



April 14, 2016

Texas Senate  
P.O. Box 12068  
Austin, TX 78711

Dear Senator –

You may have already heard that the Texas Public Policy Foundation is promoting consumer choice and competition in the Texas title insurance market.

A recent poll showed that 91 percent of Texans agree with us. They said that because they can shop around for automobile and home insurance, they should also be able to shop around for the best deals on title insurance.

Not everyone agrees that Texas consumers should have choice. One title insurance executive wrote a column titled, “Deregulation [i.e., consumer choice] the wrong choice for Texas title industry.” The Texas Land and Title Association (TLTA) has described our modest proposal to introduce competition and choice into title insurance through the same file-and-use system that is used for auto and homeowners’ insurance as a “radical departure.”

However, the radical departure is the current regulatory system designed “to completely regulate the business of title insurance on real property” in which the Texas Department of Insurance (TDI) sets the price and coverage of residential and commercial title insurance. This is far removed from the Texas Model of lower taxes and spending and less regulation that has made Texas the nation’s economic leader for the last 15 years.

In a file-and-use system, consumers—not the government—get to choose what policy at what price is best for them. While TDI would retain its oversight of rates, consumers would benefit because competition would force the title insurance industry to meet the needs of consumers—rather than their current focus on using regulations to their benefit.

TLTA offered several incorrect justifications for maintaining the existing high cost, low-choice regulatory regime, but none of them pass the fact test:

- **CLAIM: The current regulatory system is needed to protect private property rights.**  
**FACT:** All across the country people buy and sell homes, farms, businesses, and other types of property in states with far less regulation of and lower prices for title insurance. None of these states face a crisis when it comes to protecting private property ownership due to title defects.
- **CLAIM: Title insurance consumers currently benefit from choice and competition.**  
**FACT:** Texas’ regulatory regime precludes almost all forms of competition directed at consumers. The state promulgates rates, the types of coverage, and even the division of premiums between the title company and agent. Many title companies are content with targeting various professions for

referrals instead of soliciting consumers directly. The bottom line is that consumers cannot shop for the best deals on title insurance.

- **CLAIM: Consumers have access to low and transparent prices.**  
**FACT:** According to a report by the Lyndon B. Johnson School of Public Affairs, Texas has the highest title insurance rates for \$200,000 and \$400,000 homes among states that require comprehensive coverage. The rates are transparent, but only because the state sets them. However, the rate setting process is so complicated there is very little about it that is transparent to consumers.
- **CLAIM: The current regulatory system explains Texas' low claims rate.**  
**FACT:** Title insurance is naturally a low claims product. Unlike casualty insurance that guards against future risk, title insurance defends against events that occurred in the distant past. A claim only arises if the title agent misses a defect in their search. Nationally, the losses to premiums ratio and claims rates are much lower than other insurance products like homeowners insurance.
- **CLAIM: True consumer choice in the title insurance industry would reduce Texas jobs.**  
**FACT:** Low regulation has been one of the driving forces in the Texas Miracle. Texas has created 39 percent of all non-farm U.S. jobs since the Great Recession started. Competition in the title insurance industry would actually lead to more jobs as consumer spending is directed more efficiently.

Ensuring that an owner has good title has always been important—no one denies that. What we and other advocates of the free market reject is the mistaken notion that there is something unique about title insurance that warrants its exclusion from the forces of competition that have fueled Texas' economic growth.

It makes no sense to claim that the government needs to make choices for consumers in the Texas title insurance market because for some reason consumers can't make good choices for themselves. In his 1992 convention speech, President Ronald Reagan praised his fellow citizens for their "common sense" and "intelligence," assuring them that "I have always believed in you and in what you could accomplish for yourselves and for others." The lessons of Texas history remind us that Texans can fare quite well without the government telling them what to do.

The mischaracterization of the benefits of consumer choice by the title insurance industry is unfortunate but not unexpected. Every time the drive toward liberty threatens to break an industry's hold over the Texas consumer, special interests wrap themselves up with the rhetoric of alarm, spinning tales of impending disaster should they become subject to the demands of consumers. As the great American novelist Mark Twain is said to have observed, "History doesn't repeat itself, but it does rhyme." Like past recipients of corporate welfare, the title insurance industry has conflated what is best for Texas with what is best for their bottom line.

We look forward to continuing this discussion with you during the interim and into the upcoming 85<sup>th</sup> Texas Legislature.

Sincerely,



Brooke Rollins  
President and CEO