



# **Title Insurance in Washington:** Improving Competition and Consumer Choice

## Report of the Title Insurance Review Task Force

September 2007



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**STATE OF WASHINGTON**



September 2007

The Honorable Mike Kreidler  
Insurance Commissioner  
PO Box 40258  
Olympia, WA 98504-0258

Dear Commissioner Kreidler:

I am pleased to provide you with the report of the Title Insurance Review Task Force you appointed in December 2006. This report was unanimously adopted by the task force members on August 23, 2007. It reflects a great deal of discussion and careful thought by all the task force members, whom you appointed from a variety of backgrounds in consumer advocacy, title insurance, real estate, mortgage lending, law, and public policy.

While the report was adopted unanimously and its recommendations were determined by consensus, it does not necessarily fully describe the personal opinions of any individual member, or reflect policy positions of any organization with which any member is affiliated. We hope the report will help readers understand more fully the nature and characteristics of title insurance in Washington, the role such insurance plays in property transactions, and some of the issues and concerns that have arisen about the industry. We hope the recommendations will help to improve public policies and industry practices to serve consumers better.

We appreciate the help of members of your staff in organizing our meetings and preparing this report, but I emphasize that the report is an independent product of the task force. As you requested, we have addressed our recommendations to you, for further action as you may determine. On behalf of all the task force members, I thank you for the chance to participate in this effort, and I hope our report is useful to you, to other policymakers, and to the public we all serve.

Sincerely,

A handwritten signature in black ink that reads "Dennis L. Heck". The signature is written in a cursive style.

Dennis L. Heck, Chair  
Title Insurance Review Task Force



## I. Summary

The Task Force was appointed to look broadly at the title insurance industry and recommend any improvements to serve consumers better. Its members include people involved in the title insurance, real estate, and lending industries, and consumer representatives. Its recommendations are based on discussions during monthly meetings in 2007. The recommendations are summarized in Appendix A.

Title insurance is a useful way to protect buyers and sellers of real estate, and mortgage lenders, against discrepancies or defects in ownership rights to the property. In Washington, home sellers typically purchase “owner’s coverage” for their buyers, and buyers purchase “lender’s coverage” for their lenders. Homeowners also typically buy title insurance for their lenders when refinancing mortgages.

Unlike most other kinds of insurance, title insurance protects against risks arising from past events rather than future events. Premiums include the costs of title searches to minimize those risks, making claims and losses infrequent and resulting in loss ratios around 5%. Consumers buy this insurance only when they buy, sell, or refinance real estate, so they tend to rely on real estate agents or other “middlemen” to refer them to title insurance agents instead of shopping independently.

Three diversified nationwide financial groups, controlling ten title insurance companies, account for 85% of the market in Washington. Insurers contract with 88 agents, paying commissions around 90% of premium, or use their own employees in local offices, to search property records before issuing policies. They maintain “title plants,” based on records filed with county officials but indexed by property location to facilitate searches. Increasingly, these databases have become automated and centralized. Nearly all title agents also perform escrow services, competing with independent escrow agents. Some title agencies are partially owned by brokers and others involved in the real estate industry, a trend that is growing nationwide.

Title insurers and agents seldom try to market their products directly to consumers, but instead compete for referrals from real estate agents and other middlemen. Title agents sometimes provide business services, hospitality, and other benefits to these middlemen, raising the potential for conflict of interest in referring consumers. This potential is greater when a middleman has an ownership interest in a title company.

Title insurance premiums are based on the price of the property, but otherwise differ very little within communities. Since premiums rise and fall with property prices, the title industry’s revenue depends heavily on real estate market conditions, which in turn relate closely to mortgage interest rates. Rising home prices, low interest rates, and a wave of refinancings tripled title insurance premium volume in Washington from \$120 million in 1995 to \$355 million in 2005. This trend is unlikely to continue as the housing market slows down. Generally, Washington consumers pay less for title insurance than those in most other states.

Title insurance is regulated by both state and federal authorities in different ways. Under state law, insurers and agents must be licensed and maintain title plants, and may not sell any other type of insurance. They may not provide any “inducement” worth more than \$25 in a 12-month period to a real estate agent or other middleman. Insurers must file their rates with the Insurance Commissioner, but need not provide justifying information. The Commissioner may order rates modified if he finds them “excessive, inadequate, or unfairly discriminatory,” but has no authority to approve or disapprove particular rate filings. He may obtain information from title insurers and agents for regulatory purposes, including investigations of possible violations.

Federal law does not regulate title insurance as such, but prohibits payments between providers of real estate closing services (such as title and real estate agents), except for services actually performed or as return on ownership interest, and then only after disclosure to the consumer of the business affiliation between them. Such professionals may pay for “normal promotional and educational activities” not conditioned on business referral.

In recent years, state and federal regulators have identified various industry practices that appear to violate the prohibitions against “inducements” for referral of title business, often resulting from “affiliated business arrangements” between middlemen and title companies. In some states, extensive kickback practices involving sham businesses have been uncovered. In Washington last year, an investigative report by the Insurance Commissioner described widespread violations of the prohibition against title companies paying inducements to middlemen exceeding \$25 a year, ranging from egregious to relatively minor. This year, the Commissioner’s office has stepped up investigation and enforcement.

Earlier this year, a report by the federal Government Accountability Office found that title insurance is provided in different ways among the states, and that affiliated business arrangements are widespread and increasing. The GAO found that the lack of direct marketing to consumers, the uncovering of illegal kickbacks, and the connection between premiums and home prices (rather than insurer and agent costs) all raise questions about how competitive the industry really is. The report also found that state insurance regulators review rates inadequately, enforce anti-kickback laws unevenly, and seldom coordinate with state agencies regulating real estate agents, lenders, and others. It recommended that they collect and analyze information about title agents’ costs and revenues, help consumers compare premiums, and work more closely with other state and federal regulators to oversee title insurance sale and marketing practices.

After much discussion and careful thought, we identified five areas in which to make recommendations regarding title insurance:

- **Inducements.** It is probably unrealistic to expect title companies to market to consumers, so laws prohibiting title companies from paying middlemen for referrals, directly or indirectly, remain necessary and should be enforced. But we think the current rule that prohibits giving anything worth more than \$25 in a year is arbitrary and inadequate. We recommend that the Commissioner revise the rule, after discussion with consumer and industry representatives, to let title companies provide defined business services and hosting to middlemen, as the

insurance regulators in Idaho and Oregon have done. The rule should prohibit all expenditures not specifically authorized. We also believe the Departments of Licensing and of Financial Institutions should have parallel rules prohibiting the middlemen they regulate from soliciting or accepting anything from title companies that the Commissioner's rules prohibit title companies from providing. After the Commissioner has revised the rule, we suggest that his office meet regularly with title industry representatives to address issues that may arise in applying it.

- **Affiliated business arrangements.** Real estate professionals should be able to invest in related businesses, and “one-stop shopping” can benefit consumers. But such affiliations can create incentives to refer consumers to title companies based on the affiliation alone, and can even conceal illegal kickbacks. We recommend that the Commissioner obtain information about title agents' ownership and business sources, and propose legislation, like existing federal law, prohibiting payments between affiliated businesses unless the affiliation is disclosed to the consumer and the consumer is free to choose another title company. We also recommend that he propose legislation prohibiting real estate brokers from requiring their agents to refer consumers to affiliated title companies, or discriminating among title companies in marketing access to consumers or agents. We recommend that he work with other state and federal regulatory agencies to enforce these laws.
- **Information for consumers.** Consumers will probably continue to rely on middlemen for advice about where to get title insurance, but they should have ready access to objective information about what different insurers will charge them. We recommend that the Commissioner's office provide an interactive premium comparison tool on its website, and seek legislation requiring real estate agents to provide such information to homeowners who list property for sale and buyers who offer to buy it. And we suggest that the Commissioner work with the Department of Financial Institutions, which regulates independent escrow agents, to provide consumers with comparable information about escrow fees charged by title companies and independent agents.
- **Rate regulation.** As the GAO report notes, state insurance regulators have very little information about the actual costs of providing title insurance, and Washington is no exception. Most of those costs are incurred by title agents, who maintain title plants and perform searches. While the Commissioner does not have authority to approve or disapprove changes title insurers may make in premium rates, he does have authority to order modifications in existing rates if he finds that they are “excessive, inadequate, or unfairly discriminatory.” We recommend that the Commissioner's office obtain cost data from title insurers and agents to determine whether any such finding is warranted, and, if so, that he order changes in rates to meet the legal standard. We also recommend that he seek legislation authorizing him to disapprove insurers' future proposed rates, as he can for most other kinds of insurance.
- **Title plant requirements.** Washington is among the few states requiring title companies to have title plants for use in searching titles, and one of only two that requires records dating before 1960. As information technologies evolve in the future, it will be increasingly important to balance the efficiencies they offer against the need to maintain accuracy and quality in searches. We do not all see a current need to change today's title plant requirements, but we recommend

that the Commissioner's office continue to monitor the uses of technology in title plants and searches, and that he recommend changes that may be needed in the future to maintain that balance.

Title insurance serves an essential purpose in an economy where real property changes hands often and is used to secure many different kinds of debt. But this does not mean we are all confident that it is priced appropriately, and we are concerned about the continuing potential for conflict of interest when consumers rely so much on middlemen to recommend title companies. Coordinated enforcement of more realistic rules about inducements and affiliated business arrangements can help reduce abuses. In addition, more effective rate regulation can discourage such improper payments and relationships. We hope these recommendations will help to increase public confidence in an industry that depends on it.

## 2. Introduction

Insurance Commissioner Mike Kreidler appointed the Title Insurance Review Task Force in December 2006 to look broadly at the title insurance industry and recommend any improvements that may be needed to serve consumers better. In announcing appointment of the Task Force, he said, “As the primary champion of consumer rights for our insurance-buying public, I have a duty to make sure that home buyers are being treated fairly and receiving comparable value for the money they spend on title insurance. Quite frankly, I’m wondering if today’s system is still the best and most cost-effective tool for ensuring clear title to a home or piece of property.”<sup>1</sup>

Commissioner Kreidler appointed the following members to the Task Force:

- **Denny Heck** (chair); founder and former president, TVW; former chief of staff to Governor Gardner; former state legislator (Olympia)
- **Bill Daley**, legislative director, Washington Community Action Network (Seattle); former deputy Insurance Commissioner for policy
- **Raymond L. Davis**, president, Pacific Northwest Title Insurance Company (Seattle)
- **Linda S. Hume**, professor of law, University of Washington (Seattle)
- **Gary Kissling**, owner, Fidelity Title Company (Yakima)
- **Bill LaBorde**, program director, Washington Public Interest Research Group (Seattle)
- **Bill Riley**, owner, Gateway Real Estate (Puyallup); vice president-elect for governmental affairs, Washington Association of Realtors
- **Robert H. Shaw**, first vice president, Home Loan Division, Washington Mutual Savings Bank (Seattle)

We met on a monthly basis, in Olympia and Seattle, between January and September 2007, with staff support from the Insurance Commissioner’s office.<sup>2</sup> We began with presentations and discussions about the nature of title insurance, why it is purchased, the market conditions under which it is sold, how it is regulated, and other relevant topics. As our work went on, we identified issues for further examination and discussion. These discussions led, by consensus, to recommendations for public policies that we believe would help make title insurance more affordable by improving competition and consumer choice.

Most of us are affiliated with organizations involved in consumer advocacy, title insurance, real estate, mortgage lending, or other activities. The findings and recommendations in this report reflect our views as a group, after much discussion and careful thought. They do not necessarily fully describe the

1 Office of the Insurance Commissioner, news release, December 18, 2006, available at <http://www.insurance.wa.gov/news/dynamic/newsreleasedetail.asp?offset=0&rcdNum=538>.

2 Staff support was provided by Ann Eddy, administrative assistant; James E. Tompkins, staff attorney; and Richard Van Wagenen, senior policy analyst. Additionally, the Insurance Commissioner’s public affairs staff helped in formatting and publishing this report.

personal opinions of any individual member, or reflect the policy positions of any organization with which any member is affiliated.

### 3. What Title Insurance Is and Does

**Title.** 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns the property and the property itself (“No one has title to that land.”).

2. Legal evidence of a person’s ownership rights in property; an instrument (such as a deed) that constitutes such evidence (“Record your title with the county clerk.”).<sup>3</sup>

Title insurance protects buyers of real estate against discrepancies between the title they think they are buying and what the seller can legally sell.<sup>4</sup> Examples of such possible discrepancies include:

- Liens for unpaid property taxes, homeowner or condominium association dues, construction or repair costs, or debts like child support and court judgments.
- Easements giving access to adjoining owners, public utilities, or others.
- The interests of former co-owners, like spouses or heirs, who might not have participated in the sale.
- The results of fraud or forgery in the ownership history (chain of title) before the sale.
- Clerical errors like misspelled names or incorrectly transcribed legal descriptions.<sup>5</sup>

Title insurance also protects lenders who finance real estate purchases through mortgages against loss of their right to foreclose, if the borrower fails to repay the loan, resulting from title impairments like those listed above. It protects the priority of the lender’s lien over competing ownership claims that might predate the loan.<sup>6</sup>

No law requires anyone to obtain title insurance. However, a property owner who does not have such coverage runs the risk that a title defect might reduce, or even eliminate, the property’s value. While an owner might recover such a loss by suing the seller or someone else, litigation involves costs, delays, and uncertainties. Insurance provides a “deep pocket” to compensate the buyer for title defects, or defend

<sup>3</sup> *Black’s Law Dictionary*, 8<sup>th</sup> ed., West Publishing Co. (2004), p. 1522.

<sup>4</sup> Washington law defines “title insurance” as “insurance of owners of property or others having an interest in real property, against loss by encumbrance, or defective titles, or adverse claim to title, and associated services” (RCW 48.11.100).

<sup>5</sup> Generally title insurance does not protect buyers from risks involving zoning or other government actions, environmental contamination, title defects they created or accepted at purchase, or any risk incurred after purchase (such as a lien filed by a new creditor). Standard title policies do not cover the effects of boundary disputes that may arise based on past actions (like a neighbor’s fence or other “adverse possession”), but buyers or lenders may obtain “extended coverage” protecting against such risks (as lenders generally do).

<sup>6</sup> Generally mortgage lenders have “first lien” rights to foreclose on property, while other creditors may recover debts owed to them only after the mortgage lender has been repaid from the proceeds of selling the property. However, debts for taxes take priority over even mortgages.

the buyer's title against challenges. In Washington, real estate is commonly transferred between sellers and buyers by "warranty deed," in which the seller guarantees to the buyer that the seller actually has the ownership rights being sold. To back up that guarantee, sellers buy title insurance protecting their buyers, in the form of an owner's title policy naming the buyer as the insured. The seller's agreement to buy such insurance is a standard clause of listing agreements with real estate firms.<sup>7</sup>

Mortgage lenders, whether financing an initial purchase or refinancing a previous loan, require borrowers to buy title insurance for them, to protect their interest in the property as security for the loan. In addition, the government-sponsored enterprises dominating the secondary mortgage market<sup>8</sup> require assurance of the lender's right to recover the debt through foreclosure – the kind of assurance a title policy provides. This means, in practice, that the only buyer who does not have to buy a lender's title policy is one who needs no financing from a commercial source.

Thus a purchase and sale of Washington real estate almost always involves two title insurance policies, which are usually issued at the same time by the same insurance company:

- An owner's policy, paid for by the seller, that names the buyer as the insured, and covers losses up to the amount of the purchase price; and
- A lender's policy, paid for by the buyer, that names the lender as the insured, and covers losses up to the amount of the loan (usually 80% or more of the purchase price).

Refinancing a mortgage does not affect the owner's title policy, since there is no change of ownership. But the lender requires the owner to buy a new policy naming the new lender as the insured, covering up to the amount of the new loan.

Title insurance is a useful product, developed over more than a century throughout the United States, to protect all parties to real estate sales and mortgages.<sup>9</sup> Besides protecting the parties to specific transactions, it also helps to keep public real estate records accurate and titles clear. In an economy characterized by widespread private ownership of real estate, frequent transactions in such property, and use of real estate as security for many kinds of debt, title insurance helps to minimize disputes by revealing title defects, providing a chance to correct those that can be corrected, and insuring against

<sup>7</sup> In many other states, buyers purchase their own title insurance. In Washington, it can be assumed that title insurance premiums, like real estate agent commissions and other sellers' closing costs, affect the prices buyers pay for property. So, from an economic standpoint, it makes little difference which consumer – buyer or seller – pays for owner's title insurance.

<sup>8</sup> Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), Government National Mortgage Association (Ginnie Mae). These organizations buy mortgages from lenders, providing cash to finance more purchases, and sell mortgage-backed securities to investors, obtaining cash to buy more mortgages.

<sup>9</sup> The first title insurance company was founded in Pennsylvania in 1876, to insure "the purchasers of real estate and mortgages against losses from defective title, liens and encumbrances," so that "transfer of real estate and real estate securities can be made more speedily and with greater security than heretofore" (American Land Title Association, "Title Insurance: A Comprehensive Overview," p. 3, quoting from the company's initial advertisement).

the effects of those that are not discovered. We believe that title insurance, in some form,<sup>10</sup> is a positive and healthy element of such an economy.

## 4. How and Why Title Insurance Differs from Other Insurance

Title insurance differs in several fundamental ways from most other kinds of insurance that consumers buy, such as life, health, homeowner, and vehicle insurance:

- The risks it protects against arise from events that occurred in the past, rather than events that might occur in the future.

Because it protects against risks due to past rather than future events, insurers and agents can do more to minimize those risks. Premiums include the costs of searching property records in order to minimize subsequent claims – costs that, in the aggregate, greatly exceed what insurers pay when claims rarely occur. Title insurance loss ratios<sup>11</sup> typically average about 5%, compared to 70% or more for other types of insurance. This low loss ratio reflects both the infrequency of claims and the cost of title searches.

- Another result of protecting against past-based losses is that title insurance premiums are paid only once, when a property transaction occurs, rather than periodically. An owner's title policy is valid as long as the owner, or his or her heirs, owns the property, and a lender's policy is valid until the loan is repaid. No additional premium is needed because no additional risk is incurred as time passes.
- Consumers buy title insurance only when they buy, sell, or refinance real estate. Instead of writing recurring checks to a life, health, home, or auto insurance company, the consumer writes a single check at a real estate or loan closing that includes title insurance, as part of a much larger transaction, perhaps a few times in a lifetime. This means that consumers are much less familiar with title insurance than with other kinds of insurance, and likelier to rely on the expertise of others in obtaining it, as they do in other aspects of real estate transactions.

## 5. Characteristics of the Market for Title Insurance

Fourteen companies are licensed to insure titles in Washington.<sup>12</sup> Ten of them, constituting 85% of the statewide market, are owned by three nationwide insurance groups or families – Fidelity National Financial Group, First American Financial Group, and Land America Financial Group. Appendix B

<sup>10</sup> The essentially local nature of real estate means that the title insurance business operates differently in different parts of the country. In some states, buyers pay for their own insurance instead of sellers buying it for them as in Washington. In some states, premiums cover only potential claims-related costs, with title searches paid for separately, while in Washington premiums include title search and related costs. In Iowa, the state operates a unique low-premium "title guaranty program," but relies on title searches and attorneys' opinions which consumers pay for separately. After reviewing information about Iowa's program, and implying no criticism of its operation in that state, we did not see potential savings or other benefits to consumers that would justify creating such a program in Washington.

<sup>11</sup> The loss ratio is the percentage of premium dollars that is paid to settle or adjust claims based on losses.

<sup>12</sup> Twelve companies were selling insurance in 2006. One no longer does so, but maintains its license in order to service and pay claims on policies they sold in the past. Another received its license in 2006 but did not receive premiums that year.

depicts these relationships. Appendix C shows each company's market share in Washington in 2006, and the same information for the larger financial groups, as a percent of premiums paid that year.

In recent years, nationally and in Washington, the title insurance market has consolidated into fewer carriers, with an increasing role for the three nationwide groups. The groups provide many other services related to real estate, such as market data, originating and servicing mortgages, property appraisals, flood reports, home inspection and warranty services, intermediary services for tax-deferred property exchanges, property and casualty insurance, construction loan disbursement, tenant and borrower screening, software, tax consulting, financial planning, offshore processing for lenders, and more. They offer many of these services in other parts of the world as well as the U.S.<sup>13</sup>

In contrast to the concentration of insurers, there are 88 licensed title insurance agents in Washington.<sup>14</sup> The business of title insurance has historically been highly localized because property records, whose examination underlies the business, are kept at the county level.<sup>15</sup> Some agents represent only one insurer, others represent more than one. Their commissions are generally about 90% of premiums, much higher than those for other kinds of insurance where the agent's job is mostly limited to selling. Some "title agencies" or "title companies" are actually branch offices of an insurer, staffed by its employees, rather than independent contractors.

To facilitate searches of property records that counties index by people's names, title companies have developed indexing systems by property description, known as "title plants," which must be updated as new documents are recorded with counties each day. In recent years, technology has made scanned images of newly filed documents available online, and enabled companies to scan older documents into electronic databases.<sup>16</sup> Many title plants now combine electronic databases for more recent years with paper or microfiche copies of older documents ("back plants").<sup>17</sup> As time passes, back plants will be needed less and electronic databases will make it easier to search titles from remote locations, potentially reducing the need for insurers to contract with local agents or operate local offices.<sup>18</sup>

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13 For a picture of the variety and scope of services these groups provide, see their Web sites: (1) <https://www.fntic.com/>; (2) <http://www.firstam.com/index.cfm>; (3) <http://www.landam.com/Home.htm>.

14 An insurer (sometimes called an underwriter) receives premiums, maintains and invests reserves, and pays claims, bearing the financial risk if claim payments exceed premiums and other income. An agent sells insurance to consumers on behalf of one or more insurers, receiving a commission on sales. Agents play an especially important role in the title insurance industry because the title searches they perform make it possible to issue policies. Many of them also handle and pay claims below specified amounts.

15 RCW 65.08.070 authorizes "recording" of documents affecting title to real estate, including deeds, mortgages, and some liens, with county auditors. It effectively requires such recording by making any unrecorded document void, as against any subsequently recorded good-faith transaction. Recording puts the public on notice of the title or claim established by the document.

16 In a few counties, all property records have been scanned. In some, old records back to various dates have been scanned, and in others, only recent records are being scanned. How far back to scan older records into an electronic database is an economic decision for each company in each county.

17 For example, all insurers and agents serving King County share an electronic title plant dating back to 1969, which is maintained by Data Trace, a company owned jointly by First American and LandAmerica. Insurers and agents serving Pierce County share a similar plant dating back to 1984.

18 Most major insurers already conduct some searches in India, Indonesia, the Philippines, and elsewhere, with lower labor cost and greater speed (because time zone differences allow overnight searches). However, there may be quality issues if title examiners are not familiar with local properties and relevant state laws. Whether reduced costs for overseas searches will offset higher claims costs due to less effective searches may become an economic question for insurers. To the extent that premiums reflect costs, it will also be relevant for consumers.

Local title agents have also diversified. In Washington, nearly all of them also perform escrow services, assembling the documents needed to close a real estate sale and transferring the necessary funds among buyers, sellers, lenders, real estate agents, tax authorities, and others. Competing with independent escrow agents, they provide escrow services in most real estate sales in Washington. In the future, title and escrow services could become, in effect, a single industry.

Another trend is the growing role of real estate brokers and others involved in the real estate industry in ownership of title agencies. Owners of three large real estate brokerages in Washington own nearly half of two large title companies, and there are undoubtedly other examples of such interlocking ownership interests. Nationwide, such “affiliated business arrangements” accounted for about 26% of title insurance premiums in 2006, up from 22.3% in 2003.<sup>19</sup>

As noted above, consumers buy title insurance infrequently and as part of a much larger transaction. Generally they lack the expertise and information to comparison-shop as they do for other goods and services, including other kinds of insurance. When they need to buy title insurance, they are typically in the middle of a real estate transaction. As with other aspects of the transaction, they tend to rely on recommendations from real estate agents, mortgage brokers, or other professionals. They may not try to shop independently for title insurance or other closing services because they do not want to disrupt or slow the process.

Title insurers and agents seldom market their products and services directly to consumers as life, health, home, and vehicle insurers do. Instead, they compete for referrals from “middlemen” like real estate agents, mortgage brokers, and loan officers. Since these middlemen are not paying for the insurance themselves, their interests and those of the consumers they serve are not necessarily identical. They may care more about a rapid title search and prompt policy issuance than about what the policy costs. They may have had good or bad experiences working with particular title agents. They may have business or social relationships that affect their recommendations. They, or their employer, may have an affiliated business arrangement with a particular title company. The fact that consumers rely on others for recommendations means that there is potential for conflicts of interest to distort the competitive market and disserve the consumer.

Different title insurers’ premiums in Washington are very similar in a given county for a given amount of coverage. This could result from a lack of price competition, or from such aggressive competition that no insurer can maintain rates higher than others’. A common pattern is for one insurer to change its rates in some way and others to follow suit not long afterwards. Such “shadow pricing” can occur in highly competitive markets like airlines and gas stations, where consumers shop directly and are very price-sensitive, but it could also characterize a lack of competition in a market where consumers rely on others’ recommendations. Appendix D shows the premium rates in effect as of May 2006 for common types of coverage in King, Pierce, and Snohomish Counties.<sup>20</sup>

As Appendix D also shows, title insurance premiums, like those for most other kinds of insurance,

<sup>19</sup> Martin and Ludwick, “Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs: An Economic Analysis,” CapAnalysis Group LLC, October 10, 2006, available at [http://www.respro.org/docs/CAP%20RESPRO%20Study%20\(2\).pdf](http://www.respro.org/docs/CAP%20RESPRO%20Study%20(2).pdf).  
<sup>20</sup> Additional rate filings have occurred since 2006.

vary with the amount of coverage purchased. For example, the premium to insure the owner's title of a \$500,000 house is about twice as high as the corresponding premium for a \$150,000 house. Such linkage between the premium and property value is common throughout the country, as it is for home and auto insurance. However, unlike home and auto insurance, title insurance claims payments account for only about 5% of premiums. Title searches to prevent losses account for the bulk of costs, and the cost of a title search does not necessarily vary with the value of the property.<sup>21</sup> One result of this proportionate premium structure is that buyers and sellers of less expensive homes pay less for title insurance than buyers and sellers of higher-priced property.

Another effect of tying title premiums to property value is that premiums rise and fall along with real estate prices, which in turn relate closely to nationwide mortgage interest rates. The fortunes of the title insurance industry are closely tied to those of the larger real estate industry. Since the early 1990s, as interest rates fell, more homes have been sold at higher prices and more owners have refinanced their mortgages. This real estate and lending boom nearly tripled the total premiums Washington consumers paid for title insurance, from \$120 million in 1995 to \$355 million in 2005. If the current slowdown in real estate markets continues, title company revenues will slow down as well.

It is hard to compare title insurance premiums among states, because of differences in what costs premiums cover, how rates are structured, and underlying real estate prices. However, title insurance seems to cost less in Washington than in most other states for comparable transactions. A 2007 survey of lenders by Bankrate.com ranked Washington 46<sup>th</sup> among the states in title insurance and related costs for a \$200,000 mortgage.<sup>22</sup> A separate 2007 comparison of estimated premiums, using one major company's web-based "calculator," ranked Washington 11<sup>th</sup> among the 19 states where premiums include the cost of title searches and related work.<sup>23</sup>

## 6. How Title Insurance Is Regulated

### (A) State Regulation

Washington's insurance code authorizes the Insurance Commissioner to regulate title insurance along with other kinds of insurance sold in the state. Most of the basic standards that apply to all insurance

21 The cost of a search may vary with how long ago the last title policy was issued, especially by the same company, since title examiners may rely on previous searches rather than duplicating them. This is one reason why lenders' title policies cost less for refinancing transactions than for original loans.

22 See [http://www.bankrate.com/brm/news/mortgages/2007/closing\\_costs\\_overview\\_1.asp?caret=1](http://www.bankrate.com/brm/news/mortgages/2007/closing_costs_overview_1.asp?caret=1). This survey was based on reviewing estimates provided on the Web sites of six to nine on-line lenders for a \$200,000 loan to a borrower paying 20% down for a single-family house in the largest city of each state. While Washington ranked 38<sup>th</sup> in overall closing costs, it ranked 46<sup>th</sup> in title costs – 28% lower than the national average.

23 This survey used First American Title Company's Title Fee Calculator ([www.titlefees.firstam.com/Titlefees.asp](http://www.titlefees.firstam.com/Titlefees.asp)), the only one found on the Internet covering all states. It compared total premiums for both an owner's policy and a simultaneously issued lender's policy on a \$374,000 residence (the 2005 median price in King County), assuming an 80% mortgage. In most states, title insurance premiums exclude the costs of title searches and other services related to issuing a policy, so the relevant comparison is to the 19 states, including Washington, where premiums are "all inclusive." However, even these "all inclusive" premiums may not cover the same services in every such state. First American's Web-based tool was not designed to compare title costs among states, but to help consumers in any given state estimate what that company would charge them.

also apply to title insurance – insurers and agents must be licensed,<sup>24</sup> insurers must file periodic financial reports,<sup>25</sup> rates must not be “excessive, inadequate, or unfairly discriminatory,”<sup>26</sup> approved policy forms must be used,<sup>27</sup> “unfair methods of competition” and “unfair or deceptive acts or practices” are outlawed.<sup>28</sup> The law prohibits insurers or their agents from providing a rebate or “inducement to insurance,” including anything worth more than \$25, to a customer.<sup>29</sup>

The code also includes specific provisions for title insurance, such as:

- Title insurers and agents must “own or lease and maintain” a “complete set of tract indexes” (title plant) for each county where property whose title they insure is located.<sup>30</sup> The Commissioner’s office inspects new title plants for compliance with its standards.<sup>31</sup>
- Title insurers may not transact any other kind of insurance.<sup>32</sup>
- By regulation, the Commissioner prohibits title insurers and agents from providing anything worth more than \$25 in a 12-month period, to anyone who may be in a position to influence a consumer’s choice of insurer or agent, “as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.”<sup>33</sup>
- Like other insurers, title insurers must file their rates (on which premiums are based) and policy forms with the Commissioner,<sup>34</sup> including changes they plan to make. But the Commissioner’s authority to regulate title insurance rates is structured quite differently from his authority over rates for most other kinds of insurance:
  - Other insurers must file, along with their proposed rates and forms, “sufficient information to permit the commissioner to determine whether [the rate schedule] meets the requirements of this chapter.”<sup>35</sup> Title insurers need not file any information justifying their proposed rates and forms.<sup>36</sup> This means the filings provide little or no information with which to evaluate the rates.

24 RCW 48.05.030, 48.17.060.

25 RCW 48.05.073, 48.05.250(1), and 48.05.400(1).

26 RCW 48.29.140(1).

27 RCW 48.18.100(1).

28 RCW 48.30.010. This section authorizes the Commissioner to make rules defining and prohibiting “methods of competition and other acts and practices” as “unfair or deceptive” in addition to those specified in statute. However, the prohibitions apply only to insurers and their agents.

29 RCW 48.30.140, 48.30.150.

30 RCW 48.29.020(2), 48.29.160.

31 WAC 284-16-030. Washington and Idaho are the only states requiring title plants to include documents dating back to the original land grants from the U.S. government, typically in the 19<sup>th</sup> century. No other states require title plants to include documents predating 1960.

32 RCW 48.05.330(3). This is known as a “monoline” requirement, prohibiting title insurers from offering property-casualty, health, or other “lines” of insurance. It effectively prohibits a company that offers other kinds of insurance from offering title insurance, unless it forms a subsidiary to operate with a separate title insurance license.

33 WAC 284-30-800, adopted in 1988 under the Commissioner’s statutory authority in RCW 48.30.010(2) to define prohibited unfair practices beyond those otherwise prohibited in statute. This prohibition does not apply to providing certain information about specific properties – a legal description, the most recently recorded deed, map, and tax information – as a service to real estate agents or lenders. It also does not apply to payments for services actually provided, such as advertising.

34 RCW 48.29.140.

35 RCW 48.19.040(2).

36 RCW 48.29.140(2).

- The Commissioner may disapprove changes in other insurers' rates within 30 days after filing, subject to another 15 days' extension.<sup>37</sup> He has no authority to disapprove title insurance rate filings as such.<sup>38</sup>
- However, if the Commissioner finds, after a hearing, that a title insurance rate is "excessive, or inadequate, or unfairly discriminatory," he can "order the modification" of the rate on a prospective basis.<sup>39</sup> This authority is independent of the rate-filing process and has not been used in at least 30 years, if ever.<sup>40</sup> Using it would require the Commissioner's office to undertake an extensive fact-finding process.
- The Commissioner has broad authority to investigate possible violations of the insurance code, and "conduct examinations, investigations, hearings ... useful and proper for the efficient administration of any provision of this code."<sup>41</sup> In addition, he may "examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer"<sup>42</sup> and "examine the accounts, records, documents, and transactions of ... any insurance agent."<sup>43</sup>

The Commissioner also regulates escrow services performed by title companies, which must meet financial requirements, segregate funds, keep separate records, and not engage in specified deceptive practices.<sup>44</sup> The state Department of Financial Institutions regulates the 182 independent escrow agencies that do not also sell title insurance.<sup>45</sup>

## **(B) Federal Regulation**

Generally speaking, the insurance industry is not federally regulated. However, title companies are among those providing "settlement services" whose activities are covered by the federal Real Estate Settlement Procedures Act (RESPA).<sup>46</sup> This 1974 law applies to residential real estate sales financed by "federally regulated mortgage loans," a definition that includes virtually all mortgages for homebuyers. Among other provisions, RESPA:

- Requires disclosure to borrowers of all costs and charges they and their sellers incur, including title insurance and other closing costs.<sup>47</sup>

37 RCW 48.19.060. Some non-title insurers may use rates before filing, subject to possible disapproval. Insurers whose filings are disapproved have a right to a hearing and judicial review.

38 RCW 48.29.140(2). Title insurance rates take effect 15 days after filing.

39 RCW 48.29.140(3).

40 The statute governing title insurance premium rates, RCW 48.29.140, has not been amended since enactment in 1947. Commissioner Marquardt held a hearing under the statute in 1979 but made no determinations about rates.

41 RCW 48.02.060(3).

42 RCW 48.03.010(1).

43 RCW 48.03.020.

44 RCW 48.29.155, 48.29.190, 48.29.200.

45 DFI's regulatory authority over escrow agents is in chapter 18.44 RCW.

46 12 USC 2601-2617, and Regulation X of the Department of Housing and Urban Development (24 CFR 3500). Other covered "settlement services" include attorneys' services, surveys, credit reports, appraisals, pest inspections, real estate agent or broker services, loan origination, and escrow services (12 USC 2602(3)). "Closing" and "settlement" are synonymous terms used in different states.

47 12 USC 2603. Costs are disclosed in a federally prescribed "settlement statement" or "HUD-1" document that all buyer-borrowers must receive.

- Requires lenders to provide borrowers with a booklet, prepared by the Department of Housing and Urban Development (HUD), which explains the closing process, related costs, and the choices the borrowers have in obtaining closing services.<sup>48</sup>
- Prohibits anyone from giving or receiving any “fee, kickback, or thing of value” based on any agreement or understanding that closing-related business (such as title insurance) will be referred to anyone.<sup>49</sup> This prohibition does *not* apply to:
  - Charges for services actually provided, or
  - “Affiliated business arrangements” involving common ownership of closing-related businesses (such as real estate agencies and title companies), where the affiliation has been disclosed to the borrower and the borrower knows that he or she can choose a different service provider,<sup>50</sup> or
  - “Normal promotional and educational activities” that are not conditioned on referral of business and do not defray expenses that would otherwise be incurred.<sup>51</sup>

## 7. Recent Developments in Title Insurance

### (A) Regulatory Focus on “Inducements” and “Affiliated Business Arrangements”

Washington and most other states have laws prohibiting title companies from providing “inducements” to real estate agents or other middlemen who are in a position to refer consumers to them. In recent years, HUD and various states’ insurance regulators have identified different kinds of such payments, some of which have involved business affiliations between title companies and middlemen. In 2004, the Washington Insurance Commissioner’s office worked with other states to stop some title insurers’ practice of buying “reinsurance,” for half the premiums consumers had paid, from other companies owned by middlemen who had referred business to them.<sup>52</sup> About 600 Washington consumers received partial refunds of their title insurance premiums as part of a multi-state settlement.

In 2005, the Commissioner’s office began to investigate compliance with the state’s anti-inducement rule, examining 18 months of employee expense reports and general ledgers of the largest title companies in King, Pierce, and Snohomish Counties. This examination revealed many instances where companies

48 12 USC 2604. This booklet is available online at <http://www.hud.gov/offices/hsg/sfh/res/stcosts.pdf>.

49 12 USC 2607(a). Violating this prohibition is punishable by criminal fine and/or imprisonment, violators are civilly liable to consumers for triple damages, and injunctions may be sought in federal court by HUD, state attorneys general, and state insurance commissioners (12 USC 2607(d)).

50 12 USC 2607(c). An “affiliated business arrangement” is defined in 12 USC 2602(7) as “an arrangement in which a person who is in a position to refer [real estate settlement] business..., or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.”

51 24 CFR 3500.14(g)(vi). This exception was created by HUD regulation as authorized in 12 USC 2607(c)(5).

52 Reinsurance is a legitimate practice in the insurance industry, spreading risk beyond individual companies. However, in these cases the payments were far greater than the risk of loss and the “reinsurers” were builders, real estate agents, and lenders.

provided goods or services to middlemen, including co-advertising,<sup>53</sup> refreshments at educational classes and “broker opens,”<sup>54</sup> gifts, golf tournament sponsorships, parties, ski and shopping trips, sports tickets, meals, and others, at costs exceeding the \$25 per person per year limit. “While some companies made no apparent effort to comply with state law and regulations, others were found to be at least attempting to comply with statutory requirements while nevertheless committing violations,” according to the investigation report. “The bottom-line conclusion is that violations occur throughout this industry, ranging from egregious breaches to relatively minor transgressions.”<sup>55</sup>

Recognizing that the anti-inducement rule had been unenforced for many years, the Commissioner’s office did not sanction the companies, but published a Technical Assistance Advisory (TAA) to help them and others comply in the future.<sup>56</sup> The TAA addresses various questions about terminology, application of the \$25 limit, and pro-rating of event costs. This year, the Commissioner’s office has examined other title company records to identify possible violations. The Commissioner found only a few minor violations among the companies previously examined,<sup>57</sup> but numerous violations by other companies. In one case, he ordered a company to stop “lavishing illegal gifts and incentives” on middlemen and proposed fines totaling nearly \$2 million. He has proposed smaller fines in other cases.<sup>58</sup> These investigations are expected to continue.<sup>59</sup>

After the investigation report was published in 2006, several consumers filed a lawsuit against various companies identified in the report. The suit, now in federal court in Seattle, seeks damages based on the portions of consumers’ premiums that were allegedly passed on illegally to middlemen.<sup>60</sup> The title companies sought to dismiss the suit based in part on the fact that the rates they charged had been duly filed with the Insurance Commissioner,<sup>61</sup> but the court denied the motion to dismiss.<sup>62</sup>

53 Co-advertising involves a title company paying all, or a disproportionate share of, the cost of ad space shared with a real estate agent, such as in a “homes for sale” booklet.

54 These are gatherings at newly listed homes to introduce them to other real estate agents who may know of potential buyers.

55 Washington State Office of the Insurance Commissioner, “An Investigation into the Use of Incentives and Inducements by Title Insurance Companies,” October 2006, p. 3. The full report is available at [http://www.insurance.wa.gov/publications/news/Investigation\\_Title\\_Insurance.pdf](http://www.insurance.wa.gov/publications/news/Investigation_Title_Insurance.pdf).

56 Washington State Office of the Insurance Commissioner, “Technical Assistance Advisory T 06 06,” November 21, 2006, available at <http://www.insurance.wa.gov/oicfiles/techadvisories/T06-06.pdf>.

57 Office of Insurance Commissioner, “Title Insurance Report,” July 2007, available at [http://www.insurance.wa.gov/publications/news/2129-report\\_titlejuly2007.pdf](http://www.insurance.wa.gov/publications/news/2129-report_titlejuly2007.pdf).

58 See order at <http://www.insurance.wa.gov/oicfiles/orders/2007orders/D07-288.pdf>, news release at <http://www.insurance.wa.gov/news/dynamic/newsreleasedetail.asp?rcdNum=563> (August 27, 2007), news release at <http://www.insurance.wa.gov/news/dynamic/newsreleasedetail.asp?rcdNum=571> (September 18, 2007), and report at [http://www.insurance.wa.gov/publications/news/2142-report\\_title3.pdf](http://www.insurance.wa.gov/publications/news/2142-report_title3.pdf) (September 18, 2007). RCW 48.05.185 entitles an insurer to a hearing before any fine can be imposed.

59 The task force has played no part in the enforcement activities of the Commissioner’s office. Reports of those activities are available at [http://www.insurance.wa.gov/consumers/title/title\\_insurance.asp](http://www.insurance.wa.gov/consumers/title/title_insurance.asp).

60 *Blaylock et al. v. First American et al.*, No. C06-1667 JCC, U.S. District Court, Western District of Washington. The Insurance Commissioner’s office is not a party in this lawsuit.

61 The companies invoked the “filed rate doctrine,” initially developed in federal courts to protect businesses whose rates are regulated from subsequent consumer claims that those rates are too high. The doctrine defers to the regulatory agencies whose authority comes from the legislative branch.

62 Order filed August 8, 2007 in *Blaylock v. First American*, *supra*.

## (B) GAO Report

In 2006, members of Congress asked the Government Accountability Office (GAO) to investigate and report on various aspects of the title insurance industry. GAO staff reviewed available studies and reports, interviewed industry representatives and regulators, analyzed data from multiple sources, and reviewed in depth the laws and market practices in six diverse states (not including Washington). The GAO's report,<sup>63</sup> released in April 2007, included several major findings and recommendations:

- While there are few nationwide title insurers, there are great variations among states in the way insurance is provided, including differences in insurer-agent relationships, how title searches are conducted, and how premiums are structured. Affiliated business arrangements are widespread and increasing.<sup>64</sup>
- Several characteristics of the title industry raise questions about how competitive it is, including the lack of direct shopping by or marketing to consumers, the uncovering of activities that may reduce competition and indicate excessive prices, and the potential that premiums, tied to coverage amounts, have risen faster than insurer and agent costs.<sup>65</sup>
- State regulators review rates without fully assessing insurers' costs,<sup>66</sup> conduct little oversight and regulation of title agents, enforce anti-kickback laws unevenly, and seldom coordinate with other state agencies that regulate real estate agents and lenders.<sup>67</sup>
- HUD should be authorized to levy civil fines for RESPA violations, and should coordinate more closely with state insurance, lending, and real estate regulators for more effective enforcement of RESPA and state laws.<sup>68</sup>
- State regulators should:
  - Strengthen requirements for capitalization, licensing, and continuing education of title agents;
  - Collect and analyze more information about agents' costs and revenues;
  - Facilitate price comparisons through websites and other means; and
  - Improve cooperation with real estate and other regulators in oversight of title insurance sale and marketing practices.<sup>69</sup>

63 Government Accountability Office, "Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers," GAO-07-401, April 2007 (hereafter cited as "GAO Report"). The full report is available at <http://www.gao.gov/new.items/d07401.pdf>.

64 GAO Report, pp. 11-21.

65 GAO Report, pp. 21-40.

66 The GAO found that typical title agent commissions nationwide are 80% to 90% of premium. Taking into account sales by "direct branch" offices whose staffs receive salaries rather than commissions, the GAO found that about 70% of nationwide premium costs go to agent commissions. (GAO Report, p. 38).

67 GAO Report, pp. 41-49.

68 HUD had 19 full-time employees enforcing RESPA nationwide in 2006 (up from five in 2001). They can only respond to complaints and pursue a few large cases. Some state regulators told GAO that HUD staff did not always follow up on forwarded cases (GAO Report, p. 50).

69 GAO Report, p. 56.

## 8. Issues and Recommendations

The task force members examined and discussed a variety of subjects and issues related to title insurance. We identified four areas in which we believe changes in public policy would benefit consumers, and a fifth that deserves continuing attention. Our findings and recommendations in each of those areas are discussed in this section.

### (A) Inducements

Since consumers so often look to real estate agents or lenders for referrals to title companies, the companies have reason to market their services primarily to those middlemen, rather than directly to consumers. Since prices vary so little among companies, the marketing focuses on service quality and working relationships. As with other relationship-based businesses, marketing sometimes involves providing minor business services as a “sample” of the quality the company can provide.<sup>70</sup> It can also involve interactions in social settings, such as business lunches or hosted events.

We discussed whether it is realistic to expect title companies to market directly to consumers. The kind of marketing that life, health, and auto insurers do, with extensive advertising in mass media, would be costly (ultimately to consumers) and seem an unwise investment for companies whose product is so seldom needed by any given consumer. Increased enforcement of anti-inducement rules, which the Insurance Commissioner’s office is now undertaking, might encourage title companies to do more to seek business directly from consumers.<sup>71</sup> However, it still does not seem realistic to expect that consumers will no longer ask real estate agents or other middlemen for advice about title companies, or that the companies will no longer cultivate their relationships with those professionals.

In that context, the Insurance Commissioner’s current rule prohibiting all “inducements” to middlemen that exceed \$25 per person per year seems both arbitrary and inadequate. Requiring title companies to charge small amounts for minor business services, or to track costs of business-related social events against an annual limit, does not seem a productive use of company resources (which consumers pay for) or an especially valuable enforcement tool. To prevent abuses, there must be limits on what title companies can do for middlemen. The question is how those limits should be structured and enforced.

In the 1990s, at the request of title companies, the insurance regulators in Oregon and Idaho adopted detailed rules defining exceptions to their states’ broad prohibitions on inducements. These rules allow limited expenditures for meals, social events, business services, and similar marketing activities

<sup>70</sup> Examples are “property profiles”, including basic description, map, current deed, and tax information on specific parcels; information about “comparable” sales in the same neighborhood as a newly listed parcel; and “neighborhood reports” with demographic and economic information about areas where specific properties are for sale. Title companies can obtain these from their title plants or from other data providers.

<sup>71</sup> For example, title companies could advertise in newspaper real estate sections or “homes for sale” booklets, independently of ads for real estate agents or specific properties.

aimed at business producers.<sup>72</sup> They have not eliminated abuses, or recurring issues of interpretation, but they have given regulators, title companies, and others greater certainty about what is and is not allowed, recognizing that building and maintaining relationships among professionals is a legitimate characteristic of this industry.

Washington's anti-inducement policy, as it applies to title companies and middlemen, is embodied in a regulation of the Insurance Commissioner, WAC 284-30-800. We recommend that the Commissioner amend this rule to define more realistically the kinds of activities and amounts of expenditure to be permitted and prohibited. The rule should broadly prohibit title insurers or agents from providing anything of value to anyone in a position to refer title business, with specified exceptions that include payment for *bona fide* services and other transfers that constitute normal promotional and educational activities.<sup>73</sup> The Oregon and Idaho rules could be useful reference points in considering changes to Washington's rule, but need not be exact models. We suggest that the amended rule be consistent with HUD's regulations interpreting RESPA's anti-kickback provisions, and include a provision that a violation of RESPA standards also violates the state rule. Such a provision could facilitate joint enforcement efforts with HUD.

In revising the anti-inducement rule, we suggest that the Commissioner's office work with representatives of the title and real estate industries, as well as consumer advocates, before and during the formal rule-making process. Of course, the Commissioner alone would determine what revisions to make, but involving interested parties could improve the quality and usefulness of more specific standards, leading to greater compliance.

Inducements are a two-way street. Title agents can feel pressure from middlemen to provide services and hosting that they might not provide voluntarily. It is just as wrong for a middleman to solicit improper services or payments as for a title company to provide them. The Insurance Commissioner has no regulatory authority over these middlemen, but we believe it would be helpful if the state agencies that regulate them adopted and enforced parallel rules prohibiting solicitation or receipt from title companies of things of value not permitted under the Commissioner's rules. We recommend that the Commissioner begin discussions with the Department of Licensing (which regulates real estate brokers and agents) and the Department of Financial Institutions (which regulates mortgage brokers and some lenders) about coordinated rules and enforcement. This would be consistent with the GAO's recommendation that state regulators work more closely together to protect consumers from real and perceived conflicts of interest.<sup>74</sup>

Like the existing rule, a revised rule would still require interpretation in some instances, and the limited resources available for enforcement should be effectively targeted. We believe an ongoing relationship between the Commissioner's office and the title and real estate industries would be useful to all. We suggest that, as in Oregon and Idaho, staff of the Commissioner's office meet regularly with industry

72 OAR 836-080-0305 through -0370, IDAPA 18.01.56.000 through .021. Appendix E summarizes these rules. Providing this summary does not imply our endorsement of the specific rules as models for Washington.

73 Expenditure limits should be adjusted periodically for inflation. Under Oregon's rules, the regulator annually notifies the state's Land Title Association of the next year's limits, based on the Consumer Price Index for the Portland area (OAR 836-080-0345).

74 GAO Report, p. 56.

representatives to address issues of interpretation, patterns of violations, and educational needs. We also believe that the Washington Land Title Association and the Washington Association of Realtors should take active roles in educating their members about the standards, helping the Commissioner's office enforce them, and policing their own industries through codes of ethics.

### **(B) Affiliated Business Arrangements**

It is not surprising that professionals in the real estate industry often invest in real estate-related businesses other than their own. For example, nearly all title agents also offer escrow services because it can be convenient, efficient, and profitable to provide both sets of services together, benefiting both consumers and companies.<sup>75</sup> For similar reasons, some owners of real estate brokerages also own portions of title agencies. However, consumers' reliance on real estate agents and other middlemen to recommend title companies presents greater potential for conflict of interest when the middleman has an ownership interest in a title company. For example, a real estate broker who owns a significant share of a title company has obvious incentives to steer his or her agents and their clients to that company and, if possible, away from competitors.<sup>76</sup> Even more troubling is the potential to create "sham" affiliates as a way of laundering payments for non-existent services, as regulators in other states have found.<sup>77</sup>

The Commissioner's office now receives no information routinely about ownership of title agencies, or about what portion of their business comes from owners (often referred to as "controlled business").<sup>78</sup> We recommend that the Commissioner obtain from title agents current information about their ownership and sources of business,<sup>79</sup> and that he propose legislation requiring title agents to report

<sup>75</sup> Escrow services offered by title agents are regulated by the Insurance Commissioner under RCW 48.29.155, 48.29.190, and 48.29.200. Independent escrow agents, who do not sell title insurance, are regulated by the Department of Financial Institutions under chapter 18.44 RCW.

<sup>76</sup> The Insurance Commissioner's office has received reports that some real estate firms that partially own title companies discourage their agents from referring clients to competing title companies. Some of these reports come from the competing title companies, others from real estate agents who feel pressure to refer their clients to their broker's title agency. Alleged tactics include waiving "desk fees" for agents who steer clients to their broker's title company, blocking e-mails from competing title companies to a broker's agents, and denying competing title companies access to those agents' mailboxes or offices. One major real estate brokerage notified title companies in 2005 that, because it had a business relationship with a particular title company, it would not distribute promotional material that other companies provided to it. In 2007, the same real estate firm notified its agents that the title company it owns would provide them for free a variety of "customer services" (such as aerial photos, mailing labels, market analysis reports, and copies of recorded documents) for which it would be charging other real estate agents, and for which other title companies would also be imposing charges, under the Commissioner's rule limiting "inducements."

<sup>77</sup> In one recent example, Minnesota regulators uncovered 34 "joint ventures," involving more than 600 real estate brokers and agents, mortgage originators, builders, and developers, who had each invested \$500 in companies that provided title and closing services only to the investors' customers, and paid the investors "dividends" based on 80% of profit, while a major title insurer performed the services and assumed the risks in return for a 20% share. See <http://www.state.mn.us/portal/mn/jsp/common/content/include/contentitem.jsp?contentid=536913586>.

<sup>78</sup> The NAIC's Title Insurance Agent Model Act defines "controlled business" as "any portion of a title insurance agent's business ... that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title insurance agent" (Sec. 2(E)). The model act defines a "producer" as "a person, including an officer, director or owner of 5% or more of the equity or capital of any person, engaged ... in the trade, business, occupation, or profession of (1) buying or selling interests in real property; making loans secured by interests in real property; or (3) acting as a broker, agent, representative or attorney of a person who buys or sells and interest in real property or who lends or borrows money with the interest as security" (Sec. 2(K)). It defines such a person's "financial interest" as "a direct or indirect interest, legal or beneficial, where the holder is or will be entitled to 5% or more of the net profits or net worth of the entity in which the interest is held" (Sec. 2(G)).

<sup>79</sup> RCW 48.02.060(3) authorizes him to "conduct examinations, investigations, hearings ... useful and proper for the efficient administration of any provision of this code."

their ownership and business sources periodically as a condition of licensing. Such information can help identify ownership and business referral patterns that might give rise to concerns about illegal inducements and other unfair or deceptive practices.

We do not believe that real estate brokers or other middlemen should be prohibited from having ownership interests in title companies, or from recommending particular title companies to their clients upon request.<sup>80</sup> “One-stop shopping” for related real estate services can benefit consumers by offering cost efficiencies and helping to resolve closing-related problems more rapidly.<sup>81</sup> However, we also believe that title company ownership should not affect consumers’ freedom to choose among competing companies, based on price, convenience, or whatever else matters to them.

The federal Real Estate Settlement Procedures Act (RESPA) seeks to balance these considerations by requiring title companies, real estate firms, lenders, and other “settlement service providers” to disclose overlapping ownership interests to consumers, and by prohibiting them from restricting consumers’ choice of service providers.<sup>82</sup> There are no parallel provisions in state law. We recommend that the Commissioner seek enactment of state legislation requiring middlemen to disclose to consumers, at the outset of any contractual relationship and again at the time the consumer chooses a title company, any ownership interest they have in particular companies. Like RESPA, the state legislation should allow payments among such affiliated businesses only for services actually performed or as a return on ownership interest,<sup>83</sup> only after the required disclosure, and only when the consumer’s choice of title company has not been restricted as a condition of receiving other services. To ensure consistent interpretation and facilitate coordinated enforcement with HUD, the legislation should include language making any violation of RESPA’s counterpart provisions a violation of state law as well.<sup>84</sup>

While consumers should have free choice of title companies, we are sure they will continue to seek recommendations from real estate agents and other middlemen. Any such recommendation should be based on the consumer’s best interest, not on whether the title company is affiliated with the middleman. Systematic “steering” of business to favored title companies seems to us just as improper when motivated by business affiliation as it is when motivated by an improper “inducement” like a payment or a social benefit. Although the Insurance Commissioner does not regulate real estate brokers and agents, we recommend that he seek legislation prohibiting brokers from requiring or creating

<sup>80</sup> No state prohibits such affiliations or recommendations, although many restrict the percentage of business title companies can accept from referrals by their owners.

<sup>81</sup> Studies sponsored by the Real Estate Services Providers Council (RESPRO), a national organization representing affiliated businesses, have found that affiliations do not increase consumers’ closing costs. The most recent study, in October 2006, analyzed data from 2,236 closings in nine states (not including Washington) in 2003 and 2005. Using regression analysis to isolate any effect of business affiliation on cost to consumers, the study found that affiliations did not affect either title insurance premiums or other title-related closing costs (Martin and Ludwick, “Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs: An Economic Analysis,” CapAnalysis Group LLC, October 10, 2006, available at [http://www.respro.org/docs/CAP%20RESPRO%20Study%20\(2\).pdf](http://www.respro.org/docs/CAP%20RESPRO%20Study%20(2).pdf)). RESPRO-sponsored studies have not identified any cost saving to consumers due to affiliations, but have assumed that the convenience of “one-stop shopping” makes affiliations beneficial in a less quantifiable sense.

<sup>82</sup> 12 USC 2607(c). This provision makes an exception to RESPA’s general prohibition of “kickbacks,” to allow payments between affiliates that reflect the cost of services actually performed or a return on ownership interest, but only in cases where the required disclosure has been made and the consumer understands that he or she is not required to choose the affiliated title company.

<sup>83</sup> Such an allowable return would be based on each owner’s percentage share of the affiliated company, not on the number of referrals received from the owner.

<sup>84</sup> RESPA does not preclude state laws that restrict affiliated business arrangements more stringently than RESPA itself does (12 USC 2607(d)(6)).

incentives or inducements for their agents, directly or through contract conditions, to refer clients to any title company affiliated with the broker, or not to refer them to other companies. The legislation should also prohibit brokers from discriminating among title company representatives with respect to access to their agents or clients for marketing purposes.

To be effective, laws supporting consumers' free choice of title companies will have to be enforced by the Department of Licensing (as to real estate brokers and agents) and the Department of Financial Institutions (as to mortgage brokers and state-chartered lenders), as well as by the Insurance Commissioner. If such legislation is enacted, we recommend that the Commissioner work closely with these agencies, as well as with HUD, to share information about possible violations and coordinate enforcement activities.

### **(C) Information for Consumers**

Consumers will continue to rely on their real estate agents and other middlemen for advice about where to obtain title insurance. Those professionals can and often do provide valuable advice, and consumers may have more confidence in it if the other recommendations in this report are adopted. However, they would also benefit from better access to accurate, unbiased information about title insurance costs. The Insurance Commissioner's office recently published a two-page fact sheet explaining how title insurance works and when it is needed, and emphasizing the importance of shopping for the best price and service.<sup>85</sup> This is a helpful resource, but most consumers do not know it is available, and it does not include specific information about title insurance costs.

We believe all consumers should receive this kind of information at a time when it is most useful to them. In addition to the existing fact sheet, we recommend that the Commissioner's office prepare comparative information about premiums charged by each title insurer and provide that information on the office's Web site, in a format that allows a consumer to compare prices among insurers in any county for a given residential property price range.<sup>86</sup> Since various discounts and surcharges may apply, depending on the type of transaction and coverage, the comparison would have to be simplified and should be so labeled.<sup>87</sup> We also recommend that the Commissioner seek enactment of legislation requiring all real estate agents to provide a printout of the relevant price information from the Insurance Commissioner's Web site to homeowners when they list property for sale, and to buyers when they make an earnest money offer to buy.

<sup>85</sup> This fact sheet is available at [http://www.insurance.wa.gov/publications/factsheets/Title\\_Insurance.pdf](http://www.insurance.wa.gov/publications/factsheets/Title_Insurance.pdf).

<sup>86</sup> The Web site of the Colorado Division of Insurance includes such a comparison tool, at [http://www.dora.state.co.us/pls/real/Ins\\_Survey\\_Reports.Report\\_Selection\\_Criteria?p\\_report\\_id=Title%20Insurance%20Premiums&p\\_label=](http://www.dora.state.co.us/pls/real/Ins_Survey_Reports.Report_Selection_Criteria?p_report_id=Title%20Insurance%20Premiums&p_label=).

<sup>87</sup> The publication should indicate clearly that it provides only general information about premiums, and that only a title agent can provide a definitive quote for a specific transaction.

Many title companies also offer escrow services, competing with independent escrow companies, and charge separate fees. Since consumers should have similar price information about escrow fees, we recommend that the Commissioner work with the Department of Financial Institutions to propose legislation requiring the companies they regulate to report their escrow charges in a comparable format, so they can be included in website information provided to consumers. Such price information could help consumers decide whether to obtain title and escrow services from the same source or use one of the many independent escrow agents.<sup>88</sup>

Consumers refinancing their homes could also benefit from timely price comparisons for the title insurance they must buy for their new lenders. Since many mortgage lenders are not state-regulated, any policies toward this goal should come from federal authorities. HUD has been trying to develop better ways to inform consumers about closing costs, and we recommend that the Commissioner support those efforts.

#### **(D) Rate Regulation**

Like the laws of other states, Washington's insurance code prohibits title insurance premium rates that are "excessive, inadequate, or unfairly discriminatory."<sup>89</sup> It requires insurers to file their rates with the Commissioner, but not to justify them with information about the costs on which they are based, including claim payments, agent commissions, or insurers' operations.<sup>90</sup> The Commissioner's office receives periodic financial reports from insurers, independent of rate filings,<sup>91</sup> but these reports provide little information to help determine whether premium rates are too high, too low, or unfair.<sup>92</sup> They help to show whether each insurer has enough assets and reserves to maintain its solvency – an important regulatory goal, but not the only consideration in evaluating the premiums consumers pay.

Although Washington title agents retain about 90% of the premiums when they sell insurance, the Commissioner's office has no specific information on how they spend this revenue. Agents must pay for maintaining title plants, searching and examining titles when property transactions occur, issuing policies, marketing their services, office overhead, taxes, and other costs, before seeing a profit, but they are not required to report these expenditures, either in the aggregate or on a per-policy basis, to

88 Information the Commissioner's office provides about title companies' escrow charges should be accompanied by a statement that consumers may obtain comparable escrow services from independent escrow agents who do not sell title insurance and are not regulated by the Commissioner's office. If comparable information about independent escrow agents' charges is readily available, the Commissioner's Web site could include it or a link to its source, so that consumers can compare escrow costs across as wide a range of providers as possible.

89 48.29.140(1). This is the same prohibition as for other kinds of insurance under RCW 48.19.020.

90 Compare RCW 48.29.140(2), which applies to title insurance, with RCW 48.19.040, which requires property/casualty and other insurers to provide "sufficient information to permit the commissioner to determine whether [the proposed rate] meets the requirements of this chapter."

91 RCW 48.05.073, 48.05.250(1), and 48.05.400(1) require insurers to file annual and other financial reports with the Commissioner (if domiciled in Washington) or the National Association of Insurance Commissioners (if domiciled elsewhere).

92 They consist mainly of nationwide data on premium and other income, assets, operating expenditures, and claims payments. Only premium and claim payment information is broken down by state. The annual and quarterly reports of Pacific Northwest Title Insurance Company, the only Washington-domiciled title insurer, are available at <https://fortress.wa.gov/oic/annrptpublic/AnnRptPublicClient/AnnRptPublicClient.aspx>. Corresponding reports of the insurers doing business here but domiciled elsewhere are public records available for inspection and copying through the Insurance Commissioner's office, but are not posted on the Web site.

the Commissioner's office. Because only about 5% of insurers' premium revenue goes to payment of claims, the kind of analysis that actuaries apply to other types of insurance, where loss ratios are much higher, is much less helpful in assessing whether premiums are appropriate.

Since the Commissioner's office does not receive information to justify specific title premium rates, or sufficient information to determine most of the costs those rates cover, and lacks authority to approve or disapprove rates in conjunction with the filing process, it has not reviewed filings of title insurance rates as closely as those for other kinds of insurance. In Washington, filed title rates are reviewed essentially for completeness, not for whether they are excessive, inadequate, or unfairly discriminatory.<sup>93</sup>

Even in states whose insurance regulators have more authority over rates than in Washington, the Government Accountability Office found that regulators seldom review the costs agents incur to determine whether their commissions, reflected in premiums, are in line with those costs.<sup>94</sup> The GAO recommended that state regulators collect data that would allow in-depth analyses of agents' costs.<sup>95</sup>

We do not have an opinion, as a group, on whether existing title insurance rates in Washington are higher or lower than they should be, or are fair or unfair to different kinds of consumers. However, we agree with the GAO that a more extensive inquiry into these rates should take place, for these reasons:

- The marketing to middlemen that characterizes title insurance, and the ownership interests some middlemen have in title companies, both make it possible that some consumers are referred to title companies without the same regard to price that the consumers would apply if they relied less on the expertise of others.
- Washington title insurers' premium income tripled between 1995 and 2005, reflecting higher home prices, declining interest rates, and resulting growth in sales and refinancings. Since the Commissioner's office receives little information about insurers' costs, and none about agents' costs, it is not clear whether those costs have risen at a comparable rate. While the housing market has slowed down recently, and its future cannot be known, the relationship between premiums and costs should be explored.
- It is not clear whether the premium structure here and in other states, tied to sale price or loan amount, appropriately reflects the cost of insuring the titles to properties of differing values. Only 5% of premiums go to claim payments, and the size of claims does not necessarily correspond to the value of the property except in the rare case of a "total failure of title." It is not apparent

<sup>93</sup> Compare RCW 48.29.140 with RCW 48.19.040, 48.19.060, and 48.19.100.

<sup>94</sup> GAO Report, p. 41-43.

<sup>95</sup> GAO Report, pp. 54, 56.

why searching the title of an expensive property should cost more than searching the title of an inexpensive one.<sup>96</sup>

- As in other states, the rate schedules filed with the Commissioner include numerous discounts and surcharges based on differences in the level of coverage provided, the type of transaction, and the category of the customer. For example, builders buying title insurance for homebuyers qualify for deep discounts, as do homeowners buying insurance for refinancing lenders. Differences in title search and other costs may or may not support such discounts.<sup>97</sup>

Fortunately, the Commissioner has broad authority to obtain the kind of information he would need to determine whether existing title insurance rates are excessive, inadequate, or unfairly discriminatory.<sup>98</sup> We recommend that his office undertake an inquiry into whether current rates meet the legal standards. We believe that title insurers and agents will voluntarily provide financial information to help the Commissioner's office measure what it costs to provide title insurance against what consumers pay for it. If necessary, the Commissioner should issue a "data call" requiring companies to furnish records and respond to questions.

If after a hearing, the Commissioner finds, that any title premium rate is "excessive, or inadequate, or unfairly discriminatory," he may order the modification of that rate on a prospective basis.<sup>99</sup> We recommend that the Commissioner use this authority if he finds that the facts warrant such orders. A rate modification order might be county-specific, company-specific, formula-based, or a combination of these. It might take account of historical trends, such as the disparity between Washington real estate prices and general inflation over time. It might reflect policy judgments about what loss ratios are appropriate, incentives to use more efficient technologies for title plants and searches, or disincentives to spend excessive amounts on marketing to middlemen. It might allow insurance buyers and sellers to negotiate alternative rates under some circumstances.

We do not know whether the Commissioner should order modification of title insurance rates, or what any modification should be. But we think he should use the authority he now has to determine whether existing rates meet the legal standard, and, if they do not, to require that they do.

Additionally, whether or not the Commissioner orders changes in *existing* rates, we recommend that

96 Title industry representatives told the GAO that higher premiums for costlier homes subsidize title searches for lower-priced homes, helping make the latter more affordable. This may be a desirable policy if the facts so indicate, but industry representatives were unable to provide the GAO with supporting data (GAO Report, p. 34), and there is no evidence of public involvement in making any such policy.

97 Discounts for builders and others may be justified for policy reasons even if not for cost reasons, but, as with premium escalation by home price, there does not appear to have been public involvement in making any such policy.

98 The insurance code allows him to "conduct investigations to determine whether any person has violated any provision of this code," and to "conduct examinations, investigations, hearings ... useful and proper for the efficient administration of any provision of this code" (RCW 48.02.060(3)). In addition, he may "examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer" (RCW 48.03.010(1)), and "examine the accounts, records, documents, and transactions of ... any insurance agent" (RCW 48.03.020). Insurers and agents must provide "accounts, records, documents, and files" in their possession and "otherwise facilitate the examination," and the Commissioner may "employ experts" to "rewrite, post, or balance" accounts not properly kept (RCW 48.03.030). He may subpoena witnesses and documents, and examine witnesses under oath (RCW 48.03.070). The companies being examined bear most examination costs (RCW 48.03.060).

99 RCW 48.29.140(3).

he propose legislation requiring title insurers to provide justifying information when they file future *changes* in rates, and authorizing him to disapprove those changes. We believe that title insurance rates should be subject to the same kind of scrutiny and regulation that the Commissioner's office provides, on behalf of the public, to rates for home, auto, health, and most other kinds of insurance.<sup>100</sup>

### **(E) Title Plant Requirements**

Washington law requires every title insurer and agent to “own or lease and maintain a complete set of tract indexes” (title plant).<sup>101</sup> About 150 of these now exist in the state.<sup>102</sup> A regulation of the Insurance Commissioner allows a title plant to be maintained in a variety of formats,<sup>103</sup> and requires that every plant include enough information to trace the “chain of title” (ownership history) of any property back to the original land grant from the U.S. government (typically in the 19<sup>th</sup> century).<sup>104</sup> While title plants are widely used in the title industry nationwide, they are not used in all states, and are required in only 12 states. Washington is one of only two states requiring that title plants include records dating before 1960.<sup>105</sup>

Requiring insurers and agents to have title plants helps ensure that their title searches will be as rapid and accurate as possible. The increasing use of electronic databases has speeded up searches, usually without sacrificing accuracy or completeness. But over-reliance on electronic data alone, without examination of document images by trained professionals who are familiar with local laws and real estate, can affect the quality of searches and, over time, lead to increased claims under title policies.<sup>106</sup> And, even with security features, electronic databases could also be vulnerable to penetration and corruption with fraudulent information. Rapid advances in information technology require constant attention to the balance between efficiency and quality.

Title insurers and agents generally try to use the best available technologies to improve their performance and compete effectively with each other. As these technologies advance, the nature and functions of title plants may change in ways we cannot now foresee, making it advisable to amend the current statutes requiring title plants and/or the regulation defining them. We do not recommend any such amendments now, but recognize the need for continuing attention by title industry regulators as well as

100 See RCW 48.19.040, 48.19.060, 48.19.100, and related statutes. Any legislation should preserve the Commissioner's existing authority to order modification of existing rates, at least until the recommended inquiry into existing rates has been completed and any resulting modification order has taken effect. Otherwise, such legislation would “lock in” existing rates that his office has not meaningfully reviewed for many years, if ever.

101 RCW 48.29.020(2) prohibits licensing a title insurer unless it “owns or leases and maintains a complete set of tract indexes of the county in this state in which its principal office is located.” RCW 48.29.040 allows an insurer whose principal office is in one county to do business in other counties as long as it, or its authorized agent, “owns or leases and maintains” such a “complete set of tract indexes” for those other counties. RCW 48.29.160 requires every licensed title insurance agent to “own or lease and maintain a complete set of tract indexes of the county or counties in which such agent will do business.”

102 Each title plant covers a county and in some counties, there are more than one plant.

103 Title plants “may be maintained in bound books, loose-leaf books, jackets or folders, on card files, or in any other form or system, whether manual, mechanical, electronic, or otherwise; or in any combination of such forms or systems” (WAC 284-16-030(3)).

104 WAC 284-16-030(1).

105 Idaho is the other state requiring records back to the “inception of title from the United States government.” Oregon requires records back to 1960.

106 A title insurance claim represents not only a financial loss to the insurer, but also major inconvenience and anxiety for the property owner. Title insurance based on good searches provides more than just financial protection to policyholders.

the industry itself. So we recommend that the Commissioner review and monitor the evolving uses of information technology in title searches, that he periodically consider whether changes in the existing title plant statutes and rule would maintain accuracy and consumer protection while allowing more cost-effective searches, and, if so, that he recommend legislation or amend the rule.

## 9. Conclusion

Title insurance serves an essential purpose in a system of private property ownership, especially one where property changes hands often and is used to secure many different kinds of debt. Not only does it protect homeowners against defects in title, it also helps maintain the accuracy of public records relating to property, thereby reducing the risks it insures against. We believe title insurance is a wise investment for a homeowner.

This does not mean we are all confident that title insurance is priced appropriately. Since consumers tend to rely on referrals rather than shop independently, and since title companies market mainly to referring middlemen instead of to consumers, the potential for conflicts of interest requires continuous regulatory attention.

While we do not all agree with all of the characterizations and conclusions in the Commissioner's 2006 report on "inducements," we do all agree that at least some of the activities the report describes were improper and harmful. We support the Commissioner's decision to enforce the laws prohibiting improper inducements, because enforcement will help deter abuses and clarify standards for all concerned. At the same time, we recommend modifying the standards to allow the kinds of interactions that are common in many industries, while focusing enforcement on abuses and true conflicts of interest. We also recommend fuller disclosure of affiliated business arrangements and prohibiting discrimination based on such affiliations in referring consumers to title companies.

Besides enforcing realistic anti-inducement rules, and promoting greater transparency about business affiliations, another way to discourage abuses is through economic disincentives. The lack of regulatory attention to title insurance rates over several decades, especially when rate structures and real estate prices have driven up premiums, may have unintentionally facilitated improper inducements by making more income available to pay for them. More effective rate regulation could help discourage expenditures, such as improper inducements, that are not essential to produce title insurance coverage for consumers.

We hope that our analysis and recommendations will be helpful to the Commissioner, his staff, the many honest and dedicated people in the title industry, and the public. If implemented, we believe they will help make title insurance more affordable and give consumers better choices. Whether or not these results occur, we believe they will at least increase public confidence in an industry that depends on it.

# Appendix A

## Summary of Recommendations



## Inducements

- Replace WAC 284-30-800 with rules prohibiting title insurers or agents from providing anything of value to anyone in a position to refer business to them, except as (1) payment for bona fide services, or (2) defined promotional and educational activities subject to cost limits. Work with representatives of the title and real estate industries, as well as consumer advocates, in developing these rules.
- Ask the Departments of Licensing and Financial Institutions to adopt parallel rules prohibiting real estate agents and lenders, respectively, from soliciting or accepting from title companies things of value that the companies may not provide under the Commissioner's rules. Seek the cooperation of these agencies in coordinated activities to enforce these rules.
- Establish regular meetings between the Commissioner's staff and industry representatives to address interpretation issues, violation patterns, and educational needs. Encourage the Washington Land Title Association and Washington Association of Realtors to be active in educating their members, helping enforce the standards, and policing their own industries through codes of ethics.

## Affiliated Business Arrangements

- Use existing investigative authority to determine the current ownership of each licensed title insurance agent in Washington and the percentage of their business referred to them by owners. Propose legislation requiring title agents to report ownership and business referral information periodically as a condition of licensing.
- Propose legislation requiring real estate firms and lenders to disclose their affiliations with title companies, and prohibiting them from requiring, as a condition of a loan or real estate services, that a consumer obtain title insurance from an affiliated company. The legislation should prohibit payments among affiliated businesses except for actual services or as a return on ownership interest, and specify that any violation of RESPA's counterpart provisions is also a violation of state law.
- Propose legislation prohibiting real estate brokers from requiring or creating incentives or inducements for their agents to refer clients to any affiliated title company, discouraging them from referring clients to other companies, or discriminating among title companies in providing access to their agents or clients.
- Work with the federal Department of Housing and Urban Development, state Department of Licensing, and state Department of Financial Institutions to share information and enforce laws that support consumers' free choice of title companies.

## Information to Consumers

- On the Commissioner's Web site, provide an interactive tool for consumers to compare basic premium information among title insurers serving each county for different property price ranges.
- Propose legislation requiring all real estate agents to provide a printout of this website information to homeowners when they list property for sale, and to prospective buyers when they make an earnest money offer to buy.
- Work with the Department of Financial Institutions to propose legislation requiring title companies that also provide escrow services to provide price information to the Commissioner, and independent escrow companies to provide comparable information to DFI, to be included in agency publications and websites.
- Work with the federal Department of Housing and Urban Development toward better mechanisms to provide timely title insurance price information to homeowners who refinance their mortgages.

## Rate Regulation

- Use existing investigative authority to obtain information from insurers and agents about the cost of providing title insurance, and analyze that information to determine whether to hold a hearing on whether any premium rate or schedule is excessive, inadequate, or unfairly discriminatory.
- If the analysis and hearing result in a determination that any rate or schedule is excessive, inadequate, or unfairly discriminatory, issue an order under RCW 48.29.140(3) modifying that rate or schedule.
- Whether or not such an order is issued, propose legislation requiring that future rates be justified when filed, and subject to the Commissioner's disapproval.

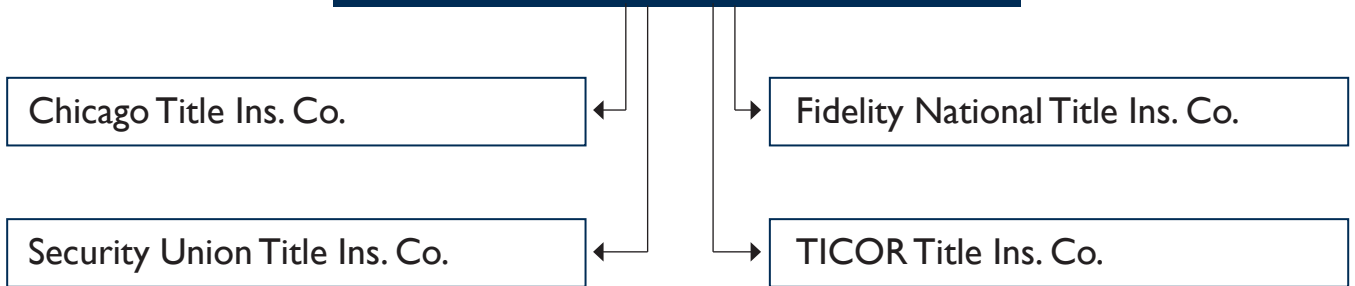
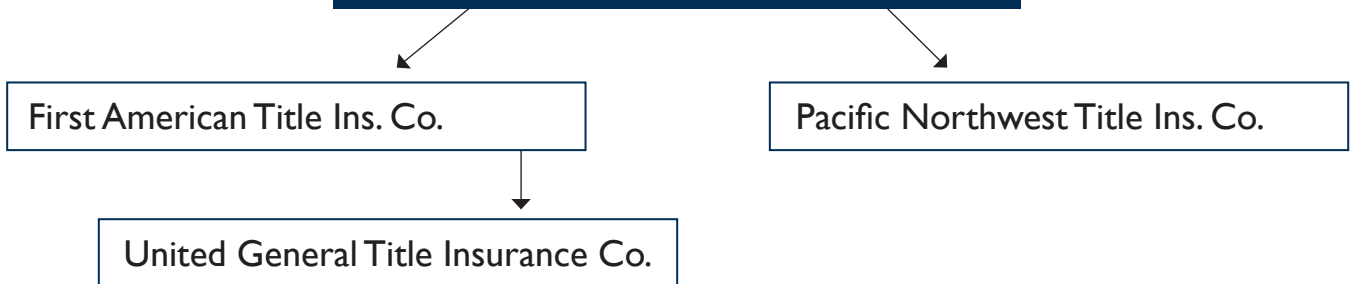
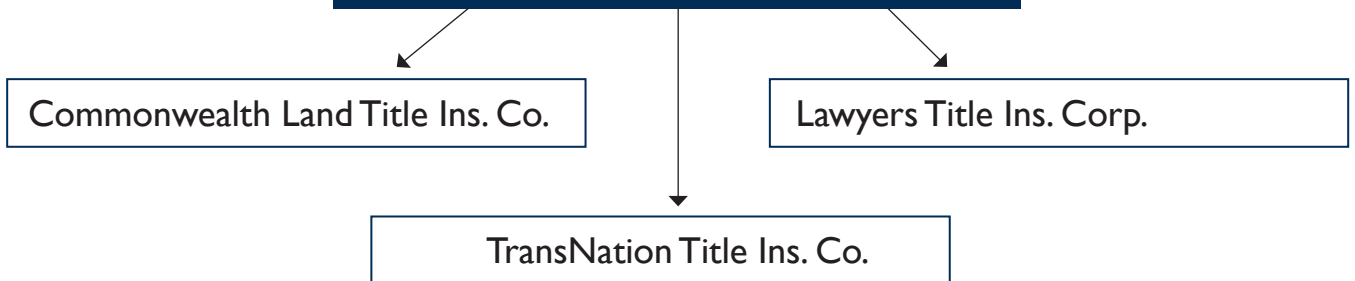
## Title Plant Requirements

- Review and monitor the uses of information technology in title searches in Washington and elsewhere, including trends and ongoing developments.
- Periodically consider whether changes in the existing statutes and rule regarding title plants would maintain accuracy and consumer protection while allowing more cost-effective searches, and, if so, recommend legislation or amend the rule.

# Appendix B

Title Insurer Relationships in Washington



**Fidelity National Financial Group****First American Financial Group****LandAmerica Financial Group**

Old Republic National Title Insurance Co.

American Guaranty Title Insurance Co.

Stewart Title Guarantee Co.

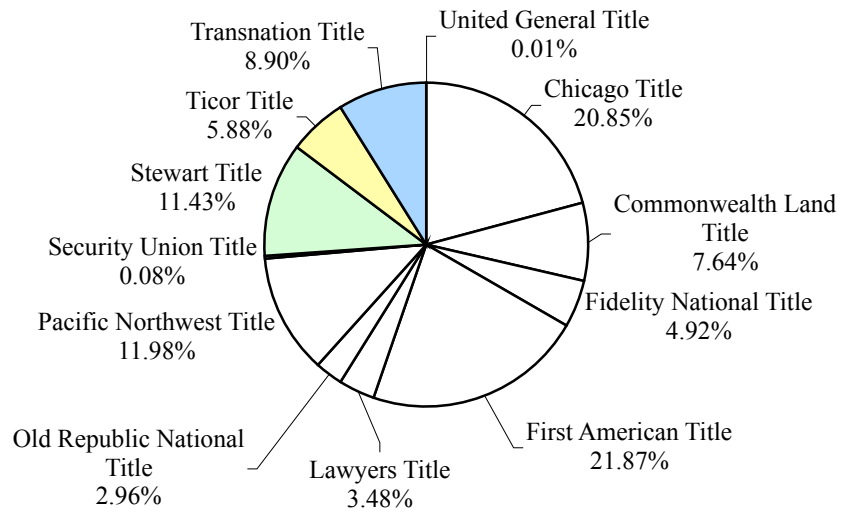


# Appendix C

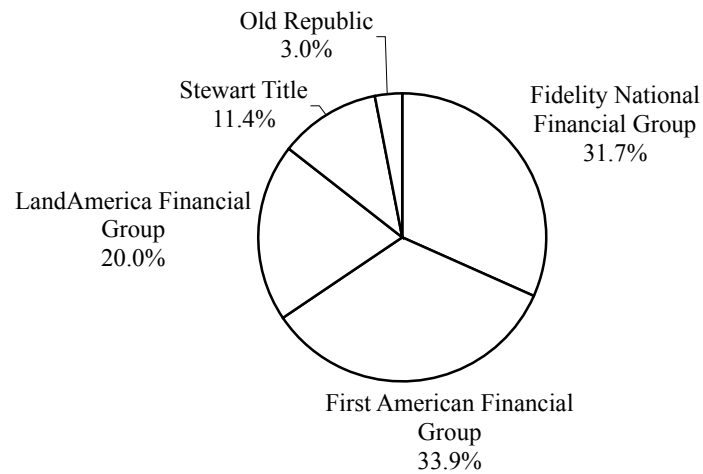
2006 Washington Market Shares



### Title Insurance Companies



### Financial Groups





# Appendix D

Title Insurance Rates in Effect May 2006 in  
King, Pierce, Snohomish Counties



| Rates effective as of:                                                | Amt of Insurance | Chicago Title | Commonwealth Land Title | Fidelity National Title | First American Title | Lawyers Title | Old Republic National Title | Pacific Northwest Title | Stewart Title | Ticor Title | Transnation Title |
|-----------------------------------------------------------------------|------------------|---------------|-------------------------|-------------------------|----------------------|---------------|-----------------------------|-------------------------|---------------|-------------|-------------------|
|                                                                       |                  |               |                         |                         |                      |               |                             |                         |               |             |                   |
| General Schedule Rate (base rate)                                     | 100,000          | 550           | 550                     | 550                     | 550                  | 550           | 555                         | 550                     | 540           | 550         | 550               |
|                                                                       | 150,000          | 730           | 730                     | 700                     | 730                  | 730           | 730                         | 725                     | 690           | 725         | 725               |
|                                                                       | 200,000          | 860           | 850                     | 825                     | 860                  | 860           | 855                         | 855                     | 825           | 850         | 850               |
|                                                                       | 250,000          | 1,010         | 1,000                   | 975                     | 1,010                | 1,010         | 1,010                       | 1,005                   | 950           | 1,000       | 1,000             |
|                                                                       | 300,000          | 1,090         | 1,080                   | 1,055                   | 1,090                | 1,090         | 1,080                       | 1,085                   | 1,050         | 1,080       | 1,080             |
|                                                                       | 350,000          | 1,210         | 1,200                   | 1,175                   | 1,210                | 1,210         | 1,180                       | 1,205                   | 1,150         | 1,200       | 1,200             |
|                                                                       | 400,000          | 1,290         | 1,280                   | 1,255                   | 1,290                | 1,290         | 1,280                       | 1,285                   | 1,250         | 1,280       | 1,280             |
| Owner's Policy for New Buyer - Homeowner's Rate (Resale Rate)         | 450,000          | 1,410         | 1,400                   | 1,375                   | 1,410                | 1,410         | 1,380                       | 1,405                   | 1,350         | 1,400       | 1,400             |
|                                                                       | 500,000          | 1,490         | 1,480                   | 1,455                   | 1,490                | 1,490         | 1,480                       | 1,485                   | 1,450         | 1,480       | 1,480             |
|                                                                       | 100,000          | 385           | 385                     | 385                     | 385                  | 385           | 389                         | 385                     | 378           | 385         | 385               |
|                                                                       | 150,000          | 511           | 508                     | 490                     | 511                  | 511           | 511                         | 508                     | 483           | 508         | 508               |
|                                                                       | 200,000          | 602           | 595                     | 578                     | 602                  | 602           | 599                         | 599                     | 578           | 595         | 595               |
|                                                                       | 250,000          | 707           | 700                     | 683                     | 707                  | 707           | 686                         | 704                     | 665           | 700         | 700               |
|                                                                       | 300,000          | 763           | 756                     | 739                     | 763                  | 763           | 756                         | 760                     | 735           | 756         | 756               |
| Lender's Policy to Lender for New Buyer - Simultaneous Rate (Ext Cov) | 350,000          | 847           | 840                     | 823                     | 847                  | 847           | 826                         | 844                     | 805           | 840         | 840               |
|                                                                       | 400,000          | 903           | 896                     | 879                     | 903                  | 903           | 896                         | 900                     | 875           | 896         | 896               |
|                                                                       | 450,000          | 987           | 980                     | 963                     | 987                  | 987           | 966                         | 984                     | 945           | 980         | 980               |
|                                                                       | 500,000          | 1,043         | 1,036                   | 1,019                   | 1,043                | 1,043         | 1,036                       | 1,040                   | 1,015         | 1,036       | 1,036             |
|                                                                       | 100,000          | 378           | 378                     | 315                     | 388                  | 378           | 379                         | 378                     | 339           | 343         | 378               |
|                                                                       | 150,000          | 441           | 439                     | 360                     | 451                  | 441           | 441                         | 439                     | 392           | 404         | 439               |
|                                                                       | 200,000          | 486           | 483                     | 398                     | 496                  | 486           | 484                         | 439                     | 439           | 448         | 483               |
| Lender's Policy - Refinance Rate*                                     | 250,000          | 539           | 535                     | 443                     | 549                  | 539           | 528                         | 484                     | 483           | 500         | 535               |
|                                                                       | 300,000          | 567           | 563                     | 467                     | 577                  | 567           | 563                         | 537                     | 518           | 528         | 563               |
|                                                                       | 350,000          | 609           | 605                     | 503                     | 619                  | 609           | 598                         | 565                     | 553           | 570         | 605               |
|                                                                       | 400,000          | 637           | 633                     | 527                     | 647                  | 637           | 633                         | 607                     | 588           | 598         | 633               |
|                                                                       | 450,000          | 679           | 675                     | 563                     | 689                  | 679           | 668                         | 635                     | 623           | 640         | 675               |
|                                                                       | 500,000          | 707           | 703                     | 587                     | 717                  | 707           | 703                         | 677                     | 658           | 668         | 703               |
|                                                                       | 100,000          | 275           | 275                     | 275                     | 275                  | 275           | 278                         | 275                     | 270           | 275         | 275               |
| Lender's Policy - Refinance Rate*                                     | 150,000          | 365           | 363                     | 350                     | 365                  | 365           | 365                         | 363                     | 345           | 363         | 363               |
|                                                                       | 200,000          | 430           | 425                     | 413                     | 430                  | 430           | 428                         | 428                     | 413           | 425         | 425               |
|                                                                       | 250,000          | 505           | 450                     | 488                     | 505                  | 505           | 490                         | 482                     | 428           | 500         | 500               |
|                                                                       | 300,000          | 491           | 486                     | 528                     | 545                  | 491           | 540                         | 488                     | 473           | 540         | 486               |
|                                                                       | 350,000          | 545           | 540                     | 588                     | 605                  | 545           | 590                         | 542                     | 518           | 600         | 540               |
|                                                                       | 400,000          | 581           | 576                     | 628                     | 648                  | 581           | 640                         | 578                     | 563           | 640         | 576               |
|                                                                       | 450,000          | 635           | 630                     | 688                     | 705                  | 635           | 690                         | 632                     | 608           | 700         | 630               |
|                                                                       | 500,000          | 671           | 666                     | 728                     | 745                  | 671           | 740                         | 668                     | 653           | 740         | 666               |

\* Amounts approaching \$670 or \$740 at the \$500K liability range, break from 50% to 45% of Gen Sch Rate at either within this range or at \$1M.



# Appendix E

Summary of Idaho and Oregon Regulations on  
“Inducements” by Title Companies



## Idaho

Regulations of the Idaho Department of Insurance prohibit any title insurer or agent from providing “things of value” to any “producer of title business,<sup>1</sup> consumer, or member of the general public,”<sup>2</sup> unless the “thing of value” falls within a list of specific exceptions. These exceptions include:

- Defined “listing packages” with real estate information;
- Advertising the title company (by itself) in trade association publications;
- Serving on trade association committees, and attending and sponsoring association events;
- Giving away “self-promotional items” worth \$10 or less (subject to monthly and annual limits on those receiving such items);
- Conducting title- and escrow-related educational and self-promotional programs costing up to \$10 per attendee;
- Holding up to two open houses (*e.g.* holiday parties) a year that cost up to \$15 per guest;
- Spending up to \$100 per person per day for meals and “events” (*e.g.* sports, music, art) for up to four “producers” (including spouses or guests).<sup>3</sup>

The rules also prohibit title companies from sharing office space with producers of title business unless the space is separate, equipment and space costs are based on fair market value, and the space is available to do business with anyone.<sup>4</sup>

## Oregon

The Insurance Division of Oregon’s Department of Consumer and Business Services has adopted rules prohibiting title companies from giving or attempting to give “any thing of value” to an “intermediary,”<sup>5</sup> unless permitted as follows:

- Non-monetary items worth \$2.61 or less;
- Sponsored activities that cost \$97.85 or less per person when five or fewer people attend, or \$13.04 or less per person when more than five are expected to attend;
- New office “open houses” costing \$32.61 or less per person (with 30 days advance notice to the regulator);

1 This term includes anyone engaged in the business of buying or selling real property or making mortgage loans, including but not limited to real estate agents and brokers, mortgage brokers, lending institutions, builders, lawyers, developers, subdividers, auctioneers, and consumers (IDAPA 18.01.56 s 010).

2 IDAPA 18.01.56.011

3 IDAPA 18.01.56.012-015

4 IDAPA 18.01.56.016

5 OAR 836-080-0315. “Intermediaries” include anyone representing a property buyer or seller, mortgage lender, developer, subdivider, builder, auctioneer, exchange facilitator, or settlement service provider. The term also includes members of such intermediaries’ households, and trade associations (OAR 863-080-310(2)). A “thing of value” includes advertisements, credit, monetary advances, products, services, and use of facilities (OAR 836-080-310(5)).

- First or tenth anniversary celebrations costing \$32.61 or less per person (with 30 days notice to the regulator);
- Donations of \$65.22 or less to a trade association in response to a general solicitation;
- Plants or flowers costing \$65.22 or less for an intermediary's office "open house";
- Condolence gifts to an intermediary costing \$65.22 or less;
- Specified information about particular real estate parcels;
- Specified assistance to a subdivider to help qualify a subdivision for approval.

The rules define "give" as any transfer "without receiving equivalent consideration," thereby allowing payment for actual services or for ownership interests of affiliated businesses.<sup>6</sup> They also include a "net cost" definition that applies to the dollar limits above,<sup>7</sup> and a provision adjusting those limits annually for inflation (the amounts above are adjusted for 2007).<sup>8</sup> Another rule allows sharing of office space with an intermediary only when it is physically separate, market-priced, and open for business with anyone.<sup>9</sup> Title companies must give a copy of these rules to every employee and train employees about them.<sup>10</sup>

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6 OAR 836-080-310(3))

7 OAR 836-080-0310(4)

8 OAR 836-080-0345

9 OAR 836-080-0360

10 OAR 836-080-0370



