



Talking Points Against Governmental Takeover of Title Companies and all Small Businesses

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Title insurance work is labor intensive.

Title agencies' labor intensive search of the public property records includes the search of tax and judicial records by skilled title examiners that provides homebuyers and lenders the security they need to purchase and transfer real estate. Otherwise, the rampant fraud that exists would reach levels that would threaten the institution of property sales and purchases and, in effect, the American Dream. Further, it is the title insurance company's willingness to stand behind this work – even if the defect originated in faulty public records – that provides lenders the confidence to release funds once the title guarantee is in place. In other countries where there is not title insurance available, lenders must wait until a transfer is actually recorded on the public record to release funds. This inevitably takes more time and drives up the overall cost of real estate. Title agents earn their money from sweat and securing the trust in property transfers.

I can show you a number of cases in my office where elderly persons' homes were saved because title companies paid an attorney to litigate and fight when a relative, grandchild or a third party thought they were refinancing their homes while their friends or relatives sold their homes out from under them. Title companies pay for the defense and if the case is lost, then the title company pays for the value of the home at the time of purchase. The cost of defense may be greater than the policy amount – there's real savings there. The State of New York is not equipped to deal with the cost of paying these claims, hiring attorneys to litigate the claims or building an infrastructure to prevent future claims not to mention the increase cost for New York taxpayers.

Imagine if a doctor told their patient the success rate of an operation that 95 percent of all these procedures result in complete recovery. This gives peace of mind to the patient. If the doctor told their patient the success rate of an operation was only 50%, they would be really concerned. I'm sure they would look for a better doctor.

Biting off more than it can chew

Even if the state decides to go ahead, it will take time, money and resources to prepare to provide the work that's currently handled by the private sector. These thousands of employees hired by the state would need to be experienced in the transfer of property process. Where would they come from? Offices would need to be opened in each county in New York that would include the costs of opening a title company, allocating the required claims reserve funds, leasing office space, creating health and pension benefits, paying salaries to skilled workers and buying and implementing the specialized technology costs. Once they set up shop, they would need to convince mortgage lenders and brokers that they can provide the same level of service and efficiency that title companies offer. It would need to get banks and Fannie Mae and Freddie Mac to accept a certificate from a government-run organization that is different from the industry standard.

The idea is to set up a state-run title agency (like Hugo Chavez has done in Venezuela for the finance, telecommunications, utilities, oil, steel, cattle and cement industries.) It would have to hire thousands of employees. A state board administering would be responsible for:

1. Underwriting of customary title issues
2. Underwriting and risk analysis of high risk title issues, such as land under water, building loans, foreclosures, deeds in lieu
3. Advising counsel on how to clear title and to cure open title issues
4. Determining whether to write over open, but paid-off, mortgages



5. Paying transfer taxes within the statutory periods to avoid the imposition of interest and penalties and determining who pays those charges if recording is not timely
6. Reviewing closing documents
7. Filing of title insurance policies and endorsements
8. Advising on the application of mortgage recording tax, including NYC issues
9. Advising on the application State, NYC and other local transfer taxes
10. Handling claims administration
11. Managing of multiple site, multi-state or multi-NY county closings
12. Closing for a single site property located in another state
13. Recording in multiple counties in New York and in other states
14. Handling accommodation recordings
15. Correcting recording issues with the local recording officers
16. Issuing UCC-based policies for cooperative units [and for mezzanine loans]

Iowa's Property Transfer and Real Estate Makeup Works Very Differently than New York State

The proposals to socialize title insurance are based on Iowa's state run title guaranty plan but do not take into account the difference between the way the two states work and transfer real estate. Iowa's title system has not been adopted by any state outside of Iowa because it does not work in any other state. Think about the average price of a piece of residential or commercial property in Iowa and the average price of a piece of residential or commercial property in New York. Since the cost of title insurance is based on the price of the property, which one do you think is going to be more expensive? The GM building itself may be worth more than all of the property in Iowa put together.

Claims are made that the proposal will make it, "easier and cheaper to buy a home or business." But what they don't tell you that a congressional study found, "[I]t is not clear that this system would make the necessary changes to the current model or that it would save consumers money," and went on to state:

Furthermore, while premium rates for Iowa Title Guaranty might be lower, although not the lowest, than rates in many other states, the total costs that consumers pay for title searches, examinations, and clearing of any title problems might not differ substantially. Iowa's total costs were about the same as those in Maryland, Nebraska, South Dakota, Washington State, and West Virginia, where private title underwriters are free to do business.

There is also much less risk of a title problem in Iowa because their county public records have fewer errors than in New York – this brings down the costs even further.

The white paper claims that in Iowa private title insurers serve just 10% of real property transactions. The truth, according to the administrators of Iowa's program, is that private title insurers operating outside the state have a 50% market share on residential transactions and a much higher market share for commercial transactions.

Title insurance costs consumers very little compared to other types of insurance



Homeowners only pay for a title insurance policy once. This means that for the 60% of average homeowners who stay in their home for more than 5 years, the average annual cost of a title insurance policy is less than \$140. About 15% of homeowners remain in their homes for more than 25 years, and their average annual cost of title insurance is less than \$28. The average cost of a homeowner's insurance policy is \$765 dollars per year, and the homeowner has to pay it every year.

Profit-margin is slim

Over the last 20 years, the operating expenses in the title insurance industry, including expenses incurred during a title search, examination, curative measures and policy issuing functions, average around 92%. The title industry spends approximately 98.4% of its income on searching properties, curing problems and paying claims.

Fuzzy math

The claim that a government-run operation will save New Yorkers \$1 billion annually is fuzzy math. Notice that they're using the peak of the real estate bubble when discussing title insurance profits. The title industry earned \$750 million in title insurance premiums paid by New Yorkers in 2008. Almost every company did well during the boom years. They're not using recent data—the answer is that the title companies profits have dwindled as a result of the above facts and the real estate market in general.

If title companies usually make a profit of around 5%, and a lot of them are losing money today, where does he find this \$1 billion in savings while at the same time find \$150 million for affordable housing, infrastructure and property tax relief? The answer is in raising the rates. The bill mandates that rates charged to consumers be enough to make at least \$150 million for housing, infrastructure and property tax relief. If the real estate market is bad, like it is now, nobody is making a profit, and the only way to make this money is to charge consumers more than what title insurance companies charge them. Claims that half of Iowa profits go towards similar programs are false; in truth, only about 20% of Iowa's revenue is used to fund these programs.

Taking A Knife into Small Businesses

Title agents are hard working small businesses that employ tens of thousands of New Yorkers and pay many millions of dollars in income taxes. Creating a government-run system would put these people out of work. The state will immediately lose the revenue their taxes provide as well as over \$15 million in premium tax revenue title insurers paid in 2008.

Unlike most insurance companies, title insurance companies spend human labor to prevent and eliminate risk rather than calculate the risk. The buyer pays for the work done to get the property risk-free with the added benefit of having insurance in case something goes wrong, for a one time premium.

Delay closings

It is the title insurance company's willingness to stand behind its work – even if the defect originated in faulty public records – that provides lenders the confidence to release funds once the title guarantee is in place. In other countries where title insurance isn't available, lenders and homebuyers have to wait until a transfer is actually recorded on the public record to release funds. This weeks or even months and drives up the overall cost of real estate. Because of fast and efficient closings in the US, the current system saves consumers around \$15 billion per year in interest. A government-run system would slow the process and cost consumers money.

The current system provides many unrealized benefits

Nationwide, every year, title insurers are responsible for collecting \$3.3 billion in delinquent real estate taxes \$2 billion in delinquent Federal income taxes, pay for 17% of the expenses of county recording offices, and collects \$325 million in delinquent child support payments. The proposed government-run operation doesn't even contemplate these benefits the current system provides.



If New Yorkers wanted to see higher claims, they would see families harmed and many more people experiencing the stress of possibly losing their home. Families undergoing foreclosure are enough evidence that this is a bad thing. More families shouldn't be faced with the same fear.

Paid title claims nationwide equaled \$271.1 million in 1996. By 2005 they had reached \$916.4 million followed by paid claims of \$870.3 million in 2006. In 2007 paid title claims reached \$1.3 billion, which is a 149 percent increase from 2006 and a 480 percent increase over ten years (AM Best Co., Oldwick, NJ).