



COLORADO

**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

2020



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**Department of
Regulatory Agencies**

Division of Insurance

Michael Conway
Commissioner of Insurance

January 15, 2021

Dear Committee Members,

I am pleased to submit the 2020 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 2020. 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,

Michael Conway
Commissioner of Insurance



Title Insurance Enforcement Actions, Market Trends and Consumer Complaints

2020

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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 2020:

- 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 six title agencies that allowed their licenses to lapse or cancelled their licenses in Colorado during 2020. 380 title insurance agencies currently hold insurance producer licenses;
- The Division resolved 129 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
- The Title Insurance Commission (TIC) conducted four quarterly meetings during 2020 and discussed a variety of important title insurance topics.



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).

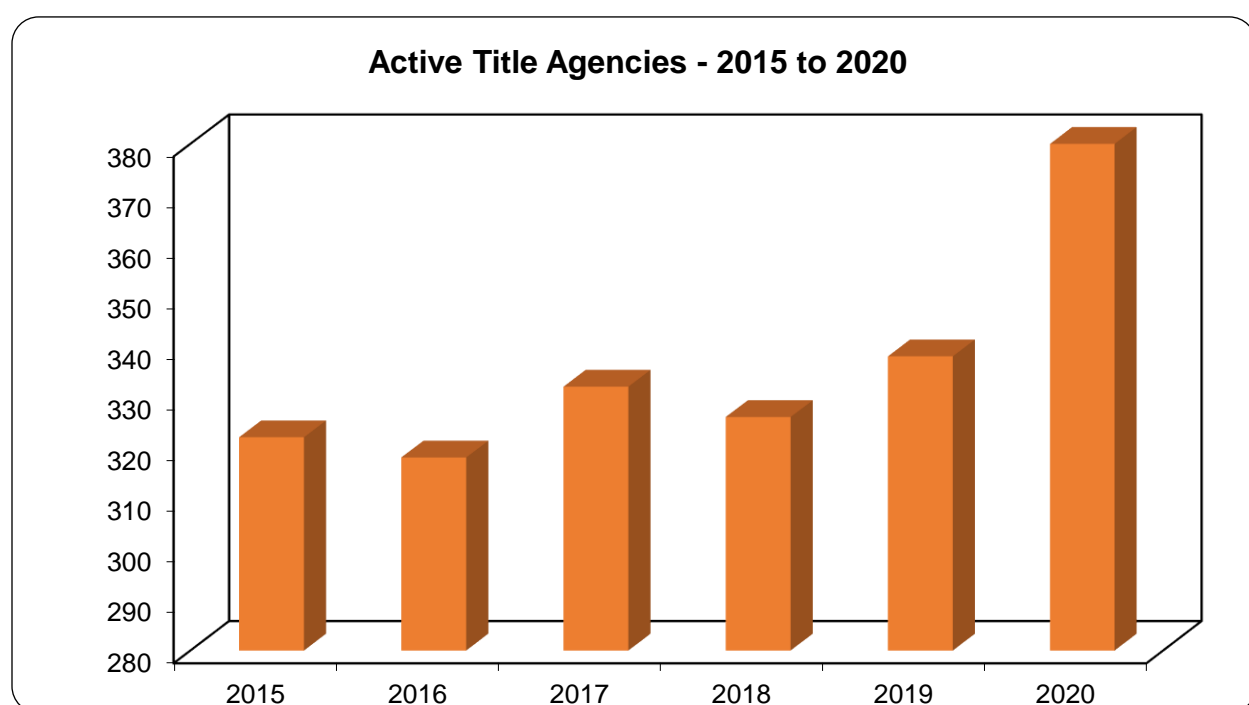
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.



Market Trends Associated with Title Insurance

Market Dynamics

Today, 380 title insurance agencies hold active Colorado insurance producer licenses; in 2015, there were 322 active title agencies. The data shows steady growth supported by a stabilized market during the last five years. The number of licensed title agencies remained steady with 318 in 2016. There was a slight increase in 2017 with 332 licensed agencies and a slight dip in 2018 with 326 licensed agencies. In 2019 there were 338 licensed title agencies with an additional 46 agencies becoming licensed in 2020.

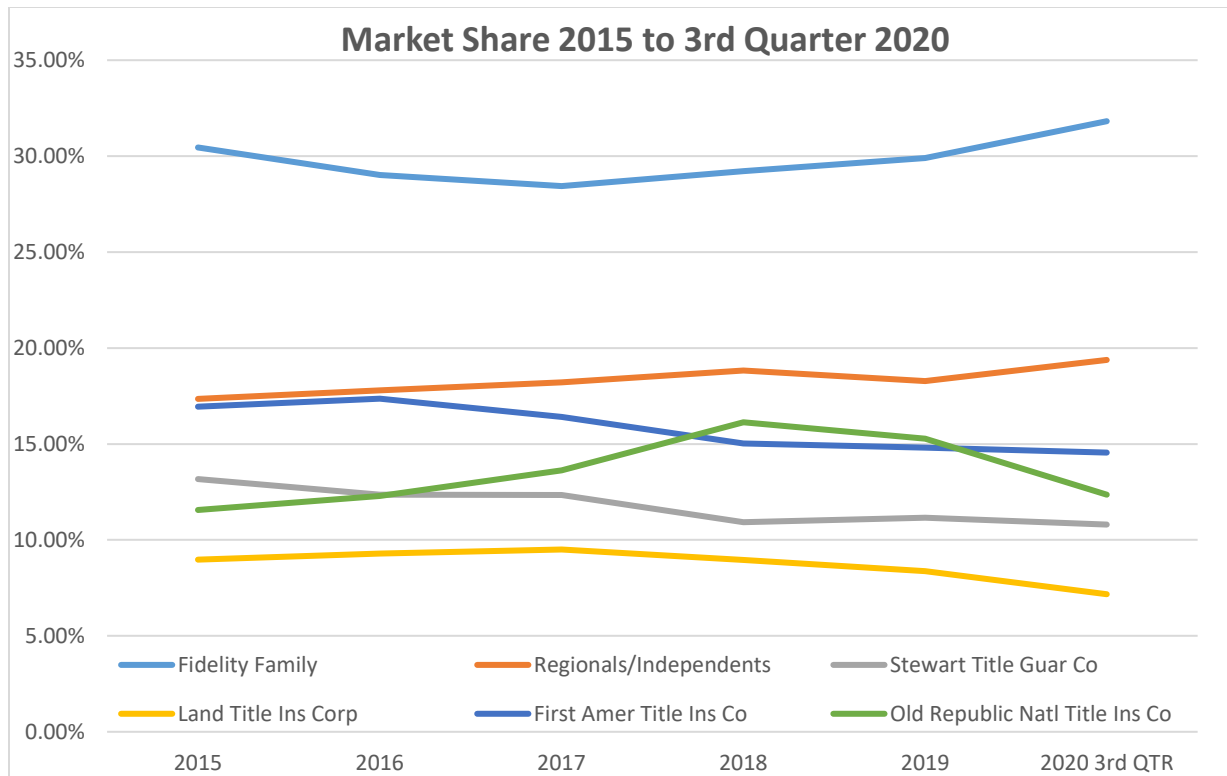


In addition to regulating title insurance entities, the Division of Insurance regulates the activities of individual title insurance producers. Currently, 3,031 individuals hold title insurance producer licenses in Colorado.

Title Insurance Underwriters

Overall, 2020 data shows continued growth in the marketplace. Some large underwriters experienced modest or marginal growth in market share while others remained stable.





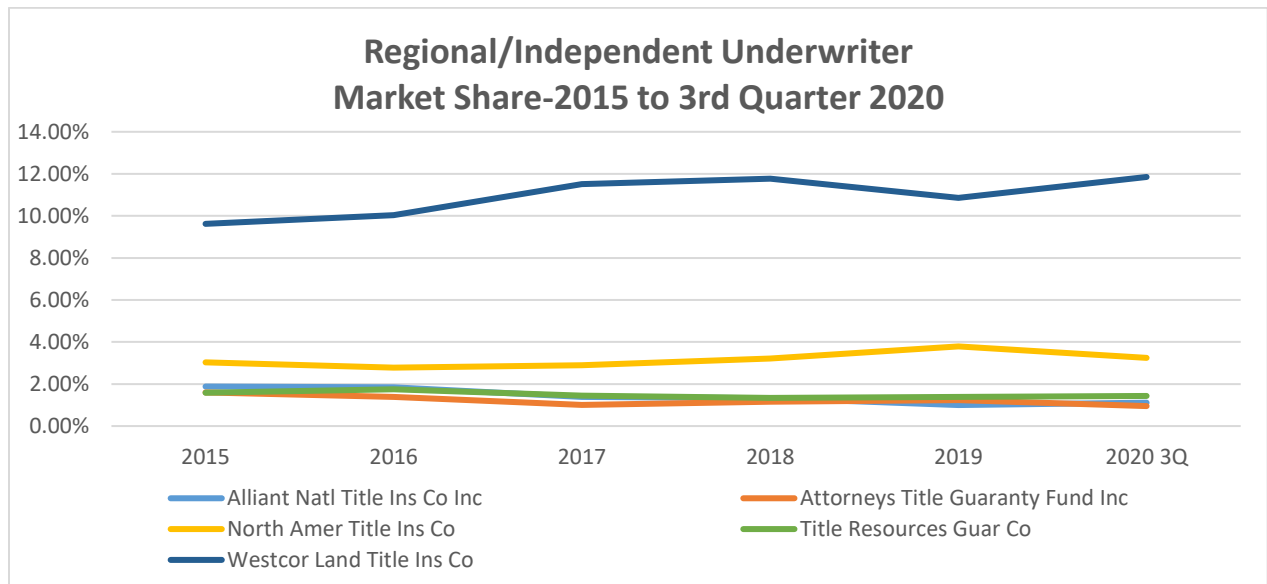
As the graph above shows, Colorado's group of regional/independent underwriters' market share remained steady. The title industry's approximate market share analysis from 2015 to third quarter 2020 includes the following:

| Market Share | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 3Q |
|--|--------|--------|--------|--------|--------|---------|
| Fidelity Family | 30.45% | 29.02% | 28.44% | 29.21% | 30.09% | 31.82% |
| Regionals/Independents | 17.35% | 17.79% | 18.21% | 18.82% | 18.32% | 19.38% |
| First American Title Insurance Company | 16.95% | 17.36% | 16.41% | 15.02% | 14.82% | 14.55% |
| Old Republic National Title Ins Co | 11.56% | 12.29% | 13.63% | 16.13% | 15.37% | 12.36% |
| Stewart Title Guaranty Company | 13.17% | 12.36% | 12.34% | 10.93% | 11.00% | 10.80% |
| Land Title Insurance Corporation | 8.98% | 9.29% | 9.50% | 8.96% | 8.39% | 7.17% |

Regional/Independent Underwriters

With seven companies continuing to compete for approximately 19 percent of the market, even small increases or declines in premiums can create volatility for Colorado's regional and independent title underwriters. As seen in the chart below, the market share picture of these regional companies reflects a changing marketplace, and the competitive environment each year can result in different leaders emerging.





Even with volatility in the market, Colorado's regional underwriters continue to control approximately 19 percent of the market, making Colorado one of the more competitive title insurance markets in the country. The regional/independent underwriters' approximate market share analysis from 2015 to third quarter 2020 includes the following:

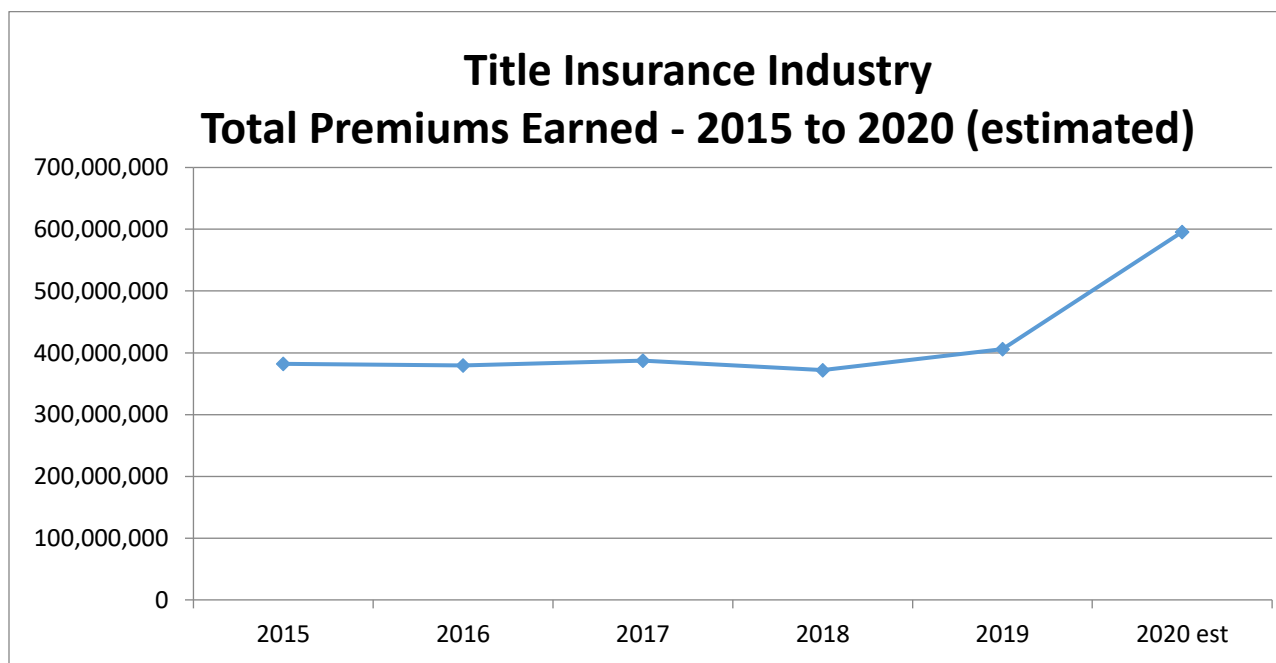
| Regionals/Independents | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 3Q |
|--|-------|--------|--------|--------|--------|---------|
| Alliant National Title Insurance Company | 2.02% | 1.84% | 1.38% | 1.33% | 1.00% | 1.12% |
| Attorneys Title Guaranty Fund | 1.59% | 1.38% | 1.00% | 1.16% | 1.24% | 0.95% |
| North American Title Insurance Company | 2.91% | 2.78% | 2.98% | 3.22% | 3.79% | 3.24% |
| Title Resources Guaranty Company | 1.42% | 1.75% | 1.45% | 1.34% | 1.38% | 1.44% |
| Westcor Land Title Insurance Company | 9.42% | 10.04% | 11.51% | 11.77% | 10.86% | 11.85% |
| Real Advantage Title Insurance Company | | | | | | 0.28% |
| First National Title Insurance Company | | | | | | 0.49% |

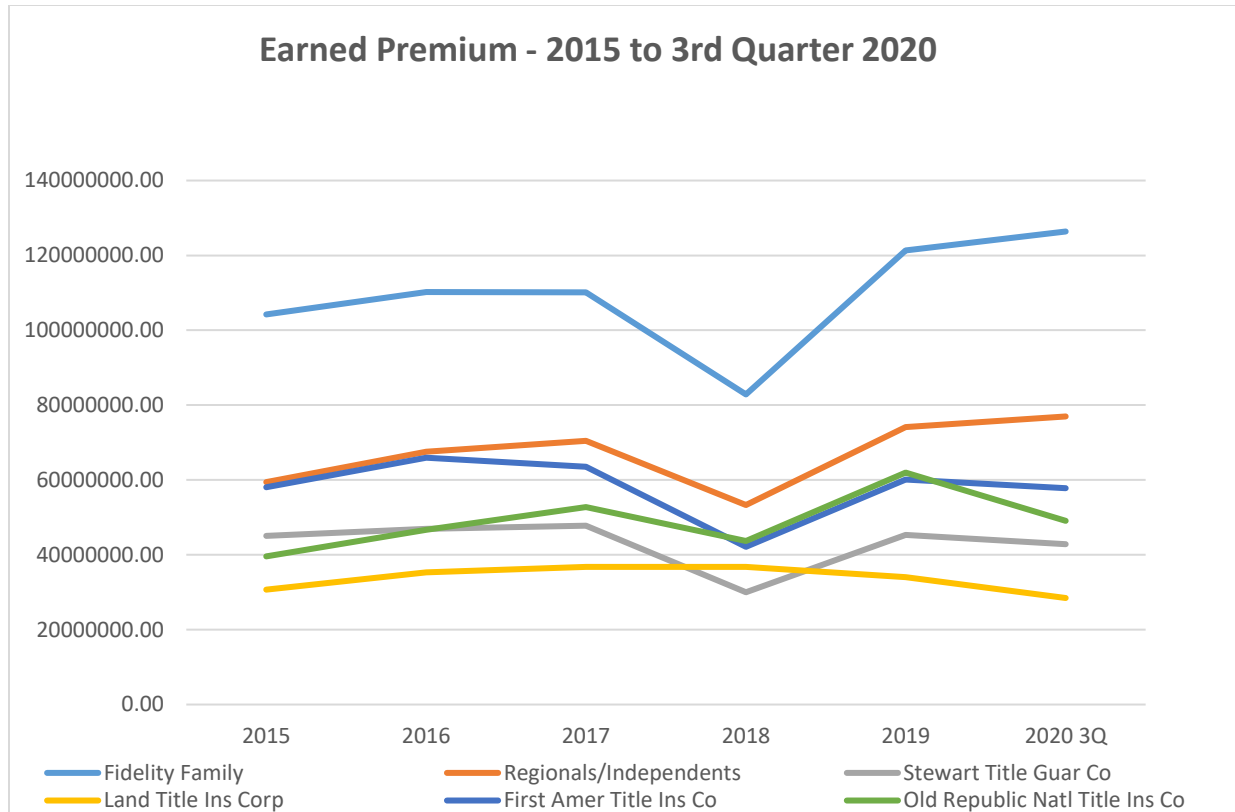


Title Insurance Losses

The title insurance industry experienced high losses as a result of the housing collapse. As the economy recovered, premium earnings and market growth increased and losses returned to their historic range of three to five percent.

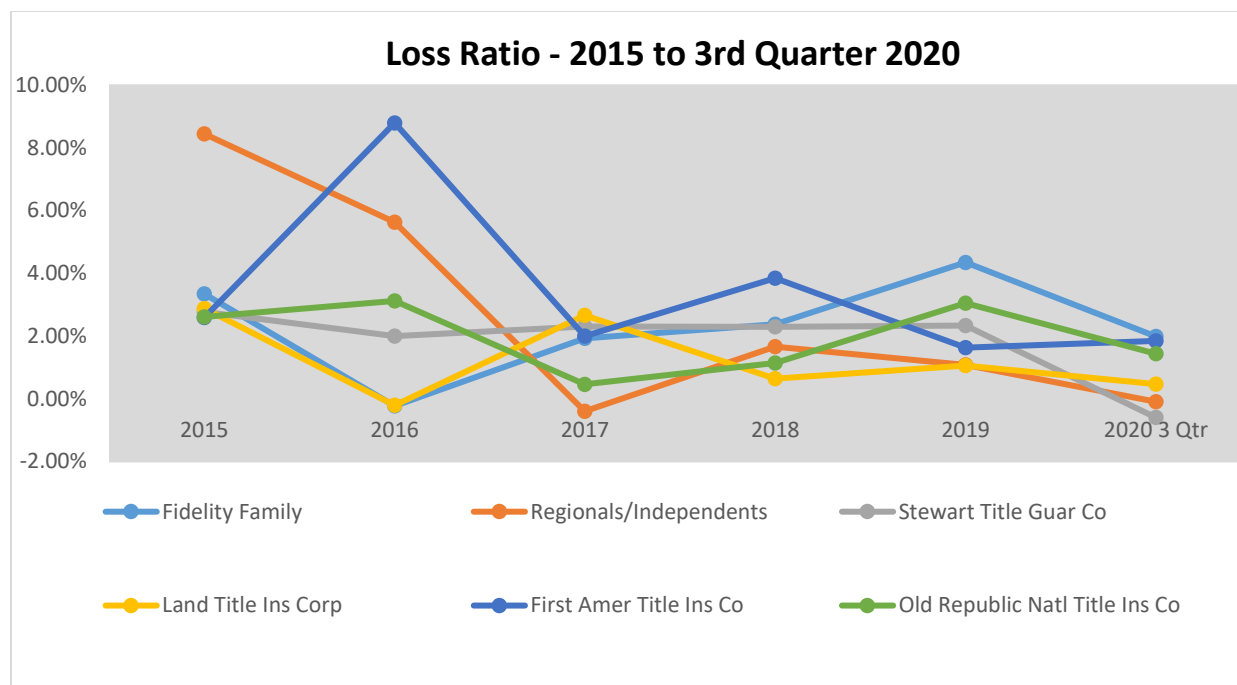
With the recovery of the real estate market in Colorado, title insurance premiums have remained stable from \$382 million in 2015 to \$405 million through 2019. As a result of a robust real estate market throughout 2018-2019, the first three quarters of 2020 reflect continued market growth with approximately \$397 million in total premiums and approximately \$198 million projected premiums representing the balance of 2020.





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 on the following page is an estimate based on those numbers.





Although some of Colorado's regional/independent and large underwriters experienced decreases in loss ratio during the past five years, the overall steady decline in title insurance losses since the housing collapse continues to demonstrate a sound market. It can be extrapolated that this market constancy will continue into 2020. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.

Enforcement Actions

Enforcement Activity

The 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 can result in the assessment of fines, license revocations, civil restitution, and stopping unauthorized insurance business.

The Producer Enforcement unit investigated matters concerning industry standards of conduct, marketing activities, consumer protections, and fiduciary duties which comprised the majority of the Division's opened and closed title investigations in 2020.

The Division took one enforcement action during 2020 and closed three investigations resulting in warnings issued to the title insurance producer. The enforcement action taken by the Division resulted in a civil penalty of \$6,000.00 for failure to perform an adequate exam of the public records prior to the issuance of a title insurance policy which resulted in a title insurance claim for the affected consumer. The enforcement action was reported to the National Association of Insurance Commissioners (NAIC).



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 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 collaborates 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.

Enforcement actions can be reviewed via the Division's website at:
<https://doi.colorado.gov/for-consumers/consumer-protection/disciplinary-actions/agent-producer-and-agency-disciplinary>.

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. Market conduct examinations review company operations and management, producer licensing, sales and marketing, underwriting, rating, and claims.

The Market Regulation Section initiated an exam in 2019 that is ongoing as of December 31, 2020. Two other exams are in process; it is anticipated both will conclude in the first quarter of 2021. Upon conclusion of those exams, another will get underway.

Common examination findings include, but are not limited to:

- Unlicensed producers;
- Charging consumers incorrect rates and fees;
- Use of generic exceptions on an owner's title insurance commitments and policies;
- Improper documentation of files; and
- Failure to timely remit premiums.

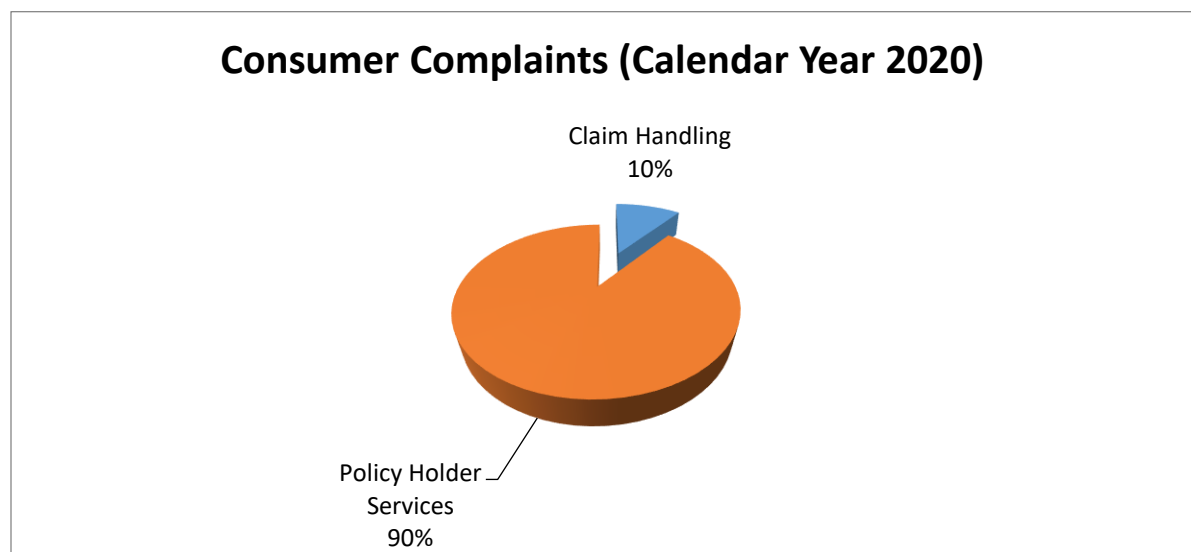
Market conduct examination reports and final agency orders can be reviewed via the Division's website at: <https://doi.colorado.gov/for-consumers/consumer-protection/disciplinary-actions/market-conduct-examinations>.



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 2020, the Division handled approximately 19 consumer complaints on title insurance. The complaints include a variety of title insurance related topics including, but not limited to, real estate closing and escrow fees and charges, delay or denial of title insurance claims, and compromised consumer and business emails (email scams). These complaints are categorized into the following two areas.

The first area is Claims Handling and includes approximately 2 consumer complaints and is broken down into the following subcategories:

- denial of claim (1)
- delay of claim (1)

The second area is Policy Holder Services and includes approximately 17 consumer complaints and is broken down into the following subcategories:

- delays/no response (4)
- state specific (11)
- payment not credited (1)
- policy delivery (1)

The “State Specific” code is used when a complaint reason does not fit in any of the other categories. Escrow and closing related complaints often fall under the “State Specific” code.



Compliance Activities - Industry Outreach and Education

In 2020, the Division focused on identifying potential problems in the title insurance industry and addressing them directly. Generally, a compliance contact is a contact with a title insurance company, agency, producer or consumer outside of an investigation or consumer complaint, in which some question of rules or issues in the industry are discussed or resolved. In 2020, the Division handled 129 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.

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 its website to ensure 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.

In 2020, the Division renewed 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.

Title Insurance Regulation Performance Audit

In the fall of 2018, the Colorado Office of the State Auditor initiated a Title Insurance Regulation performance audit of the Department of Regulatory Agencies and issued a report that included audit findings and recommendations.

The performance audit identified four specific areas for improvement concerning internal controls and procedures in the reviewing and processing of title insurance rate filings and potential conflicts of interest.



The four areas of concern include the following:

- Title Insurance Rate Filings
- Evaluating Title Insurance Rates
- Posting Rate Filing Summaries
- Conflict of Interest

As a result of the audit findings and recommendations, the Division clarified and provided specific requirements for the justification of new or amended title insurance rates in Colorado Insurance Regulation 8-1-1. Additionally, the Division implemented internal rate review processes to provide uniform guidance for the title insurance rate analyst in the performance of reviewing and processing title insurance rate filings.

Re-promulgated Colorado Insurance Regulation 8-1-1 became effective August 15, 2020, and the Legislative Audit Committee concluded the audit on September 22, 2020.

Title Insurance Commission

The Title Insurance Commission (TIC) is an advisory body to the Commissioner of Insurance concerning matters of title insurance. The TIC is tasked with proposing, advising and recommending rules, bulletins and position statements and establishing additional consumer protections, all of which are subject to the approval of the Commissioner.

The TIC conducted four quarterly meetings during 2020. They discussed a variety of important title insurance topics including, but not limited to, closing protection letters, unauthorized insurance business, wire fraud and the legislative audit on title insurance. The TIC did not recommend any specific consumer protections this year.

TIC meeting agendas, minutes and all correspondence between the Division and the TIC are posted on the Division of Insurance web page at DORA.Colorado.gov/insurance.

Miscellaneous Activities

Below are some ways in which the Division communicates with the title insurance industry, including fostering an open and productive relationship.

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) is a trade organization for the title insurance industry in Colorado. It provides education to the industry and consumers, and works closely with legislators and regulators regarding issues facing the industry. The Division meets with LTAC on a recurring basis throughout the year.

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.

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

Consumer protection is our mission.

