The New York Times

A 96-Word Law Would Be a 'License to Bribery' for Insurers

By JIM DWYER JAN. 30, 2018

Pretty much everyone who buys a home in New York is braced for sticker shock, but hardly anyone is ready for the pain of little cuts called "closing costs."

One of the deepest of these is title insurance, which guarantees that a property can change hands without anyone else having a valid claim against it.

Shopping for this kind of insurance is almost futile. A cartel sets the price. Nearly all of the 30 title insurance companies that do business in New York charge the exact same rate. It is the highest in the country, 40 percent more than neighboring Connecticut, and 25 percent more than New Jersey.

"It's not that they *happen* to have the same rates — they work together and file them collectively," said Daniel C. Price, the chief executive at OneTitle National Guaranty Company, Inc. "In any other industry, this would be struck down instantaneously."

An exemption to antitrust law permits this collective price-setting, though companies can apply to state regulators to charge different rates. Two of them, Mr. Price's OneTitle and Entitle Direct, have done so and cost less but have only a fraction of the market.

You'd think they would have a good chance at winning business on the basis of lower prices, but that's not how the warped title insurance market works.

We now move from the galling to appalling, as reported by Shane Goldmacher this week in The New York Times.

To get people to buy one identical product over another, the title companies spend enormous amounts of the premiums they collect from home buyers on lavish entertainment.

They are not entertaining the home buyers, but the intermediaries — like real estate lawyers — who steer business to members of the title cartel.

"Sports tickets. Nobu. Strip clubs. Hooters. Wining and dining," Maria Vullo, the superintendent of the state's Department of Financial Services, said. "They even give gift cards! That's cash. Why would they give a referral source cash?"

No mystery about any of it.

The consumer pays for the title insurance, but rarely chooses the title agent. "That's why you have this very problematic situation where you have meals and entertainment being lavished on the real estate professionals," Ms. Vullo said.

Whatever you might think about health insurance companies, 82 percent of the money they take in gets paid out in claims for medical care.

The title insurance industry in New York pays out less than 5 percent of its premiums in losses, Ms. Vullo said. Of $1.1 billion in annual premiums, 95 percent goes for salaries, bonuses and expenses. That, includes, of course, buying the actual insurance (which, Ms. Vullo said, is 15 percent of the cost) and the research on the titles.

Also driving the premiums are gimmicks like renting Citi Field and paying Mets players for a meet-and-greet with real estate lawyers. One title insurer spends millions each year on luxury boxes at Madison Square Garden, baseball stadiums and the U.S. Open.

The state plans to enact a regulation this week that bars much of this spending. In response, lobbyists besieged the legislature in hope of extinguishing the new rules. They are making some headway. A bill sponsored by Sen. James L. Seward, a Republican from the Ithaca area, was passed by the State Senate. The Assembly insurance committee is considering a version sponsored by its chairman, Assemblyman Kevin A. Cahill, a Democrat who represents parts of Ulster and Dutchess counties.

It says that no matter which rules are enacted, nothing prohibits the companies "from undertaking any usual and customary marketing activity aimed at acquainting present and prospective customers with the advantages of using a particular title insurer or title insurance agent."

The core language reads like a 96-word loophole, but Ms. Vullo put it in stronger terms. "It would give a license to bribery," she said.

At a hearing earlier this month, representatives of the industry argued that their practices were essential to building relationships with the people they described as their "clients" — the real estate intermediaries, not the home buyers.

Mr. Cahill suggested that marketing directly to the consumers would hurt home buyers inexperienced in shopping for title insurance. "Is it ethically appropriate to go over the head of the experts?" Mr. Cahill asked. His office said Tuesday that the bill remains in the committee. Industry representatives have said they are considering litigation to fight the new regulation, and have retained a former counsel to Gov. Andrew M. Cuomo.

Title insurance costs often look small compared to the price of the home. In New York, for a house costing $500,000, the average title insurance fee is around $2,700.

Many people just roll that cost into their mortgage, which at current rates, winds up adding about $13 a month.

Just a tiny nick from a shaving cut.

One that bleeds for 30 years.

Opinion | LETTER

Title Insurance Kickbacks

MAY 25, 2015

To the Editor:

Re “The Title Insurance Scam” (editorial, May 12):

The provisions in the Dodd-Frank law dealing with title insurance provide important protections for consumers — and Congress should leave them alone — but they don’t go far enough. The Consumer Financial Protection Bureau and state regulators should aggressively enforce laws against title insurance kickbacks, targeting both those who pay the kickbacks and those who accept them. Steering your client to a high-priced title insurer in exchange for a kickback should be punished severely.

Pro-consumer title insurance options — with lower premium rates and lower fees — have been appearing across the country. Taking enforcement seriously will make room for even more competition. Weeding out those who accept kickbacks will also reward honest lawyers, lenders and others who have the best interests of their clients at heart.

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