



Volume II:  
Settlement Performance Evaluation

# Real Estate Closing Costs

RESPA, Section 14a

## XII. THE TITLE ASSURANCE AND CONVEYANCING INDUSTRIES

This section considers those industries and groups that provide both title assurance and conveyancing services. The discussion of traditional title assurance functions, such as title search, title examination, title insurance, and attorney's opinion of title is supplemented by a discussion of the conveyancing functions, settlement, escrow, and the preparation of documents.<sup>1</sup> Strictly speaking, the conveyancing services are not a part of the title assurance process. However, the charges for these services are often calculated or reported in a manner that prevents an accurate or meaningful separation. In addition, the title insurance companies and attorneys who provide title assurance often conduct settlement and prepare documents in many parts of the country. Thus one provider collects fees for several functions.

The markets for the provision of title assurance and conveyancing services may be considered at two levels: (1) the primary or local market, which often includes many different types of providers; and (2) the national market, which for the most part comprises the title insurance underwriters. Both markets will be analyzed in this section, although the major emphasis is on the primary market where the consumer actually pays for and receives title assurance services.

The basic forms of title assurance, the types of conveyancing services, and the providers of these services were described in Chapter V. This section presents the findings of this study relating pricing and efficiency in the provision of these services. Local markets differ in many respects. There is considerable variation from state to state in the regulation of title insurance, as well as in the rules governing the unauthorized practice of law. There is also variation in use of attorneys in the transfer of real estate. The sites may also differ in a number of other characteristics, such as in the roles of lenders and brokers as referrers of title services and as settlement agents themselves. The issue of whether these practices affect prices to consumers is addressed in this section.

This chapter is divided into four major sections. The first discusses title assurance in terms of the criteria for perfect competition provided in Chapter VII. The second section attempts to determine the existence of workable competition in title insurance markets and presents findings on price variations both within markets and between markets with different regulations and practices. The third section analyzes the cost of providing the title assurance services and the relationships of these costs to total revenues. Finally the fourth section analyzes issues regarding the legal profession.

### TITLE INSURANCE AND THE CRITERIA FOR PURE COMPETITION

Chapter VII presented four criteria which need to be satisfied in order for the market of a given product or service to be characterized as having perfect or pure competition. Where perfect competition exists, competitive market pressures force suppliers to provide the product or service at the

---

In Chapter VI, the term "title assurance" will include the search and examination as well as Title Insurance. Conveyancing services include settlement or closing, escrow and document preparation.

lowest possible cost of production.<sup>1</sup> Where these criteria are only partially satisfied, but active price competition appears to prevail to a reasonable extent, "workable competition" may be said to exist. This too can assure that the buyer is receiving demanded products at a reasonable cost. However, if workable competition does not exist, there is a potential for high prices, excess profit, and poor market performance.

### Homogeneous Product

One assumption of a purely competitive model is that the product produced by different suppliers is undifferentiated or homogeneous. Product quality or characteristics of the individual supplier are undifferentiated by the buyer because each producer sends identical goods to the market. An example of this is found in the markets for many agricultural products. Most other markets, however, exhibit this characteristic only to varying degrees.

Title assurance, from the consumer's perspective, is a homogeneous product. While one firm may conduct a better title search than another one, a consumer is generally not in a position to judge performance even if he is reasonably well informed about title insurance. Usually a time lag of many years occurs between poor quality work and the increased insurance claims or diminished reputation which may result. These results should be reflected in higher loss ratios, but those data are not communicated to the public.

Furthermore, a consumer rarely has a real choice between the different forms of title assurance: an attorney's opinion of title or a policy of title insurance. While both forms may be available in some specific markets, it is usually another provider of settlement services who determines the form of title assurance to be used.<sup>2</sup> A lender, for example, who wants title insurance on the mortgages he originates, perhaps to satisfy secondary market requirements, may not accept an attorney's opinion of title. Similarly, a lender who is willing to use an attorney's opinion may specify the individual attorney from whom he will accept an opinion. A consumer who wants a policy of title insurance may have to arrange--and pay--for that service separately. Thus, while different forms of title assurance exist, they are not usually available for a given mortgage transaction.

Though title insurance can be viewed from the consumer's viewpoint as being a fairly homogeneous product, there is an important exception. The services of an attorney or other party involving assisting in writing the

---

<sup>1</sup>This would include a normal or market return on invested capital, or profit.

<sup>2</sup>In many areas, only one form of title assurance is available, unless a determined consumer undertakes extraordinary efforts to obtain the form which is not used in that area.

negotiation, selecting other settlement providers, or providing other non-procedural services may not be homogeneous. Real or perceived differences in quality may be an important factor in the choice of this provider.

### Numerous Independent Buyers and Sellers

Pure competition suggests that no single buyer or seller is large enough to influence market prices. This situation occurs only when numerous buyers and sellers are operating independently of one another. Many local markets may not meet this criterion.

Market shares and concentration ratios are useful in profiling an industry and in identifying the firms that may be in a position to dominate market pricing and product quality. Such firms can reduce the forces of competition. The data may also explain the pricing behavior actually observed in the market. These statistics alone, however, cannot definitively reveal anything more than the potential for domination by an individual firm or small group of firms.

The market for title assurance cannot easily be defined in terms of traditional market concentration analysis. Exhibit XII-1 (also presented in Chapter V) demonstrates clearly the difference between the title insurance underwriter market and the local markets in which consumers operate. Title insurance underwriters may usefully be considered in terms of a wholesale industry. The retailers are branches and agencies, attorneys, and underwritten title companies.<sup>1</sup> The buyer's contact is with the retailer. (In some cases, the retailer is, in fact, a branch office of a national firm).

High concentration at the wholesale level may lead to formal or informal attempts to fix prices, which could translate into higher prices for the consumer. In the case of title insurance, such informal understandings may be reflected in the common rate schedule used (for the risk or insurance premium only) in many places throughout the country.<sup>2</sup>

Appendix F lists the 15 largest title insurance-underwriting companies operating in the United States. Many individual title insurance underwriters are owned by a common parent corporation and therefore cannot be considered separate, competing entities. For this reason, market shares are calculated on the dollar value of direct title insurance premiums written by all of the companies under one corporate ownership. The position of these underwriting firms within the sample states is presented in Appendix G. This information is summarized in Exhibits XII-2 and XII-3.

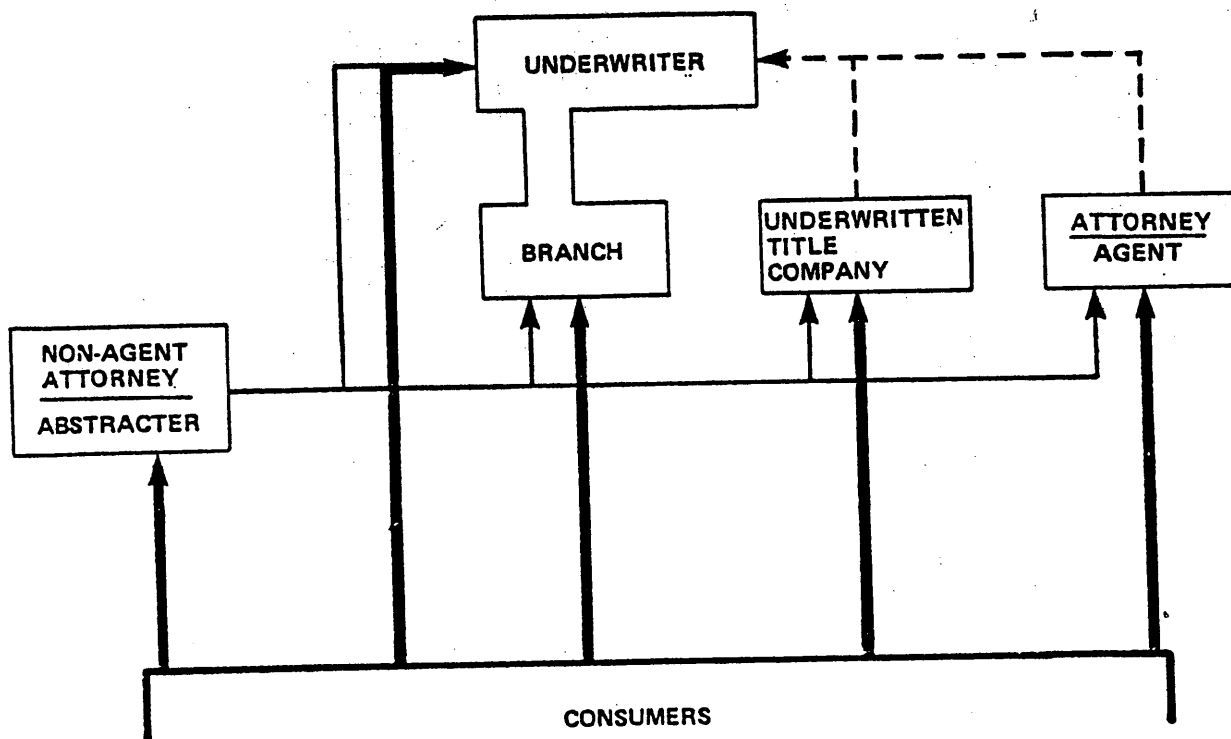
---

<sup>1</sup>In this report, as elsewhere, the term "title insurance company" will refer to an underwriter. The term "title company" will refer to a firm which sells title insurance but does not accept risk.

<sup>2</sup>The National Title Insurance rate schedule has developed historically. It is used in many places but by no means in all. The cost for title insurance alone, both mortgage and owners, would be \$210.00 on a \$60,000 house.

**EXHIBIT XII-1**

**ALTERNATIVE PATHS AND FLOWS  
OF PAYMENTS FOR TITLE INSURANCE**



**—————→** Total funds paid to the listed provider, including premium paid for title insurance policy, and charge, if any, for title search.

**—————→** Premiums paid to the selected title insurance provider by non-agent attorneys and abstracters that are not affiliated with an underwriter.

SOURCE: PMM&CO., 1980

**- - - - -→** Premiums, less commissions, paid to underwriter by the Underwritten Title Company or attorney/agent.

**EXHIBIT XII-2****CONCENTRATION INFORMATION ON THE TEN  
RELEVANT SITES**

STATE	Concentration Ratios			TOTAL STATE DIRECT PREMIUMS WRITTEN (\$)	TOTAL NO. OF FIRMS
	LARGEST FIRMS MARKET SHARES (%)	FOUR- FIRM (%)	EIGHT- FIRM (%)		
CA	30.98	81.22	97.24	241,514,977	13
CO	50.24	74.46	92.64	24,880,347	12
DC	31.06	78.76	88.61	3,749,230	13
MD	22.85	59.68	88.29	16,049,502	15
VA	83.63	71.53	90.79	17,859,111	17
FL	14.64	50.21	76.30	49,062,271	25
MA	33.28	87.20	98.99	2,075,601	10
MO	23.03	68.62	97.94	14,234,228	10
TX	22.50	64.60	90.76	146,171,062	13
WA	32.76	93.71	100.00	50,854,607	6
Averages:	29.81	74.85	92.79	66,567,790	12.75

Source: Compiled by Peat, Marwick, Mitchell & Co. from annual statutory statements (Form-9's) filed by Title Insurance Companies with State Insurance Commissioners.

WA  
33%  
30%  
7%  
24%  
34%

The four-firm concentration ratio, both nationally and in each of the states of this study, is over 50 percent. This ratio is often used to indicate the presence of oligopoly in an industry when the leading four firms control 40 percent or more of the total market.<sup>1</sup> Markets characterized by oligopoly sometimes exhibit some form of active collusion or informal understanding regarding prices; overt price cutting is generally not used as a method of competition.

Traditional concentration ratios of title insurance underwriters do not present the reality of the market, however, if underwriters do not sell directly to consumers. In many markets, insurance is sold through attorney-agents or underwritten title companies. From the consumer's perspective, the result is that, the title insurance provider is the attorney-agent, independent title company, or other party from whom he directly purchases title insurance.

In the local or retail market for title insurance, the number of providers varies by site. Where attorneys are used extensively for conveyancing, there are a large number of providers; however, the choice of a particular provider may be limited by the lending institution. In markets where title insurance branches sell insurance directly, the number of providers is more limited. An extreme example is Seattle, which has only six title insurance providers.

Clearly, the concept of oligopoly must be used very carefully. At the underwriter level, there are only a few firms supplying a large share of the market. At the local level, however, the structure of the market may vary considerably and each should be individually examined.

### Barriers to Entry

Pure competition assumes that participants are free to enter and exit the market. This implies that if profits are high in an industry, new producers will open operations, the supply of goods or services will be increased, and the equilibrium price in the market will fall. The concept of barriers to entry in the title insurance industry may be applied both at the underwriter level and the primary provider level.

For insurance underwriters, most states have required (capital) loss reserves. These requirements, which are set for all lines of insurance, generally reflect the insurance commission's stated purpose: to guarantee that the firms are solvent and that funds are available if losses are unexpectedly high in some time periods. Nevertheless, there are over 25 title insurance underwriter groups in the United States, ranging in size from \$199 million to less than \$100 thousand in premiums collected during 1978. Entry into this field certainly requires some capital but does not seem to be more restricted

---

<sup>1</sup>F.M.Scherer, Industrial Market Structure and Economic Performance, (Chicago: Rand McNally College Publishing Company, 1970).

# EXHIBIT XII-3

## DISTRIBUTION OF STATE HIGH-SHARE FIRMS: MKT. SHARE RANK/MKT. SHARE

Firm	Home State	CA	CO	DC	MD	VA	FL	MA	MO	TX	WA
TI & Trust Co.		1 30%	3 9%		4 11%	2 15%		3 19%	3 17%	4 11%	1 33%
SAFECO TIC (LA)		2 26%									2 30%
First American TIC		13 13%									4 7%
Transamerica TIC (S.F., CA)		4 10%	1 50%								3 24%
Chicago TIC (Chicago, Ill.)			2 9%	3 14%		4 11%	1 15%	2 20%	1 23%		
Lawyers TG Fund							3 13%				
Fidelity National			4 7%								
District-Realty (DC)				1 31%	2 14%						
Commonwealth Land (PA)				2 25%	3 13%	3 12%					
Lawyers TIC (Rich., VA)				4 9%		1 33%	2 14%	1 38%			
American (Miami, FL)							4 9%	4 16%			
St. Paul TIC (St. Paul, MN)									2 17%		
Stewart TGC (Houston, TX)										1 23%	
TIC Of MN. (Minn., MN.)									4 12%	2 18%	
US LIFE TIC (Dallas, TX)										3 13%	
Title Guaranty Co. of Baltimore					1 23%						
4 Firm Concentration Ratio		80%	74%	79%			50%	88%	69%	65%	94%

SOURCE: Compiled by Peat, Marwick, Mitchell & Co. from annual statutory statement (Form-9's )  
filled by Title Insurance Companies with State Insurance Commissioners.



than other lines of insurance. The more relevant barriers to entry are those at the primary provider or local level.

One type of local barrier is presented by unauthorized practice of law regulations, as discussed in Chapter V. Where these rules exist, title companies, realtors and lenders are restrained from performing certain functions, and prices might thus be higher than if the supply of providers were not restricted. (This is examined later in this chapter.) Another barrier to entry is the entrenched referral patterns which prohibit new firms from gaining access to customers. The patterns in many cases can only be broken if referrers are offered better terms by the title assurance providers.

Another type of barrier to entry is the requirement in some states, including Texas and Washington, that title companies develop and maintain a title plant. Due in part to this requirement, there are only six title companies in Seattle. For an underwriter to enter the Seattle market and provide searches as well as insurance, it must either buy an existing plant or create one, either of which is extremely costly. Abstracters and attorneys who provide title assurance in Washington State outside of Seattle are not subject to the title plant requirement. The Texas requirement is less restrictive. Title plants can be shared and data collection may be informal. Thus, the number of title companies in that state is 13.

While these barriers to entry may hamper competition in some local areas, it is doubtful that in most localities entry to the title insurance industry has been significantly restricted by artificial barriers. While regulations differ by state and by area, for the most part the basic requirements are not burdensome.

### Well-Informed Consumers

One of the more crucial assumptions of perfect competition is that both buyers and sellers are well informed about the product and market conditions. This assumption does not hold with regard to title assurance or conveyancing services. Chapter VIII presented a thorough discussion of the lack of consumer knowledge of settlement services. In this section therefore, we will briefly point out that title assurance is purchased only infrequently, it seems complex to the layman, and most consumers do not take the time and effort to become knowledgeable about either products, prices, providers, or title insurance markets.

The PMM&Co. survey indicated that only 11 percent of the home buyers interviewed had spoken with more than one title insurance company. Of the 21 percent who hired an attorney, only 18 percent talked with more than one.<sup>1</sup> These responses suggest that most consumers do not make the effort to shop for lower prices.<sup>2</sup>

---

<sup>1</sup>In the few areas where there is a choice of going through an attorney-agent or branch, it was not clear whether consumers compared the two. This is not usually an option.

<sup>2</sup>These figures resulted from the PMM personal surveys. The telephone survey results were quite close to the personal survey.

One explanation commonly given for the lack of shopping is that consumers believe prices and services are all uniform. However, of the consumers who did shop for these services, 73 percent thought it worthwhile to shop for title insurance companies, and 81 percent to shop for attorneys. Apparently, these buyers felt that they were able to find better prices and services through comparative shopping.

Nevertheless, most consumers that we interviewed did not shop. Many relied on recommendations from real estate agents and lenders. This is the primary characteristic of the market condition known as reverse competition. (A rigorous economic definition of reverse competition was presented in Chapter VIII.) Even if all other prerequisites for pure competition had been met, pure competition would not exist if the use of intermediaries led to reverse competition.

### Summary

The four criteria for perfect competition appear to be partially satisfied in the title assurance industry.

From the consumer's perspective, the title assurance product is homogenous. Barriers to entry, while variable by state, do not appear to significantly deter title insurance underwriters from entering the industry. However, in many states and localities at the retail or direct consumer provider level, artificial barriers do exist which restrict entry, sometimes from a whole class of providers. There is ample evidence that buyers are not well informed about prices, providers, and market conditions. Reliance on brokers, lenders and attorneys has led to the situation known as reverse competition (by which competition is for referrals and not customers).

### WORKABLE COMPETITION

Pure or perfect competition is an ideal not likely to be achieved in any settlement service market, nor indeed in most other product markets. However, it is critical when evaluating market performance to seek to determine if active price competition or what may be called "workable competition" exists. Where workable competition prevails, suppliers of services would be forced by the pressures of a price competitive market to provide their product or service at a price which is close to the lowest possible cost of production.<sup>1</sup> As discussed in Chapter VII, the criteria for workable competition cannot be precisely defined, but they include some degree of satisfying the four conditions for pure competition, plus evidence of competitive pricing among providers and other indications that services are being provided efficiently and at reasonable cost.

---

<sup>1</sup>This would include a market rate of return on investment or profit.

## Pricing of Title Assurance and Conveyancing Services

The price that a consumer pays for title assurance and conveyancing services can vary substantially from one location to another, and often among providers in the same locale. Variation often occurs in charges for title search, other title-related services, and conveyancing services rather than in the title insurance or risk premium itself. This section presents data from two sources on prices within the eight SMSAs selected for this study. The principal data source is Uniform Settlement Forms (HUD-1s). In this analysis, data from transactions with a sales price between \$55,000 and \$65,000 are presented. A second source is a set of estimated prices which PMM&Co. developed from provider interviews for the cost of the same services on a \$60,000 house in each site.

Because title assurance charges are based on house selling price, an average of all available transactions would have reflected cost of housing in an area rather than the cost of services. It was therefore necessary to choose a narrow band of home sales prices so that a meaningful comparison could be made across sites. The \$60,000 sales price chosen was near the average for the eight SMSAs. When analyzing the HUD-1 data, an appropriate range of \$60,000 plus or minus \$5,000 was used in order to obtain enough observations for meaningful descriptive statistics.

The data represent the total of all title and conveyancing charges. In addition, two breakdowns are also presented; (1) the total of all fees specifically identified for title assurance, including search, examination and insurance; and (2) the total of all fees for conveyancing services, which include the charges for conducting settlement, escrow, document preparation, and attorney's fees. We tend to focus on the total of all title and conveyancing charges because some providers do not explicitly charge for conveyancing, while others that do, may list the total charges under one category or the other.

### HUD-1 Pricing Data

The survey of HUD-1 forms, which has been described in considerable detail in Chapter I, is the best source of information on charges actually paid by consumers for title and conveyancing services. The HUD-1 pricing data collected for the period late 1978 and early 1979 for each of the selected sample SMSAs is presented in Exhibit XII-4.

The mean charges on the HUD-1 data do not accurately reflect what a consumer would expect to pay for these services in a given area. The data have some unique characteristics:

- The HUD-1 pricing data include the amounts paid for special or unusual legal services. As a result, they may be biased upwards as an estimation of the price of a routine or typical transaction.

# EXHIBIT XII-4

## HUD-1 PRICING DATA – ALL SITES TITLE ASSURANCE AND CONVEYANCING (1100 SERIES)

For Transactions With Contract Sales Price Between \$55,000 and \$65,000

SMSA	BOSTON	DENVER	WASHINGTON, D.C.	JACKSONVILLE
Average Sales Price w/in Sample	(\$59,620.00)	(\$59,935.68)	(\$59,025.44)	(\$59,284.14)
MEANS:				
Title Assurance (1)	\$101.14	\$214.07	\$266.66	\$302.33
Conveyancing (2)	<u>373.16</u>	<u>14.59</u>	<u>217.93</u>	<u>75.34</u>
TOTAL	<u>\$474.30</u>	<u>\$228.66</u>	<u>\$484.59</u>	<u>\$377.67</u>
Standard Deviation	114.71	65.93	108.55	106.79
SMSA	LOS ANGELES	ST. LOUIS	SAN ANTONIO	SEATTLE
Average Sales Price w/in Sample	(\$60,359.95)	(\$59,568.74)	(\$59,690.29)	(\$59,473.26)
MEANS:				
Title Assurance (1)	\$279.05	\$357.74	\$389.95	\$281.91
Conveyancing (2)	<u>279.85</u>	<u>23.92</u>	<u>115.71</u>	<u>110.12</u>
TOTAL	<u>\$558.90</u>	<u>\$381.66</u>	<u>\$505.66</u>	<u>\$392.03</u>
Standard Deviation	213.88	59.21	59.99	173.95

- (1) 'Title Assurance' includes fees identified on HUD-1 lines 1102, 1103 and 1108 as being for title search, title examination, and title insurance.
- (2) 'Conveyancing' includes all other fees listed in the HUD-1 lines series, including settlement, document preparation, and attorneys fees.

SOURCE: 1979 HUD-1 Survey.

The prices reflect the discounts that may be available with reissue rates for title insurance.

A low amount spent for title assurance may actually be a reflection of customary practices within an area to forego an owner's policy, or not to show the additional premium on the HUD-1 settlement sheet.<sup>1</sup>

The data reflect, then, are the average amounts paid for title assurance, given the range of unique situations at each site.

What is important in these data is the wide range of charges consumers paid for approximately the same services on the same price houses. The average price for all services was in Denver, approximately \$230, and the highest was in Los Angeles at \$560. While both sites will be discussed, it should be noted here that both are Western states with little attorney involvement in the title assurance process. The most important difference between the two states is the regulatory structure and the use of "title companies" in Los Angeles.

The differences in charges between other sets of cities is also interesting. For example, both the District of Columbia and St. Louis have only limited attorney involvement. Title insurance regulation is minimal and does not have rate regulation in either area. Yet D.C. charges are almost 25 percent higher than those in St. Louis. Further comparisons will be made after the completion of the estimated prices and the individual site discussions. However, the HUD-1 data clearly show that home owners in this survey paid widely varying amounts for similar services in different areas.

The prices consumers pay can also vary within sites. Exhibit XII-5 indicates that the ratio of the standard deviation to the mean of the observations varies widely among sites. Bar charts of the distributions of the observations are presented with the discussion of the individual sites. Exhibit XII-5 shows that charges for title and conveyancing services are most dispersed in Los Angeles and Seattle, and least dispersed in St. Louis and San Antonio.

Views with providers and secondary sources indicated that the HUD-1 form currently shows only the title insurance premium for a lender's policy; the additional cost for an owner's policy is often omitted from the settlement, since the provider may not know until closing whether an owner's policy will be purchased. If the owner's policy is desired, the purchaser pays the additional amount with a personal check and the amount is not reported on the HUD-1 form. Depending on the size of the loan, this amount may be substan-

**EXHIBIT XII-5**  
**RATIO OF STANDARD DEVIATION TO MEAN**

<b>SITE</b>	<b>STD DEV/MEAN</b>
<b>Boston</b>	<b>24%</b>
<b>Denver</b>	<b>28</b>
<b>District of Columbia</b>	<b>22</b>
<b>Jacksonville</b>	<b>28</b>
<b>Los Angeles</b>	<b>38</b>
<b>St. Louis</b>	<b>15</b>
<b>Seattle</b>	<b>44</b>
<b>San Antonio</b>	<b>12</b>

SOURCE: PMM&CO. Compilation from 1979 HUD-1 Survey

### Estimated Pricing Data

In order to gain a thorough understanding of title and conveyancing markets in each SMSA, we compiled a second source of data. Estimates of title insurance and conveyancing services in each of the selected sample sites were developed from title assurance provider information. The estimated pricing data are presented in Exhibit XII-6.

These data were compiled from a variety of sources and structured to be consistent with data on the HUD-1; sources included:

- . individual providers at the local level, and title insurance underwriters on the national level; and
- . insurance commissions, bar associations and trade organizations.

The surveys and interviews provided us with reasonably detailed estimates of the prices for title and settlement services in each area. The estimates were calculated using some of the published price lists that were available, but also relying on quotations from industry sources as well as subjective evaluations of "typical" or "customary" charges.

In compiling estimates, we sought to obtain prices for complete title assurance protection for both the lender and the owner on a \$60,000 house with a \$50,000 mortgage; the price applied to the type of title assurance customarily used in that area. Prices were also obtained for all other customary title and conveyancing services. Providers were asked for usual prices, assuming that there were no abnormal or complicating factors involved in the transaction. These estimates were very carefully prepared, but they do not represent a full and complete accounting of the amounts actually paid by consumers. However, they do represent what a typical or average set of title insurance services would cost in each of the eight market areas. These data, which appear in Exhibit XII-7, should be used in conjunction with the HUD-1 cost estimates as well as with the information from interviews with experts and industry sources to analyze the pricing and market performance in the individual SMSAs.

Because practices, regulations and laws vary from one state to another, each site will be discussed individually to explain the level of prices appearing in Exhibits XII-4 and XII-6. However, it is evident that the relative price structures noted in the HUD-1 data remain the same. Denver is the lowest cost area and Los Angeles is the highest. It is also evident that these estimates are not significantly different from the HUD-1 averages, except in two cases, Jacksonville, Florida and Seattle, Washington. Since empirical data, such as the HUD-1's is affected by many sources of variation and error the relative closeness of the estimates and averages is, statistically speaking, a good indicator.

### Individual Sites

#### Boston

The Boston title assurance and conveyancing market is unique among the SMSAs which were studied because title insurance is generally not used. The

**EXHIBIT XII-6**  
**ESTIMATED PRICING DATA – ALL SITES**  
**TITLE ASSURANCE & CONVEYANCING**

For a \$60,000 House With a \$50,000 Loan

SMSA	BOSTON	DENVER	WASHINGTON, D.C.		
			VIRGINIA	MARYLAND	DISTRICT OF COLUMBIA
Title Assurance (1)	\$ N.A. (3)	\$261.00	\$215.00	\$212.50	\$220.00
Conveyancing (2)	N.A. (3)	10.00	375.00	300.00	225.00
TOTAL	<u>\$500.00</u>	<u>\$271.00</u>	<u>\$590.00</u>	<u>\$512.00</u>	<u>\$445.00</u>
SMSA	JACKSONVILLE	LOS ANGELES	ST. LOUIS	SAN ANTONIO	SEATTLE
Title Assurance (1)	\$437.50	\$348.00	\$375.00	\$391.00	\$364.00
Conveyancing (2)	125.00	294.00	25.00	84.00	126.50
TOTAL	<u>\$562.50</u>	<u>\$642.00</u>	<u>\$400.00</u>	<u>\$475.00</u>	<u>\$490.50</u>

- (1) 'Title Assurance' includes all fees specifically quoted as being for title search, title examination, opinion of title and/or title insurance.
- (2) 'Conveyancing' includes all other fees customarily paid for conveyancing services, including settlement, escrow, document preparation and attorneys fees.
- (3) This subtotal breakdown is rarely defined in Boston, where attorneys generally provide all such services, without title insurance.

SOURCE: PMM&CO., 1980.



**EXHIBIT XII-7****TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1)  
FOR BOSTON, MASSACHUSETTS**

	HUD-1 DATA	ESTIMATED PRICES	INTERVIEWS OF LOCAL ATTORNEYS (PMM&CO. SURVEY)
Title Assurance Fees	\$101.14 (3)	\$ N.A. (2)	\$ N.A. (2)
Conveyancing Fees	<u>373.16 (3)</u>	<u>N.A. (2)</u>	<u>N.A. (2)</u>
Total Title Charges	<u>\$474.30</u>	<u>\$500.00</u>	<u>\$497.31</u>
Standard Deviation			192.74

- (1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.
- (2) A breakdown of total title charges into title assurance and conveyancing subtotals is generally not available in Boston. Since attorneys provide all services, any breakdown would be strictly arbitrary.
- (3) The breakdown of HUD-1 pricing data only reflects those fees which have been formally identified for title assurance services on the settlement sheet.

SOURCE: 1979 HUD-1 Survey and PMM&CO. Attorney Survey, 1980.

predominant form of title assurance used is the attorney's opinion of title. When title insurance is purchased, it is purchased in addition to the title opinion. Boston area lending institutions have tended not to require the use of title insurance. They are able to accept the limited coverage of the attorney's title opinions because they generally do not sell their mortgages to secondary mortgage market sources that would require title insurance protection.

In this city, pricing data from the two primary sources can be effectively supplemented by data from interviews which PMM&Co. conducted with local attorneys. In those interviews, attorneys were asked for the average amount of their total fees in the sale of a \$60,000 house. Exhibit XII-7 demonstrates the marked similarity of their responses to the pricing data from the other two sources. It is quite evident that the average price in Boston for title and conveyancing services on a \$60,000 house is approximately \$475 to \$500. Exhibit XII-8 illustrates the distribution of title assurance and conveyancing charges.

There is no real indication that a typical consumer would be able to make an effective or informed choice of attorneys based on any shopping for prices. Attorneys in Boston, as in most areas, do not generally advertise their prices; nor do they typically provide an established price list for their services.<sup>1</sup> The few observations at the high and the low end of the distribution may represent special situations.

Some lenders in the Boston area specify the attorney to be used, and many others limit the number of "approved attorneys." The lender can also require that if a specific attorney is not used, then the papers will have to be "reviewed" by the specified attorney. Since the "review fee" may be high, any savings which could have been obtained through careful shopping will usually be nullified. More than 94 percent of the lenders interviewed in Boston acknowledged the use of such a "review fee" system.

### Denver

The cost of title insurance and conveyancing services in Denver, as reflected in both the estimated and HUD-1 data, is the lowest among the sampled SMSAs. The difference between prices in Denver and in the other SMSAs are substantial. The prices are at least \$150 less than those in any of the seven other sites. Given the magnitude of the difference, we have undertaken special efforts to affirm the accuracy of this pricing data, shown in Exhibit XII-9, and to determine the nature and characteristics of the market in the Denver area.

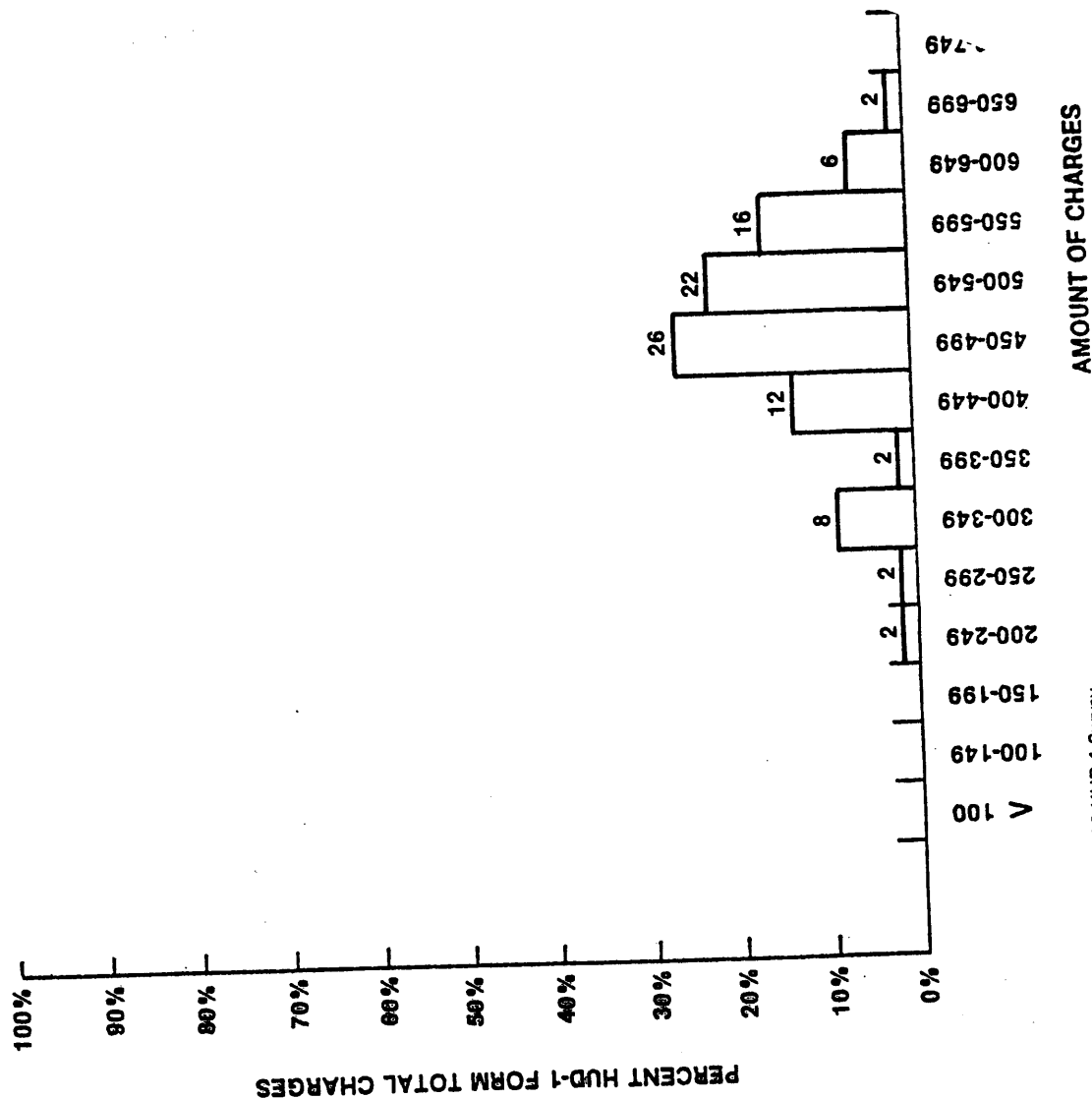
The predominant form of title assurance used in the Denver SMSA is title insurance, as it is in all of the eight sites except Boston. The rates for

---

<sup>1</sup>In the attorney interviews in the eight sites, only one individual out of 91 actually advertised rates for real estate settlement.

# EXHIBIT XII-8

## BOSTON, MASSACHUSETTS DISTRIBUTION OF TOTAL TITLE ASSURANCE AND CONVEYANCING CHARGES



Mean = \$474.30  
No. of Observations = 50  
Std. Dev. = \$114.71

SOURCE: 1979 HUD-1 Survey.

**EXHIBIT XII-9**  
**TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1)**  
**FOR DENVER, COLORADO**

	HUD-1 DATA	ESTIMATED PRICES
Title Assurance Fees	\$214.07 (2)	\$261.00
Conveyancing Fees	14.59 (3)	25.00
Total Title Charges	<u>\$228.66</u>	<u>\$286.00</u>

- (1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.
- (2) Title insurance was purchased as the form of title assurance in 100% of the HUD-1 forms.
- (3) Conveyancing fees were charged on only 40.0% of the HUD-1 forms.  
The average amount charged in those cases was \$36.48.

SOURCE: PMM&CO. and 1979 HUD-1 Survey.

title insurance are recommended by a rating bureau, and those rates are approved by the state insurance commission.<sup>1</sup> It is treated as an "all-inclusive" rate, and a separate fee may not be charged for the title search. The rate for an owners policy for a \$60,000 house is \$241, and the accompanying simultaneous issue fee is \$20. The price of a lenders policy only is \$217 for a \$50,000 loan. The fact that the HUD-1 data show an average expenditure for title services of \$214.07 may be the result of a practice of not showing the additional amount necessary to purchase an owners policy.<sup>2</sup> It may also be a result of the availability and use of reissue rates, which cause the title insurance premium to be reduced by 50 percent if a policy on the same property has been issued within the last two years.

All providers in the real estate industry are permitted to supply conveyancing services in Denver. The Colorado courts have refused to extend unauthorized practice of law prohibitions to restrain lenders, brokers, or title companies from preparing routine real estate documents, conducting settlements, or performing escrow functions. The role of the attorney in the real estate settlement market is generally limited to advice and assistance in contract negotiation and special situations.

The principal significance of the Denver conveyancing market is the comparatively low fees charged for these services. Often nothing is charged for settlement, escrow, and document preparation. Fees for conveyancing services are charged on only 40 percent of the sampled HUD-1 forms. This indicates that in 60 percent of the sampled transactions, the only fee for title or conveyancing services was the premium for title insurance. In those cases in which a conveyancing fee was charged, the amount of the fee averaged only \$36.48. Exhibit XIII10 indicates that Denver has a bimodal distribution, with 47 percent of the observations between 150 and 200 and 29 percent between 250 and 300. The ratio of the standard deviation to the mean in Denver, 28 percent, was not as low as might be expected given the rate structure.

Interviews with the Colorado State Insurance Commissioner, as well as with numerous local providers, indicated that the settlement market in Denver is

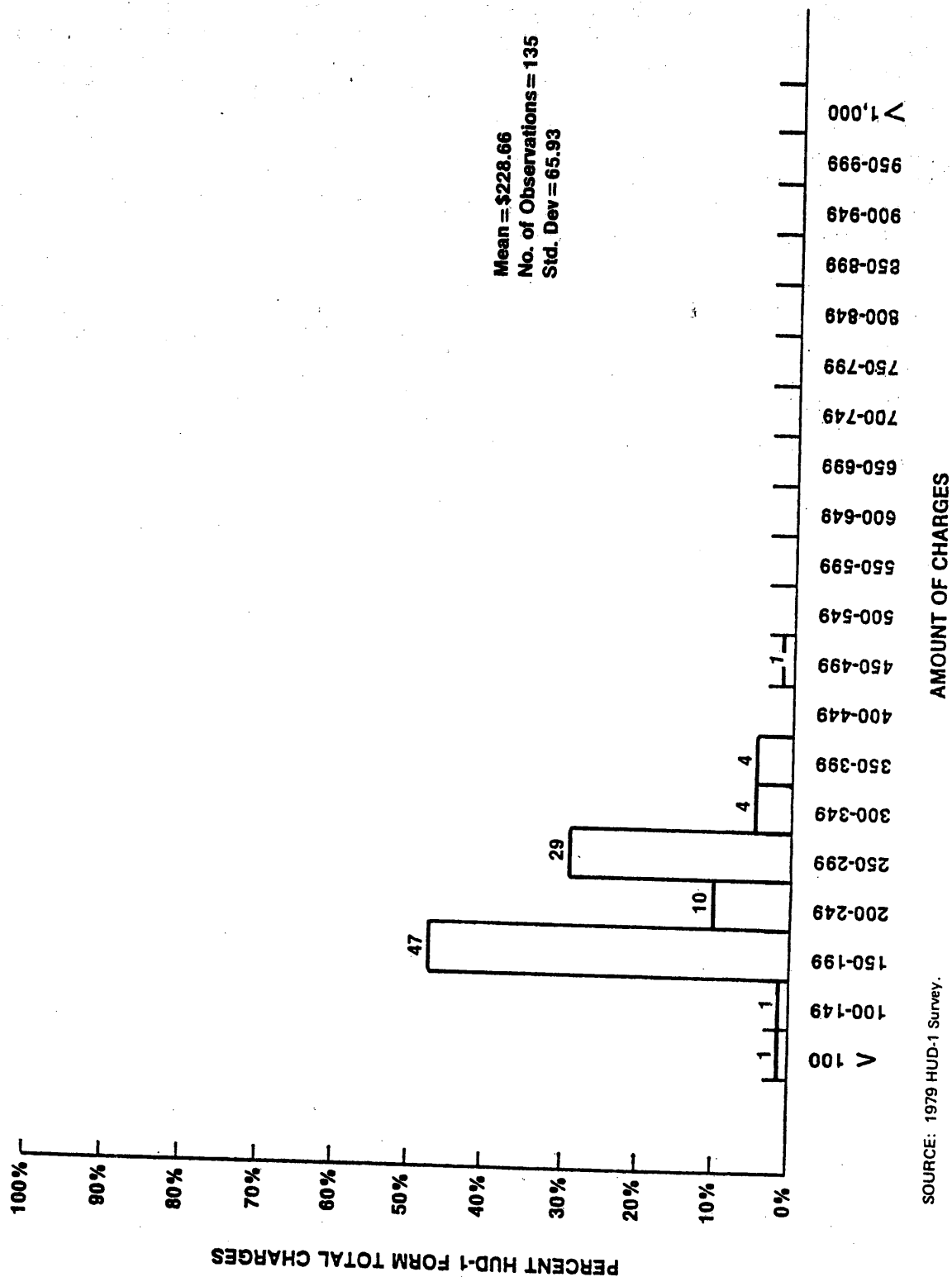
---

<sup>1</sup>This process recently underwent a legal challenge in the Colorado courts. The largest title company had refused to accept a price increase recommended by the rating bureau. The company stated that the increase was unnecessary and did not change its prices. Since this company already had a 50 percent market share, the remainder of the market providers did not proceed with the planned increase.

<sup>2</sup>It should be noted that the average amount shown on the HUD-1 forms as the premium for title insurance was only \$211.65. There was usually an additional charge of \$15.00 listed on 16.3 percent of the settlement sheets as being for "title examination." This raised the average for all title assurance services to \$214.07.

EXHIBIT XII-10

DENVER, COLORADO  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



characterized by a very real rivalry for the primary services offered by lenders, brokers, and title companies. This rivalry appears to have taken the form of supplying conveyancing services at a nominal cost. However, this situation is not the result of either pure competition or open price competition for title assurance services. The rate for title insurance is regulated and remains at a fixed rate despite substantial efforts, both in and out of the courts, to have it raised. On the other hand, the low prices cannot be attributed to the regulatory environment in Denver, which is not unique. Many places have a regulated "all-inclusive" title insurance rate and unregulated prices for conveyancing services. The low prices have been attributed principally to the customary practices in the area.

#### Washington, D.C.

The Washington, D.C., SMSA is divided into three distinct jurisdictions, each with different characteristics. There is considerable difference in the use of attorneys and title companies for the title search and conveyancing functions. Although geographical proximity results in a mixing of local practices in the District of Columbia, the title companies tend to perform most of the mentioned services, while in Maryland and Virginia attorneys are the principal providers. Virginia, in fact, was unique in its UPOL regulation, in prohibiting anyone from conducting a title search unless they are a licensed attorney or are under the direct supervision of a licensed attorney. In Maryland, the practice of a lender's requiring a legal review by his own selected attorney is commonly used to effectively mandate the use of a particular attorney. As a result of this variation in the use of different providers, the prices for the title search and conveyancing services differ widely, both by political jurisdiction and by individual providers.

Exhibit XII-11 presents the pricing data from all of our sources in the Washington, D.C., SMSA. Since the HUD-1 data were limited to the District of Columbia, the estimated pricing data for Virginia and Maryland are particularly important. The prices for the title insurance premiums are basically identical in each of the areas because almost all of the title companies use the so-called "national rate" to calculate the premium.<sup>1</sup> The rate is not regulated, nor has it been officially adopted by any of the regulatory agencies, but it is generally used by all of the providers of title insurance in the Washington, D.C. area. It is not an "all-inclusive" rate, and it is sometimes identified as the so-called "risk premium." There is little indication that reissue rates are used on a regular basis, although they may be available in some circumstances.

---

<sup>1</sup>The "national rate" was described earlier in this chapter. Although the rate is used in many areas, it is not an officially adopted rate. The phrase "national rate," however, is generally used in the industry to identify this very common pricing schedule for risk or indemnity insurance.

# EXHIBIT XII- 11

## TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1) FOR WASHINGTON, D.C.

	ESTIMATED PRICES			HUD-1 DATA
	VIRGINIA	MARYLAND	DISTRICT	DISTRICT
Title Assurance Fees (2)	\$215.00	\$212.50	\$220.00	\$266.66
Conveyancing Fees	375.00 (3)	300.00 (3)	225.00 (4)	217.93 (4)
Total Title Charges	<u>\$590.00</u>	<u>\$512.50</u>	<u>\$445.00</u>	<u>\$484.59</u>

- (1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.
- (2) In almost all cases, the title assurance fees were identified as the fairly standard rate for the title insurance premium.
- (3) In Virginia and Maryland, where attorneys are heavily involved, the attorneys fees were not broken down to identify any title search fee.
- (4) In the District of Columbia, where title companies are a principal provider, the conveyancing fees are usually identified as a 'settlement fee' without being further broken down.

SOURCE: PMM&CO., 1980 and 1979 HUD-1 Survey,



Considerable variation is evident, however, in the prices charged for of the fees other than title insurance. It can be noted, that the fees charged in the District of Columbia are generally lower than in the surrounding areas. In fact, the estimated charges in Virginia are 30 percent higher than in the District. In Maryland, both title insurance companies and attorneys are allowed to provide title assurance and conveyancing services. The estimates presented here are from attorney providers because this process is common. If title insurance companies are used, the estimated cost is approximately \$100 lower.

The distribution presented in Exhibit XII-12 is for the District of Columbia. Our interviews indicated that in the District, the difference in price from title insurance companies for the same package of services ranged from \$38.00 on a \$60,000 house to \$70.00 on a \$125,000 house. Exhibit XII-12 shows the real range to be larger, with approximately 20 percent of all observations over \$600 and 7 percent less than \$300. The ratio of the standard deviation to the mean was 22 percent. Thus, it appears that prices vary not only among political jurisdictions but among companies also.

### Jacksonville

The title insurance and conveyancing market in Jacksonville is representative of many areas of the United States which are experiencing changes in patterns of customary title and conveyancing practices. In many parts of Florida, the principal providers of these services are the attorneys. In other parts of Florida, the title companies have begun to supplant the role of attorneys in comparatively routine functions. Jacksonville is in the midst of such a change.

The Florida State Insurance Commission has established a promulgated rate for title insurance which is a minimum below which a title company's premiums may not fall.<sup>1</sup> The promulgated rate is the so-called "national risk rate" which is used in many areas. The title insurance rates which are actually published and used by title companies in Jacksonville are considerably higher since they include a search fee. The promulgated or national rate for an owners policy for a \$60,000 house is \$205.00, but the rate which is published and quoted by almost every title company in Jacksonville is \$412.50. Additional fees for attorneys would be about \$125.00 according to our interviews.

These estimates differed considerably from the pricing data compiled from the information shown on the HUD-1 forms, as shown in Exhibit XII-13. There can be a number of reasons for this difference. Our interviews suggested that considerable negotiation is possible in Jacksonville for lower rates on most conveyancing and title assurance services. This could explain some of the

---

The rationale for a minimum rather than a maximum rate is that the insurance commission has used the promulgated rate to address its obligation to assure that the title insurance companies will remain solvent.

# EXHIBIT XII-12

## DISTRICT OF COLUMBIA DISTRIBUTION OF TOTAL TITLE ASSURANCE AND CONVEYANCING CHARGES

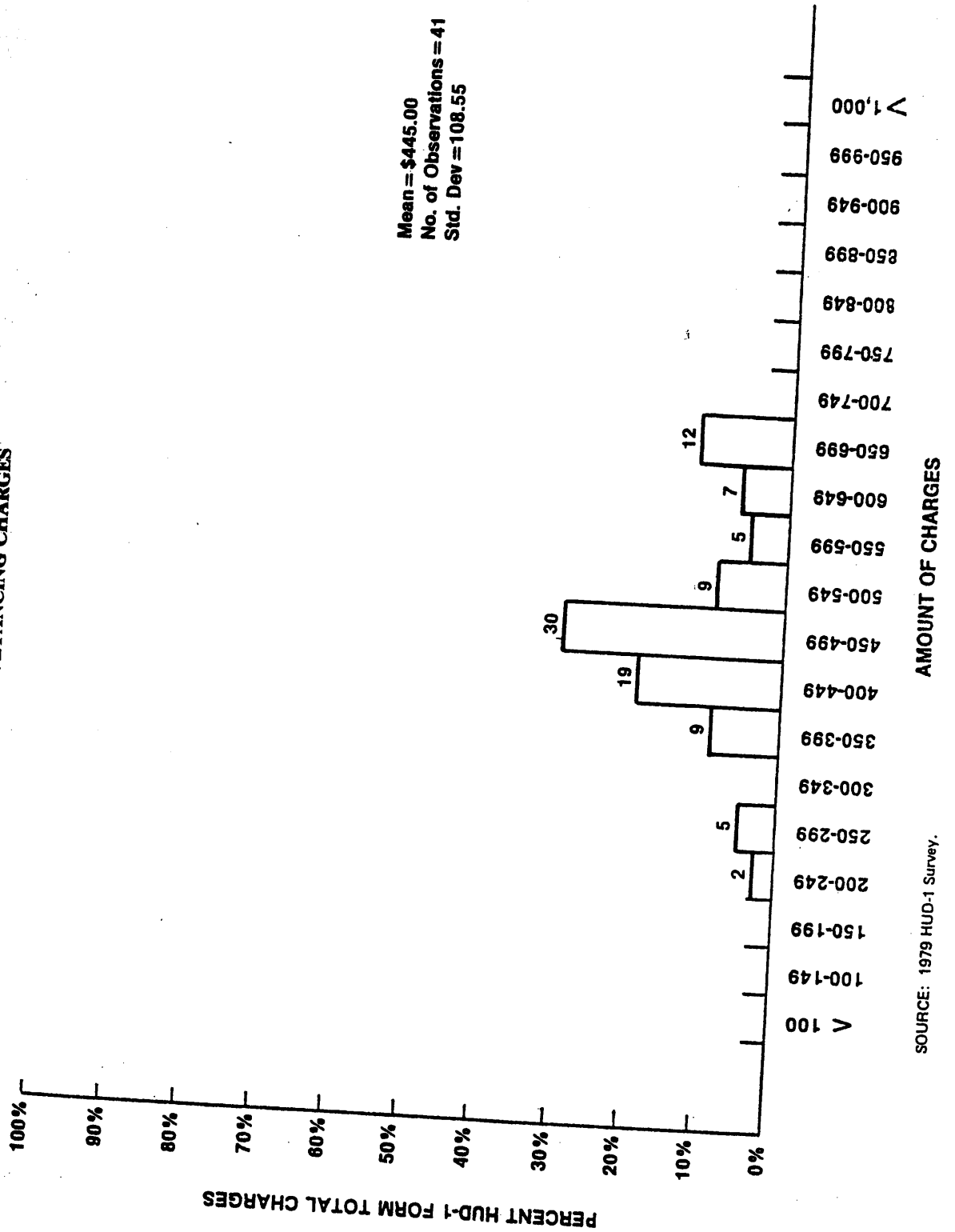


EXHIBIT XII-13

ASSURANCE AND CONVEYANCING PRICING DATA (1 ➤  
FOR JACKSONVILLE, FLORIDA

	HUD-1 DATA	ESTIMATED PRICES
Fee Fees	\$302.33	\$437.50
g Fees	<u>75.34</u>	<u>125.00</u>
le Charges	<u>\$377.67</u>	<u>\$562.50</u>

Criteria for comparison are detailed in Exhibits XII-4 and XII-6.

IM&CO., 1980 and 1979 HUD-1 Survey,

variation. However, the distribution shown in Exhibit XII-14 is not skewed upwards as one would expect, if this hypothesis were true. The distribution is wider, however, than that in places such as Denver, where almost 50 percent of the observations were within a \$50 range.

### Los Angeles

The total cost of title assurance and conveyancing services in the Los Angeles area was the highest among the eight selected sample sites. Title insurance is used almost exclusively as the acceptable form of title assurance, but an unusual feature of the title and conveyancing market in Los Angeles is the use of escrow companies to provide the conveyancing services. While the title companies supply the title searches, examinations, and insurance at rates which are not unusually high, the conveyancing functions are then performed by escrow companies who charge substantial fees. Escrow companies may be independent but often are owned by real estate brokers, lenders, or title companies. The estimated prices in Exhibit XII-15 were obtained entirely from title insurance companies, which perform the entire package of title assurance and conveyancing services.

The provision of conveyancing services by different types of providers probably accounts for the wide disparity of prices in Los Angeles. Exhibit XII-16 shows that prices vary substantially and that there is no central tendency such as exists elsewhere. The standard deviation in Los Angeles was \$214, while the mean was \$558.90.

Another source of variation unique to Los Angeles is the use of a California Land Title Association policy as the standard form of a lenders policy. An additional fee is charged if the bank requires, as they frequently do, lenders title insurance using an American Land Title Association (ALTA) policy. The differences between the policies are apparently sufficient to prompt most secondary mortgage market investors to request the ALTA form.

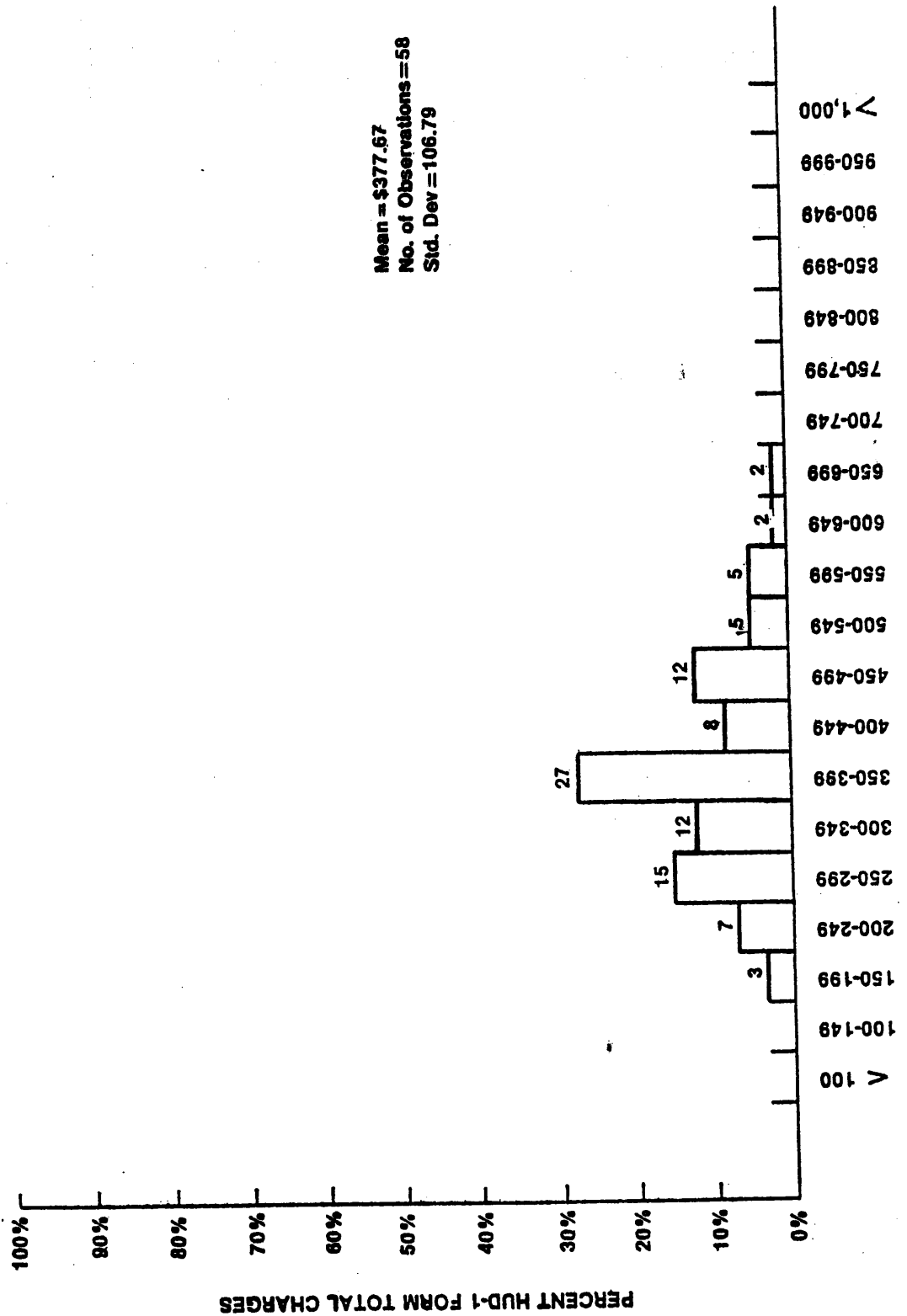
The Los Angeles SMSA is the national model for open and unregulated competition in the markets for title assurance and conveyancing services. There is effectively no regulation of rates, either for title insurance or for any of the other services covered by this chapter.<sup>1</sup> While open competition may not be a cause of high prices, neither has it promoted rate competition and consumer savings.

---

<sup>1</sup>The regulation of title insurance in California does, however, attempt to prohibit undesired practices in considerable detail, even to the extent of legislating the amount a salesman can spend on lunch for a customer.

EXHIBIT XII-14

JACKSONVILLE, FLORIDA  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



AMOUNT OF CHARGES

SOURCE: 1979 HUD-1 Survey.

**EXHIBIT XII-15****TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1)  
FOR LOS ANGELES, CALIFORNIA**

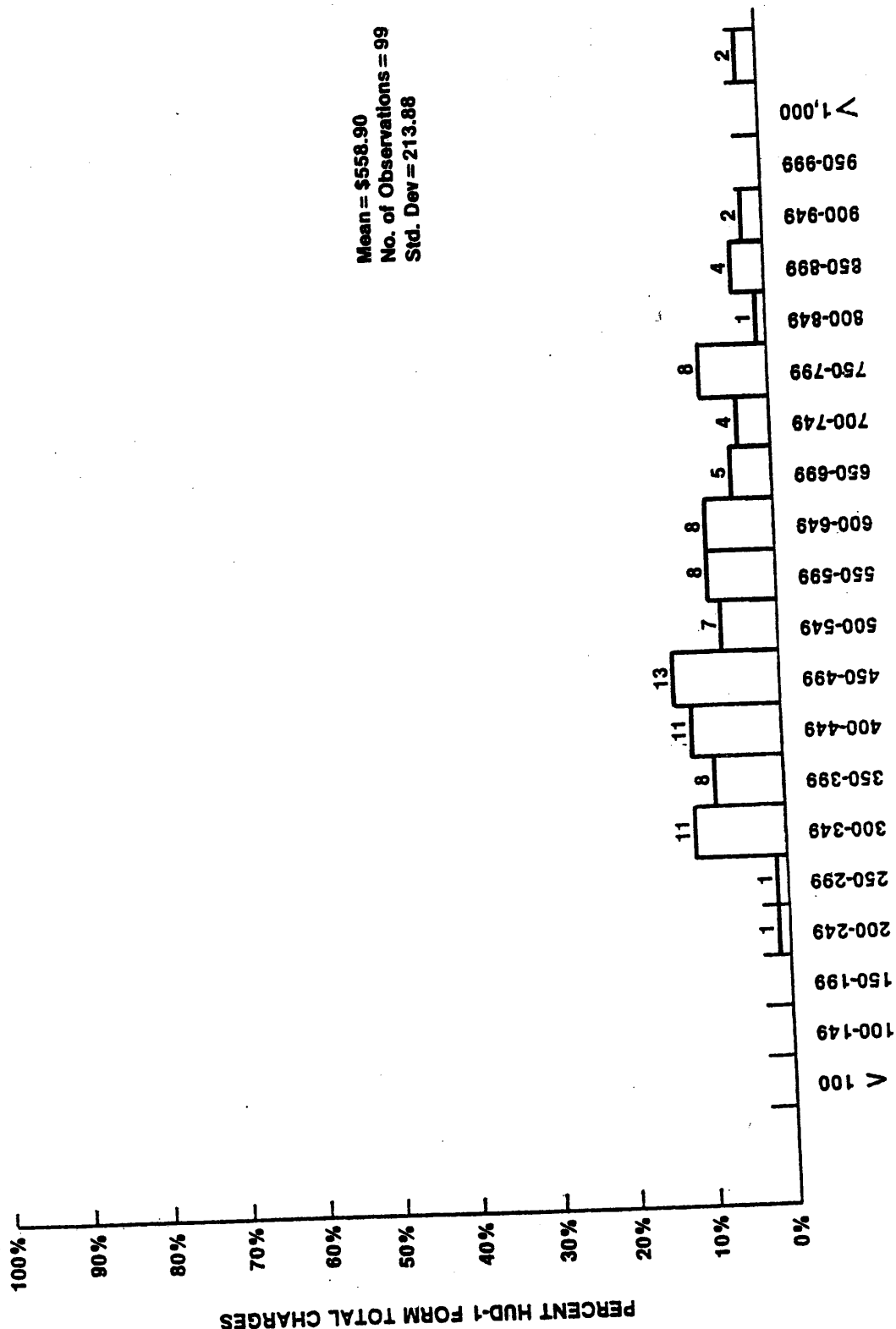
	HUD-1 DATA	ESTIMATED PRICES
Title Assurance Fees	\$279.05	\$348.00
Conveyancing Fees	<u>279.85</u>	<u>294.00</u>
Total Title Charges	<u><u>\$558.90</u></u>	<u><u>\$642.00</u></u>

(1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.

SOURCE: PMM&CO, 1980 and 1979 HUD-1 Survey.

EXHIBIT XII-16

LOS ANGELES, CALIFORNIA  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



Mean = \$558.90  
No. of Observations = 99  
Std. Dev = 213.88

AMOUNT OF CHARGES

SOURCE: 1979 HUD-1 Survey.

## St. Louis

In Missouri, the state insurance commission has the power to assure fair and equitable title insurance rates. However, a court injunction has restrained the collection of any rate data for several years. Interviews with personnel at the insurance commission indicated little concern for the regulation of title insurance. Thus the relatively low rates which are charged are not the result of rate regulation.

There is little attorney involvement in real estate transfers in Missouri, according to our interviews. The title insurance companies usually provide not only title assurance but also conveyancing services. The fees quoted in Exhibit XII-17 are all-inclusive. For this reason, the charges for title assurance may appear high. However, often no extra charges are made for conveyancing.

The uniformity, as well as relatively low levels of rates in St. Louis (see Exhibit XII-18) can only be explained as historical and customary practice. The standard deviation was only 15 percent as large as the mean. This ratio was larger in all other sites except San Antonio. There are no unusual circumstances that we could identify which would lead to this type of pricing structure.

## San Antonio

The prices for title assurance and conveyancing services in San Antonio demonstrate the problems of an all-inclusive regulated rate which is not, in fact, all-inclusive. Title companies provide not only title assurance in San Antonio, but most of the conveyancing services as well, including settlement and escrow functions. However, unauthorized practice of law regulation in Texas requires that attorneys prepare the necessary transfer and loan documents. This proves to be a critical factor since the average amount charged by attorneys in San Antonio, on the surveyed HUD-1 forms, was \$85.24. It is important to note that the role of attorneys in San Antonio in routine title and conveyancing services is strictly limited to the preparation of documents and is protected by the UPOL regulation.

It is also important to note that while settlement is considered to be included in the all-inclusive regulated rate for title insurance, the charge for handling for escrow are not. As a consequence, title companies regularly charge an escrow fee in addition to the premium for title insurance. The average fee identified for escrow was \$28.39. The combination of escrow fees and document preparation fees increased the average total cost for title services by \$113.63 over the regulated rate. As is shown in Exhibit XII-19 and XII-20, consumers pay considerably more than the fee which the insurance commission sets. The additional fees do not appear to vary considerably. The ratio of the standard deviation to the mean was the lowest of any of the sites. Forty percent of the observations were between \$450 and \$500.



**EXHIBIT XII-17****TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1)  
FOR ST. LOUIS, MISSOURI**

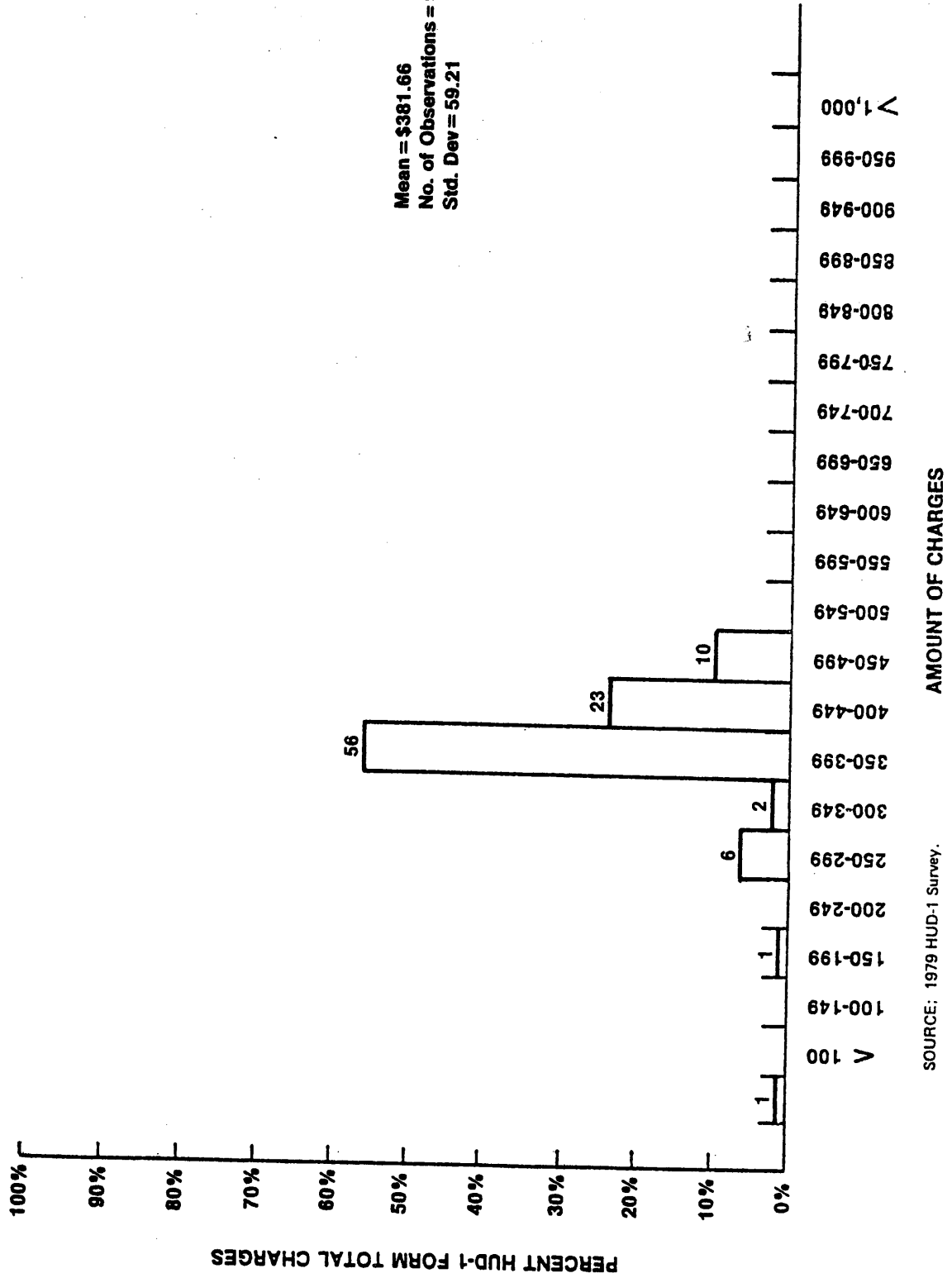
	HUD-1 DATA	ESTIMATED PRICES
Title Assurance Fees	\$357.74 (2)	\$375.00
Conveyancing Fees	<u>23.92 (3)</u>	<u>50.00</u>
Total Title Charges	<u>\$381.66</u>	<u>\$425.00</u>

- (1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.
- (2) Title insurance was purchased as the form of title assurance in 99% of the HUD-1 forms.
- (3) Conveyancing fees were charged on only 52.5% of the HUD-1 forms.  
The average amount charged in those cases was \$45.54.

SOURCE: PMM&CO., 1980 and 1979 HUD-1 Survey.

EXHIBIT XII-18

ST. LOUIS, MISSOURI  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



• EXHIBIT XII-19

**TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1)  
FOR SAN ANTONIO, TEXAS**

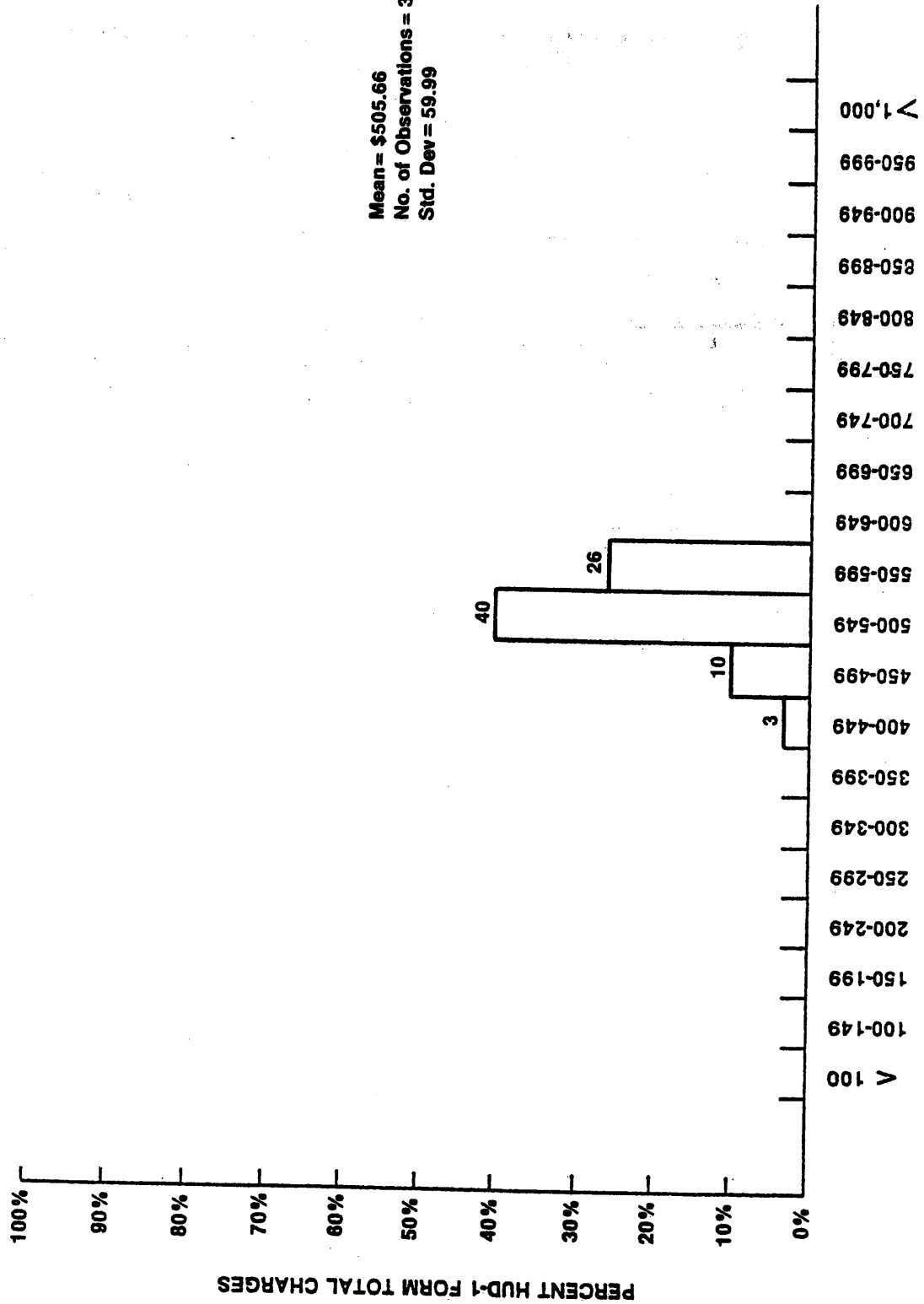
	HUD-1 DATA	ESTIMATED PRICES
Title Assurance Fees	\$389.95	\$391.00
Conveyancing Fees	<u>115.71</u>	<u>84.00</u>
Total Title Charges	<u><u>\$505.66</u></u>	<u><u>\$475.00</u></u>

(1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.

SOURCE: PMM&CO., 1980 and 1979 HUD-1 Survey

EXHIBIT XII— 20

SAN ANTONIO, TEXAS  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



SOURCE: 1979 HUD-1 Survey.

AMOUNT OF CHARGES

The effect of these extra fees is important because the Texas Insurance Commission has taken an especially active role in establishing and regulating rates for title insurance. Of the eight sites, only in Texas does the insurance commission hold annual formal hearings with complete adversarial proceedings to determine and set a single, all-inclusive rate. The HUD-1 data suggest that this established rate is frequently used. Variation in the HUD-1 data for the insurance rate is relatively low and can be explained entirely by the infrequent choice not to purchase owners title insurance. There is no reissue rate available in Texas.

### Seattle

The Seattle market for title and conveyancing services provides a unique situation in which escrow companies are regularly used to supply conveyancing services for a substantial escrow fee while at the same time many lenders regularly provide the same services without charging an additional fee. The result is that some consumers pay fees at the same level as those in Los Angeles, while others pay an amount not substantially higher than in Denver. Exhibits XII-21 and XII-22 demonstrate this very unusual situation.

The rates for title insurance in Seattle are fairly standardized. An owners policy for a \$60,000 house is usually \$264.00, plus sales tax, and the ALTA lenders policy generally costs an additional \$80.00 to \$90.00, plus tax. In practice, the amount actually paid for title insurance, subject to reissue rate discounts, etc., was \$281.91. The HUD-1 data show that in almost half of the transactions, 57.1 percent, the provider of settlement or escrow services did not charge any additional fees for those services. The bar chart in Exhibit XII-22 shows wide dispersion in charges. In 20 percent of the cases, charges were less than \$250; in 15 percent they were \$600 or more. The standard deviation is 44 percent as large as the mean. This is the largest relative deviation in any of the eight sites.

Interviews with local providers indicated that many lenders do, in fact, supply these services without additional charge. In the other half of the transactions, however, our interviews indicate that the escrow companies performed these functions. The average price quoted by escrow companies in our surveys and interviews and listed on published price lists was \$253.00. Clearly, if a home buyer is knowledgeable, he will shop for a lender who provides conveyancing services. The continued existence of escrow companies and their additional fees demonstrate that many home owners are poorly informed and do not engage in such shopping.

Another unique characteristic of the provision of settlement services pricing in Seattle is the title insurance regulation requiring any title insurance company conducting searches in Seattle to maintain a full and complete title plant. This regulation has acted as a severe barrier to entry, and title insurance in Seattle is provided by only six title companies. That is the smallest number in the eight selected sample sites. The effect of this limited number of title insurance providers is not clear, especially in light of the

# EXHIBIT XII-21

## TITLE ASSURANCE AND CONVEYANCING PRICING DATA (1) FOR SEATTLE, WASHINGTON

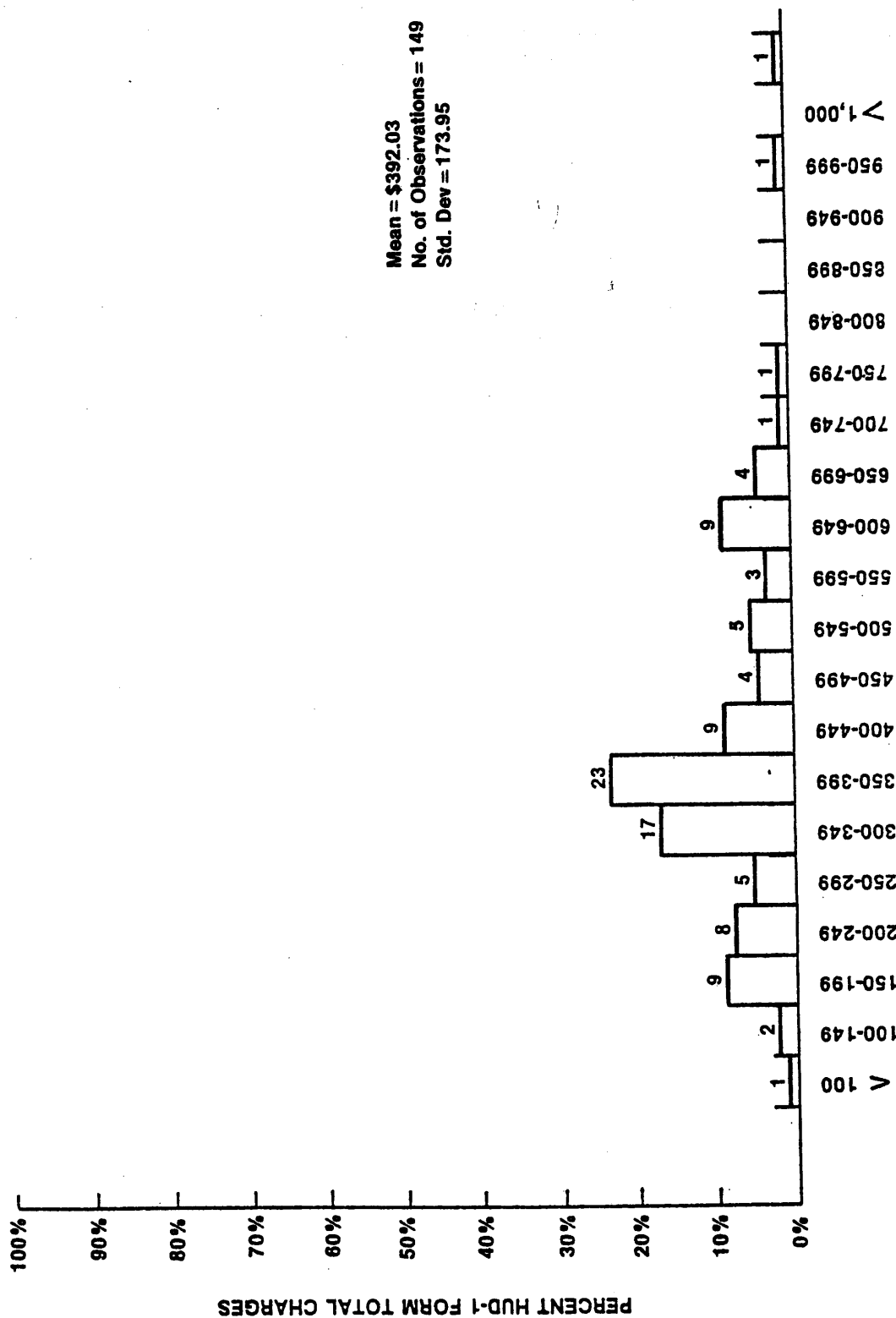
	HUD-1 DATA	ESTIMATED PRICES
Title Assurance Fees <sup>1,2</sup>	\$289.91	\$364.00
Conveyancing Fees <sup>3</sup>	<u>110.12</u>	<u>253.00</u>
Total Title Charges	<u>\$392.03</u>	<u>\$617.00</u>
Standard Deviation	173.95	

- (1) The criteria for comparison are detailed in Exhibits XII-4 and XII-6.
- (2) Title insurance was purchased as the form of title assurance in 99% of the HUD-1 forms.
- (3) Conveyancing fees were charged on only 48.3% of the HUD-1 forms. The average amount charged in those cases was \$227.90.

SOURCE: PMM&CO., 1980 and 1979 HUD-1 Survey.

EXHIBIT XII—22

SEATTLE, WASHINGTON  
DISTRIBUTION OF TOTAL TITLE ASSURANCE AND  
CONVEYANCING CHARGES



SOURCE: 1979 HUD-1 Survey

unique situation in the conveyancing market. It can be noted, however, that many of the major escrow companies are affiliated with the title companies, just as they are in Los Angeles.

### Summary

Data from the eight sites indicate that numerous regulations and practices make the purchasing and selling of title insurance appear quite different from one area to the next. The same product is being sold, but the characteristics of the market make the process seem quite different.

Clearly prices vary significantly from one area to the next. Even if Los Angeles and Denver are viewed as special cases, other sites vary for no apparent economic reason. Charges by title insurance companies in the D.C. area are 25 percent higher than prices by these same companies in St. Louis. While charges in Boston are apparently low, they do not include title insurance. Consumers are not receiving the same package of services that they do elsewhere, although it is doubtful that in New England expected losses are higher because of attorney opinions either to attorneys or home buyers, than those in other areas. Further, within the Washington, D.C. area, SMSA charges are significantly higher in Virginia than in the District. The previous discussion clearly implies that the practices and price structures in each area are determined more by historical chance or by local institutional factors than by an economic rationale. Clearly the implication of such a finding is that classical economic solutions to noncompetitive market environments will not lower prices. For example, there is little indication that increasing the number of entrants into the market will lower prices. There may be little incentive for market participants to be innovative with pricing.

Further, the type of rate regulation in a given state does not seem to determine the level of prices. The major importance of rate regulation in the pricing of title and conveyancing services lies in its potential to control the undesirable effects of reverse competition on prices. Some of the state insurance commissions have recognized this potential to address the problems of high prices and extraordinary abuses in the title insurance and conveyancing industries. In our sample, Colorado and Texas were the only states to set rates. Other state insurance commissions, such as in Missouri, Florida, Maryland and D.C., have decided that their proper role is simply to assure that the insurance companies remain solvent.

The insurance commissions that have tried to realize the full potential of rate regulation have met with mixed success. There is no indication that each of the efforts to regulate the premiums for title insurance and title search has lowered total charges. Some of these efforts have succeeded, while others have not. The success of rate regulation is substantially affected by the inclusiveness of the rate as well as the levels at which rates are set. The inclusiveness of a regulated rate is most frequently a function of local perceptions and customary practices. This is demonstrated by the examples of Denver and San Antonio.



There is every indication that the Texas commission has assumed a much more active role in the regulatory efforts than has the Colorado commission, and there is no doubt that the title companies in Texas are adhering to the established price schedules. The higher prices in San Antonio may be partially due to the existence of unauthorized practice of law protections for the preparation of documents by attorneys. They are certainly affected by the fact that the set rate in Texas is almost 50 percent higher than it is in Colorado.

It can be noted that regulated, all-inclusive rates have had a substantial impact on reducing the wide variability of prices within a market. With the price of title assurance set, the only sources of variation are the fees for services not included, the availability of a reissue rate, and the consumer's own choice on the purchase of an owners policy. Similarly, rate regulation has substantially decreased the possibility for extraordinary pricing abuses. It is also probable that more effective rate regulation is possible if the commissions had more information available.

A conclusion must be reached, given all the pricing information available to us, that workable competition does not exist in the title insurance industry. If price competition was widespread, the variation in price levels between sites would be very small and insurance commission price regulation would be important to lowering prices. In the next section, the relationship of industry costs to pricing will be discussed. These costs would have to vary significantly by site to justify the large variation in consumer prices. However, at this point, it would appear that prices in each area depend more on the development of the industry within each particular locale, than on price or workable competition.

#### STATE TITLE COSTS

In addition to the HUD-1 data on SMSAs, HUD-1 forms for all fifty states were obtained in this study. HUD-1's from the eight relevant SMSA sites is not included in the state data. Table 1 presents the average total title charges for all fifty states for houses priced between \$45,000 and \$50,000.<sup>1</sup>

It is difficult to draw any conclusions from this data. The number of observations in some of the groups was very small. It can be seen that most title charges fall between \$300 and \$500. This represents almost 60 percent difference without accounting for the highest and lowest state. This confirms our findings in the eight sites of a large variation in title assurance and conveyancing service charges.

---

<sup>1</sup>These data are reproduced from Chapter XIII. The \$45,000-\$50,000 range does not correspond to the range used previously in this chapter.

**TABLE 1**  
**AVERAGE TOTAL TITLE CHARGES BY STATE**  
**FOR HOUSE SALE PRICES OF \$45,000 - \$50,000 (1)**

STATE		AVERAGE TOTAL TITLE CHARGES	STATE		AVERAGE TOTAL TITLE CHARGES
1	Alabama	405	26	Montana	271
2	Alaska	448	27	Nebraska	142
3	Arizona	441	28	Nevada	353
4	Arkansas	236	29	New Hampshire	244
5	California	703	30	New Jersey	699
6	Colorado	221	31	New Mexico	379
7	Connecticut	600	32	New York	507
8	Delaware	609	33	North Carolina	430
9	Florida	762	34	North Dakota	143
10	Georgia	424	35	Ohio	369
11	Hawaii	564	36	Oklahoma	340
12	Idaho	321	37	Oregon	375
13	Illinois	335	38	Pennsylvania	557
14	Indiana	290	39	Rhode Island	413
15	Iowa	210	40	South Carolina	505
16	Kansas	281	41	South Dakota	192
17	Kentucky	181	42	Tennessee	446
18	Louisiana	480	43	Texas	495
19	Maine	247	44	Utah	319
20	Maryland	493	45	Vermont	269
21	Massachusetts	459	46	Virginia	468
22	Michigan	325	47	Washington	413
23	Minnesota	317	48	West Virginia	321
24	Mississippi	550	49	Wisconsin	264
25	Missouri	307	50	Wyoming	210

SOURCE: 1971 HUD-1 Survey.

(1) Total Title charges includes title insurance, title search and examination, and all of the conveyancing services which include settlement and escrow charges and document preparation (all items in the 1100 series on the HUD-1 form)

## PRICES AND COSTS

The pricing data just discussed show that the level of prices consumers pay to receive title assurance and conveyancing services varies substantially among locations and often within the same area. It is important, however, to examine the pricing structures and the general level of prices with respect to the costs incurred by the provider industries. Precise data on all costs are not available. However, this section will discuss the major types of costs that title assurance providers incur and the relationship to prices.

The major question asked at the beginning of the last section was whether workable competition exists. An additional question is whether the market is performing well in terms of providing services to consumers at the lowest possible cost. In a well functioning market for a uniform product or service, prices should approximate the cost of efficiently providing that product or service, including some normal rate of return. If prices vary substantially from one area to the other with no variation in cost, this would indicate poorly functioning markets. For this reason costs must be analyzed to see if they vary extensively over geographic areas.

### Costs of Providing Title Assurance

Costs involved in providing title assurance include losses and search costs. Each of these is discussed below.

#### Losses

The title insurance industry characterizes its role as that of a "risk-avoidance" rather than a "risk-acceptance" insurance industry. This position is explained as resulting from the consumer's need to have the exact condition of title and an assurance that the determination of title was accurate. Thus, the title insurance underwriter arranges for a title search and evaluation which, theoretically, should reveal any defects in title as well as any liens or taxes that affect the property. If any such problems are discovered, the problem must be eliminated or excluded from coverage, or the insurance company will not insure the title. This type of risk avoidance limits the liability of the title insurance company to losses resulting from some off-record risks, as were described in Chapter V, and from their own failure to find all recorded title defects.

The claims data available from title insurance industry sources report that losses are generally below 10 percent of premiums, significantly lower than those that characterize other insurance lines. However, these loss ratios are somewhat ambiguous. The calculations using nation-wide data are according to our interviews, computed from data reported on Form-9s to the insurance commissioners. The term "losses" includes both claims paid and the cost of litigating claims. The ratio is computed using total operating income. This includes fees for risk insurance, searches and examinations, surveys, agency and escrow fees, and miscellaneous. It does not include investment income, but if it did, the ratio would be even lower.

Depending on the business arrangements of a particular firm and area, different premiums will be reported. For example, in states where title insurance companies perform the search and conveyancing services, all of the income from these functions will be reported. In cases where attorney-agents are used, the search and conveyancing fees may not be remitted to the underwriter. The figures reported on the Form-9 are the portion of the risk premium sent to the company. In other cases, the entire risk premium is reported and the commission is deducted as an expense. Because the income reported depends on the primary provider, the loss ratios developed by the industry cannot be defined. To put loss ratios in perspective, however, losses as a percentage of total title assurance charges (including search) can be expected to be in the 5 to 10 percent range; losses as a percentage of title insurance premiums (including agent commissions and retentions, but excluding search fees) can be expected to be in the 5 to 15 percent range; and losses as a percentage of premiums less commissions and retentions can be expected to be in the 10 to 20 percent range. All of these figures are low compared to other lines of insurance.

While no exact data are available on what risks account for the largest portion of losses, our interviews indicated that of the total amount paid for losses the vast majority went for tax and mechanics liens. Cases of a total failure of title, where someone other than the insured owner has a substantial interest in the property, are very rare. Most claims occur on new homes. The mechanics liens are from workers and subcontractors who were not paid by builders.<sup>1</sup> These types of liens are paid only if they are on record at the time of the purchase and overlooked in the title searching process. In some states mechanics liens may be filed up to six months after the work has been completed. These liens are not the responsibility of the title insurers under a standard ALTA owners policy.<sup>2</sup> The findings indicate that basing the price of title assurance on the price of the house is artificial. Certainly, the incremental pricing gradations for title insurance premiums are not related to actuarial claims experience, since the losses paid for taxes and mechanics liens are also generally unrelated to house price.

When discussing losses and loss ratios, it is essential to keep the magnitude of the losses in the proper perspective. Even extraordinarily high losses do not represent a substantial portion of total revenue, no matter how revenue is defined. Losses are simply not a meaningful factor when the costs of producing title assurance services are analyzed.

---

<sup>1</sup>While this occurrence is possible on used homes where additions or other work has been recently completed, it is rare.

<sup>2</sup>They are the responsibility of the insurer under the lenders policy, but only if the amount due is more than the down payment on the house.

## Search Costs

There seems little doubt that the largest cost component of title assurance is the search for problems in the history of the title ownership and present liens against the property. In many areas this function is still labor intensive. Title company and law firm employees search through the public records for the necessary title information. In most urban areas, however, title plants owned by each title company or by a consortium of title companies provide information with significant savings of labor and time. Daily updates of all the information recorded in the public files each day are indexed in the title plant for quick and easy access. Thus the history of a given property can be evaluated on short notice, supposedly at a lower cost than if the public records were searched manually. The most sophisticated plants are computerized. Title plants are used extensively in all of the eight selected sample sites except Boston. In San Antonio and Seattle they are required by law. The computerized plants are common in Los Angeles.

We could not obtain adequate information on title-plant capital and operating costs to determine their relative economic efficiency. The pricing data compiled in this study suggests that sophisticated title information systems do not necessarily translate into price savings for the consumer, as demonstrated by the fact that Los Angeles had the highest cost of any of the sites. However, the high prices were identified not with the search and insurance functions, but with extremely high escrow fees charged even by the title insurance companies. This is a clear indication that purely economic considerations such as production costs do not determine charges in these industries.

One common misconception is that search costs differ substantially from one state to another due to varying real property laws. Although the laws do, in fact, differ quite a bit, the processes and techniques of title searching are quite similar. It is realistic to assume that with the widespread use of the title-plant process, variations in costs and charges should tend to diminish. The pricing data presented earlier in this Chapter do not indicate such a convergence. Thus, there is considerable question as to whether the efficiencies of technology used by title insurers are being reflected in the price to the consumer. In many areas, rate structures have not changed in many years. Revenues have increased as house prices and population mobility increase, but the amount charged for a given house has remained constant. In a competitive industry, cost savings would be expected to be reflected in reduced overall schedules.

Finally, in many areas, especially where all-inclusive rates are not used, the charges for the search, like insurance, are based on the price of the house. While exact cost figures for conducting a search are not available, clearly they are unrelated to the price of the house. The pricing structure used, according to most industry sources, is based on history, local custom and tradition. There is no indication that it is based on costs, economic rationale, or even profitability.

## Distribution of Excess Revenue

The evidence presented in the pricing section suggests that the total cost of title assurance varies from one area to the next by as much as 100 percent. However, since loss ratios and search costs tend not to vary substantially, in at least some areas high prices suggest high profits. If the four conditions for pure competition were all met, these excess profits would be temporary, and as providers compete for customers, both levels of profits and prices would decline. In fact, the dominant economic characteristic of the title insurance industry is reverse competition.

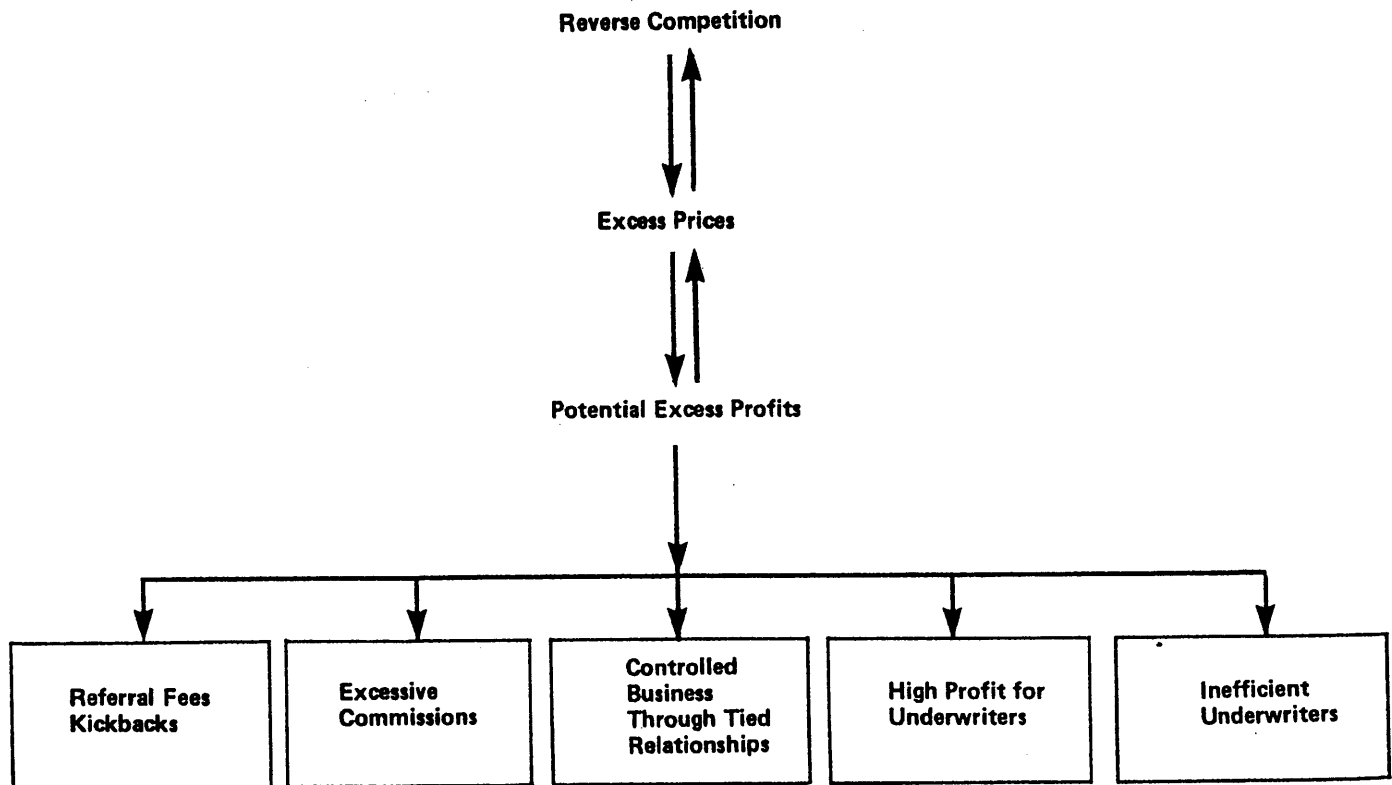
Lack of adequate consumer information and of direct access to lower cost providers has led to reverse competition for title insurance. Exhibit XII-23 describes a simple model which may be useful in describing the various interactions, incentives, and directions of causation that characterize the market for title insurance. Reverse competition essentially is competition for referrals by providers rather than competition for the customers themselves. It both facilitates high prices which in turn results in potential high profits (to the system) and is strengthened by the availability of high prices and high profits. Higher prices are possible under reverse competition because those to whom consumers are referred are less sensitive to prices charged for title assurance services. Conversely, the existence of high prices and high profits strengthens reverse competition by increasing the potential profits that might result from additional referrals.

The potential excess profits shown in Exhibit XII-23 are potential to the system, but may not necessarily accrue to the underwriter. He may have to offer some of those potential excess profits in competing for referrals. They may be offered in the form of referral fees, kickbacks, or free services, all illegal under Section 8 of RESPA, or as high commission rates. In both cases, marketing expenses are likely to be high if they are viewed as helpful in increasing the number of referrals. Alternatively, sources of referral such as lenders and brokers may seek to internalize those excess profits by setting up their own title companies, generating referrals to those companies, and negotiating favorable terms with the title underwriters.

Under these three cases of reverse competition, the underwriter may have been forced by competitive pressures to give up all the excess profits. The underwriters may seek to retain these excess profits by establishing their own direct sales outlets. Underwriters may even engage in price competition, that is, offer title insurance services at prices below those charged by underwritten title companies, lawyer agents, and other retail providers in order to increase market share and retain some (of the now diminished) excess profits.

A final possibility is that high profits and the potential for excess profits will allow inefficient firms to survive and even prosper. Unlike a price competitive market situation where only the most efficient firms can successfully compete at the market price, the higher prices existing under reverse competition may provide inefficient firms with some extra breathing

**EXHIBIT XII-23**  
**RESULTS OF NONCOMPETITION IN THE**  
**TITLE ASSURANCE INDUSTRY**



SOURCE: PMM&CO., 1980.

room. Clearly, under reverse competition the extra profit, increased marketing expenses, and industry inefficiency occur at the cost of higher prices to the consumer.

Clearly for reverse competition to exist, a widespread system of referrals is necessary. Exhibit XII-24 (reproduced from Chapter V) shows the portion of business which title insurance underwriters believe they receive from direct contact and from different sources of referrals. Direct contact plays a small role. The referrers, real estate brokers, lenders, and attorneys are the major sources of business, as expected.

### Kickbacks and Referral Fees

RESPA specifically prohibits payments for referrals in cases where no work is performed. Section 8, which details this prohibition, was motivated by reports of cases in which realtors and developers were being paid by attorneys or title companies for referrals. Developers were in a particularly strong position because they could require, as a condition to purchasing a house, that particular title assurance providers be used. Sellers are now prohibited from requiring the use of a specific title insurer. However, they are permitted to recommend specific companies or individuals.

When respondents were asked whether the incidence of illegal payments (i.e., kickbacks and referral fees) involving title insurance companies had changed since the passage of RESPA, the answers were that the incidence had:

- . increased - 2%
- . decreased - 36%
- . remained the same - 30%
- . don't know - 32%

Of those who believe illegal payments are continuing, 44 percent indicated that some lenders are involved, 96 percent indicated some brokers, and 79.2 percent indicated some builders. While these figures do not prove that kickbacks are still prevalent, many professionals in the field believe that they are. According to HUD personnel, there has been almost no enforcement of Section 8 by the U.S. Department of Justice. Thus the continuation of these practices would not be surprising.

### Commissions/Retentions

Another major marketing tool utilized by underwriters for increasing sales of their own title insurance, or increasing their market share, is the amount of the commission paid to agents. Unlike kickbacks and rebates, these commissions and premium retentions are completely legal since they were specifically exempted from coverage by Section 8 of RESPA if they cover services provided to issue the policy. The rationale for this exemption is based on the concept that those receiving a commission are performing some service other than simply referring the provider.



# EXHIBIT XII-24

## SOURCE OF REFERRALS, AS A PERCENTAGE OF TITLE INSURANCE BUSINESS (1)

	DIRECT CONTACT CUSTOMER (2)	TOTAL REFERRALS				TOTAL
			BROKERS	LENDERS	ATTORNEYS	
Entire Survey	18%	82%	49%	16%	17%	100%
Washington, D.C.	23	77	36	3	38	100
Jacksonville	16	84	18	27	39	100
San Antonio	18	82	62	4	16	100
St. Louis	19	81	62	10	9	100
Denver	10	90	70	15	5	100
Los Angeles	15	85	62	22	1	100
Seattle	22	78	32	41	5	100

- (1) PMM Title Insurer Survey, February 1980. The Boston SMSA was not represented in title insurance interview because of the predominant use of attorney opinions, as explained in the text.
- (2) May be buyer or seller.

The agents receiving such commissions are usually directly involved in the sale of the insurance. They are either attorney-agents or underwritten title companies, rather than a direct branch of the underwriter, and they are responsible for their own costs.<sup>1</sup> Although the amount of the commission varies, their sole compensation from the underwriter is that they receive a percentage of the premiums they generate.

What has been called into question with respect to these practices is the relationship between the commissions retained and the services performed. The issue is intensified when the agent collects compensation for some of these services from other sources, i.e., the consumer. There are two basic patterns for the full compensation structure of agents. In the East, where attorney-agents are more common, the premium for title insurance is often limited to the "national risk premium" schedule. The consumer pays additional fees for the title search and evaluation. There may also be additional charges for document preparation, settlement, and other legal fees. The commission in this case is a percentage of the "risk premium". Our interviews indicate that 50 percent of the risk premium was a common retention rate. Sometimes this figure was as high as 60-65 percent. This type of structure existed for attorneys, underwritten title companies, and agencies.

In cases where the agent is compensated fully for the title search and other services through separate fees, the retained portion of the premium does not appear to represent work performed. The title insurance companies readily agree that the commission rate is used as a marketing tool for obtaining and keeping valuable agents. Based on our interviews, the retention rates of attorney-agents has risen in recent years. However, because the rate structure for the title insurance "risk premium" has been set for so long, the increase in retention percentages probably has not actually increased the insurance rate. Rather, there has been an income transfer from the underwriters to the attorneys. This may be an indication that the risk premium prices are too high. On a \$60,000 house with a \$50,000 mortgage, the risk premium for owners and lenders title insurance using the national rate would be \$210.00. A commission of 50 percent would be \$105.00.

The relatively high commission rates, or retentions, of title insurance agents may indicate that the insurance premiums are too high. The implication can operate profitably on less than half the total premiums paid for the risk component of title insurance.

---

<sup>1</sup>Underwritten title companies may be owned by real estate brokers.

The second type of compensation structure exists in areas where an "all-inclusive" rate is charged for both the search and the insurance. These cases occur more often in the West where attorneys are not heavily involved in title assurance, and where the underwritten companies are the principal providers of title insurance. In many of these areas, commission rates of 80-90 percent are common, such as they are in Colorado, Texas and California. This percentage, however, refers to a premium which represents a combined cost of both the title insurance and the title search. It is also important to note that these higher commissions are often accompanied by a liability on the agent's part for a substantial portion of many claims and losses.

These commissions should not be compared to the 50-65 percent of risk premium common on the East Coast. While this second form of commission structure is designed to cover work performed, total prices may still be high. As previously discussed, total charges in Los Angeles are among the highest in the country.

The use of a commission structure is based on the concept that it reduces the total costs of the title insurance underwriter. When they sell through agents, whether through attorneys, agencies, or UTCs, the companies can expand their market share with only a minimal additional investment. Almost without exception, title insurance company representatives stated they preferred agencies in bad times and branches in good times. However, they also stated that they believed there was a long-run move toward the continued development of branch offices owned directly by the underwriter. Thus, the underwriters are able to save on the marketing value of commissions in the particular area. While it is possible that branches are a more profitable structure for the companies, there is no indication that consumers receive any lower prices from branches than from agencies if there is no pass through of cost reduction.

A number of participants in the settlement process, as well as numerous commentators, have expressed the opinion that the regular involvement of attorneys in the settlement process causes prices to be artificially high. Although our findings indicate that this is sometimes true, they do not support the contention that the absence of attorneys causes prices to be low. The highest prices found in the HUD-1 survey were charged by title and escrow companies in Los Angeles. It appears that each of the participants in the title and conveyancing markets have the potential to charge very high prices in some markets.

The selected sample sites where attorneys are primary settlement service providers are Boston, Jacksonville, and Washington, D.C. They also have a diminished but unique role in San Antonio. The HUD-1 data for these sites does not show a consistent pattern of particularly high prices. Nevertheless, certain observations and conclusions can be drawn.

Attorney-agent retentions and commissions are only one form of compensation to attorneys for real estate transfer work. As noted in Chapter V, attorneys have a critical and essential role in most, if not all, real estate transactions. The advice of attorneys in negotiating and structuring the terms

of the sale, and in direction through the remainder of the settlement process, is often invaluable. Even in transactions which are apparently routine, there is always the potential for very real legal problems which would require legal advice from a qualified and experienced real-estate attorney.

This study has not undertaken to compile or evaluate the prices charged by members of the bar for legal advice. It is quite evident, however, that lawyers charge fees which reflect very specialized training and education in all areas of the law. Our findings make it quite evident, also, that these same rates are charged for routine title and settlement functions regularly handled by paralegals and clerical staff. This situation is demonstrated in the San Antonio SMSA, where UPOL regulation requires that the necessary documents must be prepared by an attorney. The effect of this has been to raise the total costs, from an "all-inclusive" regulated rate,<sup>1</sup> by more than \$75.00. It is also apparent in the Maryland suburbs of the Washington, D.C. SMSA, where both attorneys and title companies offer similar services in a single marketplace. In that case, the estimated pricing data showed that the same services are available from title companies for about \$100 less than what attorneys generally charge.<sup>1</sup>

Finally, the lack of adequate consumer information regarding settlement services and prices may lead to overpaying for legal services or to choosing an inadequately experienced attorney. As noted previously, of the 21 percent of home buyers who paid for an attorney, only 18 percent spoke with more than one.

#### Interlocking Relationships

In addition to payments for referrals, implicit and explicit, reverse competition has contributed to patterns of interlocking business relationships between providers. These relationships provide the institutions involved with the opportunity to sell two or more services to a homebuyer and to benefit financially. It is unclear, however, whether consumers are adversely affected in terms of price or quality of service as compared to other forms of reverse competition. The provider could provide the second good at a lower than market price and thereby benefit the consumer.

#### Definition of Tied Sale, Referral, and Provider Relationships

In both the legal and economic literature, a tied sale is usually defined as the purchase of some good or service being predicated upon the purchase of some other good or service. There is usually a presumption of compulsion in that the ancillary good is required and must be purchased from a particular seller.

---

<sup>1</sup>It should be noted that many consumers in Maryland are not able to take advantage of this apparent price break, since many Maryland lenders utilize the "review-fee" method of specifying the use of a particular attorney.

The provider of a particular good or service can also recommend or "refer" a provider of the ancillary service, but not require the buyer to purchase from the referred supplier. In the area of real estate conveyancing the distinction between a tied sale and a referral may not be very important because of the lack of adequate information consumers possess with regard to the services they are procuring and their inclination to select providers on the basis of referrals.

The issue of tied sales and referrals is especially important in light of the relationships which exist between the different service providers. The predominant forms of interlocking relationships involving title assurance providers are discussed in this chapter. The predominant form or these relationships are:

- . lender-attorney; and
- . real estate broker-title insurance company.

#### Lenders-Attorneys

As discussed in Chapter VI, in many areas attorneys are used to provide the routine conveyancing functions necessary to the transfer of real estate. Frequently lenders require that this procedure be performed by a particular attorney. Under the Federal Home Loan Bank Board Regulations, member associations are allowed to require that the specified attorney review the documents, at the borrower's expense, if the specified attorney was not used for preparation. Banks and mortgage companies also have this right, although not explicitly in regulations.

The practice of requiring the use of specific attorneys appears to be widespread. We asked lenders, "If an attorney selected by the borrower has performed the legal work necessary to complete the settlement process, would you additionally require a review by your own attorney?" The following percentages of lenders in each group replied yes.

. Commercial Banks	45.5
. Savings & Loan Associations	47.4
. Mutual Savings Banks	52.9
. Mortgage Banking Companies	25.8
Total Lenders	40.7

While some lenders in each SMSA affirmed this practice, it was most common in Boston (65 percent of all lenders), Washington, D.C. (66 percent of all lenders, although primarily in Maryland), and Jacksonville (66 percent of all lenders).

As discussed in Chapter VI, it is not always necessary to have an attorney perform the title and conveyancing functions. In most Western states, they are generally not involved in conveyancing. Document preparation is often performed by title insurance companies or real estate brokers. When title insurance companies perform the work, the company also insures that the work has been completed correctly. This combination of practices raises the question of whether lenders are adding to borrower closing costs by requiring borrowers to use an attorney. Of the institutions that require such a review, the following percentages require the borrower to pay a fee for this procedure:

. Commercial Banks	73
. Savings & Loan Associations	80
. Mutual Savings Banks	100
. Mortgage Banking Companies	60
Total Average	76

Clearly borrowers are directly paying for the legal work. Since in many cases the functions could be performed less expensively by non-attorneys, or by an attorney of the borrower's choosing, the additional costs may be unnecessary.

Maryland is one area where conveyancing services are available through either title insurance companies or attorneys. The review requirement is widespread in Maryland, including the suburbs of Washington, D.C. Thus, a home buyer may be effectively prohibited by the lender from obtaining conveyancing services through a title insurance company. The data presented earlier show that for a typical \$60,000 house, the charges for title assurance and conveyancing services in the Maryland suburbs is approximately \$100 higher when purchased through an attorney instead of a title insurance company. We are not aware of any quality differences when this work is performed by an attorney or a title company. In fact, some title companies have attorneys on their staff to act as settlement agents.

The attorneys who represent specific lenders are, of course, assured a steady flow of real estate business. Many are attorney-agents for specific title insurance companies. Since the consumer, in almost all cases, pays less by having all of the work performed by the lender's attorney rather than using his own attorney and then going through the review procedure, the lender's attorney in many cases is chosen to perform the title search and evaluation and sell the title insurance, in addition to performing closing, escrow, and document preparation. As with most attorney-agents, a portion of the insurance premium may be retained in addition to separate charges which may be charged for the search and evaluation and conveyancing procedures.

There does not seem to be any indication that lenders have attempted to keep the attorney fees low.<sup>1</sup> The review requirement is often localized and does not exist throughout the country. However, practices do tend to be consistent within a given area and often continue to persist in the absence of competitive pressure. These practices are in conformance with the Federal Home Loan Bank Board regulations. Our interviews indicated that such tied relationships frequently exist. How extensive the practice is outside of the eight sites is not clear, but presumably in those areas where attorney involvement in real estate transfer is widespread (or even mandated by UPOL rules) the situation is more likely to exist than in other areas.

#### Real Estate Brokers - Title Company

Another tied relationship that has gained special attention in the past few years is the broker-owned title company. In these cases, a broker, or group of brokers, set up an underwritten title company. The broker's company performs the search and evaluation and writes the insurance policy as an agent for an underwriter. Consequently, the policy is insured by a larger title insurance company, and losses, including those which result from an inadequate search, will be paid by the underwriter.

Because of the position of the broker in the process, he can refer business to his own title company. This puts a broker in an especially strong position, both to profit from his own referrals and to develop a superior bargaining position with prospective underwriters.

---

<sup>1</sup> See Professor John C. Payne, "Closing Costs and the Mortgagee," Federal National Mortgage Association, 1979 General Counsel's Conference (Savannah, Georgia). Professor Payne is of the opinion that the lender's attorney is not under pressure to reduce charges.

While the title insurance industry underwrites these firms, they have as a group, been adamantly against these tied relationships, which they call controlled business.<sup>1</sup> The fear apparently is based on the assumption that if broker-owned title companies become widespread, the insurance industry would have to deal through them exclusively. Underwriters would be hampered in their ability to continue the trend of operating through their own branches and agencies. In addition, if an underwritten title company were tied to a large segment of the brokerage industry, it could take advantage of its market share in negotiating for agency retentions and other financial arrangements from the underwriters.

It remains unclear how extensive the controlled business movement actually has become. When we asked title company personnel in the eight sites whether they thought there was a local trend to controlled business, 37 percent said yes. This figure ranged from a high of 100 percent in Los Angeles to 0 percent in Seattle. Jacksonville and St. Louis were both 40 percent.

The title insurance industry alleges that controlled business will lead to poor quality work (presumably in searches) and higher prices. Since the insurers themselves have every incentive to make the underwritten company provide a good quality search and examination, this argument is not very persuasive. However, the assumption that controlled business could lead to higher prices needs some discussion. The only empirical evidence that we are aware of is the Coldwell-Banker case. Coldwell-Banker, a large brokerage firm in California, attempted to set up its own title company, Guardian Title Company. They owned an escrow company which according to evidence presented at the Guardian application hearing, charged 50 percent more than competitors.<sup>2</sup> In this case it is quite clear that the broker-owned title company had higher prices than average (for the area). The possibility that such a market imperfection would continue to exist on a long-term basis is strong, primarily because of the assured flow of business from the broker.

This situation is analogous to the lender-attorney situation previously discussed. Both practices can exist and even prosper because of the reverse competition aspect of title insurance. If the majority of consumers understood, shopped for, and had unimpaired access to providers of title assurance, these types of practices could not exist in the long run because consumers would go elsewhere. Even though brokers cannot require that they supply the title or conveyancing services as lenders can, it is simply unrealistic to assume that home buyers will develop the knowledge or expertise necessary to ignore a broker's referral.

---

<sup>1</sup>See American Land Title Association, The Controlled Business Problem in the Title Insurance Industry (November 1979).

<sup>2</sup>State of California, Department of Insurance, Findings of Fact, Conclusions of Law, and Recommendation in the Matter of the Application of Guardian Title Company, a California Corp., for organizational Securities Permit, File No. L-67, UTC LA-70, October 27, 1976.



Our interviews indicated that while RESPA may have contributed to the recent increase in controlled business, it was not the sole cause; broker-owned firms had existed before RESPA. The boom in housing markets during the 1970s made title work more profitable than it had been and encouraged entry into the field. Broker-owned title companies were one form of entrant.

Clearly the real debate over controlled business, as well as agent retentions and referral fees, is over who receives the potential excess profits, the underwriters or the local providers of the title assurance. If potential profits from providing title assurance and conveyancing services were not already high, brokers would be less likely to enter the business. Tied relationships may prohibit price competition, but they come into existence because prices are already high. Exhibit XII-23 portrayed this dual position of high prices earlier. Our study of the title assurance services confirms this view.

### LEGAL SERVICES

This section has focused on the provision of title assurance and conveyancing services. The role of attorneys in providing these services has been addressed. Also discussed at length was attorney involvement with lenders and title insurance companies. There are several issues however, involving attorneys which transcend title assurance or the provision of conveyancing services. In 1975, the U.S. Supreme Court held in the Case of Goldfarb v. Virginia State Bar that bar associations could no longer establish minimum fees. In the Bates v. State Bar of Arizona case, the Supreme Court held that attorneys could advertise their services. The question arises as to what effect these decisions have had on the cost and provision of settlement services. Another issue regarding attorneys is the representation of more than one party in the settlement process. These three areas will be addressed in this section.

#### Attorney Minimum Fees

Until 1975, bar associations often developed minimum fee schedules for specific legal services. Thus, new and young attorneys could not charge less than prevailing prices to gain a competitive advantage. When this practice was held in the Goldfarb decision to be price fixing and a violation of the anti-trust laws, individual attorneys were free to charge whatever fees they wanted for legal services. The expectation by some was that competitive pressures would drive prices down.

In the PMM&Co. survey of attorneys, 8 percent said they had lowered their fees since Goldfarb and 92 percent said they had not. When asked whether attorneys in general had become more price competitive since Goldfarb, 30 percent said yes and 70 percent said no.

It is difficult to interpret the answers with regard to absolute prices because the inflation rate has been so high in the intervening period of time. However, the fact that 30 percent of the attorneys at least believed the profession was more price competitive, whether they had lowered their own prices or not, indicates a perception of change which may become more widespread in the future.

Our interviews suggest that price cutting is still not the norm in the profession although for some services, such as no-fault divorces, it is becoming common. Of some additional interest is the method by which attorneys charge. In our survey the method of charging was:

53%	by the hour
39%	flat fee
8%	by house price

It remains unclear as to whether these figures refer to title insurance or only conveyancing services. However, 67% of the attorneys interviewed were not attorney agents. Their role would probably be limited to conveyancing services and arranging for title assurance but not providing it themselves.

### Attorney Advertising

Prior to the Bates decision, bar associations would not allow advertising or solicitation of business. This practice was also true in several other professions, such as medicine. Since the Bates decision, however, professional advertising is legal and cannot be prohibited by professional groups.

Of 91 attorneys interviewed in the PMM&Co. survey, only one advertises for real estate settlement services. That attorney advertised in the newspapers but not the telephone yellow pages.

One reason that advertising settlement services is not common may be the entrenched referral systems that characterize the settlement service process. Advertising is probably less efficient as a business development method than building a referral network. Further, in areas where lenders require the use of a specific attorney for a review process, a consumer would not be effectively free to respond to advertising.

### Dual Representation

It is common in real estate transactions for one attorney to represent more than one participant in the process. The parties with a legal concern are the (1) buyer (2) seller, and (3) lender. Rarely are three attorneys involved.<sup>1</sup> In our survey, 41 percent of the attorneys never represented more than one party. Of the ones who did, they represented the following combinations:

Combination	Percentage of Dual Representation
Buyer and Seller	41.5
Buyer and Lender	20.8
Buyer, Seller, and Lender	37.7
	<u>100.0%</u>

---

<sup>1</sup>As stated previously, in most areas of the country, no attorney is involved. Attorney involvement is primarily an East Coast phenomenon.

Dual representation is not illegal. In the vast majority of cases it is probably an efficient system. Certainly having two or three attorneys perform routine conveyancing services such as document preparation would be prohibitively costly to the transfer process.

The problem arises when the interests of the various parties diverge. This is most likely to occur with buyers and sellers, but could also occur between lenders and buyers. In these situations neither party may be receiving adequate representation, regardless of who pays the attorney directly. Requiring separate legal representation for each party would be costly and not necessary in most cases. One alternative is for parties involved in a settlement to be notified of the multiple representation role of the attorney and be advised to consider hiring their own attorney if legal problems are anticipated.

### CONCLUSIONS

Charges for title assurance and conveyancing services vary by over 100 percent among sites. If it could be shown that costs of operations varied geographically, the price differential might be acceptable. However, this was not the case. All of the sites were SMSAs in which title plants were common and public records were searched only infrequently. The most common explanation for differing costs and practices was historical development of the title industry. No other explanation could be found in most cases. If this reasoning is correct, traditional economic assumptions regarding competitive markets are not relevant to this industry, even without the overriding characteristic of reverse competition. Under pure competition, prices adjust to markets over time. However, the combination of reverse competition and prices set by historical and customary practices has led to excess revenues which either are used to obtain referrals or contribute to underwriter profit. The forms that referral payments have taken are large commissions and interlocking relationships, primarily between attorneys and lenders, and brokers and underwritten title companies. In the case of interlocking relationships, the excess profits flow to brokers or attorneys. Large potential profits in the title insurance industry can also cause inefficiency. Thus, companies which are poorly operated can continue to exist because general prices are high enough to cover their costs.

While more study is needed to determine what an equitable rate structure would entail, some conclusions can be drawn with regard to the present pricing systems. There appears to be little or no basis for charging by house price. The major losses are due to overlooked mechanics liens and taxes at the time of the search which are unrelated to sales price. Nor are search costs related to house value. If the major cost of producing title assurance services is constant, the pricing structure should not be tied to an artificial index such as house price. Other industry costs such as high commissions, kickbacks, and other referral fees serve to inflate the cost of producing insurance. They are not legitimate marketing costs.

While marketing practices vary from one area to another, the final product remains the same. The goal is to assure that the property being transferred is free of encumbrances. The criteria established at the beginning of Part II for judging an industry were:

- . the existence of workable competition; and
- . well served consumers in terms of service and product provision.

The major findings of this study show that the markets for title assurance and conveyancing services are not characterized by workable competition. Nor do they perform well in most localities in terms of providing consumers with required settlement services at a price which approximates the cost of efficiently providing those services.