



Title Insurance

The Issue

The regulations surrounding title insurance represent an alternative approach to the traditional direct corporate subsidies from government. In this case, the government enacts a series of regulations that essentially locks in a guaranteed revenue stream for existing players, all while discouraging new competitors from entering the market. There is no single fee or grant that consumers can point to, but the effect that “regulatory favoritism” exerts on consumers and the market is the same.

Title insurance is perhaps the worst example of regulatory favoritism in Texas law. Not only does the Texas Department of Insurance (TDI) set the price and coverage of residential and commercial title insurance policies, but it also promulgates the division of premiums between title companies and their agents. The government, in other words, designs the contract’s provisions between the parties. Consumers of title insurance have no choice except to accept the decision offered them by the government—to buy one product at one price.

The Texas Legislature’s decision to “completely regulate the business of title insurance on real property” (§2501.002, Texas Insurance Code) stands in sharp contrast to the free market principles that typically govern Texas’ economic policy. It also, for that matter, stands apart from the regulatory regimes thought necessary by Texas’ sister states. A multi-state assessment shows that Texas is one of only three states to engage in price fixing and the only one of these three to take the extra step in demanding that consumers purchase comprehensive coverage. Texas may have a reputation for being on the vanguard of competitive reforms, but in title insurance, the state lags behind the national trend.

There has been much criticism levied at the tightfisted regulations governing Texas’ title insurance market in recent years, their impact on prices in particular. According to a study by the LBJ School of Public Affairs (2011), Texas has the highest title insurance premium for \$200,000 and \$400,000 homes among states that require comprehensive coverage. Research by the Texas Public Policy Foundation concurs. Relying on an apples-to-apples comparison, it found that Texas has the fifth highest total title insurance cost for a \$300,000 home nationwide. It should be noted that

many of the overhead costs incumbent to a policy have declined of late, which has been reflected in part by TDI’s latest rate hearings. The controversy swirls around whether Texas’ stringent regulations have allowed prices to drop to its fullest potential.

The Arguments

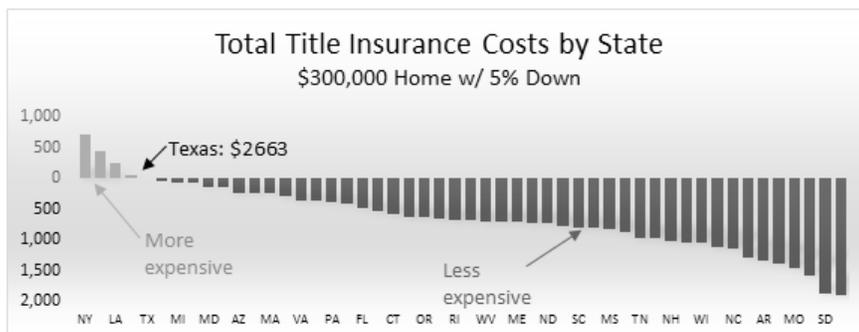
The excuses behind Texas’ title insurance regime are varied but overall unconvincing, relying predominately on the argument that there is something different about title insurance that precludes market forces from operating properly. Industry representatives, for example, assert that title insurance plays a unique and important role in the Texas economy because it gives owners and lenders peace of mind that their investment will not be undercut by a competing claim. Complete regulation, it is said, ensures that a subpar product does not accidentally disrupt owners and lenders’ expectations. Another strain of argument contends that consumers benefit from the “simple” and “transparent” pricing system—that the law does consumers a favor by taking away the anxiety of having to pick a coverage plan that works for them.

These excuses do not hold up in light of the state’s experience under the Texas Model, which deliberately relaxed government regulations in crucial economic sectors, such as electricity and telecommunications, and saw dramatic improvements in price and in product diversity as a result. In fact, the argument that title insurance somehow can’t operate under market conditions is the same one made about multiple markets by those who would in some way benefit from excessive regulation.

There is simply nothing unique about title insurance that warrants its exclusion from the forces of competition. In fact, just the opposite is true. Whereas competition forces companies to be customer-focused and conscious of quality, title insurance companies that are relatively insulated from competition are instead largely focused on manipulating regulations.

The heavy cost to consumers of the excessive regulation is readily apparent. Research by the Texas Public Policy Foundation shows that Texas has the 5th highest cost for title insurance among the fifty states. These high prices add up quickly for consumers; according to the LBJ School of Public Affairs, Texans overpay for title insurance by more than \$1 billion per year, or about \$1,663 on average per policy.

Consumers understand the problem of regulatory capture, i.e., when an industry takes control of the regulators, instinctively; a recent poll found that 91 percent of Texans agree that since they can shop around for auto and home insurance, they should be able to shop around for the best deals on title insurance. Texans also understand that allowing competition would provide them more choices and lower prices. They also understand the bigger picture; Texans favor reducing the high price of



commercial title insurance because they know it would lower the cost of doing business in Texas and result in a stronger economy and more jobs.

Recommendations

- Increase competition and consumer choice in the title insurance market by adopting the same file-and-use system that is used for auto and home insurance for both rates and forms.
- Eliminate the authority of the TDI to promulgate or approve the split of premiums between title insurance companies and agents. ★

Resources

- [*The Perils of Complete Regulation*](#) by Kathleen Hunker, Texas Public Policy Foundation (July 2016).
- “[*The Texas Title Insurance Market Should be Freed from Overregulation*](#)” by Brooke Rollins and Bill Hammond, *TribTalk* (Feb. 12, 2016).
- “[*Commentary: Why Texas Needs Competition in the Title Insurance Market*](#)” by Bill Hammond and Bill Peacock, *Austin American-Statesman* (March 7, 2016).
- [*Deregulating Title Insurance*](#) by Bill Peacock, Texas Public Policy Foundation (April 2013).
- [*Title Insurance Regulation in Texas: Challenges and Opportunities*](#), Lyndon B. Johnson School of Public Affairs (2011).

