



Texas' Title Insurance Tax: Texas One of the Most Expensive Title Insurance Markets in the U.S.

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Key Points

- The Texas title insurance monopoly results in Texas having the fifth highest title costs in the nation for a \$300,000 home.
- Among the 45 states with lower rates than Texas, the price in the median state, West Virginia, is \$703 lower than Texas.
- The Legislature should end Texas' monopolistic system by eliminating state control of rates, coverages, revenue sharing, and local title plants.
- For the latest on how to reduce title insurance costs, go to www.texaspolicy.com/title-insurance.

Executive Summary

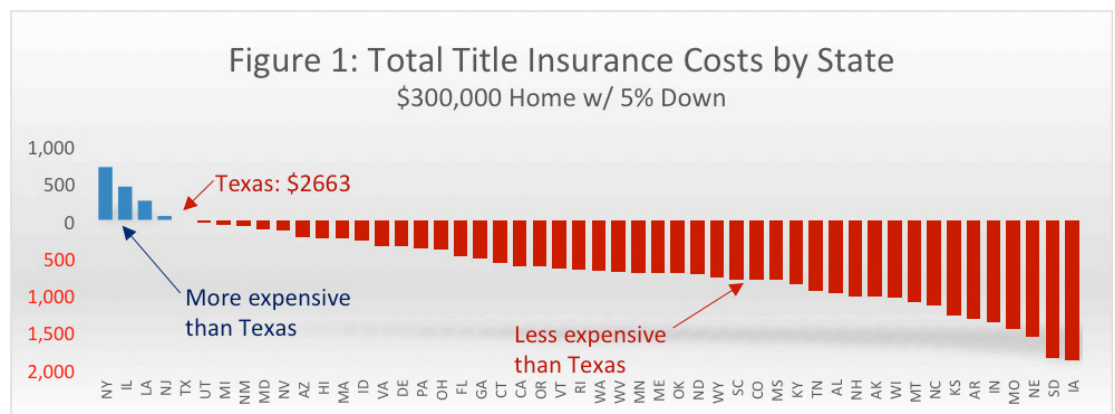
Texas has the most heavily regulated title insurance market in the country. Unlike all but one other state, the government sets a fixed rate for title insurance, preventing competition for consumer's business. This rate functions as a monopoly price that consumers are forced to pay. By requiring the purchase of comprehensive, one-size-fits-all title insurance policies at a fixed rate, Texas increases costs for both consumers and businesses by millions of dollars every year.

This paper shows the source of these excess costs that consumers pay and the excess profits that flow to the Texas title insurance industry: heavy regulation championed by the industry that has resulted in Texas having some of the highest prices for title insurance in the country. For instance, our research shows Texas has the fifth-highest title costs in the nation for a \$300,000 home. This is an "apples to apples" comparison taking into account all title insurance-related costs, not just premiums. Other research confirms the high costs and the influence of regulation.

A 2011 study by the LBJ School of Public Affairs found that Texas had the highest title insurance rates for \$200,000 and \$400,000 homes among states that require comprehensive coverage. In its most recent 2016 study, the LBJ School found that "the incremental cost for an average property purchaser for a lender's title insurance policy due solely to the Texas Legislature's rate setting rule is \$1,663 per average lender title policy."

None of this does anything to help consumers. These higher costs simply represent a "title insurance tax" imposed on consumers to benefit the title insurance industry. As the LBJ study notes, "Texas transfers wealth from property owners directly to title agents and title underwriters, with no additional value to the property owners" (Gao 2016, 1).

To reduce these costs and help consumers save millions of dollars a year, only one simple thing is needed: competition. The state of Texas should get out of the price fixing business and telling consumers how much they must pay for title insurance. Texans support this solution; a recent poll found that 91 percent of Texans



agree that since they can shop around for automobile and home insurance, they should be able to shop around for the best deals on title insurance. To this end, the Foundation offers these recommendations:

- Eliminate state setting of rates; permit title companies to set their own prices.
- Eliminate state setting of revenue sharing between agents and title companies; permit title companies and agents to share revenue by contract.
- Eliminate state setting of coverages; permit title companies to offer different coverages.
- Eliminate state-mandated barriers to entry: permit competition among title plants.

The Monopoly

Title 11, *Texas Insurance Code*, states, “The purpose of this title is to completely regulate the business of title insurance on real property” (Sec. 2501.002). And it does exactly that.

The Texas Department of Insurance (TDI) sets (promulgates) the price of title insurance, the type and extent of coverage, and the sharing of revenue between title insurance companies and agents. A prospective homeowner or business purchasing real estate has no choice in any of these areas. No matter what company they go to, the price will be exactly the same on any given home or piece of property.

In his economics textbook, *Transactions and Strategies*, Robert J. Michaels explains the characteristics of a “one-price” monopoly:

The most basic distinction between monopoly and perfect competition is that a monopolist has some choice about its selling price, but a perfect competitor is a price-taker. ... The firm can produce as much or as little as it wants without affecting that price. A price-taker has no reason to discount below the market, and no buyer will accept a price above the market when so many alternatives are available. A monopolist, however, has no market price to take.

... The monopolist must charge all customers identical prices at all times (Michaels, 170).

One point stands out in light of Texas’ total control of the title insurance, “The monopolist must charge all customers identical prices at all times.” This is exactly what happens in Texas. The Texas title insurance industry is a one-price monopoly.

How can there be a monopoly in Texas when there are numerous major companies offering policies through thousands of independent agents across the state? The answer is that there is not a single monopolist, or seller of goods, as one traditionally thinks of a monopoly, but that all the sellers are able to offer—and profit from—a monopoly price. They can do this because of the government control of the industry.

In fact, because of the extent of government intervention, what is left of the market has turned neoclassical economic theory on its head and blurred the distinctions between monopoly and perfect competition. Firms in this market function both as price takers and monopolists. Each firm in the market “can produce as much or as little as it wants without affecting that price.” Each firm “has no reason [or ability] to discount below the market.” No buyer can accept a price above—or below—the market price. And all buyers charge an identical price. This is all because, in fact, there is no market price in the Texas title insurance market. There is just one price, set by TDI on behalf of the state of Texas. This is not unlike the Soviet model in the U.S.S.R. under Nikita Khrushchev for agricultural goods with “a single price being established for each commodity on a regional basis” (Keep, 114).

TDI promulgates title insurance rates in its *Basic Manual for Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. Prices for property up to \$100,000 in value are listed in a table in increments of \$500. For properties of greater value, the prices are set based on formulas shown in Table 1.

Table 1: Title Basic Premium Calculation for Policies in Excess of \$100,000

(1) POLICY RANGE	(2) SUBTRACT	(3) MULTIPLY BY	(4) ADD
(\$100,001 - \$1,000,000)	100,000	0.00554	\$ 875
(\$1,000,001 - \$5,000,000)	1,000,000	0.00456	\$ 5,861
(\$5,000,001 - \$15,000,000)	5,000,000	0.00376	\$ 24,101
(\$15,000,001 - \$25,000,000)	15,000,000	0.00267	\$ 61,701
(Greater than \$25,000,000)	25,000,000	0.00160	\$ 88,401

Source: *Texas Department of Insurance Basic Manual*

The results of this are predictable. **Table 2** shows the results of basic premium quotes from online premium calculators from several title insurance companies for simultaneous owners and lenders policies on a \$200,000 home purchase financed with a \$170,000 loan.

Table 2: Texas Title Insurance Premium Quotes
\$200,000 Price/\$170,000 Loan

TITLE COMPANY	PREMIUM
Stewart Title	\$1,529
Republic Title	\$1,529
Independence Title	\$1,529
Frontier Title	\$1,529
Heritage Title	\$1,529
Commonwealth Land Title	\$1,529

Source: Online premium calculators of listed companies

One might think that Texas title insurance companies would object to the heavy regulation by the state. But in fact, the opposite is true. In a brochure distributed to the Texas Legislature, the Texas Land Title Association (TLTA) defended the monopolistic system, saying, “Texas has a healthy real estate market, due in part to our simple and secure title insurance process. We have developed one of the best title insurance markets in the country, with consumers across the state benefitting ... Now is certainly not the time to mess with the safety and simplicity of our real estate process” (TLTA 2016). The reason for the support of the existing regulation is obvious; price competition has been eliminated from the market, resulting in monopoly profits for companies. Industry participants have chosen, through lobbying, to have the government set their prices because they can charge higher prices than they could in a competitive market. The following section uses several sources of data to quantify how much these monopoly profits cost Texas consumers.

The Tax

Several studies over the years have questioned the prices consumers pay for title insurance. For instance, a report from the United States Government Accountability Office looking at the national market found that “multiple characteristics of current title insurance markets, as well as allegedly illegal activities by a number of those involved in the marketing of title insurance, suggest that normal competi-

tive forces may not be working properly, raising questions about the prices consumers are paying” (U.S. GAO, 53).

Focusing on Texas, a 2011 study by the LBJ School of Public Affairs confirmed that Texas title insurance prices are higher than in most other states. It found that Texas had the highest title insurance rates for both \$200,000 and \$400,000 homes in states that required companies to offer comprehensive coverage (Eaton, 74-75 & 14). It goes on to conclude, “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” (2).

The title insurance has dismissed such state to state comparisons. For instance, in a flier given to its members visiting the Texas Capitol, the Texas Land Title Association noted, “We have an ‘all inclusive’ rate that includes many costs and fees that aren’t included in other states. Unfortunately, when folks try to compare us to those other states, it’s an apples to oranges comparison” (TLTA 2015).

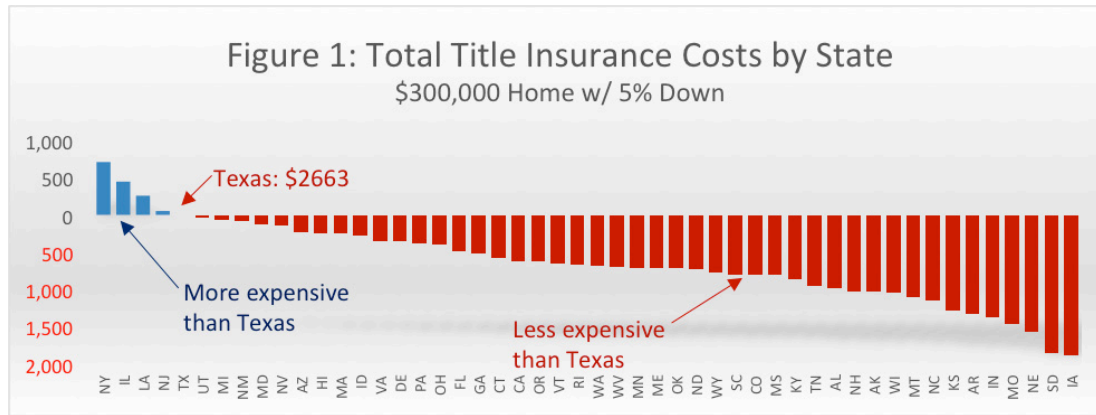
There are a couple of problems with that statement. First, some “folks” may have had some problems comparing prices across the states because of a lack of data. But the title insurance industry, down to the individual company level, has such data and could provide an accurate state to state comparison of prices if it chose.

The second problem is that Texas does not actually have an ‘all inclusive’ rate. While the Texas rate does include some costs that aren’t included in other states, it does not include the completely unregulated closing/escrow fee that consumers pay and can add over \$500 to the cost of title insurance.

Fortunately, today there is data available that can be used to provide an “apples to apples” comparison of Texas title insurance rates to the rest of the country. The Foundation has put together a database to allow such a comparison.

To develop its database, the Foundation sought quotes on the purchase of a \$300,000 home in the capitol of each of the 50 states with a 5 percent or \$15,000 down payment, resulting in a loan of \$285,000. The collected data are shown in **Table 3** in the methodology section that follows.

The simplest way to eliminate Texas’ title insurance tax is to introduce competition into the title insurance market by adopting the same file-and-use system that governs automobile and homeowners insurance.



The first set of numbers are quotes from the Stewart Title calculator for premium costs only in all 50 states. The second set of numbers generally represent the total title insurance-related costs for all 50 states from the estimates of closing costs from the Bank of America calculator. To

Figure 1 shows the results of the Foundation’s findings. In a comparison of significant closing costs related to title insurance in all 50 states, Texas had the 5th highest rate of any state at \$2,663 for the cost of simultaneous owners and lenders policies. Only New York, Illinois, Louisiana, and New Jersey had higher prices than Texas. Among those 45 states with lower rates than Texas, the price in the median state, West Virginia, was \$703 lower than Texas.

The 2016 LBJ School report also quantifies the cost of Texas’ monopoly system to consumers. It uses multiple data sets with rates from all 50 states in its calculations. These include “a national HUD-1 settlement cost database created by the U.S. Department of Housing and Urban Development in 2001, a set of closing-cost quotations from a Bank of America website collected in 2016, and a set of Stewart Title cost quotations, computed twice from Stewart Title websites, once in 2010 and once in 2016” (Gao 2016, 1). Using statistical analysis, the study’s authors find that their “analysis indicates that the promulgation of rates in Texas is a strong determinant that explains the state’s higher title-related charges” (Gao 2016, 1).

The LBJ School study determined, “The Legislature’s refusal to permit competition in title insurance makes it more difficult for Texans to purchase land or properties, by adding an expected incidental charge of \$1,663 per lender’s title policy. (Gao 2016, 1).

Methodology

Table 3 shows the dataset the Foundation built in the summer of 2016 to develop its findings. The quotes in the dataset are based on the purchase of a \$300,000 home in the capitol of each of the 50 states with a 5 percent or \$15,000 down payment, resulting in a loan of \$285,000.

come up with the totals for this section, we first gathered all the closing cost data from the Bank of America calculator, then we removed any costs that were not associated with the issuance of title insurance. We then compared the premium cost in the Stewart Title data with the Bank of America data. If the Bank of America prices were generally representative of Stewart Title’s quotes in a state, we used the Bank of America data to represent the premium costs. But if there was a significant difference—high or low, we then went to three other calculators, First American Title, Fidelity Title, and Old Republic Title, to get premium data for those states. In seven instances (highlighted with blue-shaded columns in Table 3), it appeared the Bank of America premium estimate was out of line with the four title insurance calculators, so we chose one of the other rates that was most representative, usually going with the higher of the four.

The title search fees are based on comprehensive quotes in ten states containing all the title related costs in nine states from Entitle Direct. The states were selected based on the state’s regulation of premiums to help us understand how to best compare Texas costs with the other states. The first thing that stood out was that each state quoted in the risk-only states or the risk-plus title examination states had a title search charge, whereas the comprehensive states of Texas, Pennsylvania, and California did not. So, based on an examination of the data, we estimated a \$290 title search charge for all the states that did not mandate that title search data be included in the data table; the exception to this was Oklahoma, which was assigned a \$500 charge because at least in some cases there may be less access to electronic data in undertaking title searches.

There were two other charges that were generally consistent across other states but were not found in Texas; the

Table 3: Title Insurance Rates in the 50 States

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS
Stewart Title Premium Calculator																	
Lenders Policy	125	75	100	50	496	150	1,005	25	100	25	686	150	75	500	50	0	275
Owners Policy	750	1,182	1,289	1,100	998	1,405	115	1,240	1,680	1,575	439	896	1,267	1,785	730	0	680
Total - Premium Cost	875	1,257	1,389	1,150	1,494	1,555	1,120	1,265	1,780	1,600	1,125	1,046	1,342	2,285	780	0	955
Bank of America Calculator																	
Lenders Title Insurance	650	1,300	100	648	625	1,428	980	845	1,320	1,578	725	1,277	459	1,725	239	110	596
Owners Title Insurance	250	75	1,310	189	713	190	70	420	510	25	400	250	1,326	500	624		336
Subtotal - Premium Cost	900	1,375	1,410	837	1,338	1,618	1,050	1,265	1,830	1,603	1,125	1,527	1,785	2,225	863	110	932
Closing/Escrow Fee	495	255	950	212	675	175	750	650	382	238	725	600	255	475	320	660	130
Title Insurance Endorsements			76		26	69		100				50		120	100		26
TIEF Fee													55			5	
Abstract/Title Search Fee, est.	290			290			290	290		290		290	290	290	290		290
Total	1,685	1,630	2,436	1,339	2,039	1,862	2,090	2,305	2,212	2,181	2,140	2,417	2,385	3,110	1,288	770	1,378
	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC
Stewart Title Premium Calculator																	
Lenders Policy	100	100	498	65	713	836	100	75	275	40	75	625	570	25	30	398	25
Owners Policy	1,025	1,445	451	1,206	558	1,399	938	1,200	680	1,037	830	1,250	280	1,375	1,819	1,399	627
Total - Premium Cost	1,125	1,545	949	1,271	1,270	2,235	1,038	1,275	955	1,077	905	1,875	850	1,400	1,849	1,797	652
Bank of America Calculator																	
Lenders Title Insurance	100	1,100	525	870	750	864	838	900	575	344	808	765	538	1,375	1,637	1,382	525
Owners Title Insurance	1,035	446	425	555	625	1,226	175	400	160	1,034	75	1,378	188	25	212	433	25
Subtotal - Premium Cost	1,135	1,546	950	1,425	1,375	2,090	1,013	1,300	735	1,378	883	2,143	726	1,400	1,849	1,815	550
Closing/Escrow Fee	375	885	610	815	750	500	650	262	180	180	162	378	575	975	170	1,200	640
Title Insurance Endorsements		200	100									50		50	275	68	40
TIEF Fee																	
Abstract/Title Search Fee, est.	290	290	290	290	290	290	290	290	290				290	290	290	290	290
Total	1,800	2,921	1,950	2,530	2,415	2,590	1,953	1,852	1,205	1,558	1,095	2,521	1,641	2,715	2,584	3,373	1,520
	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Stewart Title Premium Calculator																	
Lenders Policy	50	100	50	100	0	713	100	25	1,151	100	768	763	150	250	100	250	100
Owners Policy	725	1,488	950	950	1,900	388	750	725	95	1,983	1,436	335	1,160	805	1,070	1,030	1,065
Total - Premium Cost	775	1,588	1,000	1,050	1,900	1,100	850	750	1,246	2,083	2,204	1,098	1,310	1,055	1,170	1,280	1,165
Bank of America Calculator																	
Lenders Title Insurance	690	1,050	650	374	1,640	675	750	575	50	100	1,048	715	860	651	770	1,030	1,087
Owners Title Insurance	230	538	335	950	260	175	100	200	1,196	1,983	1,397	305	450	882	350	300	272
Subtotal - Premium Cost	920	1,588	985	1,324	1,900	850	850	775	1,246	2,083	2,445	1,020	1,310	1,533	1,120	1,330	1,359
Closing/Escrow Fee	720	205	360	610	200	850	725		168	530	135	700	660	452	550	295	175
Title Insurance Endorsements		175	100	100	175			25		50	40		50				60
TIEF Fee																	
Abstract/Title Search Fee, est.	290	290	500		290	290		290				290	290		290		290
Total	1,930	2,258	1,945	2,034	2,275	1,990	1,865	800	1,704	2,663	2,620	2,010	2,310	1,985	1,960	1,625	1,884

Source: Bank of America Closing Cost Calculator and Several Title Companies

courier processing (five states) and deed preparation fee (eight states). However, there seems to be no correlation between these fees being included and the state being a risk-only or a comprehensive state, so we did not include them in the total.

An additional note about the concept of comprehensive premium rates. At least in Texas, that term is something of a misnomer. Texas law mandates that title insurance premium rates must include the cost of insurance risk, title search, title analysis, and some closing costs. However, a big caveat to this arrangement is that Texas allows title insurance companies to charge an unregulated escrow fee, which significantly adds to the cost of title insurance in Texas; our estimate is \$530 dollars. So in truth the Texas premium is not fully comprehensive, and this extra cost in Texas must be taken into account when comparing costs across states.

Recommendations

To break up the current monopolistic system and eliminate Texas title insurance tax, the Foundation recommends the following:

- Eliminate state setting of rates; permit title companies to set their own prices. Replace the single promulgated rate and form with a system of “file and use” like other lines of insurance in Texas and other states. Insurers would file their proposed rates with the Department of Insurance and begin using the rates and forms unless disapproved by the Insurance Commissioner.
- Eliminate state setting of revenue sharing between agents and title companies. Allow the companies and agents to determine the appropriate fee sharing by contract similar to other lines of insurance.
- Eliminate state setting of coverages; permit title companies to offer different coverages. Replace the single promulgated policy form with a “file and use” system similar to other lines of insurance in Texas and other states that ensure adequate coverage exists to protect from loss while providing greater flexibility and competition.
- Reduce barriers to entry into the title insurance market. Texas law (with minimal exceptions) prohibits the issuance of a title policy unless an title abstract plant

is used which is owned or operated by a title agent or direct operation in the county where the property is located. Texas should allow title companies to use the best and most technologically efficient methods to obtain title evidence when underwriting the risk.

Conclusion

The simplest way to eliminate Texas' title insurance tax is to end the Texas title insurance monopoly by introducing competition into the title insurance market by adopting the same file-and-use system that governs automobile and homeowners insurance. This would result in more choices for consumers and lower prices; it also would help reduce the high price of commercial title insurance, and, therefore, lower the cost of doing business in Texas, resulting in a stronger economy and more jobs.

More competition would also bring more stability and certainty to the title insurance market. Consumers would be assured that the title insurance policies they purchase would be of higher quality, tailored to their needs and reasonably priced.

Competition brings out the best in companies as they scramble to attract customers—and profit. Instead of acting like monopolists, companies would be courting consumers with better prices, coverage, and service. Texas should allow consumers to shop for the best coverage at the best price when purchasing title insurance so they can get the best deal. ★

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Peacock has extensive experience in Texas government and policy on a variety of issues including, economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers.

Prior to joining the Foundation, Peacock served as the Deputy Commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office. Before he worked at the GLO, he was a legislative and media consultant, working with groups like Citizens for a Sound Economy and Putting Children First. Peacock also served as the Deputy Assistant Commissioner for Intergovernmental Affairs for Commissioner Rick Perry at the Texas Dept. of Agriculture, as a legislative aide to Rep. John Culberson in the Texas House of Representatives, and as an analyst for the Texas Senate Committee on Education.

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