



**CO L O R A D O**

**Department of  
Regulatory Agencies**

Division of Insurance

Annual Report of the Commissioner of Insurance

To

The Colorado General Assembly

On

Title Insurance

Enforcement Actions, Market Trends, and Consumer Complaints

2015



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

Marguerite Salazar  
Commissioner of Insurance

January 8, 2016

Dear Committee Members,

I am pleased to submit the 2015 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 and market trends associated with title insurance for calendar year 2015. Also included, where appropriate, are comparisons of prior years.

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

Sincerely,

Marguerite Salazar  
Commissioner of Insurance



Title Insurance  
Enforcement Actions, Market Trends,  
and Consumer Complaints

2015

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## Executive Summary

This report to the Colorado General Assembly fulfills 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 in the Colorado title insurance industry.

In 2015:

- The Commissioner organized and hosted four industry listening sessions throughout Colorado in 2015. The sessions were held in Alamosa, Pueblo, Colorado Springs and Fort Collins;
- Division staff participated in industry meetings in an effort to educate the title industry and general real estate marketplace on rules and requirements;
- The title insurance market in Colorado experienced growth and continued stabilization;
- There were 34 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2015 and 45 that became newly licensed;
- The Division handled 308 title related contacts from both consumers and title industry professionals. Contacts included answering questions, researching specific statutes or regulations, and handling complaints that did not necessarily result in posted enforcement actions; and
- In 2015, the Title Insurance Commission (“TIC”) was created by the passing of Senate Bill 15-210. The TIC is an advisory body to the Commissioner of Insurance concerning the matter of title insurance.



## 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).

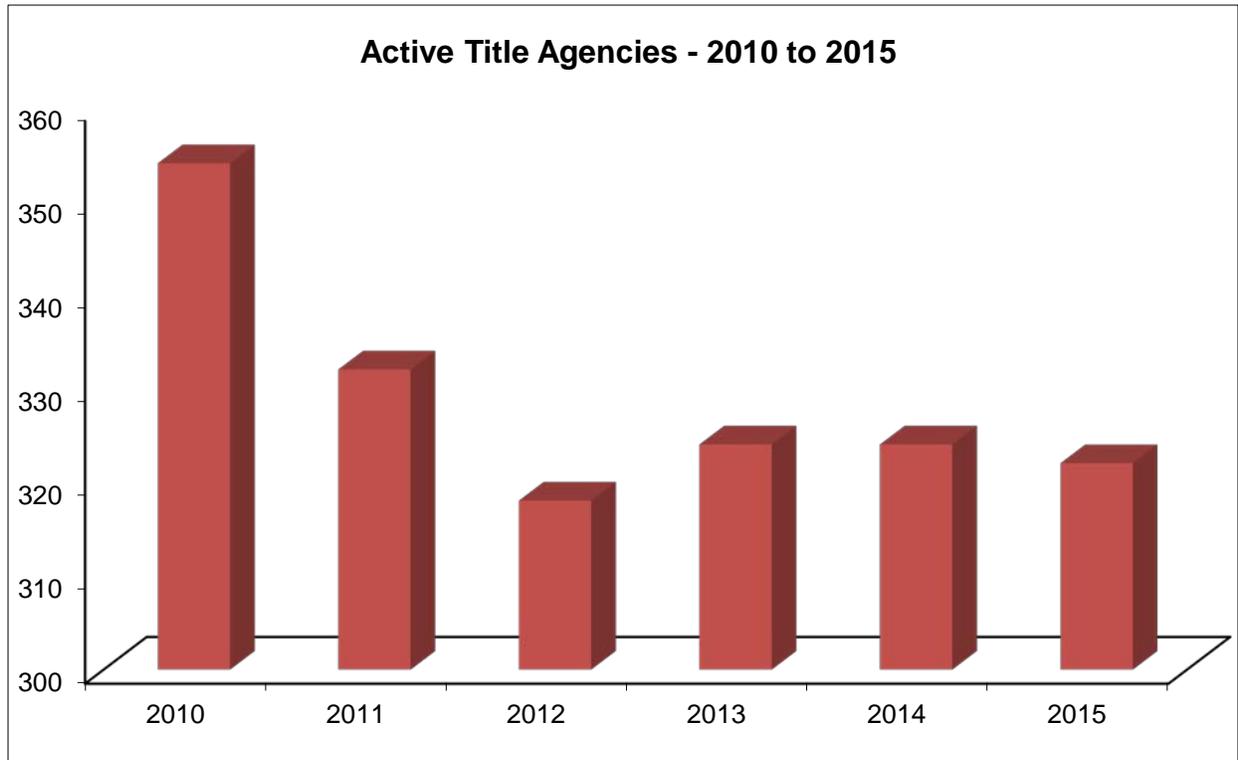
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.



## Market Trends Associated with Title Insurance

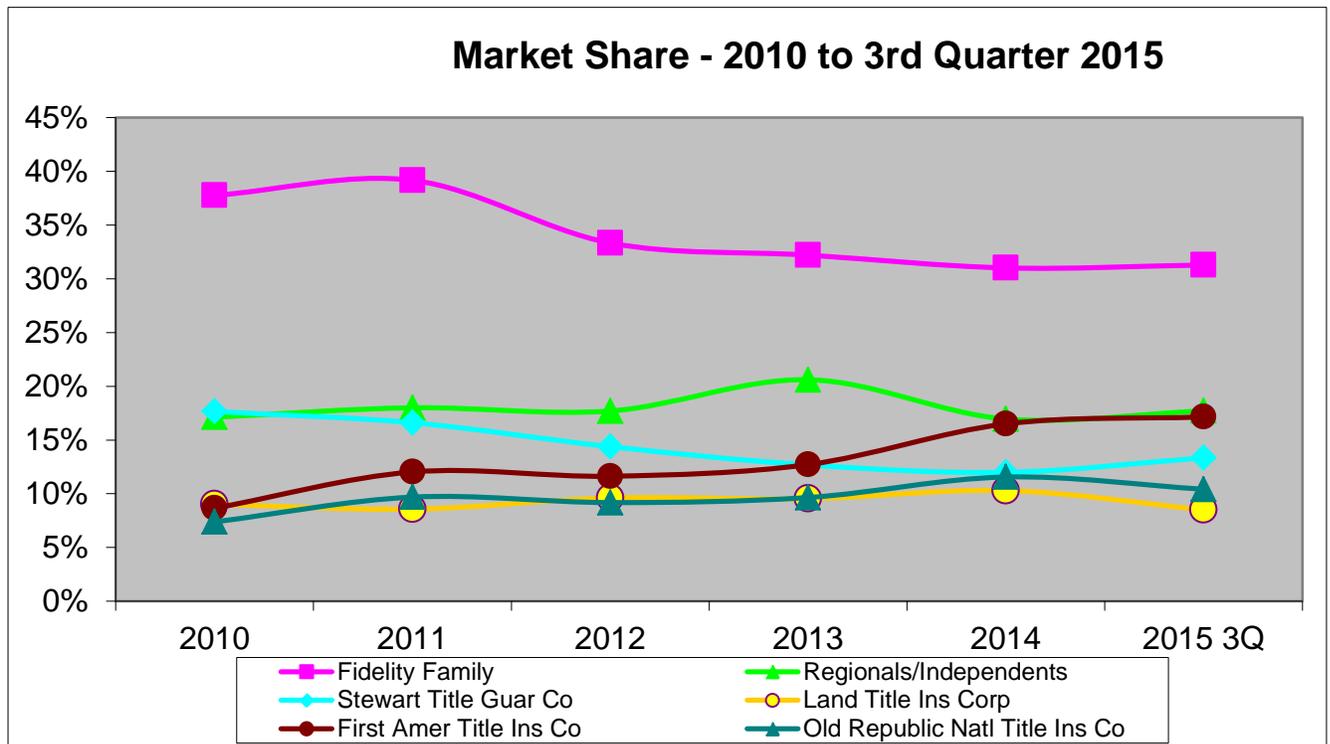
### Market Dynamics

Today, 322 title agencies hold active Colorado insurance producer licenses; in December 2010, there were 354 active title agencies. After a marked decline in active agency licenses from 2010 through 2012, the number increased in 2013, remained stable in 2014 and continued to remain steady in 2015.



## Title Insurance Underwriters

Overall, 2015 data shows continued stabilization and growth in the marketplace. Some of the large underwriters experienced modest or marginal growth in market share while others remained stable.

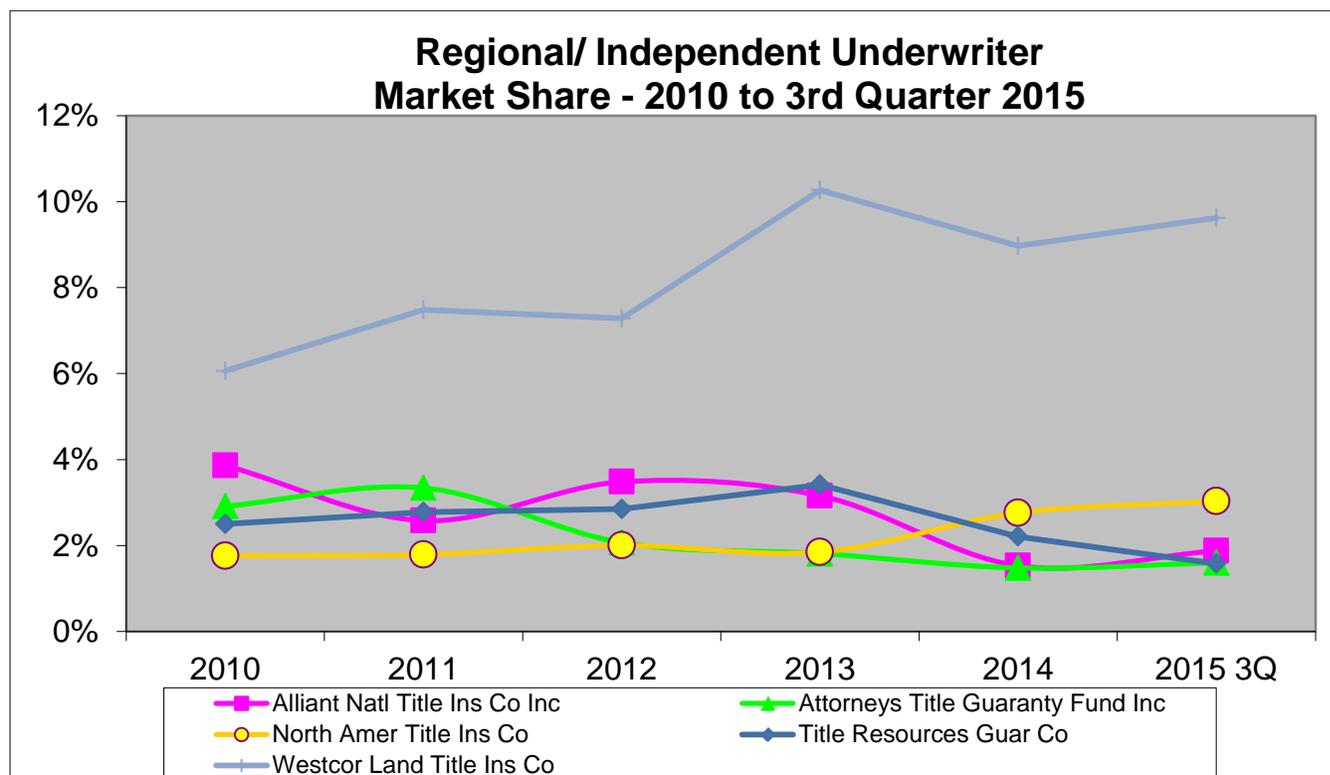


As the graph above shows, Colorado's group of regional/independent underwriters experienced a small increase in market share.



## 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's regional and independent title underwriters. As seen in the chart below, the market share picture of these smaller companies reflects a changing marketplace, and the competitive environment each year can result in different leaders emerging.



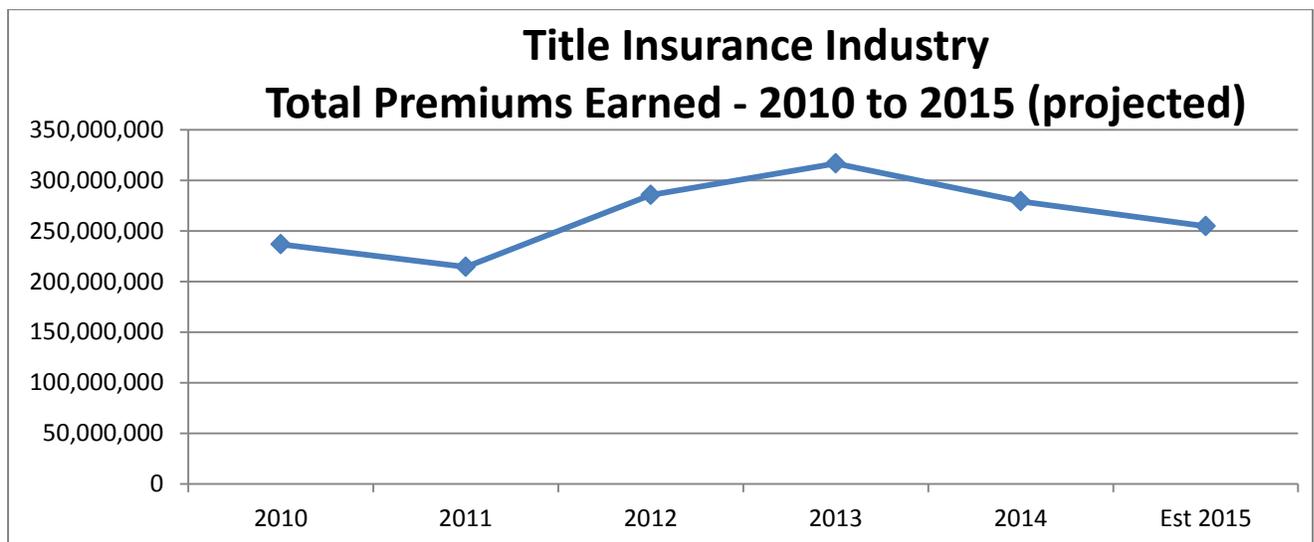
Even with volatility in the smaller market, Colorado's smaller underwriters continue to control approximately 18 percent of the market, making Colorado one of the more competitive title insurance markets in the country.



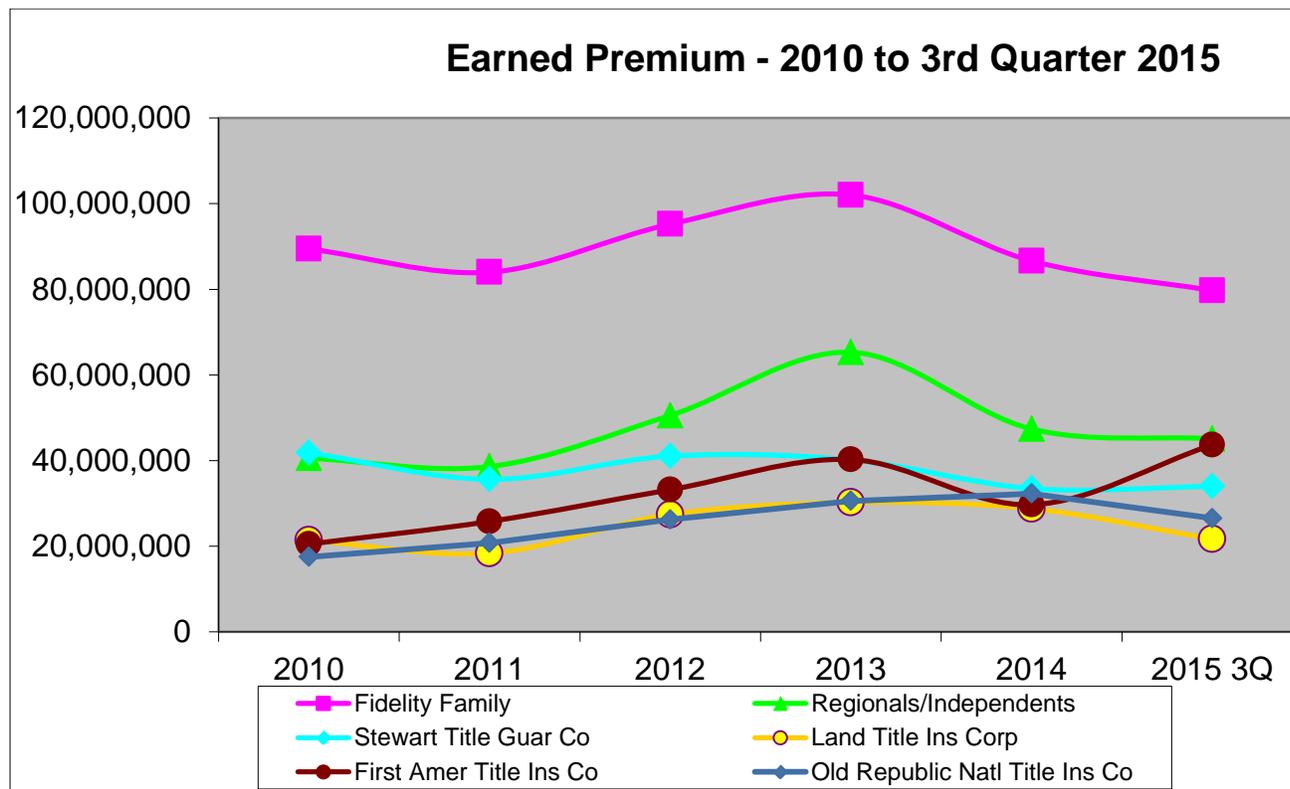
## Title Insurance Losses

Prior to the housing collapse, title insurance losses were between 3-5%. The American housing market changed and as a result, title insurance losses had been at historically high levels. With increased premium earnings and growth in the market, losses continue to return to a range of three percent or below for the insurers.

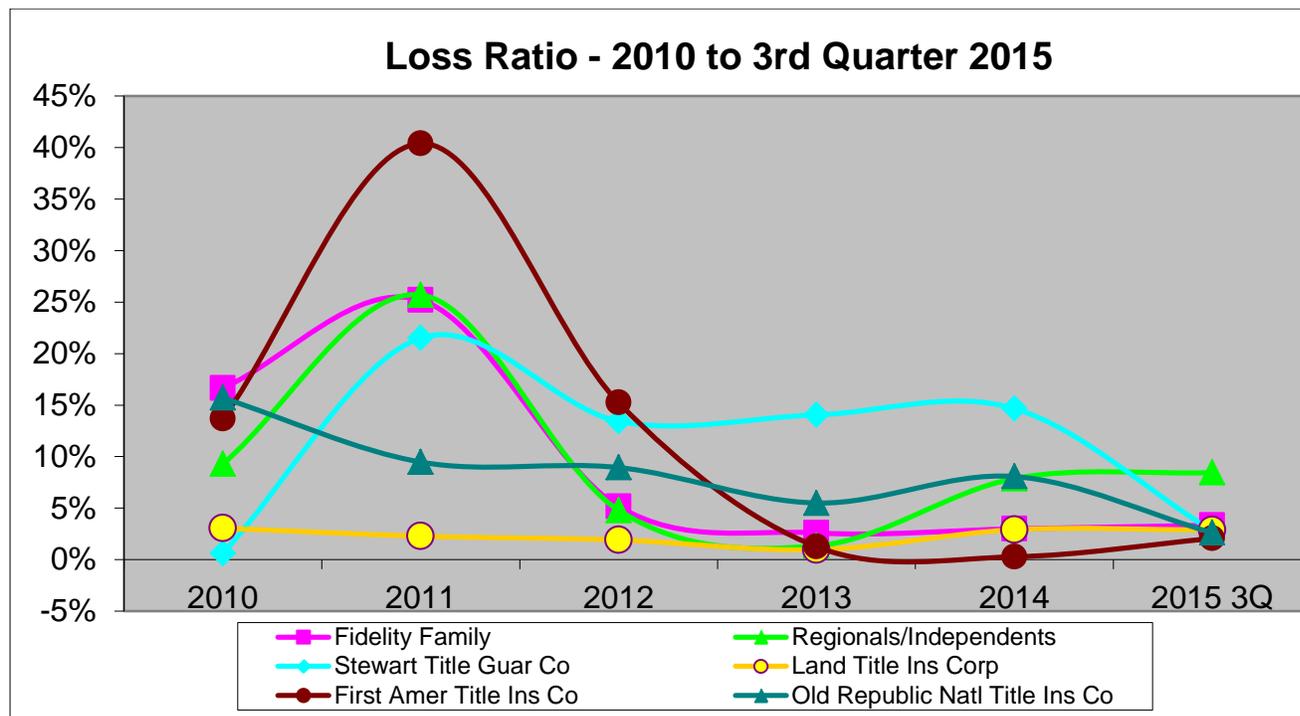
With sustained recovery of the real estate market in Colorado, title insurance premiums have steadily increased from \$236 million in 2010 to \$279 million through 2014. As a result of an uptick in refinance transactions, Colorado experienced a considerable improvement in 2013 with \$316 million but the earned premium in 2014 and the first three quarters of 2015 returned to more steady levels reflecting stable market growth.



If earnings continue on the same average trend of the first three quarters of 2015, there will be an increase in total industry earnings for the balance of 2015 and into 2016. It appears, however, that the 2015 projections may be affected by implemented Consumer Financial Protection Bureau mortgage lending rules and requirements, increased interest rates and new TILA/RESPA Integrated Disclosures form requirements.



A loss ratio reflects the portion of premiums used for the payment of claims. In addition to premiums written by agencies and direct operations, net premiums also include 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 and, therefore the loss ratio information shown below is an estimate based on those numbers.



Although Colorado’s regional/independent and large underwriters experienced significant decreases in loss ratio from 2011 through 2013, the steady decline in title insurance losses from 2012 through 2015 continues to demonstrate stabilization and recovery in the market. It can be extrapolated that this market constancy will continue into 2016. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.



## Enforcement Actions

### Enforcement Activity

Producer Enforcement unit 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.

The Producer Enforcement unit investigated matters concerning industry standards of conduct, consumer protections, licensing and fiduciary duties which comprised the majority of the the Division's opened and closed title investigations in 2015.

In 2015, the Division opened six title insurance investigations and closed three existing title insurance investigations, two of the closed investigations resulted in no action and the third concluded with an enforcement action. Through its outreach and compliance efforts, the Division continues to work with industry to address inquiries or other concerns related to the clarification and enforcement of state insurance laws and regulations.

The Division resumed its efforts to improve the industry complaint intake process in 2015 by implementing reevaluation measures identified in the latter half of 2014. By clarifying the process and establishing guidelines for the submission of industry complaints, the Division increased its ability to prioritize industry complaints and issues that immediately and directly impact consumers.

To coincide with improving upon how the Division responds to industry complaints, the Division continued its work on partitioning Regulation 3-5-1 in 2015. By separating the regulations, the Division dedicated a significant amount of time and resources collaborating with the title insurance industry and consumer representatives during 2015. These efforts provided clarification to the title industry and addressed a variety of industry issues.

The Division maintains its commitment to conduct industry outreach and compliance efforts pursuant to its mission, goals and objectives and continues to encourage title industry professionals to refer allegations of wrongdoing to the Division for investigation.

The Division also continues to work with the title industry and other stake holders and is committed to taking the necessary steps to ensure that its goals and objectives are consistent with balancing consumer protections and competitive market conditions.

### Market Regulation

The Market Regulation Section of the Division researches and tracks the overall title insurance market in Colorado and performs market conduct examinations of title insurance underwriters. The position of Market Conduct Examiner was vacated and filled in the winter / spring of 2015. Market Regulation Section completed an exam in



the summer of 2015 and is in the process of conducting an examination that was initiated shortly thereafter. Market conduct examinations include a review of company operations and management, producer licensing, sales and marketing, underwriting, rating and claims.

Common examination findings include, but are not limited to:

- Unlicensed Producers
- Charging consumers incorrect rates and fees
- Use of generic exceptions on owner's title insurance commitments and policies
- Failure to provide consumers with required disclosures
- Failure to timely remit premiums

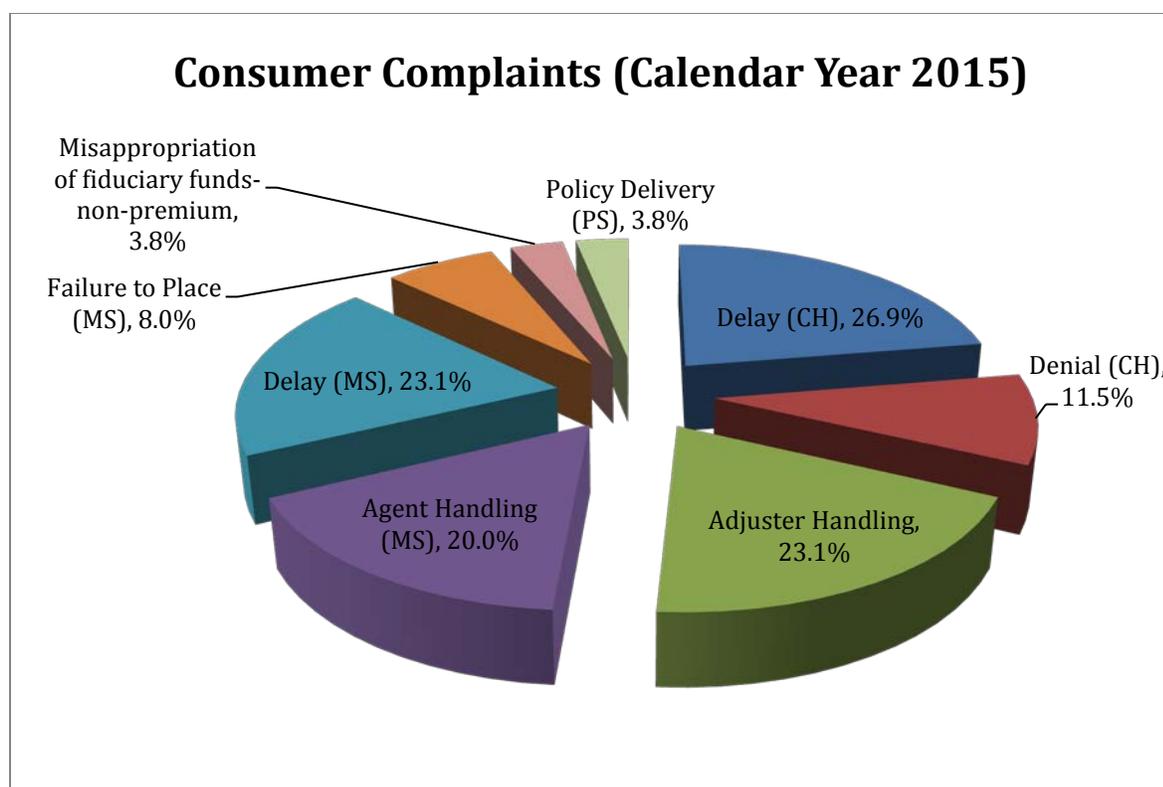
Market conduct examination reports and final agency orders can be reviewed via the Division's website at: [DORA.Colorado.gov/insurance](http://DORA.Colorado.gov/insurance). Follow the links for "Enforcement Actions" and then "Market Conduct Examinations."



## 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 2015, the Division handled approximately 26 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 denial of claims (3), delay of claims (7), and adjuster handling (6). The second area is marketing and sales and is broken down into subcategories of delay (6), and misappropriation of fiduciary funds-non-premium (1). The third area is policyholder service and is broken down into a subcategory of coverage question (1). The fourth area is underwriting and is broken down into a subcategory of delay (1).



### Compliance Activities - Industry Outreach and Education

In 2015, the Division continued its focus 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 2015, the Division handled 308 compliance contacts.



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

In addition to the Commissioner's statewide industry listening sessions, Division staff regularly attended and participated in the monthly Interprofessional Committee of Lawyers and Realtors and the Colorado Inter-Industry meetings.

### Compliance and Consumer Activities (Other)

The Division continues to improve upon its website to ensure that accurate information is provided in a format that allows consumers and the general public access to the information and data in a more efficient manner.

Additionally, the Division continues to improve its technology and the processes that enable consumers and industry alike to submit inquiries, requests, complaints and concerns regarding specific industry related matters. Improvement efforts have also been dedicated to providing information on the Division's website that would assist consumers as they shop and compare title insurance premium rates and fees.

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

Further, the Division continues to monitor implementation of CFPB's rule regarding TILA/RESPA Integrated Disclosures Rule of the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) which became effective October of 2015. The rule establishes a new Loan Estimate form and is designed to provide consumers with disclosures and information regarding the costs and risk of their mortgage loan.

As a result of the TILA/RESPA Integrated Disclosures Rule of the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), the Colorado real estate industry, comprised of industry trade associations, established a task force to develop guidelines to assist real estate brokers, mortgage lenders, title insurance entities and other real estate professionals with implementation of the new rule.

The Colorado Inter-Industry task force created and issued the *Best Practices TILA-RESPA Integrated Disclosures* guidelines, and the Division posted the guidelines on its website as a valuable resource for real estate professionals.

The Division is working on the development and implementation of the National Association of Insurance Commissioners (NAIC) Title Shopping Tool through the Title Consumers Shopping Tools Working Group. The goal of this guide is to assist



consumers with understanding the basics of title insurance and offers tips on how to shop and compare title insurance and closing services.

The Division works to inform and educate the real estate and title insurance industries, as well as consumers, on the consumer's right to choose their title insurance and closing and settlement service provider.

In 2016, the Division renews its commitment to preserve a working relationship with the title industry and continues its regulatory oversight to ensure consumer protection and a fair competitive business environment.

## Regulation 3-5-1 Title Insurance

In late 2014, the Commissioner put forth a proposal to divide the primary title regulation, Regulation 3-5-1, into separate regulations addressing particular aspects of title insurance. The Division established five work groups to collaboratively work with the title insurance industry and other stake holders to partition the regulation into specific regulations concerning Rates and Fees, Producer Licensing, Consumer Protection, Standards of Conduct and Fiduciary Duties.

Each of the work groups included subject matter experts from the title insurance industry, consumer representatives and other stakeholders. The following organizations participated in and were represented at the work group meetings:

- Land Title Association of Colorado
- Real Estate Section of the Colorado Bar Association
- Colorado Mortgage Lender's Association
- Consumer protection and advocacy representatives and other stake holders

The Division conducted a total of 23 work group meetings during 2015 covering the completion of the Rates and Fees, Consumer Protection and Producer Licensing work groups. Division staff devoted a significant amount of time and resources working with the industry during 2015 and anticipates the completion of the Standards of Conduct work group during January 2016.

Of the three completed work groups, the Rates and Fees and Consumer Protection work groups resulted in two new regulations that became effective October 1, 2015. The Title Producer Licensing Work Group concluded its work on February 28, 2015, resulting in recommendations that were included in the Title Insurance Producer Licensing Working Group (2015) Accomplishments Report hereto attached as Appendix A.

The Division collaboratively worked with the title producer licensing work group members and generally reached consensus, resulting in recommended solutions to address title licensing issues. Since most of the licensing recommendations required statutory changes, the work group agreed to reconvene in the future to work on any proposed legislation. Some recommendations from the licensing work group include the following:



- Establishing pre-licensing and continuing education requirements
- Establishing scope and purpose of capital requirements
- Establishing surety and fidelity bond requirements (depending upon financial impact on agencies)

The Division is currently working on the proposed Standards of Conduct regulation (8-1-3). This work group conducted a total of seven meetings during 2015 and an eighth meeting is scheduled for early January 2016 to prepare and finalize a proposed draft for rule-making. Fiduciary Duties is the last of the five work groups. The Division anticipates the Fiduciary Duties work group will convene and begin work in early spring of 2016.

## Regulation 8-1-1 Title Insurance Rates & Fees

Between September 2014 and February 2015, the Division conducted a total of five meetings with the Title Insurance Rates & Fees Working Group comprised of subject matter experts from the title insurance industry, consumer representatives and other stake holders. The Division worked together with industry and other work group members to address various title insurance rate and settlement fee issues. Many of the discussions included improvements to rate and fee justifications, consumer comparison shopping forms and electronic fee filing capabilities for agents.

As a result of the work conducted during the meetings, proposed Regulation 8-1-1 was prepared for the rule-making process and was noticed for hearing on June 30, 2015. Since the regulation was noticed prior to the formation of the Title Insurance Commission, the Commission was given an opportunity to review the proposed regulation and provide comments that were included during the rule-making process.

The Title Insurance Commission held a special meeting on September 23, 2015 to review proposed Regulation 8-1-1 and submit recommendations that were included and made part of the rule-making process. The Division conducted the rule-making hearing for Regulation 8-1-1 on August 3, 2015, and it was adopted on August 11, 2015. This hearing gives the public and industry the opportunity to provide comments, written and verbal, to be considered for the final regulation. Regulation 8-1-1 became effective October 1, 2015 and it benefits the industry, consumers and the Division by utilizing technology to streamline rate and fee filings and providing standardized consumer fee sheets for comparisons.

## Regulation 8-1-2 Title Insurance Consumer Protection

Between March 2015 and June 2015, the Division conducted a total of six meetings with the Title Insurance Consumer Protection Working Group comprised of subject matter experts from the title insurance industry, consumer representatives and other stake holders. The Division collaboratively worked with industry and other work group members and generally reached consensus to address a variety of title insurance industry and consumer protection issues. Many discussions included the delivery of insurance policies to insureds/consumers in a timely manner, potential harm to consumers for the delay of recording legal documents affecting real property and the



potential misuse of unremitted premiums by title agents to insurers due to, in part, delays in the issuance of policies to consumers.

As a result of the work completed during the meetings, proposed Regulation 8-1-2 was prepared for the rule-making process and noticed for hearing on June 30, 2015. Since the regulation was noticed prior to the formation of the Title Insurance Commission, the Commission was given an opportunity to review the proposed regulation and provide comments during the rule-making process.

The Title Insurance Commission held a special meeting on September 23, 2015 to review proposed Regulation 8-1-2 and submit recommendations that were included and made part of the rule-making process. The Division conducted the rule-making hearing on August 3, 2015, and the regulation was adopted on August 11, 2015. Regulation 8-1-2 became effective October 1, 2015, and it benefits the industry, consumers and the Division by assuring receipt of policies by consumers in a timely manner, reducing potential incidents involving misappropriation of insurer premium, and decreasing the amount of Division time and resources spent investigating title industry defalcations.

## Title Insurance Commission Established

The Title Insurance Commission ("TIC") was created by the passing of Senate Bill 15-210, which was signed into law by Governor Hickenlooper on June 5, 2015. The TIC is an advisory body to the Commissioner of Insurance concerning matters of title insurance. The TIC consists of nine members appointed by the governor: three representatives are employees of title insurance companies, three representatives are employees of title insurance agents and three representatives are from the public at large, all of whom are required to be residents of the state of Colorado. The TIC is required to meet no less than four times a year and may call up to four more special meetings per year, when they feel it is necessary. They are tasked with proposing, advising and recommending rules, bulletins and position statements and establishing additional consumer protections; all subject to the approval of the Commissioner. The Division is required to provide the TIC with a copy of any final agency action documents, orders and reports following the judicial review under section 24-4-106, C.R.S., or after the expiration of any period for review or appeal for any enforcement, licensing or market conduct action, occurring during the quarter prior to a meeting. The Division is also required to provide the TIC with a summary of any complaints closed without any action taken during the quarter. An increase in expenditures of no more than fifty-thousand dollars (\$50,000.00) was established to help the Division aid in the administration of the TIC and is being predominately allocated to legal fees and the funding of a TIC administrator, who is not an employee of the Division. All meetings of the TIC are open to the public.

## Miscellaneous Activities

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



*Title Advisory Council:* In 2003, the Division formed the Title Insurance Advisory Council (TAC). The mission of the TAC was to examine, discuss and address issues affecting the title insurance industry in Colorado and the promotion of fair competition and regulatory compliance within the Colorado title insurance industry. Due to the formation of the Title Insurance Commission, the Title Advisory Council conducted its last meeting on May 11, 2015.

*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):* 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.

*Colorado Inter-Industry:* The Colorado Inter-Industry is a joint task force comprised of the Land Title Association of Colorado, Colorado Mortgage Lenders Association, Colorado Association of Realtors, Colorado Association of Hispanic Real Estate Professionals, Colorado Association of Mortgage Professionals and Colorado Association of Certified Closers.

*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, Division staff monitors and participates in meetings of the Escrow Theft White Paper Subgroup, Title Insurance Financial Reporting Working Group, Title Insurance Guaranty Fund Working Group, Title Insurance Risk-Based Capital Subgroup and the Consumer Shopping Tools 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.





**COLORADO**

Department of  
Regulatory Agencies

Division of Insurance

Marguerite Salazar  
Commissioner of Insurance

# Title Insurance Producer Licensing Working Group (2015)

## Accomplishment Report



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## I. Background

The Title Insurance Producer Licensing Working Group consists of title industry experts and Division staff <sup>1</sup> who collaboratively discuss and recommend solutions to title insurance licensing issues, particularly relating to Colorado law and Insurance Regulation 3-5-1, Section 8.

The members convened four times throughout January and February of 2015 and tackled concerns relating to:

- the Affiliated Business Arrangement (“AfBA”) disclosure form;
- capital requirements;
- pre-licensing and continuing education;
- licensing of closing and settlement services (escrow licensing); and
- fidelity bonds, surety bonds, Errors and Omissions policies, and other business coverages.

The working group members also initiated discussions about licensing requirements and arranged for a presentation from two insurance producers to gain a deeper understanding of the business coverages available to title producers.

The final fifteen minutes of each meeting were set aside to solicit input from non-working group members, including interested parties and the public.

## II. Chronology

### January 14, 2015 meeting highlights (agenda attached)

- Commissioner Salazar introduced herself and welcomed industry members to the Division. She discussed the importance of working together and the group asked a question about licensing requirements. This question expanded throughout the meetings and was answered in writing by the Division in the final meeting.
- The group discussed confusion about who is required to submit AfBA disclosure forms to the Division. The Division receives forms from individuals and entities that are not required to submit them. The group subsequently revised the AfBA disclosure form and it was posted to the Division web site.

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<sup>1</sup> Industry experts include Bill Brendemuhl, Dave Carlson, Margaret Cook, Curt Fix, Terry Jones, Eric Morgan, and Greg Wolff. Melissa Young, Neil Derr, and Steve Giampaolo participated on behalf of the Division.

- The Division presented a slide show overview about licensing and group objectives.
- The participants briefly discussed increased capital requirements, including rural agent access to capital. This issue was taken up in greater detail at a later meeting.
- After the January 14 meeting, the Division sent the members pre-licensing and continuing education materials to review before the next meeting.

#### January 28, 2015 meeting highlights (agenda attached)

- The group discussed the merits of applying pre-licensing and continuing education requirements to title producers. The members support ten-fifteen hours of pre-licensing education, sixteen hours of continuing education requirements (over two years), and an ethics requirement. Continuing education should include legal and statutory updates and refreshers. Note: The title industry as a whole may not be as supportive of increased education obligations because of potential increased employer costs.
- Members arranged for two insurance producers to speak at next meeting about insurance options available to title agencies.
- The AfBA disclosure form revision was ongoing.

#### February 11, 2015 meeting highlights (agenda attached)

- Mike Dribnak (the Wright Group) and Jerome Magana (Select Specialty Insurance Services) presented to the group about Errors & Omissions policies, escrow security bonds, fidelity products, defalcation protection that covered underwriters, cyber liability (e.g., covers security breaches, crisis management, and data extortion), and cybercrime (part of fidelity theft coverage). There is a program with typical underwriting requirements geared towards small agents.
- The group discussed the Texas guaranty program that funds wind-up costs to the state.
- Question: Can the Division use something like face time for meetings? Google hangouts are available via laptops with a camera.
- Question: In Colorado, does an individual who fails to pass an examination have to wait a certain period of time before retaking the failed examination? No.

### February 28, 2015 meeting highlights (agenda attached)

- The members discussed the February 11, 2015 presentation regarding insurance and consumer protection options available to title producers.
- The group discussed capital requirements for new agencies. Question: What is the purpose of the \$10k requirement? In its present form, the statute does not define its purpose or intent. Discussion: The \$10k does not seem to serve a specific purpose, other than supporting an initial letter from CPA attesting to net worth on that specific date. Some members stated that in today's world, \$10K is an unrealistically low capital requirement and that an increase should be considered in any future legislation. Other members did not want to see an increase in the \$10k amount, citing the lack of purpose or link to consumer protection. The discussion continued and revolved around establishing a purpose for those funds, such as a guaranty fund or other similar fund to protect consumers should an agency fail (such as the one administered by the Texas Title Insurance Guaranty Association).
- Question: Does the Division intend to remove Section 8 from Regulation 3-5-1? Yes, but not at this time. Future legislation may impact its content and moving forward at a later date saves everyone the time and effort of going through this process twice.
- The revised AfBA form was posted on the Division web site prior to this meeting.
- The Division document discussing licensing requirements was presented to the members, discussed, and posted to the Division web site.
- The title industry may not work on licensing legislation this year. This working group may reconvene in the future to work on legislation.

### **III. Key Accomplishments**

- The title industry working group members and Division staff collaborated effectively on many licensing issues and, among other things, found common ground in the areas of pre-licensing and continuing education requirements, the purpose of capital requirements, and possible surety and fidelity bond requirements (depending upon the financial impact on agencies).
- The working group identified a problem concerning the submission of AfBA disclosure forms by individuals and entities that are not required to do so. This creates valueless work for industry and the Division. The members redesigned the form so that it is easier to use, with the intent of reducing the

submission and review of the unnecessary documents. The new version is posted on the Division web site and attached to this report.

- Throughout the meetings, the members raised questions about licensing requirements. As a result, a document titled “Responses to Working Group producer licensing questions” was created, circulated to the working group members, and discussed. It also adopted Title Advisory Council FAQ #24. This document is posted on the Division web site and attached to this report.
- The participants discussed the merits of applying pre-licensing and continuing education requirements to title producers. The group supported ten-fifteen hours of pre-licensing education, sixteen hours of continuing education requirements (over two years), and an ethics requirement. Additionally, continuing education should include legal and statutory updates and refreshers.

Note: The title industry as a whole may not be as supportive because of potential increased employer costs.

- The members wanted to understand insurance and other options available to title agencies in greater detail. They reached out to two insurance producers who presented to the group. The presentation was well-received and it enhanced the group’s understanding of current options. The members also brought up and talked about the consumer protection approach taken by Texas Title Insurance Guaranty Association.<sup>2</sup>

#### IV. Next Steps

- AfBA disclosure form notification letter

Furthering the effort undertaken by the working group on the AfBa disclosure form, the Division is revising a notification letter sent to all new and renewing title insurance producers that most likely contributes to the submission and receipt of unnecessary AfBA disclosure forms. The revised notification letter should reduce confusion.

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<sup>2</sup> See <http://www.ttiga.org/>

“TTIGA collects the policy guaranty fee from title insurance transactions to fund the title insurance agent audit function of the Texas Department of Insurance and to fund the payment of covered escrow account shortages resulting from the insolvency of a title insurance agent. TTIGA also collects the guaranty assessment recoupment charge fee from all title insurance transactions during the 2014 year to fund refund the assessment back to the title underwriters, which were assessed in 2013 to pay for covered claims in the Southern Title Insurance Corporation, receivership and now liquidation, in the state of Virginia. TTIGA pays covered claims involving Texas properties associated with the STIC liquidation.”

- Bulletin No. B-1.22

This bulletin applies “to all licensed title insurance producers” and requires that “[a]ll title entities shall use the Colorado AfBA Disclosure form...to disclose their affiliations.” It is recommended that this bulletin be updated to reflect that it applies to those individuals and entities that are part of AfBAs and to replace the outdated disclosure form attached to the bulletin with the one updated by the working group. This will further the effort to reduce the submission and review of unnecessary AfBA disclosure forms.

- Electronic database for the submission of AfBA disclosures

The Division is meeting with the State’s information technology department to explore the feasibility of implementing an electronic database system that makes it easier to submit and review AfBA disclosure documents.

- Future legislation

The working group committed to reconvening in the future to work on any proposed legislation.

## V. Attachments

### Who needs to be licensed?

#### Responses to Working Group producer licensing questions

Please note, every situation is factually-driven and evaluated on a case-by-case basis.

I. Q: Does a person who *only* disseminates a rate sheet as part of full-time clerical or administrative duties need to be licensed?

A: No. See §10-2-105(2)(b), C.R.S. (in endnotes)

II. Q: Who needs to be licensed in connection with AfBAs?

A: A settlement producer that is a member of an AfBA that meets and is in compliance with the definition of an “affiliated business arrangement” at § 10-11-102(1), C.R.S., does not have to be licensed in order to refer settlement services to a title insurance entity or affirmatively influence the selection of a title insurance entity, as long as the AfBA is also in compliance with §§ 10-2-401(6), 10-11-108(1), and 10-11-124, C.R.S. The issues the Division considers include, but are not limited to, the following:

- The manner in which the settlement producer is compensated;
- Whether the settlement producer is negotiating the business of title insurance;
- The AfBA’s compliance with RESPA; and
- The applicable sections of Division of Insurance Regulation 3-5-1 to AfBAs and “sham” AfBAs (including analyzing operational control and structure, performance and delivery of core services).

Please keep in mind that referrals must comply with applicable Division of Real Estate statutes and regulations.

III. Title Advisory Council presented the following FAQ to the Division for input

#### FAQ #24. Which employees of a title entity must be licensed by the Colorado Division of Insurance?

Any employee qualifying as an “insurance producer” (who solicits, negotiates, effects, procures, delivers, renews, continues, or binds policies of insurance for risks residing, located, or to be performed in this state) must be licensed.

An “insurance producer” does not include the following, who are not required to be licensed:

(a) Any person who is a regularly salaried officer, director, or employee of an insurance company or an insurance producer and who is engaged in the performance of usual or customary

executive, administrative, or clerical duties which do not include the negotiation or solicitation of insurance, so long as the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state;

(b) Any person who is a salaried employee in the office of an insurance producer or insurer and who devotes full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of such person's employer, so long as the person does not receive any commission on such applications and the person's compensation is not varied by the volume of applications or premiums taken or received;

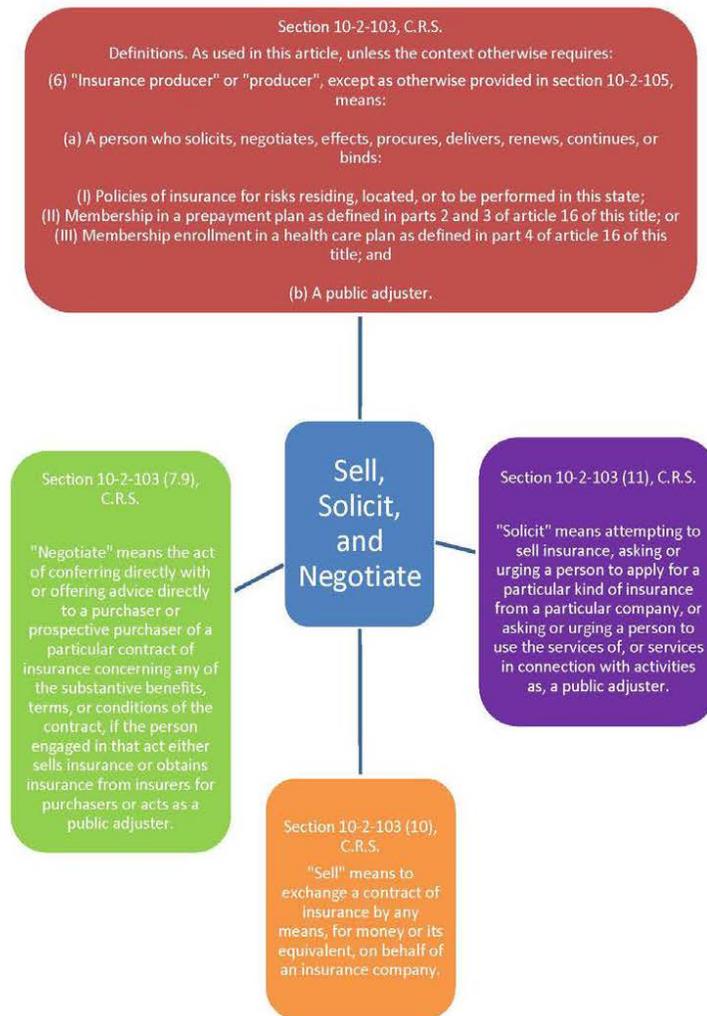
(c) An officer, director, or employee whose activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

Examples of duties and responsibilities which require licensure include the execution of a title insurance policy, binder or commitment, and the solicitation of title insurance business  
Examples of job duties or functions which do not require licensure include the mere distribution of a commitment or policy by mail email or other method and distribution of preprinted information or schedule of rates and fees.

§10-2-103, C.R.S.; §10-2-105, C.R.S.; §10-2-401, C.R.S.; §10-11-116, C.R.S.

Initial Division response: Neil and Steve reviewed this FAQ. If there is no additional input from the Working Group, we will present it without change to the Commissioner for her review and direction.

IV. "Sell, Solicit, and Negotiate" Infographic



V. For Reference: General Licensing Requirements (see endnotes)

- A. <sup>i</sup> §10-2-103, C.R.S. – Definitions
- B. <sup>ii</sup> §10-2-105, C.R.S. - Insurance producer - exemptions from definition
- C. <sup>iii</sup> §10-2-401, C.R.S. - License required
- D. <sup>iv</sup> § 10-11-116, C.R.S. - Title insurance agents licensed
- E. <sup>v</sup> § 10-2-404(2) , C.R.S. - Application for a License
- F. <sup>vi</sup> § 10-2-406, C.R.S. - Licensing of agencies
- G. <sup>vii</sup> § 10-2-103(5) , C.R.S. - Definition of agency
- H. <sup>viii</sup> § 10-11-102, C.R.S. - Definitions
- I. Colorado Division of Insurance Regulation 1-2-10 - Concerning the Regulation of Insurance Producers, including Public Adjusters, and Authorized Insurers by the Colorado Division of Insurance

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<sup>i</sup> 10-2-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Catastrophic disaster" means an event, as declared by the president of the United States or the governor, or both, which results in large numbers of deaths or injuries; causes extensive damage or destruction of property or facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local, and private sector capabilities to begin and sustain response activities.

(1.5) "Commissioner" means the commissioner of insurance.

(2) "Health coverage" means accident and health or sickness and accident policies or contracts including other health coverages provided by insurers, health maintenance organizations, or nonprofit hospital and surgical plans.

(2.5) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer meets the following:

(a) Maintains the producer's principal place of residence or principal place of business; and

(b) Is licensed to act as an insurance producer.

(3) "Individual" means any private or natural person as distinguished from a partnership, corporation, association, or any foreign or domestic entity as defined in section 7-90-102, C.R.S.

(4) "Insurance" means any of the lines of authority set forth in section 10-2-407 (1).

(5) "Insurance agency" or "business entity" means a corporation, partnership, association, or foreign or domestic entity as defined in section 7-90-102, C.R.S., or other legal entity that transacts the business of insurance.

(6) "Insurance producer" or "producer", except as otherwise provided in section 10-2-105, means:

(a) A person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

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- (I) Policies of insurance for risks residing, located, or to be performed in this state;
- (II) Membership in a prepayment plan as defined in parts 2 and 3 of article 16 of this title; or
- (III) Membership enrollment in a health care plan as defined in part 4 of article 16 of this title; and
- (b) A public adjuster.
- (6.5) "Insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.
- (7) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority, specified in such document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier to a binding agreement.
- (7.1) "Limited line insurance" means those lines of authority other than those defined in section 10-2-407 (1) (a) to (1) (e) or any other line of insurance that the commissioner may deem necessary to recognize for the purpose of complying with section 10-2-502.
- (7.3) "Limited line producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines of insurance.
- (7.5) "Limited lines credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the insured credit obligation that the commissioner determines should be designated a form of limited line credit insurance.
- (7.7) "Limited lines credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited lines credit insurance coverage to individuals through a master, corporate, group, or individual policy.
- (7.9) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers or acts as a public adjuster.
- (8) "Person" includes any individual or a business entity.
- (8.5) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:
- (a) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property or allied lines of the insured, on behalf of an insured in negotiating for, or effecting, the settlement of a claim for loss or damage covered by an insurance contract;
- (b) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property or allied lines; or
- (c) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property or allied lines for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.
- (9) (Deleted by amendment, L. 2001, p. 1190, § 3, effective January 1, 2002.)
- (10) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
- (11) "Solicit" means attempting to sell insurance, asking or urging a person to apply for a particular kind of insurance from a particular company, or asking or urging a person to use the services of, or services in connection with activities as, a public adjuster.
- (12) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.
- (13) "Uniform business entity application" means the current version of the national association of insurance commissioners' uniform business entity application for resident and nonresident business entities.
- (14) "Uniform application" means the current version of the national association of insurance commissioners' uniform application for resident and nonresident producer licensing.

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HISTORY: Source: L. 93: Entire article R&RE, p. 1348, § 1, effective January 1, 1995. L. 2001: (2.5), (6.5), (7.1), (7.3), (7.5), (7.7), (7.9), (10), (11), (12), (13), and (14) added and (3), (4), (5), (7), (8), and (9) amended, p. 1190, § 3, effective January 1, 2002. L. 2009: (7.1), (7.3), (7.5), and (7.7) amended, (SB 09-292), ch. 369, p. 1940, § 10, effective August 5. L. 2013: (1), (6), (7.9), and (11) amended and (1.5) and (8.5) added, (HB 13-1062), ch. 61, p. 200, § 1, effective January 1, 2014.

Editor's note: This section is similar to former § 10-2-102 and 10-2-202 as they existed prior to 1993.

## ii 10-2-105. Insurance producer - exemptions from definition

(1) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(2) Notwithstanding section 10-2-103 (6), "insurance producer" does not include the following:

(a) Any person who is a regularly salaried officer, director, or employee of an insurance company or an insurance producer and who is engaged in the performance of usual or customary executive, administrative, or clerical duties which do not include the negotiation or solicitation of insurance, so long as the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state;

(b) Any person who is a salaried employee in the office of an insurance producer or insurer and who devotes full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of such person's employer, so long as the person does not receive any commission on such applications and the person's compensation is not varied by the volume of applications or premiums taken or received;

(c) An officer, director, or employee whose activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(c.3) An officer, director, or employee whose function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance;

(c.5) An officer, director, or employee who is acting in the capacity of a special agent or agency supervisor assisting insurance producers, where the officer's, director's, or employee's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;

(c.7) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance or for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans or performs administrative services related to mass marketed property and casualty insurance, where no commission is paid to the person for the service;

(d) Employers, associations, or their officers, directors, or employees, or the trustees of any employee trust plan, to the extent that such employers, associations, officers, directors, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates, which program involves the use of insurance issued by an insurer; except that such employers, associations, officers, directors, employees, or trustees shall not in any manner be compensated, directly or indirectly, by the company issuing the contracts;

(e) Employees of insurers or insurance agencies or organizations employed by insurers or insurance agencies who are engaging in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who are not individually engaged in the solicitation or negotiation of policies or contracts for insurance;

(f) Management associations, partnerships, or corporations whose operations do not entail solicitation of insurance from the public;

(g) Officers or employees of a motor vehicle rental company that offers coverage in connection with and incidental to the rental of motor vehicles under motor vehicle rental agreements, so long as such coverage is:

(I) Offered at the point of the rental transaction or by preselection of coverage in master, corporate, group, or individual rental agreements;

(II) Limited in scope to the parties to such motor vehicle rental agreements and to other authorized drivers or occupants of the vehicles being rented;

(III) Limited in duration to coverage of damages incurred as a result of events occurring during the rental period; and

(IV) For traditionally recognized risks associated with motor vehicle operation and travel, including, without limitation, personal injury or death, personal liability and property damage, collision, damage to or loss of personal effects, roadside assistance, and emergency repairs;

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(h) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, so long as the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(i) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance, for commercial property and casualty risks, to an insured with risks located in more than one state insured under that contract, so long as the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(j) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, so long as the employee does not sell or solicit insurance or receive a commission.

(2.5) With respect to public adjusters, a license as a public adjuster is not required for:

(a) An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;

(b) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(c) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance of an incidental nature to a licensed public adjuster, including a photographer, estimator, private investigator, engineer, or handwriting expert;

(d) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(e) A person who settles subrogation claims between insurers.

HISTORY: Source: L. 93: Entire article R&RE, p. 1350, § 1, effective January 1, 1995.L. 98: (1)(g) added, p. 234, § 3, effective April 10.L. 2001: Entire section amended, p. 1192, § 5, effective January 1, 2002.L. 2013: (2.5) added, (HB 13-1062), ch. 61, p. 201, § 2, effective January 1, 2014.

Editor's note: This section is similar to former § 10-2-209 as it existed prior to 1993.

Cross references: For the legislative declaration contained in the 1998 act enacting subsection (1)(g), see section 1 of chapter 88, Session Laws of Colorado 1998.

### <sup>iii</sup> 10-2-401. License required

(1) No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(2) No insurance producer shall make application for, procure, negotiate for, or place for others any policies for any line or lines of insurance for which he or she is not then qualified and licensed.

(3) (a) Any representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer; except that a license is not required of any officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch thereof who devotes substantially all of his or her time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated.

(b) Any agent, representative, or member of a fraternal benefit society who in the preceding calendar year solicited and procured life insurance contracts on behalf of any society in a face amount of insurance not exceeding fifty thousand dollars or, in the case of any other kind of insurance that the fraternal benefit society may write, solicited and procured such insurance on behalf of not more than twenty-five individuals, who received no commissions or other compensation therefor, and who does not reasonably expect to exceed soliciting or procuring insurance on behalf of more than twenty-five individuals in the current year, shall be exempt from the licensing requirements for an insurance producer.

(4) No insurance producer license shall be granted or extended to any person if the license is being or will be used for the purpose of writing controlled business. As used in this section, "controlled business" means insurance procured or to be procured by or through such person upon:

(a) The person's own life, person, property, or risks, or those of his or her spouse; or

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(b) The life, person, property, or risks of the person's employer or the person's own business.

(5) Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if during any twelve-month period the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

(6) A title insurance agent and a title insurance company, as defined in section 10-11-102 (9) and (10), shall disclose the names of all affiliated business arrangements to which the company or agent is a party at the time of application for a new license, on the continuation due date of an existing license, and upon a change to any identifying information, in a form and manner acceptable to the commissioner. The disclosure shall include the physical location of the affiliated businesses, identify the settlement producer with whom the company or agent is associated, and identify the underwriter of the title insurance business.

HISTORY: Source: L. 93: Entire article R&RE, p. 1355, § 1, effective January 1, 1995.L. 94: (3) amended, p. 740, § 1, effective January 1, 1995.L. 2001: (1) amended, p. 1195, § 8, effective January 1, 2002.L. 2006: (6) added, p. 268, § 3, effective July 1.

#### <sup>iv</sup> 10-11-116. Title insurance agents licensed

(1) (a) Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, except as otherwise provided in this section.

(b) Full-time employees of a corporate contractual agent of a title insurance company authorized by such company or such contractual agent to issue or countersign binders or policies in behalf of such title insurance company shall be so licensed.

(c) A license shall be issued to an attorney-at-law licensed to practice in this state if a title insurance company notifies the commissioner in writing of the name and address of each such attorney it desires to appoint as its agent and upon payment of the fees required by sections 10-3-207 and 24-31-104.5, C.R.S.

(2) No individual, partnership, corporation, or other legal entity contractually authorized by a title insurance company as its agent to issue or countersign binders or policies on its behalf, other than an attorney otherwise qualified under subsection (1) (c) of this section, shall be licensed unless, in addition to all other requirements of this article and of articles 1 to 3 of this title, the agent possesses actual paid-in cash capital, or, if an individual, has a net worth, of at least ten thousand dollars.

(3) Title insurance agents possessing a title plant, as described in section 10-11-114, may satisfy the requirements of subsection (2) of this section by submitting to the commissioner of insurance, in a form acceptable to the commissioner, the written affidavit of a certified public accountant stating that the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section, or, alternatively, that the aggregate of the agent's paid-in cash capital or net worth, as applicable, and the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section.

(4) A licensed contractual agent of a title insurance company shall preserve and retain its closing and settlement services and escrow files for a period of not less than seven years after the closing, or completion, of said files. In lieu of retaining the original files, a licensed contractual agent of a title insurance company may, in its regular course of business, establish a system whereby the files are recorded, copied, or reproduced by any photographic, microfilm, or other process which accurately reproduces or forms a durable medium for reproduction of the original files. Upon cessation of business by a contractual agent of a title insurance company the files shall be deposited with the division of insurance or with a title insurance company or licensed contractual agent of a title insurance company authorized by the division of insurance.

HISTORY: Source: L. 69: p. 526, § 1. C.R.S. 1963: § 72-26-16.L. 77: (1)(a) amended, p. 502, § 4, effective January 1, 1978.L. 91: (2) to (4) added, p. 1217, § 1, effective July 1.L. 93: (1)(a) amended, p. 1390, § 7, effective January 1, 1995.L. 99: (4) amended, p. 27, § 2, effective August 4.L. 2010: (1)(c) amended, (HB 10-1385), ch. 204, p. 883, § 5, effective May 5.L. 2012: (1)(c) amended, (SB 12-110), ch. 158, p. 561, § 7, effective July 1.

#### <sup>v</sup> 10-2-404. Application for license

(1) An applicant for a resident insurance producer license shall make application on a form specified by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that:

(a) The individual is at least eighteen years of age;

(b) The individual has not committed any act which is a ground for denial, suspension, or revocation as set forth in section 10-2-801;

(c) The individual is a resident of this state or is a resident of another state and meets the requirements of section 10-2-502;

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(d) If the individual applicant is a nonresident, such applicant has furnished the commissioner with a current certification of license status pursuant to section 10-2-502 (1) (e);

(e) Unless exempt, the individual has satisfied minimum precicensure education requirements pursuant to part 2 of this article;

(f) The individual has paid the license fee prescribed by the commissioner in accordance with section 10-2-413;

(g) The individual has successfully passed the examination or has satisfied examination qualification requirements for the line or lines of authority for which the individual has applied; and

(h) The individual is competent, trustworthy, and of good moral character and good business reputation.

(2) An insurance agency or business entity acting as an insurance producer shall obtain an insurance producer license. Application shall be made on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) The agency has disclosed to the insurance commissioner all officers, partners, and directors, whether or not they are licensed as insurance producers;

(b) The agency's officers, directors, or partners are trustworthy, of good moral character, and of good business reputation;

(c) The insurance agency or business entity has paid the fees prescribed by the commissioner in accordance with section 10-2-413;

(d) The insurance agency or business entity has designated a licensed producer who is an officer, partner, or director responsible for the insurance agency's or business entity's compliance with the insurance laws and rules of this state;

(e) The insurance agency or business entity has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the insurance agency or business entity, is acting as and is licensed as an insurance producer;

(f) The insurance agency or business entity has registered with the commissioner at least one individual who holds a valid insurance producer license for the line or lines of authority requested in the application;

(g) If the insurance agency's or business entity's filing status is nonresident, the insurance agency or business entity has complied with the qualification requirements of section 10-2-502.

(3) The commissioner may require the filing of any documents reasonably necessary to verify the information contained or required in the application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited lines credit insurance, a program of instruction that may be approved by the insurance commissioner.

HISTORY: Source: L. 93: Entire article R&RE, p. 1357, § 1, effective January 1, 1995. L. 2001: IP(1), (1)(c), (1)(d), (1)(g), IP(2), (2)(c), (2)(d), (2)(e), (2)(f), and (2)(g) amended and (4) added, p. 1197, § 11, effective January 1, 2002.

#### <sup>vi</sup> 10-2-406. Licensing of agencies

(1) For the purposes set forth in section 10-2-701, an insurance agency or business entity shall be licensed as an insurance producer.

(2) (a) The insurance agency or business entity shall register the name of every natural person who, as a member, officer, director, stockholder, owner, or employee of the agency or business entity, is acting as and is licensed as an insurance producer.

(b) A fee, prescribed by the commissioner in accordance with section 10-2-413, shall be paid for the registration of each insurance producer.

(3) The insurance agency or business entity shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of every change relative to the licensed individual insurance producers registered and authorized to act as insurance producers for the insurance agency or business entity.

(4) The insurance agency or business entity shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of any change relative to the insurance agency or business entity name, officers, directors, partners, or owners, to report a merger, or that the insurance agency or business entity has ceased doing business in this state.

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(5) When an insurance agency or business entity ceases to do business in this state, the insurance agency or business entity shall return the producer license to the commissioner within ten days after ceasing to do business.

(6) When an insurance agency or business entity changes its principal address to another state, the insurance agency or business entity shall, within ten days, notify the commissioner and return the producer license for cancellation. Relicensing will be subject to the provisions of part 5 of this article.

(7) (a) The insurance agency or business entity shall comply with section 10-2-404.

(b) A nonresident insurance agency shall also comply with the qualification requirements of section 10-2-501.

HISTORY: Source: L. 93: Entire article R&RE, p. 1359, § 1, effective January 1, 1995. L. 2001: (1), (2)(a), (3), (4), (5), (6), and (7)(a) amended, p. 1198, § 13, effective January 1, 2002.

### vii 10-2-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Catastrophic disaster" means an event, as declared by the president of the United States or the governor, or both, which results in large numbers of deaths or injuries; causes extensive damage or destruction of property or facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local, and private sector capabilities to begin and sustain response activities.

(1.5) "Commissioner" means the commissioner of insurance.

(2) "Health coverage" means accident and health or sickness and accident policies or contracts including other health coverages provided by insurers, health maintenance organizations, or nonprofit hospital and surgical plans.

(2.5) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer meets the following:

(a) Maintains the producer's principal place of residence or principal place of business; and

(b) Is licensed to act as an insurance producer.

(3) "Individual" means any private or natural person as distinguished from a partnership, corporation, association, or any foreign or domestic entity as defined in section 7-90-102, C.R.S.

(4) "Insurance" means any of the lines of authority set forth in section 10-2-407 (1).

(5) "Insurance agency" or "business entity" means a corporation, partnership, association, or foreign or domestic entity as defined in section 7-90-102, C.R.S., or other legal entity that transacts the business of insurance.

(6) "Insurance producer" or "producer", except as otherwise provided in section 10-2-105, means:

(a) A person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(i) Policies of insurance for risks residing, located, or to be performed in this state;

(ii) Membership in a prepayment plan as defined in parts 2 and 3 of article 16 of this title; or

(iii) Membership enrollment in a health care plan as defined in part 4 of article 16 of this title; and

(b) A public adjuster.

(6.5) "Insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.

(7) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority, specified in such document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier to a binding agreement.

(7.1) "Limited line insurance" means those lines of authority other than those defined in section 10-2-407 (1) (a) to (1) (e) or any other line of insurance that the commissioner may deem necessary to recognize for the purpose of complying with section 10-2-502.

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(7.3) "Limited line producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines of insurance.

(7.5) "Limited lines credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the insured credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(7.7) "Limited lines credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited lines credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(7.9) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers or acts as a public adjuster.

(8) "Person" includes any individual or a business entity.

(8.5) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

(a) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property or allied lines of the insured, on behalf of an insured in negotiating for, or effecting, the settlement of a claim for loss or damage covered by an insurance contract;

(b) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property or allied lines; or

(c) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property or allied lines for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.

(9) (Deleted by amendment, L. 2001, p. 1190, § 3, effective January 1, 2002.)

(10) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(11) "Solicit" means attempting to sell insurance, asking or urging a person to apply for a particular kind of insurance from a particular company, or asking or urging a person to use the services of, or services in connection with activities as, a public adjuster.

(12) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(13) "Uniform business entity application" means the current version of the national association of insurance commissioners' uniform business entity application for resident and nonresident business entities.

(14) "Uniform application" means the current version of the national association of insurance commissioners' uniform application for resident and nonresident producer licensing.

HISTORY: Source: L. 93: Entire article R&RE, p. 1348, § 1, effective January 1, 1995. L. 2001: (2.5), (6.5), (7.1), (7.3), (7.5), (7.7), (7.9), (10), (11), (12), (13), and (14) added and (3), (4), (5), (7), (8), and (9) amended, p. 1190, § 3, effective January 1, 2002. L. 2009: (7.1), (7.3), (7.5), and (7.7) amended, (SB 09-292), ch. 369, p. 1940, § 10, effective August 5. L. 2013: (1), (6), (7.9), and (11) amended and (1.5) and (8.5) added, (HB 13-1062), ch. 61, p. 200, § 1, effective January 1, 2014.

Editor's note: This section is similar to former § 10-2-102 and 10-2-202 as they existed prior to 1993.

## viii 10-11-102. Definitions

As used in this article, unless the context otherwise requires:

(1) "Affiliated business arrangement" means an arrangement in which:

(a) (i) A settlement producer or an associate of such producer has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in, a title insurance company or title insurance agent; or

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(II) A title insurance company or a title insurance agent who has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in a settlement producer; and

(b) (I) Either the settlement producer or the agent of the settlement producer directly or indirectly refers settlement service business to that title insurance company or title insurance agent or affirmatively influences the selection of that title insurance company or title insurance agent; or

(II) Either the title insurance company or the title insurance agent directly or indirectly refers settlement services business to a settlement producer or associate or affirmatively influences the selection of the settlement producer or associate.

(1.5) "Alien title insurance company" means a title insurance company incorporated or organized under the laws of a foreign nation, or of any province or territory thereof, not included under the definition of a foreign title insurance company.

(2) "Applicants for insurance" includes all those, whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance and who at the time of such application are not agents for a title insurance company.

(2.5) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

(a) A spouse, parent, or child of such person;

(b) A corporation or business entity that controls, is controlled by, or is under common control with such person;

(c) An employer, officer, director, partner, franchiser, or franchisee of such person; or

(d) Anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.

(3) The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, and the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.

(3.5) "Closing and settlement services" means providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust.

(3.7) "Gap coverage" means insuring, guaranteeing, or indemnifying owners of real property, or others interested therein, against loss or damage suffered by reason of matters appearing of record in the office of the clerk and recorder subsequent to the date of issuance of a title insurance commitment and prior to the recording of closing documents for the real property concerned.

(4) "Net retained liability" means the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with subsection (7) of this section, after the purchase of reinsurance.

(5) "Premium" for title insurance is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy, including the cost of doing business and a reasonable profit, but excluding service charge, if any.

(6) "Service charge" is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance to cover the cost of procuring and examining evidence of title.

(6.5) (a) "Settlement producer" means a person who is in a position to refer business that is incident to or a part of a settlement service. "Settlement producer" includes, but is not limited to, a person who:

(I) Buys or sells an interest in real property;

(II) Lends or borrows moneys with an interest in real property as security;

(III) Acts as an agent, representative, attorney, or employee of a person who:

(A) Buys or sells an interest in real property; or

(B) Lends or borrows moneys with an interest in real estate as security;

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(IV) Is an associate of a person described in this subsection (6.5).

(b) Nothing in this subsection (6.5) shall be construed to include a title insurance company or a title insurance agent.

(6.7) "Settlement service" means any service provided in connection with a real estate settlement. "Settlement services" include, but are not limited to, the following:

- (a) Title searches;
- (b) Title examinations;
- (c) The provision of title certificates;
- (d) Title insurance;
- (e) Services rendered by an attorney;
- (f) The preparation of title documents;
- (g) Property surveys;
- (h) The rendering of credit reports or appraisals;
- (i) Pest and fungus inspections;
- (j) Services rendered by a real estate broker;
- (k) Services rendered by a real estate appraiser;
- (l) Home inspection services;
- (m) The origination of a loan;
- (n) The taking of a loan application;
- (o) Processing of a loan;
- (p) Underwriting and funding of a loan;
- (q) Escrow handling services;
- (r) The handling of the processing; and
- (s) Closing of settlement.

(7) "Single insurance risk" means the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts. Any such policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.

(8) "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

(9) "Title insurance agent" means a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies in its behalf.

(10) "Title insurance company" means any domestic company organized under the provisions of this article for the purpose of insuring titles to real property; any title insurance company organized under the laws of another state or foreign nation and licensed to insure titles to real estate within this state; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before July 1, 1969, and which meets the requirements of this article.

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HISTORY: Source: L. 69: p. 520, § 1. C.R.S. 1963: § 72-26-2.L. 87: (3) amended and (3.5) and (3.7) added, p. 446, § 1, effective April 30.L. 2006: (1) amended and (1.5), (2.5), (6.5), and (6.7) added, p. 264, § 1, effective July 1.

# Revised AfBA Disclosure Form

## AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE

In accordance with § 10-2-401 (6) and 10-11-124, C.R.S. this disclosure form must be completed and submitted (a) with every application for a new license if the applicant is a party to an affiliated business arrangement (b) for continuation of an existing license if the licensee is a party to an affiliated business agreement and (c) upon any change to affiliation information including a licensee becoming a party to any affiliated business agreement. Complete a separate form for each Affiliated Business Arrangement ("AFBA").

Individual title producers, agencies and companies must submit this form and disclose the names of all affiliated business arrangements they are a party to at the time of a new license, renewal of license or change of existing license.

Note: If you are not a "party" to an AFBA, or are only an employee of an AFBA, you are not required to complete and submit this form.

### 1) Disclosure Reason

Indicate the disclosure reason for submitting this form:

New License /Reinstatement  License Renewal  Change Affiliation Information

### 2) Name and Address of New License Title Applicant or Title Licensee (Individual or Company)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Physical Business Street Address)

\_\_\_\_\_  
(City) (State) (Postal Code)

Indicate your Colorado Insurance Producer License Number, SSN, or FEIN. \_\_\_\_\_

### 3) Underwriter Disclosure

List the Underwriter(s) with whom you are currently contracted to conduct business. Indicate if you are disclosing a new affiliation or ending an affiliation or disclosing a current affiliation with an underwriter. Enter the effective date. (If needed, please provide an addendum disclosing additional underwriters.)

Add <input type="checkbox"/>	End <input type="checkbox"/>	Current <input type="checkbox"/>	Effective Date	____ - ____ - ____	_____ (Underwriter's Name)
Add <input type="checkbox"/>	End <input type="checkbox"/>	Current <input type="checkbox"/>	Effective Date	____ - ____ - ____	_____ (Underwriter's Name)
Add <input type="checkbox"/>	End <input type="checkbox"/>	Current <input type="checkbox"/>	Effective Date	____ - ____ - ____	_____ (Underwriter's Name)
Add <input type="checkbox"/>	End <input type="checkbox"/>	Current <input type="checkbox"/>	Effective Date	____ - ____ - ____	_____ (Underwriter's Name)
Add <input type="checkbox"/>	End <input type="checkbox"/>	Current <input type="checkbox"/>	Effective Date	____ - ____ - ____	_____ (Underwriter's Name)

### 4) Disclosure of Affiliated Business Arrangement

Provide the name and physical address of the Affiliated Business.

\_\_\_\_\_  
(Name of Affiliated Business)

\_\_\_\_\_  
(Physical Business Street Address)

\_\_\_\_\_  
(City) (State) (Postal Code)

If you are disclosing a new affiliation or ending a previously disclosed affiliation, enter the effective date below.

Add Affiliation (Effective Date \_\_\_\_ - \_\_\_\_ - \_\_\_\_)  End Affiliation (Effective Date \_\_\_\_ - \_\_\_\_ - \_\_\_\_)

**5) Disclosure of Affiliated Business Arrangement (Continued)**

Yes  No  Is the Affiliated Business Arrangement with a publicly traded entity?

If yes, please complete Section 4 (a). If no, please complete Section 4 (b).

**Section 5 (a):** Please identify publicly traded company name and corporate name:

\_\_\_\_\_  
(Company Name) (Corporate Name) (Company Symbol, if applicable)

**Section 5 (b):** Complete the name, occupation, and employer of each owner, director, partner, officer, and/or member of the Affiliated Business. (If needed, please provide an addendum disclosing all directors, partners, officers or members of AFBA)

\_\_\_\_\_  
(Name) (Occupation) (Employer)

**6) Original Signature (This form must be signed by the individual applicant/licensee. For agency licenses, this form must be signed by a company officer.)**

\_\_\_\_\_  
(Print Signature) (Date)

\_\_\_\_\_  
(Signature) (Title if Company Officer)

# Agendas



## Title Insurance Producer Licensing Working Group Meeting Agenda

Wednesday, January 14, 2015  
2:00-3:30 p.m.

1. Group Introductions
2. Commissioner Salazar's Opening Remarks
3. Review the Meeting Schedule and Housekeeping
4. Group Goals - Generally
5. Group Objectives - for this meeting
  - a. Brief Producer Licensing Overview and Handout
  - b. Discuss today's objectives
6. Talk about any Additional Issues
7. Receive comments from the public (last 15 minutes of meeting)





**COLORADO**

Department of  
Regulatory Agencies

Division of Insurance

Marguerite Salazar  
Commissioner of Insurance

## Title Insurance Producer Licensing Working Group Meeting Agenda

Wednesday, January 28, 2015  
2:00-3:30 p.m.

1. Bill, Dave, and Neil discuss progress on AfBA form  
[15 minutes maximum - 2:00-2:15 p.m.]
2. Discuss next steps for:
  - a. Pre-licensing education; and  
[25 minutes maximum - 2:15-2:40 p.m.]
  - b. Continuing education  
[25 minutes maximum - 2:40-3:05 p.m.]
3. Talk about any additional issues  
[10 minutes maximum - 3:05-3:15 p.m.]
4. Receive comments from the public (last 15 minutes of meeting)  
[15 minutes maximum - 3:15-3:30 p.m.]





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Commissioner of Insurance

## Title Insurance Producer Licensing Working Group Meeting Agenda

Wednesday, February 11, 2015

2:00-3:30 p.m.

1. Presentation concerning options available to title producers  
(for example, E&O, Fidelity bond, Surety bond, Cyber security, etc.):

Mike Dribnak, The Wright Group

Jerome Magana, Select Specialty Insurance Services

[45 minutes - 2:00-2:45 p.m.]

2. AfBA form - "final" draft to be distributed for comments  
Thank you Bill, Dave, and Neil

[20 minutes - 2:45-3:05 p.m.]

3. Talk about any additional issues

[10 minutes maximum - 3:05-3:15 p.m.]

4. Receive comments from the public (last 15 minutes of meeting)

[15 minutes maximum - 3:15-3:30 p.m.]

Q: Can the Division use something like face time for meetings?

A: Google hangouts is available via laptops with a camera.

Q: In Colorado, does an individual who fails to pass an examination have to wait a certain period of time before retaking the failed examination?

A: No.





**COLORADO**

Department of  
Regulatory Agencies

Division of Insurance

Marguerite Salazar  
Commissioner of Insurance

## Title Insurance Producer Licensing Working Group Meeting Agenda

Wednesday, February 25, 2015  
2:00-3:30 p.m.

1. a. Discuss presentation from brokers Mike and Jerome about options available to title producers  
b. Talk about capital requirements for new agencies  
[30 minutes - 2:00-2:30 p.m.]
2. "Who needs to be licensed?" Discuss document.  
[35 minutes - 2:30-3:05 p.m.]
3. Discuss any additional issues  
[10 minutes maximum - 3:05-3:15 p.m.]
4. Receive comments from the public (last 15 minutes of meeting)  
[15 minutes maximum - 3:15-3:30 p.m.]

- 
- Q: Does the Division intend to remove Section 8 from Regulation 3-5-1?

A: Yes, but not at this time. Future legislation may impact its content and moving forward at a later date saves everyone the time and effort of going through this process twice.

- Note: The revised AfBA form is on the Division website. Thank you for your work on this.

