

TITLE INSURANCE:  
*A FLEEING*  
*of AMERICA*



AND WHY IT'S IMPORTANT TO KEEP IT OUT OF IOWA...

# A Current, Anti-Consumer Movement is Pushing to Legalize Title Insurance in Iowa...

**T**here's a current initiative to legalize title insurance in Iowa. This initiative is spearheaded by those who stand to reap significant financial benefits from its sale in Iowa. And they are making a lot of claims. Problem is, their claims attacking Iowa's existing title guaranty system are false.

As a member of the Iowa Legislature, you will be hearing many of these untruths. And you will be asked to make a choice of whether to maintain Iowa's existing system of Title Guaranty or to allow the sale of title insurance in our state. To help you serve the best interests of your constituents and all Iowa consumers, The Iowa State Bar Association wants you to have the facts that clearly demonstrate how title insurance is a "fleecing of America."

## **SOMETIMES, TITLE PROTECTION IS NECESSARY. IOWA'S EXISTING SYSTEM IS SUPERIOR TO TITLE INSURANCE.**

The primary purpose of title protection is to enable mortgage lenders to sell mortgages on the secondary market. The secondary market is a popular method for mortgage lenders to gain income through loan processing fees, points and closing costs. In those cases, home loan programs such as the Federal Home Loan Mortgage Corp. (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) require title protection in either the form of title guaranty or title insurance. Contrary to assertions by its proponents, title insurance is not seen as the preferred method of title protection in the eyes of the secondary market. In fact, Freddie Mac and Fannie Mae helped Iowa establish the Iowa Title Guaranty Division of Iowa Finance Authority in 1985 as a low-cost, consumer-friendly alternative to title insurance.

A recent survey conducted by The Iowa State Bar Association indicates that approximately 40 percent of Iowa mortgages are sold into the secondary market. Many bankers argue that more than 60 percent of Iowa mortgages are sold on the secondary market. Regardless, there are a substantial number of Iowa mortgages that are held in Iowa lenders' portfolios that do not need either title insurance or title guaranty.

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*"I know how we can cut the initial, up-front cost of buying a house by between a quarter and a third...And the way to do it is to do something about title insurance...My guess is the social cost of not having it [title insurance] wouldn't be one-tenth, maybe not one-hundredth the cost of purchasing these policies...We could probably do more to promote home ownership by fixing this [requiring title insurance] than by any increase in appropriations for housing that will be made in the next eight years combined."*

**- Senator Phil Gramm (R), Texas,  
December 13, 2001, Senate  
Banking Committee hearing.**

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*“A plaintiff-called witness admitted it was Chicago Title’s intent to ‘convert’ the present Iowa abstract-attorney’s opinion system to title insurance as the norm for locally determining marketability of titles. Plaintiff also conceded that over a given five-year period it collected approximately \$370,000 in title ‘insurance’ premiums, written outside the state for insuring of Iowa titles, and from these premiums paid out nothing in claims. Obviously, a loss ratio of zero percent presents a potentially lucrative source of revenue to an insurer of titles and this court cannot say the general assembly overstepped its power in barring a costly form of ‘insurance’ for which plaintiff’s own testimony demonstrates there is little need.”*

- Iowa Supreme Court in Chicago Title Ins. Co. v. Huff, 1977

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The sale of title insurance in Iowa was outlawed in 1947 after title insurance companies in Sioux City, Iowa, failed and many homeowners were left with worthless title policies. The subsequent public outcry led the Iowa Legislature to enact laws prohibiting the sale of title insurance within Iowa. When challenged in Chicago Title Insurance v. Huff in 1977, this law was upheld by the Iowa Supreme Court.



### **RIP-OFF #1:**

## **THE SALE OF TITLE INSURANCE WITHIN IOWA IS ILLEGAL.**

Selling title insurance within Iowa has been illegal since 1947. Nonetheless, the use of title insurance has become increasingly prevalent in our state by companies outside of Iowa.

The problems associated with selling title insurance in Iowa run even deeper than circumventing our laws. The sale of title insurance is stripping Iowans of millions of dollars each year through significantly inflated premiums and by taking these dollars out of our state. The sale of title insurance jeopardizes the integrity of Iowa’s property titles. And, if the organization and operation of title insurance is legalized in Iowa, these problems will be multiplied many times over.

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**RIP-OFF #2:**

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**HOMEBUYERS PAY FOR COVERAGE,  
BUT MAY NOT BE COVERED.**

A title insurance policy protects the policy holder from hidden liens or other encumbrances. Typically, the *mortgage lender* is issued the policy. Unless the homebuyer purchases a separate “owner’s policy,” the consumer is not protected, even though he or she pays the cost of the lender’s coverage. So if there’s a failure in title, the borrower isn’t covered and faces losses. Iowa Title Guaranty routinely issues both owners and lenders certificates.

What’s more, because the sale of title insurance is not legal within Iowa, its cost is often obscured within a variety of other closing costs in a property sale. Therefore, borrowers invariably don’t know what they’re buying. Nor are they given the opportunity to shop around or to compare costs. Insurance commissioners recognize the lack of consumer choice as reverse competition and as emphasizing competition for market channels, not for the end consumer.

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**RIP-OFF #3:**

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**IOWANS WILL SPEND MILLIONS MORE –  
FOR LESS PROTECTION.**

The six major American title insurance companies – which control over 90 percent of the nation’s title insurance business – stand to gain \$50 to \$60 million in premiums from Iowa homebuyers through the legalization of title insurance. With title insurance, Iowans stand to spend millions more for the same title protection they could get with title guaranty, but with less service and diminished assurance that their property titles retain their integrity.

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**RIP-OFF #4:**

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**TITLE INSURANCE ERODES THE INTEGRITY  
OF IOWA’S PUBLIC RECORDS.**

The secondary mortgage market has created huge financial opportunities for the housing industry. As a result, the haste to make and sell loans often leads to skimping on details, particularly in quality issues related to assuring a “marketable” title. With title insurance, known title problems are often “insured over,” not necessarily corrected. With Iowa Title Guaranty, any identified problems are corrected so the consumer and public records are protected.

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*“So this is title insurance in a nutshell: You, the homeowner, pay a premium to the title company to protect your lender from mistakes made by the company when it does a title search. Are you a sucker, or what?”*

*- Kiplinger’s Personal Finance,  
October 2001*

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**RIP-OFF #5:**

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“So across the nation, title insurers sift through records and charge borrowers anywhere from a few hundred dollars to several thousand. They pay out just 47 cents in claims for every \$10 they collect in premiums, according to A.M. Best Corp. By contrast, property and casualty insurers pay out \$8.70 for every \$10 they collect.”

- Wall Street Journal,  
“Refinancing Boom Puts New Pressure on Title Industry,”  
December 18, 2002.

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**TITLE INSURANCE IS EXPENSIVE,  
BUT PAYS LITTLE IN CLAIMS.**

Throughout the title insurance industry, payment of claims is rare. According to the October 2002 edition of *Kiplinger's Personal Finance* magazine, title insurers spend as little as 5 cents to 10 cents of every premium dollar to pay claims. In contrast, companies that sell auto or health insurance typically spend 90 cents or more of every premium dollar on claims.

Iowa's system for reviewing and correcting titles results in exceptionally accurate titles. Therefore, in Iowa, claims are even rarer and loss ratios are even lower. But because the cost of title guaranty is so much lower, Iowa Title Guaranty provides a much better value.



**\$9 Billion**  
**2001 Premiums**

In 2001, the title insurance industry received more than \$9 billion in premiums and paid only about \$393 million in claims for a loss ratio of 4.3 percent, according to *CDS Performance of Title Insurance Companies 2002*, published by Corporate Development Services, Inc.



**2001 Claims Paid Out**

## RIP-OFF #6:

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### SAME PRODUCT, FEWER BENEFITS.

Iowa Title Guaranty and title insurance companies provide the same policy coverage, word for word. However, title insurance provides only the insurance policy. Because Iowa Title Guaranty requires an abstract and an attorney opinion, title problems are identified and corrected – not just insured over. And the total cost for Iowa Title Guaranty is still less than what a title insurance company would charge for the policy alone.

#### **Iowa's Reality: Iowa Title Guaranty**

- + Low-cost title protection
- + No "agent commissions"
- + Abstracting and attorney opinions = marketable title
- + Accurately reflects public records
- + Requires that any identified problems be corrected and properly recorded
- + Protects real estate owner and/or mortgage lender against hidden defects not found through a typical title search
- + If the title is challenged in court, Iowa Title Guaranty acts as the owner's or lender's attorney – free as part of the one-time charge paid upon the home's purchase
- + Timely title guaranty issuance
- + Actuarially sound
- + Loss ratio: Less than 1%

#### **National Reality (except Iowa): Title Insurance**

- High-cost title protection
- Agent commissions vary from 60% to 90% of premiums
- Agents who do not need any special training to write policies and who are often unregulated
- Largely unregulated with no uniform rate standards
- Loss ratio: 4.3 percent
- Title problems "insured over" or ignored
- Undermines public records
- An industry notorious for unscrupulous activities (allegations include RICO violations, fraud, kick backs and defalcations)

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*"Fannie Mae and Freddie Mac, the large government-sponsored companies that buy mortgages, are also telling the title industry they'd like to see costs [of title insurance] and processing times fall."*

*- Wall Street Journal, "Refinancing Boom Puts New Pressure on Title Industry," December 18, 2002*

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**RIP-OFF #7:**

**TITLE INSURANCE TAKES MONEY OUT OF STATE AND HARMS IOWA'S HOUSING PROGRAMS.**

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*“The Title Guaranty funds in HAF have been a key element in helping ensure the affordability of low-income housing tax credit units.”*

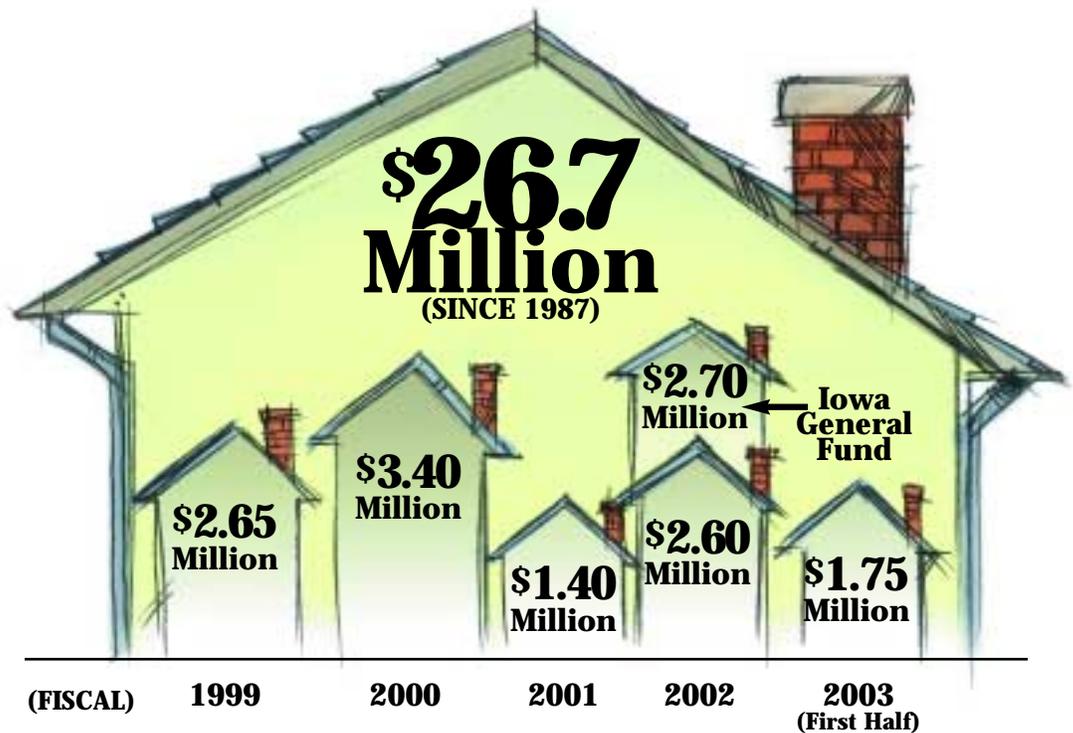
**- Doug LaBounty, President, Community Housing Initiatives, Inc., a nonprofit housing development agency in Spencer**

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Fully 100 percent of the Iowa Title Guaranty's premiums stay in Iowa to support our economy and housing programs. Conversely, title insurance premiums leave the state.

Advancement of housing is one of the primary purposes for Iowa Title Guaranty and has been an important by-product of the program. These housing programs are administered by the Iowa Finance Authority, which is not supported by taxpayer dollars. As the nation's fastest-growing housing finance agency, Iowa Finance Authority has helped more than 50,000 Iowa families achieve the dream of home ownership.

**Title insurance would produce minimal tax revenue in Iowa.** In 2002, the General Assembly approved a reduction of insurance premium taxes to the rate of 1 percent. If title insurance is legalized and, assuming that Iowa generates \$60 million in title insurance premiums, the return to the state treasury will be \$600,000. This amount of premium tax revenue from title insurance is probably not adequate to cover the increased cost of the Insurance Commissioner's office regulating the industry, based upon information provided by other states.



**Iowa Title Guaranty Funds Distributed to Statewide Housing Programs**

**The impact on housing programs would be disastrous.** For the last five fiscal years (1998-2002), Iowa Title Guaranty has averaged \$2.25 million each year in support of Iowa Finance Authority Housing programs. From the inception of the title guaranty program, more than \$26.7 million has been invested in Iowa housing programs, which has been leveraged into more than \$250 million of affordable housing projects. This funding would not be available if title insurance is approved. Without new appropriations from the general fund, funding for homeless shelters, domestic violence shelters, transitional housing programs, rental and home ownership programs would be cut or eliminated.

**In addition, the Iowa General Assembly appropriated \$2.7 million of general funds from Iowa Title Guaranty (Senate file 2326 sec. 178).** Last year alone, Iowans collectively received over \$5.3 million in benefits from the Iowa Title Guaranty program, none of which would have been possible if title insurance had been approved in our state.

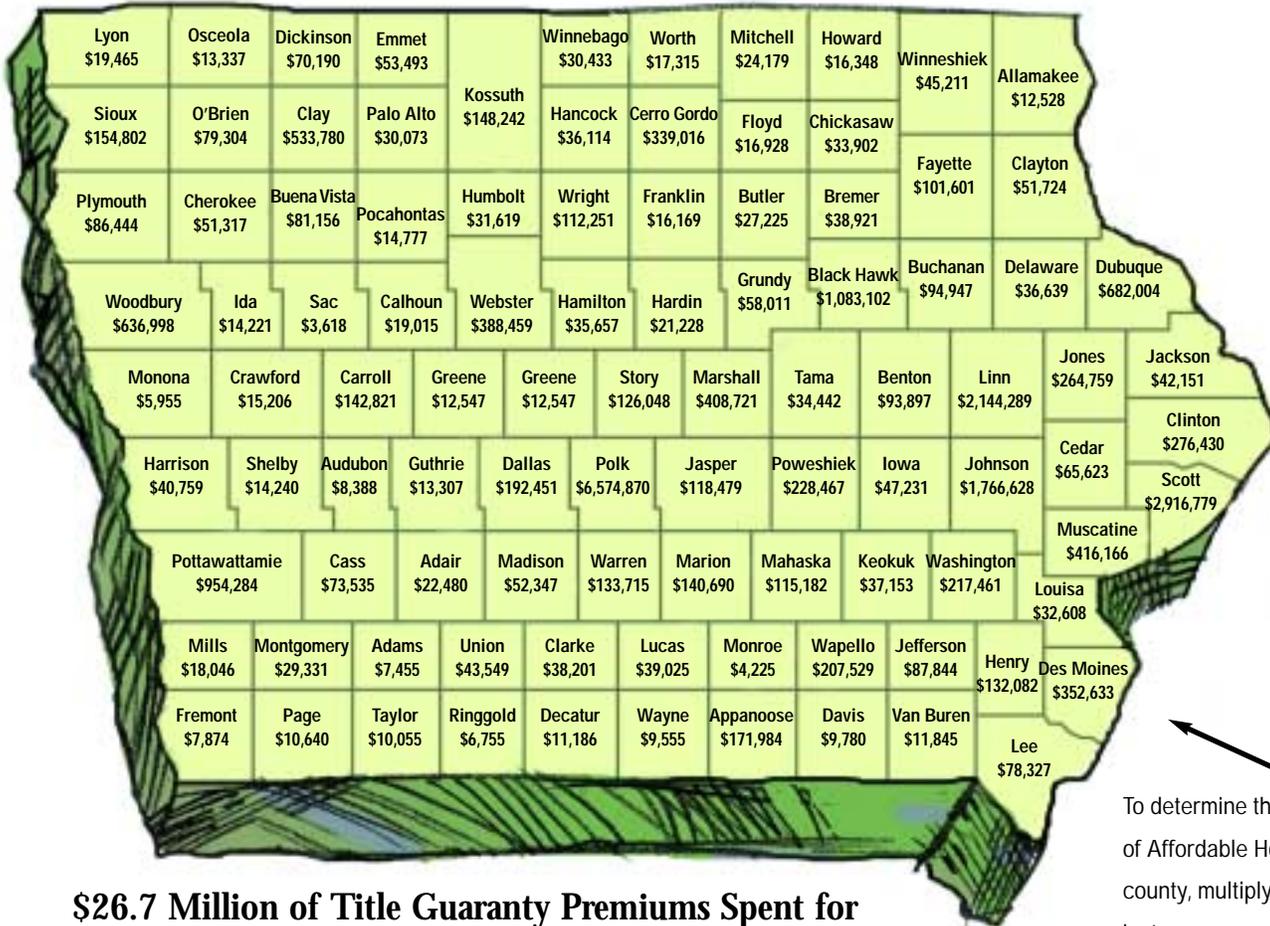
Without the premiums earned through Iowa Title Guaranty, achieving the dream of homeownership will be more elusive for many Iowans. Instead, Iowa homebuyers will pay lofty premiums for title insurance – all of which will leave the state.

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*“Cash for housing programs decreases as need grows”*

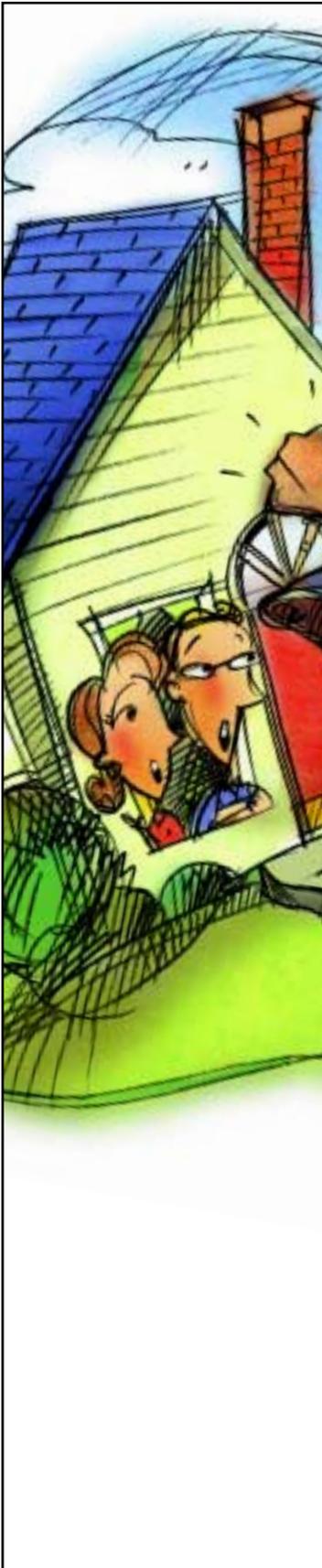
- Des Moines Register headline for the “Register Special Report: Iowa’s Crumbling Homes,” October 15, 2002

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**\$26.7 Million of Title Guaranty Premiums Spent for Affordable Housing 1988 – 2002.**  
**Leveraged into over \$250 million in affordable housing.**

To determine the total amount of Affordable Housing in your county, multiply these figures by ten.



## RIP-OFF #8:

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### AN INDUSTRY RIFE WITH UNSCRUPULOUS BEHAVIORS

Over the past decade, the title insurance's own industry publications have reported numerous law suits, settlements and industry crackdowns. Nonetheless, the industry remains loosely and inconsistently regulated. That means insurers can and do set their own rates\*. They can and do charge exorbitant fees for marginal services. Even in Iowa, they can – and do – take money out of state and pocket it for marginal services.

Here's a brief sampling of some of the reports published in *Title Management Today* and other publications:

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**NEBRASKA** Police reported that the owner of Nebraska's State Title Services, who committed suicide just prior to his company's bankruptcy, had allegedly **shuffled millions of dollars in clients' accounts to stay ahead of bad checks**. As a result, Nebraska's governor returned \$7,900 in campaign donations to the owner's family and is seeking stiffer state laws overseeing accounts that title insurance agencies hold pending in the closing of real estate deals. (March 2002).

**CALIFORNIA** The big six title underwriters **settled a \$50 million consumer lawsuit** in California that charged the companies with deceiving California consumers with hidden fees and costs while providing routine residential escrow and title services. (November 2002).

**TEXAS** The largest fine in Texas title insurance history was levied by the Texas Department of Insurance against two title companies for participating in **illegal rebates and defalcation of accounts**. (February 2002).

**WISCONSIN** A Milwaukee Title Company owner was charged with **fraud** for writing escrow account checks to himself. One of his clients reported that she received a foreclosure notice because the company failed to make appropriate disbursements. (February 2002).

**ILLINOIS** The Illinois Insurance Department shut down Intercounty National Title Insurance Company, one of the largest title insurers in Illinois, as a result of the **disappearance of \$83 million** of investors' money. (October 2002).

**OHIO** A Columbus-based title company was forced to close all five of its offices while the courts reviewed allegations that it **embezzled money and took illegal kickbacks**. (May 2001).

**ARIZONA** An Arizona title company owner pled guilty of **embezzling more than \$800,000** and was ordered to pay restitution in the amount of \$817,042 plus any victims' costs and expenses. (July 2000).

\* Except in Texas and New Mexico.

**UTAH/CALIFORNIA** California and Utah fined First American Title Company \$2.6 million for giving **unlawful rebates to real estate agents and real estate office employees** as inducements for referring title and escrow business. (November 1999).

**UTAH** A rash of high-priced scams resulted in a Salt Lake City-based title insurance agency owner pleading guilty to one count of **felony wire fraud for embezzling \$2.7 million**. The Utah Department of Insurance is quoted as stating, "Most consumers know little about title insurance." (1999).

**CALIFORNIA** A suit filed in San Francisco alleged that Fidelity National, Inc. and its subsidiaries **bilked California homeowners out of as much as \$500 million**. (July 1999).

**FLORIDA** A two-year federal investigation of 12 title insurers in Florida uncovered a pattern of **improper payments to title agents**, which forced up the cost of title insurance to homebuyers. (1999).

**MINNESOTA** A RICO suit against major title companies was dismissed, but claims of **fraud, negligent misrepresentation, breach of fiduciary duty and other defalcations** remain an aftermath of failure to pay off loan schemes. BankAmerica Mortgage Corporation alleged that Lenders Mortgage Services conspired to defraud several mortgage companies and numerous homeowners. (September 1998).

**KANSAS** Wichita Title Company closed its doors and declared bankruptcy with more than **\$1 million in customer money missing**. At the time of closing, Realty Title had been servicing 504 escrow accounts and \$241,633 was missing from the accounts. (January 1998).

**CALIFORNIA** The California Department of Insurance launched an investigation of three title insurance companies for providing **illegal incentives** to real estate brokers and agents in exchange for business referrals. (1996).

**MISSOURI** *St. Louis Post-Dispatch* reported that Missouri citizens nearly lost homes because of **unscrupulous practices of title insurances and a state agency that has done little to regulate the industry**. The *Post-Dispatch* warned citizens against ever depending on their real estate agent or banker for any representation regarding title insurance and to never allow a real estate agent, mortgage company or builder to mandate which title agency to use. (January 1996).

**ILLINOIS** An investigation of nine title insurance companies in the Chicago area was launched by the Illinois Department of Financial Institutions for **operating kickback, referral and fee-splitting schemes** for title business, costing Illinois consumers \$26.6 million in overcharges in 1987. (November 1987).

**PENNSYLVANIA** In the Philadelphia metropolitan area, five title companies paid a \$472,000 settlement for alleged **violations of the anti-kickback and referral fee prohibitions** of the Real Estate Settlements Procedures Act. (September 1996).

**No wonder Congress (Senator Phil Gramm) is investigating the title insurance industry. No wonder Iowa established laws in 1947 prohibiting the sale of title insurance within our state.**

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*“Home buyers in Iowa can be reasonably certain that they aren't paying too much for title protection. In that state, homeowners typically purchase a title-guaranty certificate from a division of the Iowa Finance Authority that provides the same coverage as title insurance at a fraction of the cost: \$1 per \$1,000 of the mortgage amount, plus an additional \$150 to \$300 for a lawyer to prepare a summary of the property's transaction history. For example, on a house with a \$150,000 mortgage, that would mean a maximum of \$450, versus as much as \$1,500 for title insurance in any other state.”*

*- Kiplinger's Personal Finance, October 2001*

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Iowa Title Guaranty vs. Title Insurance

# The Indisputable Facts

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*“In over 37 years of working with the Rural Housing Development program, we have never had a title problem in Iowa.”*

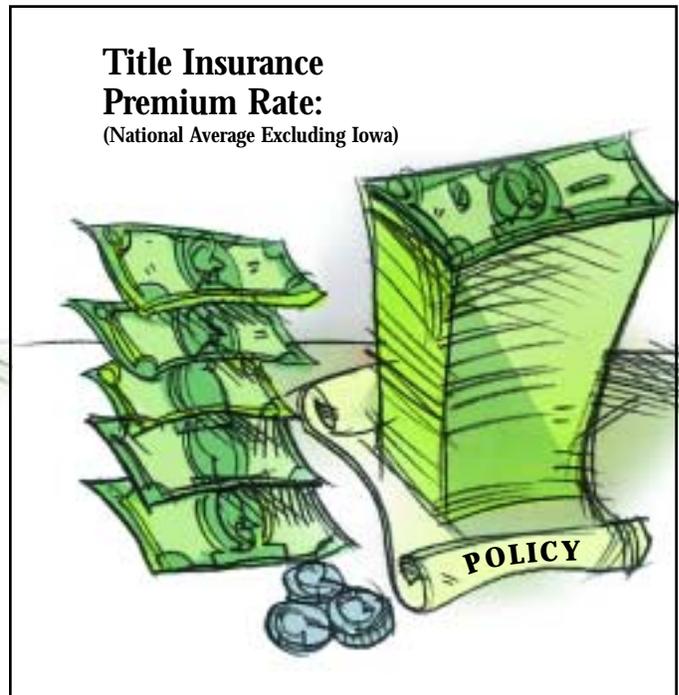
- Bruce McGuire, director of Rural Housing Programs, U.S. Department of Agriculture

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The primary reason to keep the sale of title insurance, as it is legalized in other states, out of Iowa is to protect consumers. That was the reason in 1947 when the Iowa Legislature voted to make the sale of title insurance illegal within our state. It was the case in 1977 when the Iowa Supreme Court upheld that law in Chicago Title Insurance v. Huff. And protecting consumers is still the reason to keep the sale of title insurance out of Iowa today, as demonstrated in the following:



**\$1.00 Per \$1,000 of Coverage**  
(Up to \$250,000 Loan Amount.  
Thereafter, Rates are Less.)



**\$5.15 Per \$1,000 of Coverage\***  
((\$150,000 Loan Amount.)

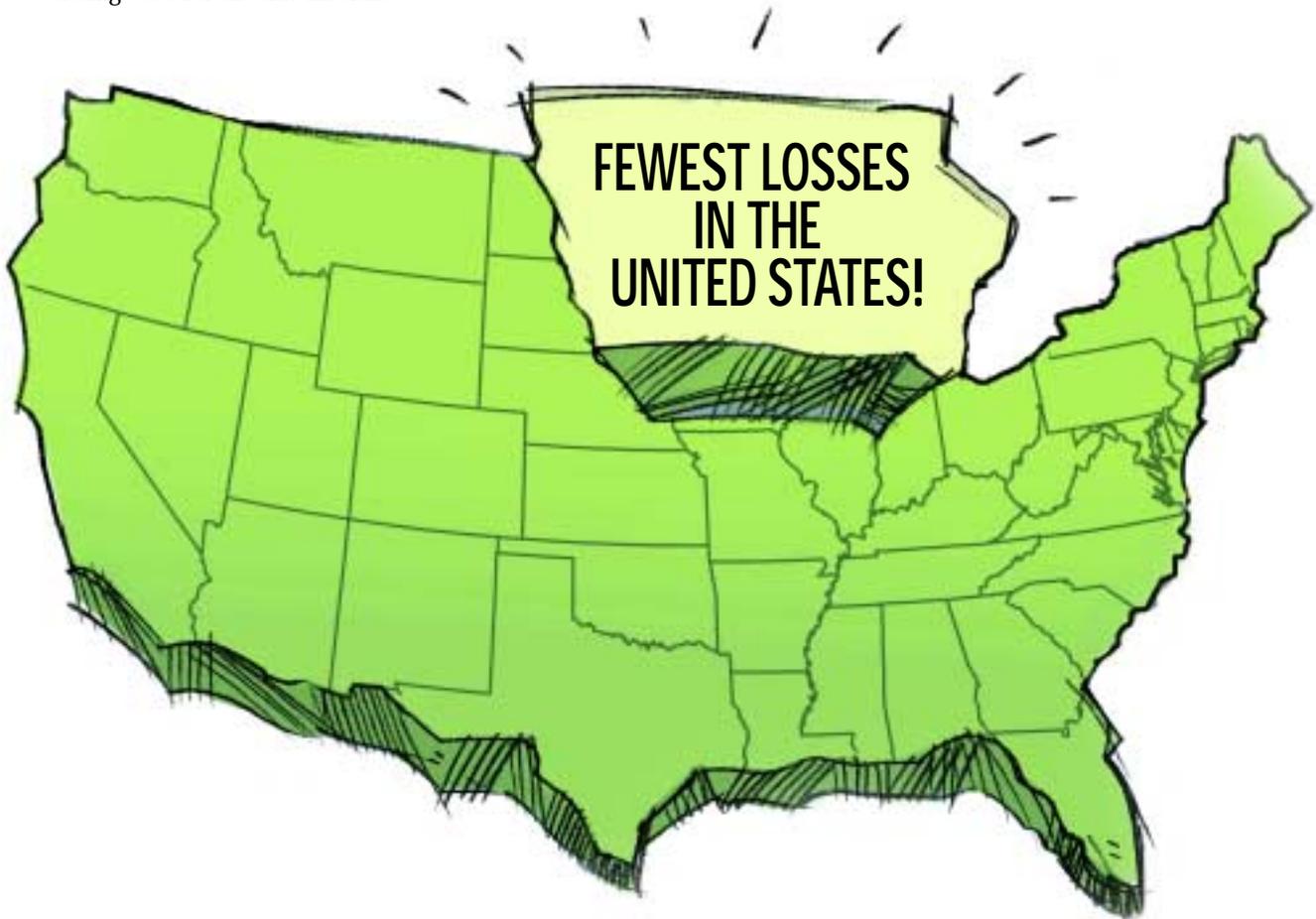
\* Rate charts obtained from state insurance commissioners and First American Title Fee Calculator online at: <http://titlefees.firstam.com/titlefees.asp>

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## **Dollar for Dollar, Iowa Title Guaranty Represents the Better Value.**

The Iowa Title Guaranty premium is one dollar per thousand dollars of coverage for coverage amounts up to \$250,000 (after that, rates are further reduced and only 50¢ if policy is reissued on same property). Even with the added cost of bringing the title up to date and securing a legal title opinion, the cost to Iowans is nearly always less than the cost of the title insurance industry's policy alone. Therefore, with title guaranty, the borrower actually gets something of value in exchange: a clean title for the property.

Consider this: If 100 percent of Iowa's residential real estate transactions included the purchase of title insurance, Iowa consumers could pay as much as \$26 to \$52 million more per year in closing costs for the title insurance.



**Iowa Title Guaranty is good for Iowa's public records, good for Iowa's homebuyers and good for Iowa's economy.**

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# Setting the Record Straight

**P**roponents for title insurance have been spouting a lot of inaccuracies and untruths. These claims are made by the people who stand to benefit financially from the exorbitant cost of title insurance.

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*“Title insurance costs many times what it's worth to consumers.”*

- Phil Gramm (R-Texas),  
Senate Banking Committee

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If you hear a claim you want to verify, we encourage you to call Iowa Title Guaranty at 515-242-4989. We'll provide accurate facts. Guaranteed.

**Proponents Say:** Protection between title insurance and title guaranty differ...Probably the most significant problem with Iowa Title Guaranty is the quality of the product and coverage provided.  
**The Truth:** Compare the insurance policy used by members of the American Land Title Association. Iowa Title Guaranty provides the exact same coverage as title insurance, word for word.

**Proponents Say:** Iowa Title Guaranty is a state-run monopoly program.

**The Truth:** Iowa Title Guaranty was created by the Iowa Legislature in 1985 to protect homebuyers while providing a mechanism for banks to meet the demands of the secondary mortgage market. The Iowa legislature determined that the abstract-opinion process for reviewing title to Iowa real estate is in the best interest of the Iowa consumers.

Iowa Code Section 16.3(15) states:

*“The abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.”*

**Proponents Say:** The process of buying a home with title insurance can be completed in two to three weeks, with the final policy delivered two weeks after closing. With Iowa Title Guaranty, the process generally requires six to 12 weeks, with the final certificate delivered three to nine months after closing.

**The Truth:** Mortgage releases are required by law to be filed within 30 days of closing. The vast majority of delays in closing are due to the lender's failure to file a mortgage release or complete other documents. Any time delays are generally not caused by the abstractor, attorney or other participant in the Iowa Title Guaranty process. An abstract can be updated immediately after closing a transaction with the mortgage release being shown by addenda in less than 30 days after filing. Lenders have complained that their title insurance provider is taking 12 months or more to provide a policy – the provider is the problem, not the process.

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*“I can confirm that Iowa mortgage lenders are not paying any penalties to Freddie Mac based upon their use of the Iowa Title Guaranty program for home loans sold to us.”*

- Allan Ratner, Deputy General  
Counsel, Freddie Mac

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**Proponents Say:** The Iowa Title Guaranty system costs the average homebuyer thousands of dollars.  
**The Truth:** Title insurance policies typically cost more than Iowa Title Guaranty certificates. For example, on average, title insurance (without abstracting and title opinion) for both the lender and buyer on an \$80,000 mortgage costs \$529 to \$860, depending on the state. The same protection provided in Iowa through the Iowa Title Guaranty would cost approximately \$445, which *includes* the cost of bringing the abstract up to date and securing a title opinion. Title insurance is without question more expensive.

**Proponents Say:** If there's a problem with the property covered by Iowa Title Guaranty, ITG doesn't step in to help the insured.

**The Truth:** Unlike title insurance, which typically protects a consumer only after the insured loses litigation, Iowa Title Guaranty provides legal defense for the certificate holder in the event of a claim. What's more, the cost of this defense is provided at no additional cost beyond that of the original Title Guaranty Certificate.

**Proponents Say:** Iowa banks were fined \$3 million due to the use of title guaranty.

**The Truth:** Copies of these claims have been provided to the General Counsel for both Freddie Mac and Fannie Mae and have been completely denied.

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*“We have no knowledge about the claim that Iowa lenders pay penalties on loans sold into the secondary market due to delays in issuing Iowa Title Guaranty certificates after loan closing.”*

**- Ruth Weis, Director,  
Risk Management, Fannie Mae**

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## IOWA TITLE GUARANTY QUICK FACTS

- **Excess funds distributed to Iowa Finance Authority's statewide housing programs** total approximately \$26.7 million to date. In fiscal 2002, \$2.6 million was transferred from Iowa Title Guaranty to support Iowa's housing programs.
- **Premium receipts in fiscal 2002** for approximately 41,000 title guaranty certificates totaled more than \$5 million, while coverage amounts exceeded \$4.1 billion.
- **A three-business-day gap endorsement** allows disbursement of funds at the closing table. This endorsement covers the certificate holder(s) for losses incurred during the gap period.
- **The basic rate for Title Guaranty** is just \$1 per \$1,000 of coverage, 50¢ per \$1,000 for reissuance.
- **Coverage is available for lenders and owners** so both parties' interests in the property can be protected. Residential, commercial, agricultural and industrial property coverage is available.
- **Iowa Title Guaranty reserves** equal \$1 million plus 10 percent of premiums. Reserves are currently approximately \$3.5 million. Iowa Title Guaranty's claim rate as a percent of coverage is nearly zero.
- **Customer service** is Iowa Title Guaranty's primary focus, and includes quick turnaround time on title guaranty certificates. Personalized service and training is available for attorneys, lenders and abstractors.
- **Commitments**, in most cases, are available via same-day fax service.
- **Participants in Iowa Title Guaranty** include approximately 2,000 attorneys and 200 abstractors. Iowa Title Guaranty supplies attorney and abstractor participation lists upon request.
- **To contact the Iowa Title Guaranty Division of the Iowa Finance Authority:**

200 East Grand, Suite 350, Des Moines, IA 50309

Phone: (800) 843-0201

Fax: (515) 242-4994

TTY: (515) 242-4890

[www.ifahome.com](http://www.ifahome.com)



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