



Dora
Department of Regulatory Agencies

**Annual Report of the
Commissioner of Insurance**

to

The Colorado General Assembly

on

**Title Insurance
Enforcement Actions, Market Trends,
and Consumer Complaints**

2012

January 1, 2013





Dora
Department of Regulatory Agencies

Division of Insurance
Jim Riesberg
Commissioner of Insurance

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

December 31, 2012

Dear Committee Members,

I am pleased to submit the 2012 Annual Report of the Commissioner of Insurance on Title Insurance pursuant to §10-3-207(1)(f)(IV), C.R.S. This year's report provides data on the number of enforcement actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints concerning title insurance for calendar year 2012. Also included, where appropriate, are comparisons of prior years.

Our mission is consumer protection, and we appreciate the opportunity to report how we respond to consumers' needs and on the activities of our title insurance regulatory team. If you have any questions, please contact me at the Division.

Sincerely,

Jim Riesberg
Commissioner of Insurance



**Title Insurance
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2012

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Executive Summary

This report is submitted to the Colorado General Assembly in fulfillment of the requirements of §10-3-207(1)(f)(IV), C.R.S. for an annual statistical report of the number of enforcement actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints in the Colorado title insurance industry.

In 2012:

- Division staff conducted seminars and training in an effort to educate the title insurance industry and the general real estate marketplace on rules and requirements.
- While still somewhat volatile, the title insurance market in Colorado continues to stabilize.
- There were 46 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2012 and 30 that became licensed. The current closure rate for title agencies is approximately 44% over a ten-year period; however, this rate has had a marked decrease over the last three years, at 10%. This demonstrates that the title insurance marketplace is stabilizing.
- The Division handled approximately 443 compliance and consumer contacts. These consist of both industry and consumer contacts, and include answering questions, researching specific statutes or regulations, and handling complaints that do not necessarily result in posted enforcement actions.

Introduction and Statutory Authority

Consumer Protection is the mission of the Colorado Department of Regulatory Agencies and the Division of Insurance.

Section 10-3-207(1)(f)(IV), C.R.S. states:

Commencing January 1, 2009, the division shall provide annual reports to the joint budget committee, the senate business, labor, and technology committee, and the house business affairs and labor committee, or any such successor committees, and shall post on the division's web site a statistical report of the number of enforcement actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints supported by the fee in subparagraph (I) of this paragraph (f).

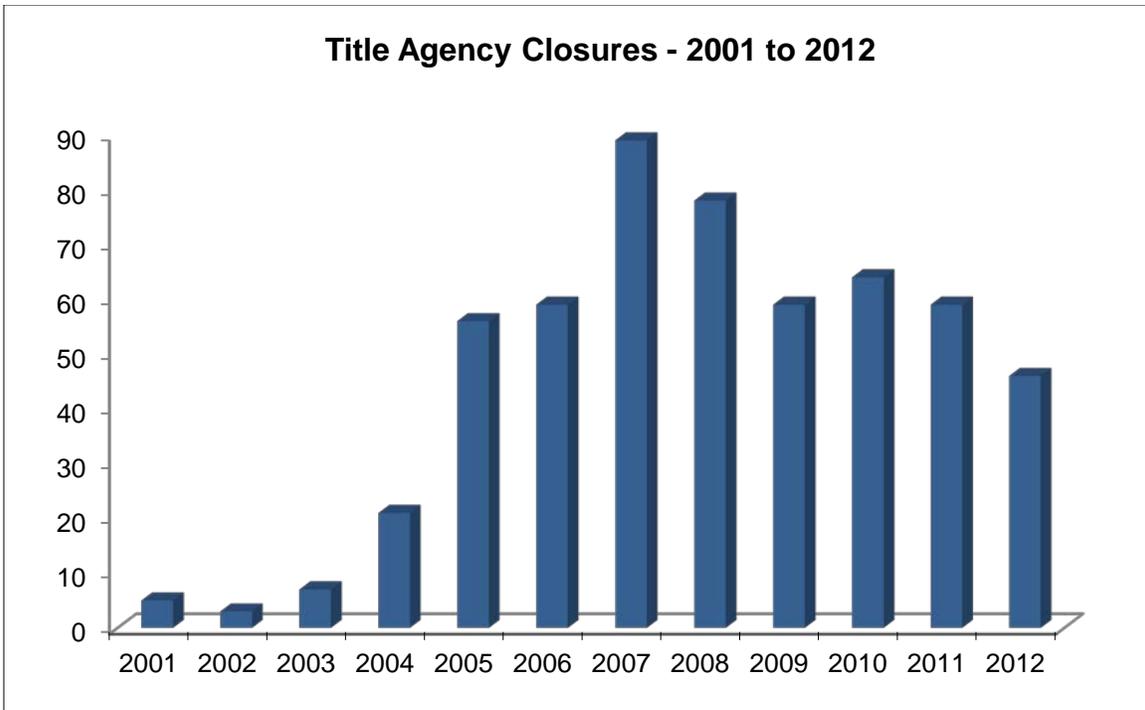
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.

Market Trends Associated with Title Insurance

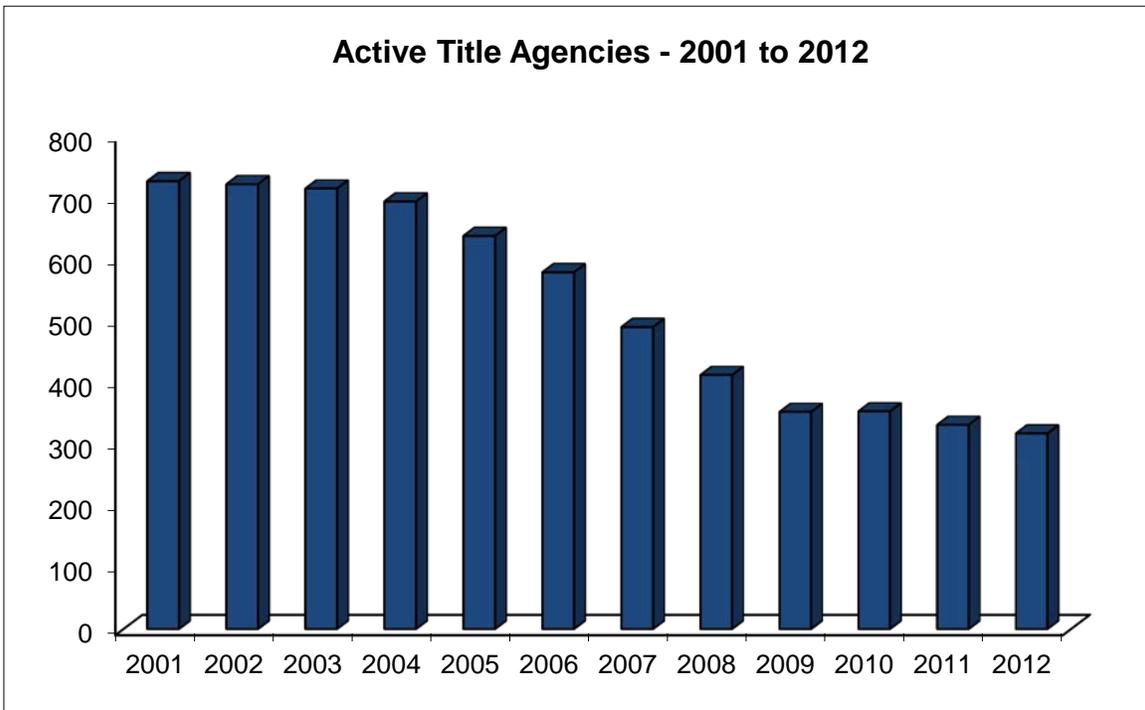
Market Dynamics

The Colorado title insurance industry experienced significant change over the past few years as has the entire housing and real estate market. The number of active title agencies and active title insurance underwriters declined rapidly for a number of years. This trend continues to slow down.

In 2012, 46 title agencies allowed their license to lapse or cancelled their license and 30 new title agencies were licensed to transact business.

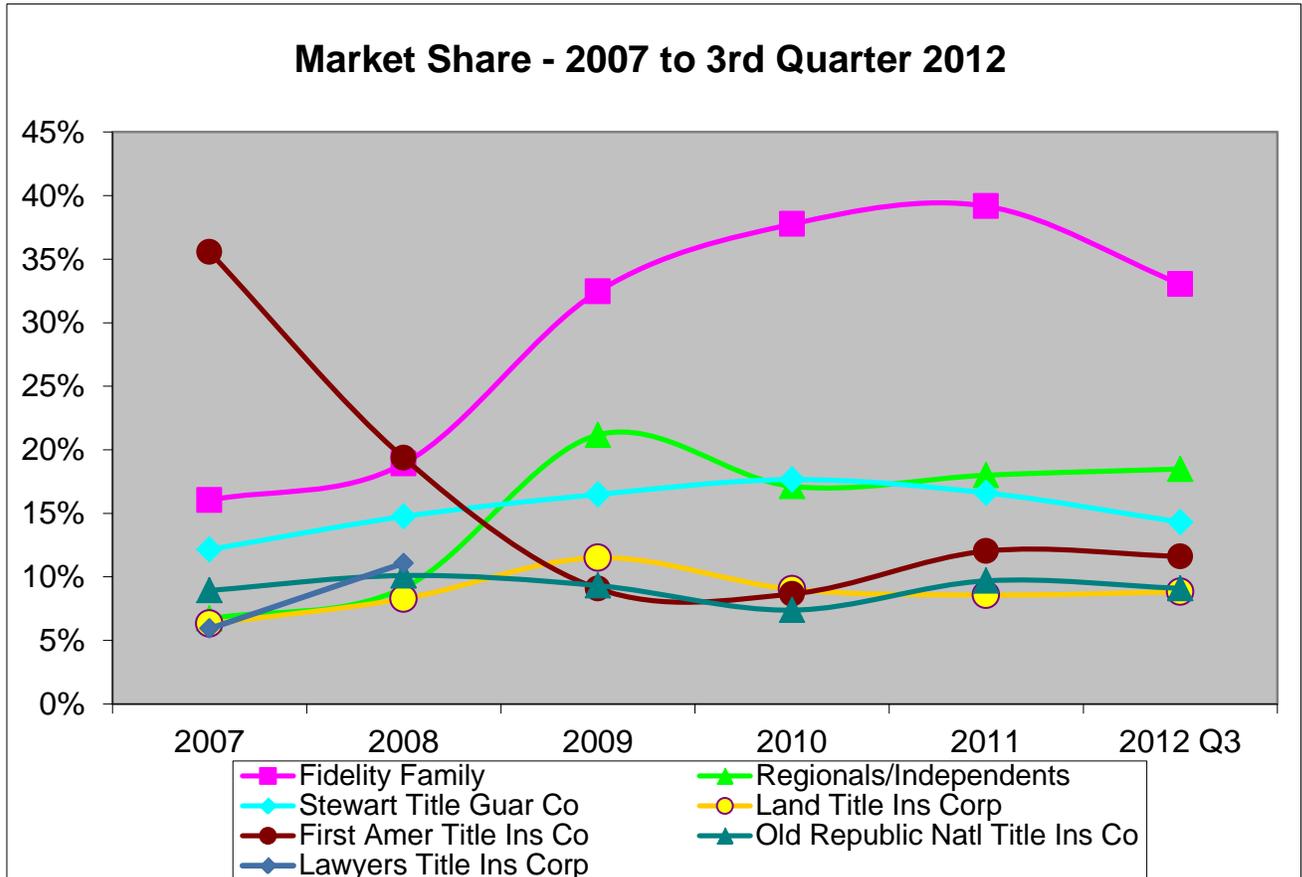


Today, 318 title agencies hold active Colorado insurance producer licenses; in December 2001, there were 727 active title agencies.



Title Insurance Underwriters

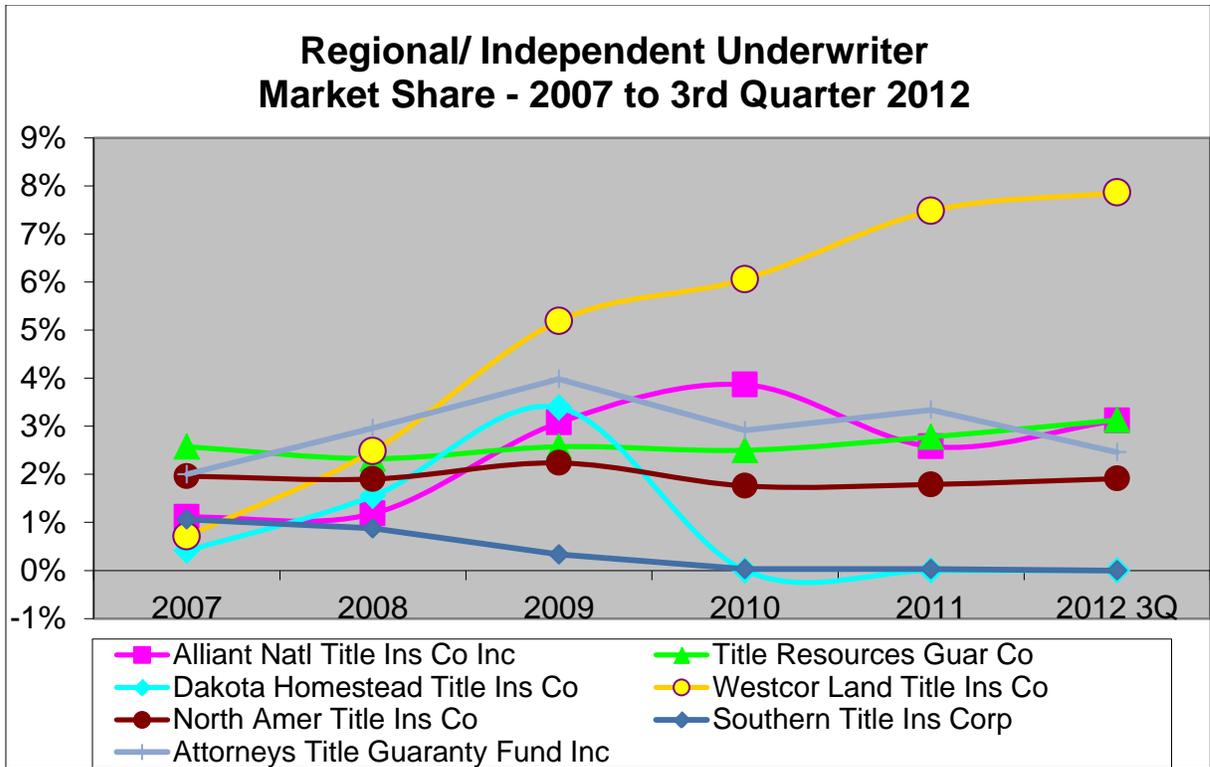
For title insurance underwriters, 2012 shows continued stabilization in the marketplace. With the exception of the Fidelity companies, the large underwriters experienced either a modest loss or marginal growth in market share.



As the graph above shows, Colorado’s group of regional/independent underwriters experienced slight growth in market share.

Regional/Independent Underwriters

With five companies continuing to compete for approximately 18 percent of the market, even small increases or declines in premiums can be volatile for Colorado regional and independent underwriters. As seen below, the market share picture of these smaller companies reflects a changing market place, and the competitive environment each year can result in different leaders emerging.

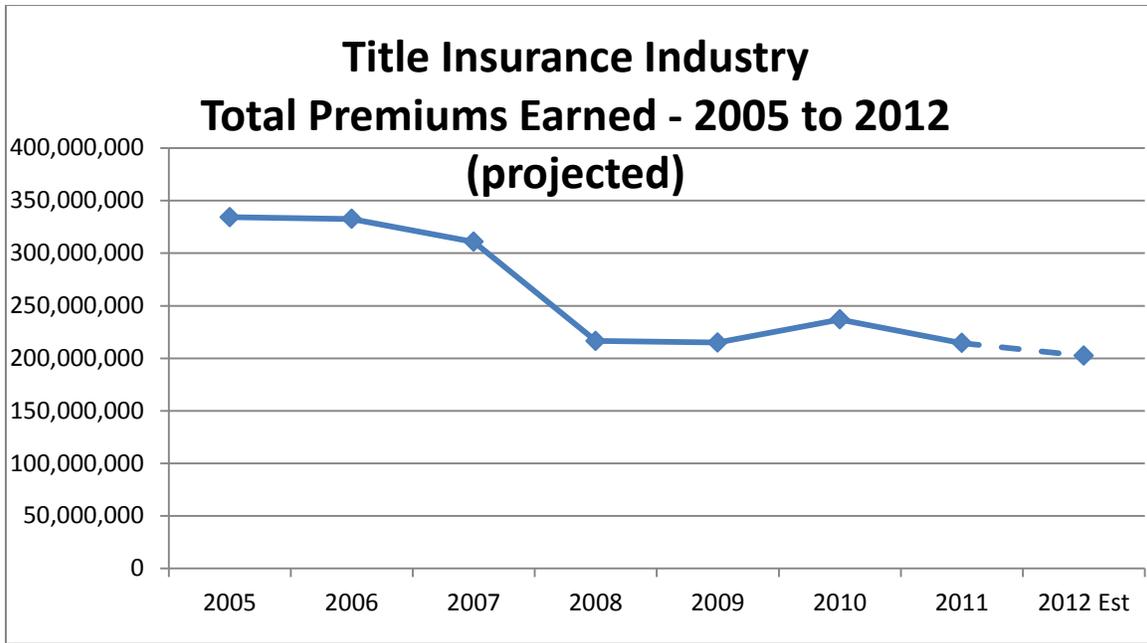


Even with volatility in the smaller market, Colorado’s smaller underwriters continue to control approximately eighteen percent of the market, making Colorado one of the more competitive title insurance markets in the country. With the complete withdrawal of Dakota Homestead Title Insurance Company and Southern Title Insurance Corporation from the state in the last couple of years, the remaining regional/independent underwriters not only absorbed their market share but also experienced a slight increase in the overall market.

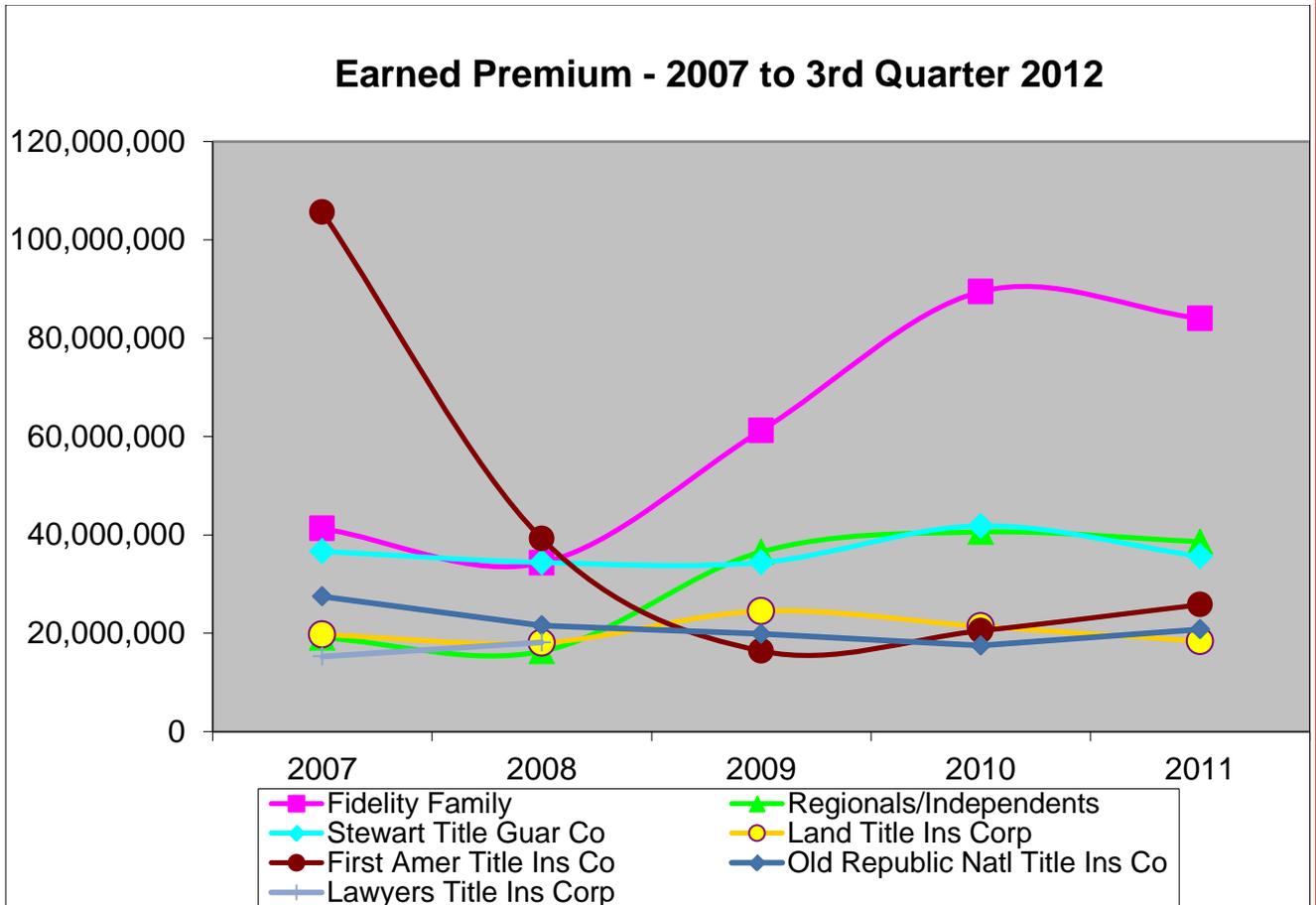
Title Insurance Losses

Prior to the housing collapse, title insurance losses were between 3-5%. The American housing market has changed and as a result, title insurance losses are expected to remain at a level above previous trends. Additionally, premium earnings in 2012 are still considerably lower than five years ago.

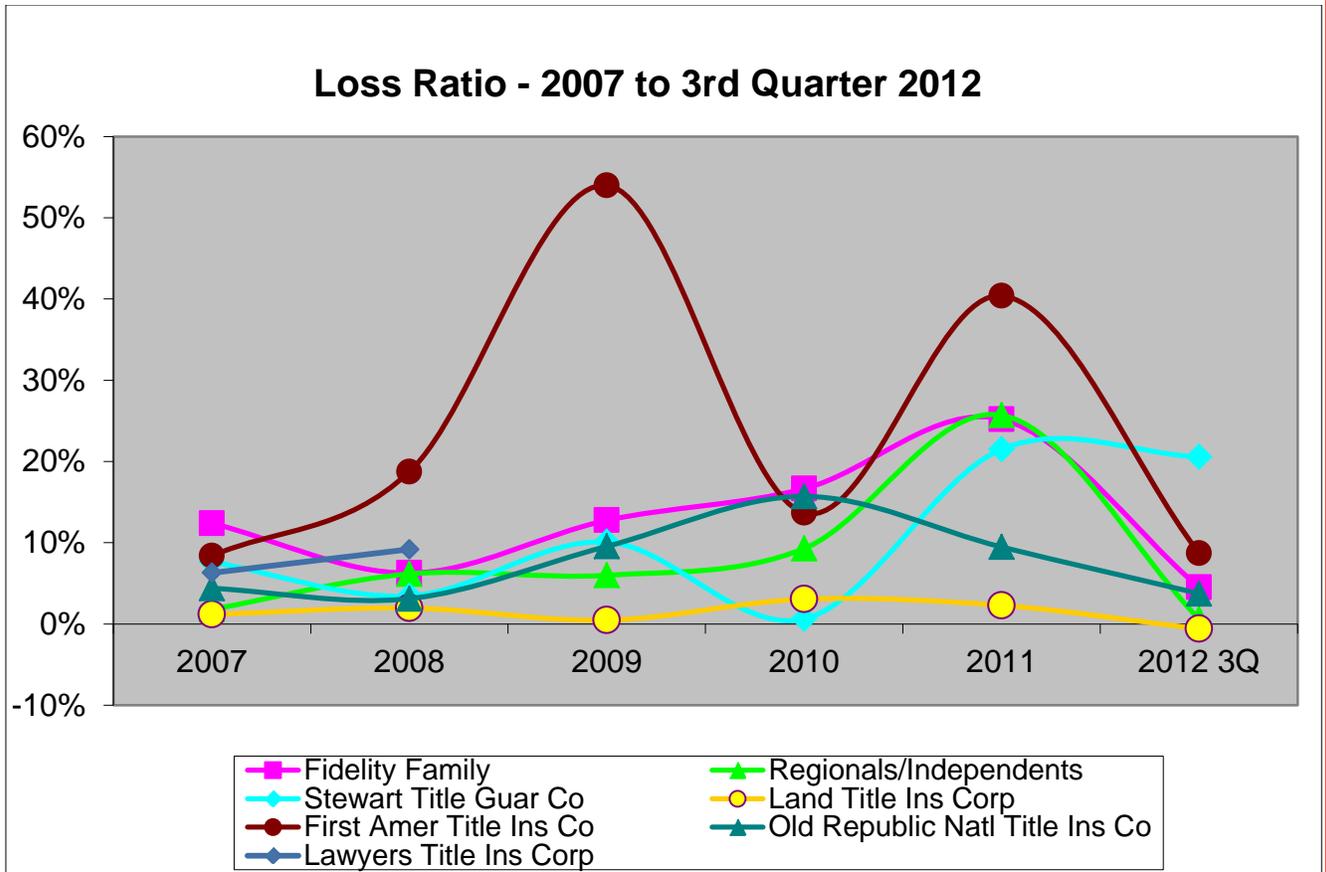
From 2005 to 2009, title insurance premiums in Colorado dropped 35%, from \$334 million a year to \$215 million at the end of 2009. There was an improvement in 2010 to approximately \$237 million and a drop in 2011 to \$214 million. Little movement occurred in the first three quarters of 2012 with approximately \$202 million in premium.



If earnings continue on the same average trend of the first three quarters of 2012, projections show a slight decline in total industry earnings for the balance of 2012 and 2013. While there has been stabilization from the marked decline of 2007 and 2008, the industry continues to experience slight contraction in the market.



A loss ratio reflects the portion of premiums used for the payment of claims. Net premiums take into account not just premiums written by agencies and direct operations, but also amounts ceded or recovered from reinsurance agreements. Because of the differences in national and state reporting requirements, only gross premiums are available on the state level, therefore the loss ratio information shown below is an estimate based on those numbers.



Colorado’s regional/independent underwriters and most of the large underwriters experienced a significant decrease in loss ratio . Stewart Title experienced a slight decrease in their loss ratio compared to last year based on the information available through the third quarter of 2012. The drop in title insurance losses during the last year continues to demonstrate stabilization and recovery in the market. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.

Enforcement Actions

Investigations Activity

The Compliance and Investigations section of the Division conducts investigations and initiates enforcement actions against regulated entities and licensed insurance producers who violate Colorado insurance statutes and regulations. The most common types of enforcement actions are fines, license revocations, and orders to cease and desist the unauthorized transaction of the business of insurance.

One Division FTE Investigator position funded by SB249 was vacant from May 1, 2011 through May 7, 2012. Upon its vacancy, the Division immediately begun efforts to fill the position but was compelled to repost the opening due to the lack of qualified applicants with the first posting of the opening. During this period, the Division utilized other Compliance and Consumer personnel to assist with its efforts to field title related inquiries, complaints and investigations.

The Compliance and Investigations section continues to conduct outreach with the industry to try to encourage industry to refer alleged acts of wrongdoing to the Division for investigation. The Division opened 25 title specific investigations in 2012. The Division closed 21 title investigations this year, 5 with a reportable enforcement action. The Division continues to conduct its outreach and compliance efforts pursuant to its goals and objectives.

Market Conduct

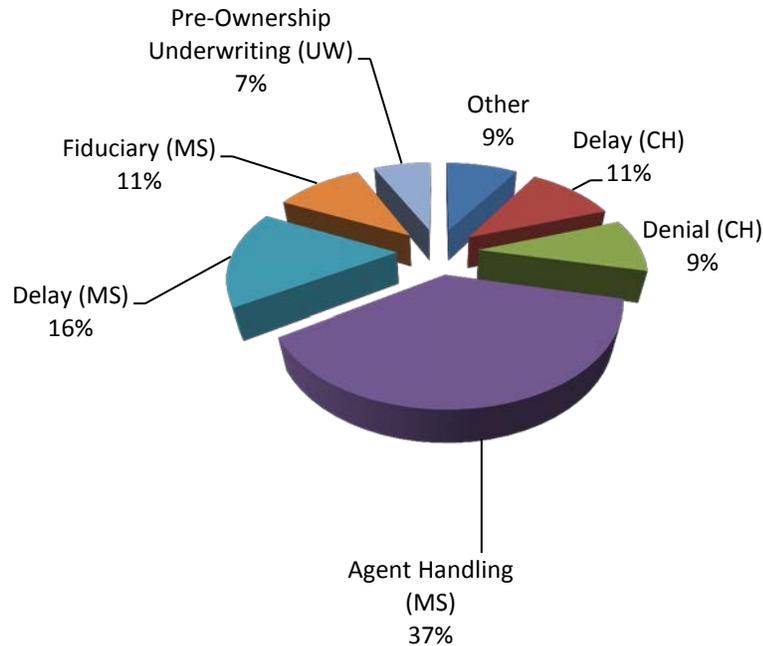
The Market Regulation section of the Division researches and tracks the overall title insurance market in Colorado, as well as performs market conduct examinations of title insurance underwriters. The Market Regulation section has three market conduct examinations in various stages of completion for 2012. These exams include a review of company operations and management, licensing, underwriting, rating and claims.

Consumer Complaints and Compliance Activities

Consumer Complaints

Title insurance is a unique line of insurance. As a result, the issues raised in title insurance complaints are not easily categorized into the coding scheme used by the Division for all other lines of insurance. In 2012, the Division handled approximately 56 consumer complaints on title insurance. These complaints are categorized into four areas. The first area is claims handling and is broken down into subcategories of agent handling (21), denial of claims (5), delay of claims (9), and adjuster not responding (1). The second area is marketing and sales and is broken down into subcategories of fiduciary (6), and other (1), which include disputes of earnest money and rate disclosures (1). The third area is underwriting and is broken down into subcategories of pre-ownership underwriting (4), and policy delivery (1). The fourth area is policyholder services and is broken down into subcategories of delay or no response (6) and misrepresentation (1).

Consumer Complaints (Calendar Year 2012)



Compliance Activities – Industry Outreach and Education

In 2012, the Division focused on identifying potential problems in the title insurance industry and addressing them directly. Generally, a compliance contact is a contact with a title insurance company, agency, producer or consumer outside of an investigation or consumer complaint, in which some question of rules or issues in the industry are discussed or resolved. In 2012, the Division handled over 443 compliance contacts.

Of the 443 compliance contacts, the Division received approximately 52 form letters concerning general business practices and standards of the title insurance industry. These inquiries did not address any specific transactions, insurers or complaints and did not result in any investigative and/or posted enforcement actions.

Division staff made presentations to industry representatives and trade associations regarding current issues in Colorado related to title insurance, as well as general education presentations on the laws and regulations that affect the Colorado title insurance industry.

Compliance and Consumer Activities (Other)

The Division took additional steps to modify its website, make it more “user friendly” by providing information in an intuitive format that allows consumers access to the information more quickly, and submit inquiries, requests, complaints and concerns regarding specific insurance producers or industry related matters.

The Division continues to monitor the Consumer Financial Protection Bureau (CFPB) and Financial Crimes Enforcement Network (FinCen) initiatives and efforts to improve consumer protections. Some of these include new mortgage disclosures, intended to provide consumers unambiguous and concise information regarding the terms and conditions of their mortgage and real estate transaction, and reporting requirements for suspicious activities involving title and escrow companies.

During 2012, the Real Estate Commission and Division of Real Estate issued **CP-34 Commission Position on Settlement Service Provider Selection, Closing Instructions and Earnest Money Deposits (revised 08/07/2012)**

CP-34 clearly establishes the consumer as the responsible party for selecting the title insurance provider. This shift is away from the historical practice, which permitted real estate brokers and other real estate professionals to steer buyers and sellers to particular title insurance and service providers.

CP-34 requires real estate brokers to “advise their clients to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker.” Brokers must provide consumers a list of at least three title insurance providers and specifically designate in the real estate contract which party is responsible for selecting the title insurance provider and which party (seller/buyer) pays for such services.

CP-34 strengthens consumer choice and encourages the consumer to be better informed and involved in their real estate transaction.

In 2013, it will be important for the Division to continue its regulatory oversight on the title insurance industry and maintain its working relationship with the industry to ensure consumer protection and further market recovery.

Miscellaneous Activities

The Division makes every effort to foster and encourage communication, and maintain open and productive contact with the title insurance industry.

Title Advisory Council: In 2003, the Division formed the Title Insurance Advisory Council. The mission of the Council is to provide the Division insight and advice regarding the promotion of fair competition and regulatory compliance within the Colorado title insurance industry. The Council continues to examine, discuss and address issues affecting the title insurance industry in Colorado.

Interprofessional Committee of Lawyers and Realtors: Originally formed by the Real Estate section of the Colorado Bar Association, the Interprofessional Committee of Lawyers and Realtors (the ICLR) meets on a monthly basis to discuss issues facing the Colorado real estate industry in general. The ICLR includes representatives from the Colorado Association of Realtors (CAR), the Land Title Association of Colorado (LTAC), the Real Estate Commission, the Colorado Bar Association (CBA), the Colorado Division of Real Estate, the Colorado Division of Insurance, the Colorado Mortgage Lenders Association and the Colorado Coalition of Appraisers.

Land Title Association of Colorado (LTAC):The Land Title Association of Colorado (LTAC) is a trade organization for the title insurance industry in Colorado. It provides education to the industry and consumers, and works closely with legislators and regulators regarding issues facing the industry. The Commissioner attended LTAC's fall convention in Beaver Creek, and gave a presentation on the laws that pertain to title insurers, agencies and producers.

National Association of Insurance Commissioners (NAIC): The Division is a member of the NAIC Title Insurance Task Force and the Title Insurance Market Conduct and Mortgage Fraud Working Group. Additionally, staff monitor and participate in meetings of the Escrow Theft White Paper Subgroup, Title Insurance Financial Reporting Working Group, and the Title Insurance Guaranty Fund Working Group.

DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado.

Consumer protection is our mission.

