

# Industry Update

## September 2006

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# Rate Hearing

- 20+ hours of testimony was heard by the Texas Insurance Commissioner on 8-16-17- 2006
- Best case presented by industry in many years
- Evidence was presented that reverse competition if it exists is not a burden to consumers

# Rate Hearing

- Dr. Jared Hazelton presented information about the original PhD paper in mid-1960's that discussed reverse competition and concluded that it was an effective and efficient way to advertise in the title business.
- Pointed out that the Justice Department report in 1977 relied on this paper but drew the opposite conclusion with no additional facts
  - Part of justification for RESPA
  - No other studies have been done but TDI and OPIC have decided that it is evil and must be stamped out
    - Of course they have no legal authority to do so.

# Rate Hearing

- Recommendations:
  - TLTA: +3.4%
  - TDI: - 4.5%
  - OPIC: -9%

Is there a political factor that will control?

If so, would there be a +% added to any decrease?

# Rate Hearing

- Remember that after nearly a year of arguments, discussions, lawsuits, and written answers to questions and depositions, TDI has filed no disciplinary actions against any one for rebating and had no proof that any rebating was impacting the rates
- At the cost of 100s of \$1000s of Dollars to industry and TDI alike.
- All because of a distrust of the industry.

# Rate Hearing

- Now the bad news
  - The commissioner was not satisfied with the evidence that didn't lead to an easy conclusion that rates should be dropped precipitously.
  - So, he asked for briefs outlining his other options.
  - Staff attorneys, most likely mouthing the ideas espoused by their actuary and enforcement attorney department head, issued a brief discussing many alternative rate methods.

# Alternative Rate Proposals (TDI)

- Reducing rates above \$100,000 on sliding scale from -2.2 to -8.9% for a 4% reduction
- Revise P-24 to give rural agents more of the premium
- Downward deviation by individual companies
- Flex-band: set a max and minimum rate and let companies charge what they want in between.
- Regional rates: more in rural areas where incomes and property values are less anyway

# Deregulation of Rate

- The final option proposed by TDI staff was a deregulation of rates
  - They admitted it would take legislation to do
  - They are assuming that rates would come down but have no way of knowing that
  - They are assuming that there would be competition and that underwriters would compete in the same way
  - This will not happen without a major and bloody battle in the legislature

# Rate Change history

## TITLE INSURANCE RATE HEARING HISTORY 1986-2002

NOMINAL HEARING YEAR	INSURANCE COMMISSIONER STAFF-TDI RECOMMENDATION	PUBLIC INSURANCE COUNSEL-OPIC RECOMMENDATION	TEXAS LAND TITLE ASSOCIATION TLTA RECOMMENDATION	TEXAS DEPARTMENT OF INSURANCE-TDI COMMISSIONER'S ORDER	EFFECTIVE YEAR
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2002	* -6.6%	-7.8%	0.0%	-6.5%	2004
2000	* -12.2%	-8.5%	5.2%	-6.0%	2002
1998	* -13.9%	-15.4%	3.7%	0.0%	2000
1996	* -12.0%	* -21.2%	8.5%	-3.0%	1998

# Rate History

- **1994** -9.7% 4.5% 5.3% 0.0% **1997**
- **1991** N/A -1.8% 5.0% -1.0% **1993**
- **1990** 5.7% N/A 12.2% 7.5% **1991**
- **1989** 0.3% N/A 9.7% 4.9% **1990**
- **1988** 21.2% N/A 17.2% 17.2% **1989**
- **1987** 4.5% N/A 18.0% 14.0% **1988**
- **1986** -14.0% N/A 5.9% 0.0% **1987**

# Adding Insult to Injury

- Commissioner is required by law (2703.203) to hold a hearing in 2006.
- But you say he just did that!
- Right, but that was the continuation of the 2004 hearing!!!
- So, now they have issued the date call with answers on 2005 business due in October, 2006

# 2006 Rate Hearing

- Again by law, the commissioner will be required to open a rate hearing by the end of 2006.
- If prior patterns are followed, it will then be adjourned until after the legislative session.
- Who will be the commissioner then?

# 2006 Rate Hearing

- The current commissioner is acting under an interim appointment and has not been confirmed by the Senate. Unless he is confirmed by the end of the session, he will be gone.
- If his patron, Gov. Perry is re-elected, he will most likely be confirmed for a 2 year term.

# 2006 Rate Hearing

- What if some else wins?
  - Strayhorn? New commissioner
  - Bell? New commissioner
  - Friedman? New commissioner
- Who should you vote for?
  - Not the subject of this discussion!!!
  - However, the lack of information about a successor is distrubing.

# No electronic fee help

- The Department has issued a new TDI bulletin that provides that title companies may not pass on the costs charged by 3<sup>rd</sup> parties for electronic recording of documents. If the clerk adds a charge, ok but not a provider.
- Does this make sense?
  - Maybe. Title companies probably save money by electronic recording rather than having to process bulk recordings. And then monitor them to see that documents were properly recorded. And we can issue the Short –form MTP at closing.
  - But who should pay for this.. The companies or the insureds? As always, TDI supports only consumers.

# TDI unofficial ruling puts burden on companies providing title evidence

- A recent interpretation by TDI has, wrongfully in our opinion, put the entire risk of uncompensated expense for cancelled deals squarely on the shoulders of companies providing title evidence.
- TDI has begun to force this interpretation by its auditing process.

# TDI unofficial ruling puts burden on companies providing title evidence

- TDI has taken the position that the company providing title evidence may only be paid when the transaction closes and may not be paid for the evidence from the operating account of the closing entity.
- This ruling effectively puts the entire cost on the company that has done all of the work and the company that placed the order and has done little to no work at this stage has no financial risk.

# TDI unofficial ruling puts burden on companies providing title evidence

- This ruling has **NOTHING** to do with a cancellation fee since the customer has not been asked to pay **ANYTHING**.
- TDI is again bumping into the trees and doesn't know that it is in a forest!
- The companies that can least afford the expense are being saddled with all of the risk of a failed deal.

# TLTA issues

- One of the most promising new programs in many years is the TLTA individual membership program.
- As we begin a legislative year, TLTA now boasts of 2500 members rather than 675 companies only. This type of number is important when discussing vital legislation.
- Please consider joining TLTA as an individual member. \$20 per year and you can join for 5 years for \$80.
- Consider it an investment in your future.

# TLTA PAC

- It is a unfortunate fact but influence in the Texas Legislature is not gained because you are nice people who do a valuable service.
- Influence: the ability to get in front of legislators to tell your story and explain the issues
- Influence comes from money

# TLTA PAC

- TLTA has for many years sponsored a political action committee. While this PAC has struggled to raise more than \$25,000, Realtor PAC raise \$3 MILLION a year. And a portion of that comes from us, the title folks.
- Much of the time our interests are compatible, as we begin what may be the most important legislative session in the history of our industry, please consider making a donation to the TLTA PAC. Any amount will be helpful.

# TLTA Possible Legislation

- The TLTA legislative committee has met and will make positive recommendations to the TLTA Board of Directors in October to actively seek passage of a number of bills.
- Some background meetings with important legislators will be needed before these bills can be drafted and introduced with any chance of passage. This is being done.

# Attachment of AJ to Homestead

- This bill is designed to put the burden on the AJ creditor to claim that the lien is against non-homestead property if the AJ debtor records an affidavit claiming that the property is homestead. This bill will implement Tarrant Bank v. Miller.
- We will insert into draft that there must be an active transaction such as a sale, mlc or hel loan.
- Judgment creditor will have 14 days to file controverting affidavit after receipt of copy of filed affidavit.

# Power of Sale by independent executor

- This bill will clarify that an independent executor only has the right to sell property in an estate when
  - 1. the power is granted in the will
  - Or
  - 2. the money will be used to pay debts of the estate
  - Or
  - A court orders the sale

# Estate operating a business

- This bill will authorize a family to obtain a court order that will allow an estate to run a family business or farm in the name of the estate. The length of time will be established in the order but will not exceed 20-25 years (but may be extended by another court order)

# Warranty deed after tax 4closure

- This bill will authorize taxing authorities to give a warranty deed after a tax 4closure.
- Some attorneys believe that only QCDs are allowed; others will give full or limited warranty deeds.
- This will specifically address due process issues like service of notice of the sale.

# Alternative Rate Proposals

- During the last Legislative Session in 2005, the industry was working on an alternative to the current rate system.
- We met with TDI representatives and discussed several alternatives including a rate bureau and a negotiated rate case.
- It was decided to try a negotiated rate case.

# Alternative Rate Proposals

- No sooner had the filing deadline passed for a rate bureau bill than the department reneged on its agreement and began the unprecedented discovery process.
- As a result, you can see that every other alternative has been placed on the table by the department.
- So now, it is time to deal with proposal again.

# Alternative Rate Proposals

- A rate bureau in Texas would be composed of agents and underwriters and would establish a rate and perform the actuarial studies needed to support the proposal. All members would then charge the rate unless the commissioner vetoed the change.
- The rate bureau would decide when a rate change was needed and would collect the data and share it with the TDI.
- The existing Guaranty Association would be the vehicle to become the rate bureau.

# Alternative Rate Proposals

- Work at the TLTA board is just beginning again and we are a ways from filing legislation.
- However, you need to know about these things and not be surprised if something this new starts to be talked about.
- And we may need you to talk to TLTA Board Members and legislators as the work progresses.

# Other Issues

- Mortgage Fraud legislation
  - Being pushed by TMBA.
    - Faulty in that it puts most of the burden on title companies for determining if there is fraud
    - Not on mortgage brokers where a lot of the fraud is coming
- Lien release act
  - Prior uniform mortgage act is badly flawed
  - Something may done to make releases more available
    - Allowing servicers to sign them
    - Allowing agents to sign the affidavit rather than just undewriters