



**State of Rhode Island**  
**DEPARTMENT OF BUSINESS REGULATION**  
**1511 Pontiac Avenue, Bldg. 69-2**  
**Cranston, Rhode Island 02920**

**Insurance Division**  
February 19, 2024

***Report on the Rhode Island Title Insurance Project***

**I. Authority**

Pursuant to [R.I. Gen. Laws § 27-71](#), the Rhode Island Insurance Division (the “Division”) within the Department of Business Regulation (“DBR”) undertook this Project to better understand the Rhode Island Title Insurance marketplace. As part of this, the Division sent out a series of interrogatories and data requests to both title insurance companies and title insurance agents and followed-up via e-mail and/or teleconference to clarify company responses and identify any potential consumer, statutory or regulatory concerns.

**II. Background**

On May 29, 2020, the Rhode Island Supreme Court (the “Court”) in [In re William E. Paplauskas, et al.](#), issued a unanimous opinion establishing the functions involved in a residential real estate closing that may be performed by a licensed title insurance agent as defined in [R.I. Gen. Laws § 27-2.6-3\(17\)](#) (“Title Agent”)<sup>1</sup> and those that must be performed by an attorney licensed by the Court (a “Licensed Attorney”). The Division issued [Rhode Island Insurance Bulletin 2020-8](#) (dated July 9, 2020) to inform interested parties of this ruling and the legal responsibilities and limitations the Division identified from that ruling, and the applicable statutory responsibilities. The Court in [In re Paplauskas, et al.](#) also directed DBR to draft a disclosure notice to be used whenever a Title Agent who is not a Licensed Attorney conducts a residential real estate closing (see pages 28-29 of the decision).

**III. Methodology**

The Division reviewed market share data to identify insurance companies that sold title insurance in Rhode Island in 2019 and 2020. The Division selected eleven (11) title insurers<sup>2</sup>

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<sup>1</sup> We note that the statutorily defined terms of title insurance agent and insurance producer, defined in R.I. Gen. Laws § 27-2.4-2, are generally referred to as Title Agents within this report.

<sup>2</sup> This Report will refer to title insurance companies generally as title insurers. Title insurance contracts can only be written in Rhode Island by insurance companies authorized to sell title insurance pursuant to R.I. Gen. Laws § 27-2.6-6. Most states have similar requirements that title insurers write only one line of insurance. See NAIC State Licensing Handbook, Chapter 29. Available online at <https://content.naic.org/sites/default/files/inline-files/Chapter%2029.pdf>.



reporting the most title insurance premium in 2019 and twenty (20) Title Agents with high ratios in 2020 of selling enhanced vs. standard title insurance policies to respond to interrogatories and follow-up questions beginning in August 2021 and concluding in July 2023. The questions and confidential responses have been documented for review by other states in an online database for state insurance regulators.<sup>3</sup>

The interrogatories included questions designed to evaluate compliance with:

- a) [In re Paplauskas, et al.](#) and [Insurance Bulletin 2020-8](#),
- b) Policies and procedures for insurance reports and owners' policies and lenders' policies,
- c) How the companies meet and/or oversee biennial agent audits,
- d) How agent license status is verified,
- e) How the companies prevent the tying of title services to other services,
- f) The selling of enhanced American Land Title Association<sup>4</sup> (ALTA) Homeowner's and standard Owner's policies, and
- g) The use of closing protection letters.

The Division asked follow-up questions as applicable including requests for details regarding loss and expense ratios and other statutory and regulatory compliance concerns.

The Division asked questions of the selected Title Agents with two general purposes: a) to confirm that day-to-day Title Agent activities matched the responses received from the title insurer and b) to gain a better understanding of how these standard and enhanced title insurance policies are marketed to consumers, since they come with additional costs.

## IV. Observations

### a) Rhode Island Supreme Court Required Disclosure Notice

In [In re Paplauskas, et al.](#), the Court determined a Title Agent who is not a Licensed Attorney may perform specific functions in conjunction with the provision of title insurance for a residential real estate closing.<sup>5</sup> To complete the functions, the Title Agent must provide disclosure to the participants in the residential real estate closing. As noted above, the Court directed DBR to draft a disclosure notice for Title Agents who are not Licensed Attorneys. One of the main reasons for this Project was to ensure that this Court required disclosure had been adopted by all title insurers.

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<sup>3</sup> Responses from Title Insurers are confidential pursuant to [R.I. Gen. Laws § 27-71-8](#), which ensures market conduct surveillance personnel full access to insurer records by protecting the information that is presented to the market conduct personnel.

<sup>4</sup> American Land Title Association, referred to as ALTA, is a national title insurance trade association that prepares and distributes title insurance policy forms (i.e., insurance contracts) and related documents to promote consistent title insurance practices in the United States.

<sup>5</sup> The Court specified that non-attorney Title Agents may (1) conduct a residential real estate closing; (2) draft a residency affidavit; and (3) draft a limited durable power of attorney, so long as those activities are carried out in connection with the issuance of title insurance. The Court also found that non-attorney Title Agents may not conduct an examination of title for marketability or draft a deed in connection with a closing.



After completion of its Project, the Division reports that companies are using the disclosure notice as required. After the Court decision and the Bulletin, Companies either created their own disclosure form or used the Division's disclosure form. The Division appreciates that the industry was able to appropriately adopt these changes. One best practice that the Division noted was that one company used a newly designed state-specific audit plan to help ensure compliance.

#### **b) Policyholder Notice of Policy Terms and Exemptions**

[R.I. Gen. Laws § 27-2.6-12](#) provides statutory protections to persons purchasing title insurance. Title insurers and Title Agents are required to provide a specific timely notice of the terms of a title insurance policy and any exemptions to the coverage to be underwritten. In a purchase transaction, additional notice must be provided to the purchaser that does not purchase title insurance explaining the lender's policy does not cover the purchaser for possible title risk. All title companies provided documentation that the notice requirements were being met for real estate closings conducted by the Rhode Island Title Agents.

The information reviewed by the Division shows that Title Agents are providing appropriate notice to persons purchasing title insurance. The Rhode Island requirement is not an outlier and a similar Massachusetts requirement is outlined in Section V. Other State Best Practices, below.

#### **c) Licensure Status Checks**

Title insurers are required to have proof the Title Agent is licensed to complete work in Rhode Island as set forth in [R.I. Gen. Laws § 27-2.6-13](#). The Division asked specific questions about license status checks. Title insurers provided a variety of responses to the Division's questions about their activities to ensure the license status of the Title Agents that were selling their title insurance policies, as required by R.I. Gen. Laws § 27-2.6-13(e). While all title insurers were confirming license status as required by law, some title insurers were verifying the licensure status of each agent less frequently than preferred by the Division. The Division believes verifying licensure status when onboarding a new agent and then annually or upon renewal thereafter (typically every two-years) is not frequent enough to account for license changes mid-term (such as cancellations or suspensions) and therefore does not meet the requirements of [R.I. Gen. Laws § 27-2.4-15](#) whereby insurers are prohibited from paying unlicensed agents.

The Division believes that insurance companies should verify the status of all insurance producer licenses at least quarterly (including Title Agent licenses), if not more frequently. With improvements in national electronic licensing records, this type of verification could be done as frequently as daily with minimal human interaction.

#### **d) Other Oversight and Monitoring of Title Agents**

[R.I. Gen. Laws § 27-2.6-13](#) sets forth several other requirements for title insurers in the oversight and monitoring of their Title Agents. Three additional topics reviewed in the Project about Title Agent oversight included on-site reviews, control over policy forms and policy numbers, and commission payments.



### 1. Biennial On-Site Reviews

[R.I. Gen. Laws § 27-2.6-13\(b\)](#) requires title insurers to complete biennial on-site reviews of contracted Title Agents. Most title insurers were able to complete the on-site reviews, even with challenges resulting from COVID-19 restrictions. Companies that did not complete the biennial review will be subject to Division compliance actions.

The Division notes that if the biennial requirement remains in the statute, it remains a requirement. Title insurers should complete their on-site review of Title Agents no less frequent than every 730 days (i.e., every two years).

### 2. Inventory of Policy Forms and Policy Numbers

One requirement of the biennial on-site reviews set forth in [R.I. Gen. Laws § 27-2.6-13\(b\)](#) is the review of the Title Agent's policy blank inventory and policy numbers, allowing the title insurer to comply with the inventory of policy forms and policy numbers allocated to the Title Agent requirement set forth in [R.I. Gen. Laws § 27-2.6-13\(d\)](#). When enacted in 2010, title insurance policy forms were in paper format and the title insurance policy numbers were tracked manually. In response to the Division's title questions, title insurers advised the Division that electronic tools are utilized to monitor the inventory of title insurance policy forms and title insurance policy numbers.

The Division supports the electronic monitoring systems used by title insurers.

### 3. Commission Payments to Title Agents

While this is not an oversight requirement, Rhode Island does require title insurers submit an Annual Contracted Producers Report ("ACPR") each year by March 1 pursuant to [R.I. Gen. Laws § 27-2.4-2\(2\)](#). (See also R.I. Insurance Regulation [230-RICR-20-50-50-5](#).) Title insurers are required to submit an ACPR listing all contracted, licensed Title Agents, reporting whether a commission was paid to each licensed Title Agent and to remit the statutory fee for any Title Agent receiving more than \$100 in commission. In reviewing ACPRs submitted by title insurers, the Division noted that title insurers had trouble tracking individual Title Agents in their ACPR submissions. Rather than listing individuals, title insurers included business entities (title and closing companies) contracted with the title insurer, in their ACPR submissions. After additional follow-up, all title insurers were able to identify all the underlying individual licensed agents and complete their ACPR filing requirements.

The Division believes title insurers should be able to easily identify the individual licensed Title Agent and license number for all issued title insurance policies, to comply with [R.I. Gen. Laws § 27-2.4-15\(a\)](#). All applicable licensees should be identified within title insurer records.

### e) **Tying of Title Services to Other Services**

[R.I. Gen. Laws § 27-2.6-15](#) limits the activities that may be completed by Title Agents. The Division requested title insurer policies & procedures that outlined how insurers ensured Title



Agents were not engaging in tying activities. All title insurers provided documentation that tying activities were not allowed and the oversight of Title Agents included the review for tying activities.

The Division appreciates that title insurers have outlined the tying activity prohibition and included reviews for potential tying activities in their oversight of Title Agents.

#### **f) Selling of Standard Owner’s and Enhanced Homeowner’s Policies**

The Division understands that Title Agents have two primary title insurance products to offer the purchaser of title insurance: ALTAs standard Owner’s policy and the enhanced Homeowner’s policy. The standard Owner’s policy typically covers defects or liens existing before the real estate closing. An enhanced Homeowner’s policy typically includes all the coverage provided by a standard policy plus protection against additional risks, potentially even providing coverage after the closing date. The Division requested information and supporting documentation from title insurers and from the data received identified a dozen Title Agents who had sold significantly more enhanced policies than standard policies during the review period.

The title insurers advised the purchase of title insurance is a sale between a Title Agent and the consumer. This sale includes the explanation of the differences in the coverage provided in a standard policy or an enhanced policy. All title insurers did respond that they provided materials to Title Agents to be used in the explanation and sale of title insurance explaining both standard and enhanced policies.

The Division then reached out to Title Agents regarding these sales. The outreach both confirmed the information provided by the title insurers and addressed the Division’s concerns that Title Agents provided notice to each purchaser and that the decision about which policy was purchased was made by the consumers. Through this process, the Division has gained a better understanding of the selling of standard and enhanced policies.

#### **g) Closing Protection Letters**

[R.I. Gen. Laws § 27-2.6-6\(c\)](#) allows for the use of closing protection letters if they are filed with the Division. All title insurers provided documentation that the closing protection letter requirements were being met for real estate closings conducted by the Title Agents.

The Division appreciates that title insurers are complying with the requirements.

### **V. Other State Best Practices**

During the review of title insurer responses, the Division looked to similar states and regulatory authorities for additional best practices. The Massachusetts Board of Bar Overseers (“BBO”) updated disclosure and consent requirements for the sale of title insurance in a December 15, 2022 article entitled [The Cost of Doing Business \(With a](#)



Client). BBO requirements set forth in the article are to:

- Disclose to the buyer the cost of the title insurance policy,
- Advise clients of the desirability of seeking independent legal advice as to the purchase of a title insurance policy,
- Clearly inform the client of the lawyer's role in the sale of the title insurance policy, which includes disclosure of the lawyers share of the title policy commission; and,
- Secure clients written consent to the terms of the transaction.

The article continues with the Massachusetts Rules of Professional Conduct requiring the lawyer to give the client reasonable opportunity to seek the advice of independent counsel in the transaction, which means the client needs advance notice to be able to make an informed decision about the purchase of title insurance. It is not sufficient to secure a client's written consent for the purchase of a title insurance policy with notice given at or shortly before the closing, by presenting the client with a form to be signed along with the other purchase and mortgage documents.

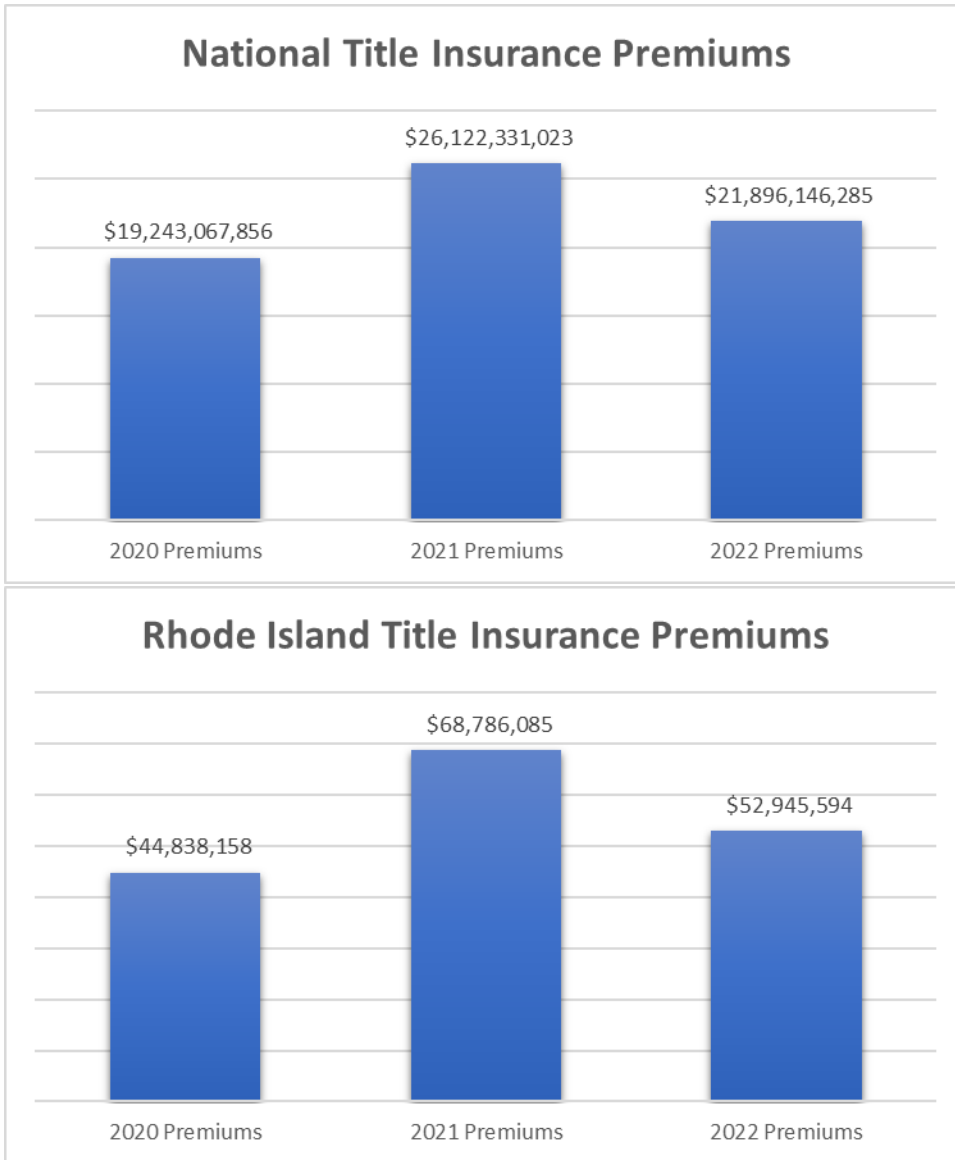
## **VI. Premiums**

The actual cost of title insurance depends upon the value of the property, the insurer from which the coverage is purchased and the location of the property. The median price of homes sold has risen sharply since the beginning of 2020. Record low interest rates, families feeling cramped due to COVID-19 quarantines and supply chain issues for building products have all combined to worsen the housing shortage, all combined to create an extraordinarily hot housing market.

As a result of the hot real estate market, national title insurance premiums increased from roughly \$19.24 billion in 2020 to \$26.12 billion in 2021 and then decreased to \$21.90 billion in 2022. During this same period, Rhode Island title insurance premiums mirrored the national trends increasing from \$44.84 million in 2020 to \$68.79 million in 2021 and then decreasing to \$52.95 million in 2022 (see charts below, data provided by the National Association of Insurance Commissioners).

In addition to the value of the property, the insurer and geographic location of the property, the title insurance premium can include the following:

- Title search fees,
- Closing protection letter,
- Government recording fees,
- Tax and other certificates, and
- Closing administrative fees.



## VII. References

[In re William E. Paplauskas, Jr.](#), 228 A.3d 43, R.I. Supreme Court (2020)

[Insurance Bulletin 2020-8 Title Insurance Guidelines](#)

[Insurance Regulation 230-RICR-20-50-50-5 Licensing and Renewal Fee](#)

[R.I. Gen. Laws § 27-2.4-2\(2\)](#)

[R.I. Gen. Laws §§ 27-2.4-15\(a\) & \(b\)](#)

[R.I. Gen. Laws §§ 27-2.6-3\(17\), 27-2.6-5, 27-2.6-6\(c\), 27-2.6-12, 27-2.6-13\(b\) & \(d\) & \(e\), 27-2.6-15\(a\) & \(b\)](#)



[R.I. Gen. Laws Chapter 27-71](#)

The Cost of Doing Business (With a Client) - Massachusetts Board of Bar Overseers - [https://bbopublic.massbbo.org/web/f/cost\\_of\\_doing\\_business.pdf](https://bbopublic.massbbo.org/web/f/cost_of_doing_business.pdf)

### **VIII. Current Compliance Actions and Next Steps**

With this report, the Division will be closing its Project reviewing the Rhode Island title insurance market. The Division also expects to issue a Bulletin on Title Insurance in the coming months that will identify some best practices and address rate filings. And the Division is considering how to address any potential non-compliance its reviews identified.

The Division will continue to work with the title insurers and Title Agents to provide effective regulation and supervision of the Rhode Island title insurance marketplace.

### **IX. Report Submission**

This Project was conducted by Brett Bache, Market Conduct Examiner-in-Charge, Brian Werbeloff, Principal Insurance Examiner, Patrick Smock, Deputy Chief of Legal Services and Matthew Gendron, Chief of Regulatory Compliance for the Rhode Island Department of Business Regulation Insurance Division.

Respectfully submitted,

A handwritten signature in blue ink that reads "Matthew M. Gendron".

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Matthew Gendron  
Chief of Regulatory Compliance