



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor  
Sean Dilweg, Commissioner

Wisconsin.gov

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## Office of the Commissioner of Insurance Title Advisory Council

**Minutes**  
**Friday, October 19, 2007**  
**9:30 a.m. – 12:30 p.m.**  
**125 South Webster Street**  
**Room 227**  
**Madison, WI 53707**

Council Members Attended: . Thomas Rostad (Chair), Dane County Title; Lemuel Eton, Metropolitan Milwaukee Fair Housing Council; David Silberman, Stewart Title; Jean Plale, Department of Financial Institutions; Sona Olson, Olson Reality; Ron Steinhofner, M&I Bank; Linda Marincel, Royal Credit Union; Joe Theisen, Fairway Independent Mortgage; and Michael Turney, Langlade Abstract and Title Company.

OCI Representatives Attended: Commissioner Sean Dilweg, Deputy Commissioner Kimberly Shaul, Jennifer Stegall, Bob Luck, Katherine Otis, Sue Ezalarab, Rhonda Peterson, Eileen Mallow, and Mary Reines

Others Present: Pete Christianson, Quarles & Brady; Mike McDonnell, First American Title; Tim Schmidt, Chicago Title Insurance Company; Karen Gilster, Wisconsin Land Title Association; Joe Binkiek, MAIC; Mel Thomas, Government Accountability of GAO; and Patrick Ward, GAO.

### **I. Opening Remarks**

Commissioner Sean Dilweg –

This committee is together to deal with both the larger issues at hand the small issues Wisconsin is doing well compared to other states. Wisconsin does not want to have issues that other states have encountered.

### **II. Introductions**

Thomas Rostad, Chair

Discussed the current title market situation and issues for the title industry over the last few years. Title insurance exists to protect owners and title companies.

Many issues came up due to the refinance boom. Really our job is to make sure you as the property owner has the property settled and avoid claims.

There have been some abuses on a national scale. Wisconsin is a state that does not have a lot of issues. Pricing here is lower than national averages

### **III. GAO Presentation**

**“Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers.”**

Patrick Ward, Senior Analyst

## Melvin Thomas, Senior Analyst

Background –

Report online Title insurance

Given at NAIC gao.gov – investigation unit of government for congress

Insurance is not federally regulated, but the federal government does rely on the states for cooperation

Information from Oxley

Referral fees

Characteristics of the market

Regulatory environment

Are we paying too much

CA, CO, IA, NY, and TX all apart of the states investigated.

They have different markets but together represent the market place

Completed in April of 2007, the report was during refinancing boom. Finished just at the end.

Tom – There are 2 basic policies

Owner – protection on land

Loan – ensures lender is in first position if there are issues with the property

Refinancing

Affiliated agents

Independent agents

85% split between insurers and agents

Premium rates varied

Bankrate.com – does not have reliable data.

Title competition

Reliance is from referrals

Affiliated business

Premiums raised by

Risk rate state – WI is – there are questions on the pricing structure.

Generally not worth the consumers time to educate themselves on title insurance. Price savings are minimal between competitors use to market to consumers

There are referrals maybe in the interest of other parties and not

Lenders requires insurance, potential

Captive insurance, builders would create their own title insurance

ABA increase referring owning part of the title company and send all their business to that company.

NAR – capture rate is low, not a lot

MN has issues

Tom (Chair)- Who did you talk with due to limited access of information. CO has bad problem. Demand (Realtors) and supply is (lenders).

WA, CO, CA, - Issues with ABA's

Look at ABA's from consumer point of view, not eliminating ABA's not any higher

Did not validate the study or not lower.

Not a lot of variation in rates

Tom – In Wisconsin it's market to market, local conditions and competition

In terms, loan amount and home price. As they go up the cost of insurance goes up.

Search examine work is the same

Agents' costs do not go up regardless

Claims rarely to policy limits  
Costs fore insurers to agents costs don't change with the house  
Lower end transactions –subsidation  
Most regulators did not know about subsidation

Risk Rate States –could not validate their own questions.  
All inclusive states –search and exam fees in premium  
Risk Rate- fees collected external of the premium  
Splits between insurer and agent  
85% of premium collected by the agent  
15% of premium to the insurer  
Review of what agents are charging outside of the premium for search and exam fees

Back hold of date – does not always know agent costs

Title insurance – small line, no scrutiny, regulation saw it as a fixed costs.  
CA & TX have data. Did not get functional data to get data at agent level  
Oversight of agents – just reviewed escrow accounts  
It is also hard to devote resources to review all accounts

Recommendations to all states and NAIC –  
Clarify regulations on referral fees  
Formalized coordination between States and HUD  
Strengthen state regulations  
Knowing who owners of title companies are  
Data is key

One option is very detailed to the transaction between the agent and “insured”  
State – needs to determine resources to devote and how to interpret laws/ regulation  
Texas has online information. Texas is still determining how useful the date is and how to not be overwhelming to the agent, yet being able to analyze.  
There is a variation between independent agents. It is an educational process for agents and small businesses alike. The data in Texas is county to county. In 2004, 5 of seven agents reported losses.

Overall, the profit, after looking at salaries and percentage of reinsurance is 29% on average. This was determined by the size and salary distribution. Comparing independents and affiliated for underwriting requirements is a mixed bag.  
These issues all raised several good questions. What is the usefulness of the data, transparency of the data, and the role of authority by government.

General comments/ Questions:

- What are agents collecting in premium and are costs excessive? It is good to understand the industry. Do agents actually exam and collect the necessary information for underwriting. What is the composition of costs
- It is important to look for norms and outliers.
- There are issued with justifications. Agents versus the underwriters. The hope is that you get voluetenary data cooperation. Most data is on the income sheet and balance sheet. There is resistance for more data. It is important to decide what issues are going on in Wisconsin and what is worth looking at.
- Some of variances in the data collected shows the range of understanding for what data should have been provided by the agents and reporting that needed to be done.
- Wisconsin is an all-inclusive state. Rates are by market. In the same market, there is not the general belief consumers with the same rate focus on competition. The consumer selects title insurance based on the angle of how consumers end up at the door. Some consumers are subsidizing as well.

There is the issue between residential and commercial involved at a higher rate per \$1,000. This maybe once issue the council will want to review.

- Consumer for insurance if the bank, mortgager, or realtor directs the business.
- Generally, in commercial, the customer is on the front end of the sale, where as residential title insurance is picked up at the closing.
- The primary concern was not pricing, but it was about service and seems to be the trend.
- There seems to be a master pricing on development. The bidding can get out of control if agents are not making money and fail to give the consumer the protection they need.
- There is an issue with ABAs – realtor owners who write must present disclaimer statement to customer. There is crossing of regulation among departments. Education is a big piece of the issue.
- Many times title insurance is lender driven to protect the interests of all involved parties. The lender needs to tell the consumer all the different elements of title insurance.
- Madison has the largest FSBO (for sale by owner) market at 27% of real estate transactions.
- A resource is titleinsurance.com and gives information on a national level. It can be helpful. The HUD booklet is also helpful, but by the time it is given to the customer is to late for them.
- The best thing the council could do is level out the playing field. There is not a strong rationale for variances in the title insurance market.
- It is important to remember that the agent deductible is shared and agent errors are transferred. The underwriter does not necessarily take resources or involved in claims. Generally, the largest claims are fraud and forgies. The agents are responsible for their negligence. Claims come out of activities not through underwriting as previously stated. Underwriters need to protect the exposure to claims. The risk factor comes out of 15% the premium.
- A couple of claim issues include the failure of recording documents, construction loans, where liens are filed, and waivers for disbursement.

#### **IV. NAIC Presentation**

Joe Bieniek

15 states were involved in a project to review title insurance regulation. California is the lead on the project and has a lot of activity and interest in reviewing the business practices of title insurance. The goal is to provide the best product to the consumer, avoid issues, and anti-inducement law summary. Broad issues- consumers are not aware that they have a choice for title insurers. The factors for rates and pricing in an area can vary. Other issues are: Excess profits, affordable costs, rate regulation, captive, disclosure requirements, costs at the consumer level versus the agent, and changes to annual statements.

Specific charges/ items identified:

- There are two different model laws. Wisconsin has not adopted either one of these laws. The laws need to be updated to reflect current marketplace issues/ practices.
- Part of the data gathering is to zone in on the rates
- Lenders pay concept – costs that are transferred to the consumer.
- Anti-Inducement Law – Nevada has this.
- Colorado and California have online quoting – however the general consumer has to have the knowledge to be able to shop around.

General comments:

In relation to excess profits, people forget it is a function of volume.

A point to consider is what happens when a person does not need a lender in a property transaction.

Need to be careful that lenders do not police the title insurance business

Concurrent insurance maybe lost and costs will go up  
Is the NAIC asking lenders to shop for the consumer?  
When lenders advertise their rate, they have to include information about the title insurance.  
Compensation drove large/ national lenders  
Realtors/ Lenders criteria is important to the consumer – the service, rate, price, and competency are key factors  
Realtors and lenders have relationships with the company  
There are no system requirements for title insurance.  
It might be appropriate to get an opinion from a realtor regulator

## **V. Update of the Title Exam**

Sue Ezalarab

OCI has not focused on title insurance in 10 years. For agent licensing, they study from the packet that has not been revised and OCI is looking to expand the packet. The goal is to expand the product knowledge and questions.

Approximately 200 agents take the annual exam

There are 2,600 agents licensed in Wisconsin

To update the packet, please e-mail suggestions to Jennifer Stegall.

The time frame for updating the packet is open right now. We are looking at up to 16 months to finish.

## **VI. Other Business**

OCI is open to suggestions from the council for updating the Title Exam

There are a lot of issues, but it will be important for the council to prioritize the issues

## **VII. Next Meeting Date**

February 15, 2008 is the next meeting. The meetings will be quarterly. All meetings for 2008 will be in room 227.