

# Jacksonville title insurance company accused of kickbacks

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Associated Press

**LOS ANGELES** - A Jacksonville, Fla., title insurance company was accused by California's insurance commissioner of taking part in kickback schemes in which it split premiums with home builders, real estate brokers and other partners for steering business its way

Insurance Commissioner John Garamendi during a hearing Monday grilled title insurance industry executives who argued that the practice, called "captive reinsurance," was designed to have both title insurers and their partners share payments of future claims.

Garamendi said Jacksonville-based Fidelity National Financial Inc. and Richmond, Va.-based LandAmerica Financial Group Inc. are among some of the biggest offenders.

"They are giving a large portion of their premium dollars to the captive reinsurance companies, but the risk is not commensurate with the price," Garamendi said.

Lenders require title insurance when financing a home loan to guarantee that the property is free of other ownership claims or liens. The average title policy in California costs about \$1,400.

"Any one claim could be catastrophic," said Theodore Chandler, chief executive of LandAmerica.

Chandler said his company set aside \$714 million in reserves as of Dec. 31 to pay possible future claims but did not know how much would be paid.

Frank Willey, vice chairman of Fidelity National, said the company reported zero losses and estimated no future recoveries on claims during the 2004 fiscal year.

Garamendi said the premiums are too high. "Ceding 50 percent of their premiums indicates there's a whole lot of fat in the game," he said.

Garamendi requested additional information from the companies before he could determine whether the companies violated California law.

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## 2 title companies questioned - Calif. targets reinsurance practice

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Craig Harris

The Arizona Republic

**LOS ANGELES** - Two prominent insurance companies with ties to Arizona came under scrutiny here Monday as California became the latest state to crack down on title reinsurance.

Regulators contend the practice amounts to kickbacks to builders, brokers and mortgage lenders in return for steering title business to insurers and unnecessarily costs homeowners hundreds of dollars every time they buy or refinance a home.

California Insurance Commissioner John Garamendi spent 4½ hours Monday questioning LandAmerica Financial Group Inc. and Fidelity National Financial Inc. executives. The hearing followed a \$24 million settlement in March between Colorado regulators and First American Title Insurance Co. over title-insurance kickbacks with home builders. First American is Arizona's largest title insurer.

The Arizona Insurance Department, which sent Deputy Director Gerrie Marks to Monday's hearing in downtown Los Angeles, has taken a more low-profile approach in what Garamendi called a scheme. Arizona plans to have private meetings over the next several weeks with three title companies.

"If it's going on in California, it's likely going on in Arizona," Marks said.

Marks said most consumers don't compare prices with title-insurance companies. Many just go with a company that was recommended by their builder or real estate agent. Title-insurance officials say this often saves consumers time.

Lenders require title policies, which protect home buyers and lenders against losses if someone successfully challenges the validity through a claim or lien of the title provided by a seller in a real estate deal.

California regulators said the title companies would help create these partnerships to ensure that builders and others would constantly send business their way. Both companies said they stopped the practice earlier this year after concerns from insurance regulators.

Garamendi and others on his staff said title-insurance companies could lower rates instead of providing large premium cuts to their partners, builders or mortgage lenders. He said that if he finds that laws were broken, he will seek refunds.

Reinsurance programs began in the late 1990s when title-insurance companies would partner with home builders, mortgage lenders and real estate brokers to create "captive reinsurance" companies. After the title-insurance company took a fee, it would provide nearly half the premiums to the partners.

The question is whether the reinsurance companies were truly assuming risk. In Colorado, regulators said the companies paid few, if any, claims, and that the payments amounted to kickbacks in return for business. Also, the amounts paid out in claims are relatively small compared with the premiums.

LandAmerica and Fidelity executives said they had some reinsurance programs in Arizona, but the total amount of money involved was relatively small.

Jacksonville, Fla.-based Fidelity, for example, pegged the Arizona number at \$626,000 from 1999 to 2004. Of that, \$387,000 went mainly to California-based William Lyon Homes Inc. and Scottsdale-based Meritage Homes. Less than \$150,000 went to mortgage lenders, and \$90,000 went to real estate brokers.

Richmond, Va.-based LandAmerica did not have financial figures for Arizona.

"Since 1999, we did \$10.5 million of captive reinsurance across the United States, and \$7.7 million was in California. We also did \$16 billion of title insurance," said Peter A. Kolbe, senior vice president and chief regulatory counsel for Fidelity. "This (reinsurance) is such a minute part of this business."

But the problem, according to regulators in Colorado and California, is that while the amount may be small to the insurance companies, it potentially adds up to a lot of money for consumers.

In California, the cost of title insurance on a \$350,000 home is about \$1,400, according to Garamendi's office. In a reinsurance relationship, the title-insurance firm typically takes a \$350 service charge and then splits the remaining \$1,050 premium with the partner.

With a loss ratio of 6 percent, confirmed by the title-insurance companies, the expected loss is just \$84. However, title-insurance companies said they also have high fixed costs.

"The risk is not commensurate with the rates. So, the question is, could they lower the rates?" Garamendi said in an interview. "Are these rates artificially high? They are ceding 50 percent (of the premium). It shows there's a whole lot of fat in this game."

LandAmerica and Fidelity said consumers in California did not pay any additional money because the title-insurance rates are set after filings are made with the state's insurance department.

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## Title probes include state - HUD is investigating 60 cases of suspected kickbacks in real estate

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Michele Derus

The Milwaukee Journal Sentinel

Wisconsin is part of a budding nationwide scandal involving suspected kickbacks from title insurance companies to real estate agents, lenders, builders and developers, authorities confirmed Friday.

"We have 60 ongoing investigations across the country into alleged violations of RESPA's anti-kickback provisions," Brian E. Sullivan, spokesman for the U.S. Department of Housing and Urban Development, said in an interview from his agency's Washington, D.C., headquarters. RESPA stands for the federal Real Estate Settlement Procedures Act of 1974, which governs home sale transactions and bans referral fees.

The National Association of Insurance Commissioners is working with HUD to determine whether title insurers, who make sure real estate is free of legal entanglements that might cloud ownership, have paid others to steer them business, said association spokesman Woody Girion.

"The investigation is broad in scope and involves many states. Some are small potatoes and some are huge. But dollars wise, we're talking about millions," Girion said in an interview Friday.

Girion is deputy insurance commissioner in California, which begins hearings April 4 into alleged title insurance industry scams there. He also heads the insurance commissioner association group that in mid-March launched an interstate probe into industry abuses. His co-chair is Erin Toll, deputy insurance commissioner in Colorado, which on Feb. 21 reached a \$24 million settlement with First American Title Co. of Santa Ana, Calif., the nation's largest title insurer, over alleged industry kickbacks.

"Most consumers don't realize if they're paying too much for title insurance, or that they even have a choice" of insurers, Girion said. "They buy a house, they just want to close the deal. So when the escrow company or lender says, 'We'll take care of it all; you just sign on the dotted line,' they do."

Consumers typically pay \$200 to \$1,300 for title insurance, according to the Web site Bankrate.com. Fees vary by region and house value.

HUD won't name its regulatory targets here or elsewhere. "We don't comment on investigations," Sullivan said.

Others say HUD clearly has its sights set on Wisconsin - specifically, on a Stewart Title Co. fee-sharing program with lenders and realty agents called Stewart Express. Officials at Stewart's Houston, Texas, headquarters didn't return calls seeking comment last week. A woman who declined to identify herself at the company's Wisconsin office in Glendale said: "Everything's in research right now. Don't call here," and hung up.

HUD investigators were in town last week, having issued a round of subpoenas.

Lisa Petersen, underwriting counsel for Jacksonville, Fla.-based Chicago Title Insurance Co., said she appeared before the investigators Wednesday, and Waukesha attorney J. Bushnell Nielsen said he reviewed the subpoena of someone appearing Thursday.

James R. Maher, executive vice president of American Land Title Association in Washington, D.C., said Friday several of his trade group's Wisconsin members were questioned by HUD last week.

The investigation focus: whether title insurers illegally paid real estate professionals for recommending a specific company to a customer.

"The test is, is the service real and is the compensation reasonable?" Sullivan said. Stewart Title, founded in 1893, has run afoul of Wisconsin law, records show. The Wisconsin State Insurance Commissioner's office issued an Oct. 8 stipulation and order requiring Stewart Express to upgrade its new associates' duties or pay them less.

Eileen Mallow, the agency's assistant deputy commissioner, said the order followed an investigation into four complaints about Stewart last year.

"Our concern was that the compensation to agents for Stewart Express was not reasonable, given the services rendered," Mallow said. "Our order tells them to change their practices, so I think you can draw the conclusion," that legal violations occurred.

Is the Stewart Express program now legal? "Well, they've stipulated that they're going to follow the law," Mallow said. No new complaints have been filed, she said. Her agency has not been in contact with HUD recently, she said, nor has it joined the National Association of Insurance Commissioners' work group probing title insurance problems.

Dick Pas, president of Heartland Home Mortgage Co Inc. in Hales Corners, said he is among many area lenders solicited by Stewart Express representatives in recent months. The proposed arrangement involved establishing a separate corporate entity to funnel title insurance orders one way and money the other way.

"The order is handled online - you're not doing any real work," Pas said.

Pas said he declined Stewart's offers - broached nearly two years ago and again in the last month. "The business person in me thought, 'This is cute.' But the lawyer in me said, 'This is not complying with the law,'" Pas said. "It was clear all this does is increase costs to the consumer."

Now, the lawbreakers face their own increased costs. On March 21, HUD announced a \$450,000 settlement with title insurers and real estate companies in Oklahoma over illegal partnerships. On Feb. 28, HUD announced a \$6.2 million settlement with title insurers and lenders in Texas.

These cases name a host of companies, big and small, publicly traded and private. The parties admit no wrongdoing, but are making payouts to the government or consumers.

Some title insurers are openly resentful, saying HUD ignored increasingly aggressive industry practices for years only to suddenly crack down without warning.

As American Land Title Association's Maher put it: "It would have been helpful if HUD engaged in a dialogue in 1999, as we asked, and provided us with guidance on how they'd view arrangements of this kind. If they had said, 'This is bad,' presumably we would not have proceeded, and wouldn't have the controversy we're going through today."

HUD's Sullivan rejoined: "We've been very clear on this matter."

Meanwhile, insurance regulators in other states are pursuing their own cases. Colorado has at least two more title company kickback settlements in the works, according to The Denver Post. California has subpoenaed more than a dozen in its kickback probe, according to The Los Angeles Times and Copley News Service.

Asked if any too-cozy partnerships have disbanded, given the unwanted federal attention, Sullivan said, "If they've been violating RESPA, I sure hope there's a chilling effect."