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TitleTRACK

Public option for title insurance

New York State Assemblyman Richard Brodsky, chairman of Assembly's Committee on Corporations, Authorities and Commissions has co-sponsored Assembly Bill A9441-S6288 with Sen. Eric Adams, D-Brooklyn, seeking the creation of a public option, a state entity charged with guaranteeing title and reducing costs through the state Insurance Fund, a class of insurance that differs from the type of insurance for which the fund was created.

According to the proposal, the entity would include seven appointed directors, who in turn would appoint a treasurer and then hire "officers and agents as it may require."

The bill's proponents seek to reduce title insurance premiums by at least 50 percent while providing \$50 million annually for affordable housing, road and bridge repair, property tax relief, and temporary relief of the existing budget crisis.

The reasoning cited in the bill shows a profound misunderstanding of the title insurance industry and how it operates. At the same time, the bill summarizes and attempts to explain purported deficiencies that in fact do not exist.

The legislation appears to compare title insurance to other types of insurance, when title insurance actually protects against losses caused by pre-existing defects to an owner's title to real property, rather than protecting against future losses. Title insurance protection is provided in exchange for a one-time premium payment, rather than monthly, quarterly or annual premium payments. The coverage lasts as long as the insured party holds an interest in the insured premises.

The legislation compares the proposed public option program to "The Torrens System" and the Iowa Title Guarantee program. The Torrens System involves the creation of title or ownership rights through the recordation (registration) of the actual real estate transaction in a central, state-run register, which is legally conclusive. The process also is called "title by registration," and no document is effective to pass title or an interest in a property unless and until it is recorded at the centralized registry. The Iowa Guarantee program offers guarantees of real property titles in the state. The title guaranty fund is created in the office of the treasurer of state. Funds collected under the program are placed in the title guaranty fund and are available to pay all claims, nec-

essary reserves and all administrative costs of the title guaranty program.

The Torrens System was formulated to combat the problems of uncertainty, complexity and cost associated with old English land law, which depended on proof of an unbroken chain of title back to a good root of title. New York State previously had a Torrens System. While a register of who owned what land was maintained, it was unreliable and could be challenged in the courts at any time. The limits of the system meant land transfers were slow, expensive and often certain title could not be created, thus the Torrens System in New York was eliminated.

The new legislation offers a flawed analysis of the profitability of title insurance, and is critical of premium rates, even though those rates are set and regulated by the state Insurance Department. The legislation states that in 2007, title insurers collected \$1.2 billion in premiums, and paid out \$55 million in losses. Comparing the 4 percent payout to other types of insurance, the legislation proposes state enter the title game not to reform perceived inflated profit margins, but instead to "take advantage of such a risk/reward scenario." New York Taxpayers for Economic Justice released a study that showed the actual profit for all title companies was a modest 5.6 percent after operating expenses in 2007.

What the current legislation fails to mention, or even to analyze, is that the real expenses associated with title insurance — including searchers, examiners, title readers, title closers, attorneys and the many real estate professionals who spend hours examining title to determine whether it is valid and free from defect, clearing title objections and other services — are provided to the consumer at no additional cost.

In an effort to reduce title insurance premiums and increase revenues for state programs and provide temporary relief for the budget crisis, the government effectively would replace an efficient and consumer-driven insurance industry with a state bureaucracy. Revenue would be offset by considerable costs not accounted for in the legislation. The state would be required to invest substantial costs upfront, establish operations and systems, and hold money that otherwise could be used for other budget priorities to meet the regulatory requirements that sub-



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stantial capital and reserve holdings be held to protect insurer solvency and prevent consumer loss. It is dangerous for a state government to look to a highly cyclical industry to fund critical infrastructure needs such as roads and bridges.

In addition to the upfront costs, the state would lose additional revenue in the form of premium taxes paid by title insurers, revenue from recording fees and revenue generated by the title insurance industry's purchase of copies of public documents.

Claims have been made that the legislation will help to create jobs, but in reality the legislation would result in lost jobs. According to the American Land Title Association, a government-run title system would eliminate more than 2,750 title abstractors and examiners in New York and would impact many of the 60,000 attorneys in the state

who provide title insurance services among their practice.

The goals of reducing consumer costs, finding new revenue streams to fund state programs and providing temporary relief to the budget crisis are admirable, but the elimination of an entire industry — and thousands of jobs — through the socialization of private business through a flawed and fiscally dangerous program is not. New York taxpayers should expect the facts from their elected officials, not political grandstanding.

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