the fees charged by him according to the above schedule. After the fund has net assets of \$250,000 the board of trustees may by a two-thirds vote reduce the rate of initial and additional contributions. Since it appears that the above schedule of fees runs somewhat higher than the fees charged by title guaranty companies in some places it will probably be necessary to readjust the schedule to meet that competition.

The board of trustees is authorized to invest in securities and mortgages

that are approved investments for insurance companies doing business in Florida.

A member, former member, or the legal representatives, heirs or legatees of a deceased member may withdraw all or any part of a member's credit balance that existed seven years before the application for withdrawal is made, provided that there are no outstanding claims or opinions by the member and providing the withdrawal will not reduce the fund below the minimum set by the trustees and not below \$250,000.

It may be that in many states amendments to the insurance statutes would be required to permit the operation of such a plan and it is suggested that the members of the bar generally study and discuss the plan as one of the steps in preserving to the legal profession a field of activity which is rapidly becoming the object of corporate encroachment.

Upon Information and Belief

The Responsibility of Lawyers

Lawyers are not diligent enough in protecting their own profession and in protecting the public against the evils which arise by reason of their failure to protect their profession. The Colorado bar is not the most backward, nor is it the most forward, of all bars in this respect. An article by the late Senator Thomas in this issue describes the efforts of the tenderfoot lawyers to get the Code of Practice adopted by the first general assembly over the opposition of the old-time lawyers, who wished to retain the common law practice. In more recent years the Colorado bar accomplished a notable achievement in the adoption of Rules of Civil Procedure. The lawyers and the county judges have cooperated in improving the probate statutes, although some of the lawyers felt that a complete new code of probate practice would have been an improvement even over the present revised statutes.

During the last session of the legislature, the lawyers actively supported pay raises and a retirement plan for judges, and for some months now a committee of the Colorado Bar Association has been working out a new judiciary article to the constitution, which would very materially change the court system and the method of selecting judges. The Real Estate Standards Committees of the Denver and Colorado Bar Associations have adopted a series of title standards, which have done much to eliminate improper objections in title examinations. This is in line with the efforts of some years ago of a number of title lawyers in having adopted by the legislature a number of statutes making titles more certain and marketable. The organization of the Colorado Bar Association is an advanced type of voluntary organization rendering the maximum service for the amount expended.