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## Title-Insurer Fees Draw Scrutiny

By JAMES R. HAGERTY

The U.S. title-insurance industry faces increasing pressure from regulators to justify the fees charged to consumers for ensuring they have clear ownership of their homes.

For most people, title insurance is just another mysterious fee they must pay when they buy a home or refinance a mortgage. Unlike some of those fees, though, title charges aren't negligible. They range from several hundred to several thousand dollars—and last year totaled more than \$10 billion for the title industry. Lenders insist on the insurance to protect them against the possibility that a taxing authority, another creditor or a disgruntled heir may have a claim to the property, among other risks.

As falling home prices tempt more people back into the housing market in some parts of the country, politicians and regulators are raising questions about whether they may be paying too much for this protection. "There's no transparency," Delores Kelley, a state senator in Maryland, said in an interview. She introduced legislation that created a commission to study the title-insurance industry in Maryland. That panel is due to make recommendations about possible regulatory changes by December.

In Pennsylvania, Attorney General Tom Corbett earlier this year successfully campaigned against a push by the title industry for increases in regulated rates. New Mexico's legislature this year enacted a law that will allow price competition among title insurers, previously required to charge standard prices set by the state insurance regulator. That kind of fixed-price regime continues in Texas.

A bigger potential threat to title insurers comes from the Obama administration's proposed Consumer Financial Protection Agency. The new regulator would oversee a wide variety of financial products, including title insurance, which is now regulated mainly at the state level. That would open the door to more federal oversight.

Rather than shopping around, most people accept title-insurance choices made for them by a real-estate agent, mortgage company or builder. Cathy Pearson, an elementary school teacher who recently bought her first home, in San Clemente, Calif., says she accepted as "a given" the title insurer chosen by real-estate agents involved in the transaction. Like many buyers, Mrs. Pearson didn't feel she had time to question all the details.

Yet people advising home buyers often have conflicts of interest. Some real-estate brokers, mortgage firms and builders own firms that act as agents for title insurers. Federal and state laws bar title insurers from giving kickbacks to real-estate agents, mortgage firms or others for funneling business toward a particular title company, but enforcement is spotty. In recent years, regulators have fined title companies for various alleged violations of laws against inducements to steer business toward a title agent. The inducements have included entertainment, trips and help with marketing.

Typically, 80% or more of the premium goes to the title-insurance agent, with the rest going to the insurer. Agents often handle the task of searching through and analyzing public documents, sometimes going back many decades. But in many states, consumers pay separate fees to the agents for that research, on top of the premiums.

Charges vary widely around the country. In Texas, for instance, the current cost of basic title coverage for a \$250,000 home-purchase loan is \$1,644. That is supposed to include the cost of searching for and examining title records and related tasks, Texas insurance regulators say, but they warn that title agents sometimes tack on unjustified fees. In Iowa, the costs of similar coverage—including fees for lawyers and title researchers—range from around \$500 to \$800. Unlike the rest of the nation, Iowa has a state agency that provides title insurance.

The industry so far has fended off a class-action lawsuit, filed in early 2008, charging title insurers with illegally fixing prices at unreasonably high levels in New York state. A U.S. District Court judge for the eastern district of New York dismissed that suit last month. It has been appealed to the U.S. Court of Appeals for the Second Circuit.

The American Land Title Association, or ALTA, a trade group for insurers and agents, rejects suggestions that title insurance is overpriced. “Nobody’s getting rich” selling title insurance, says Kurt Pfothenhauer, the ALTA’s chief executive officer.

The ALTA opposes the Obama plan to include title insurance as a product to be regulated by the proposed consumer-protection agency. “Regulation of local transactions by Washington bureaucrats is a recipe for frustration and malfunction,” says Mr. Pfothenhauer.

State regulators are striving to show they are on top of the issue. A working group of the National Association of Insurance Commissioners is devising plans under which title insurers and agents would provide financial data to help regulators determine whether premiums are reasonable. The working group is also looking at ways to help consumers shop effectively for title insurance.

Jack Guttentag, a finance professor emeritus at the University of Pennsylvania’s Wharton School who provides mortgage advice on the Web site [www.mtgprofessor.com](http://www.mtgprofessor.com), advises home buyers to shop for title insurance online and to do so early in the home-buying process. When refinancing, borrowers should make sure they are getting the discount for title insurance that often applies on such transactions, says Mr. Guttentag.

The pressure on title insurers comes at a time when they are struggling to adapt to the plunge in transactions that has accompanied the housing bust. The four biggest title insurers—units of [Fidelity National Financial Inc.](#), [First American Corp.](#), [Stewart Information Services Corp.](#) and [Old Republic International Corp.](#)—all reported losses for 2008. Together, they account for more than 90% of the market. They distribute their insurance through thousands of title agents nationwide.

The big title insurers may face more price competition. Entitle Direct Group Inc., of Stamford, Conn., last year began selling title policies online. Timothy Dwyer, chief executive officer and founder of the company, says Entitle aims to undercut other insurers by at least 35%.

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