

**American Land Title Association
Letter to Steve Forbes**



Mr. Steve Forbes
Editor in Chief
Forbes
60 5th Avenue
New York, NY 10011-8868

Dear Mr. Forbes:

On behalf of the more than 100,000 men and women in the title insurance industry, we are appalled by the inaccuracies and misrepresentations contained in the recent article in Forbes Magazine (“Inside America’s Richest Insurance Racket,” Nov. 13, 2006). The article contains so many inaccuracies and misleading conclusions that it would take an entire volume to address them all.

Ten months ago, Scott Woolley approached the First American Corporation about writing a profile on the company for Forbes. Mr. Woolley was invited to First American’s corporate headquarters, where he spent considerable time with Chairman and CEO, Parker Kennedy, as well as a number of other senior executives. The tone of the interviews was very open and positive, focusing on First American’s entire business -- not solely its title insurance division.

The article, written nearly a year later, was a complete denigration of the title insurance industry. Mr. Kennedy’s words from the original interview were taken out of context and carefully manipulated to serve the reporter’s preconceived agenda. It is perplexing that Forbes would write such a scathing article critical of First American when, just months prior, it cited First American as one of the top five companies from the insurance industry which are “absolutely great at what they do” (Global High Performers” June 2, 2006).

Mr. Woolley contacted us as the trade association for the industry, first in mid-September, and then again just days before completing his article. In both calls he indicated that he was doing a general piece on the title insurance industry. Even though we spent considerable time with him, he never mentioned the article’s connection with First American—one of our largest members—nor did he indicate this was an expose’ on the industry. Once we learned the true nature of Mr. Woolley’s intent, representatives from our industry attempted to contact him (and others at the publication) to ensure that inaccurate and misconceived assertions would be avoided. All of our requests were denied.

We want to bring some of the more glaring inaccuracies to your attention, and have attempted to summarize a number of key points below.

“A title insurance product protects the buyer in case the deed turns out to be defective but the seller cannot be collared to refund the purchase price.”

With Mr. Woolley’s months of research, we are astounded that he would summarize the entire business of title insurance with such a simple and crass statement. This is the only statement in the entire article that attempts to describe the nature of title insurance. It is misleading in that it implies that this is the only real purpose behind title insurance.

Title insurance protects lenders and consumers in two very important ways—by providing the assurance that the title is clear before a sale occurs, and protection in the event that a previously undiscovered title issue should arise after the transaction has been completed. As Mr. Woolley points out, the latter is rare, but that is precisely the intent of the product.

Title insurance is much more than an insurance policy—it is the very extensive process that occurs before the policy is issued to ensure, to the extent that it can, that the title to a specific property is free and clear of defects. Issues with title are found and corrected by title professionals in one out of every three residential real estate transactions. This is a far greater incidence of potential claims than occurs in any other line of insurance. Far less than one in three houses burn down, yet no one claims that fire insurance is an unnecessary product. The losses that title insurance PREVENTS include, but are not limited to, prior mortgages, mechanics’ liens, tax judgments, street and sewer assessments, utility easements, mistakes in the public record and probate matters.

“Title insurance firms rake in \$18 billion a year for a product that is outdated, largely unneeded—and protected by law,” and in another statement, that the top three title companies are “fat and thriving in an \$18-billion-a-year business that has quadrupled in ten years.”

Over the past 25 years, the pre-tax profit margin for title insurers has been roughly 1.3% which, by any stretch of the imagination, is certainly not excessive. On a cost-per-thousand dollars of liability basis, title insurance rates have actually decreased over the last 40 years.

Profitability for title insurers is dependent on real estate sales and mortgage refinance activity, which is highly cyclical. We have recently experienced a boom cycle that was fueled by low interest rates and high refinance activity, which leads to inaccurate conclusions unless one looks at the history of the real estate cycle. Since a significant portion of a title company’s cost structure is fixed, profits during booms play a critical role in providing a cushion that permits a title insurer to ride out repeated collapses in real estate markets and pay claims that occur as many as 10 or 20 years after a policy is issued.

“It (title insurance) is far less necessary in these days of computerized records, online searches and rare instances of title fraud or hidden liens.”

Mr. Woolley would have his readers believe that conducting a title search is as easy as a Google Search.

There are thousands of counties, parishes and independent cities in the United States. Only a small percentage have automated title files, so in the vast majority of the country, the data retrieval process is still highly manual and paper-based.

In the areas of the country where technology is used, computerized records are maintained in what is called a “title plant.” There is a tremendous capital outlay to set up these facilities, not to mention the cost to maintain them and update records on a daily basis.

Our recent survey found that title problems are found in 36% of all residential real estate transactions. In addition, Mr. Woolley also seems to be unaware of the explosion in mortgage fraud that is currently plaguing the country, rendering the issuance of title insurance policies to lenders ever riskier.

“Now only \$74 of each policy goes to pay claims—that is, make home buyers with defective deeds whole. That leaves a \$1,373 spread for overhead and for profit.”

This statement, once again, implies that title insurance companies are making excessive profits on the basis that they pay so little in claims. To understand the “spread” more accurately, you need to understand how title insurance differs from other types of insurance.

Title insurance is based on loss avoidance as opposed to loss assumption. The majority of the premium dollar goes toward preventing claims from occurring through the search and examination process, as opposed to paying claims. That’s the whole point. You don’t want a claim on your property after you’ve moved in.

To draw a comparison using property and casualty insurance, where there is little upfront work performed, the majority of the premium goes toward paying claims. The cost of the premium is based on what may occur in the future, relying on actuarial estimates to predict future losses. With title insurance, the exact opposite is true.

To be more precise, expenses for title insurers are approximately 90% of the premium dollar, with 5% going toward claims and the remaining 5% toward profit. Expenses for property and casualty insurers are approximately 25% of the premium dollar, with 70% going toward claims and the remaining 5% towards profit.

The article refers to antiquated state laws “dictating that only dedicated title insurers could sell home buyers title policies,” and that these laws “walled off the industry from outside competition.”

As Mr. Woolley accurately points out, during the Depression Era, many insurers went insolvent and left policyholders without the coverage they paid for. Because the Depression was so long ago he concludes that the current “monoline” laws are antiquated. Had he done his homework, he would have also noted that, during the 1980s, mortgage guaranty insurers experienced a 190% loss ratio and a 72% drop in their contingency reserves. Writing title insurance in conjunction with mortgage guaranty insurance under cyclical and highly stressed financial conditions would have put insurers and their policyholders at great risk. The monoline restriction prevented one of the largest title insurers in the United States from being dragged into insolvency in 2000 when its parent company, Reliance Insurance, collapsed.

Most state regulators have determined that monoline restrictions constitute sound economic and regulatory policy by limiting companies writing a particular line of “high risk” insurance to writing only that line. (High risk in this case refers to insurance that is affected by swings in the real estate market.) Monoline restrictions have been a critical safeguard in ensuring the protection of these policyholders for many years. Similar monoline restrictions also apply to life insurance. Would Mr. Woolley have your readers believe that life insurers are the beneficiaries of antiquated laws?

“A homeowner refinancing a mortgage pays for new title insurance, despite the utter absence of any new risk in the deed.”

On what basis does Mr. Wolley assume there is no new risk? Any number of title issues could have occurred since the previous title policy was issued, even if it has only been a few months. A mechanic’s lien for unpaid work, or a lien for unpaid taxes are just two examples of the hundreds that could cloud the title. Even when a property is refinanced within a short period of time, it is the lender that requires a new search to make certain the title is clear and that they have a first-priority position on the loan.

A loan policy of title insurance is issued for the life of a loan. When a homeowner refinances their home, they are closing out the existing loan and taking out a new one, restarting the exposure clock, which requires a new loan policy of title insurance by the lender.

Another critical point lost on Mr. Woolley is that the secondary mortgage market will not purchase loans without the title insurance guarantee.

“Iowa, the one state government to not only maintain property records but guarantee their accuracy, can offer a vastly better deal.”

It is very misleading to tout the state-run title insurance system in Iowa on the basis that the insurance is “cheaper.” When purchasing a title insurance policy from the Iowa Title Guarantee Division (TGD), you must first hire an abstractor to perform a title search, for an additional cost. The Abstractor’s findings must be reviewed by an attorney, who charges a fee separate and apart from the Abstractor’s fee and cost of the title policy. What the reporter failed to note is that these services can add up to \$1,200 to the price of the premium.

Iowa is the only state with a state-imposed monopoly. The fact that the other 49 states have not adopted the Iowa system demonstrates that policymakers have determined that private title insurance is a superior product and value.

“Of the cash First American collects for title searches and accompanying insurance, it hands 80% to its own agents and to independents.”

Again, this statement demonstrates Mr. Woolley’s failure to grasp the way the title business operates. Title agents perform the search, examination of title and necessary title repair work, issue the policy, and often conduct the closing. The agent passes the risk portion of premium to the title insurer. It makes sense that the title agent, who performs the majority of the work, would receive the majority of the premium.

Allegations of wrongdoing and illegal practices in the title insurance industry

We don’t deny that we have problems in our industry. We make no excuses for, nor do we support, wrong behavior. However, there’s another side to the story that is never told.

The laws governing title insurance vary from state to state as well as with HUD. Our industry has experienced frustration over the ambiguous language in many of the regulations. We have repeatedly sought guidance from regulators on how vague rules apply to certain business practices, but there have been many instances when the first we were aware of an allegation of wrongdoing was from the news media. Unfortunately, issuing a press statement alleging wrongdoing in an election year has become an effective means to garner publicity.

ALTA supports practices that are in compliance with the laws and regulations governing our industry, and the uniform enforcement of those laws. We also want greater clarity on how those laws and guidelines apply to specific business practices. We are committed to continuing to work with regulators to accomplish this goal.

William Baldwin's Sidebar, "Entitlements"

There are tens of thousands of title agents in this country who are the backbone of our industry. They are hardworking men and women, many of whom are "mom and pop" operations. For Mr. Baldwin to refer them as "featherbedders," and compare them to "mafia goons" and "coal handlers," is unconscionable.

For most Americans, their home is the single largest financial investment they will ever make. There are literally dozens of ways in which the title to their property can be jeopardized. The title insurance industry exists to ensure that title issues don't affect their homeownership rights—before and after a purchase. For Mr. Woolley to allege that title insurance is unnecessary when one out of every three title searches reveals a problem is not only wrong, it is irresponsible.

Clearly defined property rights or "title" is what enables homeowners to use their assets as loan collateral and borrow funds that help build wealth and improve their lives. Those who don't see the value in land record systems and the insurance that accompanies them need only look to developing nations where clouded property ownership equals uncertainty, lender risk, and thus minimal opportunity to unlock the value of property assets. We're quite surprised that a magazine of Forbes' financial acumen could miss--or purposely dismiss--that economic reality.

We have come to rely on Forbes as a publication of journalistic integrity dedicated to fair and balanced reporting. The deceptive tactics used to research this story, and to print whatever sells as opposed to the truth, is something one expects from the tabloids. Mr. Forbes, we are extremely disappointed.

Signed,



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