

Public Perceptions Make Settlement Services a Tough Business

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*It's an industry consumers neither
understand nor want to understand*

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The average citizen believes there is a book at the courthouse which shows who owns what real estate. He believes title companies merely look at this book and charge \$3.50 a thousand for writing up what they see.

This is what a citizen thinks if he thinks anything at all. More likely, however, he neither knows nor wants to know about such things. He becomes aware of title companies a few times during his lifetime and knows only that they are one of several sets of paper shufflers who take money from him at a difficult and vulnerable time. And they never tell him there is no such book.

He rarely complains. "Usual and customary" and "the lender requires it" and "a modest expense compared with other closing costs" always works. The closing table moves on to other business.

Were the citizen to look deeply into the title and settlement processes he would find oddities difficult to explain or defend. Many aspects of this ancient and arcane specialty simply do not make much sense. But consumers do not become aware, do not become concerned, and see no benefit in becoming educated.

It's when the citizen becomes a legislator or regulator that the industry's peculiarities become a problem. As a public official he must knowledgeably fit the titling process in with other commercial processes and interests. He must guard the interests of the public as to fairness, appropriateness, and cost. He must, at the same time, keep the playing field level in the way the business world demands.

To perform these functions the legislator-regulator finds he must become educated. He must learn the industries and business processes he's been asked to regulate. Soon, his ignorance has turned to incredulity, and the trouble begins.

Why are the charges consumers pay so complicated and hard to follow?

They don't have to be. In some states, an all-inclusive rate approach puts most title charges into a single lump sum package. Consumers usually like this better, even if the bill is higher than one with dozens of itemized charges, and even if it is somewhat unfair to the consumer whose transaction is simple and requires only a few supplemental services. On the other hand, HUD requires a great deal of itemizing on its mandated HUD-1 closing form and favors the disclosure concept. As we know, disclosure, especially disclosure in minute detail, is seen as a virtue in today's consumer-protecting environment even though the longer the list of disclosures the less time the consumer spends looking at them.

Why do these so-called insurance companies have such low claims?

Generation after generation of public officials have washed up on this shore. They understand the basic idea of insurance as it works to insure lives (people can die) and automobiles (some crash) and insist that the majority of what they call "premiums" be paid back to policyholders when an untoward event occurs. They cannot comprehend a premium that is mainly used to pay salaries of people whose job it is to eliminate the possibility of loss – that is, to make claims unlikely. They cannot believe that only 5% or 10% of title revenues are returned as claims payments. They cannot understand a brand of insurance which intends that there be no claims at all.

The legislator-regulator spends a great deal of time trying to reach some kind of logical connect between title insurance and other kinds of insurance in the area of claims, and, of course, he cannot.

Why is there no logical relationship between premiums and claims? Why are certain charges called premiums in one state not called premiums in other states?

These are troubling questions. To begin with, title claims do not randomly "happen" as do deaths and crashes. They are permitted to happen by faulty or incomplete examinations and, very occasionally, by the failure of the public records to reflect the entire ownership-encumbrance story. The relationship between title claims and something measurable is difficult to establish.

This problem is compounded by the insistence of some states that all fees charged for insurance be called premiums, even though they go to pay for search, examination, and, occasionally, for escrow and closing work. It gets worse when some states take totally different tacks in deciding which parts of the cost package should be regulated as insurance and which not.

Why should a consumer buy insurance against his title company making a mistake?

Unfortunately that is what it comes down to, and it's not easy to explain. Title insurers talk about fraud, forgeries, and unknown heirs, but they pay very few claims on such matters. Virtually all claims can be avoided by better work on the part of the title company.

This is another area where the semantics of the insurance concept get in the way. If the public could be made to think of a title policy as an indemnification agreement rather than an insurance contract, it becomes easier to understand.

Why do title insurers fight over every claim?

They may not fight over every claim but they fight over far too many. Often they would be much better off quickly recognizing damage to the policyholder and fixing it at once, rather than waging a prolonged battle over a minor principle or precedent. Many title insurance people are attorneys, think like attorneys, and can't stand the thought of paying a claim when legal precedent is on their side, even though their policyholder has been grievously injured. They'd like to believe their company makes no mistakes at all, and resist admitting errors even when they've clearly been made. They lose customers this way. They sometimes pay big damages to claimants for failing to respond to claims of loss in a timely and considerate way.

Interestingly, the largest of the major title insurers have learned in recent years that fighting over claims is financially unproductive. At five or six percent of their gross revenues, title claims are a piddling expense to these big companies unless they choose to battle them, in which case the costs can go way up. This new drive to pay claims quickly has had some interesting side effects. Local offices, both owned and agency, complain that title insurers pay claims too quickly and generously, thereby damaging important and sensitive local business relationships. And agents complain that quick big settlements where liability is questionable can trigger all kinds of bad consequences for them under their agency agreement, including financial penalties and cancellation of their agency.

Why do title companies keep searching for and examining the same documents, over and over again?

Another difficult question if one looks at the titling process logically. Every time a piece of property changes hands or is financed, a title company locates all the documents in its chain of title and then figures out what each one does. It issues title insurance based on its conclusions. The next time the property is sold or mortgaged the same job is done all over again by a second title company. Rarely does the second company see what the first company did or learned.

It doesn't take a financial genius to figure out that this system adds enormous costs to the titling process nationwide – billions of dollars every year – and adds a significant cost to each title insurance policy issued. Consumers increasingly ask why work done before must be repeatedly done again, but are given little or no satisfaction on this point. The title industry has not yet seen fit to confront this anomaly, although it has had before it a serious proposal for the universal sharing of prior work for the last several years.

Why are agents paid such high commissions?

Commissions to title agents for originating title policies range from 70% to 80% in states which regulate only the so-called "risk" portion of the total charge and up to 90% or more in states with all-inclusive rate structures. Public officials cannot believe this is right or fair (again when

compared to commissions paid to life and casualty salespeople) and cannot wait to regulate this commission down to a more reasonable figure. A better question might be why, if an agent does 100% of the work and accepts a major portion of the risk, as many agents now do, the portion he retains should not be higher than it is, rather than lower.

If it is true that no other country in the world uses title insurance, why do we have it?

This is a question title people ought to welcome. We have title insurance because it works extremely well. It is fast. It is cheap. Most of all, it minimizes the impact of minor discrepancies and problems in an area of human activity where petty mistakes, minor screwups, scribes' errors, and paper-shuffling glitches are common and troublesome but of no particular importance in the grand scheme of things. Title insurance permits these things to be examined and pondered, and, in many cases, ignored and insured against.

We have title insurance because it brings free market competition to an important economic activity handled by government bureaucrats in virtually every other nation. Can you imagine a government department agreeing to overlook minor flaws, old liens, improperly cancelled mortgages, encroachments, or badly handled estates? Can you imagine it agreeing that if anyone gets hurt it will fix matters and reimburse those damaged? American title companies do these things roughly 40,000 times every day. And if one title company is skittish over a problem, its competitors may not be, or may have a way of minimizing it.

The U.S. has had an ongoing experiment in government cleared titles for many years. It is called the Torrens system of land registration and is responsible for administering real estate titles, transfers, and encumbrancings in small areas of a handful of U.S. states. In virtually every case the administering departments are slow, expensive (financed through taxes and fees), and dictatorial. Every problem – major, minor, or extremely minor – must be fixed regardless of the time or cost. Many weeks or months are required to transfer properties. The Torrens system provides for state-administered indemnification of a sort, but virtually every U.S. mortgage lender ignores this option and insists on obtaining a commercially-issued title insurance policy just as it does on non-Torrenized land.

Bottom line, does title insurance vastly accelerate and simplify real estate transactions?

Exactly. It materially assists in moving properties quickly and readily from seller to purchaser. Its speed and sureness support the mortgage industry. Title insurance *makes* the real estate market. By so doing it significantly increases the dollar value of every piece of property in the country. It adds enormous wealth to our nation and to every one of its property owners.

With all its difficulties and contradictions, then, this remarkable ability to facilitate transactions, with its resulting generation of enormous wealth, is the great untold story of the title business.

Are congresspersons ignorant of this story? How about HUD? State insurance departments? Is it totally lost on the media? Consumer groups?

Unfortunately, the answer to all is yes.

Public perceptions make this a really tough business. ♣