

Title fight

Insurance commissioner's proposal to roll back service fee gets a hearing Wednesday

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Consumer advocates across the nation will be closely watching this week's tense showdown between Insurance Commissioner John Garamendi and the title insurance industry.

Charging that title and escrow services are "rife with illegal kickbacks and gratuities," Garamendi will hear testimony Wednesday on his proposal to roll back service fees to 2000 levels. The rate reduction could take effect as early as March 1.

The ambitious reform plan pits Garamendi, a candidate for lieutenant governor, against one of the nation's most powerful lobbying groups.

"There is no doubt that they have political power," Garamendi said. "They have gone to the legislatures and Congress and simply passed out money. ... I don't mind a tough fight if it is the right thing to do to help consumers, to overturn unnecessarily high rates. I will fight to the finish. I can't be bought, and we'll win."

Insurers already are rallying to stop the rollback and a planned restructuring of title and escrow fees. If implemented, Garamendi's plan would trim an estimated \$1 billion a year off the title and escrow industry's \$4.5 billion revenues in California.

Analysts say the San Francisco hearing also could add momentum to ongoing studies of title and escrow prices by the U.S. Government Accountability Office (GAO) and by several states. Industry critics have accused Garamendi of political grandstanding. They also have threatened to take him to court.



BEN MARGOT / Associated Press
Insurance commissioner John Garamendi faces industry opposition to his plan to restructure title and escrow fees.

Insurers strongly dispute charges that kickbacks and a lack of competition have inflated their fees. Rate hikes, while high in recent years, have been justified by rising costs, they hold.

Lawrence Green, executive vice president of The California Land Title Association, contends that Garamendi lacks the authority to implement his plan. "We have counsel," he said. "We are still looking at our legal options."

While fees soared between 2000 and 2005, along with California real estate prices, the slowing pace of sales "has changed the dynamics" of the title industry in recent months, he maintains.

"I believe the title insurance market is competitive, that title rates have been falling, and that the commissioner's regulations are actually anti-competitive," Green said.

Studies have shown that only a handful of firms dominate the title insurance industry in California, Garamendi said. By basing the price of title insurance and escrow fees on the cost of homes, the industry has created a fee system that is "virtually unrelated to the cost of services provided," he added.

The commissioner was at odds with title and escrow companies long before the hearing was called. Since mid-2005, he has ordered various title companies to pay nearly \$39 million in fines and refunds to consumers to settle charges that they paid kickbacks to real estate brokers, lenders and builders in return for referrals.

His office estimates that the proposed rollback of title and escrow fees could lead to a 23 percent reduction in title insurance rates for home purchases, a 16 percent drop in the cost of title policies for refinances, and a 27 percent decrease in the cost of services by escrow companies controlled by title insurers.

On a \$500,000 home sale in San Diego County, a title insurance rollback would result in a savings of as much as \$413 for the buyer and seller combined. Stressing that escrow fees vary greatly, the state Department of Insurance estimates a savings in escrow fees ranging from \$442 to \$2,242 on a \$500,000 purchase.

A national issue

Insurance regulators have begun questioning title and escrow fees in a number of states, including Colorado, New York and Texas. Some analysts say California is in a position to lead a national insurance-reform movement.

"If the commissioner adopts the regulations that have been circulating, I think other states can be expected to look at that and consider their own," said Michael Strumwasser, outside counsel to Garamendi. "We have had studies of competition in the title insurance industry for literally a quarter century, and they all say the same thing literally: There isn't any."

If the rollback plan goes forward, it will be completed by Garamendi's successor, since he plans to leave office at the end of the year. In 2008, the title and escrow companies would begin filing reports on their costs and operations, and the commissioner's office would be charged with setting new maximum rates.

Since the proposed rollback would be administrative, it likely would take a lawsuit or new legislation to block its implementation, the commissioner said. In Northern California, most escrow operations are affiliated with title companies. Southern California is dominated by independent escrow firms that are regulated by the state Department of Corporations, not Garamendi's office.

P.J. Garcia, who chairs the Escrow Institute of California trade group, says the rollback would force independents to lower their rates to remain competitive. Some would be forced out of business, she contends.

Edward Miller, chief counsel and vice president of public policy for the American Land Title Association, holds that increased scrutiny of his industry here and around the country is the result of the recent housing-price boom.

“I think there has been focus on the real estate industry in general because it is doing so well,” Miller said. “Prices for homes have gone up. We should not be surprised they (Garamendi and the GAO) are looking at settlement services as well.”

At the request of the House Financial Services Committee, the GAO is studying the title insurance industry, including pricing, competition, the size of the market, the roles of the various participants in the market and how the industry is regulated. A report is expected to be ready early next year.

Price of success

Doug Heller, executive director of the Foundation for Taxpayer and Consumer Rights, says sky-high title and escrow fees, not rising home prices, have fueled interest in insurance reform.

“This problem has been identified all around the country,” Heller said. “Nowhere has it been addressed.”

Mike Belote, spokesman for the California Escrow Association, said free enterprise already is doing a good job of establishing fair prices. The commissioner's “whole proposal is based on a faulty premise that there is no competition in title and escrow, and, in fact, those are fiercely competitive businesses,” he said.

Title and escrow services are not well understood by consumers, said Bob Hunter, director of insurance at the Consumer Federation of America. While people have the right to shop for title insurance on the open market, most people have their title insurance chosen for them by their real estate agent or mortgage broker, he said.

The costs of title and escrow services frequently get lost in the paperwork as stressed-out home buyers struggle to understand their home loans and make preparations to relocate, said Patrick Woodall, a senior researcher for the consumer federation.

“Consumers don't know they can shop for it,” he said. “It appears to be part of the real estate transaction. If you are buying a house in California, it is a \$600,000 event. Title insurance may only be a few thousand dollars of it. It often is very difficult to assess what you are paying for.”

Title insurance protects the lender and the buyer against loss arising from disputes over property ownership. It is required by lenders to guarantee that there are no conflicting ownership claims, such as tax liens or utility easements. The rate is generally a percentage of a property's sales price.

An escrow officer is a neutral third party who holds the documents and money involved in a real estate transaction and ensures that all conditions of the sale are met. Escrow companies “have evolved to be the glue that holds things together,” said Garcia.

Garamendi says it's time to pull things apart and examine how the pieces fit.

Robert Fellmeth, director of the Center for Public Interest Law at the University of San Diego, strongly supports Garamendi's efforts. He isn't convinced that the commissioner can succeed, however.

Consumer activists have been complaining about a lack of competition within the title and escrow business for decades, Fellmeth said. In a report to Garamendi that drew fire from the industry last year, Texas economist Birny Birnbaum concluded that there was little price variation among the top six title companies in California.

“There have been other reports on this subject,” Fellmeth said. “It is not as if something has suddenly been discovered.” Insurance companies “are very powerful. We'll see what happens. I wouldn't sell any stock in the title insurance industry yet.”