

A Global Perspective on Title Insurance

by Benito Arruñada

SUMMARY

Title insurance indemnifies the holder of a right in real property for losses caused by title defects that exist but are unknown at the date of policy. It first appeared in the United States in the last third of the 19th century, to complement the personal liability and the errors and omissions insurance of professionals examining title quality. Being a residual claimant, the insurer is strongly motivated to search the available evidence for any title defect before issuing the policy (risk screening). Defects which are discovered in the search are either excluded from coverage or purged. The insurer is also motivated to ensure that a correct settlement of the transaction takes place (risk avoidance).

In the U.S., these forces have led title insurers to vertically integrate all kinds of title examination and settlement services. They also explain why only a minor part of the industry's revenue (around 7%) is spent in

compensating losses to policyholders. Outside the U.S., title insurance has mainly been sold to U.S. investors operating in foreign and unfamiliar markets.

Policies sold recently in Europe come closer to its origins, as insurers do not examine the quality of individual titles and do not build title plants. They rely, instead, on the functioning of the land registers and the work of solicitors and notaries. These policies are thus issued on a casualty basis, complementing and enforcing the professional liability of conveyancers. Future development of title insurance in Europe is uncertain, however, because of adverse selection, possible competitive reactions from the established systems of land conveyance and the ability of the larger banks to self-insure title risks.

HISTORICAL BACKGROUND

Title insurance is a contract whereby an insurer undertakes to indemnify the holder of a right in real property if he suffers a loss because the insured title is found to be defective, and to legally defend the title if necessary. It first appeared in its current form in the United States in the last third of the 19th century, as a complement to errors and omissions (i.e. malpractice) insurance provided by lawyers and lay conveyancers. Title

insurance covers more risks because the insurer is liable even if there has been no negligence in the examination of title. It also achieves better enforcement than malpractice insurance because the insurer pays compensation without it being necessary for legal action to be taken against him. Moreover, the insurer is usually more solvent than the conveyancer and is liable for a longer period of time, not only to the customer but also to his heirs.

At the start, this insurance was separate from title examination and worked as an additional guarantee. Rapidly, however, the insurance companies took on other functions—those that had been developed by abstracters, such as the production and maintenance of private databases that parallel public registers—"title plants"—and the closing, or settlement, of transactions. Moreover, even if insurance companies do not explicitly provide title opinions, in practice they have made them unnecessary in ordinary operations. Their willingness to insure implicitly conveys the relevant information on title.

Title insurance expanded substantially after World War II. The driving force was the demand for standard title guarantees on the part of creditors and, especially, of buyers of securities in the secondary mortgage mar-

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ket, often life insurance companies. Trends in the sector seem to have focused on addressing the needs of the mortgage loan market. Private property transactions require security, and secondary transactions involving mortgages require standard security whereby loans become a commodity. Since, in the U.S., the public legal system (which, for property matters, operates on a state and local basis) does not provide this standard security, private initiative provides it in contractual form. Initially, when those demanding security were local entities, their demand was met by local experts. Later on, with the development of distance loans and the secondary mortgage market, security of standard and reliable quality became necessary to allow for contracts with unknown persons. This took the form of title insurance, which is used now in 85% of residential sales and purchases in the United States.¹

THE NATURE OF U.S. TITLE INSURANCE: FOCUS ON PREVENTION

The salient attribute of title insurance is that most of the risks it covers have already occurred when the policy is issued. Furthermore, a standard clause explicitly excludes coverage of any defects arising after the date of the policy. This makes title insurance very special. In other branches of insurance, risk assumption is the common practice: in exchange for a policy, the insured party covers himself against a future and uncertain risk. Title insurance, on the other hand, covers against risks associated with facts that already exist but that are unknown when the policy is issued and may or may not be discovered in the future.

Therefore, the activity of insurance companies is based not on risk spreading or loss compensation but on loss avoidance. To this end, they attempt to identify all preexisting title defects and to carefully perform closing services. The rationale behind title insur-

ance is not mere risk aversion on the part of the insured, but the provision of powerful incentives for the screening of preexisting risks, and the correct performance of closing services, thus avoiding the emergence of new risks. Title insurance is therefore better seen as an arrangement for reducing transaction costs, by motivating the production of information and the enforcement of liability. This is achieved both directly, when insurers integrate such functions, or indirectly, when their role is limited to enforcing the professional liability of those providing them.

The fact that title insurance covers risks in the past means that it suffers little danger of moral hazard (opportunism in the form of events subsequent to issuance of the policy), unlike other types of insurance. It is, however, susceptible to a high degree of adverse selection (the worst risks are the most likely to take out such insurance). This means that serious difficulties would arise if titles were insured without carrying out a prior examination of title. Fraud, especially, would be rife. For example, insolvent debtors could easily sell their mortgaged properties because the insurance company would have to indemnify the new grantee when the mortgagee steps in to repossess the property. Therefore, even if, in principle, the title insurance company is not liable for the examination of title and could, in theory, offer casualty or actuarial insurance without investigating the title being insured, it is in its own interest to have the title assessed by a professional or to do it itself.

This need for an examination of title explains why the total losses paid out to clients or spent in defending insured titles add up to a small proportion of companies' total revenue, around 7%, a much lower percentage than those typical of other branches of the insurance industry (these are around 80% in general property and casualty and not even lower than 42% in boiler and machinery and surety). They have every incentive to devise

the means to discover in advance and to correct any defects in the titles before they provide coverage.

In order to improve the efficiency of title searches, since the 19th century most title companies have kept private databases, known as "title plants," which are better organized than the official records in two main respects. On the one hand, by using tract indexes, they provide fast and reliable access to all relevant information on each property. On the other, they are constantly updated with changes in the content of not only the deed register but of all other public registers containing information of interest. This "take-off from sovereignty" is usually performed on a daily basis. Although these title plants are well organized, they only serve companies' internal administrative functions, however, as they have no legal effect. This lack of public function is necessarily the case as the incentives of the title plant owner would be very poor otherwise.

This emphasis on assurance or risk avoidance also explains why title insurance companies have increasingly taken on the production of title information and the provision of closing services. No one has greater incentives to detect past risks and to avoid new ones than the insurer who, if the worst comes to the worst, will have to pay out any losses resulting from either of these risks. It is therefore the insurer who is in command of the process and he will organize the task of risk screening and avoidance using whatever means he thinks fit, from branch offices to independent agents.

U.S. title insurance, however, still includes an element of casualty insurance in spite of its focus on prevention. This can be seen in the losses that are still paid out by insurance companies in spite of the prior examination of titles. This is because it is impossible to prevent all risks, especially in view of the state of public records in the U.S.

Process and Products

The usual process begins with an abstracter summarizing the recorded documents, now most commonly using a title plant. This abstract is then revised by another employee of the company. The result of this examination is a preliminary commitment to insure which gives the name of the owner and lists and describes any defects and encumbrances on the property.

This report is generally used as the basis for either curing any defect in the title (for example, lifting a mortgage or removing an encroachment) to place it in the situation stated in the sale contract, or for excluding any defects discovered from the insurance coverage by inserting them in the Schedule B of the policies. These defects may arise from a wide range of rights, encumbrances and defects. The insurer usually informs the customer of these exceptions before the transaction is closed so that the contracting parties can duly negotiate a solution. The seller may cure the defect or give a discount to the buyer in exchange for accepting the risks inherent in the defects. For minor defects, the insurer may also be willing to extend coverage, at an extra premium. Otherwise the transaction may also be cancelled at this stage.

Once settlement has taken place, the insurance company issues a policy in which it replaces the name of the former owner which appeared in the preliminary commitment to insure with that of the new one and, where appropriate, the previous mortgage with a new one. The policy insures the title as it exists on the date of the policy, typically the date of closing or the date on which the mortgage loan is disbursed.

The two main types are the owner's policy and the lender's policy. The owner's policy generally covers an amount equal to the purchase price. This means that, if the title is

defeated, compensation does not usually cover any capital gains on the property. Increased coverage for inflation is now included in residential policies and may be added to commercial policies. The premium is paid only once and the policy covers both the purchaser and his heirs in perpetuity, as long as they maintain a right or obligation over the property, even after it has been sold. This is especially applicable to warranties given when selling the property, so that in practice title insurance includes warranty insurance. The lender's policy covers the amount of the mortgage loan and, therefore, as the loan is paid off, coverage is reduced until it expires altogether. It can be assigned to subsequent holders of the same loan.

With each sale, a new policy for the updated value of the property must be taken out which especially aims to provide coverage for any acts of the last owner. The reissue rate for this new insurance usually includes a discount when the insurer is also in charge of examining the title, closing the operation and selling the policy. In successive transactions carried out by different insurance companies, a chain of liabilities is set up in which each insurer protects his insured party and any heirs, even after the property has been sold. Thus, after paying for any loss sustained by the insured party, his rights are automatically transferred to the insurer, who uses them to claim against the person who transmitted the property with a warranty deed and against the latter's insurer.

Premiums differ substantially across states. They usually increase in a lower proportion than the amount insured. Running an ordinary least squares regression model on the data given in Boackle (1997), for a property valued at US\$50,000, the owner's policy costs on average \$3.55 per thousand, but this falls to \$2.44 per thousand for properties valued at \$1 million. The percentages are slightly lower for lender's policies. These

premiums do not include the costs of search (estimated between \$190 and \$520), closing services and document preparation. These figures are consistent with other sources.

In addition to the exceptions included in each specific policy concerning any risks which were discovered in the title search and which have not been eliminated, policies usually have more general exclusions. Standard policies, as drawn up by the American Land Title Association, exclude the following general risks, among others:

- Public land use regulation, especially environmental and zoning regulations;
- Eminent domain that is not on record at the date of policy;
- Any matters created, suffered, assumed or agreed to by the insured claimant as well as those known by him before the company issues the policy;
- Defects causing no loss or damage;
- Defects subsequent to the date of policy; and
- Gratuitously transferred interests.

Policies also include preprinted general exceptions concerning certain title problems. The most frequent are rights and claims of parties in unrecorded possession, any defects that would have been disclosed by an accurate survey, easements that cannot be discovered by searching the public records, unrecorded mechanics' lien, and taxes due that do not yet constitute a lien.

Extended coverage may be added, at an extra premium, as endorsements to the standard coverage of the policy for a variety of additional risks. These are associated with restrictive covenants, zoning, street improvement assessments, changes in

development plans, condominiums, variable-rate mortgages, encumbrances related to environmental protection easements, etc. There is, however, some doubt as to whether these extensions were in fact providing specific, costly coverage for risks previously covered by the insurer's general "duty to defend" the title of the insured.

TITLE INSURANCE OUTSIDE THE U.S.: AIMS VS. DEEDS

Title insurance has been developed almost solely in the United States. There, it has not only spread risks but has also provided a degree of assurance that is not forthcoming from the public registers. It is, therefore, understandable that the insurance sector in the U.S. has great faith in the efficiency of the system and in the possibility of transplanting the model to other countries. It is possible to read, for example, "It is America's destiny to deliver some of its best attributes to a needy world. One of these is the American method of real estate conveyance. The title industry and its associated services In short, the American Title Insurance process is arguably the most efficient and cost-effective in the world" (Hick, 1998). In a similar vein, the trade association American Land Title Insurance affirms in its web page that "America is home to the most efficient land transfer system in the world".²

Those introducing it into the European market are equally enthusiastic about the size of the potential market. "The scope of the business is virtually unlimited and the depth of the market rivals that of the U.S. Title insurance in Europe will become a multi-billion euro business within the next ten years and, if present trends are accurate, probably much sooner" (L&E, 2000, p. 22).

The subject is also of importance in the debate on the development of reliable systems for property law in developing and for-

mer socialist countries. Some authors advocate the use of title insurance in Russia, claiming that the situation there is very similar to that of the United States in the 19th century.³

However, it is not yet clear that the U.S. insurers are right in having such great expectations. On the one hand, their international presence is limited. Companies tend to be present only in regions whose economies are closely connected to the U.S., such as Canada, Puerto Rico and the Pacific islands. Outside these areas, insurance companies are mostly just starting out or else work through agents and from offices in other countries.

Moreover, much of their international business serves to meet the demand of U.S. individuals and entities investing in foreign countries.⁴ Being unfamiliar with foreign systems, they tend to demand title insurance to reach their usual level of security. Understandably, the initial problem for title insurers is to design the policies and to price the risk correctly, given that they are also unfamiliar with foreign markets.

In addition, insurers show different levels of adaptation to different markets. In countries where they have direct operations they usually sell policies tailored to the specific risks faced by investors and insurers in that market.⁵ These country-specific policies are usually governed by local law and are subject to the jurisdiction of the local courts of each country, where the insured property or mortgage is situated or originated. Other markets are served from headquarters or from other foreign offices. When the demand is small, operations are considered on a transaction-by-transaction basis. If there is substantial demand, some insurers sell an "international" policy after performing a due diligence examination of the general risks faced in that market. They are targeted to firms investing in foreign markets, given that

their governing law and venues are those of the country of origin (the U.S., except for international policies sold from Canada and the U.K.) rather than the country where the property is located. The insurer will defend the title in the country where the property is located, however.

International policies provide less coverage than the standard policies sold in the U.S. and have limited use in the applicable jurisdictions, as they exclude risks that would require cover and cover other risks only in too vague terms, written for a different jurisdiction. It seems that, lacking knowledge about which risks are insurable, which are the efficient clauses and which are the reasonable prices, insurers opt for excluding hard to ascertain risks. It is, therefore, doubtful if they provide the insured with a reasonable expectation of cover or, instead, lull them into a false sense of security. Certainly, writing specific policies is costly and incentives to innovate in their design are hindered by the possibility of imitation. A hint of these problems is that even the current international policy of First American is now copyrighted for the first time in the industry.

On top of limited coverage, their focus on transnational clients raises a doubt on the prospects of these international policies. An expansion of international title insurance was to be expected as a consequence of the current globalization of the economy. This is so because globalization increases the number of parties buying property in foreign countries for the first time. The needs of these clients have little to do with a greater demand for insurance by nationals in their own countries, however. They also constitute a weak basis for future development of the sector because such demand may be only temporary, being linked to development of international trade and, in countries with reliable registration systems, the lack of experience of these first-time investors.⁶ In a similar way, the original busi-

ness of Europe's leading insurance company focused on insuring the purchases of British expatriates buying homes on the Mediterranean coast.

The fact that investors demand additional security when buying real estate in unfamiliar markets makes the sparse international presence of U.S. insurers more revealing because it should have been easy for them to sell title insurance to U.S. multinationals during their international expansion in the 1950s and 1960s and to use such sales as bridgeheads for further advances in foreign markets. In addition, the limited development of title insurance is also surprising if we consider that the securitization of mortgage loans, essentially a U.S. invention, played an important part in the development of title insurance in the U.S. This poor degree of international development of U.S. title insurers also contrasts with that of companies in similar sectors, such as brokerage of commercial property, legal advisory services or financial auditing.

Finally, attempts to sell insurance in the former socialist countries have found limited success, perhaps because the obstacles to proper functioning of their registers of rights are the same as those that stand in the way of title insurance. Based on the analysis given above, it is debatable whether there is any real similarity between Russia today and the United States of the 19th century. In order for both the register of rights and title insurance to function correctly, clear laws and a competent judicial system are required. Title insurance did not arise in the U.S. to make up for the absence of laws or the shortcomings of courts but, as stated above, to complement the errors and omissions insurance of conveyancers. Possibly, a condition for title insurance to function at an acceptable price is that both the recording of deeds and the courts must function properly—with recording setting the priority of titles and the courts resolving title conflicts.

Two Revealing Cases

Before assessing the possible role of title insurance in Europe, it is worthwhile observing the previous interaction between title insurance and the two main types of land registration. The two cases with a longer history are those of Puerto Rico and Canada.

Puerto Rico has a register of rights that purges any title defect before registration. Before 1914, registrars were paid with a residual, as they are today in France or Spain. Since then, they have been paid on a fixed salary basis. Probably as a consequence of this, the register performs poorly in an area that is crucial. As with the Torrens register operative in Cook County (Chicago) until 1997, it suffers considerable delays. After documents have been lodged (and have, therefore, gained priority) they still wait for years for the registrar's review and eventual registration. As a result, validity of the lodgment entry has had to be extended to four years (a few weeks is usual in systems that function well). Insurance companies have stepped in to cover the risk during the period between lodgment and registration, mainly to meet the demand for security of investors in the U.S. secondary mortgage market.

On the other hand, title insurance has been used in the Ontario region of Canada, around Toronto, for many years. In this area, before most conveyances, lawyers traditionally issued title opinions based on the evidence provided by the public registers. Until the 1990s, title insurance policies similar to those in the United States were only used to meet the demands of U.S. companies for speed and security. Since then, however, U.S. insurance companies led by First American have gradually established insurance in the place of the lawyer's report in ordinary residential transactions. By 1999, most banks were prepared to accept title insurance instead of the lawyer's opinion for

routine transactions. Some banks even offer title insurance as one of their refinancing services to obviate the need for a lawyer.⁷

The reaction of Canadian lawyers is illuminating. Since 1997, they have been offering their own title insurance. Sold under the name of TitlePLUS, this product is a complementary insurance promoted by Lawyers Professional Indemnity Co. (LPIC), the liability insurance company owned by the governing body of the legal profession in Ontario, *The Law Society of Upper Canada*. TitlePLUS complements liability insurance by providing no-fault errors and omissions insurance. This has two main advantages. For the customer, it covers more risks than the insurance imported from the U.S., such as utility arrears, tax arrears and zoning.⁸ For the lawyers, it allows them to compete with insurance companies because the latter's policies allow the insurer to subrogate against a lawyer who gave a defective title report and whose professional liability is insured by the LPIC as a monopoly (O'Donnell, 1997). In addition, the law societies in the western provinces of Canada have opted for extending the coverage of their liability regimes.

THE EUROPEAN MARKET: RECENT EVENTS

In the United Kingdom, "defective title insurance" has commonly been used when defects in titles are discovered, usually as a result of long-standing errors and lost deeds. This is similar to the above-mentioned practice of U.S. insurers charging an extra premium to bear the risk of a minor title defect on a casualty basis. More recently, however, insurance against unknown defects is being sold by three companies, two of them subsidiaries of large U.S. title insurers. The risks covered in the U.K. by this actual title insurance, are the following: "confusion from similarity of names; forged or missing documents; signatures of minors or mentally

incompetent persons; signatures made under duress; mistakes in recording legal documents; undisclosed or missing legal documents; undisclosed or missing heirs; fraud; invalid divorces; misrepresentation of marital status; unpaid taxes; clerical errors in public records; wills not probated; erroneous searches; inadequate rights of access; inaccurate boundary descriptions; voidable or invalid deeds" (Pratt, 1988, p. 24).

The leading provider of title insurance in the U.K., London and European (L&E), a subsidiary of the French April Group, is also pioneering the sale of title insurance in France. According to its advertising, this insurance is necessary to cover the risk of fraud and risks as the following: "Une partie de votre propriété appartient en fait à un tiers qui l'avait d'abord acquise. [b] La jouissance privative de votre jardin s'est transformée en jouissance commune à la suite d'une modification du règlement de copropriété antérieure à votre achat, ce dont vous n'aviez pas eu connaissance. [c] Votre jardin se voit amputé du quart de sa surface en raison d'une erreur de cadastre commise des années avant votre achat. [d] Une partie importante de votre maison a été édifée par le précédent propriétaire sans aucun permis de construire et la municipalité vous en demande sa démolition. [e] Vos voisins réclament subitement, pièces à l'appui, un ancien droit de passage sous vos fenêtres, qui plus est en voiture. [f] A la suite de travaux décidés par l'administration antérieurement à votre achat et dont vous n'aviez pas eu connaissance à cette époque, le tracé de la route d'accès à votre propriété est modifié ne vous permettant plus de rentrer chez vous en voiture. [g] Vous découvrez au plus mauvais moment, c'est à dire lors de la revente de votre bien, que celui-ci est frappé depuis toujours d'un alignement alors que l'administration avait omis de le signaler dans les renseignements d'urbanisme, lors de votre acquisition. [h] Vous découvrez moins d'un an après votre acquisition, que la surface 'Loi Carrez' de

vos appartement est inférieure de plus de 5% à la surface indiquée dans votre titre de propriété alors que le vendeur qui avait produit une attestation d'un géomètre expert, est insolvable ou introuvable"⁹.

In Spain, L&E began by dealing with British customers purchasing property in Spain, but at the start of 2001 it launched a campaign to distribute title insurance in the Spanish market through financial institutions and real estate developers. The insurance covers only residential land and buildings, excluding all types of rural or commercial property. The main risks for which L&E attempts to offer coverage in Spain are:

- Incorrect identification of the property;
- Smaller surface area than that stated;
- Loss of registered documents;
- Lack of good title or capacity by the grantor;
- Rights of heirs, usufruct and other real rights;
- Lack of information on the municipal situation of the residence with regard to historic and ruinous sites;
- The existence of encumbrances on the property which should be entered in the register if they are to be operative;
- Rights of way;
- Access to the residence;
- Purchase of an expropriated home; and
- Lack of relevant administrative permits (L&E, 2001a, pp. 6-12).

The preliminary models of policy include most of these risks together with some

which are not present in the Spanish legal system such as lack and/or loss of documents showing the validity of title; and lack or interruption in the chain of title whereby the property might be justifiably claimed by one of the former owners or their successors. The policy has the exclusions which are standard in the U.S., such as claims caused by the insured or known by him at the date of policy; any defects accepted by him or arising subsequent to the signature; and those which do not cause him any damage; as well as some other risks that are relevant in Spain, such as tacit mortgages in favor of the State, Social Security and employees.

Prospects

Comparative analysis of the various registration systems suggests that title insurance is most necessary under deed recording than under registration of rights, mainly to motivate the efficient provision of assurance services.¹⁰ However, even in jurisdictions based on registration of rights, there might be potential demand for title insurance, either because of insecure conveyance or ineffective registration. The potential market for title insurance in Europe is, nevertheless, smaller than that in the United States.¹¹

One of the main reasons for this is the apparent lack of demand for additional title security from the secondary mortgage market. Based on experience in the U.S., it is considered in the sector that the potential development of the secondary mortgage market on a Europe-wide scale would involve a marked increase in the demand for title insurance. However, the expansion of title insurance is unlikely to benefit from this development to the extent that it did in the U.S. This is due to differences in both supply and demand. With respect to available supply, the degree of standardization and security of European public registers is much greater than that of U.S. deed records.¹²

Revealingly, insecurity concerning property titles is not one of the causes given by experts for the limited development of mortgage securitization in Europe.¹³ With respect to demand, European financial intermediaries are larger and are therefore better placed than those in the U.S. to self-insure these risks. Even in the United States, some banks are beginning to self-insure the mortgages they sell in the secondary market.¹⁴ This phenomenon seems related to the increase in the concentration and size of participants in the financial market, which reinforces the argument.

Whatever the extent of the demand for title insurance in Europe, its nature will inevitably be very different to that in the U.S., where the information provided by registers is so unreliable that, even if a careful study is made, a substantial number of defects will remain. Most European countries have registers of rights that make private title plants unnecessary and even where deed recording is used, records are better organized than in the U.S. Moreover, the closing of transactions is the preserve of notaries in most European countries, and in France and Belgium this is also the case for the production of title searches.¹⁵ For standard transactions, additional examination of title is probably fruitless.

As a result, title insurance is therefore limited to a complementary role, making up for deficiencies in the security provided by the current systems. This is most notable in the fact that European title insurers issue their policies on a casualty basis instead of producing additional information on title quality, as their U.S. counterparts do. Insurers may play, however, an important role as enforcers of professional liability of those involved in real estate transactions. In addition, some integration of closing activities is plausible, but in many countries it would require further liberalization of the monopoly currently enjoyed by notaries public. Moreover, even within

these constraints, the development of title insurance faces several uncertainties:

- First, the ability of insurers to avoid adverse selection without individual screening.
- Second, the willingness of professionals, particularly notaries and solicitors, to adopt strict liability standards, which would tend to make casualty title insurance redundant.
- Third, the capability of the current conveyance and registration systems to close the remaining gaps in security.
- Fourth, the proven capacity of European banks to self-insure existing title risks, thus reducing institutional demand.¹⁶

NOTES

¹ See Cribbet (1975, pp. 318-20) for the origins of the industry; A. M. Best (2000) and Nyce and Boyer (1998) for its economic structure; Lipshutz (1994) for an analysis of its regulation; and Lipshutz (1999a, 1999b) for a discussion of its future. Legal issues are dealt with extensively by Burke (2000) and Palomar (2000).

² Web page of the American Land Title Insurance (ALTA), at <http://www.alta.org/store/catalog/index.htm> (accessed June 2, 2001).

³ For example, Jaffee and Kaganova (2001).

⁴ Whenever they have begun operations outside the United States, this seems to have been the general trend. See, for example, the cases of the United Kingdom (Oetking, 1974) and Canada (Melnitser, 1999).

⁵ See, for instance, the variety of coverage and exceptions of the policies sold by Stewart Title Guaranty in the U.K., Mexico and other countries (<http://www.vuwriter.com/>

[vumainmenu.htm](#) [accessed September 18, 2001]).

⁶ This kind of demand was so marked that in the 1990s some companies, notably First American, altered their commercial strategy in foreign countries, placing the emphasis not so much on additional security as on the speed and simplicity of real estate transactions when covered by title insurance (Grifferty, 1999). For an example of the promotional arguments used to sell title insurance to these kind of investors, see Murdock (2000).

⁷ On the evolution of title insurance in Canada, see Troister and Waters (1996), McKenna (1998, 1999a, 1999b) and Melnitser (1999).

⁸ See "TitlePLUS: The Future of Residential Conveyancing" (<http://www.titleplus.ca> [accessed June 2, 2001]).

⁹ "Les vices ou défauts qui surviennent le plus souvent . . ." (<http://www.ftr.com/assur/Exemples.htm>, accessed January 2001).

¹⁰ See Arruñada (2001a).

¹¹ In the U.K., the volume of premiums has been estimated at €400 million (Webster, 1999a). In Spain, the estimate stands at only €100 million (L&E, 2001b). When these figures are compared with the €6,500 million in revenue earned and the €350 million in losses paid by title insurers in the U.S. in 1994, it seems clear that even those promoting title insurance in Europe do not expect it to play more than a secondary role, which is in line with its casualty basis.

¹² This is true not only for the majority of countries with registers of rights but even for systems such as the French deed recording that have been using tract indexes and applying the principle of "preliminary entry"

that forbids recording a deed if the grantor's title is not recorded. Most U.S. deed recorders have only recently become able to provide information on a tract basis, thanks to computerization.

¹³ See, for instance, Diamond and Lea (1992, pp. 26–28, 56–60 and 131–34); the works collected in Lea (1998); Batchvarov, Rajendra and De Pauw (2001, pp. 758–63); and Mozilo (2001).

¹⁴ See experiences described in Palomar (2000, pp. 1–12 to 1–13), Britt (1995), Hartle (1998) and *National Mortgage News* (vol. 23, no. 12, December 7, 1998, p. 15).

¹⁵ For an economic analysis of the role of notaries in Civil Law countries, see Arruñada (1996).

¹⁶ See the last sections in Arruñada (2001b) for a more detailed analysis of the industry's prospects.

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