

Market Competition in the NH Title Insurance Marketplace (2008)

There is ongoing interest in the Title Insurance (Title) marketplace, in New Hampshire and countrywide. This report will look at the NH Title insurer population and evaluate whether we believe the Title market is a competitive or non-competitive one.

General Information:

Title is a protection against loss arising from problems (i.e. discrepancies or defects in ownership rights) connected to the title for a property in which the insured has an interest. Title is a form of property/casualty insurance, but it has some distinct differences from other personal lines coverages. Like other lines, Title is based on the basic risk-sharing and risk-assumption/transfer principles of insurance. However, Title is a retrospective rather than a prospective coverage (meaning it only protects against losses arising from events that occurred prior to the issuance of the policy, not from future events.) Also, Title has a single premium that is considered fully earned at issuance, and lasts not for a defined period of time but for as long as the insured has an interest in the property covered by the Title policy.

There are two types of Title insurance policies; a lender's policy and an owner's policy. The lender's policy is required if one has a commercial mortgage/loan on a property. The policy protects the lender up to the extent of the loan, and is paid for by the borrower. This policy does not protect the owner's equity in the property; for that the owner would need an owner's title policy for the value of the property. Owner's title policies may be paid for by either the buyer or the seller of the property (based on a negotiation between the two) but is likely paid for by the seller. There is speculation that if the lender's Title policy was paid by the lender instead of the by the borrower, costs of the coverage would be reduced (due to the financial and negotiating power of the lenders vs. individual borrowers.) One further note - refinancing does not affect an owner's policy, but a lender requires an owner to buy a new Title policy covering the amount of the new loan.

The Title Insurance Market in NH

There are seventeen individual Title insurance companies showing up in the data for NH. However, several are part of a group of affiliated companies, so in effect there are only thirteen different Title companies (Exhibit I.) The entire NH Title market was almost \$44MM in 2006 which is the latest year available at the time of this review. This is actually down from a little over \$51MM in 2005 and most likely reflects the slowing of sales and adjustments in pricing of property that NH has been experiencing in conjunction with the rest of the country. We would expect to see further erosion in 2007 based on trends in the real estate marketplace. The individual company 2006 market shares range from a low of 1% to a high of 36% (First American Title), and are consistent with the 2005 market shares.

It is important to note that there is a significant difference between the Title insurance market and other insurance markets. While, in general, insurance purchasers will work with either an agent or broker or

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directly with the company, in the Title world, the insurers do not market their services directly to the consumers who actually pay for the product. Instead, they market their services to third-parties involved in the real estate transaction (i.e. real estate agents or brokers, realty companies, mortgage brokers, etc.) that are then in the position to refer or steer the property buyer to particular Title companies. In some cases, there may even be some level of ownership of the Title insurance company by those third parties. According to one study, these “affiliated business arrangements” accounted for about 26% of Title insurance premiums in 2006.¹ Furthermore, it appears that there are significant barriers to entry for new Title companies to come in to the market, especially in terms of the established relationships between the entities that can steer/refer the consumer’s Title business to those that sell the services.

Title insurers compete for these referrals, in many cases through a variety of considerations to the producers of the business, in ways that lead to reverse competition. According to Jack Guttentag, “Third parties involved in the lending process ... costs are generally higher than they would have been if they were purchased in a normally competitive market. The reason is that third-party service providers compete not for the favor of borrowers, who pay their fees, but for the favor of the lenders who select them. This type of competition is perverse because it drives up the costs of the service providers. This in turn raises prices to borrowers or prevents prices from falling in response to improvements in technology.”²

In fact, it is obvious from a survey of activities and reports across the country that - despite both federal and state laws countrywide that prohibit inducements, kickbacks and sometimes referral fees from Title insurers to the third-parties who refer business their way - there is much evidence that these activities take place (e.g. see “Title Insurance in Washington: Improving Competition and Consumer Choice”, Report of the Title Insurance Review Task Force, Washington State Office of the Insurance Commissioner and “An Analysis of Competition in the California Title Insurance and Escrow Industry”, Report to the California Insurance Commissioner). In 2006, a report by the federal Government Accountability Office found that since the consumer is not really the customer in Title, that these affiliated business relationships and inducements exist, and that the connection is between premiums and home prices rather than insurer and agent costs all raise questions about the competitiveness of the market.

State Analysis:

In our look at Title insurers in NH, first we look at the concentration of business in the various companies and groups of companies. First American Title Insurance Company is the top company by market share, with 36% of the state market in 2006. The top five companies by 2006 premium volume account for 88% of the total business in the state. The top seven companies by 2006 premium volume account for 96% of the total business in the state. When viewed by groups of affiliated companies, the top five groups account for 95% of the total business in the state. Countrywide, the top five

¹ Martin & Ludwick, “Affiliated Business Arrangements and Their Effect on Residential Real Estate Settlement Costs: An Economic Analysis”

² Jack Guttentag, “Real Estate Settlement Services Take Bite out of Borrowers”, Inman News, 9/6/2005

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families/groups of Title insurers account for 93% of the total business. Obviously, this is a much more concentrated market than most standard property/casualty markets.

We also look at a ratio called the Herfindahl-Hirschman Index (HHI) that measures the size of firms in relationship to the industry and is an indicator of the amount of competition among firms. The HHI for the seventeen individual companies is 16.3%; when the companies are grouped by affiliation where it exists, the HHI is 16.7%. An index below 10% indicates an unconcentrated market, an index from 10% to 18% indicates moderate concentration and an index above 18% indicates high concentration. Note that the HHI for the Title marketplace (Exhibit I) shows a moderate (approaching high) concentration, which is in line with our expectations for this line of business and the relatively small number of insurers writing this business in the state.

The expense component of the Title premium is often 90% or more of the total, reflecting the research that goes into writing the Title policy and the historically low level of actual Title losses. Because Title covers past events, most of the cost is related to loss reduction; i.e. finding and fixing defects before the policy is issued. Where there are claims, they may be based on errors made in the search of records, taxes or assessments, improper closing procedures, fraud, liens or many other areas. There is generally no transparency in regards to these expenses; the borrower sees only a total premium for the Title policy but no detail as to what, or how much, work was done.

Pricing is an issue in the Title area, with many people who say that Title premiums are too high. As mentioned above, there is generally no breakdown of the premium on Title policies as to exactly what has been done, or how much time it took, or any other information. Because of the nature of Title, with most of the work coming up-front, but a coverage term that may last for only a few weeks or months or may last for fifty years or more, there is some inherent inequity in the premium if it is spread over the coverage term. Furthermore, it may be that smaller (in value) policies are underpriced and larger policies are overpriced. This is because premiums are scaled to the amount of the mortgage/loan or the value of the property, yet the costs are in research and loss prevention which may not vary that much by property value.

As shown on Exhibit II and expected from our knowledge of Title, loss ratios for the NH market are in the mid-single digits, at 6% and 5% respectively for 2005 and 2006. Countrywide expense ratios are in the mid-to-high 90%*s*, again as might be expected. If we use the CW expense figures to estimate combined ratios for Title, we get results just over 100%. This reflects an underwriting loss, but does not reflect the impact of investment returns on earned premium reserves the Title companies hold.

Exhibit III shows some financial ratios that are available on a countrywide basis for Title. The first (Operating Ratio) is the ratio of Net Operating Gain/(Loss) to Total Operating Income. Most of the Title companies show a positive Operating Ratio, meaning they had an operating gain for the year(s) in question. Overall for the Title companies operating in NH, both 2005 and 2006 show an average Operating Ratio just over 4%.

The second ratio (Income Ratio) is the ratio of Net Income (pre-tax) to Total Operating Income. Again, most of the Title companies show a positive Income Ratio, meaning they had positive pre-tax Net Income. Overall for the Title companies operating in NH, both 2005 and 2006 show an average Income Ratio of about 5 ½%.

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Regional Comparison

We looked at market share and concentration by state within New England as well. This table shows the results:

State	Top 5 Cos	Top Co	HHI
CT	76%	26%	10.7%
ME	91%	49%	24.8%
MA	73%	37%	14.9%
RI	80%	32%	11.8%
VT	94%	40%	20.6%

(1) First American Title Insurance Company is top company for CT, ME, MA

(2) Commonwealth Land Title Insurance Company is top company for RI

(3) Connecticut Attorneys Title Insurance Company is top company for VT

The rest of New England appears to be in line with NH as well as countrywide; a few companies dominate the market, with the top company having as much as half of the business in the state. All of the HHIs are at least in the moderate range, with a couple in the high concentration range.

Summary & Conclusions:

After reviewing the material reflected in this report and the attached exhibits, we believe that there is **not** a reasonable degree of competition in the NH Title insurance marketplace. The factors that we emphasize are as follows:

- The number of companies offering the coverage is low, with market share for some individual companies high. A very few companies account for anywhere from 75% to 90% of the premium.
- Reverse competition exists, in that the marketing of the product is not to the party who pays for it, and the consumer has little, if any, market power since they must purchase the product if they have a loan/mortgage on the property. There is little incentive for the brokers, etc to keep costs down since they simply pass them on.
- Finally, a review of filing activity shows little actual movement in the rates for Title insurers. The rates the Title companies charge are not responsive to changing costs of production, improvements in technology or increased revenue per transaction because they don't need to be. There is no transparency for the ultimate consumer – they don't generally “shop” their business and the premium is not broken down into its component parts. Even if real costs are falling for the Title company, they can use the excess of what they collect in premiums to provide the inducements or services to the third-parties we discussed earlier that generate more business for them, rather than returning it to consumers in the form of lower premiums.

Exhibit I

NAIC Code	Company Name	Group Code	Line of Business	Product Mix	HHI Index ****	State Specific					
						2006	2005	Mkt Share			
						DWP	DWP	Chg from 2005	2006	2005	
50814	FIRST AMERICAN TITLE INSURANCE COMPANY	70	Title	100%		15,879,287	19,208,167	-17.3%	36%	37%	
51624	UNITED GENERAL TITLE INSURANCE COMPANY	70	Title	100%		232,159	0		1%	0%	
50083	COMMONWEALTH LAND TITLE INSURANCE COMPANY	99	Title	100%		4,721,620	5,741,821	-17.8%	11%	11%	
50024	LAWYERS TITLE INSURANCE CORPORATION	99	Title	100%		2,519,605	2,972,959	-15.2%	6%	6%	
50012	TRANSNATION TITLE INSURANCE COMPANY	0	Title	100%		418,296	63,952	554.1%	1%	0%	
50520	OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY	150	Title	100%		3,555,977	4,997,361	-28.8%	8%	10%	
50121	STEWART TITLE GUARANTY COMPANY	340	Title	100%		5,372,831	6,365,221	-15.6%	12%	12%	
50369	INVESTORS TITLE INSURANCE COMPANY	627	Title	100%		0	0		0%	0%	
50229	CHICAGO TITLE INSURANCE COMPANY	670	Title	100%		9,050,645	9,510,777	-4.8%	21%	18%	
51101	NATIONS TITLE INSURANCE OF NEW YORK, INC.	670	Title	100%		0	0		0%	0%	
51535	TICOR TITLE INSURANCE COMPANY OF FLORIDA	670	Title	100%		221,225	494,115	-55.2%	1%	1%	
51268	CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY	4255	Title	100%		324,200	272,209	19.1%	1%	1%	
51586	FIDELITY NATIONAL TITLE INSURANCE COMPANY		Title	100%		969,303	1,588,561	-39.0%	2%	3%	
51020	NATIONAL TITLE INSURANCE OF NEW YORK INC.		Title	100%		0	0		0%	0%	
50784	SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE		Title	100%		2,494	8,061	-69.1%	0%	0%	
50857	SECURITY UNION TITLE INSURANCE COMPANY		Title	100%		365	0		0%	0%	
50067	TICOR TITLE INSURANCE COMPANY		Title	100%		101,669	256,793	-60.4%	0%	0%	
	All Other					304,940	0		1%	0%	
TOTAL											
						16.3%	43,674,616	51,479,997	-15.2%	100%	100%

* Expense Ratio is a countrywide companywide ratio, to be used for comparison purposes only and to develop a combined ratio

** Operating Ratio = Net Operating Gain/(Loss) divided by the Total Operating Income

*** Income Ratio = Net Income (pre-tax) divided by the Total Operating Income

**** The Herfindahl-Hirschman Index (HHI) is a measure of the size of firms in relationship to the industry and an indicator of the amount of competition among them.

An index below 10% indicates an unconcentrated index

An index between 10% and 18% indicates moderate concentration

An index above 18% indicates high concentration

Exhibit II

NAIC Code	Company Name	Group Code	Line of Business	Loss Ratio		Exp Ratio *		Countrywide Combined Ratio		Underwriting Profit	
				2006	2005	2006	2005	2006	2005	2006	2005
50814	FIRST AMERICAN TITLE INSURANCE COMPANY	70	Title	6%	3%	98%	97%	104%	100%	No	Yes
51624	UNITED GENERAL TITLE INSURANCE COMPANY	70	Title	0%		98%	99%	98%		Yes	No
50083	COMMONWEALTH LAND TITLE INSURANCE COMPANY	99	Title	2%	7%	94%	92%	96%	99%	Yes	Yes
50024	LAWYERS TITLE INSURANCE CORPORATION	99	Title	20%	1%	100%	100%	120%	101%	No	No
50012	TRANSNATION TITLE INSURANCE COMPANY	0	Title	17%	28%	108%	105%	125%	133%	No	No
50520	OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY	150	Title	0%	10%	94%	94%	94%	104%	Yes	No
50121	STEWART TITLE GUARANTY COMPANY	340	Title	0%	6%	94%	94%	95%	100%	Yes	Yes
50369	INVESTORS TITLE INSURANCE COMPANY	627	Title			79%	74%			No	No
50229	CHICAGO TITLE INSURANCE COMPANY	670	Title	6%	4%	96%	94%	102%	98%	No	Yes
51101	NATIONS TITLE INSURANCE OF NEW YORK, INC.	670	Title			15021%	12505%	n/a	n/a	No	No
51535	TICOR TITLE INSURANCE COMPANY OF FLORIDA	670	Title	7%	16%	101%	90%	108%	106%	No	No
51268	CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY	4255	Title	0%	0%	99%	96%	99%	96%	Yes	Yes
51586	FIDELITY NATIONAL TITLE INSURANCE COMPANY		Title	18%	19%	96%	94%	113%	113%	No	No
51020	NATIONAL TITLE INSURANCE OF NEW YORK INC.		Title	-2%		42%	39%	40%		Yes	No
50784	SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE		Title	0%	0%	97%	98%	97%	98%	Yes	Yes
50857	SECURITY UNION TITLE INSURANCE COMPANY		Title	0%	0%	93%	92%	93%	92%	Yes	Yes
50067	TICOR TITLE INSURANCE COMPANY		Title	21%	51%	100%	104%	120%	155%	No	No
	All Other					n/a	n/a	n/a	n/a		
	TOTAL			5%	6%	97%	95%	102%	101%		

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Exhibit III

NAIC Code	Company Name	Group Code	Line of Business	Oper Ratio (CW) **		Inc Ratio (pre-tax) (CW) ***	
				2006	2005	Prior Yr	Prior 5 Yrs
50814	FIRST AMERICAN TITLE INSURANCE COMPANY	70	Title	3.1%	3.9%	4.6%	6.0%
51624	UNITED GENERAL TITLE INSURANCE COMPANY	70	Title	-4.5%	-3.8%	-3.2%	-2.0%
50083	COMMONWEALTH LAND TITLE INSURANCE COMPANY	99	Title	9.1%	5.0%	12.3%	5.3%
50024	LAWYERS TITLE INSURANCE CORPORATION	99	Title	2.4%	2.1%	3.9%	2.7%
50012	TRANSNATION TITLE INSURANCE COMPANY	0	Title	-5.3%	4.1%	-1.8%	3.6%
50520	OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY	150	Title	1.8%	2.5%	2.8%	3.3%
50121	STEWART TITLE GUARANTY COMPANY	340	Title	1.6%	3.3%	2.0%	3.2%
50369	INVESTORS TITLE INSURANCE COMPANY	627	Title	9.4%	15.5%	10.8%	12.9%
50229	CHICAGO TITLE INSURANCE COMPANY	670	Title	7.6%	5.5%	9.4%	8.0%
51101	NATIONS TITLE INSURANCE OF NEW YORK, INC.	670	Title	37.6%	46.2%	88.6%	97.8%
51535	TICOR TITLE INSURANCE COMPANY OF FLORIDA	670	Title	-3.7%	2.5%	1.6%	4.2%
51268	CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY	4255	Title	-5.3%	3.6%	-0.4%	5.9%
51586	FIDELITY NATIONAL TITLE INSURANCE COMPANY		Title	5.4%	3.1%	6.1%	7.7%
51020	NATIONAL TITLE INSURANCE OF NEW YORK INC.		Title	1796.6%	137.0%	419.6%	73.5%
50784	SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE		Title	2.5%	-4.1%	2.3%	-2.0%
50857	SECURITY UNION TITLE INSURANCE COMPANY		Title	3.6%	3.7%	10.3%	14.4%
50067	TICOR TITLE INSURANCE COMPANY		Title	6.6%	4.6%	10.7%	8.5%
	All Other						
TOTAL				4.1%	4.1%	5.6%	5.5%

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