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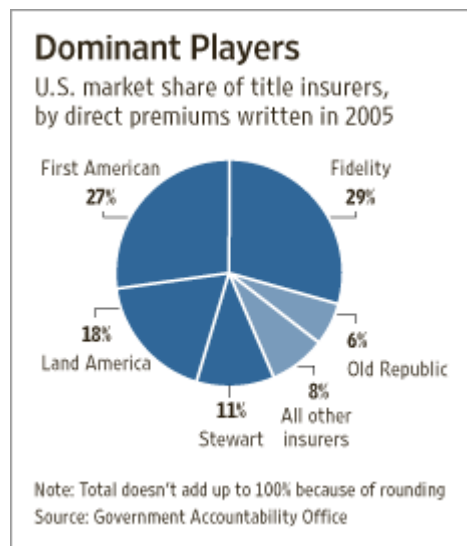
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Scrutiny Tightens for Title Insurers

 By **JOHN R. WILKE**
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The collapse of the housing boom is bringing harsh new scrutiny to the \$17 billion title-insurance business, including allegations that insurers colluded illegally and paid kickbacks to agents or brokers to get business.

In the latest legal challenge, an antitrust suit filed Feb. 1 in federal court in Brooklyn accuses the four firms that dominate title insurance nationwide of illegally fixing prices in New York state. Although insurance firms have limited immunity from antitrust claims because state regulators approve their rates, the suit accuses title firms of concealing improper costs underlying their rate requests.



The recent housing bust is putting the spotlight on what critics see as abusive practices across the housing industry. Mortgage brokers and lenders who pushed high-cost loans onto borrowers and appraisers who bent their estimates to ensure deals could go through are among those facing pressure to clean up their acts.

The New York suit, which seeks to represent all home buyers in the state, says consumers were forced to pay hundreds of millions of dollars in extra closing costs.


At least six states, including California, Colorado, Florida and New York, have targeted alleged kickbacks and payments by title insurers to agents and others. Since 2003, title insurers, their agents or affiliates have paid more than \$100 million in fines, penalties and settlement money in

cases brought by state and federal regulators, according to a 2007 report by the Government Accountability Office. The report also cited a lack of competition in most states.

"We're seeing widespread abuses in this industry, and more states are beginning to take action," said Woody Girion, deputy insurance commissioner in California.

Title insurance gives buyers the assurance they have clear ownership of the property and don't face competing claims over it. The insurance is required in nearly every real-estate transaction, even when people are refinancing a loan on a home they already own. The industry is overseen by the states, resulting in widely varying rates and regulation.

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Regulators say that since most consumers don't shop around for title policies, the insurance firms battle to get recommended by brokers, lawyers and others who assist buyers. Sometimes these intermediaries get referral fees in exchange for recommending a particular title insurer. To the extent that insurers compete to pay the most lucrative referral fees, it pushes the price of a policy up, not down.

While most referral fees are barred by state and federal regulation, title-insurance agents and the real-estate and mortgage brokers they work with often craft compensation arrangements that fall into a gray area, regulators say.

Edward Miller, a spokesman for the American Land Title Association, said kickbacks "are illegal, and we think anyone who violates that should be prosecuted." At the same time, he said, "we're not just dangling it out there -- title companies get pressured [by brokers and lawyers], and they should be looked at too."

The association, which represents the title-insurance industry, says state regulators work to ensure that rates aren't excessive. In New York, "rates are filed with the regulator, which has the ability to say if it is fair or not," said Mr. Miller, adding that companies are entitled to a reasonable profit and they compete to provide the best service.

Most in the industry play by the rules, he said. While the housing boom encouraged new people to come into the business, he said, "now the down market is doing a lot to clean out the bad apples."

The New York antitrust suit names four big firms that control nearly 90% of the market: **Fidelity National Title Group**, a unit of **Fidelity National Financial Inc.**; **First American Corp.**; **LandAmerica Financial Group Inc.** and Stewart Title Insurance, a unit of **Stewart Information Services Corp.** Shares in all four parent companies are traded on the New York Stock Exchange. The four firms typically sell their policies through nationwide networks of independent agents and affiliates.

The suit says rates in New York are among the highest in the nation, and that New Yorkers paid \$1.2 billion for title insurance in 2006, more than four times the \$260 million paid in 1996.

Title-insurance rates in New York are set by an industry group, which submits them to state regulators for review. The suit alleges that these rates overcharge consumers because they conceal from regulators referrals and other payments that make up much of the cost of a title policy. A 1994 Supreme Court ruling protects title-insurance firms from antitrust suits only if they are actively supervised by state regulators.

"They're gaming the regulatory system," said Gordon Schnell, a lawyer representing the four named plaintiffs. "Especially in New York, where the firms set their rates collectively, that's a violation of the antitrust laws." The suit cites a 2006 state hearing in which regulators conceded they can't adequately review agents' commissions, which make up 85% of rates.

Title-insurance firms said their rates are reasonable and carefully reviewed by regulators. Peter Sadowski, a spokesman for Fidelity National, said the company "is in full regulatory compliance" and will vigorously oppose the antitrust action. Stewart and LandAmerica offered similar responses. First American declined to comment.

The suit says that if regulators looked more closely at agents' costs, they might not like what they

saw. In the hearing, one title agency's financial statements showed it spent \$1 million of its commissions on items identified as "Christmas," auto expenses, political contributions and travel and entertainment, the suit said.

Mr. Schnell said that a typical consumer in New York pays hundreds of dollars in excess charges because of the alleged collusion. He is a partner at Constantine Cannon LLP, a New York law firm that won a \$3 billion antitrust settlement on behalf of **Wal-Mart Stores Inc.** and other retailers against Visa and MasterCard in 2003.

The lead plaintiff in the title-insurance case is Brendan Dolan, a retired New York policeman who owns rental properties in Queens. "The system is unfair for home buyers," he said. "Every time I bought a property, it was the same companies with the same rates."

At the 2006 New York insurance-department hearing, witnesses said rebates and referrals were rife. In testimony from the hearing cited in the new suit, Larry Litwack, the former president of the New York Land Title Association, said, "Let's face it: There are no 'rules' governing title agencies in New York. Steering, kickbacks and referrals are open and notorious, often aided and abetted by the underwriters."

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