

## **Kenneth Harney: Kickbacks can inflate title insurance costs**

Congressional subcommittee hears problem

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Have you ever looked at the fees associated with a home purchase and wondered: Why am I paying so much for title insurance? Why do I have to pay \$1,000 to \$2,000 for coverage when payouts on claims involving actual title defects are minuscule?

A congressional subcommittee held a landmark hearing in late April on that very subject, along with a related question: To what degree do illegal tie-ins among realty agents, mortgage brokers, home builders and title agents inflate the premiums that consumers pay at closing?

The hearing produced bombshell revelations for anyone who hasn't followed the title business closely for the past year:

- In Colorado, according to Erin Toll, that state's deputy insurance commissioner, "the pervasiveness of kickback schemes in the residential real estate process has created a black market that makes it impossible for those who play by the rules to compete. The cost of providing kickbacks is passed on to consumers and rolled into" the premiums consumers are charged.

Toll said the situation is similar in other states, based on her observations as cochairwoman of a National Association of Insurance Commissioners task force examining title insurance practices.

- An independent title insurance agent from Minneapolis, Douglas R. Miller, president and CEO of Title One Inc., testified that in Minnesota, "the title insurance industry and the real estate industry have locked up almost the entire marketplace through controlled business schemes."

The arrangements take varying forms, Miller said, but they all add up to the same result: "steering real estate consumers into overpriced ancillary services for secret profits." Miller's firm refuses to take part in joint ventures with realty brokers or lenders and, despite charging what Miller said are the lowest premiums in the area, it struggles to attract business from home buyers. Since he doesn't play the premium-sharing game, realty agents and mortgage companies don't send customers his way.

- State insurance commissioners nationwide recently levied close to \$50 million in fines and penalties against title insurers and title agencies for illegal kickbacks. In

Colorado alone, \$25 million has been returned to consumers. In California, three large insurers paid \$12.5 million to settle charges alleging illegal kickbacks and referral fees.

- At the federal level, regulators uncovered dozens of kickback and sham title agencies that exist solely to funnel referral payments back to realty brokers, loan officers and builders. Gary M. Cunningham, deputy assistant secretary for housing, told the hearing about a \$675,000 settlement recently with an unnamed home builder that used its own affiliated title company to illegally split consumers' title premiums with a major title insurance company.

Cunningham also described a title scheme in Memphis that kicked back portions of premiums to the real estate agents, mortgage brokers and home builders who referred consumers' settlement business to it. The agency paid \$680,000 to settle the allegations, and participating builders paid another \$226,000.

Representatives of the title insurance and realty brokerage industries deplored the evidence of kickbacks and law-breaking presented at the hearing, but argued that title premiums are not excessive and that referral fee payments are not the norm.

Rande K. Yeager, president and CEO of Old Republic National Title Insurance Co., said in effect that most title insurance premiums go toward identifying and eliminating the bulk of the risks the insurance is intended to cover. That's why payouts for claims represent just 5% of premium dollars, versus 60% for auto insurance and 86% for HMO insurance.

The president of the National Association of Realtors, Thomas M. Stevens, said his industry is "greatly concerned" by allegations of hanky-panky between title agents and realty brokers. Joint ventures involving realty firms and title agencies typically are bona fide, law-abiding business arrangements that benefit consumers, he testified.

What should you as a consumer take away from the hearing testimony? You might start by considering what J. Robert Hunter, former Texas insurance commissioner and currently insurance director for the Consumer Federation of America, had to say: Title insurance is grossly overpriced in most parts of the country. Only one state -- Iowa -- has banned the sale of private title insurance and replaced it with a state-administered fund.

Guess what? Title premiums there are less than half what they cost elsewhere, according to Hunter -- and there no kickbacks, splits or skullduggery.