



TITLE
INSURANCE
REGULATION
IN TEXAS



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Challenges and
Opportunities

Lyndon B. Johnson School of Public Affairs

Policy Research Project Report

Number 171

**Title Insurance Regulation in Texas:
Challenges and Opportunities**

Project directed by

David Eaton, Ph.D.

A report by the

Policy Research Project on

Title Insurance Regulation

2011

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Library of Congress Control No.: 2011922826
ISBN: 978-0-89940-789-0

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Printed in the U.S.A.

Cover design by Doug Marshall
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List of Acronyms and Abbreviations

ABA	affiliated business arrangement
ALTA	American Land Title Association
ANOVA	analysis of variance
CDI	California Department of Insurance
CFA	Consumer Federation of America
CLS	closing service letter
Commissioner	Texas Insurance Commissioner
DHUA	Department of Housing and Urban Affairs
DOI	Department of Insurance
FSCO	Financial Services Commission of Ontario
FTC	Federal Trade Commission
GAO	Government Accountability Office
GFE	Good Faith Estimate
HCV	House Committee on Veterans
HHI	Herfindahl-Hirschman Index
HUD	Department of Housing and Urban Affairs
LAFG	Land America Financial Group
LBJ School	Lyndon Baines Johnson School of Public Affairs
LR	loss ratio
NAIC	National Association of Insurance Commissioners
OLS	ordinary least square regression
OPIC	Office of Public Insurance Counsel
RESPA	Real Estate Settlement and Procedures Act

TDI	Texas Department of Insurance
TIRBOP	Title Insurance Rating Bureau of Pennsylvania
TLTA	Texas Land Title Association
US	United States of America
UT-Austin	The University of Texas at Austin
VA	Veteran's Administration

Foreword

The Lyndon B. Johnson (LBJ) School of Public Affairs has established interdisciplinary research on policy problems as the core of its educational program. A major part of this program is the nine-month policy research project, in the course of which one or more faculty members from different disciplines direct the research of graduate students of diverse backgrounds on a policy issue of concern to a government or nonprofit agency. This “client orientation” brings students face to face with administrators, legislators, and other officials active in the policy process and demonstrates that research in a policy environment demands special talents. It also illuminates the occasional difficulties of relating research findings to the world of political realities.

During 2006-07, Texas’ Commissioner of Insurance (Mr. Mike Geeslin) posed a number of questions about title insurance regulation to the Texas Legislature and Texas insurance consumers. Commissioner Geeslin sought information on alternative regulatory options for title insurance in Texas.

Following the 2009 Texas title insurance rate hearings, graduate students from the Lyndon Baines Johnson School of Public Affairs (LBJ School) at The University of Texas at Austin (UT-Austin) conducted research on title insurance practices in the U.S. and Canada. The students’ preliminary findings and recommendations were presented to staff at the Texas Department of Insurance (TDI) in Spring 2010. The research team continued research in Fall 2010, culminating in this report.

The curriculum of the LBJ School is intended not only to develop effective public servants but also to produce research that will enlighten and inform those already engaged in the policy process. The project that resulted in this report has helped to accomplish the first task; it is our hope that the report itself will contribute to the second. Neither the LBJ School nor The University of Texas at Austin necessarily endorses the views or findings of this report.

Robert Hutchings
Dean
LBJ School of Public Affairs

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Acknowledgements

This report was drafted during August 2009 through December 2010 by Wayne Gerami, Katie Kizziar, Joseph Silva, Sudip Singh, and Beibei Zou, students at The University of Texas at Austin. Each of the chapters was written by one of the students: Sudip Singh drafted Chapter 2, Joe Silva drafted Chapter 3, Wayne Gerami drafted Chapter 4, Beibei Zou drafted Chapter 5, and Katie Kizziar drafted Chapters 1 and 6. Professor David Eaton and Katie Kizziar edited this report during Fall Semester 2010 so it could be distributed in 2011 to the Texas Department of Insurance and the Texas Legislature during the 81st first legislative session.

This research was supported in part by the Foundation for Insurance Regulatory Studies in Texas (FIRST) through the Austin Community Foundation via a grant administered by Professor Robert Wilson, Ph.D., Associate Dean, the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin. Professors Joseph W. Eaton and David J. Eaton assisted Dean Wilson and advised the students in their research. Financial support of this research also was provided by the Bess Harris Jones Centennial Professorship in Natural Resource Policy Studies, the Jack S. Blanton Research Fellowship of the Institute for Innovation, Creativity and Capital (IC² Institute) at The University of Texas at Austin, and the George A. Roberts Research Fellowship at the IC² Institute. Martha Harrison, Jayashree Vijalapuram, Doug Marshall, and Carrie Williams assisted in the management of this project and the preparation of the manuscript for publication. Lauren Jahnke copy-edited and formatted the manuscript.

A number of experts associated with the title industry, title regulation in Texas, and associated industries provided information, advice, guidance, and criticism to the class members. Although the PRP members have thanked each of these individuals, this report does not identify many of the persons who participated in interviews in order to protect their anonymity. These results do not represent the views of any of the institutions cited above, including the LBJ School of Public Affairs, the Institute for Innovation, Creativity, and Capital, The University of Texas at Austin, the Austin Community Foundation, or the Foundation for Insurance Regulatory Studies in Texas. The opinions expressed herein are those of the authors and editors alone, who also are responsible for any errors or omissions.

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Chapter 1. Introduction

The members of the Title Insurance Policy Research Project initiated this study after having read three sets of written comments from Mr. Mike Geeslin, Texas Insurance Commissioner, directed to the attention of the Texas Legislature and to the public regarding alternatives to Texas' current title insurance regulatory system.^{1,2,3} Title is one of the few types of insurance in Texas for which the Commissioner still promulgates rates.

In official comments to the Texas Legislature and Texas insurance consumers, the Commissioner expressed four types of concerns. First, Texas is one of the three U.S. states that promulgates rates. This means that the title agents who market policies and the title underwriters who insure policies have no disincentive against reporting costs as high as possible to justify rates. Second, rates are set through a long, costly, and adversarial biennial rate and rule hearing. The final promulgated rate that is adopted is mandatory, so price competition is illegal. Third, title insurance providers compete over service and not price. It is unclear from the evidence presented at the hearings whether "reverse competition" occurs, where agents market to participants in the real estate business, such as real estate agents, builders, or lenders. The evidence on vertical integration also is hard to assess, as over 90 percent of all title policies sold in Texas are written by four firms. Fourth, there appears to be some special challenges for title firms in rural areas, where the dearth of local title expertise may impede real estate transactions. There also is a concern regarding commercial versus residential title business.

This report consists of five chapters evaluating title policy coverage, prices, and losses by state, the federal roles regarding title insurance, and comparisons of title regulation among states. The sixth chapter reports on sets of recommendations for the Commissioner's consideration, along with suggestions derived from representatives of industries involved in title insurance. In effect, each chapter is a separate commentary; some ideas are repeated when project members developed parallel conclusions based on their data.

Chapter 2 includes data and statistical analysis of major title insurance underwriters' title insurance prices for standard policies in each state, focusing on types of coverage as opposed to types of policies. Each state's title coverage was classified based on the services included. Statistical analysis performed by coverage type shows that prices between the two large title companies are not statistically different. Analysis of comparisons by regulation type further indicates that a greater level of state control is associated with an increase rather than a decrease in title insurance rates.

Chapter 3 discusses the federal government's role in regulating title insurance through the Government Accountability Office (GAO), Department of Housing and Urban Affairs (HUD), and the National Association of Insurance Commissioners (NAIC). The GAO has reported that regulators set promulgated rates or permit prices that do not reflect the underlying cost of title insurance policies and that it has concerns regarding inappropriate

activities within the title industry. In 2010 the NAIC presented a proposed set of data elements which might be used for market analysis and regulation in the title industry. This chapter includes a comparison between the NAIC suggestions and data collected by Texas.

Chapter 4 discusses various regulatory styles used in the 50 states: file and use, use and file, promulgated, and various systems with less formal oversight. The title regulation systems of four U.S. states along with Canada are examined in detail, comparing file and use systems, promulgated rate systems, public guarantee without regulation, and varied models in Canadian provinces, including a “Torrens” system. The chapter analyzes the strengths and weakness of those systems to identify regulatory innovations that could improve Texas’ title insurance regulation.

Chapter 5 reports the results of a detailed statistical evaluation of title insurance prices and losses under different systems of regulation. The results are counter-intuitive, but convincing.

Stricter regulation in the form of promulgated or state-set prices is not associated with lower prices, but rather higher prices. Comprehensive state regulation of title insurance and promulgation of price leads to higher prices for consumers, yet does not reduce losses to companies.

The number, complexity or types of services offered by the title industry in different states (title search, title validation, title underwriting, and closing on settlement of the property purchase) do not appear to influence title insurance prices. In other words, title insurance companies on a national basis, do not charge higher rates for more comprehensive services (which may be perceived as more expensive) versus title insurance prices in states where title insurance delivers fewer services. Pricing reflects the states and their regulatory system, with the complexity of the offered services.

Higher average industry losses in a state *per se* (payments to the insureds, costs of loss administration and funds set aside to cover title losses loss administration and risk mitigation) are not associated with increased title prices. States with lower industry average losses do not exhibit lower title prices. Again, the key factor on determining prices is the state and how it regulates title insurance.

These results imply a question: if neither consumers nor the title companies benefit from promulgated title insurance rates, why should the practice continue? These results support the point of view of Texas’ Commissioner of Insurance that the Texas Legislature should consider seriously whether to change how Texas regulates title insurance and introduce opportunities for title companies to seek homeowners’ business through price competition.

The final chapter presents a set of recommendations divided into three categories: improvements in data and information, cooperation among stakeholders, and changes to the regulatory process. Specific recommendations are presented to address barriers to implementation, steps to improve the title process, and a set of performance measures to

document progress. Some next steps are also suggested for the Texas Insurance Commissioner's consideration.

The appendices include additional data tables comparing national title insurance policy costs and losses. All of the data used in these analyses are reproduced, so anyone who wishes to reconfirm results has access to all raw data.

Notes

¹ Michael Geeslin, Insurance Commissioner of Texas, *2006 Biennial Report of the Texas Department of Insurance to the 80th Legislature*, Texas Department of Insurance, Austin, Texas, 2007, pp. 41-43.

² Michael Geeslin, Insurance Commissioner of Texas, Official Order of the Commissioner of Insurance of the State of Texas, Austin, Texas, in the Matter of the 2004 Texas Title Insurance Biennial Rate Hearing, Docket Number 2601, Texas Department of Finance, Austin, Texas, 2006, pp. 1-2.

³ Michael Geeslin, Insurance Commissioner of Texas, *Legislative Request of the Texas Insurance Commissioner to the Texas Legislature*, Texas Department of Insurance, Austin, Texas, 2007, sections A2, B2, C2.

Chapter 2. Price Competition in the Title Insurance Industry: An Empirical Study

This chapter reports on price competition in the United States title insurance industry using data collected directly from the websites of First American Corporation and Fidelity National Title Insurance Company. It analyzes four questions: 1) Do rates differ between the two companies? 2) Is the inclusion of more services in a title insurance policy associated with higher policy rates? 3) Is greater state regulation associated with higher policy rates? 4) Is greater state regulation associated with diminished price competition? Based on exploratory data analysis as well as logistic regression, the answers to the questions are that the two companies' rates are not statistically different on a nation-wide basis, the inclusion of more services and increased regulation are associated with higher prices, and price competition occurs primarily in states where rates remain unregulated by the states.

Introduction

Competition over price, quality, and quantity of goods is one characteristic of free market capitalism: economic efficiency occurs when firms compete in a free market. While “perfect” competition is more an ideal than reality, economic competitiveness nevertheless remains a rationale for free market economies. When prices in an industry are set by a government, such promulgation might lead to a lack of price competition. Consider the title insurance industry in America, for example. Title insurance is underwritten by private sector companies in 49 of the 50 states, although the state regulates prices directly in 43 of 50 states. This paper asks whether title insurance prices can be competitive even when regulated. The approach is to compare pricing patterns of two of the four major national title companies, First American Corporation and Fidelity National Title Insurance Company. These companies were chosen because they offer customers the chance to obtain price quotes from an Internet website. The company rate quotes allow analysis of the factors that might affect rates and competition. After a brief introduction to the industry and the data used in the study, the paper compares prices within states. The paper also assesses the impacts of service inclusion and regulation style on policy rates. The results show that prices vary across states but vary less (if at all) within states.

The title insurance industry was created to offer protection against title defects and their consequences by offering lenders as well as buyers a policy as part of the mortgage agreement. Owners can purchase title insurance to protect themselves against defects in title. Title insurance is a key element in any mortgage-backed real estate transaction in the United States because the purchaser does not “own” property until a title has been transferred to his or her name. Rights of ownership can be challenged. A defective title can prove costly and can result in litigation on a potential loss of ownership.¹

As of 2010, six companies combine to underwrite almost 99 percent of all title insurance policies, with Fidelity and First American writing the highest percentages. For the purposes of this analysis, it is useful to distinguish between differences in policy types, coverage types, and various regulation styles used by different states. Companies offer varying *policy types* to cover different risks. For instance, First American offers customers a “Standard” policy that covers basic title defects. It also offers a more comprehensive “Eagle” policy that covers “building permit violations, post policy forgeries, [and] post policy encroachment,” which would not be covered by a standard policy.²

Difference in *coverage* refers to the difference among the services that are included in the cost of the title insurance policy. The state government in each of the 50 states (rather than the companies themselves) determines which services are included in a title policy in each state. In addition to the basic risk premium, any of the following may also be included: (a) *title search*, the acquisition of public records and other documents; (b) *title examination*, the evaluation of documents for defects in title; or (c) *closing costs*, which often include the final payout for the real estate transaction as well as other title-related costs involved in the purchase.

In some states, the price paid for a title insurance policy includes only the underwriting of the risk of a defective title. In other states, all of the services listed above are included in the cost of coverage. States in which closing costs and at least one of search or examination phases are included in the policy cost are referred to as *comprehensive* or *all-inclusive* states. Other states might include only the examination and premium, or everything except for closing costs. Title companies may charge separately for services or commitments other than those listed above. Table 2.1 lists states by coverage type. For example, Texas is a so-called “comprehensive” state because a customer buying a First American title policy in Texas would pay for all four of the services listed above.

Table 2.1
Title Insurance Coverage by State

Risk Premium Only	Title Examination and Risk Premium Only	Title Examination, Search, and Risk Premium	Comprehensive
Alabama	Illinois	Idaho	Alaska
Arkansas	Oklahoma	Michigan	California
Connecticut	Wyoming	Montana	Nevada
Delaware		Nebraska	Pennsylvania
Florida		Oregon	South Dakota
Georgia		Utah	Texas
Hawaii			Wisconsin
Indiana			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			

Massachusetts			
Minnesota			
Mississippi			
Missouri			
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Rhode Island			
South Carolina			
Tennessee			
Vermont			
Virginia			
West Virginia			

Source: “Notes” section of rate quotes obtained from First American’s Title Fees Calculator, online at <http://titlefeecalculator.firstam.com/>. Some data were verified by contacting individual state departments of insurance.

Note: Data are not available for Arizona, Colorado, Iowa, and Washington from the source.

This chapter focuses on differences in coverage type rather than alternative policy types. Insurance is regulated by each state, rather than by the federal government. Title insurance regulation fits into one of five styles, as listed in Table 2.2. Promulgated rates represent the highest degree of government intervention. File and Use is the most common regulation style. Table 2.3 categorizes states by regulation style.

Table 2.2
Title Insurance Rate Regulation Processes

<p>No Regulation</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Regulatory review takes place only on an ad hoc basis, usually in the event of consumer or competitor complaints.
<p>Use and File</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer offers and completes transactions using the derived rates. 3. Title insurer files rates within a state-mandated timeframe; typically, no formal justification is required. 4. Title insurer continues to use rates provided that the state does not object, but must maintain the rates that were filed.
<p>File and Use</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency; justification requirements vary by state. 3. Title insurer offers and completes transactions using the derived rates. 4. State agency approves or rejects filed rates 15 to 75 days after filing. 5. Title insurer must maintain the rates that were approved.

<p>Prior Approval</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency; justification of proposed rates typically must be provided. 3. State agency approves or rejects filed rates within 15 to 60 days. 4. Title insurer offers and completes transactions using approved rates. 5. Title insurer must maintain the rates that were approved.
<p>Rate Promulgation</p> <ol style="list-style-type: none"> 1. State regulatory agency collects data and hears testimony regularly from title insurers, consumers, and other parties related to title insurance transactions. 2. State regulatory agency formulates “rate charts,” which set title insurance policy rates based on transaction size, on the basis of collected data. 3. Title insurer offers and completes transactions using promulgated rates. 4. Title insurer must maintain the rates that were developed by the regulatory body.

Adapted from: Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001); and Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry* (New York: NYU Press, 2007).

Table 2.3
Title Insurance Regulation Styles by State

No Regulation	Use and File	File and Use	Prior Approval	Promulgated
Alabama	Kansas	Alaska	Arizona	Florida
Arkansas	Utah	California	Connecticut	New Mexico
Georgia	Vermont	Colorado	Idaho	Texas
Hawaii	Wisconsin	Delaware	New Hampshire	
Illinois		Kentucky	New Jersey	
Indiana		Louisiana	South Carolina	
Massachusetts		Maine		
Mississippi		Maryland		
Oklahoma		Michigan		
Virginia		Minnesota		
West Virginia		Missouri		
		Montana		
		Nebraska		
		Nevada		
		New York		
		North Carolina		
		North Dakota		
		Ohio		
		Oregon		
		Pennsylvania		
		Rhode Island		
		South Dakota		
		Tennessee		
		Washington		
		Wyoming		

Source: Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

The prices of title insurance used in this study reflect rate quotations from Fidelity National Title Insurance Company and First American Corporation for title insurance policies in 34 states obtained from each company's respective website. Table 2.4 lists these data. Appendix A describes the data collection methodology. As this study compares title prices across companies within each state, if there are no data from either company for a given state that state's data cannot be used, which explains why only 34 states are included in this study (see Table 2.4). Fidelity's calculator appears to round prices to the nearest dollar; all of its prices are exact dollar amounts. For simplicity and ease of calculation, all rates from First American and Fidelity have been rounded to the nearest dollar in Table 2.4. The values in the "Difference" column come from the subtraction of Fidelity's rate in the third column from First American rate in the second column. Thus, a negative number in the "Difference" column indicates that First American is the less costly alternative for the given state, while a positive number indicates that Fidelity is cheaper.

The rate quotes in Table 2.4 are the foundation of all subsequent analyses in this chapter. The data are re-sorted for analysis purposes later in the study on the basis of coverage type and regulation style, but each rate quote value listed in Table 2.4 is identical to values in Table 2.5, Table 2.6, Table 2.7, and Table 2.8. Note that the data in Table 2.4 differs from data in Table 5.1, which also is a compilation of rates computed from title insurers' websites. As the data were collected on different dates (November 30, 2008, vs. June 18, 2010), the insurance costs differ due to changes over the intervening 19 months.

This paper strives to answer four distinct questions: 1) Do rates differ between the two companies? 2) Is the inclusion of more services in a title insurance policy associated with higher policy rates? 3) Is greater state regulation associated with higher policy rates? 4) Is greater state regulation associated with diminished price competition? Because of the small data sample set, a 10 percent alpha or significance level is used for all hypothesis tests in the section.

Do Rates Differ Between the Companies?

The question of whether First American or Fidelity charges less for title insurance policies can be evaluated using exploratory data analysis and the Wilcoxon Signed-Rank Test. Table 2.4 lists the title insurance policy rates for Fidelity and First American in 34 states. In over half of these states, the price difference between the two companies is essentially zero. Indeed, in 15 states for which data from both companies were available, there was absolutely no difference in the quotes retrieved from each forms title fees calculators. Due to rounding (discussed in the previous section), the difference was less than \$1.00 in three other states (Pennsylvania, Kentucky, and Ohio). Thus rates did not differ in 18 of the 34 states. In any of these states, a consumer has no choice of price when purchasing title insurance, which suggests that supply and demand are not the factors that determine title insurance policy prices.

Table 2.4
Comparison of Standard Title Insurance Rates
(sorted by company for a \$400,000 home)

State	First American	Fidelity	Difference
Alabama	\$950.00	\$1,100.00	-\$150.00
Arkansas	\$925.00	\$950.00	-\$25.00
California	\$1,092.00	\$1,469.00	-\$377.00
Delaware	\$1,250.00	\$1,250.00	\$0.00
Florida	\$2,075.00	\$2,075.00	\$0.00
Hawaii	\$1,423.00	\$1,444.00	-\$21.00
Idaho	\$1,430.00	\$1,430.00	\$0.00
Kentucky	\$1,238.00	\$1,238.00	\$0.00
Maine	\$1,200.00	\$1,100.00	\$100.00
Maryland	\$1,325.00	\$1,398.00	-\$73.00
Massachusetts	\$1,460.00	\$1,400.00	\$60.00
Mississippi	\$1,400.00	\$1,050.00	\$350.00
Missouri	\$925.00	\$925.00	\$0.00
Nevada	\$1,315.00	\$1,502.00	-\$187.00
New Hampshire	\$875.00	\$875.00	\$0.00
New Jersey	\$1,725.00	\$1,725.00	\$0.00
New Mexico	\$2,257.00	\$2,257.00	\$0.00
New York	\$1,771.00	\$1,771.00	\$0.00
North Carolina	\$730.00	\$650.00	\$80.00
North Dakota	\$925.00	\$925.00	\$0.00
Ohio	\$1,838.00	\$1,838.00	\$0.00
Oklahoma	\$1,104.00	\$925.00	\$179.00
Oregon	\$1,150.00	\$1,150.00	\$0.00
Pennsylvania	\$2,359.00	\$2,359.00	\$0.00
Rhode Island	\$1,110.00	\$1,250.00	-\$140.00
South Carolina	\$800.00	\$800.00	\$0.00
South Dakota	\$1,380.00	\$925.00	\$455.00
Tennessee	\$1,125.00	\$950.00	\$175.00
Texas	\$2,445.00	\$2,445.00	\$0.00
Utah	\$1,995.00	\$1,995.00	\$0.00
Vermont	\$1,300.00	\$1,025.00	\$275.00
Virginia	\$1,410.00	\$1,410.00	\$0.00
Wisconsin	\$1,775.00	\$1,605.00	\$170.00
Wyoming	\$1,315.00	\$1,315.00	\$0.00
	Average Difference		\$25.62

Sources: Fidelity National Title Insurance Company, “Estimator,” *Fidelity National Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30, 2008; and First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

In the remaining 16 states prices differ between companies. In most competitive industries a company may strive to create a *basis of differentiation*, where a company may attempt to distinguish itself from the competition on certain criteria. In some competitive industries a low-cost, high-efficiency company (such as Southwest Airlines in the airline industry) may pride itself on its ability to provide low rates and efficient service to consumers. If the title insurance industry were competitive, some company might indeed advertise some basis of differentiation that would be manifested in lower prices.

From the data in Table 2.4, it does not appear that either of these companies has a readily evident, price-related basis of differentiation. In seven of the 16 states in which price differs, First American is the lower cost alternative. In the remaining nine states, Fidelity holds the low-cost position. The states in which First American is cheaper are designated in Table 2.4 as having a negative value in the Difference column. The average of these negative values is \$139.00. This means that when First American is the low-cost alternative, it is cheaper by an average of \$139.00, or about 10.2 percent of an average Fidelity policy. The average of the positive values in the Difference column is \$204.89, indicating that when Fidelity is cheaper, it is cheaper by an average of \$204.89, or 14.7 percent of the average First American policy.

Consider the weighted average of the low-cost alternative values for each company. On average, if a price difference exists, Fidelity is cheaper by \$55.44, or 4.0 percent of the average rate from either company. *On average* Fidelity appears to be a low-cost provider in roughly one-quarter of the states surveyed. However, nothing in this analysis suggests that First American is the high-cost alternative in the title insurance industry. When all 34 states' price differences are taken into account, Fidelity is cheaper on average by a mere \$25.62, or 1.8 percent of the average rate from either company.

Statistical methods can be used to test the hypothesis that significant price differences do not exist between the two companies. Indeed, a Wilcoxon Signed-Rank Test confirms this hypothesis. The test compares the medians of the difference between the two companies' rates against a null hypothesis, which in this case is that the median price difference is equal to \$0.00.

Wilcoxon Signed-Rank Test	
H ₀ :	Median Price Difference = 0
H ₁ :	Median Price Difference ≠ 0

Table 2.5 lists the results of the test: there is no significant difference in median price between the two companies. It is reasonable to perceive a difference in prices if the calculated p-value is less than 0.10. In this case, the p-value of 0.3388 indicates that such differences would occur in 3 out of 10 cases in which random numbers were compared to one another. Based on these values alone there is no evidence that the rates obtained

from Fidelity and First American differ from one another. The results do not demonstrate the lack of competition in the industry, but show that prices do not differ significantly; per se *price* competition does not exist. Even if other factors such as coverage type and regulation type affect pricing, there is no evidence from the rates collected from the company websites that prices rates differ significantly from each other.

Table 2.5
Wilcoxon Signed-Rank Test Results

Signed-Rank Test (Paired-Sample)	First American - Fidelity
Hypothesis	
Hypothesized median (H_0)	0
Sample Size Adjustment	
Initial sample size	34
Number of values = H_0	18
Num. of values < or > H_0 (adjusted size)	16
Ranking Information	
Number of tied values	0
Sum of negative ranks	49
Sum of positive ranks (test statistic)	87
p-Value Computation	
Normal approximation (NA) used	Yes
Ties present, but not corrected for	No
Mean for NA	68.0
Std. Dev. for NA with tie correction	\$19.33
z-Statistic for NA with tie correction	0.9566
p-Value	0.3388

Source: Sudip Singh, output from StatTools software (Palisade Decision Tools Suite) using data from Fidelity and First American “Title Fee Calculators” (online at <http://titlefeescalculator.firstam.com> and <http://ratecalculator.fntg.com/default.aspx?brand=fntic>).

Are More Services Associated with Higher Policy Rates?

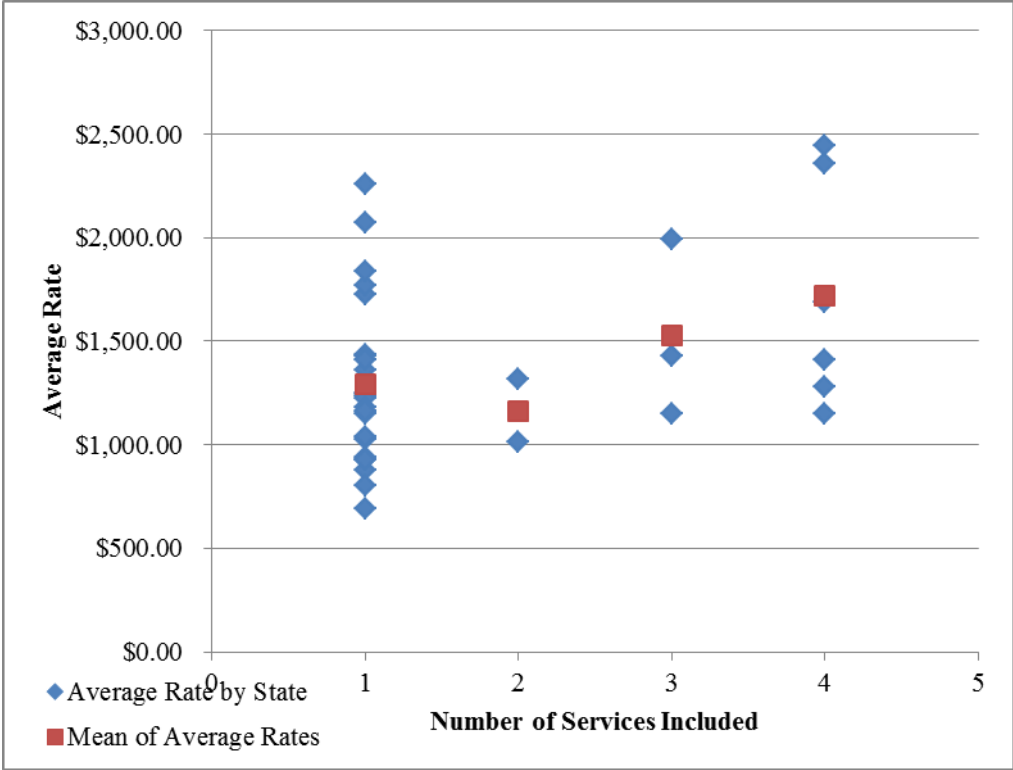
If states are classified and compared on the basis of coverage type, title insurance rates for different services can be compared. Table 2.6 presents a re-sorted version of the same data presented in Table 2.4. A graph (see Figure 2.1) plots the average of Fidelity and First American’s rates in a given state against the number of services included in that state’s title insurance rate. Comprehensive states, for instance, typically include four services (risk premium, title search, title examination, and closing costs), while risk premium-only states include only one, the premium. If the data are examined, is it true that title rates rise with the number of services provided by insurers? One hypothesis is that the number of service does not affect rates (see the box below).

Rate vs. Number of Services

H₀: Number of services does not affect rates

H₁: Rates increase as number of services increase

Figure 2.1
Graph of Average Rate vs. Service Inclusion



Sources: Fidelity National Title Insurance Company, “Estimator,” *Fidelity National Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30, 2008; and First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

Codes: risk only =1, title exam and risk =2, title exam search and risk =3, and comprehensive coverage =4.

Table 2.6
Comparison of Standard Title Insurance Rates
(for a \$400,000 home by company and services)

State	First American	Fidelity	Difference
<i>Risk Premium Only</i>			
Alabama	\$950.00	\$1,100.00	-\$150.00
Arkansas	\$925.00	\$950.00	-\$25.00
Delaware	\$1,250.00	\$1,250.00	\$0.00
Florida	\$2,075.00	\$2,075.00	\$0.00
Hawaii	\$1,423.00	\$1,444.00	-\$21.00
Kentucky	\$1,238.00	\$1,238.00	\$0.00
Maine	\$1,200.00	\$1,100.00	\$100.00
Maryland	\$1,325.00	\$1,398.00	-\$73.00
Massachusetts	\$1,460.00	\$1,400.00	\$60.00
Mississippi	\$1,400.00	\$1,050.00	\$350.00
Missouri	\$925.00	\$925.00	\$0.00
New Hampshire	\$875.00	\$875.00	\$0.00
New Jersey	\$1,725.00	\$1,725.00	\$0.00
New Mexico	\$2,257.00	\$2,257.00	\$0.00
New York	\$1,771.00	\$1,771.00	\$0.00
North Carolina	\$730.00	\$650.00	\$80.00
North Dakota	\$925.00	\$925.00	\$0.00
Ohio	\$1,838.00	\$1,838.00	\$0.00
Rhode Island	\$1,110.00	\$1,250.00	-\$140.00
South Carolina	\$800.00	\$800.00	\$0.00
Tennessee	\$1,125.00	\$950.00	\$175.00
Vermont	\$1,300.00	\$1,025.00	\$275.00
Virginia	\$1,410.00	\$1,410.00	\$0.00
Average	\$1,305.96	\$1,278.52	\$27.43
<i>Title Examination and Risk Premium Only</i>			
Oklahoma	\$1,104.00	\$925.00	\$179.00
Wyoming	\$1,315.00	\$1,315.00	\$0.00
Average	\$1,209.50	\$1,120.00	\$89.50
<i>Title Examination, Title Search, and Risk Premium</i>			
Idaho	\$1,430.00	\$1,430.00	\$0.00
Oregon	\$1,150.00	\$1,150.00	\$0.00
Utah	\$1,995.00	\$1,995.00	\$0.00
Average	\$1,525.00	\$1,525.00	\$0.00
<i>Comprehensive Coverage</i>			
California	\$1,092.00	\$1,469.00	-\$377.00
Nevada	\$1,315.00	\$1,502.00	-\$187.00
Pennsylvania	\$2,359.00	\$2,359.00	\$0.00
South Dakota	\$1,380.00	\$925.00	\$455.00
Texas	\$2,445.00	\$2,445.00	\$0.00
Wisconsin	\$1,775.00	\$1,605.00	\$170.00
Average	\$1,727.63	\$1,717.50	\$10.13

Sources: Fidelity National Title Insurance Company, "Estimator," *Fidelity National Title Rate Calculator*.
Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30,

2008; and First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

In assessing title insurance policy prices on the basis of service inclusion, prices appear to rise as more services are included. Comprehensive states, where closing costs are included in the policy, have the highest rates on average. Risk premium-only states appear to have lower average prices. The sample size for states outside of these two categories is so small that statistical tests are unlikely to distinguish rate differences. The fact that states that offer both the examination and the premium on average have lower prices than states offering only the premium may or may not be more than an anomaly because the sample size is so small. Thus, the focus of this analysis is on the comparison between comprehensive and premium-only states.

In several states, the prices charged for only risk premiums exceed the prices for comprehensive title insurance services. This result is difficult to understand: how can prices for more services in some states be lower than the prices for fewer services in other states? Consumers in five of the 22 risk premium-only states can expect to pay more for a single risk premium than counterparts in comprehensive states, who receive many more services for a similar price. For example, a Floridian pays \$2,075 for only a risk premium, regardless of company. A Floridian pays on average approximately \$350 more for fewer services than the average consumer in a comprehensive state. Consumers in New Jersey, New Mexico, New York, and Ohio can similarly expect to pay higher prices for fewer services. In three of the six comprehensive states, consumers pay less for more services. For example, a First American customer in California or Nevada or a South Dakota homeowner with Fidelity pays less for a comprehensive policy than the average customer in a risk premium-only state. In other words, in eight of 28 states there is an exception to the business concept that more services result in higher prices.

An examination of prices *within* each coverage group offers further evidence of unexplained anomalies in price. A homeowner purchasing a Fidelity title insurance policy for a \$400,000 home in North Carolina would pay approximately \$650 for a title policy. A consumer making a similar purchase in New Mexico would pay \$2,257. Comprehensive coverage in South Dakota can be had for as little as \$925 from Fidelity. In Texas a similar policy would cost \$2,445. There does appear to be at least some unexplained discrepancy between what might be expected in a competitive environment and what is observed. Figure 2.1 illustrates these concepts graphically. Both risk premium-only states and the comprehensive coverage states have few high-cost examples. Despite the discrepancy in services provided, the two series have similar wide ranges, and several risk premium-only states have higher rates than comprehensive states.

Logistic regression can be used to test the hypothesis that higher levels of service inclusion are associated with higher prices. Coverage type is a categorical variable with four levels of increasing services: risk only (C=0), title exam and risk (C=1), title exam, search, and risk (C=2), and comprehensive coverage (C=3). The hypothesis is that the

title insurance rate in a state i is a function of the service level j , where j ranges from 0 through 3. Three dummy variables can represent the four service levels presented in Equation 1. Each state is i categorized using 0,1 coding so that a unique slope coefficient, β_j can be obtained for each service level (see appendix B for the specific coding). The hypothesis is that the title rate in state i with service level j can be explained by the service level, or

$$\text{Rate}_{i,j} = \beta_0 + \beta_1 S_{1i} + \beta_2 S_{2i} + \beta_3 S_{3i} \quad (\text{Equation 1})$$

where $\text{Rate}_{i,j}$ is the title insurance cost in state i with services j . Then β_0 represents the intercept coefficient in risk premium-only states, S_{1i} represent rate value in exam and risk states, S_{2i} is a surrogate for rate in title exam, search, and risk states, and S_{3i} represents rates in comprehensive coverage states. Table 2.7 shows the results of the regression analysis. Equation 2 reports the coefficients.

$$\text{Rate} = 1292.24 - 127.49S_1 + 232.76S_2 + 430.34S_3 \quad (\text{Equation 2})$$

Table 2.7
Regression Output, Rate vs. Number of Services

	Coefficients	Standard Error	t Stat	P-value
Intercept (Risk Only)	1292.24	90.47	14.29	6.4E-15
Title Exam and Risk	-127.49	319.87	-0.40	0.6930
Title Exam, Search, and Risk	232.76	266.35	0.87	0.3891
Comprehensive	430.34	198.91	2.17	0.0386
R Square	0.1551			
F	1.8361			
Significance F	0.1619			

Source: Sudip Singh, using Microsoft Excel 2007 and the coding included in Appendix A.

The four regulatory levels explain less than 16 percent of the variance. Neither β_1 nor β_2 is statistically different from 0. The weak explanatory power may reflect the small sample sizes in the intermediate categories, as only two states are included in Service Level 2. Rates in states that offer “title exam and risk protection” are not different statistically from title insurance costs in risk premium-only states. The same holds true—the average rates do not differ for states with title exam, search and risk versus states with risk only (see Table 2.7). When rates in risk premium-only states are compared to the comprehensive states, the cost of title insurance in comprehensive states exceeds rates in premium-only states: the p-value of 0.0386 is well below the 0.1 level of significance. The results in Table 2.7 indicate that title policy prices vary not so much based on service inclusion but between comprehensive coverage states versus all the rest. In other words, homeowners in a comprehensive state can expect to pay more for their title insurance coverage than those living in a risk-premium only state.

Is a Greater Degree of Regulation Associated with Higher Policy Rates?

Is there evidence that regulation style (no regulation versus “use and file,” “file and use,” prior approval, or promulgated) affects title insurance policy rates? Table 2.8 re-sorts the title rate data by regulation style. The table shows that Fidelity and First American charge the same rate for title insurance in at least one state in each of the five regulation categories, including states in which rates are unregulated. Table 2.8 also illustrates that a large number of states use “File and Use” as opposed to other regulation styles.

Using logistic regressions, let “not regulated” be represented by a zero, “use and file” by a 1, file and use by a 2, prior approval by a 3 and promulgated as a 4. Figure 2.2 plots the average of Fidelity and First American’s rates in a given state against the degree of regulation in that state. For example, in Alabama the average of Fidelity and First American rates is \$1,025. Since rates are unregulated in Alabama, this “no regulation” case is associated with the “zero” on the x-axis. It is possible to use the degree of regulation, from “none” to “promulgated” rates to test whether title price reflects the degree of regulation.

Table 2.8
Rate Comparison by Company and Regulation Style
 (for a standard title insurance for a \$400,000 home)

State	First American	Fidelity	Difference
<i>No Regulation</i>			
Alabama	\$950.00	\$1,100.00	-\$150.00
Arkansas	\$925.00	\$950.00	-\$25.00
Hawaii	\$1,423.00	\$1,444.00	-\$21.00
Massachusetts	\$1,460.00	\$1,400.00	\$60.00
Mississippi	\$1,400.00	\$1,050.00	\$350.00
Oklahoma	\$1,104.00	\$925.00	\$179.00
Virginia	\$1,410.00	\$1,410.00	\$0.00
Average	\$1,238.86	\$1182.71	\$56.14
<i>Use and File</i>			
Utah	\$1,995.00	\$1,995.00	\$0.00
Vermont	\$1,300.00	\$1,025.00	\$275.00
Wisconsin	\$1,775.00	\$1,605.00	\$170.00
Average	\$1,690.00	\$1541.67	\$148.33
<i>File and Use</i>			
California	\$1,092.00	\$1,469.00	-\$377.00
Delaware	\$1,250.00	\$1,250.00	\$0.00
Kentucky	\$1,238.00	\$1,238.00	\$0.00
Maine	\$1,200.00	\$1,100.00	\$100.00
Maryland	\$1,325.00	\$1,398.00	-\$73.00
Missouri	\$925.00	\$925.00	\$0.00
Nevada	\$1,315.00	\$1,502.00	-\$187.00
New York	\$1,771.00	\$1,771.00	\$0.00
North Carolina	\$730.00	\$650.00	\$80.00

North Dakota	\$925.00	\$925.00	\$0.00
Ohio	\$1,838.00	\$1,838.00	\$0.00
Oregon	\$1,150.00	\$1,150.00	\$0.00
Pennsylvania	\$2,359.00	\$2,359.00	\$0.00
Rhode Island	\$1,110.00	\$1,250.00	-\$140.00
South Dakota	\$1,380.00	\$925.00	\$455.00
Tennessee	\$1,125.00	\$950.00	\$175.00
Wyoming	\$1,315.00	\$1,315.00	\$0.00
Average	\$1,296.94	\$1,295.00	\$1.94
Prior Approval			
Idaho	\$1,430.00	\$1,430.00	\$0.00
New Hampshire	\$875.00	\$875.00	\$0.00
New Jersey	\$1,725.00	\$1,725.00	\$0.00
South Carolina	\$800.00	\$800.00	\$0.00
Average	\$1,207.50	\$1,207.50	\$0.00
Promulgated			
Florida	\$2,075.00	\$2,075.00	\$0.00
New Mexico	\$2,017.00	\$2,092.00	-\$75.00
Texas	\$2,445.00	\$2,445.00	\$0.00
Average	\$2,179.00	\$2,204.00	-\$25.00

Sources: Fidelity National Title Insurance Company, “Estimator,” *Fidelity National Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30, 2008; First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008; and Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

Rate vs. Degree of Regulation	
H ₀ :	Degree of regulation does not affect rates
H ₁ :	Rates increase as the degree of regulation increases

The results in Figure 2.2 illustrate how title rates in promulgated-rate states exceed the rates for any other regulatory style.

If degree of regulation is used as categorical quantitative variable with five distinct levels (no regulation, use and file, file and use, prior approval, and rate promulgation) it is possible to test they hypothesis that the title insurance rate in state i is a function of its regulation style k where k equals 0 through 4. Dummy variables are again created using a 0,1 coding system to allow each of the “steps” to be matched with a slope coefficient, β_k . The “no regulation” style is used as the intercept ($k = 0$). The following formula will serve as the model:

$$\text{Rate}_{i,k} = \beta_0 + \beta_1 R_{1i} + \beta_2 R_{2i} + \beta_3 R_{3i} + \beta_4 R_{4i} \quad (\text{Equation 3})$$

where $\text{Rate}_{i,k}$ is the title insurance cost in a state i using regulation style k , β_0 represents unregulated rates, R_{1i} is the use and file style, R_{2i} represents file and use states, R_{3i} represents prior approval, and R_{4i} is associated with a state using promulgated rates. Table 2.9 presents the results.

$$\text{Rate}_{i,k} = 1210.79 + 405.05R_1 + 85.18R_2 - 3.29R_3 + 1048.21R_4 \quad (\text{Equation 4})$$

Table 2.9
Regression Output, Rate vs. Degree of Regulation

	Coefficients	Standard Error	t Stat	P-value
Intercept (No Regulation)	1210.79	136.11	8.90	8.76E-10
Use and File	405.05	248.50	1.63	0.1139
File and Use	85.18	161.72	0.53	0.6023
Prior Approval	-3.29	225.72	-0.01	0.9885
Promulgated Rates	1048.21	248.50	4.21	0.0002
R Square	0.4374			
F	5.6372			
Significance F	0.0018			

Source: Sudip Singh, using Microsoft Excel 2007 and the coding included in Appendix B.

The p-values for β_0 , 8.76E-10, and β_4 , 0.0002, suggest that random sampling alone would not be likely to produce the rates found in no regulation versus promulgated rate states, respectively. At the intermediate levels β_1 , β_2 and β_3 however, p-values do not reach the 0.1 significance level. These results suggest that sampling error alone could be a reasonable explanation for the differences in rates. The model explains best the relationship between no regulation and promulgated rate states: states in which title insurance rates are promulgated can be expected to exhibit higher prices than those where rate are unregulated.

Given the small sample size, prior approval states may not differ statistically from the file and use states. To assess the relationships among the intermediate levels, the prior approval states were combined with the file and use states and the regression was run for a second time (see Table 2.10). The relationship between rates and regulation can be stated as follows:

$$\text{State Title Rate} = 1210.79 + 405.04R_1 + 68.33R_2 + 1048.21R_4 \quad (\text{Equation 5})$$

Table 2.10
Test 1, Rate vs. Degree of Regulation

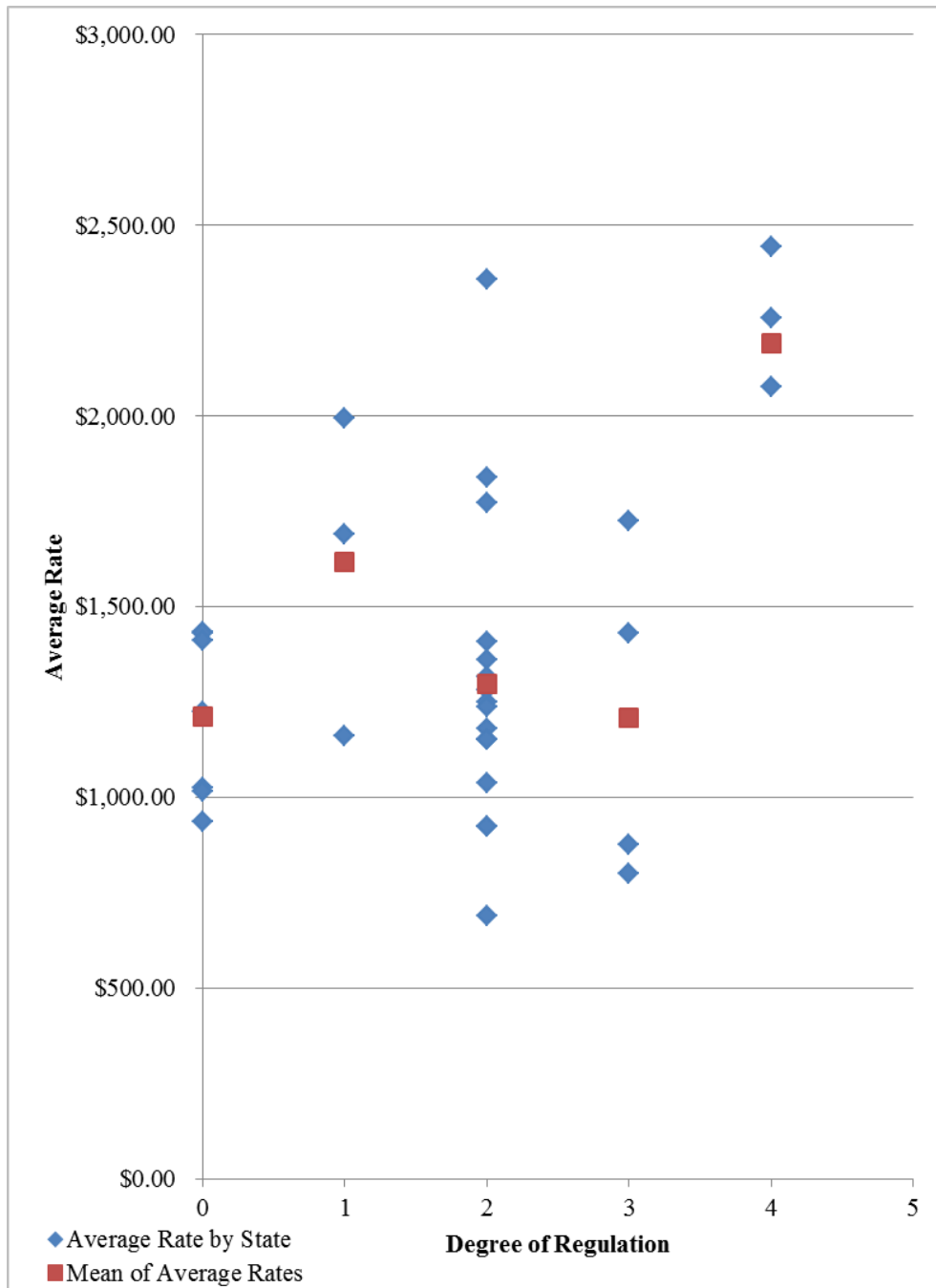
	Coefficients	Standard Error	t Stat	P-value
Intercept (No Regulation)	1210.79	134.27	9.01	4.81E-10
Use and File	405.05	245.15	1.65	0.1089
File and Use	68.33	155.05	0.44	0.6625
Promulgated Rates	1048.21	245.15	4.28	0.0001
R Square	0.4336			
F	7.6564			
Significance F	0.0006			

Source: Sudip Singh, using Microsoft Excel 2007 and the coding included in Appendix B. (“Prior Approval” category eliminated).

When the β_0 represents “no regulation” and β_1 , β_2 , and β_3 respectively refer to use and file (β_1) states, file and use plus prior approval states (β_2), and promulgated states (β_3). For use and file regulation states, the p-value is just above the 0.1 alpha, indicating that that the difference between a use and file state and an unregulated one might not be attributable to chance alone. If use and file states differ from no regulation states, this could indicate that introduction of even the least invasive form of regulation affects rates. When moving from an unregulated state to a state using a use and file method, a customer can expect to pay on average over \$400 more for a title policy. Table 2.10 indicates the relationship between the “no regulate” states versus state rate promulgation: on average a customer will pay over \$1,000 more in a promulgated rate state than in a file and use state. The large range of values in the file and use category indicates the category has no empirical statistical significance.

The findings of the regression analyses are that introduction of even the least invasive form of regulation (use and file) can be expected to raise prices. When a state promulgates rates, the cost of title insurance will on average be significantly higher than the title prices where states use other regulation styles. In summary, one key distinction between the states that use any form of regulation versus those that remain unregulated is that a property owner in any state that has introduced some form of regulation is likely to pay on average more for title insurance than in an unregulated state.

Figure 2.2
Graph of Average Rate vs. Degree of Regulation



Sources: Fidelity National Title Insurance Company, “Estimator,” *Fidelity National Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30, 2008; and First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

Does a Greater Degree of Regulation Reduce Price Competition?

A final analysis considers whether regulation per se affects price competition, as measured by the difference between Fidelity and First American rates for a given state. The relevant data for this analysis comes from the “Difference” column in Table 2.8 (see also Figure 2.3). In any state with a difference between company rates, then there is some price competition within that state. For example, those states with a higher absolute difference between the two companies’ rates appear to be more rate-competitive. Table 2.8 lists the absolute value of the difference as an indicator of price competition. In other words, it matters less that Fidelity is cheaper than First American in a given state or vice versa than that a difference exists. Data analysis and a single logistic regression can be used to assess the hypothesis listed below.

Price Competition vs. Degree of Regulation

- H₀: Degree of regulation does not affect title rate differences
H₁: Differences in rates decreases as degree of regulation increases

Perhaps the most striking feature of this data set is that every regulation group, even the no regulation states, contains at least one state in which the price difference is \$0.00. In the file and use category (an intermediate level of regulation), 9 of the 17 states do not show any difference between Fidelity and First American rates. This suggests that quality of price competition can be limited in any state regardless of the level of regulation.

Looking at the “Mean of Difference in Rate” (see Figure 2.3), differences in rates tend to shrink as government involvement rises. Preliminary observation of the data suggests that a negative relationship between regulation and competition could exist. The hypothesis can be tested using a logistic regression analysis of the absolute value of the difference in rates.

$$\text{Difference}_{i,k} = \beta_0 + \beta_1 R_{1i} + \beta_2 R_{2i} + \beta_3 R_{3i} + \beta_4 R_{4i} \quad (\text{Equation 6})$$

where Difference is the difference between Fidelity and First American title insurance rate quotes in a state i using regulation style k . The intercept β_0 represents the difference between rates in unregulated states, R_{1i} is the difference in a state that has adopted the use and file style, R_{2i} represents the difference in file and use states, R_{3i} represents the difference in prior approval states, and R_{4i} is a surrogate for the difference in rates in a promulgated rate state.

Table 2.11 presents the results of the regression. Equation 7 lists the relationship between price competition and degree of regulation.

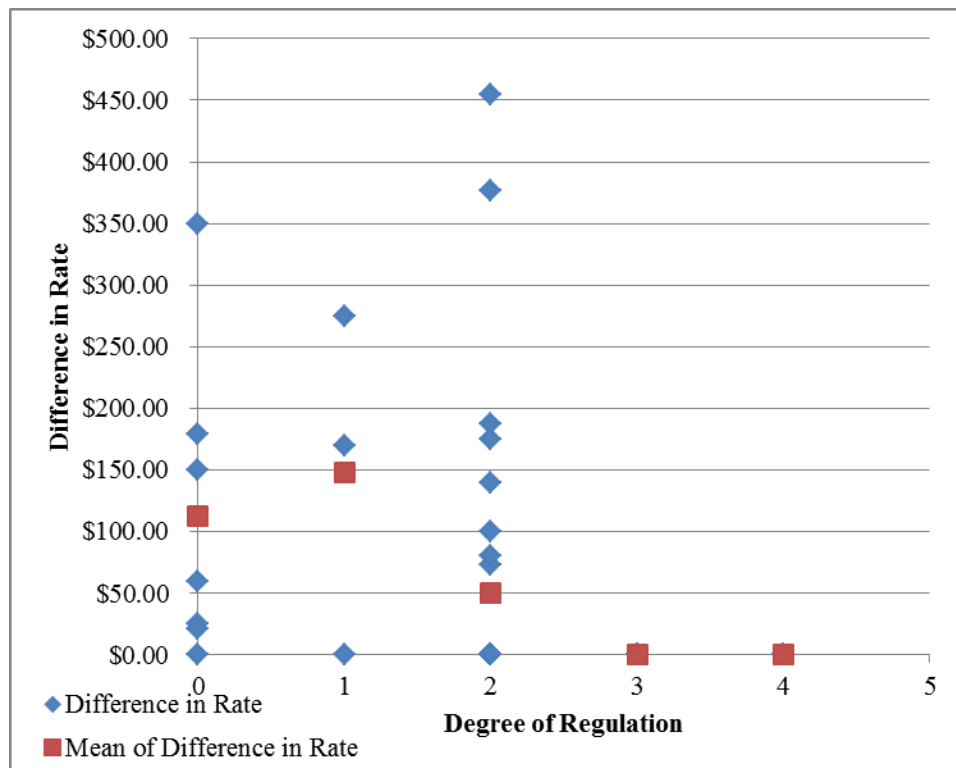
$$\text{Difference} = 112.14 + 36.19R_1 - 18.79R_2 - 112.14R_3 - 112.14R_4 \quad (\text{Equation 7})$$

Table 2.11
Regression Output, Difference in Rates vs. Regulation

	Coefficients	Standard Error	t Stat	P-value
Intercept (No Regulation)	112.14	46.56	2.40	0.0226
Use and File	36.19	85.01	0.42	0.6734
File and Use	-18.79	55.32	-0.34	0.7365
Prior Approval	-112.14	77.21	-1.45	0.1571
Promulgated Rates	-112.14	85.01	-1.31	0.1974
R Square	0.1352			
F	1.1332			
Significance F	0.3603			

Source: Sudip Singh, using Microsoft Excel 2007 and the coding included in Appendix C.

Figure 2.3
Graph of Price Differences vs. Degree of Regulation



Sources: Fidelity National Title Insurance Company, “Estimator,” *Fidelity National Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: November 30, 2008; and First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

From the results in Table 2.11, only the rate values in no regulation states show statistical significance. That is, the p-value for β_0 is well below the 0.1 significance level, suggesting that random error alone cannot account for the difference between no regulation state rates and those of other states ($k = 1, 2, 3$ or 4). Any differences that exist among the intermediate levels could be the products of sampling error, given that p-value exceeds an alpha of 0.10.

Two factors may weaken the explanatory power of this model: small sample size and two outliers. Small sample sizes in three of the categories may create problems in assessing relationships in the intermediate levels. Two high outliers are in the file and use category, differences of \$377.00 in California and \$455.00 in South Dakota. These two points affect the relationship, as the correlation between difference in rate and degree of regulation is -0.2655 with the outliers included and -0.4066 without them. Exclusions of the high outliers can make promulgated rates and prior approval state data statistically significant.

Excluding the high outliers where more competition appears to exist, the results indicate that a consumer can expect to see some differences in rates between Fidelity and First American policies in unregulated states. Competition does appear to exist in California and South Dakota, which warrants some further investigation as to why. In other states, it is hard to argue that price differences exist. In other words, consumers are most likely to see differences in title insurance policy rates in states where title insurance remains unregulated.

Implications

This study has sought to estimate the nature of price competition in the American title insurance industry by answering four key questions. Each question was addressed using data analysis and statistical techniques (see Table 2.12). Regulation appears to reduce price competition. Unregulated states had by far the cheapest rates. States that promulgate prices had both high rates and less competition. Consumers do not appear to be beneficiaries in the regulation process, as the more comprehensive the degree of regulation, the higher the insurance rates.

Table 2.12
Summary of Findings

<p>Question 1: Do rates differ between companies, either within a state or in aggregate?</p> <ul style="list-style-type: none"> • Rates were identical between the two companies in 18 of the 34 states for which data were available. • Rates from First American and Fidelity do not statistically differ from one another in these 34 states, as demonstrated by the Wilcoxon Signed-Rank Test.
<p>Question 2: Is the inclusion of more services associated with higher policy rates?</p> <ul style="list-style-type: none"> • Statistical significance could not be found at intermediate service inclusion levels, largely

due to small sample sizes in these categories.

- Individuals living in “comprehensive” states can expect to pay more for title insurance policies than consumers living in risk premium-only states.

Question 3: Is a greater degree of regulation associated with higher policy rates?

- Prices rise when the “use and file” style, the lowest form of regulation, is imposed—as opposed to no regulation.
- Consumers in “promulgated rate” states can expect to pay over \$1,000 more for title policies than consumers living in unregulated states.

Question 4: Does a greater degree of regulation reduce price competition?

- A consumer purchasing a \$400,000 home in an unregulated state can expect that price differences will exist between Fidelity and First American.
- Regulation levels per se do not appear to reduce “price competition,” although results are affected by small sample sizes in some categories. Two states (California and North Dakota) in the “file and use” category indicate more competition than expected.

Notes

¹ Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry* (New York: New York University Press, 2007).

² The American Land Title Association, *Why You Need Title Insurance*. Online. Available: <http://www.homeclosing101.org/whyneed.cfm>. Accessed: January 8, 2009.

³ First American Corporation, *San Francisco County – Title Insurance*. Online. Available: <http://www.firstam.com/title-ca/sanfrancisco/html/cust/2020.html>. Accessed: January 8, 2009.

⁴ Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

Chapter 3. Title Insurance: The Federal Government's Role

The purpose of this chapter is to describe the roles of the United States (US) federal government in the management of property title. As each of the 50 states regulates land titles, the federal government does not regulate directly title insurance. However, the US federal government can influence the title insurance industry's operations in its roles as an owner of land, financier of mortgages, and regulator of the country's financial institutions. This section describes options that the State of Texas can consider to improve Texas' title insurance system based on a review of recent reports by the Government Accountability Office (GAO) and the Department of Housing and Urban Affairs (DHUA), recent congressional hearings, and analysis by the National Association of Insurance Commissioners (NAIC). These options include allowing "Torrens" title registration, requiring lenders to pay for title insurance, improving the promulgation of title insurance premium rates by improving data collection, and enhancing the coordination of state real estate fraud investigations.

Hernando de Soto has argued that capitalism succeeds in the United States in part because owners of property and land can document ownership and use such records to create an asset that can be used as a surety for loans to improve the property or invest in other purposes, such as a new business.¹ As a result, American's recording system that certifies land title is one basis for the country's economic success, as lenders would be reluctant to provide loans for purchasing land or using that land as collateral for further investments without land title (or its assurance through a third party such as with title insurance). While private companies may guarantee title, both state and federal regulators have a role assuring the long-term viability, honesty, and transparency of the title insurance industry. This chapter describes the title system and the history of the title insurance industry, articulating the respective regulatory roles of the state and federal governments. This paper then reviews two recent reports by the Government Accountability Office (GAO) and the Department of Housing and Urban Affairs (HUD) regarding the Real Estate Settlement and Procedures Act (RESPA). It reports on recent congressional hearings and the work of the National Association of Insurance Commissioners (NAIC). This chapter concludes with options for reforms that the State of Texas can consider to improve Texas' title insurance system.

State and Federal Regulation of Title Insurance

The title insurance industry grew as the United States economy changed from a rural agricultural county system into a modern, industrial, urban civilization. During this transition, sellers subdivided and sold large tracts of land. As the number and frequency of real estate transactions increased, new property owners sought means to assure the validity of title to land and property.²

Some form of title insurance is reported as early as 1853.³ In 1868, the Pennsylvania Supreme Court ruled in *Watson v. Muirhead* that a conveyancer could not be judged

liable for errors if he was not negligent in his duties.⁴ After this ruling Pennsylvania judges and its bar decided to develop an alternative that could protect persons in real estate transactions. The growth of the metropolitan areas required significant capital investments, most of which were secured by mortgages that needed the assurances that title insurance could provide. During and after World War I, some title insurers were departments of larger banking institutions.⁵ During the Depression some title insurance companies failed due to losses incurred from real estate (not insurance).⁶ After World War II, between 1945 and 1960, the title insurance industry diverged from the banking and financial industries to operate on insurance-based principles. In order to encourage home ownership after World War II, federal programs began to provide mortgage insurance and guarantees, a process that expanded the use of title insurance even into the rural parts of the country. By the 1960s the demand for capital became a national market where lenders sought the security of a mortgage to be acceptable throughout the nation via a “freely transferable mortgage” with standard title insurance policies.⁷

As the real estate industry has grown, both the title insurance industry and the concomitant regulatory system have changed. During this period of industry growth, regulation of the industry was conducted at the state level due to the 1868 United States Supreme Court case *Paul v. Virginia* ruling that insurance was not commerce and thus could not be regulated at the national level.⁸ Despite attempts to extend federal regulation to encompass the insurance industry, it was subject only to state regulation, usually through statutes regulating the business of title insurance.⁹ A major shift in this regulatory structure took place in 1944 when Supreme Court ruled in *United States v. Southeastern Underwriters Association* that an insurance company operating across state lines was engaged in commerce and therefore subject to federal regulation and the Sherman Anti-Trust Act.¹⁰ However, the 79th Congress responded quickly and on March 4, 1945, passed the McCarran-Ferguson Act which provided that the Sherman and other anti-trust acts would not apply to the insurance companies until January 1, 1948, and then only if it was deemed that the states were unable to enact and enforce the necessary regulations:

Thus, while the state insurance departments remain the centers of controls over the activities of the insurance industry, there looms large the specter of centralized control if the several states do not effectively discharge their function. In effect, therefore, the states are charged with the supervision of the insurance industry, but their license is conditioned upon the efficient execution of their trust.¹¹

Description of the Title Insurance System

Clear title to property can be difficult to prove. State and federal law recognize many barriers to clear property title due to the complexities of a real estate transaction, such as unpaid real estate taxes, a lien on the property, or a judgment against the seller.¹² Assuring the title of a property and addressing these obstacles can be accomplished through a title search, a title abstract, an attorney's letter of opinion, a title certificate, or title insurance.¹³ As the secondary mortgage market has adopted title insurance as the preferred type of assuring title, it is the form most often required by lenders.¹⁴

Title insurance is a product that protects both a landowner and a lender against the risk that the ownership of the property is in dispute. A title insurance policy can protect the holder (either the lender or the purchaser) by assuring that the title to the property is good and committing to defend that evaluation in court.¹⁵ The insurance company will conduct a title search and determine if there are any defects (defined as either a hidden risk to the title or some form of encumbrance) in the title for that property.¹⁶ When a lender provides a mortgage to a purchaser, it wants to ensure that the seller owns the property and can sell it and that there are no defects.

Title insurance as an insurance product differs from casualty insurance in intent and practice. A casualty insurance promises funds to protect a property from future risks such as accidents, fire, a natural disaster, or theft. Title insurance provides protection from past events such as errors in property records, prior ownership disputes, liens against the property, or judgments against the owner. Casualty insurance rates reflect the insurance company's assessment of the likelihood of risks to a property. Title agents research the property and legal records of local county clerks to assure that there are no outstanding claims on the property. Casualty insurance is purchased regularly for a specific period. Title insurance is purchased once and lasts for as long as the mortgage exists or the owner owns the property. Insurance company's losses for casualty insurance can exceed 70 to 80 percent of the premium. Estimated losses for a title insurer can range from less than 1 percent but almost always less than 10 percent of title insurance fees. Title insurance rates are regulated and set by each state, which differs from casualty insurance where in many states companies set rates in an open market.

Many homebuyers are unfamiliar with the home buying process and rely on real estate professionals (such as a real estate agent, mortgage broker, or lawyer) for a reference recommendation for a title insurance agent.¹⁷ Given this system, title insurance agents may market services to real estate professionals more than to the consumer who actually pays for the product. Some analysts have argued that the relationship between title agents and underwriters to other related real estate industry professionals follows a pattern called "reverse competition" that can affect the price homeowners pay for title insurance, as costs are incurred in marketing title insurance to real estate-related professionals without the involvement of the property buyer.

In Texas, the Commissioner of Insurance regulates title insurance and sets rates. State statutes require that the Commissioner promulgate title insurance rates at a price that is fair to consumers but also allows title agents to cover expenses and make a fair and reasonable profit.¹⁸ State regulators have only limited resources to supervise the rate-setting process and in practice may focus on illegal fraud and defalcation activities in this industry. It is not easy for any state insurance regulator to provide actuarial justification for a title insurance rate, as regulators may not possess title insurance industry costs. Indeed, consumers pay for diverse services under the rubric of title insurance. Title insurance rates vary across the country by more than a factor of ten as expressed in terms of premium cost per \$100 of mortgage, making it difficult for Texas consumers to know whether they are paying too much or too little for services rendered.

Title agents work with local lenders and borrowers, research county title records, register the new title, and often act as an escrow agent. For these efforts a Texas title agent keeps the majority of the premium and forwards the remainder to the underwriter (insurance company) to cover “insurance risks, pay for losses and adjustments, administer the corporation, and earn a respectable profit.”¹⁹

In the title industry, one of the ways that title insurers compete for market share is through payment for bringing business to the insurers, sometimes called a “kickback.” In addition to direct cash payments to the referring entities, indirect kickbacks (such as free spa trips) can also occur. Fraudulent “affiliated business arrangements” or “captive reinsurance” allow an insurer and a title agent to share revenue through a controlled business relationship.²⁰

Federal Review of the Title Insurance Industry

After the passage of the McCarran-Ferguson Act, individual states regulated the title insurance industry so that direct federal oversight has been limited primarily to prevention of industry abuse of the referral system (the concept of “reverse competition”), which led to the passage the federal Real Estate Settlement Procedures Act (RESPA) in 1974. RESPA protects homebuyers during the real estate closing process by making it unlawful “for title insurance companies to give anything of value for the mere referral of business.”²¹ State attorneys general may sue a title company based on reported kickbacks and fraud violations. Some consumer advocates have argued that consumers pay too much for title insurance, that the industry is concentrated into too few insurance underwriters, and that revenues increase while expenses do not.²² The Federal Trade Commission (FTC) brought an anti-trust lawsuit in 1985 against six title insurance companies alleging that the insurers operated through rating agencies and restrained competition by setting rates for title search and settlement services. In 1992, the House Committee of Veterans (HCV) investigated whether the Veterans Administration (VA) paid too much for title insurance and whether it would be less expensive for it to self-insure title policies.

During testimony, the HCV learned that the Department of Veterans Affairs changed its policies in 1986 regarding properties that were foreclosed on by the lender. By 1986, the VA had over 16,000 of these properties pending a review to ensure that the title was clear and marketable. In order to process these properties faster, it enacted a policy encouraging lending institutions to provide title insurance, the cost of which it could include in its claims. By 1992, the VA was paying approximately \$5 million dollars for title insurance. It was able to ensure title for these properties and reduce the time it took to market a property from 102 days in 1986 to 65 days in 1992.²³ For the VA, it was “a way to have the private sector conduct the title research on these cases that [the VA was] not equipped to handle due to budgetary constraints.”²⁴ In addition, the VA testified that it was not the appropriate body to investigate whether title insurance was over-priced or that the VA should provide title insurance itself even if “the VA could generate revenue or charge less than the private industry.”²⁵

By the mid-2000s, the increasing number of home refinances and the rising home prices of the housing boom that followed helped the title insurance industry quadruple into an \$18 billion industry and become what Forbes magazine called “America’s richest insurance racket.”²⁶ In June 2005, the U.S. Department of Housing and Urban Affairs announced that it was considering revisions to the Real Estate Settlement Procedures Act (RESPA) regulations, while the National Association of Insurance Commissioners (NAIC) was considering changes to its model legislation for title insurers and title agents.

In response to these events, U.S. Representative Oxley (R-OH), Chairman of the House Financial Service Committee, asked the Government Accountability Office (GAO) to study the title industry, including price competition, the size of the market, the roles of the various participants in the market, and how the industry is regulated. The GAO found that 70 to 90 percent of the title premium went to the title agent but that few states regulated them. The GAO found that most states do not take title agent costs into consideration when they set premium rates and that real estate entities were increasingly becoming partners in affiliated business arrangements which may create potential conflicts of interests.²⁷

The GAO investigators stated that regulators in most states set premium rates that do not reflect the underlying costs of the product, as the largest expense for title insurers is not losses from claims (as in most other types of insurance), but expenses related to title searches and agent commissions.²⁸ The investigators were unable to report how often discounted title rates are offered for mortgage refinancing even though states authorize discounted rates. The investigators questioned whether a truly competitive market exists for title insurance.²⁹ Consumers who purchase title insurance lack the knowledge to shop for an agent and rely on recommendations from real estate agents and other professionals. In addition, the title industry is concentrated, as five major national underwriters of title insurance policies account for over 90 percent of all premiums.³⁰

Although title agents are a central component of title industry, not all states regulate them. In many states various real estate professionals are regulated by different state agencies. In 2006, the GAO reported to the House Financial Service Committee that many state regulators did not set insurer rates, that most did not consider title search expenses to be part of the premium and did not collect the financial information needed to examine expenses for the title search and examination work. In most other lines of insurance, a consumer’s premium may be set to cover losses and claims experienced by the insurance provider. Title insurance policy claims are a minor cost compared to the expenses related to title searches and agent commissions. For example, in 2005 title insurers faced losses and loss adjustment expenses of approximately 5 percent of total premiums written, while agents retained approximately 70 percent of total premium written (primarily for work related to title searches and examinations and for agents’ commissions).³¹ This compares to property casualty insurers’ losses and loss adjustment expenses that accounted for approximately 73 percent of total premiums.³² Consumers could be in a poor negotiating position when purchasing title insurance due to a dearth of information.

The percentage of uninformed customers raised the question of whether a competitive market exists. Since consumers do not purchase title insurance often enough to comparison-shop, they may take recommendations from a real estate professional, such as a realtor or mortgage lender. When title agents market their services to these professionals and not the consumer, it is not easy to know whether recommendations are made with the consumer's interests in mind. For example, some consumers refinancing their mortgages were unaware that a potential discount on the premium might be possible if they were using the same agent.³³ It was not clear whether they received a discount, how large a discount, or if a consumer even knew to ask for it.³⁴

The GAO report found three types of illegal activities: kickbacks or free or discounted business services and other items of value, unlawful referral fees through captive reinsurer agreements, and allegedly inappropriate or fraudulent business arrangements.³⁵ Kickbacks are fees that title agents pay to a referring entity, often a real estate agent, broker, or lender. The GAO report noted a number of state and federal investigations of kickbacks and misappropriations of customer premiums—illegal activities that can occur in the sale of title insurance.³⁶ The report stated that while kickbacks and referral fees are illegal under both the Real Estate Settlement Procedures Act (RESPA) and most state insurance laws, the practice is common, as indicated by the recent state and federal investigations.³⁷ Large settlement amounts for illegal kickbacks in several states have resulted in over \$90 million of fines between 2003 and 2006, as compared to net earnings for the top five major insurers listed in excess of \$1.6 billion annually.³⁸

These kickbacks could be paid as direct payments through captive reinsurance arrangements. State insurance regulators reported that by title insurers and agents have allegedly used so-called captive reinsurance arrangements to provide unreported compensation for referrals. Such a referral-for-fee practice is unlawful under some state anti-kickback and anti-rebating laws as well as under RESPA. Under this arrangement, a title insurance company can form a reinsurance company with other parties, some of whom provide referrals to the company, such as a homebuilder or real estate broker. The title company pays a portion of the premium to this new entity in order for it to allegedly share in the risk involved. Investigators reported that in some cases the amount of the premium that was paid to this new entity was in excess of the risk it was undertaking, especially for a single-family home.³⁹

Investigators recommended further study of affiliated business arrangements (ABAs), companies owned jointly by real estate agents, title agents, real estate brokers, or mortgage brokers. Industry groups claim that convenient, one-stop shopping and lower risk allow consumers to benefit. Consumer groups and state insurance regulators point out that such an arrangement can be abused and could present conflicts of interest in which “entities such as real estate brokers, lenders, and builders... increasingly becom[e] full or partial owners of title agencies and that can create conflicts of interest and can be used in ways that do not benefit consumers.”⁴⁰ Although an ABA could provide a convenient service for consumers by rolling these services into one business, they can also be a mechanism for providing referral fees back to the referring entity. The GAO reported that the number of these arrangements has been increasing recently and warrant

further investigation as some ABAs have been discovered to be no more than empty shell businesses with no physical location, employees, or assets.⁴¹

The GAO also reported that many state regulators provided limited oversight of the operation of the title insurance agents, even though they play a critical role in the underwriting process. This oversight varied from state to state. In some states, title insurers or underwriters themselves oversee the operations of title agents. As title insurance often is part of a much larger real estate transaction, regulators from various state and federal agencies provide oversight for other parties involved in the transaction. Title insurance involves many types of professionals; the degree of involvement and the extent of coordination among regulators of these entities are not clear. These entities are generally overseen at the state level by different regulators, and the extent of regulation related to title insurance sales practices tends to vary across states.

More recently, the National Association of Insurance Commissioners (NAIC) has been working to revise title insurer regulations. The NAIC provides a forum for the development of uniform policy for insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories. Since a state regulator's primary responsibility is to protect the interests of insurance consumers, the NAIC helps regulators fulfill that obligation through their shared objectives of financial and market conduct regulation. The first major step in that process was the development of uniform financial reporting by insurance companies. Since then, new legislative concepts, new levels of expertise in data collection and delivery, and a commitment to even greater technological capability have moved the NAIC forward into its role as a regulatory support organization.⁴²

In 2010, an NAIC task force presented a proposed set of data elements that state regulators could collect to use for market analysis and market regulation. Current reporting from title companies does not give regulators a complete picture of the profit, loss and expenses in the title insurance business. As the performance of the title business is based on the title agent, rather than the underwriter, the task force recommended that most jurisdictions obtain data directly from title agents on risk avoidance, business profit, business expense, and business loss. The risk avoidance elements include the number of policies written, the number of files cancelled, and the number of other search reports run that might not translate into policies (ownership and encumbrance report, abstracts, etc.). The business profit data are the dollar amount of premiums written, the dollar amount of closing and settlement charges, and the agent/underwriter splits (dollar figure, not percentage). The business expense items include the salaries and benefits paid, the rent or other real estate expenses, title plant costs, and miscellaneous expenses (marketing, etc.). The business loss elements are the escrow/closing losses paid by agent, the title losses paid by agent, and the deductibles paid to insurers.

The task force acknowledged that some states already collected data on title agents and that they would contact those jurisdictions to determine what was collected and how those data were used. For example, Texas requires that in fixing premium rates, the Texas Commissioner of Insurance consider all relevant income and expenses of title

insurance companies and title insurance agents attributable to engaging in the business of title insurance in this state.⁴³

However, in Texas, a title insurance company or a title insurance agent may bring a suit in a district court in Travis County alleging that the request for information is unduly burdensome, is not a request for information material to fixing and promulgating premium rates, represents a matter subject to the biennial hearing, or is not a request reasonably designed to lead to the discovery of that information.⁴⁴ Despite this limitation, that state collects a total of 64 data elements, including 17 income-related, 40 expense-related, four income/loss-related, and three related to the quantity of premiums written (see Table 3.1).⁴⁵

The NAIC study and the GAO reports together list 15 different data elements that states could consider collecting (see Table 3.2). Of these, the Texas Department of Insurance collected eight for the 2008 “Texas Title Insurance Agents Statistical Report.”

Options for Title Insurance Regulation in Texas

Title registration is a critical component of the economy, as it allows a landowner to prove land ownership and sell equity quickly and easily. It is critical part of a well-regulated industry that exists to protect consumers and ensure the long-term financial viability of title insurance underwriters. The State of Texas promulgates the rates for title insurance premiums, just one of the different methods for regulating title insurance. The federal studies and congressional hearings suggested several options that could be applied to the title industry in Texas. These options include automating the title search process, authorizing lenders to pay for title insurance, improving rate promulgation by improving data collection, and enhancing coordination of state real estate fraud investigations. The GAO also recommended increasing competition among title agents by improving the consumers’ knowledge of title insurance. Often, consumers do not understand what title insurance is, may not know that they can chose a title agent, or may not consider options, given the cost of title insurance versus the entire real estate transaction. However, in Texas, as rates are promulgated by the state and there is no difference in price between any two agents, consumers have no incentive to shop around on the basis of price for their title agent.

Automating the Title Search Process

In Texas, a county clerk is responsible for the recording of legal documents including the land titles. These documents are indexed by grantor-grantee index (the purchaser and seller of the property) and were initially maintained in hard-copy formats. This made following the chain of ownership for a title search a time-consuming process. Title agencies improved the title search process by building and maintaining title plants that collected records from county clerk offices and cross-indexed them to the legal address of the property. This system reduced the time necessary to conduct a title search. As faster technology became available, these title plants were computerized, reducing the time and expense of a title search even further.

Table 3.1
Data Collected by Texas for the Promulgation of Premium Rates

Agency Information		Expenses	
	Agency Number	18	Salaries- Employees
	Agency Name	19	Salaries- Owners/Partners
	Agency Address	20	Benefits- Employees
	Agency City, State, Zip	21	Benefits- Owners/Partners
Income		22	EE- Other Agents/UW
1	Title Premiums	23	EE- Attorneys/Others
2	Percent Premiums Remitted	24	C/F- Other Agents/UW
3	Retained Title Premiums	25	C/F- Attorneys/Others
4	Examination Evidence Fees	26	Rent
5	Fees Received for Closing	27	Utilities
6	Tax Certificates	28	Accounting and Auditing
7	Recording Fees	29	Advertising/Promotions
8	Restrictions	30	Employee Travel/Lodging
9	Inspections Fees	31	Insurance
10	Courier/Overnight	32	Interest Expense
11	Telephone/Facsimile	33	Legal Expense
12	Interest Income	34	License, Taxes, and Fees
13	Other Income	35	Postage and Freight
14	Total Title	36	Courier/Overnight
15	Total Escrow	37	Telephone/Facsimile
16	Total Non-Policy	38	Printing/Photocopying
17	Total Income	39	Office Supplies
Income/(Loss)		40	Equipment/Vehicle Lease
58	Income(Loss) Title	41	Depreciation
59	Income(Loss) Escrow	42	Director's Fees
60	Income(Loss) Non-Policy	43	Dues, Boards, and Associations
61	Net Income/(Loss)	44	Bad Debts
Quantity		45	Loss/Loss Adjustment
62	Number of Policies Issued	46	Tax Certificates Paid
63	Allocated to Underwriters	47	Recording Fees Paid
64	Allocated from Underwriters	48	Plant Leases/Updates
		49	Damages for Bad Faith Suits
		50	Fines or Penalties
		51	Donations/Lobbying
		52	Trade Association Fees
		53	Other Expenses
		54	Total Title
		55	Total Escrow
		56	Total Non-Policy Abstract
		57	Total Expenses

Source: Unpublished listing from the Texas Department of Insurance.

Table 3.2
Data Recommended for Collection by GAO and NAIC Compared to Texas

	GAO	NAIC	Texas
A complete list of title underwriters, the underwriters' affiliated title agents and unaffiliated title agents	X		X
Financial data on each affiliate, including balance sheets	X		
Revenue data including title premium revenues and production fees such as search and examination, closing, and recording fees	X		X
Personnel expense data including average salaries, bonuses and benefits, commission	X	X	X
Other expense data including fees paid to contractors, advertising, entertainment, plant maintenance, rent, office supplies, and legal fees and settlements	X	X	X
Title premium policy revenues broken out by residential and commercial	X	X	
The number of policies written		X	X
The number of files cancelled		X	X
The number of other search reports run that might not translate into policies (ownership and encumbrance reports, abstracts, etc.)		X	
The dollar amount of closing and settlement charges		X	
Agent/underwriter splits (dollar figure, not percentage)		X	X
Miscellaneous expenses (marketing, etc.)		X	X
Escrow/closing losses paid by agent		X	X
Title losses paid by agent		X	X
Deductibles paid to insurers		X	

Sources: United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers* (Washington, D.C., April 2007), pp. 3-4; and National Association of Insurance Commissioners, *About the NAIC*. Online. Available: http://www.naic.org/index_about.htm. Accessed: April 1, 2010.

County clerks, particularly those in urban and suburban counties, have also developed computerized systems to store and maintain these records. In addition, they have started to cross-index these records by the legal address of the property. The result is a duplication of the data maintained by both the county clerk and title agents. Since the county clerks are the original source of data for title plants and the data is computerized and cross-indexed by property legal address, there may reach a point where the databases of county clerks or county appraisal offices can provide information that is comparable to title plants. As long as many county clerks' offices do not record some relevant information, such as divorces, title plant records will remain more complete databases for the purposes of title evaluation.

The state can now serve as a central conduit to county clerk data (see Table 3.3). Using a web-based model, the state would not store the data from county clerks but would access each county's database and retrieve the request data each time a title search is requested. Interested parties could query the system for a property in a specific county and the

system would access that county’s database and return the legal documents for ownership plus other related legal documents such as liens, judgments, and other encumbrances. This model would be analogous to the method that car insurance agents are able to retrieve a driving record from the Texas Department of Public Safety for a consumer’s driving record and then offer a quote for the premium. The main technical difference would be the fact that the driving record system only accesses the data from one state agency while a title search system would start out with only a limited number of counties but could eventually reach 254 separate county clerk databases.

The benefit for consumers should be a decrease in title insurance premium rates since the title agent would no longer have the expense of owning or leasing a title plant. For example, in 2008, title agents spent over \$48,464,808 dollars on “Plant Lease/Update” expenses, or 3.7 percent of total expenses.⁴⁶ This value is likely to understate the actual expenses, as other costs could be included with “salary,” “overhead,” or other cost categories. An additional benefit is the ability for any interested party to conduct their own title searches and see what encumbrances are attached to a property.

A significant obstacle to this option would be resistance from the entities who currently own title plants, a \$48 million dollar industry in the state of Texas. The state would have to conduct sufficient due diligence to ensure that it can provide this service faster and cheaper than current providers. Initially, this system would only be available for those counties in which the county clerk has computerized and cross-indexed the legal documents. Currently, all seven major urban counties—Bexar, Dallas, El Paso, Harris, Nueces, Tarrant, and Travis—have online search capabilities for property records that includes the legal description, although only Nueces and El Paso counties also allow searches by the legal description of the property only.

Table 3.3
Develop a State Clearinghouse to Access County Clerk Databases

Advantages
<ul style="list-style-type: none"> • Title agents would eliminate/reduce the expense of maintaining or leasing a title plant. • Data for properties would be available to any interested party.
Disadvantages
<ul style="list-style-type: none"> • Significant resistance from current owners of title plants. • Would not be available for those counties without computerized, cross-indexed legal documents.

Authorize Lenders to Pay for Title Insurance

Currently, the home mortgage borrower purchases title insurance for the protection of the lender and if he/she wishes for themselves via an owner’s policy. Although the borrower pays for the policy, title insurance is marketed towards the real estate professional such as the real estate agent, a mortgage broker, or the lender, who can then provide a referral to consumers. Since a home purchase happens infrequently a consumer is in a weak

position to negotiate with title insurance providers. One option could be for the lender to purchase a policy (see Table 3.4). Requiring the lender to purchase the title insurance policy should result in reduced premium rates since lenders have significantly more influence within the real estate marketplace than an individual consumer. Although the lender could pass these costs on to the consumer, prices should decrease because the home buyer is more likely to shop for a lender than a title agent, thus increasing competition and adding downward pressure on prices for title insurance policies.⁴⁷ Lenders conduct more transactions than individual consumers and thus have more bargaining power to negotiate better premium rates from title agents.

While a reduction in premium rates would be the ultimate benefit of this option, another benefit would be the elimination of “reverse competition” in which the marketing of a product, in this case title insurance, is not directed towards the consumer, but to intermediaries who have the ability to make referrals to the consumer. Marketing of title insurance would be directed towards lenders who are more knowledgeable consumers.

The main drawback to this option is that in order for it to have the intended result, the State of Texas would have to discontinue promulgating title insurance premium rates and allow the marketplace to set rates. If the state continued to promulgate rates, then the lender would have no incentive to negotiate for lower rates since all lenders in the state would pay the same amount for a title insurance policy. Changing to an open market system would require legislative action, action which would no doubt be met with much resistance from the financial community.

Table 3.4
Develop Authorize Lenders to Pay for Title Insurance

Advantages
<ul style="list-style-type: none"> • Lenders conduct significantly more real estate transactions than individual consumers and could negotiate for lower premiums from title insurance providers. • Title insurance providers can market title insurance directly to lenders rather than real estate professionals, thus reducing the need for referrals and marketing costs. • Consumers are more likely to shop for mortgage providers (banks or mortgage brokers) than title insurance providers.
Disadvantages
<ul style="list-style-type: none"> • If Texas continues to promulgate rates for title insurance, lenders will pass the cost of the insurance policy to the consumer. • Would require legislative action. • Resistance from the banking and mortgage industries.

Collect Better Data

In Texas, the rates for a title insurance policy are promulgated by the Texas Department of Insurance. Texas, like other states, does not gather some information that could enable regulators to estimate the true costs for a title insurance policy and estimate industry costs

and profits. As losses due to claims are exceptionally small (usually below 5 percent) compared to other types of insurance, and title agents, who conduct most of the work of issuing a policy, retain most of the premiums (approximately 85 percent), more information about title agent expenses would help regulators assess whether the rates promulgated are fair.⁴⁸ Table 3.5 lists information on some additional data that could be collected. Table 3.6 lists the reasons for and against additional data collection.

Table 3.5
GAO Recommendations for Data Collection

<ul style="list-style-type: none"> • A complete list of underwriters’ affiliated title agents and title underwriters. • Financial data on each affiliate, including balance sheets. (This issue may be addressed when HB 4338 is implemented.) • Revenue data including title premium revenues and production fees such as search and examination, closing, and recording fees. • Personnel expense data including average salaries, bonuses and benefits, commissions. • More details regarding agents and underwriters’ expense data, including fees paid to contractors, advertising, entertainment, plant maintenance, rent, office supplies, and legal fees and settlements. • Title premium policy revenues broken out by residential and commercial.

Sources: United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers* (Washington, D.C., April 2007), pp. 3-4; and National Association of Insurance Commissioners, *About the NAIC*. Online. Available: http://www.naic.org/index_about.htm. Accessed: April 1, 2010.

Table 3.6
Collect Better Data

Advantages
<ul style="list-style-type: none"> • State would have sufficient data to promulgate rates so that they achieve their multiple objectives of customer protection and assurances of a reasonable rate of return to ensure profits to the title agent. • The parties to any rate hearing could analyze the data in more detail.
Disadvantages
<ul style="list-style-type: none"> • Texas Department of Insurance staff is limited, so that their data analysis may not be able to go beyond the current assessment level, referred to as a “reasonability check.”

Enhance Coordination Among State Agencies

Recent investigations by HUD and state regulatory officials suggest that title policy premium rates appear may be excessive.⁴⁹ From 2002 through 2006, HUD conducted nine investigations involving 17 entities, which resulted in \$1.8 million being paid in settlement and refunds.⁵⁰

One investigation in Colorado found an individual title agent who was an owner or part-owner in 13 sham ABAs that were used to pay referral fees to mortgage brokers.⁵¹ Many of these types of investigations involve charges of illegal kickbacks and referral fees, affiliated business arrangements, and captive reinsurance payments. Each of these arrangements have been used to provide illegal referral fees to real estate agents, lawyers, homebuilders, and other real estate professionals. In reference to captive title reinsurance arrangements, HUD’s position was that “there is almost never any bona fide business purpose for reinsurance on a single-family home.”⁵²

In Texas, many entities in a real estate transaction are regulated. The TDI already participates in a Mortgage Fraud Task Force that include many of the agencies that regulate real estate transactions. Table 3.7 lists many of the professionals involved in a real estate transaction and the associated state regulators. In many cases these entities are regulated by federal agencies as well.

Table 3.7
State Agencies Responsible for the Oversight of Real Estate Professionals

Real Estate Professional	Regulatory Agency
Real estate agents	Texas Real Estate Commission (TREC)
Mortgage brokers	Texas Department of Savings and Mortgage Lending (TDSML)
Title agents and underwriters	Texas Department of Insurance (TDI)
Attorneys	Texas State Bar
Lender	Texas Department of Banking (TDB)
Lender	Texas Office of Consumer Credit Commissioner (OCCC)

Regular communication and cooperation among these various regulatory agencies is needed to discover and correct illegal activities such as fraud and illegal referrals (see Table 3.8). The advantage of this option is that it can be implemented without industry or legislative action. However, the additional communication and coordination may require sufficient staffing in order to be effective.

Table 3.8
Enhance Coordination Among State Agencies
(All agencies responsible for regulating various real estate entities)

Advantages
<ul style="list-style-type: none"> • No changes required for the title insurance industry or consumers. • Greater likelihood of uncovering illegal activities. • Less controversial and only requires state agency action.
Disadvantages
<ul style="list-style-type: none"> • Ineffective if sufficient staffing is not provided.

Develop a Proactive Fraud Investigation System

The State of Texas has received recognition as having one of the better data collection systems and is often looked to as a model for other states. The Texas Department of Insurance already examines raw data submissions by title underwriters and title agents for “reasonableness.” Indeed, if reported data are outside of the norm, TDI already conducts follow-up inquiries. As shown in Table 3.2, many of the data recommended by the GAO and the National Association of Insurance Commissioners are already collected by Texas.

While it is possible to ask for and collect more data from the title insurance industry, the alternate step is to take full advantage of the data already collected and use it to proactively search for signs of fraud among title agents and underwriters (see Table 3.9). Within the data collected for the 2008 Texas Title Agent Statistical Report are several data elements that can be used to look for data outside the norm as compared to other agencies. For example, the state currently collects 40 expense-related data elements, one of which is “Other Expenses.” Using the data from the 2008 Statistical Report, of the 635 title agencies in the state, “Other Expenses” accounted for 4.7 percent of “Total Title Expenses” with a standard deviation of 5.7 percent. Looking for those agencies that were clearly outside the norm (greater than 3 standard deviations) or whose “Other Expenses” were larger than 21.7 percent of “Total Expenses” identifies 13 agencies, including one agency who listed over \$5.7 million in “Other Expenses” or 41.5 percent of “Total Expenses.”

While there may be a reasonable explanation for the percentage to fall so far outside the norm of all title agencies, it does suggest the potential value associated with further inquiry. Table 3.9 lists some advantages and disadvantages of enhanced cooperation among agencies.

Table 3.9
Conduct Enhanced Proactive Fraud Investigations Using Currently Collected Data

Advantages
<ul style="list-style-type: none"> • Does not require any change for title insurance industry or consumers. • Protects consumers by proactively monitoring agencies at financial risk or engaging in illegal activities.
Disadvantages
<ul style="list-style-type: none"> • It is hard to know in advance whether enhanced investigation efforts would improve fraud determination.

Notes

¹ Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), p. 6.

² Ernest F. Roberts et al., *Public Regulation of Title Insurance Companies and Abstractor* (New York: Villanova University Press, 1961), pp. 2-3.

³ *Ibid.*, pp. 1-2.

⁴ *Ibid.*, pp.14-17.

⁵ *Ibid.*, pp. 2-3.

⁶ *Ibid.*, p. 17.

⁷ *Ibid.*, p. 18.

⁸ *Ibid.*, p. 26.

⁹ *Ibid.*, pp. 25-28.

¹⁰ *Ibid.*, pp. 28-32.

¹¹ *Ibid.*, p. 32.

¹² Nelson R Lipshutz, *The Regulatory Economics of the Title Insurance Industry* (Westport, CN: Praeger, 1994), p. 6.

¹³ Randy E. Dumm et al., *The Title Insurance Industry: Examining a Decade of Growth* (Tallahassee: February 2006), p. 1.

¹⁴ Charles Nyce and M. Martin Boyer, "An Analysis of the Title Insurance Industry," *The Journal of Insurance Regulation*, Winter 1998, vol. 17, iss. 2, p. 213.

¹⁵ Roberts, *Public Regulation of Title Insurance Companies and Abstractors*, p. 5.

¹⁶ Nyce, *An Analysis of the Title Insurance Industry*, p. 4.

¹⁷ United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers* (Washington, D.C., April 2007), pp. 3-4.

¹⁸ Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry* (New York: New York University Press, 2007), p. 34.

¹⁹ *Ibid.*, p. 35.

²⁰ U.S. Congress, Committee on Financial Services, Subcommittee on Housing and Community Opportunity, *Title Insurance: Preliminary Views and Issues for Further Study: Hearings*, Testimony by Erin Toll, Co-Chair of the Title Insurance Working Group for the National Association of Insurance Commissioners, April 26, 2006, pp. 8-9.

²¹ U.S. Congress, Committee of the Judiciary, Subcommittee on Monopolies and Commercial Law. *Competitive Practices in the Title Insurance Industry*, 100th Congress, 2nd session (May 4, 1988), p. 77.

²² Ibid., p. 77.

²³ U.S. Congress, Committee on Veterans Affairs Subcommittee on Housing and Memorial Affairs, *Housing Benefits for Native American Veterans and Oversight of Title Insurance*, 102nd Congress, 2nd session (October 1, 1992), p. 12.

²⁴ Ibid., p. 12.

²⁵ Ibid., p. 50.

²⁶ Scott Woolley, “Inside America’s Richest Racket,” *Forbes* (November 13, 2006). Online. Available: http://www.forbes.com/forbes/2006/1113/148_2.html. Accessed: March 2, 2010.

²⁷ U.S. Congress, Committee on Financial Services, Subcommittee on Housing and Community Opportunity, “Title Insurance: Preliminary Views and Issues for Further Study: Hearings,” Testimony by Orice M. Williams, Director, Financial Markets and Community Investment, Government Accountability Office, April 26, 2006, pp. 37-38.

²⁸ GAO, *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, p. 9.

²⁹ Ibid., p. 53.

³⁰ Ibid., p. 11.

³¹ Ibid., p. 9.

³² Ibid.

³³ Ibid., p. 30.

³⁴ U.S. Congress, Committee on Financial Services, Subcommittee on Housing and Community Opportunity, “Title Insurance: Preliminary Views and Issues for Further Study,” p. 11.

³⁵ GAO, *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, p. 9.

³⁶ Ibid., p. 46.

³⁷ Ibid., p. 34.

³⁸ Ibid., p. 47.

³⁹ Ibid., p. 35.

⁴⁰ GAO, “Title Insurance: Preliminary Views and Issues for Further Study,” p. 6.

⁴¹ Ibid., p. 32.

⁴² National Association of Insurance Commissioners, *About the NAIC*. Online. Available: http://www.naic.org/index_about.htm. Accessed: April 1, 2010.

⁴³ Texas Insurance Code, Sec. 2703.152.

⁴⁴ Ibid., Sec. 2703.153.

⁴⁵ Texas Department of Insurance, *Texas Title Insurance Agents Statistical Report: Calendar Year 2008*. Austin, Texas, December 7, 2009, p. 9.

⁴⁶ Ibid., p. i.

⁴⁷ GAO, “Title Insurance: Preliminary Views and Issues for Further Study,” p. 8.

⁴⁸ GAO, *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, p. 9.

⁴⁹ Ibid., p. 32.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., p. 30.

Chapter 4. Title Insurance Regulation in Various States and in Canada

Real estate title insurance is an underappreciated feature of the North American economic system. A title serves as public proof and legal protection of property ownership. Without a title, any land sale or exchange has ambiguity of ownership. Title insurance is a system where a private company offers assurance that a person or entity owns a property, and thus it can be sold and transferred safely to a buyer. Despite the importance of title insurance, it may be perceived by homeowners as just a line item expense at closing, as it usually is less than 1 percent of the cost of the mortgage.

A homebuyer may initially learn about title insurance upon receiving a Good Faith Estimate (GFE), a complete list of the estimated costs and fees that federal regulations require be provided 72 hours before closing.¹ The homebuyer's mortgage broker or lender provides the GFE. The document includes estimates for brokerage or lending charges and fees from other entities. A GFE covers a multitude of fees so the title insurance portion may go unnoticed on a transaction.

Title insurance has become a trillion dollar industry as measured by the value of mortgage coverage and transactions and a multi-billion dollar industry in terms of fees. As Table 4.1 shows, homeowners in Texas and Pennsylvania, respectively, spent just over \$1.2 billion and \$410 million in title insurance premiums in 2008.² Combined title company earnings in the two states were over \$1.6 billion and they paid out approximately \$82 million in losses or loss adjustment costs during the same time period, a combined 5.125 percent loss-to-premium ratio.³ Such a ratio of loss relative to premium is consistent for title insurance agencies across the country.⁴

Table 4.1
Premium and Loss Ratios

2008	Premium Earned (\$)	Losses Incurred (\$)	Loss Ratio (%)
Texas	1,246,702,583	52,037,069	4.17
Pennsylvania	410,711,953	30,054,904	7.31
California	1,450,157,380	249,120,127	17.18

Source: National Association of Insurance Commissioners, Actuarial and Statistical Services Department, *State of the Title Insurance Industry 2008* (p. 4). Online. Available: www.naic.org/documents/topics_title_insurance_brief.pdf. Accessed: November 15, 2009.

Title insurance seeks to protect against a loss from a past event via a thorough examination for title defects, unlike most other forms of insurance that hedge against a future risk. The title insurer, through its policy, offers a commitment that nothing will

need to be paid by the policyholder in the event that the title search missed a claim that could be staked against the property; it insures against defects present at the time the insurance was offered. Insurance for title is useful in situations where the legal effect of a particular action or document is unclear, or where legal experts may disagree on the effect. Title insurance can also protect against loss by committing to offer a legal defense of the title if there is a dispute or claim.

Title insurance as an industry began in the late nineteenth century. In 1903 a New York court stated in a ruling:

The risks of title insurance end where the risks of other kinds begin. Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to [hold] him harmless from any loss through defects, liens or encumbrances that may affect or burden his title when he takes it. It must follow as a general rule, therefore, that when the insured gets a good title the covenant of the insurer has been fulfilled and there is no liability.⁵

The use of title insurance became a staple of real estate transactions in the United States when the Federal National Mortgage Association (Fannie Mae) required title insurance to help facilitate mortgage lending for low- to middle-income families in the late 1930s.⁶

Basic title insurance coverage protects against defects where any private, governmental, or other party may seek to assert rights to the property. As the First American Title Insurance Company explains, “Some of the things a title search uncovers are any unpaid taxes or mortgages, judgments against previous owners, easements, and many other court actions or recorded documents which can affect title to real estate.”⁷

Both Texas and Pennsylvania mandate that insurers offer “comprehensive” title insurance coverage that includes at least four components: 1) a title search, or the collection of public records and documents pertaining to the property; 2) a title examination of relevant documents for title defects; 3) closing costs, or the inclusion of additional costs associated with the purchase; and 4) insurance from defect, or a commitment for an insurance company to protect the insured against claims either through legal defense or restitution. Most title insurance policies insure against loss or damage title claims that exist at the time a policy is issued up to the “face value” of the policy and/or for the costs associated with defending the title in court, if necessary. Liability limits vary by state.

Discounted title insurance, sometimes called “reissue rates,” can be offered when a new title is issued to an existing owner or her/his mortgage holder within a pre-defined time period after the previous policy was issued. In Pennsylvania this time limit is ten years, whereas in Texas it is seven years.

Regulation of title insurance has primarily been the responsibility of individual states since the Supreme Court ruled in 1869 on the case of *Paul v. Virginia*, stating that, “the issuing of a policy of insurance is not a transaction of commerce... but is a simple contract of indemnity against loss.”⁸ This definition of insurance had been interpreted as

removing insurance from the jurisdiction of the U.S. Congress under the commerce clause of the Constitution. In 1944, a separate Supreme Court ruling in *United States v. Southeastern Underwriters Association* modified this understanding. The Court held that the business of title insurance had indeed become a form of interstate commerce that could be regulated by the Congress. In 1945 President Truman signed into law the McCarran-Ferguson Act placing insurance under federal regulation “to the extent that such business is not regulated by state law.”⁹ While this law did open the door for federal involvement in the title insurance industry, the federal government has yet to exercise its power, choosing instead to defer to the states.

The Department of Housing and Urban Development (HUD) is responsible for a limited federal oversight of the title insurance industry derived from its authority in the Real Estate Settlement Procedures Act (RESPA). Section 8 of RESPA prohibits kickbacks, fees, or compensation for “referrals of a settlement service business involving a federally related mortgage loan. In addition, RESPA prohibits fee splitting...”¹⁰ RESPA does not give HUD the ability to level civil money penalties, but it may file injunctions or criminal cases against offending institutions. This joint federal and state regulatory structure, a lack of clarity regarding jurisdiction, as well as a “lack of consistent enforcement [...] by all relevant state regulators as well as HUD” limits the impact of enforcement.¹¹

Section 9 of RESPA “prohibits a seller requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale.”¹² This statute, while noble in intent, is hard to enforce, as few homeowner understand title insurance, or know that they can shop for a better price or product. It also limits damages to three times the sum of charges made for title insurance,¹³ which is a relatively small amount considering the effort that would need to be expended to assert a case in court.

HUD also seeks to provide oversight of “affiliated business arrangements” (ABA), where real estate agents, builders, developers, or other professionals in industries related to title insurance are part or full owners of title agencies. These situations can create a conflict of interest for the title agent. ABAs reduce competition for the customer because the mortgage broker, builder, real estate agent, or other professional is part owner of a title agency, creating a de facto captive market for their business. ABAs reduce competition, reverse or otherwise, and hamper other efforts to drive prices down. Efforts to tighten up restrictions on who can participate in an ABA have led to novel ways to structure them, creating increasingly complex and difficult-to-regulate arrangements. Currently, RESPA requires that the ABA shareholder both notify the customer of their financial involvement with the ABA and remind the customer that they are free to look elsewhere. This standard is difficult to enforce if few customers understand title insurance.

Several distinct regulatory styles have emerged among the 50 states, including file and use, use and file, prior approval, fully promulgated rates, and no direct regulation. A file and use system mandates that rates and forms be filed before being used, although these rates and forms are not subject to any specific oversight process. Approximately 25 states use a file and use system.¹⁴ Under the “file and use” system, the rates and forms are filed and then title underwriters or title agents may use them, either immediately or

after a wait-to-use period that varies by state. This manner of regulation is used in about seven states. Three states promulgate rates; a governing entity, usually a commissioner, sets rates and forms for the state. Twelve remaining states utilize no standardized oversight procedures, instead responding to complaints from customers or competitors as they arise.¹⁴

The following sections discuss the title insurance practices in Texas, Pennsylvania, California, Iowa, and Canada. It is beyond the scope of this report to evaluate the title insurance regulation in all 50 states.

Texas

The Texas Insurance Code governs the regulation of title insurance in Texas and empowers the Texas Department of Insurance (TDI) to produce “The Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.”¹⁵ The manual promulgates the rules for: (a) all insurance forms and endorsements; (b) rate rules for insurance coverage; (c) procedural rules for insurance coverage; (d) Texas Department of Insurance administrative rules; (e) additional forms required to be used; (f) claims procedures; and (g) Texas Department of Insurance bulletins.¹⁶

Title insurance is one of the few remaining forms of insurance in the State of Texas whose rates are determined exclusively by TDI.¹⁷ The rates for most other forms of casualty and property insurance are regulated by TDI on a file and use basis.¹⁸ The TDI regulations on title insurance are exclusive and explicit. Only promulgated forms may be used and no coverage outside of these promulgated forms may be offered. Premium and endorsement rates are defined and absolute; an insurance company can offer no independent discounts or increases. State law specifies that every two years hearings be held before the Insurance Commissioner to discuss changes to the rates and forms.

There are four major stakeholders in these rate hearings: consumers, underwriters, title agents, and TDI. The Office of Public Insurance Counsel (OPIC) “represent the interests of consumers in insurance matters” in the state of Texas.¹⁹ The Texas Land Title Association (TLTA) “provide[s] legislative and regulatory representation, gather[s] and disseminate[s] information, provide[s] education, and enhance[s] the value of the title insurance industry.”²⁰ TDI is an admitted party. Several insurance companies, a title insurance agent group (IMTIAT, or Metro), the Texas Society of Professional Surveyors, and four individuals filed motions for admission to the latest hearing.²¹ All four individuals requesting standing were admitted through a single legal counsel to petition on their behalf. Typically the TLTA, OPIC, and TDI will make rate recommendations prior to the hearings. In addition, underwriters may present one or several separate recommendations.

In anticipation of the most recent hearings the three main stakeholders issued rate adjustment recommendations. In February 2009, the TLTA, with the support of several other trade organizations, called for an increase of the current basic premium rate level by 13.55 percent.²² The Texas Department of Insurance recommended no change in the

rates.²³ OPIC issued a statement that the current basic premium rate is excessive and recommended that rates be reduced by 9.6 percent.²⁴

The title insurance process for most consumers in Texas begins with a search of the title records upon an offer to purchase being accepted on a property. Once this search comes up clear, or is eventually cleared, an underwriting commitment is made contingent upon certain conditions such as a final closing. Funds are collected for the lender policy, an owner policy if specified, and any required or requested endorsements. The underwriter then issues a title policy when the documents are signed, funds are received and dispersed appropriately. Once the premium has been paid and the documents are filed, a final record check is performed to ensure that nothing was missed.

Through this process, the responsibilities of a title insurance agent in Texas can be compared to “a complete branch office of an underwriter.”²⁵ As title insurance agent undertake the search and examination process, they do more than agents in some other lines of insurance where an agent may serve primarily as a marketing office. As one title insurance expert noted, “the alternative to title insurance availability through the independent agent is no title insurance availability at all.”²⁵

Title insurance agents market to the people who produce business (real estate agents, lenders, builders, etc.) as opposed to those who pay for their service (consumers). Marketing to the business producers allows the agent to gain access to clients en masse. This is known as reverse competition, defined as a “market [where] expenses are inflated as title insurers compete for the producers of title business—the real estate agents, mortgage brokers and lenders and others involved in real estate settlements.”²⁶

Although reverse competition may produce better service in the form of a more rapid turnaround or closer closing venue, any benefits are generally not marketed directly to the consumer, as consumers often rely on referrals from real estate and mortgage professionals.²⁷ Reverse competition may inflate prices, as there is no incentive for an insurer to lower prices because savings will not be passed on to the consumer. Higher revenues can be spent to ‘market’ through services, gifts, and benefits to the producers of title business. The Texas Commissioner once stated in an official order, “The evidence in the record supports a conclusion that reverse competition exists and has impacted title insurance expenses, but does not adequately support any specific adjustment to reported expenses.”²⁸

Title insurance premium rates have gone down in Texas over the past ten years. In 1998, a policy on a \$100,000 home cost \$1,023, a rate reduced by 6.5 percent in 2004 and an additional 3.2 percent in 2007.²⁹ Prior to 1998 there had not been a drop in rates since 1978, but since 1999 rates have dropped by a total of 17 percent.³⁰ As of April 2010, the Commissioner has yet to issue rate changes based on the 2009 hearings.

A recent study of insurance premiums concluded that there is a positive relationship between premium rates and degree of regulation; as regulation increases, prices increase (see Chapter 2). The study also concluded that regulation tends to limit competition as

measured by predictable price differences. This means that increased regulation tends to be correlated with a decrease in competition, as measured by price differences.

These trends are evident in Texas' title insurance rates. The Texas Insurance Commissioner sets fixed rates that prevent competition for the consumer's business. Texas, with its fully regulated, comprehensive coverage, has rates that are among the highest in the nation.³¹ For example, testimony during the most recent rate hearing compared the costs of a private title insurance product, "TitleGuard," to the costs associated with the title insurance process.³² TitleGuard is an insurance product that will insure title, usually on an automobile, against defects existing at or before the point of purchase. From the testimony:

The TitleGuard policy may not provide the [...] office closing that real property title insurance affords, but the database maintenance cost, marketing costs, insurance cost, search and examination function costs are all covered for a price of \$59.99 per policy. This [raises] the question why a similar policy covering real property should cost almost 20 times as much.³³

There are reasons for the difference in rates charged on these two products. Overhead costs associated with maintaining title plants and physical locations to hold mortgage closings dwarfs the costs of maintaining a car owner database. However, a twenty-fold difference in relative cost between property and real estate title is striking.

Affiliated business arrangements (ABA) have become increasing common in Texas as they ensure that an ABA owner (who could be either an Underwriter, an Agent, or both) receives the full proceeds of the title insurance premium.³⁴ Seminars are hosted to encourage industry professionals to join into an ABA in order to increase revenue by providing the capital to lease a title plant.³⁵ However, these ABAs may serve as a barrier to entry by "almost requiring partnerships with established players."³⁶

Title insurance regulation in Texas recently came under national scrutiny when Wall Street Journal reporter James R. Hagerty referred to a "fixed-price regime" in place in Texas.³⁷ He also relayed a warning that title insurers in the state have been known to add "unjustifiable fees" onto the price, a claim consistent with the recent \$6.2 million settlement that the U.S. Department of Housing and Urban Development (HUD) reached with title lenders and insurers regarding illegal business practices.³⁸

Table 4.2 lists some examples of these fees and their frequency, based on information provided by HUD. The data show an average markup of 55 percent on the FHA mortgages surveyed. Some of these fees include services that might reasonably be expected to be included in the regulated portion, such as the title search, title examination, document binder, and document preparation. Based on these limited surveys alone it is not transparent whether each of these fees represents a supplemental collection above the comprehensive rate. For example, the "Abstract or Title Search," "Title Examination" and "Endorsement 1" categories may reflect subcontracting rather than supplemental fees. To the degree that any of these fees are supplemental beyond the

comprehensive rate, these data could document Mr. Hagerty’s claims of “unjustifiable fees.”³⁹

**Table 4.2
Texas Title Premiums and Unregulated Surcharges**

	Mean Expense per Transaction	Number of Sales Not Charged	Number of Sales Charged	Average Charge When Charged
Total Expense of Insurance	1691.7	0	188	1691.7
Title Insurance	1091.64	1	187	1097.48
Other Title Related Costs				
Total	600.05	0	188	600.05
Settlement closing	66.44	138	50	249.8
Abstract or Title Search	3.29	187	1	619*
Title Examination	3.18	186	2	298.5*
Title Insurance Binder	0.27	187	1	50
Document Preparation	135.29	36	152	167.34
Notary fees	1.7	183	5	63.8
Attorney’s fees	76.42	107	81	177.37
Courier Wire Delivery	40.27	54	134	56.49
Endorsement 1	15.53	149	39	774.87*
Endorsement 2	1.04	182	6	32.5
Escrow	165.37	58	130	239.15
Sub Escrow	0	188	0	0
Detailed Escrow	0	188	0	0
Additional Endorsement	1.06	185	3	66.67
Special Assessment Search	2.12	185	3	132.67
Loan Title Insurance	0	188	0	0
Restrictions	4.5	159	29	29.17
Additional Attorney	5.18	184	4	273
Name Search	0	188	0	0
Sp Assessment Search	0	188	0	0
Reconveyance	0	188	0	0
Reconveyance Tracking	0	188	0	0
Tax Certificate	29.41	42	146	37.87
Lien Certificate	0.07	187	1	13
Other Charges	48.3	122	66	137.59

Source: Modified from a special tabulation of HUD-1 data in Susan Woodward, *A Study of Closing Costs of FHA Mortgages*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, May 2008, p. 270.

* Examples of charges that are not easy to interpret as part of the promulgated rate or as supplemental fees.

In regulatory hearings for other states, Texas is cited as an example of poor regulatory outcomes. In Pennsylvania the commissioner was reminded that, “for many years (Texas) had the unchallenged distinction of being America’s least cost-effective title

insurance market.”⁴⁰ While arguing against a change to rate promulgation in California, experts stated:

[I]n Texas [...] there is the most onerous rate regulation where the insurance commissioner promulgates the rates that insurers can charge for title insurance. [P]remiums for title insurance in Texas [...] are considerably higher than in California. To make matters worse, in Texas [...] there is absolutely no product innovation because every firm is required to sell exactly the same product. Consequently, as one example, First American does not offer in Texas a variety of its products that it considers of higher quality.⁴¹

These assertions are justifiable upon examination of the regulatory structure in Texas. Rates are notably high and products are completely identical across the state. If these characteristics are to be altered going forth, changes in the state’s regulatory style could lead to lower consumer costs while allowing for the stability and profitability of the title insurance market.

Pennsylvania

Pennsylvania regulates title insurance through a prior approval system and, like Texas, requires title insurance that covers the risk portion, search and examination costs, and settlement fees associated with title insurance.⁴² Under file and use, each insurance company is required to file an all-inclusive rate and forms manual with the Pennsylvania Department of Insurance (Pennsylvania DOI). Pennsylvania DOI reviews the document for 30 days and may require changes be made, and the public may comment on the rate and forms.⁴³ The rate goes into effect after 30 days if there is no opposition from the Pennsylvania DOI.⁴⁴

Pennsylvania, unlike Texas, does not require that hearings be held bi-annually. Hearings were held in May 2009 to discuss some of the changes proposed in the manual filed in February 2009 by the Title Insurance Rating Bureau of Pennsylvania (TIRBOP). TIRBOP sought to simplify and combine rates, increase fees, and overhaul the manual to accommodate these alterations. These changes encouraged the Pennsylvania DOI to call for hearings.

Despite the difference in regulatory style, the actual results yield similar consequences on competition. In the 2006 manual, 26 out of an estimated 30 companies statewide reported being members of TIRBOP,⁴⁵ leaving few insurance companies to submit rates and forms independent of TIRBOP. In effect, a single ratings bureau makes one filing. As most of the insurance companies in the state adhere to the TIRBOP filed rates, the effect of this rating bureau is to reduce price competition, as indicated in Tables 2.4 in chapter 2.⁴⁶

An oligopoly can be said to exist when a small group of companies control price for a service, a practice that may be illegal except where an anti-trust exemption is granted.⁴⁷ The so-called rating bureau method of filing a joint manual with no reported input from consumers and limited commentary from government could be perceived as a being

biased towards the interests of the industry. The Supreme Court ruled in *FTC v. Ticor Title Insurance Co.* (1992) that an anti-trust exemption can be granted if and only if the state exercises independent review of practices and charges that meet a two-fold test, called the Midcal test.⁴⁸ One prong of that test is the “active supervision inquiry” test that is used to “determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate State intervention.”⁴⁹

Table 4.3 lists the rate changes in the TIRBOP manuals over the past 27 years. Title insurance rates in Pennsylvania are 29 percent higher today than they were in 1982. Premium rates, relative to home prices, have remained constant since 2002 but other charges have not. In its most recent filing, TIRBOP requested an increase in the Closing Service Letter (CSL) fee from \$35 to \$75 as well as an expansion of the rate schedule beyond the current cap of \$30 million. The CSL covers different things in different states. In Pennsylvania, the CSL serves as the official request for the Closing Protection Letter, which initiates the title policy.⁵⁰ This is in contrast with a CSL in Texas, which protects against loss of settlement funds due to fraud or dishonesty of the insurance agent.⁵¹ In Texas there is no charge for a CSL. In this most recent filing TIRBOP sought to simplify rates leading to an increase of effective rates of 4.1 percent.⁵²

Table 4.3
Rate Trends in TIRBOP Manual Filings

Date	Rate Change (%)	Rate Factor (%)	Cumulative Factor (%)
3/1/1995	9.46	109.46	109.46
4/1/1996	4.16	104.16	114.01
5/1/1997	3.90	103.90	118.46
5/1/1998	4.53	104.53	123.83
10/1/2000	2.49	102.49	126.91
1/1/2002	2.35	102.35	129.89
2009 Estimate	4.10	104.10	135.22

Source: Adapted from a letter from Ronald E. Chronister, Specialist/Insurance Industry Consultant to Chuck Romberger, Director, Property & Casualty Bureau, PDI, September 8, 2008.

Several of the changes made in the 2009 TIRBOP manual seem incongruent with the “deliberate State intervention” test. The increase in CSL fees may serve to increase profits, as TIRBOP did not cite cost evidence justifying a price increase for the consumer. The 2009 TIRBOP manual requests a 10 percent fee increase when both owner and lender policies are issued, with no justification for the price increase.⁵³ A joint issue policy such as this may involve little extra expense, as the title records have already been searched in either scenario independently. TIRBOP also authorizes agents to charge \$100 for the ALTA Short Form Residential Policy even though ALTA does not charge for this form.⁵⁴

Rate changes in Pennsylvania have increased consumer costs. The changes in the manual also have allowed the state to maintain a constant ratio of commission rates for agents and insurers for the last 25-30 years,⁵⁵ with approximately 80 percent of any increase in the rate goes toward title agents.

Pennsylvania, like Texas, allows for discounted refinancing or “reissue” rates that offer a pro-rated discount on fees, depending on the length of time since the previous title search, up to ten years. There are different premium levels depending on the length of time. The charge also depends on whether or not the homeowner takes out additional cash during the refinance.⁵⁶

Pennsylvania’s title rates are de facto a minimum, as insurance agents can charge for additional services, such as notary fees, document preparation, title searches, and settlement closing, which are hard to justify given the comprehensive nature of Pennsylvania’s rate structure.⁵⁷ Indeed, agents have been able to charge customers on the order of 60 percent above the Pennsylvania Department of Insurance authorized premium with fees⁵⁸ (see Table 4.4). It is not transparent from the source what each of the cost categories of Table 4.4 represent, a common challenge in industry accounting allocations.

Pennsylvania’s practice allows for a comparison between title insurance rates for the TitleGuard policy offered. A TitleGuard policy can insure a vehicle purchase cost against title defect, with \$50,000 in coverage through TitleGuard costing \$49.95.⁵⁹ A comparable \$50,000 title insurance policy for real estate would cost \$420.00 before any additional surcharges for added fees. Despite the similarities in the protections being offered, there exists an 8- to 13-fold increase in price.

The positive correlation between degree of regulation and the associated premium charged for title insurance seems to fit the pattern identified by Mr. Singh in his report.⁶⁰ Pennsylvania requires comprehensive coverage and mandates the charges for premiums, making it one of the more heavily regulated states. Only six other states, including Texas and California, require such comprehensive coverage.

The effect of the regulatory structure in Pennsylvania combined with the TIRBOP Manual joint-filing system serves to create and maintain high title insurance premium rates. Pennsylvania already has some of the highest premiums in the nation before taking into account any of the additional fees that agents are able to charge, which can add an additional 60 percent onto the price for the consumer.

Table 4.4
Pennsylvania Title Premiums and Unregulated Surcharges

	Mean Expense per Transaction	Number of Sales not Charged	Number of Sales Charged	Average Charge when Charged
Total Expense of Insurance	1104.71	0	190	1104.71
Title Insurance	691.69	1	189	695.35
Other Title Related Costs				
Total	413.01	0	190	413.01
Settlement Closing	40.08	136	54	141.02
Abstract or Title Search	7.55	172	18	79.72
Title Examination	0	190	0	0
Title Insurance Binder	2.45	188	2	233
Document Preparation	68.32	80	110	118.01
Notary Fees	22.95	39	151	28.88
Attorney's Fees	38.11	160	30	241.37
Courier Wire Delivery	9.86	127	63	29.73
Endorsement 1	135.16	15	175	146.74
Endorsement 2	2.11	183	7	57.14
Escrow	0	190	0	0
Sub Escrow	0	190	0	0
Detailed Escrow	0	190	0	0
Additional Endorsement	1.84	186	4	87.5
Additional Settlement Closing	0.18	189	1	35
Loan Title Insurance	0	190	0	0
Restrictions	0	190	0	0
Additional Attorney	0.05	189	1	10
Name Search	0	190	0	0
Special Assessment Search	0.51	187	3	32.33
Reconveyance	0	190	0	0
Reconveyance Tracking	0	190	0	0
Tax Certificate	7.34	140	50	27.88
Lien Certificate	8.69	153	37	44.62
Other Charges	67.81	42	148	87.05

Source: A special tabulation of HUD-1 data in Susan Woodward, *A Study of Closing Costs of FHA Mortgages*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, May 2008, pp. 270.

California

California regulates its title insurance industry with a “file and use” system comparable to Pennsylvania. The California Insurance Code § 12401.1 mandates that title agencies file rates, forms, and rate modifications with the Insurance Commissioner. After 30 days such changes go into effect if there is no opposition from the California Department of Insurance (CDI). California, unlike Pennsylvania, does not have a rating bureau system in place where companies file rates and forms together.

In late 2005 and early 2006 there was an outpouring of opinions on the competitiveness of the title insurance industry in California. This dialogue started with a report (henceforth, called the “contractor report”) requested by the California Insurance Commissioner from Mr. Birny Birnbaum.⁶¹

The contractor report found that there was not a “reasonable degree of competition [...] in the markets for title insurance and escrow services in California.”⁶² This report makes several assertions about the nature of the market in California: it is highly concentrated; reverse competition exists; it is excessively profitable; illegal kickbacks and rebates occur; prices are inelastic; there exist barriers to entry resulting in few new entrants to the market. The inelasticity in prices refers to a “remarkable absence of rate changes by title insurers over the past five years, despite declining costs of production, increased number of transactions and increased revenue per transaction.”⁶³

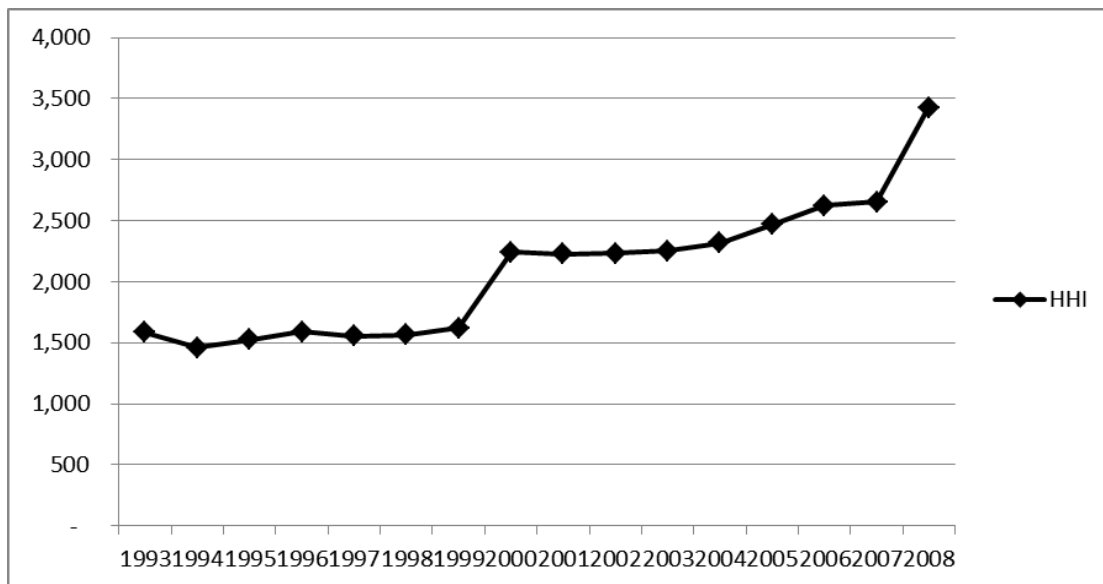
The contractor report prompted several interested parties to issue responses arguing against the findings. A report released in January 2006 commissioned by First American Title Insurance Company argued that California’s title insurance market was competitive, that rates have dropped relative to home prices, and that the rates were low relative to other large states, such as Texas.⁶⁴ Instrumental to their argument is the fact some homeowners pay less than base rate, the figures used to determine costs as presented in the report to the Commissioner.

An additional report issued on behalf of the Land America Financial Group, Inc. (LAFG), sought to reinterpret or cast doubt on the data in the contractor’s report. This LAFG report concludes by stating: “Given [the contractor report’s] significant limitations, the contractor report provides no basis for making regulatory decisions about the state of competition in the California title insurance [...] industry.”⁶⁵

More recent data supports several of the contractor report’s claims. Data in a 2008 Title Market Share Report shows that competition has steadily decreased since 1993 as measured by the Herfindahl-Hirschman Index (HHI or the Index), a benchmark standard to measure competitiveness in a market.⁶⁶ Figure 4.1 illustrates changes in the index from 1993 until 2008. An HHI of less than 1,000 means the market is competitive and a HHI between 1,000 and 1,800 means the market is moderately competitive. An HHI greater than 1,800 means the market is not competitive. From 1993 to 2008 in California the HHI has grown from 1,587 in 1993 (moderately competitive) to 3,429 (not competitive) in 2008.⁶⁷

This Index may not be the only indicator of competition in the California title insurance industry. For example, one recent study on competition in the title insurance industry compared the rates of First American and Fidelity within a state. California was found to have the second greatest price difference of all the states compared, while also having rates well below the average for states with similar, comprehensive coverage.⁶⁸ This finding indicates that there is some degree of price competition within the state and that this competition appears to affect rates in the state.

Figure 4.1
Herfindahl-Hirschman Index in California, 1993-2008



Source: Modified from special tabulation of NAIC data collected by California Department of Insurance for California licensed companies. CDI, “Title Market Share Report: 1993-2008” database. Online. Available: www.insurance.ca.gov. Accessed: February 16, 2010.

California is also noted for a lack of ABAs relative to other states. A Government Accountability Office report credits this to more stringent licensing and capitalization requirements.⁶⁹ In California, agents must raise between \$75,000 and \$400,000 to begin work as an ABA, whereas in Texas there are no independent capitalization requirements for an ABA per se.⁷⁰ The licensing process is exhaustive, including reviews of “the character, competency, and integrity of prospective owners; a financial assessment; and a review of the reasonableness of their business plan.”⁷¹ Regulatory officials believe that such a thorough review process and higher capitalization costs require a level of due diligence by the industry that reduces the incidence of illegal kickbacks and illegal practices as compared to looser regulation.⁷² The state also conducts quarterly financial statement audits on ABAs.⁷³

Many of California’s reforms that have tightened ABA regulation came after a series of major investigations into title insurance companies’ illegal kickbacks and revenue sharing. In 2003 and 2004, title insurance companies in California settled for a combined \$50 million due to mishandling of escrow funds.⁷⁴ In 2005, after a long investigation and series of public hearings, California Insurance Commissioner John Garamandi issued a \$590,000 fine and ordered a \$160,000 restitution payment from a San Diego based title insurer for rebating activities amounting to \$594,102.67.⁷⁵ In 2005, the Commissioner also reached a \$24 million settlement agreement with a California-based title insurer due to fraudulent reinsurance practices.⁷⁶

California seems to have a greater degree of competition than Texas and Pennsylvania, at least with respect to the difference in prices between companies, a difference not evident in Texas or Pennsylvania.⁷⁷ The lower number of ABAs in California is also indicative of higher market capitalization requirements.

Iowa

In 1947, the state of Iowa banned the sale of title insurance by in-state companies.⁷⁸ Iowa is unique among the 50 states in that the state offers a public Title Guaranty system in parallel to the sale of private title insurance from outside the state. This has resulted in the majority of title insurance being written through the Title Guaranty Division while the remaining policies are handled through independent, out-of-state agents. The Iowa Finance Authority describes the Title Guaranty system as:

Title Guaranty offers Commitments, Certificates, and Endorsements that provide low cost title protection for real estate located in Iowa. Title Guaranty issues coverage based on an abstract and attorney title opinion. Once a participating abstractor prepares an abstract, a participating attorney reviews and then issues a title opinion or Title Guaranty Commitment. All Title Guaranty Commitments, Certificates and Endorsements are issued using the industry standard ALTA forms. For a residential transaction, coverage up to \$500,000 is just \$110 and an additional \$1 per thousand over \$500,000. Most common endorsements are offered at no charge.⁷⁹

Iowa's Title Guaranty system differs from the private sale of title insurance practiced in most other states. Iowa's system actively searches out and corrects errors that may exist in title through attorney-abstract opinions that are issued for each real estate transaction in the state.⁸⁰ The Title Guaranty Division's deputy director Matthew White asserted that, "Iowa's titles are considered to be the cleanest in the nation."⁸¹

Private title insurance companies often operate under the assumption that title is good,⁸² as the historical loss ratios for the industry are under 10 percent and often below 5 percent.⁸³ Private companies will also insure over known defects by writing exceptions into the policy. This approach allows for commercial title insurance companies to operate more quickly the Title Guaranty system. However, this speed often means that title defects, instead of always being fixed, are sometimes insured over, resulting in a lower quality of public title records. Carl Nielsen, the executive director of the Iowa State Bar Association, is quoted as saying, "Consumers are better off using abstracts and attorneys' opinions. Title Insurance destroys abstracts. They insure over defects. Iowa lawyers clean up title defects and record everything done in the course of that cleanup."⁸⁴ Private companies may sacrifice the accuracy of public records for speed.

Iowa has lower title insurance premium rates than many of the other 49 states. Table 4.5 shows the prices for a comprehensive title insurance policy in Texas, Pennsylvania, and California when purchased from First American or Fidelity, two of the largest commercial insurers in the country. The Iowa figure (approximately \$700) is based on a GAO estimate that accounts for fees in addition to the Title Guaranty rate.⁸⁵

Table 4.5
Comparative Title Premium Rates

	First American	Fidelity
California	\$1,092.00	\$1,469.00
Pennsylvania	\$2,359.00	\$2,359.00
Texas	\$2,445.00	\$2,445.00
Iowa ⁸⁶	~\$700	~\$700

Source: Modified from data in Sudip Singh, *Competition in the Title Insurance Industry: An Empirical Study* (Unpublished Report, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, 2009), p.15.

Despite these low fees, Iowa’s Title Guaranty division still manages to turn a profit.⁸⁷ It reinvests this profit into a housing program fund designed to help homeowners and citizens in Iowa with various housing-related issues. Over \$25 million has been put into this fund over the life of the program, with \$10 million in excess coming between 1999 and 2002.⁸⁸

One criticism of the Title Guaranty system is that homeowners underutilize the coverage. Most of the policies purchased are lender policies, protecting only the mortgage lender in the case of a title defect. From 1997 to 2001, between 21,464 and 39,696 lender policies were purchased, while the number of homeowner policies purchased fluctuated between 1,006 and 1,840.⁸⁹ The effects of this under-usage may be mitigated by the fact that the error rate in Iowa’s records and titles is particularly low.

Canada

Title insurers have been licensed in Canada since 1914 but have become more common in Ontario and the Eastern provinces of Canada since the 1990s.⁹⁰ The style of title registration varies widely among the provinces, from a quasi-European system in Quebec, to a Torrens title systems in the Western provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, to an “old-style” title system in the Eastern provinces, including Ontario.⁹¹ First American Title Insurance Company, operating under the name First Canadian Title, entered the market in 1991. It took 11 years to sell its first million policies. It sold its second million policies between 2002 and 2004, demonstrating the rapid growth rate of title insurance in Canada.⁹²

A real estate transaction in Canada follows the same basic process as a transaction in the United States. Once the contract is signed, but before the closing, the buyer has the opportunity to confirm that they will receive a clean property title. Traditionally this process involves getting a written legal opinion from a lawyer stating that they have “good and marketable title.”⁹³ This process is known as due diligence, where the lawyer performs a search to protect the interests of both buyer and seller by identifying title or

survey defects, non-compliance with local by-laws, and any other errors that “may cause loss or affect the buyer’s use and enjoyment of the property.”⁹⁴

Under the Torrens system in place in Canada’s western provinces, this due diligence process is a fairly straightforward examination of public records. No chain of title is necessary, as the on-file title is indefeasible (with limited exceptions). The province offers reimbursement in the case of an error in the record that results in a loss. The province does not reimburse for “off-title” matters, including zoning compliance issues or the physical characteristics of the structures on the property.⁹⁵ For this reason, a lawyer may advise the buyer to obtain a survey of the land. This survey is called a building location certificate in the province of Manitoba; the more extensive survey conducted in Alberta and Saskatchewan is called a real property report.⁹⁶

Title insurers have yet to establish any meaningful presence in the western provinces. Susan Billington, Director of the Western Provinces Conveyancing Project and a staff lawyer at the Law Society of Alberta, stated, “It is our view that title insurance is incompatible with the Torrens registration system.”⁹⁷

Most of the growth of the title insurance industry in Canada has been in the Eastern provinces, especially Ontario. Title insurers benefit from prior legal due diligence ensuring clean title, leading the Law Society of Upper Canada to note, “The risk in Ontario is so low that title insurers in Ontario are laughing their heads off. Is there a title in Ontario that can’t be fixed? The insurers are feeding off the good job lawyers have done for years.”⁹⁸ Despite their initial frustration with the nature of title insurance, the Law Society of Upper Canada (Ontario) went on to establish TitlePLUS, its own title insurer which now services the four provinces of Eastern Canada.⁹⁹

The Canadian title insurance experience highlights differences between the state-run Torrens registration system (with the state guaranteeing clean title), and a more traditional American system requiring, either explicitly or implicitly, a chain of title and insurance on this title. Title insurance is redundant and unnecessary in situations where the state offers indefeasible claim to land.

The regulatory processes vary among provinces. The federal regulator is responsible for incorporation, qualifying foreign insurance companies, and supervision of many financial matters for insurers. The federal government also regulates the relationship between banks and insurance companies or agents.¹⁰⁰ The responsibility for regulating licensing, marketing, contractual issues, and general consumer protection/disclosure issues falls to the provinces,¹⁰¹ including management of the premiums that insurers charge. As title insurance is a relatively new phenomenon in Canada, legislation and regulation is broad, usually dealing with insurance at large and not title insurance in particular. For example, Manitoba has no specific regulation for title insurance while Saskatchewan defines title insurance without regulating it.¹⁰²

In an effort to better understand title insurers in their province, Ontario’s regulatory entity, the Financial Services Commission of Ontario (FSCO) issued a report in

November 2008 detailing the findings of an in-depth review of the major title insurers in the province.¹⁰³ The FSCO sought to determine if:

- The title insurance industry is competitive;
- Title insurers have proper claims handling procedures;
- Consumer complaints are being appropriately addressed by title insurers;
- Consumers are receiving sufficient information on title insurance products at the point-of-purchase; and
- If consumers are being well served by title insurance companies.¹⁰⁴

The report concludes that the market is competitive, stable, has appropriate claim handling procedures with acceptable complaint handling procedures. The report does hint at reverse competition in the Canadian market, noting that “[t]itle insurers tend to treat lawyers as clients, instead of focusing on consumers, who actually buy their products.”¹⁰⁵ This finding is echoed in the Manitoba and Saskatchewan Law Reform Commission findings.¹⁰⁶ The report also indicated that in Alberta approximately 10 percent of premiums go towards loss claims (similar to figures in the United States).¹⁰⁷

Analysis and Options

Title insurance is an important feature of the economic system in the United States and parts of Canada. It protects the interests of lenders and homeowners in assuring clean title to properties with very low claim rates, especially when compared to other lines of insurance. According to the Government Accountability Office (GAO), the losses for property-casualty insurance in 2006 accounted for 73 percent of written premiums in the US. For title insurers, the losses accounted for approximately 5 percent of the total written premiums. Nationally, 70 percent of premiums remain with agents for work performed during either the search or commission.¹⁰⁸

These differences reflect the nature of the product being offered as well as the unique pay structure. By virtue of being a nonrecurring fee, a title insurance premium captures all expenses involved in the title search and provides sufficient capital for situations where a legal defense and compensation must be offered. However, as the Texas Commissioner of Insurance noted in his briefing, reverse competition in the industry seems to affect the premium cost, even if there is no reliable method at present to discern this impact.¹⁰⁹ This finding is echoed in the Manitoba and Saskatchewan Law Reform Commissions finding, where they noted how marketing to service providers increases the potential for improper referral fees, and that “[t]he payment of referral fees and incentives drives up the cost without adding significant benefit to the consumer.”¹¹⁰

A report by the Government Accountability Office makes a number of recommendations for the title industry in the United States. The recommendations to state and federal regulators and legislators are to: (a) improve the ability of consumers to shop for title; (b)

encourage price competition; (c) ensure that pricing accurately reflects costs; and (d) strengthen HUD's ability to "detect and deter" violations.¹¹¹ This would include authorizing HUD to assess monetary fines on organizations and individuals found to be in violation of RESPA Section 8. HUD, in response to the GAO report, acknowledged the difficulties that arise from not having strong enforcement power.¹¹² It also recommends that HUD evaluate ABAs more closely and clarify regulations concerning ABAs so as to protect consumers from unacceptable practices in the industry.

The full effects of ABAs are difficult to discern. They do allow for a manner of one-stop-shopping for the consumer, but they also open the door to corruption and kickbacks if improperly regulated. ABAs also serve as a barrier to entry into the market, hampering competition.¹¹³ The ABA regulatory structure in California seems to manage some ABA risks by requiring them to be capitalized, vetted, and licensed before operating.

The GAO also recommended that state agencies strengthen regulation of title agents, enhance oversight, increase rate transparency, and improve cooperation among state regulators. GAO recommends auditing and increased information gathering at the state level to help increase the oversight of title agents. Appendix E lists the types of information that the GAO recommends collecting. If such data were to be collected in multiple states, individual states could compare the effects of any local reverse competition relative to other states.

Some states might want to consider an all-inclusive, state or county-controlled system similar to Iowa's Title Guaranty System or Canada's Torrens system. Under a Torrens system,

[a] court or bureau of registration operates the system, with an examiner of titles and a registrar as the key officers. The owner of a piece of land files a petition with the registrar to have the land registered. The examiner of titles reviews the legal history of the land to determine if good title exists. If good title does exist, the registrar issues a certificate of title to the owner. This certificate is ordinarily conclusive as to the person's rights in the property and cannot be challenged or overcome by a court of law. If a mistake is made by the examiner of titles, an insurance fund pays the person who holds a claim against the land. The fees charged to examine and register property pay for the insurance fund and the operation of the registration office.¹¹⁴

State responsibility for title record keeping would reduce overhead costs by reducing the demands of maintaining a title plant. Most of the information needed for a title search could be handled through such a system. A shift towards electronic central records could allow for data to be accessible over the Internet. Electronic title records would make the process of providing title insurance faster, cheaper, and hopefully more accurate, as all the records would be in one place and guaranteed by the state.

Some states might consider allowing for open inter-state competition to increase competition and drive prices down. If someone in Texas can buy life insurance from a firm in from Pennsylvania or California, why not title insurance? A hybrid system

utilizing a Torrens-type state managed data program while allowing competition from all private companies, regardless of location, could serve to maintain low prices, foster innovation, create increasingly accurate public records, and serve consumer interests.

Another possible reform could be to require the party that chooses the insurer to pay the premium.^{115,116} In this case, if a lender requires title insurance, the lender would pay for the premium since they derive the most benefit from the policy. If an owner's policy is desirable and the realtor paid for it, reverse competition might be reduced. In this case, the competition for business from realtors, lenders, and other "middlemen" is now competition for the party that is paying the premium. It also allows the more knowledgeable parties involved in the transaction, lenders and realtors, to make the most efficient decision, reducing the problems that asymmetrical information present.

Texas

The federal recommendations may have limited utility in Texas, where the Commissioner of Insurance promulgates rates, mitigating what can be done on the state level. The Commissioner has noted the difficulty in discovering the effects of reverse competition given the limited scope of information available. The GAO also recommends more thorough information gathering techniques. It would be worthwhile to pursue a greater amount of information on costs and expenses incurred by title insurance agents in order to better understand and analyze any effect that reverse competition may have on the market. Detailed audits of company spending would be preferable to allow for this sort of analysis.

Competition does not and cannot exist in the title insurance market in Texas under the currently regulatory structure. It has been shown both empirically¹¹⁷ and anecdotally, in the case of California, that encouraging competition and discouraging reverse competition through increased regulation on ABAs can drive rates down. Inversely, discouraging competition and passively encouraging reverse competition through loose restrictions and low capitalization costs on ABAs serves to increase the cost burden on the consumer. Rethinking regulatory restrictions on the title insurance market would allow for businesses to compete and would drive costs down, a process that would require a change in the laws in Texas governing title insurance regulation.

Pennsylvania

The title insurance market in Pennsylvania suffers from a lack of competition despite a regulatory structure capable of encouraging it. The rating bureau method of filing used by the majority of title insurance companies in the state has all but eliminated competition. Title Insurance Rating Bureau of Pennsylvania (TIRBOP) as it currently functions may be incompatible with the "deliberate state intervention" prong of the Midcal test for state regulation set forth in *FTC v. Ticor Title Insurance Co.* (1992)¹¹⁸ and may fail to comply with the Sherman Anti-Trust Act:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations,

is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony...¹¹⁹

The current regulatory environment creates a virtual “monopoly of State law protection against free market competition.”¹²⁰ Pennsylvania has called state hearings, which is an encouraging step towards enforcing these regulations. Perhaps the state will continue to move towards promoting competition.

Pennsylvania, as with all the states, would benefit from a better understanding of the effects of reverse competition. Greater access to the financial information of the title insurance agents is a useful step to take. However, this creates some legal confusion. From the report to the Pennsylvania Commissioner of Insurance:

From a legal standpoint, the questions facing the Department involves (*sic*) the extent to which it can look behind the cost structure of title insurers to determine if costs are reasonable. The title insurance industry notes that its internal costs are modest and its claims rate is low. Most of its costs are from the title agent community, which receives as much as 85 percent of the title insurance premiums in the form of commissions.¹²¹

Pennsylvania should make identify what information it can obtain legally and pursue that information. Properly regulating (or disbanding) TIRBOP could serve to open the market to competition and discourage reverse competition.

California

California, despite the shortcomings in its title insurance regulatory system, has a higher degree of competition than either Texas or Pennsylvania, as reflected in the lower prices (although the prices are not as low as in Iowa). California has sought to avoid the pitfalls that ABAs can bring through regulation selection of firms via stringent regulation and high capitalization costs. Competition could be increased in the state by allowing the use of out-of-state companies.

Iowa

Iowa’s unique title insurance system is an excellent model for other parts of the country to consider. By working to actively correct title flaws instead of identifying and insuring over them, the state is able to create a clean title database in an industry that already has excellent claim rates. This process can add time to the closing process, one of the critiques of Iowa’s Title Guaranty System.¹²² The relatively small population allows for the state to manage the database of homeowners with relative ease.

Property owners in Iowa tend to purchase fewer homeowner policies than other states. The state may wish to make further efforts to educate the consumer as to the potential benefits of purchasing a homeowner policy. However, the costs of such a process may not be worth it, considering the low error rate in the state.

Notes

- ¹ Andrew Vierra, *WealthWise Mortgage Planning, Deciphering the Good Faith Estimate*. Online. Available: <http://www.wealthwisemortgage.com/Andrew>. Accessed: November 12, 2009.
- ² National Association of Insurance Commissioners (NAIC), Actuarial and Statistical Services Department, *State of the Title Insurance Industry 2008*. Online. Available: www.naic.org/documents/topics_title_insurance_brief.pdf Accessed: November 15, 2009.
- ³ Ibid.
- ⁴ United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, April 2007, p. 41.
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Chapter 5. How Coverage, Regulation Styles, and Losses Affect Title Insurance Prices

Title insurance is used for protection against title defects that can occur in property purchase and refinance.¹ These defects can be found in public records such as undisclosed liens, legal judgments, back taxes, and other legal and financial documents. Defects also include non-recorded title problems not revealed during the title search, such as fraud in the execution, forgery in interpretation, mistakes in documents, and other risks.² The two types of policies for title insurance, owner's policies and lender's policies, insure respectively the homebuyers who own the real estate, versus the lenders who possess a valid lien on the property.³

Title insurance facilitates stability and efficiency in the real estate market because it protects homeowners and mortgage investors as well as title insurance agents and underwriters.⁴ Although title insurance in America has its origins in the mid-19th century, by the mid-20th century it had become mandatory for most US real estate investments with mortgages.⁵ Most US states regulate title insurance based on the rationale of information asymmetry,⁶ that insurance policies are too complicated for consumers to understand, compare, and select the most appropriate product. In the past five years, regulatory institutions, including the Government Accountability Office (GAO), the National Association of Insurance Commissioners (NAIC), and the Consumer Federation of America (CFA) have published a number of reports that point out flaws in title insurance, such as excessive prices.

This chapter seeks to understand factors that affect title insurance prices and examine the effectiveness of regulation. The next section introduces the methodology of this study, including the data, measurements, and models. A second section showcases empirical results, followed by a discussion section. The last section develops conclusions based on evidence.

Price Data Sources

One approach to examine title insurance “price” is to seek to explain prices as a dependent variable based on independent variables, such as coverage types, regulation styles, loss ratios, or losses. The title insurance market is concentrated, so that only a few underwriters have a large market share.⁷ For example, the four largest title insurance companies in the US (Fidelity National, First American, Stewart Title, and Old Republic; Land America, another large firm, filed bankruptcy in 2008) sold 92 percent of title policies in 2008 and 87 percent in 2007.⁸ Each of these top four companies has a rate calculator on their respective website that allows a potential consumer to calculate real estate title costs. Rate quotations for properties at various prices in different states are computed based on answers to a series of questions about policies, residential situations, and financial conditions. This study collected title insurance price quotations for \$200,000, \$400,000, \$600,000 and \$1,000,000 properties from the four companies in

June 2010.^{9,10,11,12} The data collected included only the most basic possible owner's policies so that it would be possible to compare price forms. Table 5.1 lists the raw data by state, rounded to the nearest dollar. For example, a \$1 million home in Alabama would have a First American title insurance rate of \$2,150.

Blank entries in Table 5.1 reflect circumstances where the automated rate estimation programs used online would not yield a rate for the state in question. The Iowa rates reflect state policies.

Table 5.1
Title Insurance Price Quotations

<i>State</i>	<i>First American</i>				<i>Fidelity</i>			
	\$200,000	\$400,000	\$600,000	\$1,000,000	\$200,000	\$400,000	\$600,000	\$1,000,000
Alabama	550	950	1,350	2,150	600	1,100	1,525	2,225
Arkansas	882	1,482	2,032	1,907				
Arizona	948	1,460	1,915	2,827				
Arkansas	525	925	1,325	2,125	605	1,045	1,485	2,365
California	762	1,168	1,488	2,108	889	1,322	1,683	2,368
Colorado								
Connecticut	750	1,350	1,900	2,900	750	1,350	1,900	2,900
Washington DC	1,140	2,190	3,150	4,950				
Delaware	650	1,250	1,850	3,050	650	1,250	1,850	3,050
Florida	1,075	2,075	3,075	5,075	1,075	2,075	3,075	5,075
Georgia	640	1,240	1,790	2,790	650	1,250	1,800	2,800
Hawaii	815	1,495	2,010	3,160				
Idaho	996	1,573	2,067	3,055	996	1,574	2,070	3,062
Illinois	1,150	1,550	1,950	2,750				
Indiana								
Iowa								
Kansas	550	1,000	1,425	2,225				
Kentucky	688	1,238	1,733	2,613	525	925	1,325	2,125
Louisiana	995	1,895	2,705	4,145				
Maine	600	1,200	1,800	3,000				
Maryland	740	1,398	1,978	3,038	778	1,469	2,078	3,190
Massachusetts	730	1,460	2,190	3,650	700	1,400	2,100	3,500
Michigan	946	1,441	1,891	2,791	1,076	1,653	2,177	3,225
Minnesota	667	1,215	1,615	2,535				
Mississippi	800	1400	2000	3200				
Missouri	210	370	530	850				
Minnesota	812	1,257	1,657	2,457				
Nebraska	608	1,008	1,408	2,208				
Nevada	1,012	1,512	1,932	2,772				
New Hampshire	475	875	1,275	2,075	475	875	1,275	2,075
New Jersey	895	1,685	2,345	3,405	895	1,685	2,345	3,405
New Mexico	1,293	2,257	3,117	4,629	1,293	2,257	3,117	4,629
New York	1,029	1,771	2,480	4,508	1,029	1,771	2,480	4,508
North Carolina	410	730	990	1,390	350	650	900	1,300
North Dakota	525	925	1,325	2,125				
Ohio	1,088	1,838	2,463	5,649	1,088	1,838	2,463	3,563

Oklahoma	780	1,180	1,580	2,380				
Oregon	700	1,150	1,500	2,100	700	1,150	1,500	2,100
Pennsylvania	1,359	2,359	3,234	4,734	1,359	2,359	3,234	4,734
Rhode Island	630	1,110	1,590	2,550	575	1,075	1,550	2,450
South Carolina	540	960	1,350	2,070				
South Dakota	525	925	1,325	2,125				
Tennessee	625	1,125	1,625	2,625				
Texas	1,377	2,445	3,513	5,649	1,377	2,445	3,513	5,649
Utah	1,016	1,696	2,206	2,886	1,315	2,179	2,827	3,691
Vermont	700	1,300	1,900	3,100				
Virginia	780	1,530	2,240	3,600				
Washington	775	1,175	1,575	2,375				
West Virginia	700	1,300	1,800	2,600				
Wisconsin	850	1,450	2,050	3,250				
Wyoming	825	1,325	1,775	2,575				
	<i>Stewart</i>				<i>Old Republic</i>			
	\$200,000	\$400,000	\$600,000	\$1,000,000	\$200,000	\$400,000	\$600,000	\$1,000,000
Alabama	650	1,250	1,750	2,550	600	1,000	1,400	2,200
Arkansas	882	1,482	2,032	2,907				
Arizona	928	1,418	1,838	2,678	820	1,250	1,570	2,210
Arkansas	1,100	2,200	3,300	5,500				
California	750	1,186	1,502	2,126	820	1,250	1,570	2,210
Colorado	1,186	1,556	1,915	2,615	1,172	1,542	1,902	2,602
Connecticut	750	1,350	1,900	2,900	750	1,350	1,900	2,900
Washington DC	1,140	2,190	3,150	4,950	950	1,825	2,625	4,125
Delaware	650	1,250	1,850	3,050	650	1,250	1,850	3,050
Florida	1,075	2,075	3,075	5,075	1,075	2,075	3,075	5,075
Georgia	600	1,200	1,745	2,725	400	1,100	1,750	2,950
Hawaii	827	1,562	2,270	3,719	898	1,614	2,236	3,483
Idaho	905	1,430	1,880	2,780	905	1,430	1,880	2,780
Illinois	1,145	1,545	1,945	2,745				
Indiana	550	950	1,350	2,150	525	925	1,325	2,125
Iowa	110	110	210	610				
Kansas	832	1,251	1,564	1,964				
Kentucky	725	1,325	1,875	2,875	688	1,238	1,733	2,613
Louisiana	995	1,895	2,705	4,145	995	1,895	2,705	4,145
Maine	600	1,200	1,800	2,563	600	1,200	1,700	2,500
Maryland	750	1,425	2,025	3,125	770	1,458	2,063	3,163
Massachusetts	730	1,460	2,190	3,650	730	1,460	2,190	3,650
Michigan	1,025	1,575	2,075	3,075	1,025	1,575	2,075	3,075
Minnesota	688	1,163	1,613	2,513	650	1,113	1,488	2,188
Mississippi	800	1,400	2,000	3,200	800	1,400	2,000	3,200
Missouri	206	360	440	440				
Minnesota	812	1,247	1,657	2,457	796	1,196	1,596	2,396
Nebraska	555	955	1,355	2,155	608	1,008	1,408	2,208
Nevada	880	1,341	1,707	2,507	944	1,439	1,879	2,759
New Hampshire	600	1,000	1,400	2,200	500	900	1,300	2,100
New Jersey	895	1,685	2,345	3,405	895	1,685	2,345	3,405
New Mexico	1,292	2,256	3,116	4,628	1,293	2,257	3,117	4,629
New York	1,210	2,082	2,916	4,508				
North Carolina	350	650	900	1,300	410	730	990	1,390
North Dakota	525	925	1,300	2,000	525	925	1,300	2,000
Ohio	1,088	1,838	2,463	3,563	1,088	1,838	2,463	3,563

Oklahoma	695	1,085	1,495	3,563	700	1,100	1,500	2,300
Oregon	700	1,150	1,500	2,100				
Pennsylvania	1,359	2,359	3,234	4,734	1,359	2,359	3,234	4,734
Rhode Island	650	1,250	1,800	2,800	575	1,075	1,575	2,575
South Carolina	540	960	1,350	2,070	450	800	1,125	1,725
South Dakota	919	1,379	1,810	2,614	525	925	1,300	2,000
Tennessee	1,169	2,069	2,819	4,019	600	1,050	1,500	2,400
Texas	1,377	2,445	3,513	5,649	1,377	2,445	3,513	5,649
Utah	1,195	1,995	2,595	3,395	1,195	1,995	2,595	3,395
Vermont	710	1,310	1,910	3,110	475	875	1,275	2,075
Virginia	780	1,530	2,240	3,600	780	1,530	2,230	3,550
Washington	668	1,090	1,462	2,152	639	947	1,255	1,825
West Virginia	730	1,410	2,050	3,250	750	1,350	1,900	2,900
Wisconsin	975	1,775	2,175	2,175	1,138	1,988	2,738	4,038
Wyoming	815	1,315	1,765	2,565	815	1,315	1,765	2,565

Sources: The rate calculator websites of First American (<http://tfc.firstam.com/public/default.aspx>), Fidelity National (<http://ratecalculator.fntg.com/default.aspx?brand=fntic>), Stewart Title (<http://www.stewartorders.com/ratecalc>), and Old Republic (<http://www.oldrepublictitle.com/newnational/resources/locations.asp>). Accessed: June 18, 2010.

Table 5.2
Descriptive Summary of Price Quotations

Company	Property	Obs.	Mean	Median	S.D.	Range	Min	Max
First American	\$200,000	48	794.5	769	246.3	1167	210	1377
	\$400,000	48	1379.4	1313	422.8	2075	370	2445
	\$600,000	48	1917.1	1870	597.4	2983	530	3513
	\$1,000,000	48	2973.5	2718	1039.7	4799	850	5649
Fidelity	\$200,000	23	858.6	778	301.2	1027	350	1377
	\$400,000	23	1508.5	1400	502.2	1795	650	2445
	\$600,000	23	2098.7	2070	694	2613	900	3513
	\$1,000,000	23	3216.9	3062	1098.6	4349	1300	5649
Stewart	\$200,000	51	825.2	800	272	1267	110	1377
	\$400,000	51	1429.6	1379	476.3	2335	110	2445
	\$600,000	51	1977.9	1880	679	3303	210	3513
	\$1,000,000	51	3002.9	2800	1088.2	5209	440	5649
Old Republic	\$200,000	43	796.7	770	257.5	977	400	1377
	\$400,000	43	1387.8	1315	434.4	1715	730	2445
	\$600,000	43	1928.7	1850	609.6	2523	990	3513
	\$1,000,000	43	2940	2759	946.5	4259	1390	5649

Table 5.2 presents price quotation summary statistics. Because title is sold on a state basis aggregation of rates among states has no inherent meaning. Only Stewart has data for all the 50 states and the District of Columbia. First America has quotations for 48 states, Old Republic has 43, and Fidelity provides information for 23 states. First American has the lowest average prices for properties at \$200,000, \$400,000 and \$600,000, which are \$794, \$1,379 and \$1,917 respectively. Old Republic has the lowest

average price for a \$1,000,000 property, which is \$2,940. Fidelity’s average price quotations for all the four pricing properties are the highest, at \$859, \$1,509, \$2,099 and \$3,217 respectively. It is not possible to infer much about comparative prices on these data because each company reports rates for different states.

The analysis of variance (ANOVA) can be used to answer the question of whether or not the differences among the prices from these four companies are significant. This method compares the means of the prices against a null hypothesis that there is no difference. Given the small sample sizes, especially of Fidelity with only 23 quotations, one approach is to use an alpha of 10 percent. This approach means that if a p-value of the ANOVA is smaller than 10 percent, then the inference would be that these companies charge significantly different title insurance prices. Table 5.3 lists ANOVA results: none of the p-values are smaller than 10 percent. Based on these data from between 23 and 50 states, the title insurance prices by state among these four companies do not significantly differ from each other.

Table 5.3
ANOVA for Price Comparison Among Companies

	\$200,000	\$400,000	\$600,000	\$1,000,000
First American	794	1379	1917	2974
Fidelity	859	1509	2099	3217
Stewart	825	1430	1978	3003
Old Republic	797	1388	1929	2940
P-value	0.7568	0.6884	0.6991	0.7616
Significance	N	N	N	N

As the prices among different companies do not differ significantly, in principle it could be possible to use prices from only one firm. For any study of title insurance prices that expects to include all states, Stewart’s quotes and prices are more useful because only Stewart Title’s website reports price data for all the 50 states and the District of Columbia.

Table 5.4 presents the descriptive summary of Stewart Title’s price data. Ranges between the “maximum” and “minimum” prices are large for all the properties at each of the four different prices. Title costs increase when the prices of the real estate increase from \$200,000 to \$1,000,000 properties. For example, for a \$200,000 property, the minimum title insurance price is \$110 in all 50 states and the maximum price is \$1,377. For a \$400,000 property, the minimum is still \$110 (that is Iowa’s state rate), although the maximum is \$2,445. For a \$600,000 property, the minimum increases to \$210, but the maximum goes up much faster to \$3,513. The range for a \$1,000,000 property is more than \$5,000, from a low of \$440 to a high of \$5,649. Figures 5.1 to 5.4 illustrate the variability of the title insurance prices among the different states in histograms. One of the main purposes of this study is to explain the variability of title insurance prices in the different states.

Table 5.4
Summary of Rates in States

	\$200,000	\$400,000	\$600,000	\$1,000,000
mean	825.2235	1429.566	1977.9347	3002.8731
median	800	1379	1880	2800
mode	650	1250	1350	3562.5
S.D.	272.0047	476.3113	678.98887	1088.2251
range	1267	2335	3303	5208.6
min	110	110	210	440.4
max	1377	2445	3513	5649

Figure 5.1
Comparison of Rates for a \$200,000 Property

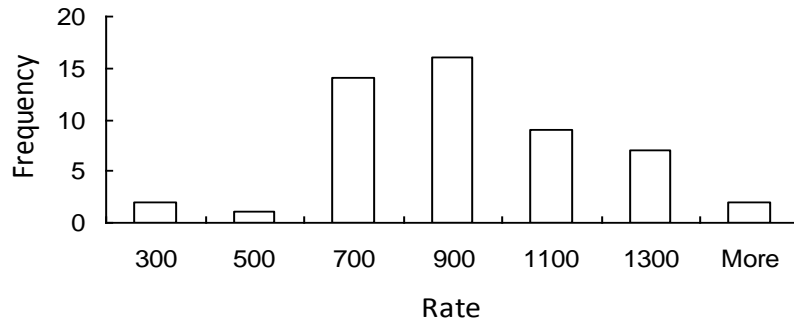


Figure 5.2
Comparison of Rates for a \$400,000 Property

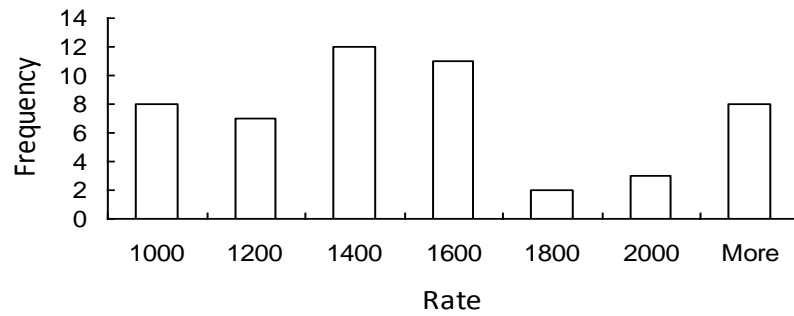


Figure 5.3
Comparison of Rates for a \$600,000 Property

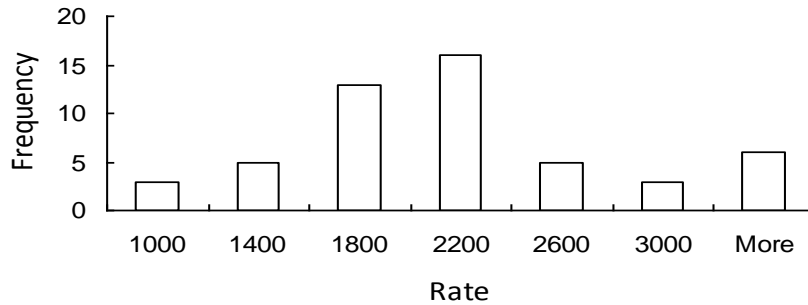
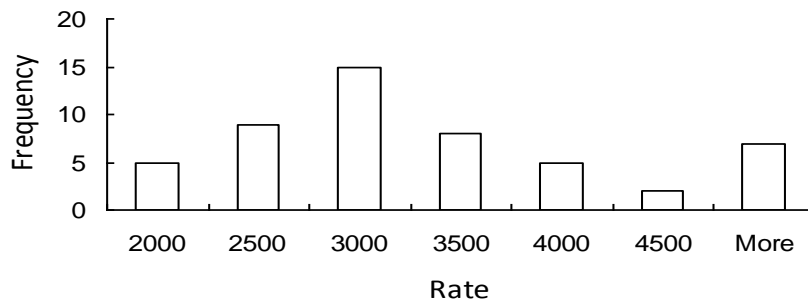


Figure 5.4
Comparison of Rates for a \$1,000,000 Property



Coverage Variables and Measurement

This study tests several possible variables to explain the pattern of title insurance prices. One independent variable is its coverage or what the title insurance price buys. The “coverage” of a title insurance policy refers to the services purchased when a consumer buys a policy, and these services differ by state. There are four main services provided by title insurance agents and underwriters in the 50 states. These services include: (a) future payments for claims, which are reflected in insurance premiums; (b) title search, which means the acquisition of public records and other documents; (c) title examination, which refers to the evaluation of documents for defects in title; and (d) closing costs, which include the final payout for the real estate transaction as well as other title-related costs involved in the purchase. State governments select the coverage type, so the insurance company does not determine which services should be included in the cost of title insurance.

Table 5.5 summarizes coverage information for the states. Data are not available for Arizona, Colorado, Iowa and Washington. Thirty states charge premiums for title insurance only. Illinois, Oklahoma and Wyoming cover both premiums and title examination fees. Michigan and another five states charge premiums, title search and examination fees. Some states, like Texas, include closing costs and at least one title search and examination fees in the title insurance prices, sometimes called “comprehensive” coverage.

Table 5.5
Title Insurance Price Coverage by State

Risk Premium Only	Title Examination and Risk Premium Only	Title Examination, Search, and Risk Premium	Comprehensive
Alabama	Illinois	Idaho	Alaska
Arkansas	Oklahoma	Michigan	California
Connecticut	Wyoming	Montana	Nevada
Delaware		Nebraska	Pennsylvania
Florida		Oregon	South Dakota
Georgia		Utah	Texas
Hawaii			Wisconsin
Indiana			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Minnesota			
Mississippi			
Missouri			
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Rhode Island			
South Carolina			
Tennessee			
Vermont			
Virginia			
West Virginia			

Source: “Notes” section of rate quotes obtained from First American’s Title Fees Calculator, online at <http://titlefeecalculator.firstam.com/>. Some data were verified by contacting individual state departments of insurance.

Note: Data are not available for Arizona, Colorado, Iowa, and Washington from the source.

In a competitive market, the underlying presumption would be that the more services included in the title insurance fee, the higher the price should be. Therefore, the first hypothesis is that increasing coverage complexity has a positive impact on insurance price: the more services included, the higher title policy prices.

Descriptions of State Regulation

A second possible explanatory variable is the “style” of state regulation, which refers to the five ways in which states relate to title underwriters: use and file, file and use, prior approval, and promulgated, along with no regulation.¹³ Table 5.6 describes the tasks included in these styles of regulation. Table 5.7 lists the states by style; only data from the District of Columbia is missing. In the “promulgated” states, Florida, New Mexico, and Texas, title insurance prices are promulgated by a state agency. In the six “prior approval” states, a state agency must approve title insurance prices before an underwriter can use the rates. Most of other states use either a “file and use” or a “use and file” style. For the purpose of simplifying these two styles, “file and use” and “use and file” are treated as one style, because in these states title insurance companies set their own prices and state officials can approve or disapprove those proposed prices. One difference between “file and use” and “use and file” is whether the insurance company must file a rate before it starts to use it.

Table 5.7 lists the states with “no regulation” style of title insurance, which means that the state allows the market to set prices in principle, but reserves the right to intervene if regulators conclude that rates on conditions are inappropriate. Of the five styles of regulation (no regulation, file and use, use and file, prior approval price and promulgated price) the main characteristic of the middle three styles, versus the other two levels, is that a title insurance underwriter initiates a price proposal which is then considered by state officials. To simplify analyses, it may be useful to combine all three together into one style—approval price. As one aim of title insurance regulation is to prevent excessive prices, it is reasonable to hypothesize that the relationship between the depth of government involvement versus prices is negative, so title insurance prices ought to be lower in the promulgated states than the approval-price states, and the no-regulation states.

**Table 5.6
Title Insurance Rate Regulation Processes**

<p>No Regulation</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Regulatory review takes place only on an ad hoc basis, usually in the event of consumer or competitor complaints.
<p>Use and File</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer offers and completes transactions using the derived rates. 3. Title insurer files rates within a state-mandated timeframe; typically, no formal justification is required. 4. Title insurer continues to use rates provided that the state does not object, but must maintain the rates that were filed.

<p>File and Use</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency. Justification requirements vary by state. 3. Title insurer offers and completes transactions using the derived rates. 4. Some file and use states may have a time limit of a number of days to approve a filing. 5. Other file and use states do not approve a filing but merely “accept” the filing. 6. Title insurer must maintain the rates that were approved.
<p>Prior Approval</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency. Justification of proposed rates typically must be provided. 3. State agency approves or rejects filed rates within 15 to 60 days. 4. Title insurer offers and completes transactions using approved rates. 5. Title insurer must maintain the rates that were approved.
<p>Rate Promulgation</p> <ol style="list-style-type: none"> 1. State regulatory agency collects data and hears testimony regularly from title insurers, consumers, and other parties related to title insurance transactions. 2. State regulatory agency formulates “rate charts,” which set title insurance policy rates based on transaction size, on the basis of collected data. 3. Title insurer offers and completes transactions using promulgated rates. 4. Title insurer must maintain the rates that were developed by the regulatory body.

Adapted from: Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001); and Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry* (New York: NYU Press, 2007).

Table 5.7
Title Insurance Regulation Styles by State

No Regulation	Use and File	File and Use	Prior Approval	Promulgated
Alabama	Kansas	Alaska	Arizona	Florida
Arkansas	Utah	California	Connecticut	New Mexico
Georgia	Vermont	Colorado	Idaho	Texas
Hawaii	Wisconsin	Delaware	New Hampshire	
Illinois		Kentucky	New Jersey	
Indiana		Louisiana	South Carolina	
Iowa		Maine		
Massachusetts		Maryland		
Mississippi		Michigan		
Oklahoma		Minnesota		
Virginia		Missouri		
West Virginia		Montana		
		Nebraska		
		Nevada		
		New York		
		North Carolina		
		North Dakota		
		Ohio		
		Oregon		
		Pennsylvania		
		Rhode Island		
		South Dakota		

No Regulation	Use and File	File and Use	Prior Approval	Promulgated
		Tennessee		
		Washington		
		Wyoming		

Source: Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

Note: Data is not available for Washington, D.C.

Loss Data Resources

One purpose of title insurance is to allow the underwriter to share the risk of a flawed title with the mortgage holder and owner. If there is a title error, the insurer ought to cover the loss and provide legal representation. Therefore, losses are usually important in the price-making process. The relationship between insurance prices and losses often is assumed to be positive. For example, if the amount of revenue used to pay losses or loss adjustments and hedge against losses increase, so should prices. Or, if the percentage of losses versus income increases it should lead to higher prices. This study collects data for both of those two indices: the volume of funds to protect against losses and ratio of these funds to income.

The loss ratio data in this study is from Demotech, Inc. (see Table 5.8). From 1999 to 2008 most of the loss ratios are under 10 percent. Both in 2001 and 2008, the loss ratios apparently rise, a result consistent with the history of the housing industry. During each of these years, a financial crisis occurred and the economy went to recession. Financial crises sometimes lead to defaults in the real estate market. However, in some states (Alaska, Arizona, Colorado, Delaware, Idaho, Kansas, Montana, Nebraska, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Wisconsin, and Wyoming) the average loss ratios from 1999 to 2008 remain under 5 percent even when the two financial crises periods are included.

Table 5.8
Loss Ratios by State

State	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Average
Alabama	7.85	9.09	11.24	8.55	7.49	6.65	7.98	7.23	7.03	15.80	8.89
Alaska	5.99	0.45	1.25	2.18	1.21	0.48	5.74	2.49	6.32	4.29	3.04
Arizona	2.57	6.19	3.63	3.08	2.24	2.76	1.62	2.48	4.99	7.81	3.74
Arkansas	2.24	4.63	6.44	9.59	9.90	4.37	2.93	5.57	10.80	10.43	6.69
California	5.06	4.18	3.70	3.56	3.00	3.83	4.85	4.66	11.90	16.40	6.11
Colorado	3.24	2.71	3.14	4.53	2.67	2.82	4.30	5.47	9.12	7.56	4.56
Connecticut	3.95	5.08	4.54	4.60	2.50	3.43	12.60	4.47	8.11	8.20	5.75
Delaware	4.13	1.80	4.45	7.52	6.79	2.57	1.01	0.80	3.11	6.27	3.85
Florida	3.05	5.60	4.00	3.92	3.46	2.87	2.92	3.68	8.03	17.10	5.46
Georgia	6.38	7.66	7.65	10.64	9.52	8.33	15.40	7.56	10.83	19.24	10.32
Hawaii	7.33	10.52	12.01	6.22	6.38	4.72	4.01	4.99	15.29	15.10	8.66

Idaho	4.58	5.87	5.55	4.57	2.14	3.47	1.98	2.51	7.52	6.35	4.45
Illinois	4.88	9.26	10.02	7.84	7.56	8.49	6.84	6.44	7.72	12.14	8.12
Indiana	4.09	4.03	3.59	9.82	10.53	10.30	6.56	6.26	7.81	10.89	7.39
Iowa	6.62	16.53	15.12	18.74	3.76	15.03	23.07	11.38	9.04	0.71	12.00
Kansas	2.24	0.83	3.64	3.91	3.86	3.86	2.59	3.75	14.12	2.07	4.09
Kentucky	1.50	2.42	4.99	6.52	3.31	9.31	10.85	10.46	7.91	10.75	6.80
Louisiana	6.28	3.51	5.83	11.47	6.68	4.03	5.13	4.16	2.21	5.69	5.50
Maine	3.70	5.01	4.98	2.40	3.55	4.31	5.73	7.22	9.71	11.29	5.79
Maryland	3.18	11.02	4.59	4.59	2.20	2.62	4.17	4.41	6.60	12.41	5.58
Massachusetts	5.95	6.86	4.85	3.72	3.61	4.20	5.85	9.00	9.08	7.09	6.02
Michigan	3.20	4.80	4.79	6.90	6.10	8.18	11.22	14.93	15.79	18.37	9.43
Minnesota	5.27	7.18	3.76	2.79	3.44	5.68	8.67	7.60	19.19	27.13	9.07
Mississippi	3.20	9.92	4.23	8.49	11.36	8.05	10.45	4.58	26.55	7.74	9.46
Missouri	6.10	11.38	13.30	10.58	9.40	9.58	34.41	20.20	19.57	18.92	15.34
Montana	4.03	9.03	3.71	2.37	3.16	2.53	3.78	3.76	4.06	3.62	4.01
Nebraska	0.64	1.05	4.85	2.27	1.82	2.11	4.61	6.61	5.00	2.94	3.19
Nevada	4.33	7.80	11.18	8.25	7.06	5.62	3.28	1.04	4.71	6.34	5.96
New Hampshire	4.34	6.16	3.36	1.98	2.26	3.00	5.56	5.08	10.18	10.89	5.28
New Jersey	4.80	6.73	4.90	7.77	5.86	4.22	7.49	5.51	6.24	10.45	6.40
New Mexico	5.68	6.58	6.54	5.10	4.37	3.86	4.01	5.50	2.27	4.47	4.84
New York	3.87	5.01	4.37	3.96	3.40	3.53	3.91	3.49	4.00	6.89	4.24
N. Carolina	7.72	14.23	14.33	12.09	9.21	13.28	12.01	10.33	14.37	35.19	14.28
North Dakota	0.14	0.15	2.04	0.30	1.03	1.56	1.23	1.87	55.76	1.10	6.52
Ohio	3.78	3.95	4.94	4.44	3.05	2.49	4.21	4.18	5.36	5.99	4.24
Oklahoma	3.46	3.49	2.94	2.12	2.15	2.34	3.88	2.67	3.26	2.83	2.91
Oregon	2.55	3.70	3.25	2.32	1.33	2.25	2.05	1.79	2.70	5.91	2.79
Pennsylvania	2.31	2.87	2.57	1.69	2.34	2.96	3.21	2.78	4.48	6.47	3.17
Rhode Island	1.17	7.10	6.58	6.00	1.17	6.32	8.46	4.23	14.90	11.73	6.77
S. Carolina	4.08	6.91	4.46	11.13	5.93	8.54	8.03	5.55	6.92	10.95	7.25
South Dakota	0.37	0.80	1.21	2.41	0.11	1.36	3.87	0.54	31.74	2.11	4.45
Tennessee	2.47	5.79	20.34	3.86	4.13	4.20	9.61	4.76	3.74	10.88	6.98
Texas	1.87	1.85	1.54	2.31	2.46	2.50	2.85	2.57	2.85	3.97	2.48
Utah	3.58	4.21	13.01	4.02	3.82	6.94	3.97	1.62	2.69	4.50	4.84
Vermont	3.06	2.90	8.46	6.55	5.37	10.57	21.18	14.35	6.02	8.37	8.68
Virginia	4.83	5.33	2.20	2.29	2.21	2.09	2.98	3.29	6.48	9.80	4.15
Washington	4.76	4.24	5.06	5.24	4.66	4.29	3.97	3.98	6.29	10.76	5.33
Washington DC	4.45	9.11	8.69	5.93	10.24	5.42	8.30	6.56	10.00	24.26	9.30
West Virginia	2.84	10.01	4.95	6.45	2.28	3.79	5.73	2.54	10.11	7.34	5.60
Wisconsin	2.46	5.73	2.78	2.57	3.09	2.02	4.72	4.13	12.74	5.33	4.56
Wyoming	2.28	4.11	1.20	2.59	3.27	2.11	0.66	0.85	2.37	3.64	2.31

Source: Demotech Inc., *Demotech Performance of Title Insurance Companies* (2009 Edition), Dublin, Ohio, p. 2009-05.

Loss data from both Demotech, Inc., and Corporate Development Service, Inc., are listed in Table 5.9. The available data are from 1999, 2000, 2002, 2003, 2004, and 2008. The average of these years' losses are used to represent the loss variable. Using losses as an independent variable is similar as using loss ratios, but has one advantage: raw losses excludes the impact of operating income.

Table 5.9
Losses by State

State	1999	2000	2002	2003	2004	2008	Average
Alabama	5528577	3364211	5952338	5981753	4728099	15144014	6783165
Alaska	1286362	246448	2062133	472139	299259	815866	863701
Arizona	7869632	12560425	8638760	11780112	14909292	29149342	14151261
Arkansas	908822	1312970	2062133	3167068	3171472	5429750	2675369
California	62715358	57859666	87999425	100422281	97590278	224825759	113739482
Colorado	5648767	6703651	12708836	11480532	11611921	16514094	11803807
Connecticut	3582505	3519640	6156783	4683971	5940450	5042394	5068648
Delaware	638158	225510	1168622	2912582	1001515	1465602	1354766
Florida	28193136	37712548	39686593	42114531	57017704	122468610	59799997
Georgia	7938411	9274805	15189624	20372846	20990863	35476892	20261006
Hawaii	2733927	2993015	3005544	5381740	4362553	7704077	4689386
Idaho	2003462	2542352	4042178	3212724	2643382	7050505	3898228
Illinois	11591610	17130992	29516007	32226804	42053547	36993385	31584147
Indiana	3431184	2663172	7941003	8250843	16963475	12873902	9738479
Iowa	91075	115632	124974	252374	752988	458263	340846
Kansas	585429	631704	1446325	1993607	2498412	1245122	1563034
Kentucky	726652	497256	917359	3110647	5082640	7049385	3331457
Louisiana	4200723	1422660	5042874	8616327	3289431	5076386	4689536
Maine	744108	650372	756599	1089266	1511069	3225070	1446475
Maryland	3602044	12594474	8245914	5614847	8515916	25638053	12121841
Massachusetts	7040178	7409351	6944893	14553768	12617339	12264665	10758003
Michigan	7950683	12743076	25260588	24407209	31724993	48922231	28611619
Minnesota	5269573	2863570	5781271	6014621	11462742	29956240	11215689
Mississippi	480312	1060902	2283566	3016034	2252754	3850725	2492796
Missouri	3684920	5536396	8431736	7359319	8789778	17582301	9539906
Montana	1525385	2317233	1183647	1478653	1489172	1948806	1683502
Nebraska	4361976	309289	1143825	938900	1304331	1112274	961724
Nevada	3301372	5620528	9709868	17265565	11760769	9582076	10787761
New Hampshire	1059340	1333751	1001747	1027968	1147239	2657283	1433598
New Jersey	12462809	14990736	21631831	22864828	21586676	40538354	24322485
New Mexico	3782790	3091645	3872779	8391772	4781275	3484324	4724359
New York	17922750	23765433	28619637	29892109	36005323	44742970	32605094
North Carolina	6772672	8056846	9432383	11838834	15879283	36105981	16262665
North Dakota	892	4101	20320	47436	70819	102788	49093
Ohio	6266570	9400891	11180329	12563528	14362951	19374443	13376428
Oklahoma	1486788	1547987	1888276	1073947	1472196	1547952	1506072
Oregon	3666309	4205221	6411944	5917593	5669680	8869579	6214803
Pennsylvania	8805884	7435560	9751041	12231770	20466376	23369998	14650949
Rhode Island	260979	640488	940953	773838	3269368	3380617	1801053
South Carolina	3405235	2422449	5040473	6389863	9910323	12584059	7269433
South Dakota	29258	41657	133794	170346	251705	399453	199391
Tennessee	1869402	2525440	5047077	5238709	8760070	14099254	7134110
Texas	16797843	14560627	28485765	34039165	37131303	54644989	33772370
Utah	3213880	3268747	8343679	7669396	10883371	7568069	7546652
Vermont	206978	226247	452975	486614	873357	1114765	630792
Virginia	8023612	7611092	4621263	7720789	9487930	22087948	10305804
Washington	11828030	8282877	15648865	16422388	16182824	33419544	17991300
Washington DC	832019	1203588	1389794	2716040	2395578	7931084	3230011
West Virginia	104937	985298	297944	426057	853001	1239301	760320

Wisconsin	2250762	3635584	3191768	3797212	5299395	10341535	5253099
Wyoming	378719	425001	443442	640391	430143	1408346	669465

Source: Demotech Performance of Title Insurance Companies (2004, 2005, 2006, and 2009 Editions); and Corporate Development Services, Inc. (2000, 2001, 2003).

Seeking an Evaluation of Price: The Models to be Estimated

To evaluate price data, it is useful to examine factors which may be able to explain the variability of the title insurance prices in the different states. The dependent variable is the title insurance price. Possible explanatory variables are coverage, regulation, and loss ratios or losses. According to previous studies and the analysis above, these are the hypotheses:

- Hypothesis 1: Title insurance prices in the different states are influenced by the types of coverage, styles of regulation, and loss ratios or losses.
- Hypothesis 2: The relationship between price and coverage ought to be positive, which means the more services included, the higher the price should be.
- Hypothesis 3: The relationship between price and regulation ought to be negative, which means the higher or more intrusive the level of government regulation, the lower the price should be.
- Hypothesis 4: The relationship between price and loss ratio or loss ought to be positive, which means the higher the losses due to failed title policies, the higher the price should be.

In the study, the prices of title insurance ought to be relevant to the four types of coverage, the three styles of regulation, and the loss ratios. If “no regulation” and “premium only” levels are treated as alternative baselines for comparing other states, the analyst can compare the influences of other levels of regulation and coverage to the baselines. The price function can be written as:

$$P = F(C1, C2, C3, R1, R2, LR/L) \quad (\text{Equation 1})$$

where P denotes title insurance price. The variables C1, C2 and C3 denote alternative service levels: title examination and premium only; title examination, search and premium, and comprehensive price respectively, where “premium only” is not designated with a variable because it serves as the base for comparison. The terms of R1 and R2 are for the regulation of approval price and promulgated price where “no regulation” is not designated with a variable because it serves as the base for comparison. LR represents the loss ratio, and L is the loss, all of which are included in the model. Table 5.10 lists the variable definitions.

Table 5.10
Variables Information

Variable	Value	Label
Price	Quotations from Stewart	P
Coverage	Premium only	-
	Title examination and premium only	C1
	Title examination, search and premium	C2
	Comprehensive price	C3
Regulation	No regulation	-
	Approval price	R1
	Promulgated price	R2
Loss Ratio	Loss Ratio	LR
Loss	Loss	L

Prices, loss ratios, and losses are numerical data, so the raw data listed above can be used directly for analyses. Coverage and regulation are categorical data, which can be represented by so called (0, 1) dummy code variables. In other words, each of the dummy variables C1, C2, C3, R1 and R2 can hold one of two values 0 or 1. For example, if C1 equals 1, the title insurance price of that state covers examination and premium only, 0 otherwise. If C1, C2 and C3 are each equal to 0, the price only includes the premium which is the bare case. When R1 and R2 are both 0, that state has no regulation on title insurance prices.

Given the data listed above, it is possible to use the ordinary least square (OLS) regression to assess the influences of service coverage, regulation styles, and loss ratios or losses. This study evaluates each factor separately to know their independent impacts, and then tests the effects of combinations of these factors.

Empirical Results

Single Variable Models

Table 5.11 presents the results of the regression models for different pricing properties. A first set of models seek to explain title insurance prices for four alternate properties (valued respectively at \$200,000, \$400,000, \$600,000, and \$1,000,000) by service coverage: examination and premium only (C1), examination, search, and premium (C2), and comprehensive price (C3). The price functions on coverage are:

$$P (\$200,000) = 768.9 + 116.1C1 + 96.5C2 + 251.4C3 \quad (\text{Equation 2})$$

$$P (\$400,000) = 1409.4 - 94.4C1 - 17.4C2 + 300.2C3 \quad (\text{Equation 3})$$

$$P (\$600,000) = 2002.0 - 267.0C1 - 158.4C2 + 279.7C3 \quad (\text{Equation 4})$$

$$P (\$1,000,000) = 3086.5 - 129.0C1 - 426.2C2 + 157.9C3 \quad (\text{Equation 5})$$

where $P()$ represents the title insurance price for the property, and the variables C1 through C3 are defined above.

The constants are significant in all these four functions. Many of the coefficients of coverage variables are insignificant; C3 is significant in the first two models. The signs of C1 and C2 are not consistent in these models: positive in the first function and negative in the other three. The signs of C3 coefficients are consistently positive. These results do not identify a clear narrative to use for service coverage as a predictor of title insurance prices.

The second set of models uses regressions to evaluate styles of regulation, regulated by approval prices (R1) or promulgated prices (R2). Equations 6 to 9 represent estimates for evaluating title insurance prices for the four different pricing property prices, from \$200,000 to \$1,000,000.

$$P(\$200,000) = 726.4 + 87.5R1 + 521.6R2 \quad (\text{Equation 6})$$

$$P(\$400,000) = 1308.5 + 69.8R1 + 950.2R2 \quad (\text{Equation 7})$$

$$P(\$600,000) = 1878.8 - 8.0R1 + 1355.9R2 \quad (\text{Equation 8})$$

$$P(\$1,000,000) = 3105.1 - 374.2R1 + 2012.2R2 \quad (\text{Equation 9})$$

The results for R2 are consistent in all four cases, with the coefficients of R2 positive and significant below the 1 percent level of significance. The R1 coefficients are not significant in these models; the coefficient signs change to negative in the third and fourth functions. Like the coverage models, the constants are all significant. There is a strong evidence for a positive relationship between prices with the intensity of government regulation. Compared to states where title insurance price is not regulated, the states with promulgated price regulation have higher prices, and the differences increase as a property's price goes up.

The equations on loss ratios (LR) are listed below (Equation 10 to Equation 13). The regressions on loss ratios all provide significantly negative coefficients, which mean that for every one percent decrease of the loss ratio, the title insurance price increases. In other words, if one state's loss ratio is smaller than another's, it is likely that its title insurance price will be larger, and increments rise as the values of properties increase. Equations 5.10 through 5.13 show the results.

$$P(\$200,000) = 1125.1 - 48.3LR \quad (\text{Equation 10})$$

$$P(\$400,000) = 1308.5 - 75.0LR \quad (\text{Equation 11})$$

$$P(\$600,000) = 2584.4 - 97.7LR \quad (\text{Equation 12})$$

$$P(\$1,000,000) = 3905.3 - 145.4LR \quad (\text{Equation 13})$$

The last set of models use losses (L) as the independent variable instead of loss ratio. The equations for the property prices from \$200,000 to \$1,000,000 are listed below. Like the loss ratio variable, the coefficients of loss in this set of models are also all negative. These results reinforce the relationship between losses and prices in the title insurance industry: negative instead of positive. However, these coefficients are not significant. Together the two results (with LR and L as alternative independent variables) illustrate that the impact of loss ratio is mostly from operating income. According to these statistical analyses, losses alone do not appear to affect prices.

$$\text{Rate } (\$200,000) = 791.4 - 0.0029L \quad (\text{Equation 14})$$

$$\text{Rate } (\$400,000) = 1380.9 - 0.0042L \quad (\text{Equation 15})$$

$$\text{Rate } (\$600,000) = 1918.2 - 0.0051L \quad (\text{Equation 16})$$

$$\text{Rate } (\$1,000,000) = 2917.1 - 0.0073L \quad (\text{Equation 17})$$

Multiple Variable Models

Multiple variable models allow a user to isolate the consequences of one independent variable by controlling for other independent variables effects. Based on the results in the section above, regulation style is the most significant title influence on rates of all the alternative factors. By using regulation as the primary independent variable it is possible to compare and control other variables one-by-one. The reason not to control more than one variable at a time is because the sample size is relatively small. Adding too many independent variables would lower the accuracy of the models.

The first set of multiple variable models include regulation styles and coverage as independent variables. These models are shown as equations 5.18 to 5.21. The results are consistent with the single variable models. All the other predictors are insignificant except R2, promulgated prices. With the same type of coverage, the prices in the states using promulgated prices are significantly larger than the states having no regulation. Differences increase from \$415.1 for the \$200,000 properties to \$1692.2 for the \$1,000,000 properties.

$$P (\$200,000) = 757.7 - 26.1R_1 + 415.1R_2 + 136.0C_1 + 133.7C_2 + 225.6C_3 \quad (\text{Equation 18})$$

$$P (\$400,000) = 1431.8 - 113.1R_1 + 737.0R_2 - 79.1C_1 + 73.3C_2 + 269.3C_3 \quad (\text{Equation 19})$$

$$P (\$600,000) = 2078.8 - 234.1R_1 + 1072.4R_2 - 265.7C_1 - 1.0C_2 + 250.4C_3 \quad (\text{Equation 20})$$

$$P (\$1,000,000) = 3368.9 - 624.0R_1 + 1692.2R_2 - 203.4C_1 - 84.6C_2 + 168.7C_3 \quad (\text{Equation 21})$$

The second set of multiple variable models include regulation styles and loss ratios as independent variables. as listed in equations 5.22 to 5.25. The significance and sign of the constant, R2 and LR coefficients do not change, as compared with the single variable models. The coefficient of R1 in the first model is positive but insignificant. Only the fourth function has a significant R1. Again, the influence is that states using the promulgated regulation style are likely to have higher title insurance prices. Loss ratios have significantly negative impacts on title insurance prices.

$$P (\$200,000) = 1075.2 + 9.5R1 + 370.4R2 - 46.4LR \quad (\text{Equation 22})$$

$$P (\$400,000) = 1866.4 - 54.9R1 + 708.4R2 - 74.2LR \quad (\text{Equation 23})$$

$$P (\$600,000) = 2626.6 - 175.2R1 + 1031.8R2 - 99.5LR \quad (\text{Equation 24})$$

$$P (\$1,000,000) = 4316.2 - 644.8R1 + 1487.3R2 - 61.1LR \quad (\text{Equation 25})$$

The last set of multiple variable models involve regulation styles and losses. Once again, the sign and significance of predictors do not change. Holding losses the same, the marginal differences in prices among the states using promulgated style of regulation for the properties of \$200,000, \$400,000, \$600,000, and \$1,000,000 are \$488.4, \$919.7, \$1336.9, and \$2000.1 respectively.

$$P (\$200,000) = 714.8 + 83.7R1 + 488.4R2 + 0.0014L \quad (\text{Equation 26})$$

$$P (\$400,000) = 1297.9 + 66.3R1 + 919.7R2 + 0.0013L \quad (\text{Equation 27})$$

$$P (\$600,000) = 1872.1 - 10.2R1 + 1336.9R2 + 0.0008L \quad (\text{Equation 28})$$

$$P (\$1,000,000) = 3100.9 - 375.6R1 + 2000.1R2 + 0.0005L \quad (\text{Equation 29})$$

All these results reinforce a single outcome: promulgated regulation of prices lead to significantly higher prices than all other regulatory style. No other variable, not title coverage, nor losses per se, have a consistent consequence in terms of higher or lower prices.

Table 5.11
Results for Estimating Title Prices by Models

Home Price	N	Cons.	C1	C2	C3	R1	R2	LR	L
\$200,000	46	768.9***	116.1	96.5	251.4**				
\$400,000	46	1409.4***	-94.4	-17.4	300.2**				
\$600,000	46	2002.0***	-267.0	-158.4	279.7				
\$1,000,000	46	3086.5***	-129.0	-426.2	157.9				
\$200,000	50	726.4***				87.5	521.6***		
\$400,000	50	1308.5***				69.8	950.2***		
\$600,000	50	1878.8***				-8.0	1355.9***		
\$1,000,000	50	3105.1***				-374.2	2012.2***		

\$200,000	51	1125.1***						-48.3***	
\$400,000	51	1895.0***						-75.0***	
\$600,000	51	2584.4***						-97.7***	
\$1,000,000	51	3905.3***						-145.4**	
\$200,000	51	791.4***							0.0029
\$400,000	51	1380.9***							0.0042
\$600,000	51	1918.2***							0.0051
\$1,000,000	51	2917.1***							0.0073
\$200,000	46	757.7***	136.0	133.7	225.6**	-26.1	415.1***		
\$400,000	46	1431.8***	-79.1	73.3	269.3**	-113.1	737.0***		
\$600,000	46	2078.8***	-265.7	-1.0	250.4	-234.1	1072.4***		
\$1,000,000	46	3368.9***	-203.4	-84.6	168.7	-624.0*	1692.2***		
\$200,000	50	1075.2***				9.50	370.4***	-46.4***	
\$400,000	50	1866.4***				-54.9	708.4***	-74.2***	
\$600,000	50	2626.6***				-175.2	1031.8***	-99.5***	
\$1,000,000	50	4316.2***				-644.8**	1487.3***	-61.1***	
\$200,000	50	714.8***				83.7	488.4***		0.0014
\$400,000	50	1297.9***				66.3	919.7***		0.0013
\$600,000	50	1872.1***				-10.2	1336.9***		0.0008
\$1,000,000	50	3100.9***				-375.6	2000.1***		0.0005

Note: * means significant with 90% confidence, ** means significant with 95% confidence, and *** means significant with 99% confidence.

Table 5.12
Results for Estimating Title Prices by Home Price

Home Price	N	Cons.	C1	C2	C3	R1	R2	LR	L
\$200,000	46	768.9***	116.1	96.5	251.4**				
\$200,000	50	726.4***				87.5	521.6***		
\$200,000	51	1125.1***						-48.3***	
\$200,000	51	791.4***							0.0029
\$200,000	46	757.7***	136.0	133.7	225.6**	-26.1	415.1***		
\$200,000	50	1075.2***				9.50	370.4***	-46.4***	
\$200,000	50	714.8***				83.7	488.4***		0.0014
\$400,000	46	1409.35***	-94.4	-17.4	300.2**				
\$400,000	50	1308.5***				69.8	950.2***		
\$400,000	51	1895.0***						-75.0***	
\$400,000	51	1380.9***							0.0042
\$400,000	46	1431.8***	-79.1	73.3	269.3**	-113.1	737.0***		
\$400,000	50	1866.4***				-54.9	708.4***	-74.2***	
\$400,000	50	1297.9***				66.3	919.7***		0.0013
\$600,000	46	2002.0***	-267.0	-158.4	279.7				
\$600,000	50	1878.8***				-8.0	1355.9***		
\$600,000	51	2584.4***						-97.7***	
\$600,000	51	1918.2***							0.0051
\$600,000	46	2078.8***	-265.7	-1.0	250.4	-234.1	1072.4***		
\$600,000	50	2626.6***				-175.2	1031.8***	-99.5***	
\$600,000	50	1872.1***				-10.2	1336.9***		0.0008
\$1,000,000	46	3086.5***	-129.0	-426.2	157.9				
\$1,000,000	50	3105.1***				-374.2	2012.2***		

\$1,000,000	51	3905.3***						-145.4**	
\$1,000,000	51	2917.1***							0.0073
\$1,000,000	46	3368.9***	-203.4	-84.6	168.7	-624.0*	1692.2***		
\$1,000,000	50	4316.2***				-644.8**	1487.3***	-61.1***	
\$1,000,000	50	3100.9***				-375.6	2000.1***		0.0005

Note: * means significant with 90% confidence, ** means significant with 95% confidence, and *** means significant with 99% confidence.

Model with Promulgated Regulation as the Baseline

The results above indicate that promulgated regulation significantly increases title insurance prices, but approval price regulation does not. To further compare the impacts of approval price regulation versus the promulgated regulation, it is possible to change the coding so that the “promulgated” states are coded within the intercept. Thus “promulgated regulation” becomes the baseline, versus dummy variables for approval style or no regulation.

Table 5.13 presents results and provide additional evidence. In this model, all variables are significant, including approval price regulation. These results support the inference that promulgated regulations lead to higher title prices, versus all other states without title insurance regulation or other styles of regulation. The significance and negative coefficients of “approval price” indicate that less intensive regulation leads to lower prices for title insurance.

Table 5.13
Models with Promulgated as Baseline

Home Price	Cons.	No Regulation	Approval
\$200,000	1248.0***	-521.6***	-434.1***
\$400,000	2258.7***	-950.2***	-880.4***
\$600,000	3234.7***	-1355.9***	-1363.9***
\$1,000,000	5117.3***	-2012.2***	-2386.4***

Note: * means significant with 90% confidence, ** means significant with 95% confidence and *** means significant with 99% confidence.

Discussion

This section discusses the policy implication of how regulatory styles, the complexity of services, or losses influence title insurance prices.

One hypothesis was that the type, number on complexity of title services would influence title prices, with pricing rising with service diversity or complexity. That hypothesis is rejected by the empirical tests above; the complexity of services does not lead to differences in title insurance prices. The results from Equation 2 to Equation 5 document

how the title industry differs from other lines of insurance in that neither fewer nor simpler services reduce prices. Whether a state allows any or all of the four service options (title search, title validation, title underwriting and legal representation, and/or property closing), the number of services does not affect title insurance prices significantly.

Another hypothesis is that in a competitive market, more through regulation ought to lead to lower prices. Empirical results support the opposite result: stricter regulation significantly increases title insurance prices. The only significant price predictor for all models is the promulgated style of regulation. The coefficients of the promulgated style of regulation are always highly significant with positive signs no matter what the different independent variables: the styles of regulation as the independent variable only (Equation 6 to Equation 9) or control coverage types (Equation 18 to Equation 21) or control loss ratios (Equation 22 to Equation 25); or losses (Equation 26 to Equation 29)]. States that promulgate rates have higher prices, not lower losses.

The models with “promulgated style” as the baseline of coding quantify the marginal effect of promulgated regulation for raising the prices of title insurance. According to Table 5.13, for a \$200,000 property, states using promulgated prices for title insurance charge \$434.10 more on average than the states using approval prices, and \$521.60 more on average than the states without regulation on title insurance. These differences increase with the home prices. For a \$1,000,000 property, the “promulgated” states have a \$2,386.40 higher price of title insurance on average than the “approval” states, and \$2,012.20 higher on average than the “no regulation” states. Another noticeable point is that the impacts of the approval style of regulation are not consistent in the models for different home prices.

One additional hypothesis is that increased “losses” (payments to the insured, administrative costs associated with losses, and funds set aside to cover losses) ought to lead to an increase in prices. Losses in this industry usually only account for a very small percentage of costs on average, about 5 percent of operating incomes. There is no empirical support for an argument that the types of title service offered in a state affect the rate of title losses; loss do not appear to affect title insurance prices either. Equation 14 to Equation 17 indicates there is no relationship between title insurance prices and losses. It is true that the loss ratio models (Equation 10 to Equation 13) indicate that loss ratios are inversely related to prices (the higher the loss ratio, the lower the insurance prices). However the results from Equations 14 to 17 indicate that this relationship reflects the income *denominator* in the loss ratios (losses divided by income). The price differences in regulatory style account for the price ratio results.

If service coverage inclusion and losses do not affect prices, these empirical results disprove a common industry argument that “enhanced services” generate additional costs. The type or complexity does not affect prices significantly. The promulgated style leads to higher title prices, without reducing losses, or enhancing services. Based on these results, an analyst would find little if any empirical support for promulgated regulation of title insurance prices. Promulgation increases prices. It does not reduce title losses.

These results are strong and consistent. Texas as a state with promulgated rates ought to seriously question why the system continues without change, as neither consumers nor companies appear to benefit.

Conclusions

This study uses the title industry's own price data to show that the prices of title insurance are not significantly influenced by losses or services included in the prices, unlike other lines of insurance. Regulation (in particular the promulgated style that is supposed to prevent consumers from being overcharged) actually raises prices of title insurance. Title insurance reform could start with eliminating the promulgation system, because this system results in higher prices than other regulation styles, including file and use, use and file, and approval price, as well as no-regulation systems. These empirical results would justify Texas' Insurance Commissioner's recommendations to encourage market competition for title insurance. The empirical results support the inference that, in states where title insurance charges are determined by a free market, title insurance prices are likely to be lower than title prices in states that regulate prices through promulgation. Title insurance regulation through a more price competitive system than Texas' are not likely to lead to higher losses than prices set by Texas' Insurance Commissioner.

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Notes

¹ California Land Title Association, *Understanding Title Insurance*. Online. Available: <http://www.clta.org/for-consumers/consumer-general.html>. Accessed: May 1, 2010.

² Rande K. Yeager, Statement on behalf of the American Land Title Association before the Subcommittee on Housing and Community Opportunity of the US House Committee on Financial Services, April 26, 2006.

³ California Land Title Association, *Understanding Title Insurance* (online).

⁴ Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry: How a Cartel Fleeces the American Consumer* (New York University Press, New York: 2007), p. 2.

⁵ Yeager, Statement on behalf of the American Land Title Association before the Subcommittee on Housing and Community Opportunity of the US House Committee on Financial Services.

⁶ Susan Randall, "Insurance Regulation in the United States: Regulatory Federalism and the National Association of Insurance Commissioners," *Florida State University Law Review*, Spring 1999.

⁷ National Association of Insurance Commissioners (NAIC), Actuarial and Statistical Services Department, *State of the Title Insurance Company*, 2008.

⁸ Ibid.

⁹ First American, *Comprehensive Calculator*. Online. Available: <http://tfc.firstam.com/public/default.aspx>. Accessed: June 18, 2010.

¹⁰ Fidelity National, *Title Rate Calculator*. Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. Accessed: June 18, 2010.

¹¹ Stewart Title, *Stewart Rate Calculator*. Online. Available: <http://www.stewartorders.com/ratecalc/>. Accessed: June 18, 2010.

¹² Old Republic, *Locations- Rate Calculator*. Online. Available: <http://www.oldrepublictitle.com/newnational/resources/locations.asp>. Accessed: June 18, 2010.

¹³ Eaton and Eaton, *The American Title Insurance Industry: How a Cartel Fleeces the American Consumer*, p. 79.

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Chapter 6. Conclusions and Recommendations

Title insurance regulation practices in Texas could be improved to the benefit of consumers, businesses, title insurance agents, and underwriters. Based on a head-to-head comparison of rates from two major title insurance companies, Texas title insurance rates ranked highest in the nation in a state-to-state comparison of prices for standard policies for the same mortgage (see Table 2.1). Texas' relatively high rates coexist with lower insurance payments, as losses due to title insurance on Texas's claims are 40 percent lower than the state with the next most expensive title insurance (see Chapter 4). Based on the limited information provided by title agents, title underwriters, or the Texas Department of Insurance during the 2009 hearings, it is hard to document whether Texas' promulgated rates are reasonable or appropriate, given the costs of doing business in the title industry.

US states with more regulation in the title industry have higher costs of title insurance (see Table 2.8). This report does not speculate on identifying the causes of higher costs. Fees charged to consumers, in addition to promulgated rates, increase consumer costs in Texas an average of \$600 per title issued (see Table 4.2). It is not known whether associated business agreements (businesses where the multiple title services are grouped together under one roof) in Texas capture more profit from a captive consumer.

In each biennial hearing of Texas' Insurance Commission there is continued pressure from title agents and underwriters to increase title insurance prices. Indeed, there is no reason why the current situation in Texas—high promulgated rates as well as high supplemental fees—will not continue. Evidence in the 2009 title hearings do not document how to compute actuarially a reasonable return for title insurance agents or underwriters. It is unclear how title insurance industry costs are set because the industry decides the pricing for fees and their investment in maintaining title plants.

This report includes a set of recommendations for the consideration of the Texas Commissioner of Insurance regarding title regulation. Some of these recommendations include decisions that the commissioner can take either immediately or in the future (if they are worthwhile with existing authorization), while other suggestions for change in the regulation of title insurance in Texas are likely to require action by the Texas Legislature. These recommendations include improvements in data and information, improvements in cooperation among stakeholders, and changes to the regulatory process. Specific recommendations are presented to address barriers to implementation, steps that may improve the title process, and a set of performance measures to document progress. Some initial next steps are also suggested for the Texas Insurance Commissioner's consideration, as discussed below.

Improve Data and Access to Information

The State of Texas, through its system of county clerks and county tax assessors, collects and maintains records of land ownership and provides this information as needed for

document preparation and real estate transactions. Title searches may not be easy if the information is fragmented; indeed, the complexity is a reason that title companies maintain a title plant by county. It is possible that changes in data management could reduce title company costs and possibly reduce the cost of doing business for the Texas title insurance industry. As indicated in Chapter 3 of this report, the GAO and NAIC have made recommendations about data related to the title insurance industry that states should collect. Texas collects many of those indicators. However Table 6.1 lists suggested federal indicators that Texas doesn't currently collect.

Table 6.1
Data Recommended by NAIC that Texas Does Not Collect

A complete list of the underwriters affiliated title agent and title service companies
Premium policy revenues, broken out by residential and commercial
The number of other search reports run that might not translate into policies (ownership or encumbrance reports, abstracts, etc.)
The dollar amount of closing and settlement charges
Deductibles paid to insurers

Without a major overhaul to the record-keeping system, TDI could enhance useful data by requesting from the U.S. Department of Housing and Urban Development a sample of HUD 1 forms and analyzing the information not currently collected by TDI to allow for comparisons and improved understanding of the rate structure. This is action that could be taken immediately to gain a better understanding of the cost of doing business in the title industry.

Chapter 3 contains recommendations about proactive fraud prevention that could occur through a review of current information or collection of additional data from title insurance agents and underwriters. A specific example is provided that suggests that the Texas Department of Insurance could filter title agent or underwriter cost data to identify outliers that could warrant further investigation. Consumer awareness is another topic as it is not easy to determine whether Texans receive discounted title insurance rates when refinancing home loans (even though there are few complaints filed with the DOI on discounted rates). For example, a sample of HUD 1 forms would provide evidence as to the fraction of closings involving a home refinancing within seven years of a previous closing. If it is apparent that individuals are not aware of discounted rates available to them then the Texas Department of Insurance could send a notice to every title agent informing them of their legal obligation to assure any customer refinancing within seven years should be charge discounted rates. If this should be a problem, then TDI might consider promulgating a form for consumers to sign indicating that they are aware of discounts available to them.

Improve Cooperation Among Stakeholders

Improved communication among stakeholders will assist with implementing data sharing among counties in the state. Improved communications should reduce the costs of doing business and reduce risk to underwriters as well. Table 6.2 lists some possible communication improvements.

In each Texas county there is a clerk’s office, an appraisal district, and a tax office that maintain records relevant to title abstract searches. Many urban counties are moving towards digital court records and creating processes for storing and facilitating access to these data via web portals and databases. The state could serve as a conduit to those data sets by maintaining a linkage to existing records within each county where such information is available digitally.

**Table 6.2
Title-Related Communication Improvements**

Improve local-to-local entity communication
Provide structure and process for the county clerks, appraisal districts, and tax offices to best coordinate and collaborate.
Improve local to state communications
Create a portal at the state level to allow access to information from various local entities at once.
Improve communication within the state
Require and foster ongoing collaboration and conversation about system improvement for any agency that regulates elements of the real estate process.
Improve public to private communication
Form a Commissioner’s Advisory Committee that identifies a means to reduce costs and improve communication between the Department of Insurance, title agents and underwriters.
Improve state-to-state communication
Ensure that exemplary title practices from other states are documented, researched, and used to Texas’ advantage.

Management of a simple web-based portal (to access any existing available digital information in the public domain that is now managed by counties in Texas) would strengthen the service TDI provides to consumers and the title industry. The state could work with county clerks and appraisal districts to ensure that data are formatted with commonalities to enable cross searches. (For example Atlanta, Georgia, may be a good case study of a county that allows individuals to access records for title searches.) State-facilitated access to title record-keeping could reduce overhead costs by reducing the demands for unique data sets only available in a title plant. Electronic title records would make the process of providing title insurance faster, cheaper, and hopefully more accurate, as all the records could be reached via one portal and all of those records’ accuracy would be guaranteed by each of the county office though their insurance policies for omissions or errors.

When the Travis County Clerk, Dana DeBouvoir, was interviewed for this research, project members asked if it was possible for a state or county government to collect data in a format that could assist and reduce costs for a title plant. She confirmed that it would indeed be feasible, and that the appraisal district already operates in a manner that is more similar to title plants than the county clerk. The Travis County Clerk recommended that agencies research several considerations when deciding to digitize records, including such information as: (a) How far back in the records do you go? (b) Do you employ staff to work in the house? (c) Do you subcontract recordkeeping by turning over originals to outsiders? (d) How much does it cost? and (e) How long does it take to digitize records and will it affect normal business operations?

The Commissioner of Insurance could move such a process forward through research on requirements and technical standards for data collection and linkage for a statewide system. There could be opposition to such a change in title industry record-keeping.

Change the Regulatory Process

There exist a number of reforms that the Texas Legislature could adopt in the regulation of title insurance. Three different options that could be considered are to require the mortgage lender to pay the insurance, cease state promulgation of insurance rates, and authorize county clerks to guarantee title. It is beyond the scope of this report to advocate or oppose any of these ideas, but they are listed for the Texas Legislature to consider.

Require Lenders to Pay

Title regulation practices in other states in the U.S. as well as a Canada examined in Chapter 4 provide ideas of regulatory innovations possible in Texas. For example, the Texas Legislature could authorize the Commissioner to require the party choosing the insurer to pay the premium. In this case, if a lender requires title insurance, the lender could pay for the premium, as they derive the most benefit from the policy. This process could allow the “consumer,” now the mortgage holder, to seek marketing and discounts directly. It also allows lenders and realtors, who are the more knowledgeable parties involved in the transaction, to make the most efficient decision, reducing the problems that asymmetrical information present. Given the proper legislative framework, lenders could incorporate cost into the price that they charge for mortgages. As lenders, agents handle thousands of transactions per year, so they have more leverage to negotiate better pricing. If an owner’s policy is desirable and the realtor paid for it, reverse competition might be reduced.

Cease Promulgating Rates

The empirical chapters of this report (chapters 2 and 5) provide consistent, strong, and unambiguous evidence that state promulgation of rates and/or comprehensive service coverage does not control or limit title prices, but actually leads to increased title insurance costs to insureds. Promulgation is associated with significantly higher title rates versus any other state process of price regulation. Promulgating rates for

comprehensive services does not limit costs for underwriters but tends to increase them. In Texas, as in other states, added fees that are unregulated charges add significant incremental costs above and beyond Texas' promulgated rates. There is no empirical evidence that consumers benefit in terms of reduced price or reduced losses from Texas' decision to promulgate rates.

Based on this evidence, an analyst could argue that the Texas Legislature ought to authorize the Commissioner to cease promulgating title insurance rates altogether. It would then be up to the Texas Legislature (and/or to the Commissioner of Insurance) to decide how to regulate title insurance prices. The options used in other states include file and use, use and file, or allowing title insurers to offer market rates. Another option could be for Texas to break up the "all inclusive" title insurance rate and continue to promulgate a rate for only the title underwriting portion of policies, while leaving other title agent fees charged to Texas home buyers to be determined by the market.

Authorize the County Clerk to Guarantee Titles

The Texas Legislature could authorize county clerks to confirm the accuracy of titles. In Iowa the title insurance system operates without title insurance agents; the state collects fees for each deed filed and ensures that the claims to property are upheld. When the Travis County Clerk was interviewed for this research, project staff asked if it was possible for a state or county government to assure the accuracy of titles in their records. The clerk confirmed that it would indeed be feasible, although she indicated that such a new responsibility was not her preference. She also indicated that appraisal districts operate in a manner that is more similar to title plants than the offices of a county clerk.

One attorney with knowledge of Texas real estate law affiliated with the mortgage bankers' association warned that the higher costs of the promulgated rate structure for commercial transactions could be a detriment to economic development. Might the Commissioner create a different rate structure for commercial properties, one not tied in a linear fashion to the cost of the property? Such a shift in regulation could lead to decreased costs for developers and commercial entities wishing to do business in Texas. In rural areas with few local title plants, people may not want to do business where there are so few title agents that it takes too long to get business done. In effect, the sparseness of title service may be detrimental to economic growth in those areas. Varied rate structures might also benefit rural areas where it takes longer to do business because there are fewer title agents.

Texas has relatively lenient Associate Business Agreements (ABA) regulations in place, at least compared to California, which seems to manage some risks by requiring ABAs to be capitalized, vetted, and licensed before operating. HUD, in response to the GAO report, acknowledged the difficulties that arise from not having strong enforcement power.¹ The title insurance industry has had previous success with the RESPA regulation in correcting fraudulent practices within the business. A real estate professional and member of a regional board of realtors said that their profession was very satisfied with the results from RESPA. Regulation and penalties for inappropriate ABAs could enhance ethical business practices and reduce title costs.

Consumer Education and Proactive Enforcement

The Texas Department of Insurance could send a notice to every title agent informing them of their legal obligations to (a) inform in writing any customer refinancing within the time frame of the option of discounted rates, (b) oblige title agents to charge the discounted rates and inform customers of their actions to do so, or (c) create title agent penalties for not offering discounted rates to eligible consumers. TDI might consider promulgating a form for consumers to sign indicating that they are aware of discounts available to them.

The data currently reported to the Texas Department of Insurance by title agents may contain evidence of fraudulent activities or inappropriate business dealings. The TDI does assess those data for so-called “reasonableness.” However, it might be worthwhile for TDI to develop a more extensive set of indicators to filter possible “red flags.” For example, one such indicator might be the percent of an agent’s expenses listed in the “other expenses” category. Such information is already collected by TDI and could be analyzed to proactively address improper or fraudulent practices, saving consumers money. Setting an internal indicator of a reasonable range and implementing a process where data outside of this range triggers a review or follow-up could proactively enforce the department’s rules in place to protect consumers.

Conclusions

If it was the intent of the Texas Legislature to create a title insurance regulatory system that kept prices low, then the Legislature has failed. Based on title costs alone, Texans appear to pay the highest title insurance rates in the nation. Texas’ promulgated rate has become a price floor for title insurance prices; title agents add a significant set of supplemental costs that are not regulated. High title insurances costs and high real estate settlement costs in Texas reduce the likelihood that citizens can purchase a home.

It is not easy to discern the value of the biennial title hearing process. Hearings involve much expense but yield little meaningful cost data because of vague reporting categories. Consider the data calls for either the hearings process or annual submissions of data by title companies. The ambiguity of how different companies allocate cost data to categories would make it difficult for any analyst to determine what each title insurance company actually pays to search for a title, validate title information, underwrite an insurance title, provide a legal representative to defend a flawed title, or complete the sale of a home through the closing process. It is not clear whether title insurance underwriters file data with the TDI that clearly separates out how much they pay out in losses to insured parties, how much is allocated to administrative or legal processes associated with a loss, or how much money has been set aside to prepare for possible future losses. While some underwriters and the TDI insist that such data are collected, staff associated with this project could not find such finely disaggregated data on TDI’s website or any analyses of “actual loss” data within the record of title insurance hearings.

The data from hearings do not produce cost-based evidence to justify promulgated rates unambiguously. Unlike other fields of regulation, the title industry is not asked for and does not provide details of the cost structure that can be related to title risks, title losses, or title expenses. Commissioner Geeslin was right to question whether Texas' title insurance system should be reformed.² The results reported in this report support the Commissioner' request that the Legislature develop an alternative to Texas' promulgated title system.

Notes

¹ Letter from Brian D. Montgomery, Assistant Secretary for Housing, Federal Housing Commissioner, to Orice M. Williams, Director of Financial Markets and Community Investment, GAO. March 29, 2007, as cited in United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, April 2007, pp. 64-66.

² Mike Geeslin, Texas Insurance Commissioner, *2010 Biennial Report of the Texas Department of Insurance to the 82nd Legislature*, Texas Department of Insurance, Austin, Texas, 2011, Section C (Recommendations: Title Insurance Rates), pp. 37-38.

Appendix A. Methodology

The price figures used in this analysis were collected directly from the First American (<http://www.firstamerican.com>) and Fidelity National Title (<http://www.fntic.com>) Internet websites. The site of each company features a “Title Fee Calculator” that allows users to obtain a quote for a title insurance policy by answering questions. As the primary goal of this analysis is to compare the prices across companies, it was important that the quotes be for similar policy types. As a result, the study sought price quotations for the most basic possible policy from each company so as to make the data as comparable as possible. This section outlines how data were collected.

All quotes were for an owner’s policy, which represents the price an owner would pay for a policy covering himself, rather than lender policies or simultaneous policies. The transaction amount input in the Fee Calculator was \$400,000 for every policy. Aside from these general constants, each Fee Calculator required answers to a variety of questions to generate a rate for the most basic possible policy. These variations are the primary focus of this section.

Fidelity’s Title Fees Calculator can be found online at: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>. On the main page, users must input the zip code for which they would like a quote; quotes are not available for all locations. In many cases, the best strategy for obtaining quotes was to input the zip code of a major city located in the state, but this was not always required. In the case of Alabama, for instance, no quote was available for Moody, Alabama (35004), so a Birmingham postal code was used instead (see Table A1). After 35201 was input as the zip code, the subsequent screen allowed the user to enter a transaction amount in the “Amount” field. After entering 400,000 in this field and leaving any others blank, a table loads to show rates for various policy types. For this example, the following table was loaded. From Table A.1, the relevant rate would be the “Basic Owner’s Policy” of \$1,100.

For six states (California, Florida, New Jersey, New York, Pennsylvania, and Texas), Fidelity’s calculator is more complex because many additional questions must be answered to retrieve the quote for a basic policy. For example, if 78705 is entered as the zip code, a user is taken to a screen to verify that the quote is for Travis County, Texas. The next screen asks two series of questions, one concerning the transaction and another concerning the policy desired. The answers used are displayed in Table A.2, with explanations to some responses provided in italics.

Although the Fee Calculator questions differed across states using this format, the methodology remained the same. The goal was always to reduce variables as much as possible so that a single, basic policy rate could be obtained. A price quotation could not be retrieved from Fidelity for 13 states: Alaska, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Montana, Nebraska, and West Virginia.

Table A.1.
Sample Fidelity Rate Quotation

Jefferson County, Alabama	
<i>Products and Services:</i>	<i>Rate:</i>
Basic Owner's Policy	\$1,100.00
Owner's Reissue Rate	\$660.00
ALTA Homeowner's Policy	\$1,320.00
Lender's Simultaneous with Owner's Policy	\$50.00
Loan Policy Rate	\$850.00
Loan Policy Reissue Rate	\$510.00
ALTA Expanded Loan Policy	\$1,020.00

Source: Fidelity National Title Insurance Company, "Estimator," *Fidelity National Title Rate Calculator*.
Online. Available: <http://ratecalculator.fntg.com/default.aspx?brand=fntic>.

Table A.2
Fidelity Alternate Questionnaire

<p><i>Transaction Questions:</i></p> <p>1. Q: Transaction Type A: Property Purchase (with or without financing)</p> <p>2. Q: Purchase Amount/Value of Property A: \$400,000</p> <p>3. Q: Loan Amount(s) A: \$400,000. <i>The assumption here is that most homeowners use debt financing to purchase homes.</i></p> <p>4. Q: Property Type A: Residential</p> <p>5. Q: Is this transaction eligible for the Concurrent Owner's and Loan Rate? A: Yes. <i>This allows us to combine the Owner's and Loan policies into a single rate. Responding "No" leads to forces us to deal with different rates for each loan, rather than a single one for the entire policy.</i></p> <p><i>Policy Questions:</i></p> <p>1. Q: Which policy form are you using? A: Texas Residential Owner Policy of Title Insurance (T-1R). <i>Varying responses to this question do not impact policy price.</i></p> <p>2. Q: Is the policy eligible for the Prior Binder Rate? A: No. <i>A Prior Binder Rate deals with prior liens on the property. We assume that no prior liens exist in an effort to derive the most basic possible policy.</i></p> <p>3. Q: Is this policy eligible for the Prior Owner's Policy Credit? A: No. <i>Here, again, we seek to eliminate variables which might impact the basic policy rate.</i></p>

Source: Fidelity National Title Insurance Company, "Fidelity National Rate Calculator – Quote Number 2377260." Online. Available: <http://ratecalculator.fnf.com/?ZipCode=78705&ID=fidelitytitle>.
Accessed: November 30, 2008.

The Title Fee Calculator for First American Corporation (FAC) is formatted somewhat differently (see <http://titlefeecalculator.firstam.com>). From the FAC main page, a user can select a state for which they would like to retrieve rates. Once the state is selected, the user is prompted to select a county and then to answer a series of questions so that a

rate can be derived. Questions were worded differently from state to state, with some states posing fewer questions than others. For an owner's policy for a transaction of \$400,000, responses were formulated to meet a number of criteria. The owner's policy should (a) not be issued simultaneously with a lender's policy; (b) a renewal rate should not be applicable; (c) a substitution rate should not be applicable; (d) a reissue rate should not be applicable; (e) a refinance rate should not be applicable; and (f) the rate should be a for a basic or standard policy.

First American's Title Fees Calculator also displays a relevant "Notes" section on the page on which the quote is given. This section provides details regarding the coverage type for the state in question. The First American calculator provided information necessary for each state regarding its coverage, or the services included in the price of the policy. Quotes were not available from First American for five states: Arizona, Colorado, Illinois, Iowa, and Washington. As an example, the Notes for Alabama (a risk premium-only state) include the following:

- "Quote is for the Risk Premium Only."
- "The premium quote for Alabama does not include Search, Exam, Escrow, Closing Service, Endorsements, or other Pass Through charges."¹

Notes for Texas (a comprehensive state) from First American offer similar insight (see Figure A.2): "The premium in Texas includes the charges for title examination, closing the transaction and issuance of a policy."²

Data concerning regulation styles was retrieved from a study conducted by the LBJ School of Public Affairs at The University of Texas at Austin.³ Some missing data regarding coverage and regulation types were obtained through phone calls made to state insurance agencies.

Notes

¹ First American Corporation, “First American Title Insurance Company – Quote Summary,” *Title Fees Calculator*. Online. Available: <http://titlefeescalculator.firstam.com>. Accessed: December 1, 2008.

² Ibid.

³ Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

Appendix B. Logistic Regression Coding, Rate vs. Service Inclusion

State	Average Rate	Title Exam and Risk	Title Exam, Search and Risk	Comprehensive
Alabama	\$1,025.00	0	0	0
Arkansas	\$937.50	0	0	0
California	\$1,280.50	0	0	1
Delaware	\$1,250.00	0	0	0
Florida	\$2,075.00	0	0	0
Hawaii	\$1,433.50	0	0	0
Idaho	\$1,430.00	0	1	0
Kentucky	\$1,238.00	0	0	0
Maine	\$1,150.00	0	0	0
Maryland	\$1,361.50	0	0	0
Massachusetts	\$1,430.00	0	0	0
Mississippi	\$1,225.00	0	0	0
Missouri	\$925.00	0	0	0
Nevada	\$1,408.50	0	0	1
New Hampshire	\$875.00	0	0	0
New Jersey	\$1,725.00	0	0	0
New Mexico	\$2,257.00	0	0	0
New York	\$1,771.00	0	0	0
North Carolina	\$690.00	0	0	0
North Dakota	\$925.00	0	0	0
Ohio	\$1,838.00	0	0	0
Oklahoma	\$1,014.50	1	0	0
Oregon	\$1,150.00	0	1	0
Pennsylvania	\$2,359.00	0	0	1
Rhode Island	\$1,180.00	0	0	0
South Carolina	\$800.00	0	0	0
South Dakota	\$1,152.50	0	0	1
Tennessee	\$1,037.50	0	0	0
Texas	\$2,445.00	0	0	1
Utah	\$1,995.00	0	1	0
Vermont	\$1,162.50	0	0	0
Virginia	\$1,410.00	0	0	0
Wisconsin	\$1,690.00	0	0	1
Wyoming	\$1,315.00	1	0	0

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Appendix C. Logistic Regression Coding, Rate vs. Regulation Style

State	Average Rate	Use and File	File and Use	Prior Approval	Promulgated
Alabama	\$1,025.00	0	0	0	0
Arkansas	\$937.50	0	0	0	0
California	\$1,280.50	0	1	0	0
Delaware	\$1,250.00	0	1	0	0
Florida	\$2,075.00	0	0	0	1
Hawaii	\$1,433.50	0	0	0	0
Idaho	\$1,430.00	0	0	1	0
Kentucky	\$1,238.00	0	1	0	0
Maine	\$1,150.00	0	1	0	0
Maryland	\$1,361.50	0	1	0	0
Massachusetts	\$1,430.00	0	0	0	0
Mississippi	\$1,225.00	0	0	0	0
Missouri	\$925.00	0	1	0	0
Nevada	\$1,408.50	0	1	0	0
New Hampshire	\$875.00	0	0	1	0
New Jersey	\$1,725.00	0	0	1	0
New Mexico	\$2,257.00	0	0	0	1
New York	\$1,771.00	0	1	0	0
North Carolina	\$690.00	0	1	0	0
North Dakota	\$925.00	0	1	0	0
Ohio	\$1,838.00	0	1	0	0
Oklahoma	\$1,014.50	0	0	0	0
Oregon	\$1,150.00	0	1	0	0
Pennsylvania	\$2,359.00	0	1	0	0
Rhode Island	\$1,180.00	0	1	0	0
South Carolina	\$800.00	0	0	1	0
South Dakota	\$1,152.50	0	1	0	0
Tennessee	\$1,037.50	0	1	0	0
Texas	\$2,445.00	0	0	0	1
Utah	\$1,995.00	1	0	0	0
Vermont	\$1,162.50	1	0	0	0
Virginia	\$1,410.00	0	0	0	0
Wisconsin	\$1,690.00	1	0	0	0
Wyoming	\$1,315.00	0	1	0	0

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Appendix D.
Logistic Regression Coding, Difference in Rate vs. Regulation Style

State	Difference	Use and File	File and Use	Prior Approval	Promulgated
Alabama	\$150.00	0	0	0	0
Arkansas	\$25.00	0	0	0	0
California	\$377.00	0	1	0	0
Delaware	\$0.00	0	1	0	0
Florida	\$0.00	0	0	0	1
Hawaii	\$21.00	0	0	0	0
Idaho	\$0.00	0	0	1	0
Kentucky	\$0.00	0	1	0	0
Maine	\$100.00	0	1	0	0
Maryland	\$73.00	0	1	0	0
Massachusetts	\$60.00	0	0	0	0
Mississippi	\$350.00	0	0	0	0
Missouri	\$0.00	0	1	0	0
Nevada	\$187.00	0	1	0	0
New Hampshire	\$0.00	0	0	1	0
New Jersey	\$0.00	0	0	1	0
New Mexico	\$0.00	0	0	0	1
New York	\$0.00	0	1	0	0
North Carolina	\$80.00	0	1	0	0
North Dakota	\$0.00	0	1	0	0
Ohio	\$0.00	0	1	0	0
Oklahoma	\$179.00	0	0	0	0
Oregon	\$0.00	0	1	0	0
Pennsylvania	\$0.00	0	1	0	0
Rhode Island	\$140.00	0	1	0	0
South Carolina	\$0.00	0	0	1	0
South Dakota	\$455.00	0	1	0	0
Tennessee	\$175.00	0	1	0	0
Texas	\$0.00	0	0	0	1
Utah	\$0.00	1	0	0	0
Vermont	\$275.00	1	0	0	0
Virginia	\$0.00	0	0	0	0
Wisconsin	\$170.00	1	0	0	0
Wyoming	\$0.00	0	1	0	0

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Appendix E.

How Title Agent Costs Relate to Insurance Premiums

Understanding title agents' costs and how these costs relate to title insurance premiums that consumers pay is important because title agents do or coordinate most of the work necessary for issuing title insurance policies, and they retain most of the premium. Understanding these costs would require state insurance regulators to gather and analyze financial data on title agents. The list below illustrates the types of data that might be gathered and analyzed. This would be a multistep process and could involve detailed analysis of some title agents, such as those that look quite different financially from group (such as county or statewide) averages. Reasonable explanation for such differences could be informative of agency costs, while the absence of reasonable explanation could raise questions about the legitimacy of such costs.

The ten types of information listed below could be requested from insurers regarding affiliated agents and direct operations:

1. A complete list of underwriters' affiliated title agents and title service companies that would include the company name and address and the year acquired or established by the underwriter.
2. Financial data on each affiliate that would include balance sheets and statements of changes in owners' equity.
3. Revenue data that would include title premium revenues and production fees earned from others (e.g., search and examination, closing, and recording).
4. Title premium revenues and policies written that would be broken out between residential and commercial.
5. Personnel cost data that would include salaries, commissions, bonuses, benefits, and full-time equivalent employees, by function.
6. Other personnel data that would include average salaries, bonuses and benefits, and brief descriptions of any incentive pay systems, by job type and function.
7. Five years of other expense data that would include search and examination fees paid to contractors, advertising, entertainment, plant maintenance, rent, office supplies, and legal fees and settlements.
8. Expenses allocated to and from the underwriter.
9. For each affiliated title service company, the names of the ten largest clients.

10. For each subsidiary of the underwriter, the names of any other underwriters, escrow companies, realtors, builders, developers, mortgage brokers, lenders, or other entities in the title, real estate, or mortgage industry
 - that have ownership interests in the subsidiary, in which the subsidiary has an ownership interest, or
 - that are vendors of the subsidiary and owned by subsidiary management.

Likewise, we identified the following information on independent title agents that could be requested from insurers:

1. The number of independent agents, by state.
2. The number of offices of each independent agent, by state.
3. Each agent's title premiums written for the underwriter as a percentage of the agent's total title premiums written.
4. Premiums written by each agent for this underwriter, by state.
5. Revenue data that would include title premium revenues and production fees earned from others (e.g., search and examination, closing, and recording).
6. Expense data that would include employee and owner salaries, commissions, bonuses, and benefits; director fees; search and examination fees paid to contractors; advertising; entertainment; plant maintenance; rent; office supplies; legal fees and settlements; and claim losses.¹

Note: The above is verbatim from the U.S. Government Accountability Office, as cited in the reference. The Texas Department of Insurance already collects a substantial proportion of these data, as indicated elsewhere in this report.

Notes

¹ United States Government Accountability Office (GAO), *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, April 2007, pp. 62-63.

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Appendix F. Tables and Figures for the Analysis of Title Insurance Prices and Losses

**Table F.1
Price Quotations from Four Companies**

<i>State</i>	<i>First American</i>				<i>Fidelity</i>			
	\$200,000	\$400,000	\$600,000	\$1,000,000	\$200,000	\$400,000	\$600,000	\$1,000,000
Alabama	550	950	1,350	2,150	600	1,100	1,525	2,225
Arkansas	882	1,482	2,032	1,907				
Arizona	948	1,460	1,915	2,827				
Arkansas	525	925	1,325	2,125	605	1,045	1,485	2,365
California	762	1,168	1,488	2,108	889	1,322	1,683	2,368
Colorado								
Connecticut	750	1,350	1,900	2,900	750	1,350	1,900	2,900
Washington DC	1,140	2,190	3,150	4,950				
Delaware	650	1,250	1,850	3,050	650	1,250	1,850	3,050
Florida	1,075	2,075	3,075	5,075	1,075	2,075	3,075	5,075
Georgia	640	1,240	1,790	2,790	650	1,250	1,800	2,800
Hawaii	815	1,495	2,010	3,160				
Idaho	996	1,573	2,067	3,055	996	1,574	2,070	3,062
Illinois	1,150	1,550	1,950	2,750				
Indiana								
Iowa								
Kansas	550	1,000	1,425	2,225				
Kentucky	688	1,238	1,733	2,613	525	925	1,325	2,125
Louisiana	995	1,895	2,705	4,145				
Maine	600	1,200	1,800	3,000				
Maryland	740	1,398	1,978	3,038	778	1,469	2,078	3,190
Massachusetts	730	1,460	2,190	3,650	700	1,400	2,100	3,500
Michigan	946	1,441	1,891	2,791	1,076	1,653	2,177	3,225
Minnesota	667	1,215	1,615	2,535				
Mississippi	800	1400	2000	3200				
Missouri	210	370	530	850				
Minnesota	812	1,257	1,657	2,457				
Nebraska	608	1,008	1,408	2,208				
Nevada	1,012	1,512	1,932	2,772				
New Hampshire	475	875	1,275	2,075	475	875	1,275	2,075
New Jersey	895	1,685	2,345	3,405	895	1,685	2,345	3,405
New Mexico	1,293	2,257	3,117	4,629	1,293	2,257	3,117	4,629
New York	1,029	1,771	2,480	4,508	1,029	1,771	2,480	4,508
North Carolina	410	730	990	1,390	350	650	900	1,300
North Dakota	525	925	1,325	2,125				
Ohio	1,088	1,838	2,463	5,649	1,088	1,838	2,463	3,563
Oklahoma	780	1,180	1,580	2,380				
Oregon	700	1,150	1,500	2,100	700	1,150	1,500	2,100
Pennsylvania	1,359	2,359	3,234	4,734	1,359	2,359	3,234	4,734
Rhode Island	630	1,110	1,590	2,550	575	1,075	1,550	2,450

South Carolina	540	960	1,350	2,070				
South Dakota	525	925	1,325	2,125				
Tennessee	625	1,125	1,625	2,625				
Texas	1,377	2,445	3,513	5,649	1,377	2,445	3,513	5,649
Utah	1,016	1,696	2,206	2,886	1,315	2,179	2,827	3,691
Vermont	700	1,300	1,900	3,100				
Virginia	780	1,530	2,240	3,600				
Washington	775	1,175	1,575	2,375				
West Virginia	700	1,300	1,800	2,600				
Wisconsin	850	1,450	2,050	3,250				
Wyoming	825	1,325	1,775	2,575				
	<i>Stewart</i>				<i>Old Republic</i>			
	\$200,000	\$400,000	\$600,000	\$1,000,000	\$200,000	\$400,000	\$600,000	\$1,000,000
Alabama	650	1,250	1,750	2,550	600	1,000	1,400	2,200
Arkansas	882	1,482	2,032	2,907				
Arizona	928	1,418	1,838	2,678	820	1,250	1,570	2,210
Arkansas	1,100	2,200	3,300	5,500				
California	750	1,186	1,502	2,126	820	1,250	1,570	2,210
Colorado	1,186	1,556	1,915	2,615	1,172	1,542	1,902	2,602
Connecticut	750	1,350	1,900	2,900	750	1,350	1,900	2,900
Washington DC	1,140	2,190	3,150	4,950	950	1,825	2,625	4,125
Delaware	650	1,250	1,850	3,050	650	1,250	1,850	3,050
Florida	1,075	2,075	3,075	5,075	1,075	2,075	3,075	5,075
Georgia	600	1,200	1,745	2,725	400	1,100	1,750	2,950
Hawaii	827	1,562	2,270	3,719	898	1,614	2,236	3,483
Idaho	905	1,430	1,880	2,780	905	1,430	1,880	2,780
Illinois	1,145	1,545	1,945	2,745				
Indiana	550	950	1,350	2,150	525	925	1,325	2,125
Iowa	110	110	210	610				
Kansas	832	1,251	1,564	1,964				
Kentucky	725	1,325	1,875	2,875	688	1,238	1,733	2,613
Louisiana	995	1,895	2,705	4,145	995	1,895	2,705	4,145
Maine	600	1,200	1,800	2,563	600	1,200	1,700	2,500
Maryland	750	1,425	2,025	3,125	770	1,458	2,063	3,163
Massachusetts	730	1,460	2,190	3,650	730	1,460	2,190	3,650
Michigan	1,025	1,575	2,075	3,075	1,025	1,575	2,075	3,075
Minnesota	688	1,163	1,613	2,513	650	1,113	1,488	2,188
Mississippi	800	1,400	2,000	3,200	800	1,400	2,000	3,200
Missouri	206	360	440	440				
Minnesota	812	1,247	1,657	2,457	796	1,196	1,596	2,396
Nebraska	555	955	1,355	2,155	608	1,008	1,408	2,208
Nevada	880	1,341	1,707	2,507	944	1,439	1,879	2,759
New Hampshire	600	1,000	1,400	2,200	500	900	1,300	2,100
New Jersey	895	1,685	2,345	3,405	895	1,685	2,345	3,405
New Mexico	1,292	2,256	3,116	4,628	1,293	2,257	3,117	4,629
New York	1,210	2,082	2,916	4,508				
North Carolina	350	650	900	1,300	410	730	990	1,390
North Dakota	525	925	1,300	2,000	525	925	1,300	2,000
Ohio	1,088	1,838	2,463	3,563	1,088	1,838	2,463	3,563
Oklahoma	695	1,085	1,495	3,563	700	1,100	1,500	2,300
Oregon	700	1,150	1,500	2,100				

Pennsylvania	1,359	2,359	3,234	4,734	1,359	2,359	3,234	4,734
Rhode Island	650	1,250	1,800	2,800	575	1,075	1,575	2,575
South Carolina	540	960	1,350	2,070	450	800	1,125	1,725
South Dakota	919	1,379	1,810	2,614	525	925	1,300	2,000
Tennessee	1,169	2,069	2,819	4,019	600	1,050	1,500	2,400
Texas	1,377	2,445	3,513	5,649	1,377	2,445	3,513	5,649
Utah	1,195	1,995	2,595	3,395	1,195	1,995	2,595	3,395
Vermont	710	1,310	1,910	3,110	475	875	1,275	2,075
Virginia	780	1,530	2,240	3,600	780	1,530	2,230	3,550
Washington	668	1,090	1,462	2,152	639	947	1,255	1,825
West Virginia	730	1,410	2,050	3,250	750	1,350	1,900	2,900
Wisconsin	975	1,775	2,175	2,175	1,138	1,988	2,738	4,038
Wyoming	815	1,315	1,765	2,565	815	1,315	1,765	2,565

Sources: The rate calculator websites of First American (<http://tfc.firstam.com/public/default.aspx>), Fidelity National (<http://ratecalculator.fntg.com/default.aspx?brand=fntic>), Stewart Title (<http://www.stewartorders.com/ratecalc>), and Old Republic (<http://www.oldrepublictitle.com/newnational/resources/locations.asp>). Accessed: June 18, 2010.

Table F.2
Descriptive Summary of Price Quotations

Company	Property	Obs.	Mean	Median	S.D.	Range	Min	Max
First American	\$200,000	48	794.5	769	246.3	1167	210	1377
	\$400,000	48	1379.4	1313	422.8	2075	370	2445
	\$600,000	48	1917.1	1870	597.4	2983	530	3513
	\$1,000,000	48	2973.5	2718	1039.7	4799	850	5649
Fidelity	\$200,000	23	858.6	778	301.2	1027	350	1377
	\$400,000	23	1508.5	1400	502.2	1795	650	2445
	\$600,000	23	2098.7	2070	694.0	2613	900	3513
	\$1,000,000	23	3216.9	3062	1098.6	4349	1300	5649
Stewart	\$200,000	51	825.2	800	272.0	1267	110	1377
	\$400,000	51	1429.6	1379	476.3	2335	110	2445
	\$600,000	51	1977.9	1880	679.0	3303	210	3513
	\$1,000,000	51	3002.9	2800	1088.2	5209	440	5649
Old Republic	\$200,000	43	796.7	770	257.5	977	400	1377
	\$400,000	43	1387.8	1315	434.4	1715	730	2445
	\$600,000	43	1928.7	1850	609.6	2523	990	3513
	\$1,000,000	43	2940.0	2759	946.5	4259	1390	5649

Table F.3
ANOVA for Price Comparison Among Companies

	\$200,000	\$400,000	\$600,000	\$1,000,000
First American	794	1379	1917	2974
Fidelity	859	1509	2099	3217
Stewart	825	1430	1978	3003
Old Republic	797	1388	1929	2940
P-value	0.7568	0.6884	0.6991	0.7616
Significance	N	N	N	N

Table F.4
Summary of Rates in States

	\$200,000	\$400,000	\$600,000	\$1,000,000
mean	825.2235	1429.566	1977.9347	3002.8731
median	800	1379	1880	2800
mode	650	1250	1350	3562.5
S.D.	272.0047	476.3113	678.98887	1088.2251
range	1267	2335	3303	5208.6
min	110	110	210	440.4
max	1377	2445	3513	5649

Table F.5
Title Insurance Price Coverage by State

Risk Premium Only	Title Examination and Risk Premium Only	Title Examination, Search, and Risk Premium	Comprehensive
Alabama	Illinois	Idaho	Alaska
Arkansas	Oklahoma	Michigan	California
Connecticut	Wyoming	Montana	Nevada
Delaware		Nebraska	Pennsylvania
Florida		Oregon	South Dakota
Georgia		Utah	Texas
Hawaii			Wisconsin
Indiana			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Minnesota			
Mississippi			
Missouri			

New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Rhode Island			
South Carolina			
Tennessee			
Vermont			
Virginia			
West Virginia			

Source: Sudip Singh, “Price Competition in the Title Insurance Industry: An Empirical Study,” May 2010; original source: “notes” section of rate quotes obtained from First American’s Title Fees Calculator at <http://titlefeecalculator.firstam.com>.

Notes: Some data were verified by contacting individual state departments of insurance. Data are not available for Arizona, Colorado, Iowa, and Washington from the source.

**Table F.6
Title Insurance Rate Regulation Processes**

<p>No Regulation</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Regulatory review takes place only on an ad hoc basis, usually in the event of consumer or competitor complaints.
<p>Use and File</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer offers and completes transactions using the derived rates. 3. Title insurer files rates within a state-mandated timeframe; typically, no formal justification is required. 4. Title insurer continues to use rates provided that the state does not object, but must maintain the rates that were filed.
<p>File and Use</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency. Justification requirements vary by state. 3. Title insurer offers and completes transactions using the derived rates. 4. State agency approves or rejects filed rates 15 to 75 days after filing. 5. Title insurer must maintain the rates that were approved.
<p>Prior Approval</p> <ol style="list-style-type: none"> 1. Title insurer sets rates. 2. Title insurer files rates with state agency. Justification of proposed rates typically must be provided. 3. State agency approves or rejects filed rates within 15 to 60 days. 4. Title insurer offers and completes transactions using approved rates. 5. Title insurer must maintain the rates that were approved.

Rate Promulgation

1. State regulatory agency collects data and hears testimony regularly from title insurers, consumers, and other parties related to title insurance transactions.
2. State regulatory agency formulates “rate charts,” which set title insurance policy rates based on transaction size, on the basis of collected data.
3. Title insurer offers and completes transactions using promulgated rates.
4. Title insurer must maintain the rates that were developed by the regulatory body.

Source: Sudip Singh, “Price Competition in the Title Insurance Industry: An Empirical Study,” May 2010 May; originally modified from Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001); and Joseph W. Eaton and David J. Eaton, *The American Title Insurance Industry* (New York: NYU Press, 2007).

Table F.7
Title Insurance Regulation Styles by State

No Regulation	Use and File	File and Use	Prior Approval	Promulgated
Alabama	Kansas	Alaska	Arizona	Florida
Arkansas	Utah	California	Connecticut	New Mexico
Georgia	Vermont	Colorado	Idaho	Texas
Hawaii	Wisconsin	Delaware	New Hampshire	
Illinois		Kentucky	New Jersey	
Indiana		Louisiana	South Carolina	
Iowa		Maine		
Massachusetts		Maryland		
Mississippi		Michigan		
Oklahoma		Minnesota		
Virginia		Missouri		
West Virginia		Montana		
		Nebraska		
		Nevada		
		New York		
		North Carolina		
		North Dakota		
		Ohio		
		Oregon		
		Pennsylvania		
		Rhode Island		
		South Dakota		
		Tennessee		
		Washington		
		Wyoming		

Source: Sudip Singh, “Price Competition in the Title Insurance Industry: An Empirical Study,” May 2010 May; original source: Robert Clifton, *Taxonomy and Anatomy of Title Insurance Rate Regulation* (The Lyndon B. Johnson School of Public Affairs, Austin, Texas, 2001).

Note: Data is not available for Washington, D.C.

Table F.8
Loss Ratios by State

State	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Average
Alabama	7.85	9.09	11.24	8.55	7.49	6.65	7.98	7.23	7.03	15.80	8.89
Alaska	5.99	0.45	1.25	2.18	1.21	0.48	5.74	2.49	6.32	4.29	3.04
Arizona	2.57	6.19	3.63	3.08	2.24	2.76	1.62	2.48	4.99	7.81	3.74
Arkansas	2.24	4.63	6.44	9.59	9.90	4.37	2.93	5.57	10.80	10.43	6.69
California	5.06	4.18	3.70	3.56	3.00	3.83	4.85	4.66	11.90	16.40	6.11
Colorado	3.24	2.71	3.14	4.53	2.67	2.82	4.30	5.47	9.12	7.56	4.56
Connecticut	3.95	5.08	4.54	4.60	2.50	3.43	12.60	4.47	8.11	8.20	5.75
Washington DC	4.45	9.11	8.69	5.93	10.24	5.42	8.30	6.56	10.00	24.26	9.30
Delaware	4.13	1.80	4.45	7.52	6.79	2.57	1.01	0.80	3.11	6.27	3.85
Florida	3.05	5.60	4.00	3.92	3.46	2.87	2.92	3.68	8.03	17.10	5.46
Georgia	6.38	7.66	7.65	10.64	9.52	8.33	15.40	7.56	10.83	19.24	10.32
Hawaii	7.33	10.52	12.01	6.22	6.38	4.72	4.01	4.99	15.29	15.10	8.66
Idaho	4.58	5.87	5.55	4.57	2.14	3.47	1.98	2.51	7.52	6.35	4.45
Illinois	4.88	9.26	10.02	7.84	7.56	8.49	6.84	6.44	7.72	12.14	8.12
Indiana	4.09	4.03	3.59	9.82	10.53	10.30	6.56	6.26	7.81	10.89	7.39
Iowa	6.62	16.53	15.12	18.74	3.76	15.03	23.07	11.38	9.04	0.71	12.00
Kansas	2.24	0.83	3.64	3.91	3.86	3.86	2.59	3.75	14.12	2.07	4.09
Kentucky	1.50	2.42	4.99	6.52	3.31	9.31	10.85	10.46	7.91	10.75	6.80
Louisiana	6.28	3.51	5.83	11.47	6.68	4.03	5.13	4.16	2.21	5.69	5.50
Maine	3.70	5.01	4.98	2.40	3.55	4.31	5.73	7.22	9.71	11.29	5.79
Maryland	3.18	11.02	4.59	4.59	2.20	2.62	4.17	4.41	6.60	12.41	5.58
Massachusetts	5.95	6.86	4.85	3.72	3.61	4.20	5.85	9.00	9.08	7.09	6.02
Michigan	3.20	4.80	4.79	6.90	6.10	8.18	11.22	14.93	15.79	18.37	9.43
Minnesota	5.27	7.18	3.76	2.79	3.44	5.68	8.67	7.60	19.19	27.13	9.07
Mississippi	3.20	9.92	4.23	8.49	11.36	8.05	10.45	4.58	26.55	7.74	9.46
Missouri	6.10	11.38	13.30	10.58	9.40	9.58	34.41	20.20	19.57	18.92	15.34
Montana	4.03	9.03	3.71	2.37	3.16	2.53	3.78	3.76	4.06	3.62	4.01
Nebraska	0.64	1.05	4.85	2.27	1.82	2.11	4.61	6.61	5.00	2.94	3.19
Nevada	4.33	7.80	11.18	8.25	7.06	5.62	3.28	1.04	4.71	6.34	5.96
New Hampshire	4.34	6.16	3.36	1.98	2.26	3.00	5.56	5.08	10.18	10.89	5.28
New Jersey	4.80	6.73	4.90	7.77	5.86	4.22	7.49	5.51	6.24	10.45	6.40
New Mexico	5.68	6.58	6.54	5.10	4.37	3.86	4.01	5.50	2.27	4.47	4.84
New York	3.87	5.01	4.37	3.96	3.40	3.53	3.91	3.49	4.00	6.89	4.24
North Carolina	7.72	14.23	14.33	12.09	9.21	13.28	12.01	10.33	14.37	35.19	14.28
North Dakota	0.14	0.15	2.04	0.30	1.03	1.56	1.23	1.87	55.76	1.10	6.52
Ohio	3.78	3.95	4.94	4.44	3.05	2.49	4.21	4.18	5.36	5.99	4.24
Oklahoma	3.46	3.49	2.94	2.12	2.15	2.34	3.88	2.67	3.26	2.83	2.91
Oregon	2.55	3.70	3.25	2.32	1.33	2.25	2.05	1.79	2.70	5.91	2.79
Pennsylvania	2.31	2.87	2.57	1.69	2.34	2.96	3.21	2.78	4.48	6.47	3.17
Rhode Island	1.17	7.10	6.58	6.00	1.17	6.32	8.46	4.23	14.90	11.73	6.77
South Carolina	4.08	6.91	4.46	11.13	5.93	8.54	8.03	5.55	6.92	10.95	7.25
South Dakota	0.37	0.80	1.21	2.41	0.11	1.36	3.87	0.54	31.74	2.11	4.45
Tennessee	2.47	5.79	20.34	3.86	4.13	4.20	9.61	4.76	3.74	10.88	6.98
Texas	1.87	1.85	1.54	2.31	2.46	2.50	2.85	2.57	2.85	3.97	2.48
Utah	3.58	4.21	13.01	4.02	3.82	6.94	3.97	1.62	2.69	4.50	4.84
Vermont	3.06	2.90	8.46	6.55	5.37	10.57	21.18	14.35	6.02	8.37	8.68
Virginia	4.83	5.33	2.20	2.29	2.21	2.09	2.98	3.29	6.48	9.80	4.15
Washington	4.76	4.24	5.06	5.24	4.66	4.29	3.97	3.98	6.29	10.76	5.33

West Virginia	2.84	10.01	4.95	6.45	2.28	3.79	5.73	2.54	10.11	7.34	5.60
Wisconsin	2.46	5.73	2.78	2.57	3.09	2.02	4.72	4.13	12.74	5.33	4.56
Wyoming	2.28	4.11	1.20	2.59	3.27	2.11	0.66	0.85	2.37	3.64	2.31

Source: Demotech Inc., *Demotech Performance of Title Insurance Companies* (2009 Edition), Dublin, Ohio, p. 2009-05.

Table F.9
Variables Information

Variable	Value	Label	Code
Price	Quotations from Stewart	P	
Coverage	Premium only	-	
	Title examination and premium only	C1	
	Title examination, search and premium	C2	
	Comprehensive price	C3	
Regulation	No regulation	-	
	Approval price	R1	
	Promulgated price	R2	
Loss Ratio	Loss Ratio	LR	

Table F.10
Models for \$200,000 Property Title Insurance Price

	N	Cons.	C1	C2	C3	R1	R2	LR
1	46	768.9***	116.1	96.5	251.4**			
2	50	726.4***				87.5	521.6***	
3	51	1125.1***						-48.3***
4	46	1002.0***	41.8	66.3	149.7*	-50.2	332.2***	-32.0**
5	50	1075.2***				9.50	370.4***	-46.4***

Note: * means significant under 10% level of significance, ** means significant under 5% level of significance, and *** means significant under 1% level of significance.

Table F.11
Models for \$400,000 Property Title Insurance Price

	N	Cons.	C1	C2	C3	R1	R2	LR
1	46	1409.35***	-94.4	-17.4	300.2**			
2	50	1308.5***				69.8	950.2***	
3	51	1895.0***						-75.0***
4	46	1935.0***	-273.1	-65.6	112.9*	-162.7	566.3***	-65.8***
5	50	1866.4***				-54.9	708.4***	-74.2***

Note: * means significant under 10% level of significance, ** means significant under 5% level of significance, and *** means significant under 1% level of significance.

Table F.12
Models for \$600,000 Property Title Insurance Price

	N	Cons.	C1	C2	C3	R1	R2	LR
1	46	2002.0***	-267.0	-158.4	279.7			
2	50	1878.8***				-8.0	1355.9***	
3	51	2584.4***						-97.7***
4	46	2843.3***	-560.5*	-212.0	12.8	-309.4	813.0***	-100.0***
5	50	2626.6***				-175.2	1031.8***	-99.5***

Note: * means significant under 10% level of significance, ** means significant under 5% level of significance, and *** means significant under 1% level of significance.

Table F.13
Models for \$1,000,000 Property Title Insurance Price

	N	Cons.	C1	C2	C3	R1	R2	LR
1	46	3086.5***	-129.0	-426.2	157.9			
2	50	3105.1***				-374.2	2012.2***	
3	51	3905.3***						-145.4**
4	46	4685.1***	-710.9**	-447.7	-240.5	-753.8**	1245.6***	-172.1***
5	50	4316.2***				-644.8**	1487.3***	-61.1***

Note: * means significant with 90% confidence, ** means significant with 95% confidence, and *** means significant with 99% confidence.

Table F.14
Models with Promulgated as Baseline

Property Value	Cons.	Approval	No Reg.	LR
200,000	1445.6***	-370.4***	-360.9***	-46.4***
400,000	2574.8***	-708.4***	-763.3***	-74.2***
600,000	3658.4***	-1031.8***	-1206.9***	-99.5***
1,000,000	5803.5***	-1487.3***	-2132.2***	-161.1***

Notes: R1, R2 and LR represent no regulation, approval price and loss ratio. * means significant with 90% confidence, ** means significant with 95% confidence and *** means significant with 99% confidence.

Figure F.1

Comparison of Rates for \$200,000 Property Among States

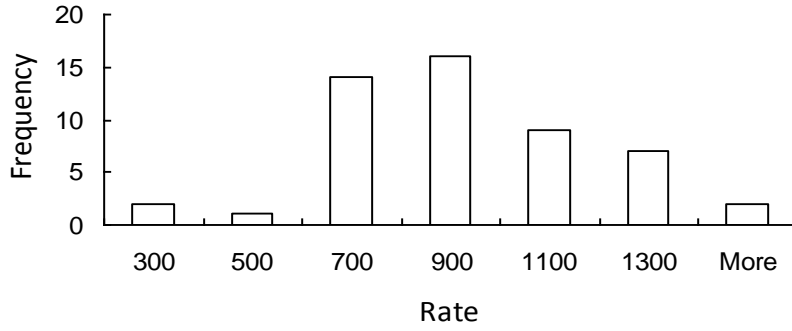


Figure F.2

Comparison of Rates for \$400,000 Property Among States

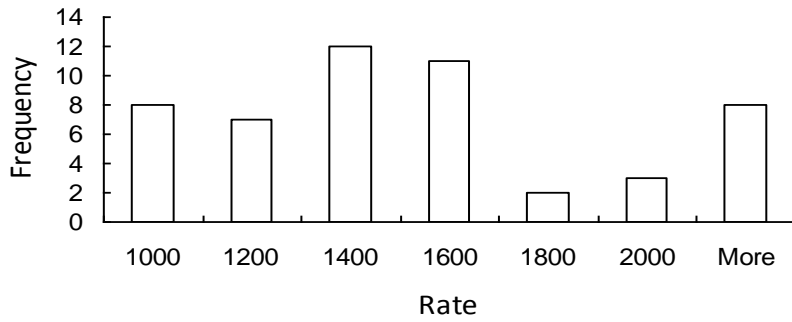


Figure F.3
Comparison of Rates for \$600,000 Property Among States

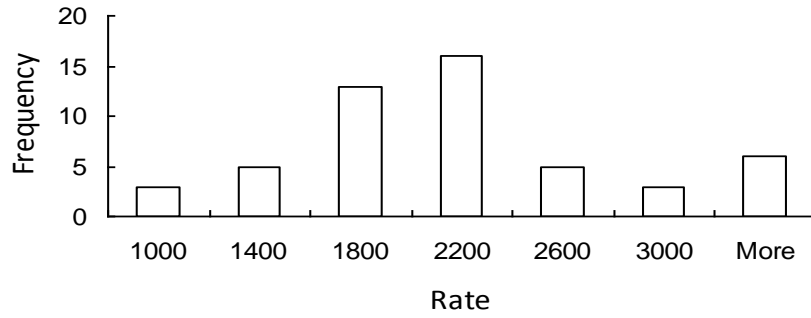


Figure F.4
Comparison of Rates for \$1,000,000 Property Among States

