Real estate brokers’ ties with title insurers might cost Colorado consumers

Home sellers might not be getting the chance to choose who closes their deal

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Real estate agents in Colorado are required both to disclose to their clients whether they have a financial interest in the title company they are recommending in a home sale and to register that affiliation with regulators.

The reason for the safeguards is to ensure that consumers are aware of these profit-sharing relationships and have the opportunity to choose a title company for themselves.

But a Denver Post review of more than 2,200 Colorado home sales in the past year involving about a dozen of the state’s largest affiliated business arrangements found that the title work mostly stayed within those partnerships. Three-quarters retained at least 90 percent of the transactions they controlled, and three of them were involved in all of their real estate deals, The Post found.

The findings indicate that some real estate agents — it is not clear how many — intentionally steer business to their title-company partners, a practice regulators sought to curtail a decade ago. Industry practice suggests brokers offer consumers three choices

Critics say the practice of steering real-estate closings is not uncommon and results in higher costs for customers and stifled competition in the industry. Proponents say the partnerships ensure a smooth real estate transaction, and that consumers are relieved to take their professional recommendation because it removes the burden of having to shop for a title company.

Brokers and title company executives privately told The Post that the referral system is a profitable one, in which loyalty between agents and title firms offers consistent financial returns, although a few expressed ethical concerns. Nearly all declined to be identified because they worried about losing business.

“The silence surrounding these questionable practices is deafening,” said Garry Wolff, a title industry watchdog who has railed about affiliated business practices for years. “Brokers won’t snitch or admit anything because of their involvement, and the title industry won’t address it for fear of losing business from brokers blackballing them. It’s a real Catch-22.”

The Post also found 37 agents with financial interests in title companies have not registered those affiliations with the state — including one of Colorado's five real estate commissioners who oversee the industry.

Hiring the wrong title company can carry risks for consumers. Since 2013, three title companies in Colorado have folded amid allegations of misappropriation or theft of millions of dollars of homebuyers' escrow funds. Title insurance protects buyers and sellers from ownership claims not found during a search of public records.

"Who looks at a title company? You sort of figure that when businesses are recommended, you trust your Realtors," said Alicia Smith, who lost $3,000 in earnest money when the title company in her deal folded. The real estate agent selling the house had a financial interest with the title company, records show, paperwork Smith said she didn't recall seeing until it was too late.

The state's larger title companies say they avoid affiliated business arrangements, known as ABAs, yet others commonly use them. There are 67 registered ABAs with the Colorado Division of Insurance involving hundreds of real estate brokers. Industry insiders estimate as many as 35 percent of all home sales in Colorado are handled by a title company with a financial tie to the broker selling the property.

"It is clear that there is no direct benefit to consumers who remain completely unaware that their settlement business is being traded as part of a quid pro quo to compensate referral sources for steering their consumers to closely held title insurance agencies," John Novarina of the National Association of Independent Land Title Agents said in a 2013 speech.

Consumers might not realize their rights or bother to execute them, state officials said.

"We make licensees aware that consumers have the right to choose who they want to use for their settlement service provider," Colorado Real Estate Division spokesman Eric Turner said in an e-mail to The Post. "However, consumers may not be aware of the services of title insurance companies, to conduct their own search the way they are about providers like home inspectors, mortgage loan originators, appraisers or structural engineers."

Changes made in 2006

Lawmakers began requiring disclosures in 2006 in order to curtail the practice of creating shell companies masking referral-fee kickbacks that were rampant between title companies and brokers. Referral fees were disallowed, but brokers and title companies could still share in the profits of their registered affiliations as long as there was no requirement to refer business.

"I like my title closer, who does such a good job for me," said Amanda DiVito Parle, a real estate agent in Arvada who has a registered ABA with Equity Title Associates. "It would be brain damage to send my business to four and five different closers and companies."

Parle has used Equity Title in 82 percent of the home sales she has handled over the past year, The Post found.

Parle said it's natural for title companies to seek out brokers as business partners.

"Have you ever seen a TV commercial for title insurance?" she said. "They don't target consumers because it's not where they're getting their business. They target the real estate brokers."

Frequently, it is the top-selling brokers who are asked to join the partnership. "Not everybody is invited to participate in the title company," Parle said. "It doesn't work for the partnership if you're not a top producer."

State law requires that real estate agents and title companies register their affiliated business arrangement with the agencies that regulate them: the Colorado Division of Insurance for title companies and the Division of Real Estate for brokers. Both divisions are within the Department of Regulatory Agencies.

State licensing data obtained by The Post shows 1,492 real estate agents have registered at least one affiliation. At least three dozen agents, however, have not registered their ABA with regulators even though they were identified by title companies as members of a partnership.

Colorado Real Estate Commissioner Christopher McElroy, a real estate broker in Fort Collins, has an interest in an ABA that he had not registered, The Post found. McElroy said he was unaware of a need to register a partnership he has been a part of for years, pointing at the attorneys who control it as being responsible for the paperwork.

In another case, The Post found the state's largest ABA – Equity Title Associates I – had properly identified its 19 broker partners to state insurance regulators, but only 10 of them in turn registered with real estate regulators.

State officials said they investigate when a complaint is filed, but that it's up to licensees to do as is required.

"Generally speaking, the Real Estate Commission has the authority to impose an administrative fine not to exceed $2,500 for each separate offense and to censure a license, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license," spokesman Turner said in an email.

Turner said he could not recall the last time the agency cited a broker for an ABA registration violation.

Choices appear to be rare

Real estate protocol — not any law — calls for a broker to offer a choice of three title companies to their home-selling clients. There is no requirement or protocol to show consumers the cost differences between those choices, which can amount to several hundred dollars.

The Post found 100 percent of three brokers' listings used the title company in which they had a financial interest, raising a question as to whether clients were actually receiving any choice of title companies or, as some say, simply didn't care if their broker made extra money.

"Assuming the outcomes are equally likely and the (consumer's) choices were completely independent, it would be staggeringly unlikely that the outcome would be 100 percent," said Ronnie Pavlov, an associate professor of mathematics at the University of Denver.

Recent cases illustrate how consumers can lose money when title companies get in trouble.

In one instance, dozens of homeowners had millions of dollars tied up in bankruptcy court for years after the title company they agreed on — American Title Services — closed after its owner committed suicide with a nail gun following years of embezzlement.

In another, a mother-daughter team abruptly shuttered their agencies — Foresight Title and Williams Title — amid allegations that more than $600,000 of clients' money was missing, many of them consumers whose real estate brokers had financial interests in the companies. One of the customers who lost money was Alicia Smith.

Foresight was the creation of an ABA between Williams and the owners of Redefy, a real estate firm, state records show. Nearly all of Redefy's business selling houses ended up at Foresight — 97 percent of the company's home sales from January to June 2016, public records show. And in the month before Foresight closed, 54 of the 55 closings it handled came from Redefy, records show.

"The reason for Foresight Title's closure was not related to it being an affiliated business," Redefy co-owner Jordan Connett said in an e-mail to The Post. "The Colorado office of Redefy Real Estate closed 335 transactions from January through June 2016 and used over 20 different title companies to close those transactions. Foresight Title was one of them."

Public records, however, show that the 335 is actually a combination of homes Redefy listed on behalf of sellers — who typically mandate which title company handles the closing — and those representing buyers, who typically do not. Between January and June 2016, Redefy represented sellers on 234 properties — and 227 of them closed with Foresight, records show.

Arrangements are profitable

The title industry last year generated about $417 million in revenues in Colorado — and the number of claims sat at about 6 percent of all policies. A share in the profits from an ABA typically are in the hundreds or thousands of dollars, but can reach tens of thousands of dollars a year for a broker, according to interviews.

In an undated letter soliciting interest in joining an ABA with Equity Title, president Bill Dinnebeil described the arrangements as profitable, especially when top sellers are recruited.

“Ten years ago, Equity Title formed a partnership with a select number of the elite, top-producing agents in the market,” he wrote in the letter e-mailed in June 2016, a copy of which was provided to The Post by one of its recipients. “They would all tell you that the hallmarks of this partnership have been exceptional service and profitability that leads to dividend distributions to partners. The partnership has had 10 consecutive years of profitability and dividends.”

The six brokers named in Dinnebeil’s note largely used Equity Title to close their real estate sales, a cross-check of public records by The Post found.

Broker Joe DiVito is one of the agents partnered with Equity. His daughter — Amanda Parle — is listed in state license records as a partner as well. The two bought into Equity from its inception, Parle said.

“Frankly, it’s been by far the best investment I’ve made in real estate to date,” Parle said in an interview. “The whole thing is just so good, I can’t even tell you.”

Of 61 homes the father-daughter pair has sold in the past year — they call themselves The DiVito Dream Makers — 50 were closed by Equity, records show.

“I’d say 97 percent of the agents are choosing the seller’s title company for them,” Parle said. “The industry tries to tell you it’s the customer, but across the board it’s the real estate company.”

Similarly, of 31 properties sold in the past year by Equity Associates partner Jeff Smith, closings on all of them were handled by Equity Title, records show.

The odds that all of Smith’s sales could land at Equity, assuming each consumer was given a choice of three title companies and each had an equal chance of being picked: about 1 in 618 trillion, according to Pavlov.

Efforts to reach Smith were unsuccessful.