



Dora

Department of Regulatory Agencies

Annual Report of the Commissioner of Insurance

to

The Colorado General Assembly

on

Title Insurance Enforcement Actions, Market Trends, and Consumer Complaints

2008

January 1, 2009





Dora
Department of Regulatory Agencies

Division of Insurance
Marcy Morrison
Commissioner of Insurance

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive
Director

January 1, 2009

Dear Committee Members,

I am pleased to submit the 2008 Annual Report of the Commissioner of Insurance on Title Insurance pursuant to §10-3-207(1)(f)(IV), C.R.S. This year's report provides data on the number of enforcement actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints concerning title insurance for the calendar year 2008. Also included, where appropriate, are comparisons of prior years.

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

Sincerely,

Marcy Morrison
Commissioner of Insurance



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Executive Summary

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

In 2008, the Division of Insurance:

- Took 15 enforcement actions against title insurance entities (insurers, agencies, and individual producers). This is a significant increase over prior years: four actions were taken in 2007, and two in 2006.
- Handled approximately 250 compliance and consumer contacts. These consist of both industry and consumer contacts with the Division of Insurance, and include answering questions, researching specific statutes or regulations, and handling complaints that do not necessarily result in posted enforcement actions (e.g., the slow payment of claims.)
- Prepared and analyzed comprehensive interrogatories (surveys) on all title insurers authorized in Colorado with an emphasis on insurer-agent relationship.
- Compiled an updated comprehensive market analysis of the title insurance industry in Colorado.
- Reviewed and analyzed seven years of self-audit reports from four title insurance companies regarding rate calculation errors discovered in past market conduct examinations. Developed a corrective intervention strategy and remediation plan that is expected to result in refunds of approximately \$300,000 to Colorado consumers in early 2009 for the years 2007 and 2008.
- Called a comprehensive market conduct examination of a title insurer. This examination encompasses analysis of operations/management, complaint handling, marketing, rating and premiums, claims, agency licensing, and agency relations/oversight. The examination will be completed in 2009.

Introduction and Statutory Authority

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

In 2007, the Colorado General Assembly passed Senate Bill 07-249, allocating two FTE (full-time equivalent) positions to the Division of Insurance (“Division”) for the regulation of the Colorado title insurance industry.

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 analysis of the enforcement and regulatory actions, market trend analysis, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.

Background

The Division conducted an extensive interview process to find and hire two full-time employees who possessed the expertise, experience, and knowledge necessary to fully implement the bill and to serve as experts in the field of title insurance.

Personnel

Samuel Humpert – Mr. Humpert began his position as Title Insurance Market Conduct Examiner on November 1, 2007. Mr. Humpert is a lawyer, licensed in Colorado, and has over 20 years experience in the title insurance industry. He also has a master's degree in business administration (MBA). In addition to his duties as a market conduct examiner, Mr. Humpert serves as the market conduct and compliance contact person for title insurers, and provides educational outreach to the industry, including presentations made to the Land Title Association of Colorado as well as agent education seminars for title insurers.

Andrew Helm – Mr. Helm joined the Division as a Title Insurance Analyst/Investigator for the Division's Compliance and Investigations section, and began his work on December 3, 2007. He has over 13 years of experience in the title insurance industry, holding positions ranging from records clerk to commercial title examiner, escrow officer, and company manager. In addition to his duties investigating title insurance agencies and serving as a compliance contact for the industry, Mr. Helm is the Division's liaison to the Title Advisory Council and serves as the Division's representative on the Interprofessional Committee of Lawyers and Realtors.

Market Trends Associated with Title Insurance

Title Insurance Losses

The title insurance industry has experienced 10 consecutive quarters in which premiums written declined from the prior year's equivalent quarter. Furthermore, each successive quarter's decline was greater than the previous quarter.

The trend continues into 2008, Colorado insurers wrote 20.64% less premium in the first quarter of 2008 and 23.81% less in the second Quarter. This accelerating descent of revenue is worsened by a dramatic increase in claims.

A loss ratio is total claims losses divided by total premiums. As shown below, it took nine years for the Colorado loss ratio to double. It then more than doubled in the next three years. It is on the verge of doubling again; the loss ratio for the first half of 2008 is 15.23%.

Year	1995	1999	2004	2006	2007
CO Claims Ratio	1.8%	2.5%	3.6%	5.75%	8.16%
Return on Equity	3%	N/A	23%	12.67%	-.78%

The fallout has been both large and personal. Since the beginning of 2007, numerous people have lost their jobs in the title insurance industry. The region's largest agency network (Mercury Companies) filed bankruptcy – only the Colorado subsidiaries of the company survive today. The third largest title insurance holding company in the country, LandAmerica, filed bankruptcy and their title underwriters are in rehabilitation. Within the year 2008, LandAmerica stock went from \$55.00 per share to \$0.20.

Title Insurance and the Real Estate Market

The Colorado real estate market is healthier than most and that directly influences the state's title insurance market. The S&P Case-Schiller Home Price Index for the past 12 months shows property values much stronger here than other parts of the country.

City	Denver	Detroit	Los Angeles	Miami	Las Vegas	Phoenix
Decline in home value	-5.4%	-18.6%	-27.6%	-28.4%	-31.3%	-31.9%

Colorado is the 13th largest title insurance market in the country. One of our domestic insurers, Alliant Title Insurance, recently expanded by acquisition of Mason Title Insurance Company, domiciled in Florida. Title insurers operating in Colorado remain solvent and supervised.

Market Concentration

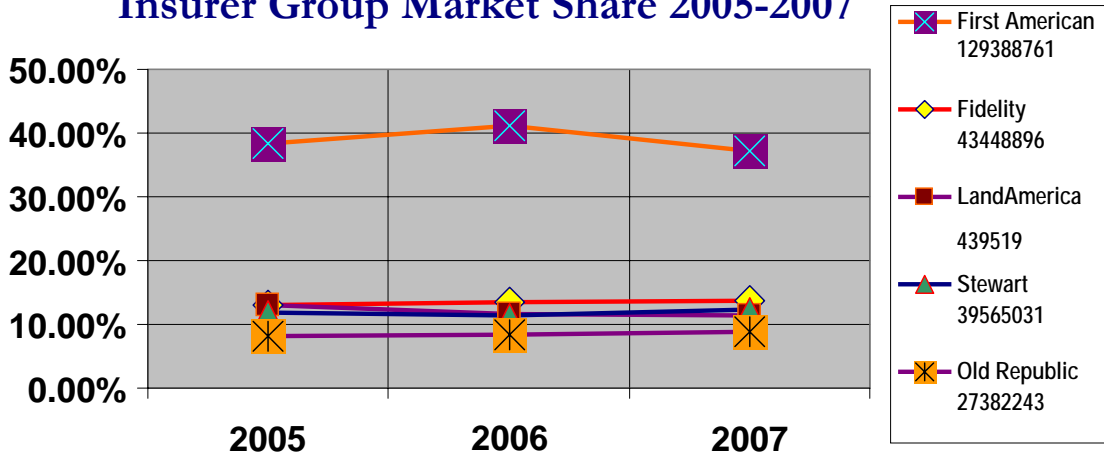
Growing Market Concentration			
YEAR	ACTIVE COMPANIES	Colorado Volume	Top 5 cos. Market %
1996	15	154,703,346	64.6%
2006	22	324,848,850	70.5%
2007	23	302,792,696	70.52%

Title insurance market dynamics are a paradox; the market is both highly concentrated and highly diverse. At the underwriter level, the industry is highly concentrated – there are five insurer groups, or groups of title insurance companies under common corporate ownership, which account for about 90% of the title policies around the country. Those five insurer groups accounted for 86% of the Colorado title policies in 2006 and 83.4% in 2007. The balance of the market is shared by nine independent title underwriters.

Looking ahead to 2009, the dynamics of the title insurance market are expected to change drastically. This change will be most apparent in the structures of the five insurer groups, with LandAmerica exiting as an independent group.

This market type requires close monitoring for anticompetitive actions that may harm smaller, independent underwriters. The dominant companies also require regulatory attention to policyholder service, claims response, agency oversight, rate practices and marketing.

Insurer Group Market Share 2005-2007



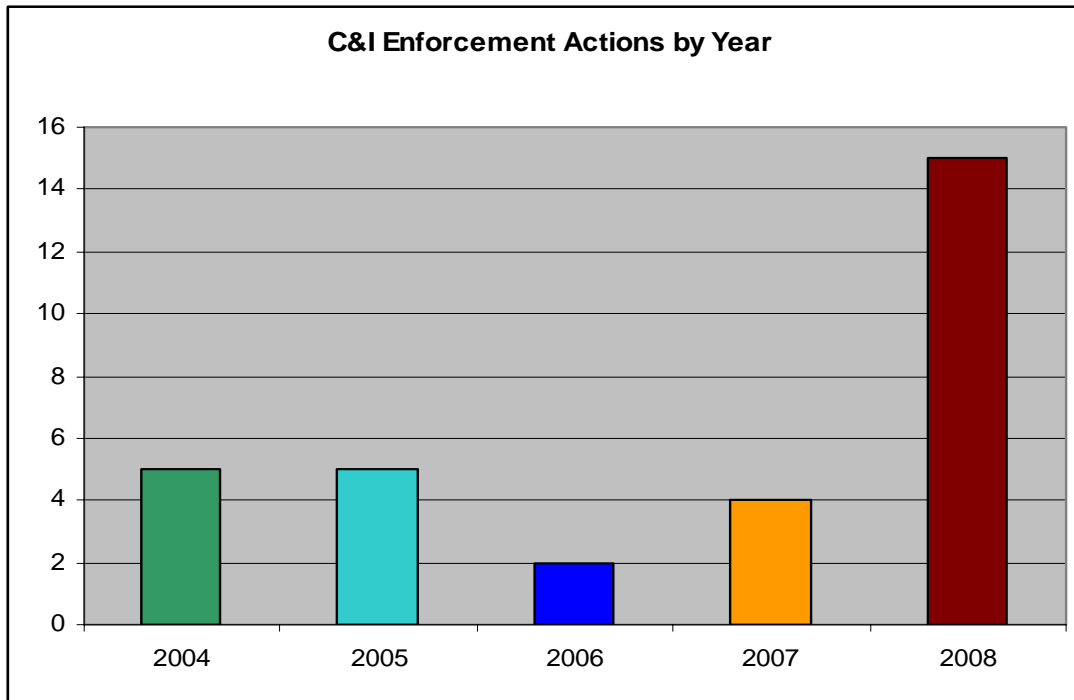
Enforcement Actions

Investigations Activity

The Compliance and Investigations section of the Division takes enforcement actions against regulated entities and licensed insurance producers after an investigation into violations of 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.

In 2008, the Division took fifteen regulatory enforcement actions against title insurance entities. In 2007 the Division took four actions, and in 2006 there were two.

Of the fifteen enforcement actions taken, the Division collected fines in the amount of \$39,000, revoked five licenses, and issued one order to cease and desist.



Market Conduct Actions

The Market Regulation section of the Division researches and develops analysis, researches issues associated with the overall title insurance market in Colorado, and performs market conduct examinations of title insurance underwriters. Market regulation accomplishments for 2008 include:

- Created the Colorado Title Insurance Market Conduct Examination Manual.
- Reviewed and analyzed seven years of self-audit reports from four title insurance companies regarding rate calculation errors discovered in past market conduct examinations. Based on these self-audit reports, the Division developed a corrective intervention and remediation plan that is expected to result in refunds of approximately \$300,000 to Colorado consumers for the years 2007 and 2008 (payable in 2009).
- Prepared and analyzed comprehensive data surveys for all title insurers authorized in Colorado with an emphasis on insurer-agent relationships and financial analysis. The survey provided data for an updated market analysis of the title insurance industry in Colorado.
- Called a comprehensive market conduct examination of a title insurer, which is currently in progress. This examination encompasses analysis of operations/management, complaint handling, marketing, producer licensing, policyholder services, underwriting and rating, claims, escrow, settlement, closing funds, agency licensing, and agency relations, with a completion goal of early 2009.

Consumer Complaints and Compliance Activities

Consumer Complaints

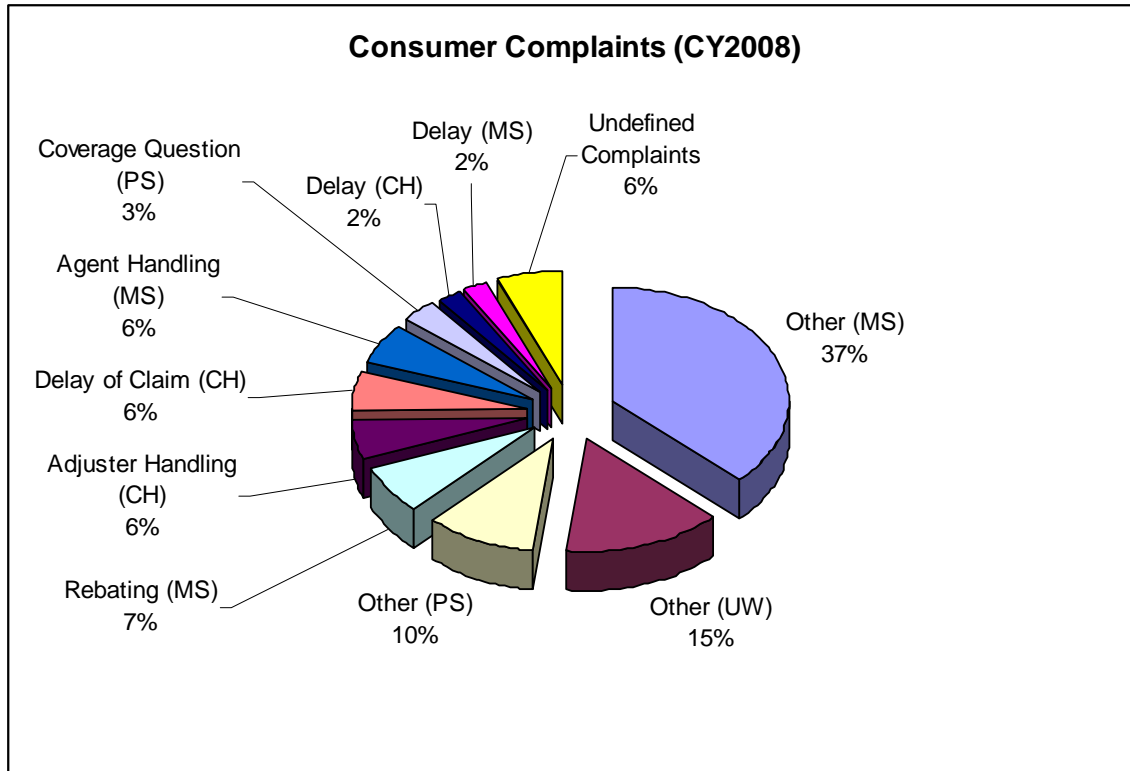
Title Insurance is a unique line of insurance. Because of this, the issues raised in title insurance complaints cannot be easily categorized into the coding scheme used for all other lines of insurance.

Top Ten Title Insurance Complaint Reasons (by fiscal year)					
		2004-05	2005-06	2006-07	2007-08
1	Other (MS)	30%	11%	13%	26%
2	Coverage Question (PS)	23%	66%	45%	20%
3	Other (PS)	10%	4%	4%	10%
4	Other (UW)	--	2%	1%	8%
5	Claims Delay (CH)	3%	4%	3%	7%
6	Agent Handling (MS)	10%	2%	4%	6%
7	Rebating (MS)	3%	--	--	5%
8	Denial of Claim (CH)	--	--	7%	4%
9	Adjuster Handling (CH)	--	--	--	3%
10	Delay (MS)	--	--	--	3%
	Total	79%	89%	77%	92%

Note: UW signifies that the reason falls under the Underwriting category; CH is Claims Handling; PS is Policyholder Services; and MS is Marketing and Sales.

Examples of “Other” complaints for Marketing and Sales in title insurance (the top reason code above) include earnest money disputes and rate disclosure issues. In the Policyholder Services category, “Other” (number 3 above) includes an agent’s failure to follow written closing instructions and failure to timely release deeds of trust or other liens. Underwriting “Other” (number 4 above) complaint reasons encompass errors in the search and examination process (failure to find pre-existing liens or encumbrances) and issuing title without fully disclosing impairments of record to consumers.

As shown by the charts above and on the next page, the number of consumer complaints regarding issues such as earnest money disputes increased from fiscal year 06-07 into fiscal year 07-08, and have continued this upward trend through the 2008 calendar year. Complaints on Underwriting issues and Rebating have also increased during the year 2008, while Coverage Questions have decreased.



Compliance Activities – Rate and Fee Filing Project

A large focus in 2008 was to identify potential problems in the title insurance industry and try to contain or correct the issues before receiving complaints. Generally, a compliance contact is considered contact with title companies or agencies outside of an investigation, and in which some question of rules or issues in the industry is discussed or resolved. In 2008, there were over 250 compliance contacts.

A major collaborative compliance project accomplished in 2008 involved identifying agencies without filed schedules of fees and charges (as required by statute.) The Market Regulation section and the Compliance and Investigations section worked together to identify title insurance underwriters who did not have closing and settlement fees on file for their agents, and then to identify which of their agents did not individually have closing and settlement fees on file. Letters were sent to both underwriters and agencies informing them of their responsibility to file fees (or, in the underwriters' case, their responsibility to ensure their agents filed the fees), and provided instructions on how to file them.

While not releasing the agencies from liability should a complaint be received, this rate and fee filing project ensured that a larger percentage of the industry is in compliance with Colorado insurance laws and regulations, and to decrease the likelihood of multiple violations during an investigation. Agencies and underwriters still not in compliance will likely be the subject of further enforcement actions in 2009.

Miscellaneous Activities

Often, trade organizations and committees make up primary contacts with the industry. The Division makes every effort to encourage and foster communication and maintain open and productive contact with the title insurance industry. The summaries below detail who these groups are and their primary focus.

Title Advisory Council: The Title Insurance Advisory Council (the Council) was formed by the Division in 2004. The mission of the Council is to provide the Division of Insurance with insight and advice regarding the promotion of fair competition and regulatory compliance within the Colorado title insurance industry. Recently, the Council formed a subcommittee that has been tasked with developing and recommending best practices for the industry. Andy Helm serves as the Division liaison on the Council.

Interprofessional Committee of Lawyers and Realtors: 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), and the Colorado Division of Real Estate. Andy Helm serves on the committee as a representative of the Division.

Land Title Association of Colorado (LTAC): The Land Title Association of Colorado (LTAC) is a trade organization for the title insurance industry in Colorado. It provides education to the industry and consumers, and works closely with legislators and regulators regarding issues facing the industry. Sam Humpert attended LTAC's fall convention in Vail, and gave a presentation concerning his market analysis of Colorado title insurance.

Educational seminars: Sam Humpert and Andy Helm have prepared presentations dealing with the current state of the Colorado title industry and regulatory issues facing the industry. This seminar has been presented so far to the agency groups of two title insurance underwriters. Sam has prepared a class on statutes and regulations for LTAC and Sam and Andy have been invited to make a presentation to the Colorado Certified Closers.

Looking Ahead

2008 was an interesting year for the Colorado title insurance industry – with multiple closures and bankruptcy of agents and insurers alike, and a down real estate market in which to conduct business. In 2009 it will be important to maintain a close regulatory eye on the industry.

The focus for 2009 will continue to be on partnering and working with the title insurance industry, answering questions on regulatory compliance, continued market analysis and regulation, taking enforcement actions when necessary, and a strong emphasis on consumer outreach, education, and protection.

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.

