



The Grand Façade: Affiliated Business Arrangements

The emergence of Affiliated Business Arrangements (AfBAs), also known as Controlled Business Arrangements (CBAs), has created an environment within the Title Insurance and Real Estate Industries that threatens free market competition, increases closing costs for consumers while reducing service levels, undermines the solvency of National and Regional Title Underwriters, and erodes the accuracy of the Land Record System, the basis of the entire U.S. Economy.

Loss of Competition:

The one-stop shopping concept of purchasing Real Estate, Mortgage and Title Insurance through affiliated companies may superficially seem a good way to improve services to consumers and reduce costs. Upon a closer review of the practice, it is clear that the opposite is achieved. The problem rests in the fact that the ultimate consumer does not truly “shop” for Settlement Services. The consumer generally relies on the Realtor to make the decisions as to where Title Insurance is purchased, and those decisions are based on the advantages for the Realtor or brokerage, not the consumer.

Increase in Costs:

While the majority of Title Insurance fees are fixed by state insurance regulators, the formation of and proliferation of AfBAs have led to increased costs for the consumer in very insidious ways. Since the Title Agency typically rewards referral sources anywhere from 25% to 50% of total revenue, agencies look to both increase revenue and decrease costs in order to maintain profitability. For starters, the lobby for increasing title insurance premiums will grow ever louder. One has to ask if a title agent can afford to give up to 50% of their premium to a referral source that adds no value to the examination of the title or the issuance of the policy, are premiums too high already. In addition, there are certain fees that agents have some latitude in charging. For example, in Pennsylvania, agents can only charge a settlement fee if the settlement is outside either the office or normal business hours. An agent that is giving away 50% of her premium will be much more likely to charge this fee to a consumer when given the opportunity to do so.

Decrease in Service:

Similarly to the potential for increase in costs, paying referral fees of up to 50% of revenue will force agents to reduce costs beyond the normal improvements in efficiency that all business aim towards. Industry research shows that 29% of all Title Insurance sold in the United States is through an AfBA. 49% of the revenue in those transactions goes to the referral source who adds no value to the examination of title or the issuance of the policy. That equates to 14.21% of all revenue in the Title Insurance Industry. These numbers are all trending up. This reduced revenue in the industry, without any off-setting gain in productivity, results in shoddy performance in all areas by agencies due to reduction in staff or through the hiring of more affordable but non-professional Title Insurance personnel in order to save on operating costs and maintain profitability.

Long Term Health of Underwriters is Diminished:

While national underwriters pursue their short term interests of increased market share by encouraging agents to participate in AfBA's, the long term health of those companies and the industry as a whole is in jeopardy. As agencies give away more and more revenue to referral sources they turn to the Underwriters and demand higher and higher premium splits to maintain profitability. The results are inadequate capital reserves for the Underwriters, the effects of which are being fully realized in the current slow down market. Claims and loss ratios are at historically high levels due to the combination of market forces and poor performance of agencies for the reasons listed above and Underwriters continue to receive less and less of every premium dollar collected.

Erosion of Accuracy in the Public Records:

Perhaps the most alarming aspect of this business practice is that Title Agents are supposed to be the guardians of the public land records, the underlying foundation of the entire economy of the United States. Poor performance by Agents and their less and less experienced staff, among other factors, is eroding the legitimacy of those records. If we do not clearly understand who owns what and the condition of the titles in question, the American economy will be in disarray.

About NAILTA:

The National Association of Independent Land Title Agents (NAILTA) is a non-profit trade association that represents the interests of independent title insurance agents and independent real estate settlement professionals from across the United States. It was created by independent real estate settlement professionals to further the agenda of small business owners from within the title insurance, abstracting, surveying, and real estate community who lack representation at local, state and national levels.

To contact NAILTA, please visit our website at www.nailta.org.