

# SANTA FE NEW MEXICAN

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## BY THE NUMBERS

Title insurance discounts from full price when homeowners refinance a mortgage under 2009 state law, based on years after the property's original purchase:

- ◆ At least 60 percent after 0-3 years
- ◆ At least 50 percent after 3-5 years
- ◆ At least 40 percent after 5-10 years
- ◆ At least 20 percent after 10-20 years

SOURCE: THINK NEW MEXICO

## Home title insurers could owe refunds

Owners who refinanced may be due payment for discount discrepancy

By **Staci Matlock**  
The New Mexican

Thousands of New Mexico homeowners who refinanced their homes in the last two years could be due a refund from title insurance companies, depending on the outcome of a case currently before the state Department of Insurance.

A Santa Fe homeowner and an Albuquerque resident have each already received refunds from their title insurance company, and they hope the outcome of the case means more people will get money back as well.

At issue are discrepancies between a state insurance rule and state law over discounts in title insurance for properties refinanced since May 1, 2009. The insurance rule provides less of a discount than the 2009 state

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# Refunds: Law doesn't address disclosure

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law, but both are in effect.

Think New Mexico, a policy group, is asking the Insurance Division to amend the rule so the discount matches state law and is seeking to have insurance title companies refund customers for any overcharged amounts. A hearing is scheduled for 1:30 p.m. Wednesday, Nov. 14, before a hearing officer in the PERA building, 1120 Paseo de Peralta in Santa Fe.

The New Mexico Land Title Association, an umbrella group representing six title insurance underwriters and 80 title insurance agents in the state, agrees the rule and state law need to match. "NMLTA is taking a hard, close look at the proposed rule making and in general supports having one schedule of discounts rather than two," said Ed Roibal, NMLTA's executive director. "This would be a benefit to the public and would avoid confusion."

But the association balks at refunds to policyholders, according to documents filed by NMLTA's attorneys in the case. The association says title insurers issued more than 70,000 refinance policies from 2009 to 2011. Premiums in 2011 alone equaled more than \$10 million. Attorneys for the association say refunds to those policyholders would have to be spread among all rate payers and would require a change in title insurance rates recently approved by Insurance Superintendent John Franchini. NMLTA claims a whole new rate case would be needed.

But Fred Nathan, executive director of Think New

Number of New Mexico homeowners who refinanced since title insurance discount law took effect:

**2009:** 24,457

**2010:** 26,165

**2011:** 21,979

SOURCE: NEW MEXICO LAND TITLE ASSOCIATION

Mexico, said NMLTA was alerted early on that some of its members weren't giving policyholders the correct discount.

The state law requiring a deeper title insurance discount on refinanced properties was passed unanimously in early April 2009 by the New Mexico House and Senate. The law immediately took effect when signed by the governor, but NMLTA asked for more time to allow title companies to make the changes. The new effective date was May 1, 2009.

Data collected by the New Mexico Insurance Division show 74 percent of the policies handed out on refinanced mortgages in the first year after the law had not received the new, higher discount rate. Nathan sent letters to NMLTA in 2009 and 2010 questioning whether customers were receiving the right discounts.

NMLTA's members can claim a loophole regarding what they had to legally tell customers. NMLTA argued in 2009 for keeping the existing title insurance discount rule along with the new statute because the state law required property owners to bring in documents showing the original title insurance amount and mortgage. When the docu-

ments were presented, the title industry gave policyholders the new, deeper discount allowed by law, according to NMLTA's attorneys. When the documents weren't available, the rule provided "a safety net" where a policyholder could still get a discount.

The problem is the state law is silent on who is supposed to tell the policyholder about the documents or the difference in discounts.

Michael Austin of Santa Fe refinanced his mortgage in May. No one he dealt with at Fidelity National Title of New Mexico told him about insurance discounts he qualified for, according to an affidavit he filed in the insurance case. After he heard a radio report from Think New Mexico mid-summer, he crunched the numbers and realized he might still be due some money. He said staff at Fidelity National Title concurred and he quickly got a refund of more than \$200. "I would not have received the full discount for which I was eligible had I not happened to find out about it from a news story," he said.

He said Fidelity's staff told him later that most people don't have their previous mortgage paperwork, so they don't ask for the discount. "The question is whether or not they legally have to tell us about the deeper discount," Austin said.

Ronald J. Gedrim of Albuquerque had a similar situation when he refinanced in 2011. He ended up with a \$162 refund from Fidelity National Title after he questioned the insurance premium. But he was infuriated by a letter he received from the company

when it admitted the discrepancy, according to a letter he filed with the state. "Due to a rounding error [we] could have given you a slightly better discount," according to the company.

"I would recommend that Fidelity National Title (and perhaps New Mexico's other title insurance companies) be audited to see how many 'counting' errors ... other closing agents have made in recent closings," Gedrim wrote.

Managers at Fidelity National Title's Santa Fe and Albuquerque offices referred questions to corporate offices in Florida, which already had closed Monday afternoon.

Fidelity National Title is not the only title insurance company that may not have been giving the right discount to its customers. A partial list of insurance companies, the number of refinances they handled in 2009-10 and the number that received the higher discount are listed at [www.thinknewmexico.org/titleinsrefinancediscounts.html](http://www.thinknewmexico.org/titleinsrefinancediscounts.html).

Roibal said neither the rule or the law address who is responsible for telling policyholders what they need to qualify for a discount. "It is our industry's best practice [for policyholders] to get the discounts for whatever the refinance qualifies for," he said.

But he declined to comment on whether NMLTA members were following best practices.

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