



# Texas Title Insurance Needs Competition

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## Key Points

- Texas needs a more flexible, competitive regulatory structure for title insurance and to eliminate rate setting.
- Title insurance is the only line of insurance in Texas where the state sets the rate to be charged.
- Texas is one of only two states in the country that sets insurance rates for title.
- Texas has among the highest title insurance rates in the country.
- Title rates in Texas are even more excessive for larger, commercial policies, and the excess charges grow at an exponential rate compared to other states studied.

## Introduction

In 2018, a Texas homebuyer paid over \$280,000 for an average priced home. That's up 3.5 percent from last year, and almost 45 percent from 10 years ago. And many added costs related to purchasing and owning a home have also increased. Luckily, today's competitive markets and advanced technologies allow consumers to shop around for the best prices on homes, on mortgage interest rates, on improvement projects, on realtor fees, and on homeowners insurance. They can even look for the neighborhood with the lowest homeowner association fees and tax rates. For added convenience, a number of online comparisons have been created over the last several years to assist shoppers in finding the best deals.

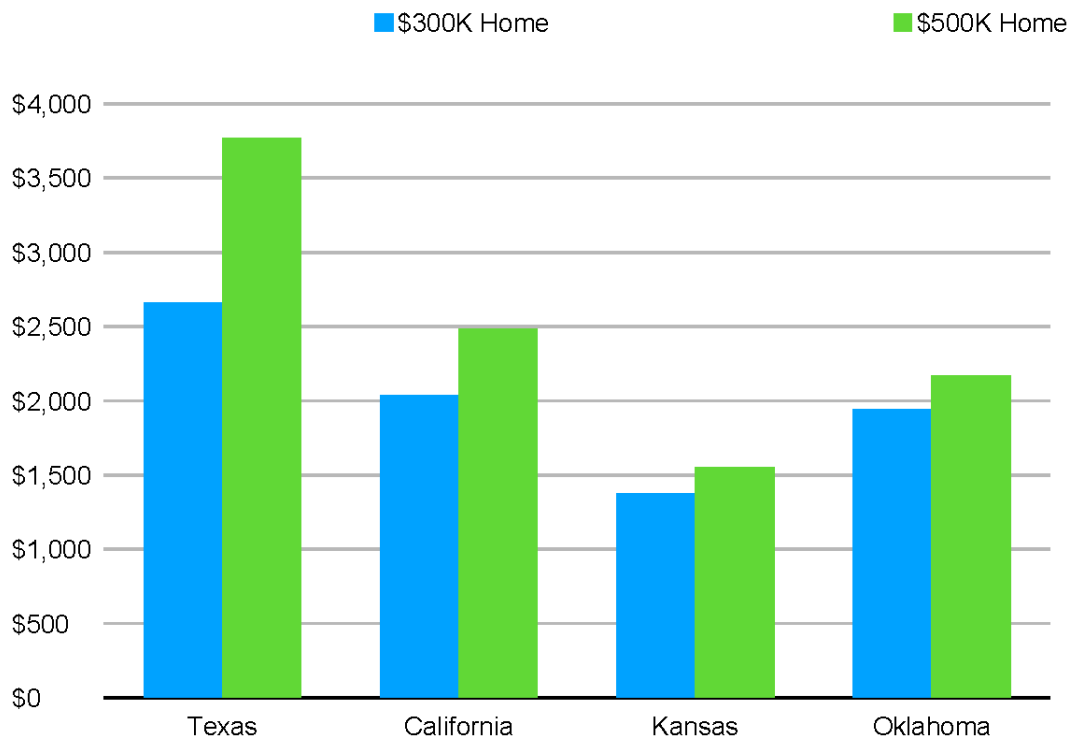
Unfortunately, there is one cost related to home buying that is absolutely non-negotiable: title insurance. In fact, Texas law mandates a set rate that all insurance companies must charge, and you are prohibited from shopping for a better deal. That's right, Texas homebuyers are prohibited from exercising their freedom to shop around for the best price. And surprisingly, it is the title insurance industry that wants it that way. Why? Because they charge among the highest prices for title insurance of any state in the nation.

The solution is to add a competitive rate filing system similar to every other line of insurance in Texas and most every other state. This would allow insurance companies to compete for business by offering lower rates to Texans while still ensuring regulatory oversight to protect against insolvencies and fraud.

## Excessive Rates

According to research from the University of Texas at Austin LBJ School of Public Affairs, Texans pay up to \$1,663 more for title insurance than for comparably priced properties in other states, and this is only for properties valued up to \$1 million ([Eaton and Gao 2016, 4, 5](#)). This study compared policies valued up to \$1 million in all 50 states. The findings show Texans pay among the highest rates of any state in the country, and the higher the value of the property, the greater the overcharge (see [Figure 1](#)).

The study used multiple data sets comparing rates from all 50 states in its calculations. These include "a national HUD-1 settlement cost database created by the U.S. Department of Housing and Urban Development, a set of closing cost quotations from a Bank of America website collected in 2016, and a set of Stewart Title cost quotations, computed twice from Stewart Title websites, once in 2010 and once in 2016" ([Eaton and Gao 2016, 4](#)). Using a multivariate statistical model, the study's authors found that "...states with promulgated rates, such as Texas, have significantly higher title costs..." and "the 'type' of regulation is the independent variable that best explains different title related charges across the states" ([Eaton and Gao 2016, 8](#)). "On a per-policy basis, Texas's decision to set prices and restrict

**Figure 1.** Title insurance costs

Source: Calculations from data derived from Texas Department of Insurance Rate Manual, and Bank of America title closing cost estimate.

innovation adds from \$292 (in 2001 dollars) to \$1,663 (in 2016 dollars) in costs for the average purchaser of title insurance policies of \$1 million dollars or less” ([Eaton and Gao 2016, i](#)).

### Commercial Rates

A follow-up study by the same authors in 2017 found that for larger, and mostly commercial, policies, the increased cost in Texas is even greater (**Figure 2**). “In Texas, promulgated title insurance prices ... increase at a rate of \$4,577.1 per \$1 million dollars of increased mortgage, or \$4.58 in increased charges per each thousand-dollar increase in a mortgage” ([Eaton and Gao 2017, 4](#)). In fact, the study found that comparing Texas to nine other states for lenders’ policies between \$1 million and \$10 million, Texas’ title insurance prices and the rate of increase are higher than any of the other nine states, and the second highest for simultaneous policies, which include owners’ and lenders’ policies ([Eaton and Gao 2017, 4](#)).

“The state with the second highest rate of increase in lenders’ title insurance increase is New York, where its lenders’ title insurance rates increase at a rate of \$3,121.6 per million increase in a mortgage, or \$1,446 per incremental million mortgage less than Texas.” For simultaneous policies, Texas was the second highest with a rate of increase of \$4,628.10

per million increase, while New York was highest with a rate of increase of \$4,687.68 per million increase, or \$59.58 more than Texas ([Eaton and Gao 2017, 4, 5](#)).

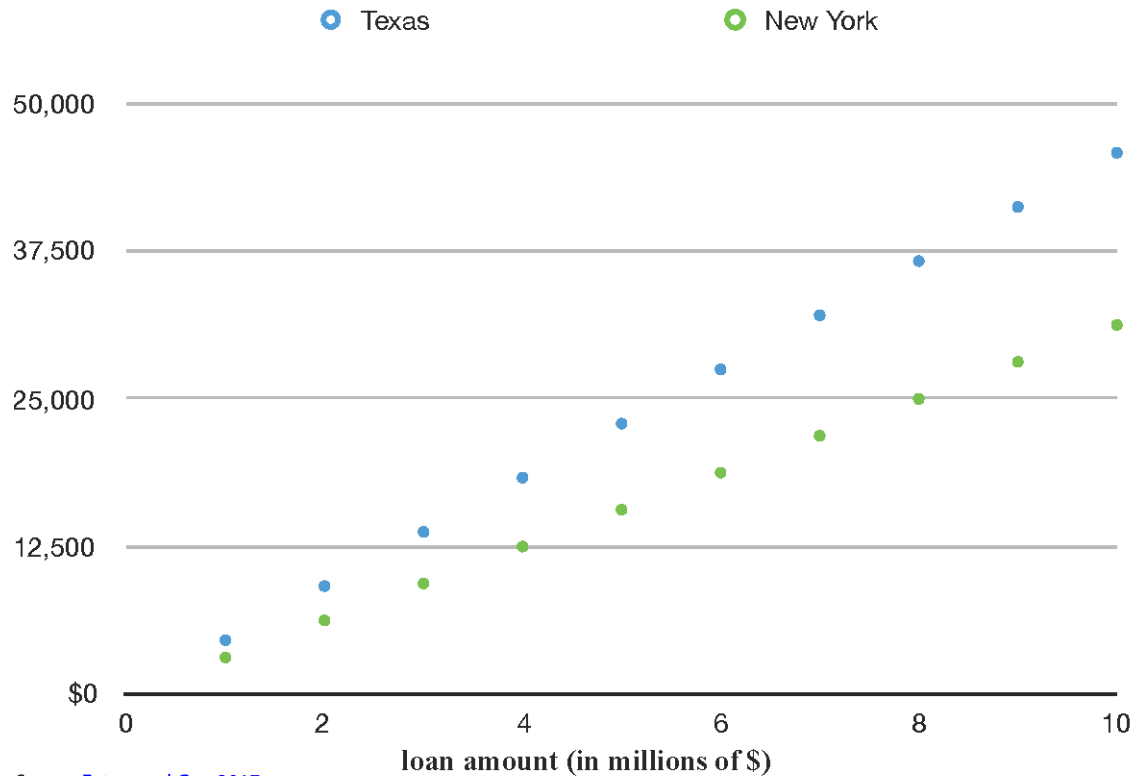
### What Is Title Insurance?

Title insurance protects the buyer and lender from losses related to certain defects in the title of real property. A title insurance policy generally attempts to ensure that the title to the property is clean and clear at the time of purchase. The title insurance agents will attempt to identify any defects in the title that need to be corrected before the owner of the property sells it. If any losses occur as a result of unknown or undiscovered defects, the policy indemnifies the owner and/or the lender for those losses.

There are two types of policies: an owner’s policy and a lender’s (or loan) policy. As the names suggest, the owner’s policy protects the buyer’s interest, and the loan policy protects the interest of the lender, or mortgage company.

In reality, because the title to the property has been searched for any defects, liens, or encumbrances prior to the closing, claims rarely arise which require payment by the policy. In this respect, a title policy can be thought of as an errors and omissions insurance policy. In fact, in Texas, insurance policies pay out less than 2 percent of the premi-

**Figure 2.** Commercial (mortgage) policies title rates 2017  
(Graph showing variations in rates for Commercial Title - TX vs NY)



Source: [Eaton and Gao 2017](#).

um paid. This compares with 60 percent to 90 percent of the premium paid in losses in most other lines of insurance such as automobile and homeowners insurance (**Figure 4**).

### Background

Texans now pay more than \$2 billion in title insurance premiums per year ([TDI 2017a](#)), and we have among the highest rates of any state in the country. Worse yet, Texas actually prohibits price competition, sets a single rate mandated for use in all transactions, and prohibits consumers from shopping or negotiating lower rates. No state in the country restricts or regulates title insurance more.

Why? Because it's the law! The Texas Insurance Code specifically states the purpose of title insurance regulation in Texas "...is to completely regulate the business of title insurance... to:

1. protect consumers and purchasers of title insurance policies; and
2. provide adequate and reasonable rates of return for title insurance companies and title insurance agents" ([Texas Insurance Code, Sec. 2501.002, Subsection \(a\)](#)).

The statute goes on to state:

"(b) It is the express legislative intent that this title accomplish the purpose described by Subsection (a)."

The problem is the statute does not actually accomplish the described purpose. In fact, the statute actually accomplishes the opposite. It sets a rate which prohibits any competition, resulting in excessive rather than reasonable profits. This not only fails to "protect consumers and purchasers of title insurance policies," it actually forces them to pay more. It also fails to provide "adequate and reasonable rates of return for title insurance companies and title insurance agents" ([Texas Insurance Code, Sec. 2501.002, Subsection \(a\)](#)).

Some title insurance companies and agents have higher costs of doing business, while others are extremely efficient. By forcing them to charge the same rate, the government's regulations may provide an inadequate rate in some instances and an unreasonable rate of return in others. In fact, despite the high level of rate regulation, several title insurance agents have still become insolvent over the years. The problem with trying to establish reasonable rates of return by setting a single rate is that every company and agent has unique costs and needs. It is impossible to set a single rate that will provide a "reasonable rate of return" for each company. The rate will either be inadequate for some companies or result in "excessive" rates of return for others.

This was identified as a problem by the National Association of Insurance Commissioners (NAIC) in a publication in the *Journal of Insurance Regulation*. The authors describe the actuarial problems with promulgation in general but particularly with rates of return. In effect, promulgation actually incentivizes excess expenditures leading to higher prices. It also discourages efficiencies. The study determined that in Texas, the more efficient agents' expense ratio was 30 percent lower than the aggregate of all agents ([Ai et al., 28](#)). Unfortunately, less than 3 percent of title agents operate efficiently according to the study ([Ai et al., 17](#)). In a promulgated system of setting a single rate, this inefficiency leads to excessive rates in many instances and likely inadequate rates in others.

## Regulatory Trends

Over the years, both in Texas and across the nation, the trend has moved toward less restrictive, more flexible regulation, allowing the marketplace to help determine an efficient rate. This is usually done by allowing insurance companies to file rates and compete for business. Consumers in the market then can shop for the best deal. In Texas and most states, we no longer set rates in other lines of insurance, we regulate the rates proposed by the marketplace. In years past, Texas set rates in many lines of insurance. Since then, every line of insurance except title has been reformed with more reasonable and flexible rate regulation. The result has been greater competition and more options for policyholders.

Other states have also seen the light. Every other state in the nation, except one, which previously set rates for title insurance, has moved toward less restrictive, more flexible regulations. Many of these states have seen that setting rates and restricting competition has adverse consequences for consumers: less competition and higher rates. These states have reformed their regulations to allow more competitive pricing and more competition ([NAIC 2015](#)). In fact, every state that has implemented reform to their regulatory laws has chosen less regulation rather than more. Many of these states previously set rates like Texas but amended their laws to provide more flexibility. Conversely, no state with flexible regulation has moved toward a more restrictive system of setting rates.

## How Rates Are Set

Title insurance in Texas is governed by the Texas Insurance Code and regulated by the Texas Department of Insurance (TDI), which is directed to set a single rate to be charged for all title insurance policies. Similarly, TDI is directed to promulgate a single policy form. No title policy may be issued in the state of Texas unless it uses the promulgated form and rate. There are no deviations or exceptions, and consumers

have no opportunity to shop for better deals as in every other line of insurance and almost every other state. The Texas Insurance Code directs the Commissioner to promulgate or set a rate after a hearing in which insurance companies, agents, and the state offer evidence. No individuals or groups have standing to participate and offer evidence.

The statute directs the rate to be set at a level to allow for a reasonable rate of return for all insurance companies and agents. The least efficient agent or company is allowed a reasonable rate of return. But because only one rate is set, the return for many of the most efficient insurers is actually excessive. In a more flexible system, more efficient insurance companies with lower costs could offer a lower rate and attract more business—as in other states and other lines of insurance.

For every dollar paid by a Texas policyholder, only 1.6¢ goes to pay a claim.

## Statutory Rate Standards

When a hearing is held to set title rates, the standard in setting those rates is far different from that of other lines of insurance. In other lines of insurance in Texas and most other states, statutory regulations use actuarial terminology requiring that rates not be “inadequate, excessive, or unfairly discriminatory.” These words are actuarial terms of art that are used to ensure the insurance industry has adequate capital to pay claims and earn a reasonable profit, while at the same time ensuring that the states' consumers are not charged excessive or discriminatory premiums. Other lines of insurance in Texas also encourage companies to compete by filing different rates. This allows the market to help select the most efficient rate at equilibrium, as the insurers must lower costs to compete. In a regulated environment, other than title, these competing rates are achieved through a file and use or use and file system or a prior approval system, where insurance companies file their rates for review by the states' regulator. Only in Texas and Florida are title rates set by the state with no opportunity to compete ([NAIC 2015](#)).

In addition to setting rates rather than regulating rates proposed by the market, Texas uses different actuarial language in the title insurance statute, mandating that “the premium rates fixed by the commissioner must be: (1) reasonable as to the public; and (2) nonconfiscatory as to title insurance companies and agents” ([Texas Insurance Code. Sec. 2703.152](#)). The actuarial terms “not excessive” and “not

unfairly discriminatory” are not used for setting rates for title insurance as they are in other lines of insurance. This means the statute ensures the title insurance industry a profit but does not ensure rates are not excessive or unfairly discriminatory. Consumers are trapped in a system that often requires them to buy a product that is set by the state for the protection of the insurance industry with little to no benefit to the consumer.

### Premiums Determined by Insurance Rate and Value of Property

Once the rate is set by the Commissioner, the premium you pay is determined by applying the rate to the value of the property. As indicated in **Figure 3**, the property valuations have increased dramatically in Texas in recent years, which in turn has resulted in significant and inflated premiums paid to the title insurance industry. The title industry will argue that higher values result in higher risk of loss, but as shown in **Figure 4**, the risk of loss is negligible (less than 2 percent) in relation to the premium paid. So if the risk of loss has not significantly increased, and increased valuations have resulted in greater premiums and profits to the title industry, why have premiums not declined? Theoretically, the rate-setting process should take care of that, but rates are only required to be set every five years. The last rate hearing resulted in an increase of 3 percent in 2013. The Commissioner of Insurance recently issued a data call requiring

insurance companies and agents to submit detailed experience data by October 31, 2018, in order to determine the need to adjust the rates further ([TDI 2018b](#)).

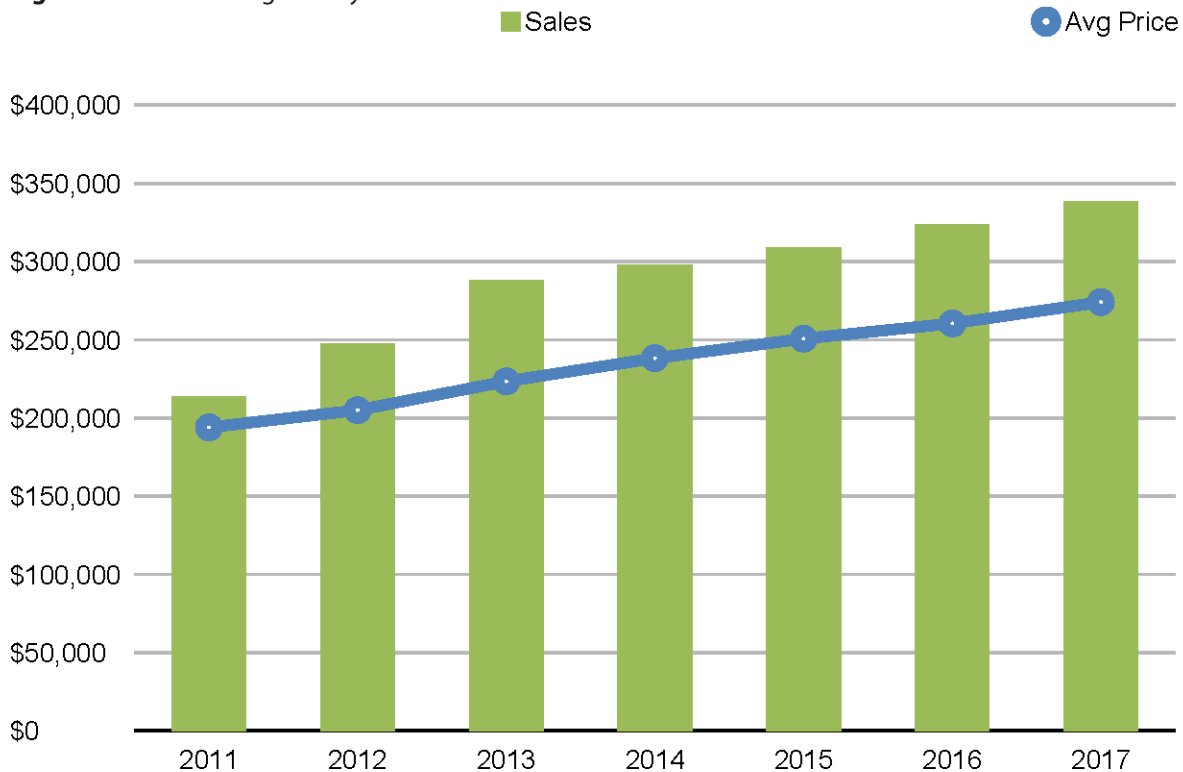
### Losses

The title insurance industry traditionally pays very little in claims losses, less than 2 percent of their premiums collected. **Figure 4** shows the most recent 10-year average loss and loss adjustment ratio is 1.8 percent, and it’s been steadily decreasing in recent years. In 2016, the most recent year for which data has been reported, the ratio was 1.6 percent.

This means that for every dollar paid by a policyholder, only 1.6 cents goes to pay a claim. Most other lines of insurance pay significantly higher percentages for claims losses. Homeowners insurance, for instance, paid 87.5 percent of premium for losses in 2016, the most recent year reported, and an average of 63.5 percent over a 10-year period. Private passenger automobile insurance paid 79.8 percent in losses in the most recent year with a 10-year average of 66.9 percent. General liability paid 50.4 percent in the most recent year and an average of 47.1 percent over a 10-year period.

**Figure 5** illustrates that between 2011 and 2016, premiums increased 74 percent from \$1.164 billion to \$2.023 billion, while paid losses actually decreased in that time from \$30.5 million to \$20.5 million. This compares to the average

**Figure 3.** Texas housing activity



Source: [Texas A&M Real Estate Center](#).



price of homes sold in Texas in that span noted in **Figure 3**, which increased 34 percent, from \$194,014 to \$260,449. And the number of homes sold increased 51 percent from 213,968 to 323,661.

For the title industry, these lower loss ratios are usually cited as good news and evidence of a successful job of title research, and rightly so. Their primary purpose is to search for and ensure good and clear title when you buy your property. With so few claims paid, it is apparent they do their job well. But with such success comes the reality that the risk of loss is nearly nonexistent. Expenses are the overwhelming cost associated with title insurance. Expenses vary significantly among carriers and business models, with many using technological advances to improve efficiencies and reduce their corresponding costs.

The problem is, with a premium rate set by the state, no individual carrier can pass these cost savings on to their customers. Instead, these savings end up being redirected to other expenses or profit. In a competitive system, many of these cost savings would be directed to the consumer through lower prices. Instead what we have is a system that incentivizes inefficiencies, driving costs higher with no opportunity for consumers to shop for better rates.

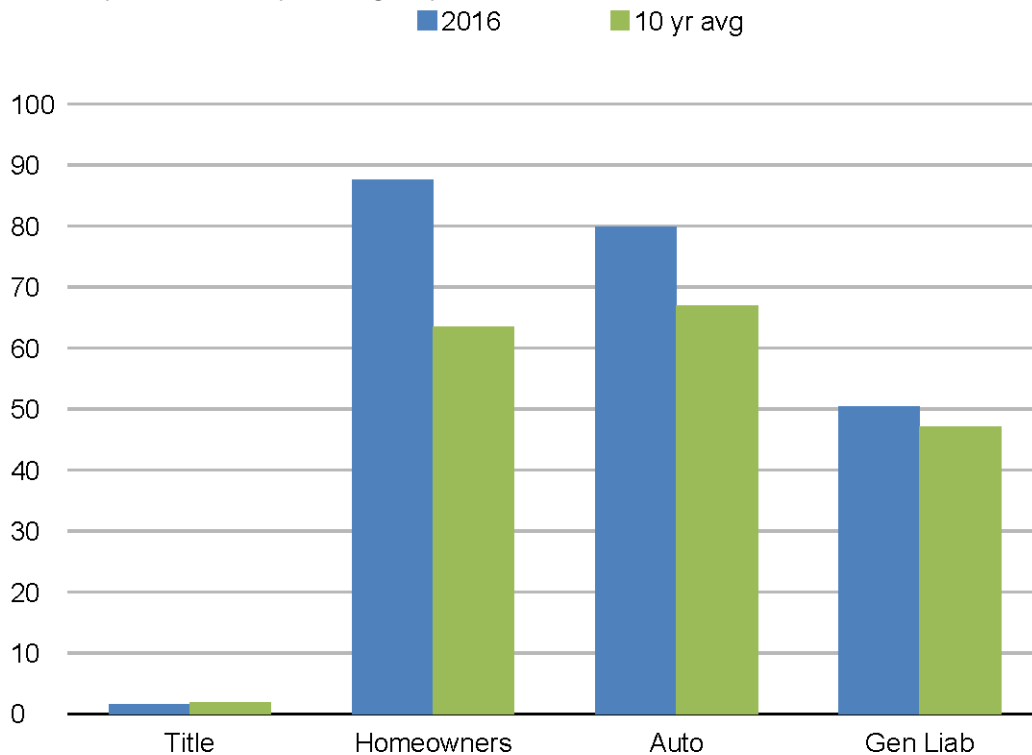
Premiums have increased significantly and steadily over time while the losses have actually decreased slightly. While there may be some insurance companies and agents as exceptions, the figures show an overall increasing level of expenses and profit. In this environment, competition would have otherwise encouraged many insurers to lower their rates in order to compete for new and profitable business. Unfortunately, that is specifically what is prohibited by Texas law.

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### Types of Regulation

What alternatives are there to setting prices? There are four basic models in use in the country for state oversight or regulation of insurance rates: promulgation, prior approval,

**Figure 4.** Loss ratios by line of insurance (amount paid in losses as percentage of premium)



Source: [TDI 2017a](#), [TDI 2018a](#).

file and use, and use and file. The last two are similar in that a licensed insurance company files a proposed rate with a state regulator and begins using the rate unless the regulator disapproves the filing. With prior approval, the insurer is unable to use the rate until receiving an approval from the regulator. Finally, promulgation (used in Texas) directs the regulator to set and fix the rate to be charged by all insurers with no opportunity to compete. Promulgation was once widely used to set rates in title insurance and other lines but has become disfavored over recent years. Most states, including Texas in other lines of insurance, have moved away from rate-setting and toward a more flexible file and use system, allowing for competition while protecting the consumers in the state from inappropriate and excessive rates ([Texas Insurance Code, Chapter 2251](#)).

The rate paid for title insurance in Texas and elsewhere includes the insurance premium to cover any losses as a result of claims against the title and also includes certain other costs such as searching for title defects, liens, encumbrances, and closing costs. Some states exclude more of these costs, and Texas includes more of them in the title premium. Although, even in Texas, where the policy is described by the industry as comprehensive, there are a number of additional costs that are not included in the rate set by the

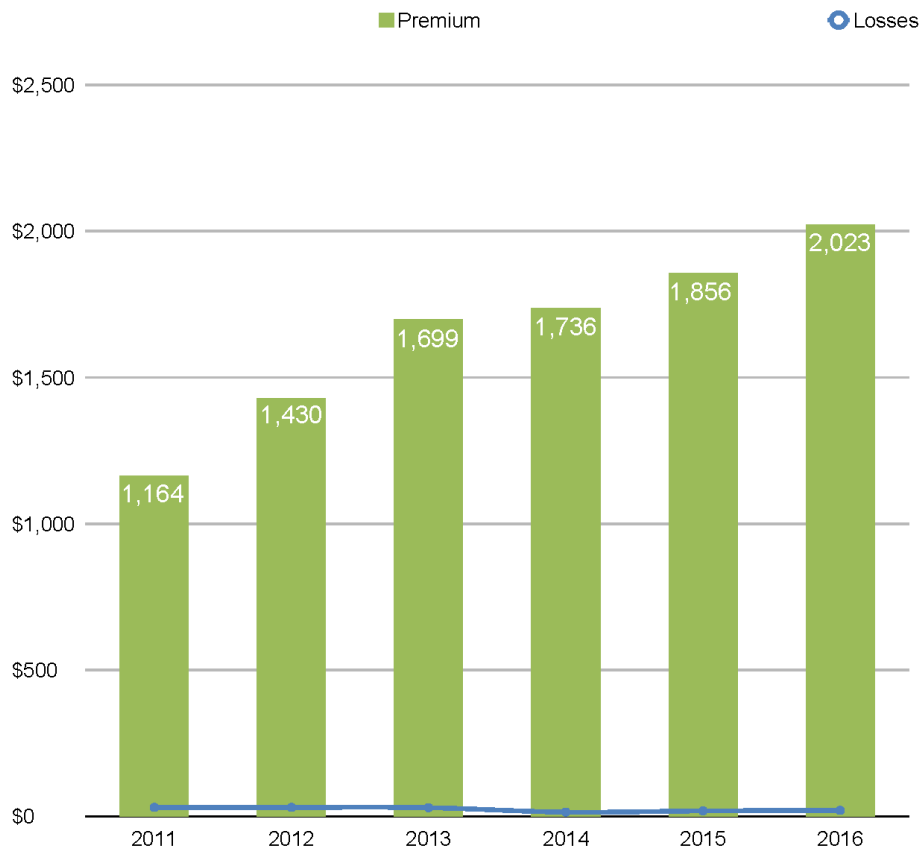
state. These include escrow, filing, courier service fees, and the like.

### Purpose of Regulation

Regulations are often imposed on markets, as they have been in Texas title insurance, in the name of consumer protection. However, in many cases, regulations are used by industries to protect their profits rather than consumers. The data show that this is certainly the case in Texas. Simply put, in the case of title insurance rate-setting, regulation has failed Texas consumers.

The setting of title rates has also failed to accomplish its stated goal of guarding against unscrupulous practices, causing insolvencies and fraud. Despite the setting of rates, insolvencies continue to occur within the title industry resulting in increased costs passed on to the consumer through guaranty fund assessments. In order to pay claims incurred by these insolvent companies, the TDI directs a statutorily created Guaranty Fund to pay claims and submit a proposal for a rate assessment to pay for such claims. These assessments are then passed on to the consumer by increasing premiums. In fact, the current rate was increased most recently in 2018 to account for such an assessment by the Guaranty Fund for the most recent title insolvencies ([TDI 2017b](#)). Likewise, setting rates does not prevent fraud. TDI

**Figure 5.** Title insurance premiums and losses (in millions)



Source: [TDI 2017a](#), [NAIC 2018b](#).

has issued enforcement orders against a number of companies and agents for fraudulent and unlawful practices in title insurance as in other lines of insurance. The department has an enforcement section and fraud investigators that are equipped to investigate and prevent fraud, all of which are unaffected by the rate-setting process in title insurance.

If the purpose of the regulation is to protect the consumer from being overcharged excessive rates and ensure the lowest rate possible, the regulations also fail. As described earlier, the state of Texas has among the highest rates of any state in the country. In fact, not only does the set rate fail to protect consumers from excessive rates, it is partly the cause of those excessive rates. The LBJ study specifically found that rate-setting was the primary reason for our high rates in Texas. The researchers studied multiple variations among all 50 states and concluded that the closest statistical correlation to higher rates among states was the type of regulation. While other factors influenced high rates, their analysis was clear: the stricter the regulation, the higher the rate ([Eaton and Gao 2016](#), [Eaton and Gao 2017](#)).

## Recommendation

Texas should amend its statutory rate setting by creating a competitive rate filing system similar to every other line of insurance in Texas and most other states. Insurance companies would be allowed to file proposed rates with the Texas Department of Insurance and begin using these rates if not disapproved by the Commissioner. To provide consumer and market protection, the Commissioner would retain regulatory authority to disapprove a rate filing if it were determined to be excessive, inadequate, or unfairly discriminatory. This would finally allow Texans to shop for the best rate among a number of competing companies and would strengthen the title insurance market through vigorous competition.

This is Texas, a state which prides itself on reasonable regulations and a consumer- and business-friendly competitive marketplace. It is time we follow our own successful examples in other markets and other lines of insurance. It is time Texas reforms title insurance regulations by allowing competition once and for all. ★



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## About the Author



**Rod Bordelon** is a distinguished senior fellow at the Texas Public Policy Foundation. He has extensive experience over 30 years in leading major state regulatory agencies and implementing reforms in insurance and workers' compensation. His work includes successfully adopting medical cost containment guidelines and pharmacy formularies in workers' compensation and advocating free-market reforms in all lines of insurance. Most recently he has served as the policy director for the recently formed Texans for Free Enterprise (TFE), a non-profit, non-partisan organization advancing public policy and regulations to further free markets, job creation, investment, and competition in title insurance in Texas.

An 11-term gubernatorial appointee, Bordelon was appointed as the public insurance counsel by Governor George W. Bush and reappointed by Governor Rick Perry, and he was appointed as the commissioner of workers' compensation by Governor Perry.

As commissioner he implemented extensive reforms to the workers' compensation system in Texas, resulting in significant market performance improvements and cost savings, a 50-percent drop in the rates of insurance premiums, and increased performance within the regulatory agency. His achievements include adopting the first-in-the-nation pharmacy formulary for workers' compensation, implementing improved treatment and fee guidelines, increasing medical review and enforcement penalties, and streamlining and expediting dispute resolution.

As public insurance counsel, he negotiated numerous regulatory reforms and was instrumental in implementing flexible file and use rate and form procedures in property and casualty lines of insurance, reducing regulatory delays and increasing competition in the insurance marketplace.

He is a frequent speaker at insurance and legal educational conferences and has served on numerous boards and commissions.

Rod is a graduate of the University of Texas at Austin and South Texas College of Law in Houston.

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