BUSINESS INSIDER

I just bought my first home, and I got screwed out of $4,000 by a scam that's built into every single mortgage

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For decades, America's economic rules have been rigged to the benefit of homeowners. There's the 30-year fixed-rate mortgage, which drives down monthly payments. There are four government-backed agencies, including Fannie Mae and Freddie Mac, working to reduce banks' risk so they'll lend more money to a wider pool of homebuyers. There's the tax deduction for interest paid on mortgages up to $750,000. Taken together, these efforts have played a pivotal role in creating America's middle class.

But sitting in front of this golden, taxpayer-backed bridge to financial security is a private tollbooth. It's run by an obscure industry that's pretty much permitted to charge you whatever it wants for a product you'll probably never need. It's dominated by four big companies whose profits have surged during the decade-long housing and refinancing boom. And it bilks homebuyers out of a staggering $20 billion a year.

The product is title insurance. In the simplest terms, a title-insurance policy guarantees the seller of a home actually owns the property free and clear. If it turns out they don't — if someone shows up claiming to be a long-lost heir, say, or wielding an undiscovered lien — the title-insurance company will step in and either resolve the problem or pay the bill.

In practice, these hiccups almost never happen. More than half of car-insurance premiums are paid out in claims. Last year, title insurance paid out less than 2%. But to make a mortgage into a marketable commodity — one that other companies will purchase — banks need a guarantee they actually own the investments they're making. So the banks have essentially created a protection racket, requiring homebuyers to purchase title insurance to protect the bank's interest in their homes.

From the consumer's perspective, title insurance is essentially a special license you need to show the bank before it'll lend you the money you need to buy a house. It adds hundreds or even thousands of dollars to the price of your new home. And the cost typically isn't revealed until after you make your offer, when it's bundled into the mysterious catchall known as "closing costs."

Economists call this *information asymmetry* — the gap between what sellers know and what they tell consumers. "People might not actually want these services, or understand what prices are negotiable, but they're bundled into the transaction," Ben Keys, a former Federal Reserve economist who teaches at the Wharton School, told me. "You're bombarded with technical terms and reams of paperwork, and you wind up feeling that you simply have to write the check so you can get the keys to your dream house. It's a real power imbalance in terms of getting from one end of the transaction to the other."

No comparison shopping

Like millions of homebuyers, I wasn't aware that such a thing as title insurance even existed until I bought my first home. Last summer, shortly after placing a bid on a house I'd found, I received a document called "Buyer's Estimated Closing Costs" from my real-estate agent, Linda, a salty older woman who drove a leather-trimmed luxury car and graciously put up with my first-time-buyer jitters. The projected price of my title-insurance policy — $4,901 — stood out among the long list of two- and three-figure fees for things like document preparation and processing. That number rose to $5,105 after a second, slightly higher offer I made on the house was officially accepted.

At the time, I experienced title insurance as something like a tetanus shot — a small but necessary pain to prevent an unlikely but potentially devastating misfortune. It hurt, but it was for my own good.

The sting, however, was compounded by the fact that the house I wanted to buy was in Philadelphia, the city where title insurance was born in 1876. Almost every title agent in the state charges homebuyers according to rates set by a private board called the Title Insurance Rating Bureau of Pennsylvania. The board of TIRBOP has five officers. One is a full-time employee; the other four all work for large title-insurance conglomerates. State insurance officials have to approve the industry-set rates, but in practice they've done little more than push for small reductions. When TIRBOP asked for a 4.95 percent increase in late 2019, the state trimmed it back to 4.88 percent.

Prices for title insurance in Pennsylvania are among the highest in the nation. I asked Dave Buono, the state's acting deputy insurance commissioner for market regulation, why that is. "That's a really hard question for me to answer," he said — an answer that surprised me, given his department's official mission to promote a competitive marketplace that benefits consumers. "I don't know what other states charge."

I had the sense that I was getting a raw deal, but there wasn't much I could do about it. There was plenty of flexibility in the case of the mortgage. Natasha, the mortgage broker Linda recommended, kept offering me better and better deals to match offers made by her competitors. But when it came to title insurance, the state-approved pricing schedule meant that shopping around wouldn't be of much use.

"There's no comparison shopping," says Stewart Sterk, who teaches real-estate law at Cardozo Law School. "The people who pay aren't in a position to do anything but pay. The banks are the only ones who have some leverage in this situation to keep rates down. But they don't have much incentive to do so if they can pass on all the costs to homebuyers."

There was one small loophole: I could choose to work with someone called "an approved attorney" instead of a title agent, who usually pockets 75% or more of the insurance premium. I learned this from the website of one Jeff Rosner. With him, I could get insurance for a mere $4,080 — saving me $1,025 compared with the title agent Linda recommended I use.

It felt as if these quotes were being pulled out of thin air. And that feeling only intensified when I started looking at what title insurance would have cost me if I were buying the same house in another state. The ideal place would have been Iowa, where I would've paid no more than $750 in premiums and related fees. That's because Iowa handles all title insurance through a state-run company, Iowa Title Guaranty, which charges 90% less than its private-sector counterparts in Texas, New York, and Pennsylvania.

Why is title insurance so much cheaper in Iowa? For starters, the state keeps its overhead low: The director of Iowa Title Guaranty earns $130,000 a year. By contrast, annual compensation for the CEOs of the "Big Four" companies that dominate 80% of the industry runs as high as $10 million a year. And because Iowa Trust Guaranty isn't pocketing any profits, it's able to return some $2 million a year to the state — money that's used to support first-time homebuyers.

Title insurance is "basically an oligopoly," says Gerald Glombicki, who tracks the industry for Fitch Ratings, a leading credit rating agency. The Big Four devote a lot of money to lobbying the banks and real-estate brokers who can steer business their way. That gives them an incentive to charge higher prices, so they can shower banks and brokers with all kinds of perks, from steakhouse dinners to luxury boxes at NFL games. In a subtler but more lucrative system of kickbacks known as "captive reinsurance arrangements," a broker or builder steers a homebuyer to a title-insurance agency that appears to be independent but that actually funnels money back to another company they control. Over the years, the industry has paid tens of millions of dollars to settle cases of illegal kickbacks and other anticompetitive practices.

"In a competitive market, you'd expect that the price of this service would reflect the direct cost," says Keys, the Wharton economist. "The fact that there's so much variability tells you that the markup charged is not being determined by supply and demand but by the question of what these insurers can get away with from a regulatory standpoint."

A protection racket

The risk that title insurance protects against is real. It's just very, very, very unlikely. By scouring the public record, it's possible to dig up a handful of cases where faulty deed records have led to nightmarish litigation that the title company stepped in to pay for. Exactly how often that happens is a trade secret; the industry doesn't disclose the frequency of claims. But payouts on title insurance have been dwindling in recent years, even as revenue from premiums has soared.

It's been clear for years that something is seriously wrong with title insurance. The industry has been called a "racket" (Forbes), a "cartel" (Curbed), and an "invidious form of business" (Iowa Supreme Court). In an editorial, The New York Times called it, simply, a "scam." The industry's ability to fend off periodic attempts at reform is a testament to its lobbying prowess, as well as to the inefficiencies of federalism, which divides responsibility for regulating insurance prices among the states. In many ways, title insurance is a throwback to the robber-baron capitalism of the late-19th century, when giant trusts used their scale and clout to circumvent the rules of supply and demand. "There's a 50-year problem here that markets haven't solved," Keys says.

Indeed, title insurance owes its existence to the vagaries of federalism. Unlike most of the developed world, which has adopted the Torrens system of land registration that requires governments to actually *certify* who owns a piece of property, almost all of the US continues to rely on an antiquated and disjointed system that does nothing but *record* property transactions. To make matters worse, those records are strewn across some 3,000 county offices, which run on more than a dozen suites of software. If a dispute arises over who owns your home, you have to ask a court to settle the matter by filing what's known as a "quiet title action." Title insurance is one of the greasy cogs in our dilapidated and decentralized system of record keeping that has created a lucrative market for a handful of big companies. If the government were willing to take responsibility for who owns what, there would be no need for title insurance in its current form.

In the old days, keeping track of all the records was hard work. Insurance companies had to conduct title searches by hand at "title plants" — warehouses full of filing cabinets stuffed with deed records and cadastral maps. The industry continues to use the convoluted search process to justify its prices: One industry-backed study found that the average property had five "matters" to be "addressed or cured" before a policy could be issued. But today, most records are digitized, and much of the search process has moved offshore. Yet the lower costs and technological efficiencies haven't translated into savings for the consumer. On the contrary, since 2007, prices for title insurance have nearly doubled in many states. In 2020, the industry took in a record $19.2 billion in premiums — a 21% increase over 2019. And thanks to the housing boom, the payoff for 2021 promises to be even bigger, with revenue leaping by 32% in the third quarter alone.

Abraham Lincoln's father, who was forced to move twice because of title issues, is often cited as an example of someone who might have benefited from title insurance. And an insurance executive I spoke with trotted out an Old West scenario of a paper deed that had been won in a poker game. Yet the industry, for its part, is unable to offer any credible explanation of what value, if any, it provides for the exorbitant prices it charges consumers, beyond processing the paperwork necessary to get a mortgage. In a statement, the American Land Title Association, the industry's national trade group, called title insurance "one of a homebuyer's best values" because it protects "the ownership of their largest asset." But when I asked ALTA whether it could put me in touch with a homebuyer who actually needed to use its policy, it said no. "With all of the legalities involved in a title claim, most people don't want to discuss their issue in the press," a spokesperson told me. When I suggested she tell me about a case without mentioning any personal details, or point me to one that had already been reported in the media, she declined to cite a single example.

Refinancing reform

The most sensible fix for title insurance would be to require banks — the primary beneficiaries of the policies — to pay the cost themselves. That would give them an incentive to drive down prices. Sterk, the law professor at Cardozo, said another effective reform would be to require banks to roll the costs of title insurance into their advertised interest rate, a number that consumers shop for vigorously. "People look at the interest rate and think, 'As long as I have this house, I'm going to have to pay it,'" Sterk said. "Nobody advertises lower title-insurance costs." But so far, title insurance has been impervious to reform. The industry defeated a "lender pays" fix that was proposed in Congress back in 1973, and the financial crash of 2008 stifled a more recent effort at reform.

Title insurance is a throwback to the robber-baron capitalism of the 19th century, when predatory trusts used their scale and clout to circumvent the rules of supply and demand. **Pete Ryan for Insider**

There is one slice of the real-estate market where it would make sense to abolish title insurance altogether: refinancing. When borrowers decide to get a new mortgage on their home, they're forced to buy a new title-insurance policy — even though they own the home and already bought a title-insurance policy to guarantee it. It would be simple to create a system in which the old policy would be transferable, or in which the new policy would be deeply discounted to reflect the minuscule risk. A company called Radian tried to do that in the early 2000s, offering Californians "lien protection" on refinanced mortgages for only $325. State regulators banned the product after Radian's competitors complained that it was illegal.

Forcing those who refinance their homes to buy title insurance contributes to racial disparity. The high price of refinancing is particularly burdensome for Black homeowners, who have less access to family wealth. White homeowners are twice as likely to refinance their homes and obtain a lower interest rate. Black homeowners, meanwhile, are twice as likely to lose their homes.

In San Francisco, a homeowner named Max Simkoff grew increasingly frustrated after being forced to pay $1,500 for a series of title-insurance policies as he repeatedly refinanced his home to take advantage of lower interest rates. "This is ridiculous," he remembers thinking. "I'm paying over and over again, even though I know exactly what the risk is, because I'm the owner."

In 2016, Simkoff founded Doma, which is seeking to reduce the cost of underwriting title-insurance policies for refinanced mortgages. Unlike Radian's approach, it uses a risk-assessment algorithm. Even though Doma saves consumers money by skipping over the time-consuming work of conducting traditional title searches, it hasn't wound up paying out any more in claims — which suggests the old approach isn't really necessary.

My closing

In the end, I wasn't able to do much to cut the costs of my own title insurance. Jeff Rosner, the approved attorney I worked with, advised me that I didn't need to purchase an "enhanced policy" to protect myself from title challenges, in addition to the policy I had bought to protect my bank's interests. Homebuyers are sometimes billed for enhanced policies automatically, unless they specifically decline the coverage in writing.

Linda, my realtor, didn't seem especially happy with my decision to go with Rosner. She complained a bit about having to close the sale at a coworking space that Rosner had suggested, instead of a room down the hall from her office, where her affiliated agent worked. She never quite said that approved attorneys aren't reliable, but she did say in a rather pointed way that she wasn't familiar with them. To me, it seemed she was implying that working with Rosner could introduce some friction into the closing process.

It didn't. I sat at a table in the coworking space with Linda, the seller's realtor, and an associate of Rosner's. There was a 114-page document that required dozens of signatures. I wrote some checks. In Pennsylvania and most other states, title insurers also handle the paperwork and make sure everyone gets their money. One of the most important documents in the transaction — the "ALTA form" — shows where all the money was coming from and going. It's named for the American Land Title Association, the industry trade group.

Three months later, Rosner's office sent me two PDFs. One showed that the transfer taxes had been paid. The other showed that the deed and mortgage had been recorded at the county records office. This, in the end, was the core service for which I'd paid $4,080. I had been forced by my bank to hire someone to inform me that the home I'd paid for, and had already moved into, actually belonged to me.