

UP weighs in to protect Title Insurance policyholders

Written testimony of United Policyholders Before the California Department of Insurance

Rulemaking Hearing on Proposed Regulations Governing the Title-Insurance Industry in California File No. RH05049799, August 30, 2006

The following comments are respectfully submitted on behalf of United Policyholders in support of the proposed addition of sections 2355.1 through 2359.7 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations and the amendment of Title 10, Chapter 5, Subchapter 3, Article 14 of the California Code of Regulations.

These comments were prepared by Jane Marie Downey, ARM, M.Ed, Clarity Concepts Inc., Ms. Downey is a member of the United Policyholders ("UP") Advisory Board and a professional insurance and risk management consultant. UP is a not-for-profit national organization dedicated to preserving insurance promises and educating the public on insurance issues and consumer rights.

UP commends Commissioner Garamendi and CDI staff for their research and effective response to the excessive premiums and profits obtained by title insurers across the country. California title insurance company profits have risen dramatically in recent years, while expenses have dropped considerably due to automation.

Additionally, with the more frequent turnover of homes in the state, the risk on many new title policies is lessened due to the existence of prior title insurance on the same property, thus only a few years of title research is necessary and losses can potentially be tendered back to the prior title carrier. These excessive premiums and market prices in title insurance are documented in the "**Report to the**

California Insurance Commissioner: An Analysis of Competition in the California Title Insurance and Escrow Industry " authored by Birny Birnbaum. United Policyholders support Mr. Birnbaum's findings as discussed below.

The profits in title insurance are labeled excessive because:

- *"In 2003 and 2004, underwritten title insurance companies in CA earned after-tax profits of 49% and 32.3 % respectively-excessive by any reasonable measure"* . (Birnbaum report as quoted by Kathleen Doler in **Investors Business Daily** , July 7, 2006)
- **A 1980 Peat Marwick Study for the Dept. of Housing and Urban Development** as cited in Mr. Birnbaum's report (p. 32) found, *" The total cost of title assurance and conveyance services in the Los Angeles area was the highest among the eight selected sample cites ."*
- The number of title insurers had reduced in the last ten years while title insurance premiums grew larger in California than any other state (Birnbaum, p. 79)
- *" Claims are so rare in fact, that insurers spend as little as 5 cents to 10 cents of every premium dollar to pay them "*, (Kiplingers Personal Finance Magazine entitled, **Home Buyers Beware Title Insurance**, October, 2001). In general, the Property and Casualty industry pays out over 90% of premiums in losses.
- *" Each year people like us pay \$12 billion for home title insurance to a small club of insurers. And a club it is indeed-seven firms control 90 percent of the national market "* (A Bizarre Bazaar, **Risk and Insurance Magazine** , June, 2004)

We leave the findings of statistically proper rate calculations to the insurance commission of the state so have no comment on how the maximum charges are developed. We do support a sliding scale on rates, wherein a larger home purchase receives a discount after a certain threshold. Premium reductions for providing evidence of previous title insurance should also be included. Scaling back the housing price baseline in the rate formulas, as proposed to the year 2000, will eliminate the natural excessive increases in rates due to home price inflation in the state and we support this methodology.

It is important to note that despite the comment in the findings in this proceeding that *" The Commissioner has identified no reasonable alternatives to the presently proposed regulations "*, there is an alternative. The state of Iowa has taken to issuing title insurance from a state-owned facility, thus eliminating the presence of other title insurers in the state, while dropping prices significantly. The title

insurers of California should be appreciative that this option is not under consideration.

We look forward to working with the CDI on developing additional regulations to enhance competition among title insurers and address how title insurance is sold. While the present set of regulations will enhance the regulation of rates and premiums, it is unclear how these new rates will allow for additional competition, yet the economic report makes it quite clear that the barriers to entry are the established distribution relationships between the title companies, realtors and financial intuitions. As stated on page 26 of Mr. Birnbaum's report, " *We found...significant competition for the referrers of title insurance and escrow business-as opposed to competition for the consumers who actually pay for the services .*" It is critically important that the proposed regulations help create a truly competitive market for title insurance wherein the sellers are directly courting the buyers of their product.

United Policyholders wants to encourage freedom of choice and better title insurance product knowledge for the buyers of title insurance in California. The proposed regulations do not address the excessive rewards and motivational sales payments that are distributed to lock-in sales referrals from realtors and lenders.

Although direct referral fees are illegal, Mr. Birnbaum's report documents that there are a variety of other incentives including free services and profit sharing. The history of the state's prosecutorial actions as well as HUD's against title insurers for illegal referral payments is substantial; therefore, we know the system is ripe for unlawful actions. These bonus methods severely reduce competition. A disclosure requirement to consumers needs to be part of the regulations; all bonuses and rewards as well as controlled business relationships should be shared not only with the state, but also the homebuyer.

Although California does mandate a stronger title insurance policy as compared with some states, we do not see any requirement placed on title insurance agents to present the homebuyer with a full explanation of title insurance, how it works, additional expansions of coverage, etc. Some of these additional coverages to the standard ALTA policy required in California can include:

- Survey exception
- Environmental endorsement
- Nonviolation of conditions, covenants and restrictions

Requiring full explanation of the additional coverage or mandating all extensions of coverage would allow homebuyers to procure coverage that will best protect them.

The 1979 American Land Title Association Report on Controlled Business cited in Mr. Birnbaum's report (p.31) states, " *Because title insurance services are generally obtained only in connection with the purchase of real estate, which is an infrequent event in the lives of most people, home buyers and sellers as a rule have little familiarity with title insurance service providers, and accordingly, are willing to accept the recommendation of others regarding the selection of a title insurance provider .*" Thus, the home buyer may be paying less under the new system, but they still may not be aware of their ability to choose a title agent and a title company; buyers cannot yet fully compare and shop the coverage options available as found in other insurance markets such as automobile insurance.

Lastly, the proposed regulations should address the fact that buyers of properties are forced to buy an insurance product that is designed to protect the banks and lenders. An October 2001 article in Kiplingers Personal Finance Magazine entitled, **Home Buyers Beware Title Insurance** , stated, " *So this is title insurance in a nutshell: You, the homeowner, pay a premium to the tile company to protect your lender from mistakes made by the company when its does a title search, are you a sucker or what ?*"

Consideration should be given to requiring the lenders to pay for this cost. Alternatively, title costs could be apportioned to the seller, who would have an incentive to mitigate costs by providing the prior title policy and clear up any barriers to title transfer. This approach is supported by Peter Rousmaniere in Risk and Insurance Magazine, " *A bizarre, bazaar: mortgage holders demand that the problems with home titles be taken care of by a tile insurance company. But the mortgage companies to do not pay for, nor have any real incentive to contain the cost of insurance.*" (Risk and Insurance Magazine, June, 2004)

In summary, United Policyholders supports a new rating system for title insurance and recommends better consumer education, requirements of title agents and a possible redistribution of title insurance premiums.

The following supplements UP's testimony:

A personal account regarding Title Insurance:

by Jane M. Downey, ARM

I am a professional insurance and risk management consultant. My consulting practice is over ten years old, I have a degree in Insurance from Temple University and have worked in this industry for over twenty years. I hold the Pennsylvania Property and Casualty Insurance brokers license. I learned the hard way that I knew absolutely nothing about title insurance.

In 2003 when buying a home I relied on my bank to recommend the title agent. At closing, I paid \$2,443 for title insurance and truly was not aware of this significant premium due to all of the other significant sums transferred that day.

I did not discover until two years later that I was never even given a title insurance policy. I honestly thought the forms were regulated and they were identical. As I came to learn, this is not the case and many extensions of coverage are available to protect the buyer. The problem is: How do you find out about them?

A dispute arose with my neighbor in 2005 concerning not only the property line, but also a claim that a portion of my property belonged to him due to his continuous use of the property for 21 years. He sued me under an action in Quiet Title. When I reported the claim to my Investors Title, my insurance carrier, they then produced my policy and told me I had a survey exception. I was informed that I could have bought this coverage back at the time the policy was procured-but no one informed me of this choice; isn't the idea of Title Insurance to provide full coverage, presumably including survey coverage?

Their denial was also in violation of the contract as this adverse possession claim would not have been discovered by a property survey. It only came to light when we erected a fence on the line. I will have to pursue legal action to ensure enforcement of my policy.

The key issue here is I was never given any choices, I was never given a sample form and I was never told that there were any exclusions in the policy. I told my tale to the PA Department of Insurance and

they told me that the carrier did not have to reimburse my \$3,000 in legal cost to successfully defend me against this frivolous legal action.

I am now left with no choice but to sue the insurer and the title agent. My bank, which recommended the title insurer, has shown no interest in assisting me in this recovery and appears to have no recognition that I believe they had a fiduciary responsibility in recommending these vendors