



New York State Land Title Association, Inc.

Tradition, Excellence, Knowledge and Vision

**Title Insurance:
Protecting Your Piece of the Planet**

January 19, 2010

MEMORANDUM IN OPPOSITION

**Re: S6290 (Adams)
A9445-A (Brodsky)**

The New York State Land Title Association opposes Bill S6290 and A9445-A. This Bill attempts to import a system of state-issued title guarantees from Iowa, a state with a low real property turnover rate and uniform real estate procedures, to New York State, a state having many multiples of the volume of transactions in Iowa, and a wide variety of local real estate procedures. According to the Iowa Land Title Association, The Iowa Guaranty system was set up to deal with problems caused by the legislative prohibition, years earlier, of the selling of title insurance in Iowa. Because of this, Iowa property owners and lenders could only rely on a certified abstract of title to protect their rights to their land. In order to allow their citizens to take full advantage of the emerging secondary mortgage market, the Iowa state government was forced to step in and provide an alternative to title insurance. New York does not face this problem- there is a vibrant and competitive market for title insurance in New York.

Since much of the bill is taken almost word-for-word from an Iowa statute, it may be helpful to examine the system that has been established in that state (Note: the below information about Iowa reinsurance and practices is from the Iowa Association of Realtors). First, although Iowa's statute does not require it, the Iowa Guaranty Fund has determined that even its relatively small pool of policies contains too much risk- it purchases re-insurance (from a Title Insurance Corporation) for every sale or mortgage over \$500,000 that it guarantees (it used to purchase reinsurance for guarantees over \$100,000, then \$250,000). Only a tiny percentage of residential properties in Iowa are valued at over \$500,000. Since land values in Iowa are small compared to those in New York, it is certain that these re-insurance costs will be dramatically higher here, driving up the cost of the Guaranty to New York consumers.

The price of an Iowa Guaranty is artificially low because much of the costs and risks are pushed onto abstractors and attorneys. They are both required to keep substantial errors and omissions insurance, and Iowa typically refers any claim that arises to the examining attorney to "solve". Because any error that causes a claim will cost them substantial money, attorneys in Iowa rarely recommend that buyers purchase an Iowa Guaranty that covers their ownership interest. Such a policy increases the chances of a claim and therefore their liability, putting those attorneys into a clear conflict of interest between their client's protection and their own pocketbook. Iowa attorneys usually charge \$325 for an opinion of title. New York attorney's fees for such a service would certainly be substantially higher. In Iowa, the buyer also has to pay for the post-closing update of the abstract, typically costing \$175. In New York, abstract costs are either already included in the basic title insurance premium (downstate) or paid for by the seller (upstate), sparing the buyer a heavy expense.

Even if the desire remains to institute such a flawed system in New York, this bill has other problems that place additional burdens on the State and its consumers, while facing substantially less regulatory oversight than the New York title insurance industry currently does.

Section 3975 of the bill sets up a Public Authority to run the program and issue guarantees. It also empowers the Authority to issue bonds to fund the program. The legislature should anticipate that there would have to be *significant* initial borrowing to fund both a claims reserve sufficient to cover the guarantees and fund start-up and operating costs.

Section 3977(7) allows the Authority to pledge “all or any part of its revenues or assets”, leaving vital claims reserves subject to the demands of bond creditors. We note also that subsection (10) has an apparent error in that it requires the Authority to consider the financial impact on the “county”, not the Authority or New York State. Ironically, subsection (11) prohibits the Authority from holding any interest in real property, barring it from a common method available to title companies to recover losses by taking title to real property assets after paying out a total loss claim.

While Sections 3978 and 3979 require that the Authority *consult* with the Department of Insurance regarding forms and claims reserves, they do not allow any *regulation* of them by the Department. If problems arise with the coverage of the guaranty forms, or if the Authority misuses its claims reserves, or if service levels decline intolerably, or even if corruption and kickbacks come to light, the Insurance Department would have no power to intervene and punish. In fact, no one would likely be held accountable should these problems arise.

The bill also requires the Authority to set guarantee prices so that the program generates \$150 million *annually* for “affordable housing”, “roads and bridges”, a “STAR” rebate program” and possible other programs. This requirement is completely unrealistic, considering the cyclical nature of the real estate market. In a “down” market (such as the current one that has resulted in widespread losses for title companies in New York) such a requirement could force the Authority to raise rates *above* market title insurance rates. Without a price advantage, very few consumers would choose coverage under the Guarantees, resulting in a vicious cycle of lowered demand *causing* price increases, further lowering demand.

This entire plan relies on a system of “participating abstractors” to create abstracts, and “participating attorneys” to issue opinions of title based on those abstracts (Section 3980). This would force the re-introduction of certified abstracts into the downstate counties, reversing the judgment of the real estate community decades ago that abstracts did not provide enough coverage. It would also force almost all downstate real estate attorneys to learn or relearn title “reading” and clearance skills, or face loss of business to other colleagues who have been authorized to examine title.

Subsection (1) allows the Authority to set “participation” fees (essentially licensing fees) charged to the abstractors and attorneys, however, the Authority does not have the power under the bill to set the fees charged to consumers for the actual abstracts and opinions. Such fees would raise the cost to the buyer to a level considerably *above* current New York title insurance costs.

Section 3980 (2) A2 requires that all “participating abstractors” use an “up-to-date title plant including tract indices for real estate for each county”. However, hardly any current abstract companies currently have such title plants, fewer still contain tract indices, and no current abstract company plant contains records for all New York counties. Most New York counties use “grantor/grantee” indices that would be impossible to organize into tracts. The unpleasant truth is that most New York county real estate records are complex and require skilled abstractors working many hours to put together an abstract of title for a particular property. Title “plants” of the sort envisioned in this bill to lower costs would be impossible to create in most New York counties.

The Iowa system resulted in costs that were artificially suppressed because of a statutory lack of competition which allowed inferior claims coverage, and the spreading of risk to parties that had no choice but to take on that risk. Transplanting the Iowa plan to New York would also result in a product that is more costly to buyers than current title insurance protection, and also shift significant risk to members of the New York Bar, possibly causing attorneys to recommend against owners coverage, decreasing coverage and increasing risk for consumers. The point is worth making again- if buyers costs *increase* under this plan, and they surely will, consumers and their attorneys will choose a traditional title insurance product to protect them, leaving the State Title Insurance Fund without money to pay its bondholders- a costly and messy failure that would cast doubt on the security of title of thousands of properties and would certainly require a bailout from the State's general fund, leaving thousands of angry Guaranty holders and taxpayers.

It is also not proper or desirable for the State of New York to displace private enterprise for the purpose of generating revenue for the State. Government should promote and regulate private enterprise for the public good by encouraging productive private employment opportunities for its citizens, encourage investment and entrepreneurship. Through a robust and healthy economy, the State can generate tax revenues to fund State programs and projects to benefit its citizens. When the State injects itself into private enterprise as a business competitor, it stifles competition, entrepreneurship and employment. By competing against private enterprise, the State will adversely affect countless persons employed in the Title Insurance industry, people who buy products and services in the State's economy, and pay State and local taxes.

Respectfully submitted,

Sharon Sabol
Executive Vice President

*The New York State Land Title Association, formed in 1921, is a statewide association that advances the interests of all those involved in abstracting, examining or insuring title to real estate. Our membership includes title insurance companies licensed in the State of New York, abstract companies, title insurance agents, law firms, individual attorneys, surveyors and others actively involved in real estate matters.