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Re: "Inside America's Richest..."

Scott Woolley's article on title insurance (November 13, 2006) is loaded with falsehood. The article misstates the cost, pricing and profit of title insurers and it omits mention of the related and essential services of examination of public records, document review and examination, transaction closing and mortgage pay-off. Title insurance itself is a valuable product. Title insurance companies hire 100,000 employees nationwide. Contrary to what the article states, the title insurance policy covers much more than just forgery, and it affords coverage for lawyer's fees if the title is attacked.

The business of title insurance is still a tedious, labor-intensive venture, laden with cost and risk that some in other fields and other lines of insurance underestimate. The article's falsehoods and the disregard and disrespect with which Woolley treats his subject cannot be adequately addressed in a short letter like this, but I must demonstrate my point by describing some salient features of the title insurance business that were overlooked, and several more that were distorted.

Land Title Examination

Title examination is akin to a car buyer holding the original "pink slip". It is absolutely essential, and it cannot be done by simply visiting a website.

The principal invention of the unique American business of title insurance is the "Lot Book" system – in place all over the Western States and begun in the County of Los Angeles in 1875. The article's only photograph displays several specimens of these old books, even though they are not mentioned.

Until the 1880's, real estate record examination in California and most Western states required the services of a lawyer. In the old days, as in a few parts of the United States today, custom called for a formal lawyer's opinion. Since then, such work has been done routinely by non-lawyer title searchers and title examiners, in a simplified manner and at a greatly reduced cost.

Real Estate Records are maintained by County Recorders' nationwide - some three thousand government offices - and separately managed by individually elected officials.

All states, under Statutes of Frauds, require that real estate transfers be written; these writings are called "deeds", and they are typed up by human beings with the aid of typewriters or computer word processors. It is customary, and legally essential, that these deeds be recorded in the County Recorders' offices. The County Recorders' offices post the public record with the owners' names; this posting is done by human beings.

These County Real Estate Records are maintained by name only, except in Utah. Scott Woolley is confused. He thinks that County Real Estate Records can be easily accessed through an internet search. In fact, County Tax records can be easily accessed in that manner, but County Real Estate Records cannot. One can search real property ownership in County Real Estate Records only by a purported owner's name. If the owner's name is John Smith, then the searcher must find and examine all deeds naming John Smith as grantee, then separate out the deeds that contain the legal description of the land in question. The searcher must identify the grantor on those deeds - say Jose Gomez - and then continue the process of finding and examining all deeds naming Jose Gomez as grantee, and so on. In Los Angeles, the County Real Estate Records prior to 1947 are not even arranged alphabetically!

The title insurance "Lot Book" system works this way: on a daily basis, title companies examine all deeds (and related documents) recorded in Real Estate Records in every County. They then post each document to their own records, reorganized so that the documents can be located by legal description alone. Today, this posting is done by data entry onto private electronic records maintained by title insurance companies, at great expense. And again, this work is done by human beings. Those private electronic records date back to about 1960 in most California Counties - in many Counties back to 1947. The older records - those that date from 1982 back to 1850 are kept the old fashioned way: on Lot Books in a Title Plant Records Library. Although these older records are not necessary on most jobs, they are essential for reference in quite a number of cases.

Everywhere in California, title searchers work from the date of their company's last insurance, using a copy of the last policy as a "starter". In fact, it is rare that a job will ever take the title searcher all the way back to the date of the original Spanish Land Grant, and the premium rates charged by title insurance companies in no way reflect such extraordinary work. Even where the larger title insurance companies refuse to share their policy copies to speed up their competitor's search process, the title searcher will use a variety of established techniques to work from available information - including a request for a copy of the sellers' policy to expedite his work.

When one learns about this "Lot Book" system, one can easily understand why fixed costs alone account for 90% or more of the title insurer's total business cost. Lipshutz, the Regulatory Economics of Title Insurance (1994); Plotkin, On the Theory and Practice of Rate Review and Profit Measurement in Title Insurance (Arthur D. Little 1978).

Land Title Examination is still Labor-Intensive

In spite of hard work and attention to detail by all of the human beings in the process, errors and omissions of all kinds are committed by public employees and private parties alike. Our experience is that these errors and omissions are actually occurring more frequently as time goes by, and they sometimes cause legal defects that must be remedied by a title insurance company in the closing process. A recent study, cited below under “Claims” found that these problems actually increased over the five years prior to the study.

The article states that title examination costs the insurer a small amount. The article showcases one company in its efforts to reduce cost. All companies seek to reduce costs in different ways. But most of the work is, in fact, not done at a low fixed cost, and none of the most demanding work is done that way.

The article exaggerates the value of electronic storage of Real Estate Records. Searching on-line will never be an alternative to searching the title insurance company way because of how Real Estate Records have been kept for over a hundred years.

Title Insurance Provides Valuable Services and a Worthwhile Product

There is an extensive record on residential real estate transactions and their related costs – including the cost of title insurance. Before the federal government decided to outlaw rebates and make full consumer disclosure of costs, several thorough studies were conducted. Whitman, Home Transfer Costs: and Economic and Legal Analysis, 62 Georgetown Law Journal, 1311 (1974); Payne, Ancillary Costs in the Purchase of Homes, 35 Missouri Law Review, 455 (1970); U.S. Senate, Committee on Banking, Housing & Urban Affairs, Mortgage Settlement Costs, report of The Department of Housing and Urban Development and Veteran’s Administration, 92nd Congress, 2nd Session, Washington, D.C. (March 1972). A later government study was done by the U.S. Department of Justice on the Pricing & Marketing of Insurance (1977). These studies proved that the title insurance system is quick and cost effective in comparison with the systems in most other states. Thirty years later, that is even more the case.

The title insurance system is strong in the United States – particularly in the Western states. The only state in the country where title insurance is not customary is Iowa, where a lawyers’ monopoly exists by statute, and real estate professionals have been crying out for a switch to title insurance. Iowa Realtors’ found that Iowa lawyers take 45 to 85 days to do their work, but title insurance takes only 15 to 20 days and the Iowa-lawyer system costs more: <http://www.iowarealtors.com/legislative/docs/tibroch.pdf>. The State of Iowa recognizes the value of title insurance; its Finance Authority obtains title insurance under a special legal loophole, on loans over \$100,000.00, under the Iowa Title Guarantee Program, but that insurance program is not available to the Iowa public.

Here are some of the other essential services provided by title insurance companies:

Handling Loan Proceeds

These days, institutional lenders and others refuse to fund their loan proceeds into the account of a small law office or escrow company; they require that funds be accepted by a title insurance company, backed by its underwriter.

Paying Off Existing Mortgages

The payoff of existing mortgages, including Home Equity Lines of Credit, FHA, odd private party arrangements and commercial defeasance, present tremendous challenges. But the title insurer handles these difficult, highly underrated tasks for a small flat fee concurrent with policy issuance.

Corrective Documentation

When a material error is discovered in the search and examination, the error is remedied by corrective documentation – usually before the transaction closes.

Reviewing & Submitting Recordable Documents to the County

The review and submittal of documents to the County Recorder may seem to an outsider, to be an easy matter. But a tedious comparison of all elements of each document must be made – again, by a human being. Most County Recorders maintain websites for public reference. The document standards and requirements that have been imposed by State law are applied by the local County Recorder.

Title insurance companies retain staffs of lawyers who are underwriters who advise local insurance company offices, and whose advice is constantly sought by transaction lawyers throughout the country who wish to avoid problems in their documentation. The expertise of these underwriters is recognized nationally in substantial investment transactions as well as in small details.

Premiums and Charges

In the City of Los Angeles, the Government takes more in Documentary Transfer Tax than the title company makes in premiums. No title insurance company has doubled its premium. In fact, rates have been lowered in almost all cases. But as home prices rose in the last six years, policy liabilities rose, and higher liabilities bring higher premiums. The volume of claims rose even faster in the last several years than the rate of increase in the numbers of policies written.

The reason that more policies are written during refinance activity is that lenders prefer to rewrite all loan documentation for each and every refinance. If they would simply modify existing loan documents, borrowers would save at least fifty percent in title insurance premium.

Title insurance companies offer a discount on any property that was the subject of title insurance within the past five years, and they offer a routine discount for a loan policy on

refinance transactions in part because the search periods are usually short. Despite the insurance laws, there is fierce price competition in title insurance.

The late Insurance Commissioner's call for premium reduction was a political play unsupported by objective, responsible research. See experts' commentary at: http://clta.org/Regulatory/DataCall/Study/title_insurance_study-all.htm

Claims

Most homeowners do not suffer from covered claims because title insurance company officers work hard during the course of closing a transaction to remedy apparent problems by assuring that proper release and corrective documents are obtained through the process described above. The Industry estimates that roughly a third of all transactions require some remedial action during the closing process: http://www.alta.org/press/curative_action.pdf

When a problem that is covered by the policy does arise, title insurance claims attorneys can be recognized as some of the best real estate attorneys in the country. They routinely face challenges in the courtroom on behalf of the parties we insure, and they handle remedial actions that range from the minor detail to multi-party complex litigation, and they do this at the companies' expense.

Entry into the Title Insurance Market

The California Association of Realtors (CAR) made a power play to gain entry into the business at a time during which big realty franchisors saw their revenues dropping. CAR sponsored legislation in 1997 that would have had far-reaching implications for title insurance business. The CAR campaign began and ended with a collection of falsehoods (77 California Real Estate 2, 12 (June 1997)). The CAR-sponsored legislation failed after extensive testimony in public hearings.

Radian Corporation, through Radian Guaranty, Inc., pushed their play into court with the help of a highly politicized State Insurance Commissioner, and then finally lost their legal battle last year. Radian Guaranty, Inc. v. Garamendi, 127 Cal.App.4th 1280 (1st Dist. 2005).

These were political and highly visible but poorly advised attempts to force entry into the market. Over the last fifteen years, there have been increasing efforts to force entry into the market by lenders, realtors and other lines of insurance, because they believe that there is easy money to be made. But entry into this field is not a primrose path even when it's done right – witness the difficulties of the Mercury Group (Alliance Title and Financial Title) and Transunion (Diversified Title). These companies entered the field recently, but have not had an easy time of it. There are numerous examples of casualties in this business - large and small - over the last 20 years that give lie to the myth that it is all so easy.

The prohibition of title insurance alongside other lines of insurance is not “protectionism”. See the example of Title Insurance & Trust (later known as Ticor) who started a mortgage insurance company in 1973. Upon liquidation of the mortgage insurance company in the 1980’s, the title insurance company – which had been the country’s largest – was crippled. Its holding company filed a petition in bankruptcy court and the once-proud Los Angeles-based title insurer was picked apart by an out-of-state rival.

A State-Operated Land Title Guarantee System Does Not Work

A government owned and operated alternative to title insurance in the United States – referred to as the “Torrens System” was tried in twenty states, and was repealed in half of them. The California experiment ran for about 40 years until repealed in 1955 after catastrophic forgery losses. One critical report on the system was issued by a 1989 Blue Ribbon Commission in Cook County, Illinois.

Alleged Rebates

Following a 50-year tradition of trying to stop rebates, the California Land Title Association (CLTA) ten years ago, sponsored SB 997 (Schiff) to create and privately fund a new Anti-Rebate Compliance Unit in the California Department of Insurance. (Insurance Code Section 12414). If rebates occur, they are not made without the demand of the real estate agent or real estate broker in the first place. But you cannot find the California Department of Real Estate or its Realtor members suggesting such enforcement efforts or any other type of sanction for such behavior because rebates benefit them, and they demand rebates even though they make more money than anyone else in the deal makes.

Conclusion

I have been working in the field of title insurance for thirty five years. Knowing what I do about this industry, I can state that the Woolley article bears the marks of a deliberately sensational approach. The article falls below the minimum that any reader should expect from a business journal. First Amendment protection is no defense to a claim of bad reporting. I am a Forbes subscriber, but after reading this article, I and my colleagues must consider credible sources other than your magazine in the future.

Sincerely,

Lawrence Lacombe