“Are Title Fees Fair? Florida Costs Highest in Southeast”

By: Charles Elmore (Palm Beach Post, 3/21/12) emphasis supplied”

The title insurance business is making a lot of money for folks like William P. Foley II, the highest-paid Fortune 500 executive in Florida in 2010. Total compensation: more than $27 million from companies including the nation's largest title insurer.

But it's a rotten deal for ordinary Floridians buying or refinancing a home, consumer advocates say.

"The buyer is sitting there getting shot like fish in a barrel," said Robert Hunter, director of insurance for the Consumer Federation of America. "It's a very antiquated system but hard to dislodge because you have so many rich people getting a lot of money out of it."

Buyers in Florida pay more than $700 million a year for title insurance premiums, with about 12 cents of every dollar going for insured losses in the first nine months of 2011, an analysis by The Palm Beach Post shows. It's been as low as 3 cents for major insurers in the state within the past decade.

That's far different from loss ratios up to 80 percent or more for home, car and health insurance. Industry groups say title insurance is unique and should be judged differently.

Florida's loss ratio for title insurance was about the same as the rest of the country in the first three quarters of 2011. Yet, Florida's title costs top the Southeast and almost double those in neighboring Alabama, according to 2011 survey data compiled by Bankrate.com.

Some industry officials question the data, but it is consistent with a 2006 report by a state analyst that Florida premiums were roughly double those of five surrounding states.

Florida has not revised title insurance rates since 1992 because regulators have been "unable to collect sufficient information," the state's Office of Program Policy Analysis and Government Accountability found four years ago. The report cited a "growing need" to re-examine rates, in part to measure the impact of advanced technology on lowering the costs of checking property records.

The state's Office of Insurance Regulation told The Post last week it "has made multiple attempts to enter into an actuarially sound rate-making review" but has found the process "easier prescribed than done."

Regulators compiled some rate-making data in 1999, but the legislature froze rates for three years. In 2008, regulators began working with a couple of legislators to amend the way rates are set in Florida, but the bills didn't pass, the Office of Insurance Regulation said in a prepared statement.

Title insurers and agents gave more than $500,000 in political contributions to Florida officials in the 2008 and 2010 election cycles, according to records reviewed by The Post with the aid of followthemoney.org and the National Institute on Money in State Politics in Helena, Mont.

The giving included $14,000 to Chief Financial Officer Jeff Atwater and more than $184,000 to the Florida GOP, records show. A spokeswoman said Atwater's office "supports a holistic review of title insurance at regular intervals."

State regulators and elected officials have chosen not to pursue other options that could save consumers money. Iowa long ago created a registry system designed to take the place of regular title insurance. The Iowa guaranty office charges a flat rate of $110 for homes up to $500,000.

Iowa's average title cost at closing for a $200,000 home was $1,120 in the 2011 Bankrate survey - about half of Florida's $2,153 for a home of the same price.

Industry groups dispute that the Bankrate survey captures true costs across states with varying title systems.

It's true that Florida allows up to 70 percent of title insurance premiums to be paid to a title agent, but that isn't pure profit, said Alan Fields, executive director of the Florida Land Title Association. His group represents title insurers and agents.

The agent performs the essential work of searching records to make sure a property is free of problems such as liens, he said.

"The expensive part of the process is identifying and fixing title problems - pre-emptive claims prevention, if you will," Fields said.

Fields does not quibble with the idea that advances in technology may have brought down some costs. Published reports have put search costs as low as $25; Fields said he has seen quotes ranging from $55 to $150. In any event, he argues there's more to an agent's work than a computerized search.

As for Iowa's system, he questions whether Florida needs another state-run concern after property insurer Citizens.

"The state of Florida has not proven terribly adept at running actuarially sound insurers," Fields said. "We don't need another Citizens."

What consumers outside Iowa get instead is an industry "cartel" that "fleeces the American consumer," University of Pittsburgh professor emeritus Joseph Eaton concluded in a 2007 book.

"The income that's generated is based on the public not knowing what they're paying for," Eaton said from his home in Pennsylvania."

Consumers have become accustomed to shopping around for the lowest interest rate, but title insurance is a different story. Even for refinancing the same house, lenders typically require a new search and insurance policy that protects the bank, not the consumer. The buyer pays for it at closing. And the title industry benefits with each transaction.

Most buyers have no idea they have the right to choose a title agent or insurer, consumer advocates say, so those are usually provided for them by people who have little incentive to keep costs down.

Refinancing is hardly exempt from title problems, agents respond. For example, sometimes people involved in a refinancing fail to pay off previous lenders, whether by accident or on purpose, said Barbara Richardson, a title agent in West Palm Beach and an attorney with Shutts & Bowen who represents people in title claims.

"I personally don't think it's a lot of money," Richardson said. "I spend more on my horse's insurance. I'm a consumer, too."

Who benefits? Things seem to have worked out well for Foley and his compensation from Jacksonville-based Fidelity National Financial and Fidelity National Information Systems. Salary, stock and incentives added up to more than $27 million in 2010, according to Forbes.com.

The Fidelity family of companies is the No. 1 provider of title insurance in the country, controlling 35 percent of the U.S. market as of Sept. 30, according to the American Land Title Association.

The top four families - including First American, Stewart and Old Republic - control nearly 90 percent.

Fidelity National Financial reported a profit of $370 million on revenue of $5.7 billion from title insurance and other financial services in 2010. Business has been booming at a company that ranks No. 398 on the Fortune 500 list.

"We remain the largest and most profitable title company in the country," Foley told shareholders in the company's 2010 annual report.

The title insurance business experienced "strong refinance volumes" because of low interest rates, Foley said. He concluded, "The title business produced its best earnings and pre-tax profit margin in a number of years."

In his free time, Foley, 66, has been buying distressed wineries such as California's Chalk Hill, which features an Olympic--size equestrian ring, articles in the business press have chronicled.

U.S. title insurers averaged loss ratios less than 5 percent between 1995 and 2004, the consumer federation's Hunter testified before Congress in 2006. The real action, consumer advocates say, is not to help the buyer but to get a piece of the commission. Several states have settled claims of kickbacks paid to real estate agents, mortgage brokers, lenders and developers. Florida opened at least 11 investigations related to title insurance between 2003 and 2008, state officials noted.

In 2005, for example, Fidelity National Title Insurance Co. settled charges with regulators that it created "name-only" title agencies with real estate agents and mortgage brokers. The agencies had no employees and "performed no title business whatsoever" but were a conduit to route "payment to real estate agents and mortgage brokers in return for referral of title insurance business," state records show.

Last year, Fidelity reached a $4.5 million settlement with the U.S. Department of Housing and Urban Development. HUD claimed the company "engaged in a widespread and years-long campaign to pay real estate brokers kickbacks."

Fidelity denied wrongdoing in the settlement. The company did not respond to repeated requests for comment for this story.

A U.S. Government Accountability Office report in 2007 recommended that state and federal legislators and regulators improve consumers' ability to shop for title insurance based on price, encourage price competition, and ensure consumers are paying reasonable prices for title insurance.