

TEXAS TITLE INSURANCE WORKS

LEGISLATIVE PRIORITIES

89th SESSION



Maintain Certainty in Real Estate Transactions & Protect Consumers

Texas' title insurance system has protected Texans' property rights for generations. Our state's existing regulatory structure sustains healthy marketplace competition and ensures that Texas homeowners and businesspeople have choices when they invest in protecting their property. Studies based on actual transactions make clear that Texas produces better prices for the majority of consumers.

TLTA's goal each legislative session is to maintain and improve certainty and safety for the consumer and the real estate market. Our knowledge helps inform and advise the Legislature on how to maintain and improve the best real estate economy in the country.

TLTA will seek legislative changes to improve transparency, efficiency, and consumer protection within the title industry by addressing key issues related to property records. Collectively, these changes help streamline real estate transactions, protect property owners' interests, and enhance the accessibility of property records.

Deed Fraud Self Help

Creates an *ex parte* process modeled after the fraudulent liens statute whereby a property owner can seek judicial finding that a deed in their chain of title is fraudulent and void. Although forged deeds are often recognized, dealt with and corrected in a transaction involving a title company, it is very frustrating to have this cloud on one's property prior to such a transaction. This bill would create an easier, accessible, and less expensive process to remove the fraudulent deed from the property record while maintaining appropriate due process.

Memorandum of Contract

If a person files a Memorandum of Contract that is not signed by the owner of the real property, they must provide a copy of the Memorandum to the owner. The owner may then file a contradicting affidavit with notice to the filing party. If the filer does not dispute the contradicting affidavit within 45 days, the contract identified in the Memorandum of Contract becomes unenforceable against a purchaser, allowing the transaction to proceed.

County Clerk Recording Fee

Corrects language in the Texas Local Government Code dealing with a charge for electronic copies of real property records. This would clear up conflict in the law regarding the fee clerks charge and is a simple clean up bill.

TLTA – Protecting Texans' Property Rights

Texas Land Title Association
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89TH TEXAS LEGISLATIVE SESSION

MEMORANDUM OF CONTRACT



TLTA seeks the introduction and passage of a bill addressing abuses related to Memorandum of Contract notices.

Problem

Increasingly, title agents are noticing the existence of Memorandum of Contracts on residential properties. These notices are creating complications at the closing table and opportunities for abuse.

Solution

The statute should be amended to include the following provisions:

- If a person files a Memorandum of Contract that is not signed by the owner of real property, that person must provide a copy of the Memorandum to the owner.
- Subsequently, the owner may file a contradicting affidavit, notifying the filing party.
- If the person who filed the Memorandum does not dispute the contradicting affidavit within 45 days, the contract identified in the Memorandum of Contract cannot be enforced against a purchaser, allowing the transaction to proceed.

Background

Memorandum of Contracts are used to put subsequent purchasers on constructive notice of the buyer's equitable title and ensure that the Seller does not attempt to sell to another buyer. However, the Sellers are often unaware that this notice has been filed, and the issues surrounding the contract may be stale. For the sake of clear title, these notices must be addressed.

It has been reported that often the filer of the notice will extract payment unrelated to the terms of the contract to "simply go away." In these instances, the Memorandum of Contract perpetuates a form of "greenmail", taking advantage of the duress the Seller faces in a property sale transaction.

89TH TEXAS LEGISLATIVE SESSION

DEED FRAUD SELF HELP



TLTA seeks introduction and passage of a bill that creates an ex parte process whereby a property owner can seek a judicial finding that a deed in their chain of title is fraudulent and void.

Problem

Real-estate fraud, specifically deed fraud, is on the rise. According to the [FBI's 2023 Internet Crime Complaint Center \(IC3\) report¹](#), there were 9,521 real estate-based fraud complaints in 2023. Deed fraud occurs when a scammer forges a deed and claims title to another person's home or real property without the property owner's knowledge or consent.

Although forged deeds are often recognized, addressed, and corrected in a transaction involving a title company, having a cloud on one's property can be frustrating and problematic. But if the fraudster successfully "sells" the property to a buyer outside of the title insurance system, both the rightful property owner and unsuspecting buyer can be harmed.

1. https://www.ic3.gov/annualreport/reports/2023_ic3report.pdf

Solution

Create a statute modeled on the "Fraudulent Liens" statute Section 51.901 of the Government code with the following changes:

- A. Provide that the ex parte process for fraudulent liens can be used for deeds, if the following conditions are met:
 1. A set period of time passes whereby the affidavit can be controverted before the deed becomes void, AND EITHER
 2. The filing is accompanied with a copy of a criminal judgment that references the property, OR
 3. The filing is only effective with an attached certificate of mailing as proof of the notice to the current deed claimant.

Background

The existing fraudulent lien statute allows a property owner to file a motion with a district judge asserting that the lien is fraudulent. The judge can then sign a statutorily prescribed ruling declaring the lien void.

TLTA has engaged in internal discussions and consultation with outside stakeholders. The conclusion of these conversations is that an *ex parte* approach providing property owners with this "self help" tool for deeds must incorporate additional due process protections. To that end, the proposed bill would require the motion to include evidence of notice to the beneficiaries of the deed in question and establish a specific period of time that the affidavit can be contested before the deed becomes void.

89TH TEXAS LEGISLATIVE SESSION

COUNTY CLERK RECORDING FEE



TLTA seeks introduction and passage of a clean up bill that aims to correct recently amended language in the Texas Local Government Code that created a conflict of law relative to charges for electronic copies.

Problem

Traditionally, the cost of producing electronic copies for the citizenry by the county clerks has been limited to the work and costs required to produce those documents. However, since the passage of SB 1612 during the last legislative session, there is now a conflict in the law regarding the charge for electronic copies of real property records.

Solution

The statute should be modified to:

Amend the language from Section 118.011 (a) and Section 118.052 of the local Government Code to exclude real property that allows county clerks to charge the \$0.10 fee per page for electronic copies.

Background

During the 88th Legislative Session, SB 1612 was passed. This bill included several ministerial cleanups for district courts. However, the bill also included language allowing county clerks to charge \$0.10 a page for electronic copies of real property records. This was not the goal of the legislation and was a drafting oversight.

Charging \$0.10 per page for an electronic copy greatly exceeds the amounts allowed under Section 118.11(e) of the statute, which requires that such charges be limited to the production costs as outlined in Sections 552.231 and 552.262 of the Government Code.



TEXAS TITLE INSURANCE PROTECTING TEXANS' PROPERTY RIGHTS

WHAT IS TITLE?

Title is your legal right to own or use your property. Title also establishes any limitations on those rights.

WHAT KIND OF ISSUES COULD AFFECT TITLE AND MY RIGHTS?

- Marriage, divorce, death
- Unpaid taxes, unpaid child support
- HOA liens
- Home renovation liens (resulting when contractors fail to pay subcontractors, unbeknownst to you)
- Plus many more issues, ranging from the common and simple to the rare and complicated

WHY SHOULD I PURCHASE TITLE INSURANCE?

Title insurance is the best way to protect your property from future legal claims. It's a one-time fee that covers you and your heirs' financial investment as long as you own your property. The policy also covers potential legal fees for settling claims against your property rights.

The Texas Land Title Association helps educate consumers about title. Our more than 20,000 members are here to help you protect your property rights. Put your trust in one of TLTA's member companies. Go to tltta.com for a list of members in your area and more information about title insurance.



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HOW DO I BENEFIT FROM TEXAS TITLE INSURANCE?

Texas has built one of the best title insurance systems in the country with comprehensive consumer protections resulting in:

- **MORE CHOICES** – With agents in virtually every county, Texans have access to a competitive marketplace that allows you to choose from a variety of companies and skilled professionals.
- **BETTER PRICES** – Texas prices are transparent and cost less today than they did 25+ years ago.
- **SAFER TRANSACTIONS** – Texas ranks as one of the safest states in the country with a low claims rate year-after-year, meaning Texas consumers face fewer title problems affecting their property rights.



Scan to download this packet, or visit tltta.com/titleinfo to learn more.

TEXAS TITLE INSURANCE WORKS

THE BASICS



What Is Title Insurance and How Is it Different?

Title insurance is a key component of real estate transactions, protecting buyers and lenders from financial losses caused by title defects or other problems, such as:

- Outstanding property taxes
- Fraud and forgery found in deeds
- Claims against the property made by unknown heirs

Title insurance, a risk elimination product with premiums paid only once at closing, **shouldn't be confused with homeowners and auto insurance** that protect against future hazards and must be purchased every year.

The stakes are high when it comes to real estate transactions given the possibility of losing a new home or property due to title defects. Therefore, Texas regulates title insurance like it regulates other financial services to ensure customers across the state receive:

- Comprehensive protection
- Transparency and consistency
- Best prices for services
- Low claims exposure

Premiums
decreased
almost 20%
since 1990s

How Has Texas Built One of the Best Title Insurance Markets in the Country?

Protecting private property rights is a core Texas value, and the quality of the title is an essential element in protecting ownership rights from unforeseen claims against them.

Texas' ranking as one of the safest states in protecting real estate transactions means Texas customers can rest easy with much less worry about losing their rights to own and enjoy the use of their property.

Texas has been able to maintain **one of the lowest loss-to-premium ratios at rates that have been reduced almost 20% since the 1990s by:**

- Setting statewide rates based on market data and actual costs in a transparent public process to ensure customers receive the best prices.
- Requiring consistent, comprehensive protections across the state.
- Conducting regular audits to ensure title companies remain financially sound and deliver the highest safety and quality to customers.

Located in 253 of 254 Texas counties, over 20,000 experienced title insurance professionals provide certainty, efficiency and security to residential and commercial real estate transactions by:

- Maintaining a complete set of geographically-indexed Texas county property records, with the most current detailed knowledge about the history of local properties.
- Conducting thorough title searches and examinations to identify title defects.
- Communicating with attorneys, surveyors, tax authorities and others to help address any identified title issues.
- Acting as a neutral clearinghouse for all real estate closing activities, including escrow and disbursement, and issuing title insurance.

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Why Should Texas Be Proud of the Benefits Consistently Delivered by Our State's Title Insurance Market?

1 MORE CHOICES

Texas' competitive title insurance market provides customers across the state access to a number of choices for quality service at consistent rates.

- 253 of 254 Texas counties **have title insurance agents licensed to provide local service**, meaning customers have access to local title companies who know the area and history of the communities and properties.
- There are more than 835 licensed title insurance agents in Texas, with over 20,000 employees, the vast majority of which are **small businesses**.
- When other states have restructured their title insurance markets to allow services and prices to fluctuate, the result has been fewer choices for customers due to market consolidations, reductions in local representation, and the shuttering of small businesses.

2 BETTER PRICES

Texas' competitive title insurance policies cost less today than they did 25+ years ago, ensuring Texas customers receive quality protections at the best prices.

- Texas has one of the most transparent markets in the country, with regular audits and statistical information provided by the industry on an annual basis to ensure customers across our great state receive quality protections at the best prices.
- The Texas Department of Insurance approves statewide rates based on market data and actual costs in a transparent public process to ensure Texas real estate transactions are protected at the best price.
- This system has resulted in Texas title insurance rates that have actually decreased over the past two and a half decades by about 20%.

Texas' ranking as one of the safest states in protecting real estate transactions means Texas consumers can rest easy with much less worry about losing their rights to own and enjoy the use of their property.

3 MORE RELIABLE

Texas' competitive title insurance market provides customers across the state a level of service that removes uncertainty and ensures peace of mind during real estate transactions.

- Having a transparent, consistent premium rate, as we do in Texas, takes the guesswork out of this part of the real estate transaction, making it a more **hassle-free** experience.
- Texas' consistent rate includes **costs that often are not included in the described "title insurance rates" in other states**. So, it is very difficult to make apples-to-apples comparisons between states, particularly because many lack the level of transparency that is required in Texas. **It might appear that there are lower insurance premium rates in other states, but in fact, attorneys' fees, abstract fees, and higher closing fees push up the total cost.**

4 SAFER TRANSACTIONS

Texas' competitive title insurance market consistently ensures safe and secure real estate transactions, as demonstrated by the limited claims exposure of Texas' property owners vs. those in comparable large state markets.

- **Texas leads the nation in title insurance premium volume**, with more than \$1.7 billion in direct premiums written in 2023—more than any other state. Despite our market size, **Texas maintains a loss-to-premium ratio that is more than 50% lower than the average of other major markets** like California, Florida, Illinois, and New York. This reinforces the strength and stability of our title insurance industry.
- A quick comparison between Texas and other states with fluctuating rates shows that **loss-to-premium ratios in other states can run six times higher than our low claims rate**, with customers in other large states experiencing losses as much as 200% greater than those experienced in Texas.
- **Title claims mean Texans could lose their property. This is a high stakes industry and Texas' title insurance market provides stability and peace of mind.**

TITLE INSURANCE UNIQUE LINE OF INSURANCE



More “Assurance” Than “Insurance”

Title insurance is completely different than other lines of insurance regulated by the Texas Department of Insurance. **Title insurance does not insure against future risks**, like homeowners and auto insurance does with fires, floods, hurricanes, and car wrecks. Instead, **title insurance insures against the past**. Before issuing insurance, title agents go through an extensive, labor-intensive search and examination process to find any problems with a property’s title. Then, they work to facilitate those problems being fixed before the property changes hands. So, title insurance insures against mistakes and unknown factors that may exist **prior to** issuance of the policy, **not after**, all for a one-time fee rather than an annual fee like homeowners and auto insurance.

A Financial Services Product

In many ways, title insurance is more of a financial services product than a traditional insurance product. In fact, in some states the industry is actually regulated by agencies overseeing banks and other financial institutions.

Texas title agents handle large amounts of consumers’ money in the course of handling a real estate transaction. For instance, over \$375 billion ran through Texas title agents’ escrow accounts in 2023.

Claims

Title insurance is a risk mitigation and avoidance product. Unlike property and casualty insurance, the **consumer only pays once** at closing, and the policy is good for the life of the loan or as long as the owner owns the home. As an illustration, imagine if fire insurance was to imitate the approach taken by title insurance. Before issuing a fire insurance policy, the agent would inspect the home for any fire hazards, correct any risks such as faulty wiring, and perhaps install a sprinkler system. One would only pay for the product once during the life of the home, and in the rare event the house did catch fire from a missed hazard, you would have insurance coverage up to the face value of the policy.

For this reason, title insurers experience **much lower claims** compared to other lines of insurance. Low claims are the goal and how quality is measured. Lower claims do not reflect relative higher profits, but rather a completely different business structure and product.

Agents

The **role of the title agent is very distinct** from agents in other lines of insurance. In title insurance, **the agent performs the vast bulk of the work of searching and examining the public real property records necessary to insure title**. The insurance product simply functions as a guarantee on the previous extensive title search and examination work performed.

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TEXAS TITLE INSURANCE WORKS ECONOMIC IMPACT



Title Industry Jobs Serve Texans and Communities Statewide

Texas' title insurance industry maintains high quality, skilled jobs throughout Texas—many in rural areas—including the following professionals:

- Title Examiners
- CPAs/Controllers
- Lawyers
- Database Architects
- IT Experts
- Insurance Professionals
- Licensed Escrow Professionals
- Customer Service Experts
- Abstract Plant Managers
- Cyber Security Experts

Industry Investments Keep Texas Professionals and the Real Estate Market Working

The industry develops comprehensive, geographically indexed databases containing the most current knowledge and up-to-date history of local properties. These costly investments are laboriously maintained by professional Texans who are proud to serve as true community partners:

- Securely handling more than \$375 billion annually through our escrow accounts
- Serving as a neutral clearinghouse for all funds and legal documents in real estate closings
- Providing certainty, efficiency, and security to residential and commercial real estate transactions statewide

✓ *Bolstering the Stability, Efficiency, and Security of the Texas Real Estate Industry*

✓ *Protecting Texans' Property Rights*

✓ *Providing Peace of Mind*

TITLE INSURANCE
PROFESSIONALS
20,000+

TEXAS COUNTIES WITH
LOCAL TITLE AGENTS
99.6%
253 of 254 counties



Texas Land Title Association

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TEXAS TITLE INSURANCE WORKS

FAQs



Q: HOW ARE RATES FOR TITLE INSURANCE SET?

A: The Texas Department of Insurance sets the rates in a public hearing and bases them on actual financial data. TDI actively monitors every title agent's profits and losses to ensure customers have access to the highest quality product at the best price. As a result, rates today are almost 20% less than they were 25+ years ago.

Q: DOES TEXAS HAVE THE HIGHEST TITLE INSURANCE RATES IN THE NATION?

A: No, "title insurance premiums" may *appear* higher or lower in other states, but simplistic comparisons don't work, because what is included in that price and who performs that service varies widely. It might appear that there are lower title insurance premium rates in other states, but in fact, attorney's fees, abstract fees and higher closing fees push up the total cost.

Q: HAS THE PRICE OF A TITLE POLICY IN TEXAS INCREASED?

A: No, they have decreased overall in the last 25+ years. In fact, title rates in Texas are almost 20% less today than they were in the 1990s.

Q: IS THERE COMPETITION IN THE TEXAS TITLE INSURANCE MARKET?

A: Yes. Texas' market is fiercely competitive with more choices of title agents than can be found in many other states. Every day, title insurance agents compete for customers' business based on the quality of their work and the service they provide.

Q: IS THE COST OF TITLE INSURANCE A BARRIER TO HOME OWNERSHIP IN TEXAS?

A: No. Texas currently has one of the most robust real estate economies in the country. It is in the transaction-based industry's best interest to promote and encourage homeownership in Texas.

Q: IF TEXAS HAS ADOPTED A "FILE-AND-USE" MODEL FOR AUTO AND HOMEOWNERS INSURANCE, WHY SHOULDN'T WE USE IT FOR TITLE INSURANCE TOO?

A: Title insurance is a risk elimination product with premiums paid only once at closing. It shouldn't be confused with homeowners and auto insurance policies that protect against future unknown hazards and must be purchased every year. Comparing title insurance to auto or homeowners insurance is a faulty comparison.

Q: HOW DOES TEXAS COMPARE TO OTHER STATES IN TERMS OF CLAIMS AND RISK?

A: According to the latest data, Texas has one of the lowest claims rates among large states, with claims at only 2.6% of premiums written, making it one of the safest in the nation. A comparison between Texas and other states shows that loss-to-premium ratios can run as much as seven times higher in other states than our low claims rate.

More risk would actually harm Texas' safe, reliable real estate process, which would have a negative impact on our strong real estate market. Title insurance and the costs associated with the settlement of the real estate transaction remain a very small portion of this important and complex transaction.

Texas Land Title Association

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ABOUT

Founded in 1908, TLTA is a statewide trade association representing the Texas title insurance industry and currently serving over 20,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in virtually every county in Texas, TLTA membership comprises nearly 80 percent of all title insurance agents and underwriters licensed to do business in Texas.

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