



**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**

**2009**

**January 1, 2010**





**Division of Insurance**  
Marcy Morrison  
Commissioner of Insurance

Bill Ritter, Jr.  
Governor

Barbara J. Kelley  
Executive Director

December 22, 2009

Dear Committee Members,

I am pleased to submit the 2009 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 conduct actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints concerning title insurance for calendar year 2009. 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



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

**2009**

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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 2009:

- The Division of Insurance (“Division”) reviewed and analyzed seven years of self-audit reports from four title insurance companies regarding rate calculation errors identified in past market conduct examinations. The Division and the companies developed a remediation plan that resulted in refunds of approximately \$393,000 to Colorado consumers.
- The Division handled approximately 300 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.)
- The Division served all authorized title insurers in Colorado with comprehensive interrogatories (surveys), with an emphasis on insurer/agent relationships and claims handling/loss ratios.
- Colorado saw the closure of at least 59 title agencies. The current closure rate for title agencies is approximately 54% for a ten-year period.
- The Colorado title insurance industry continued to experience lower earnings, with five consecutive years of declining premium earnings – and a 57% drop over the past four years.

## **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 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.

### **Personnel**

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

**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 14 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.

In August 2009, the second employee funded by SB07-249 resigned from the Division to pursue other opportunities. The Division is currently conducting an extensive search and interview process to find and hire an employee who possesses the expertise, experience, and knowledge to serve as an additional expert in the field of title insurance market regulation. The Division will fill this position in January 2010.

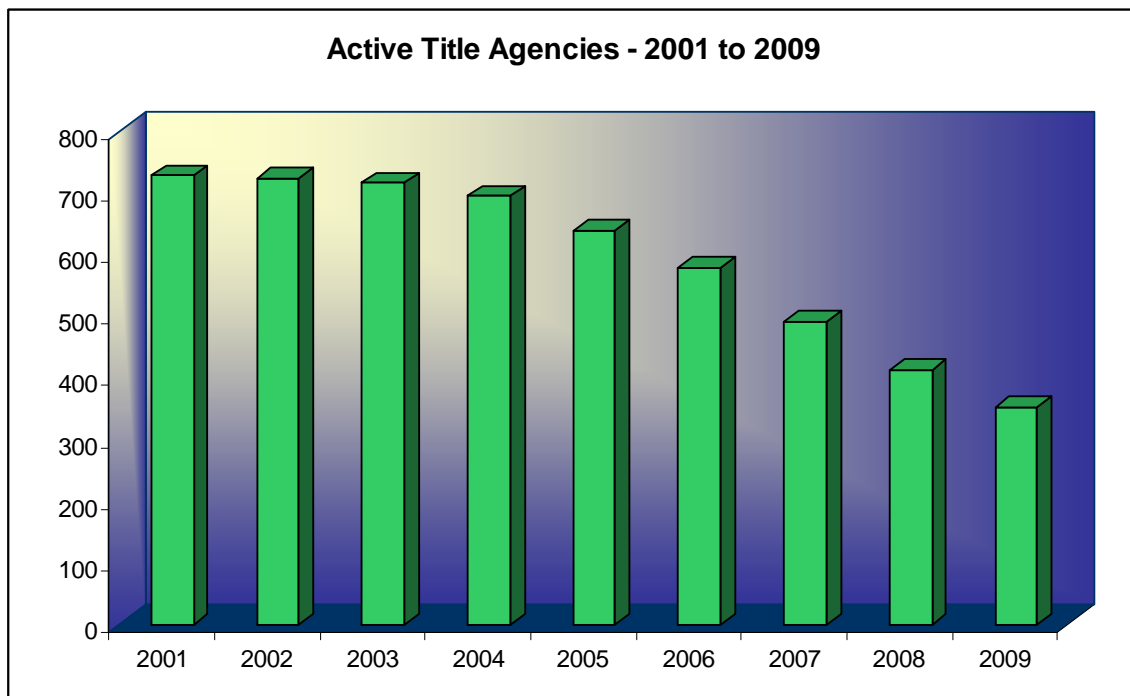
## Market Trends Associated with Title Insurance

### Market Dynamics

The Colorado title insurance industry experienced many changes in 2009. In the past few years, the number of active title agencies has dropped significantly, as did the number of active title insurance underwriters. While a large number of company closures often indicate an increasing market concentration, the reverse has apparently proven true in 2009, with market share more evenly spread among the competitors. However, the full extent of these closures will not be realized until mid-2010, as the economy improves and the dust of more recent changes settles.

### *Title Insurance Agencies*

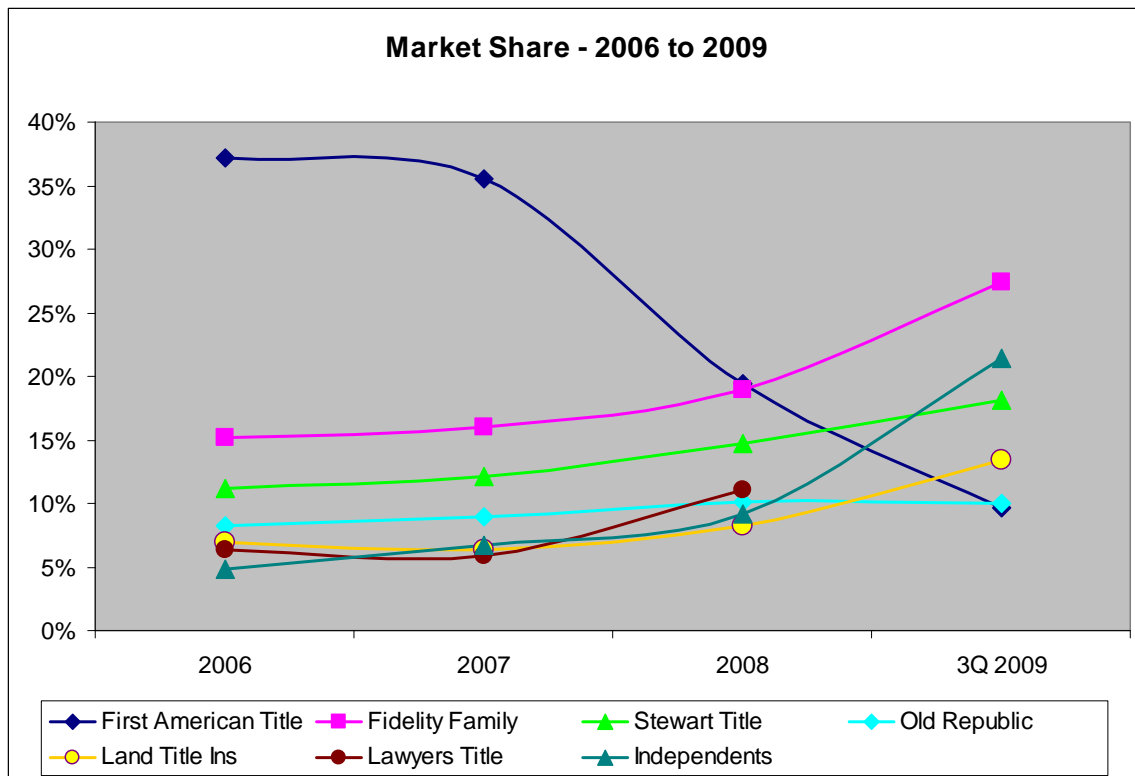
Today, there are 356 title agencies that hold active Colorado insurance producer licenses; in December 2004, there were 715 active title agencies. It is not certain how many currently active licensees have shut their doors without notification to the Division, but 2010 is anticipated to see further declines in the number of licensed title agencies.



This chart shows the number of active title agencies by year since 2001. While the number of closures since 2007 is starting to decline, it is important to note that by 2007 there were far fewer title agencies in the market than 2004, therefore even a declining number of closures still results in significant increases in market concentration.

## Title Insurance Underwriters

For title insurance underwriters, 2009 was a year of major upheaval in the marketplace. The Fidelity National family of companies acquired LandAmerica, a major national underwriter. Another acquisition, the Mercury Companies, completed its transition to Fidelity, eliminating a major source of income for First American Title Insurance Company. While these two acquisitions were initially expected to provide a strong boost to Fidelity's market share, the changes actually yielded a surprising level of renewed competition among underwriters.



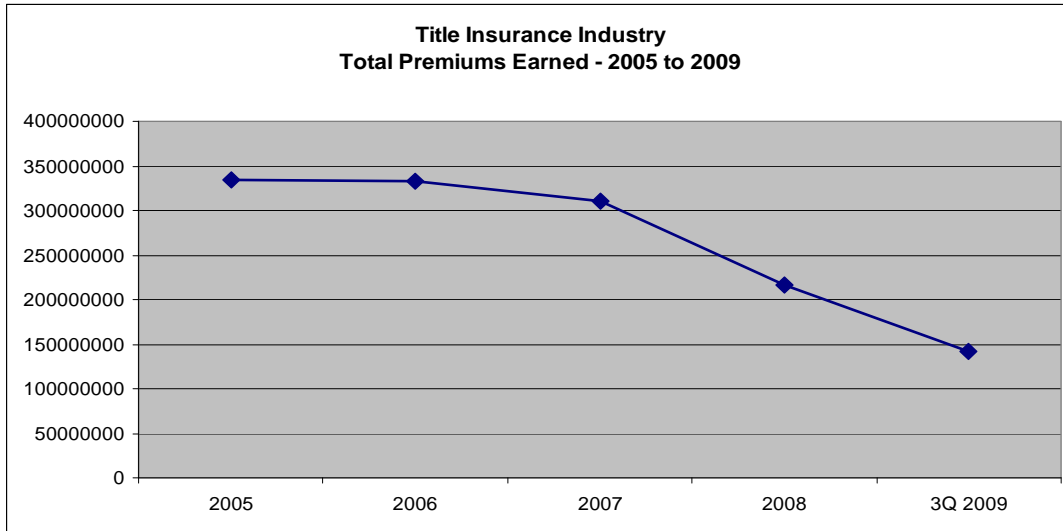
As the graph above shows, while the loss of the Mercury Companies appears to have severely affected First American's market share, the difference has been spread fairly equally across the industry.

The title insurance industry is expecting changes that are even more dramatic in 2010. Two of the larger underwriters of small, independent agents – Southern Title Insurance Company and Dakota Homestead Title Insurance Company – have withdrawn from the Colorado market. This means a large number of title agencies are looking for underwriters, and will certainly result in further shifts in market share. In addition, some of those agencies may not be able to find a new underwriter, further depressing the number of active title agencies.

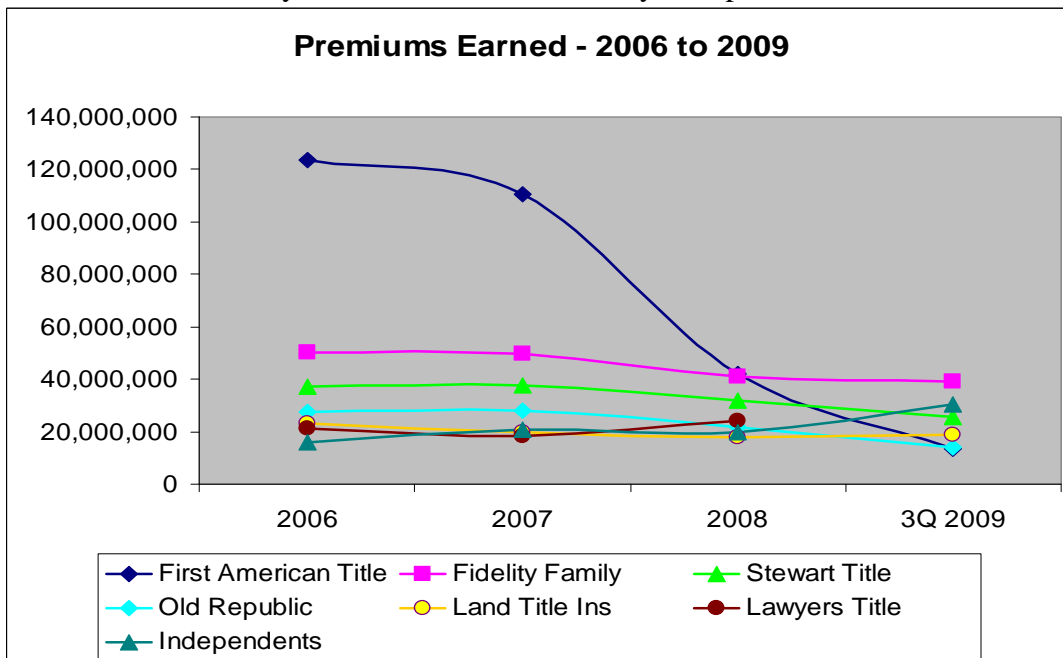
## Title Insurance Losses

The Colorado title insurance industry has now experienced five consecutive years in which premiums written declined. While the industry is beginning to see a leveling out of the drop in premiums, there is still a considerable volatility in the real estate market and potential for further losses for the industry.

From 2005 to 2009, title insurance premiums dropped 57%, from \$334 million a year to just over \$141 million at the end of the 3<sup>rd</sup> quarter of 2009.

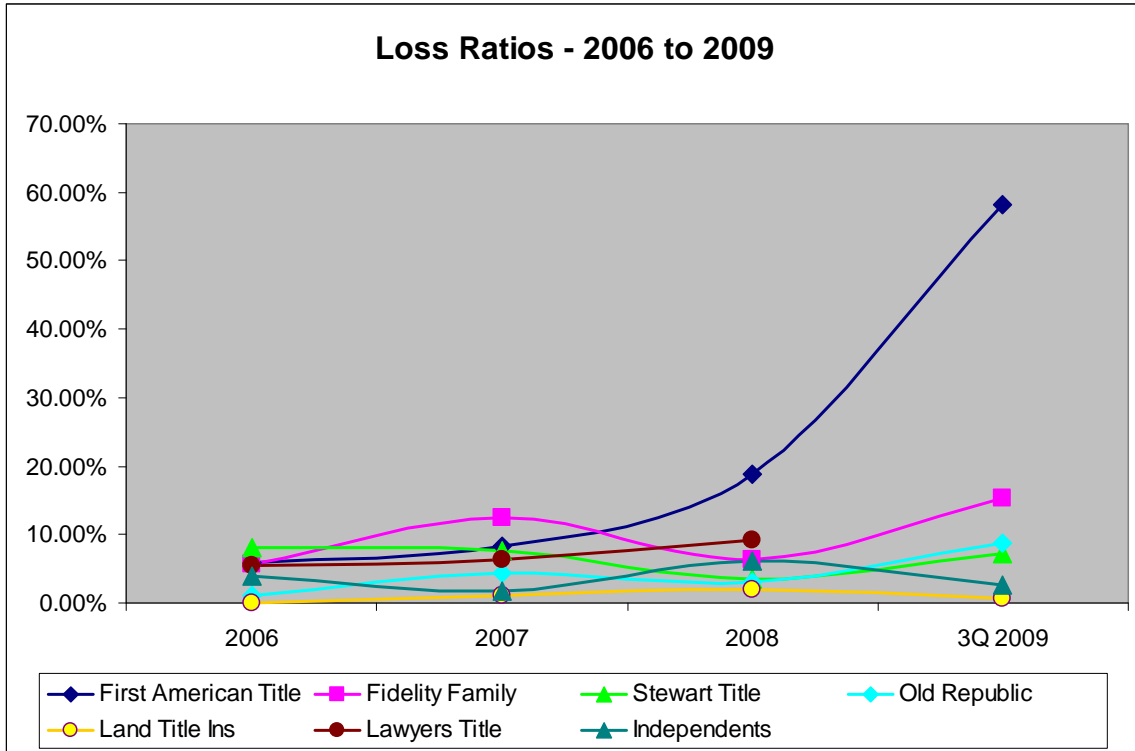


While the drop in premiums has been significant, First American Title has felt the brunt of the decline, due mainly to their loss of the Mercury Companies:





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



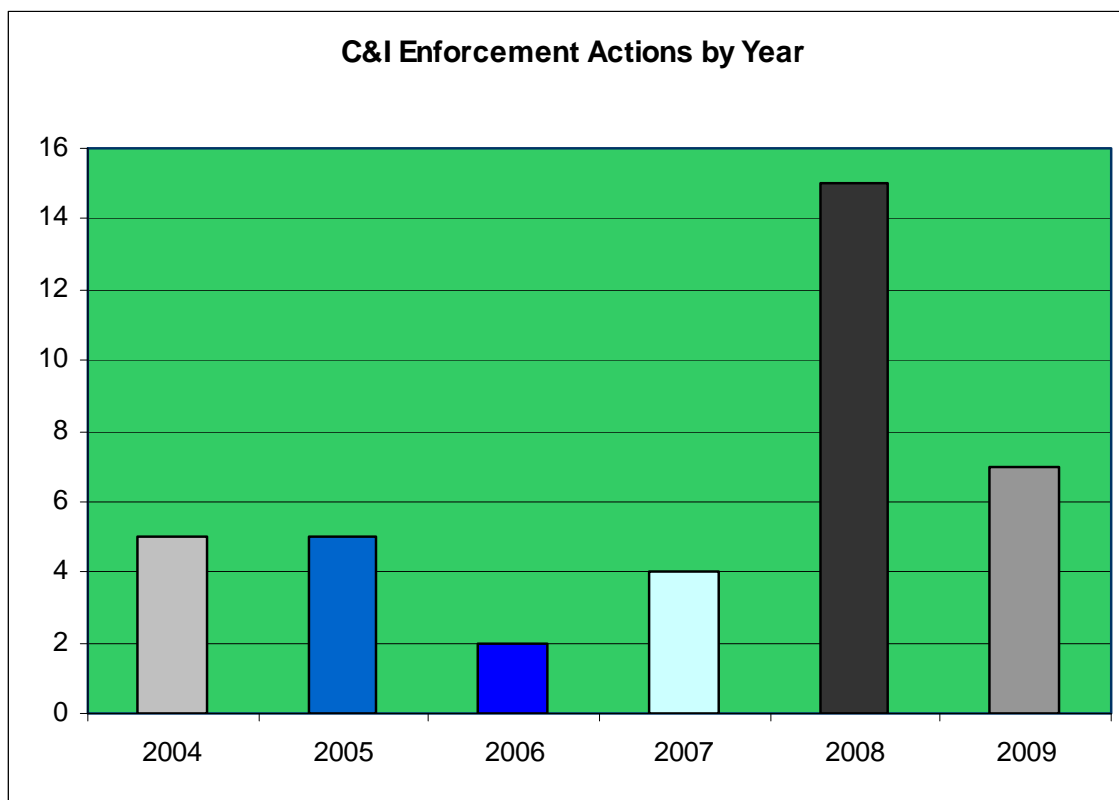
While First American’s loss ratios appear to be spiking dramatically, this is expected when a company suffers a loss of premiums in the severity of which was shown in the previous graph. With less premiums coming in, any losses paid on old policies are measured against the current/lower amount of premium. While First American’s loss ratios may return to normal levels once the company stabilizes, it is impossible to predict with certainty when this stabilization will occur. All insurers in Colorado have strict reporting, reserve, and capitalization requirements, and title insurers in Colorado remain supervised and solvent.

## Enforcement Actions

### Investigations Activity

The Compliance and Investigations section of the Division issues 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 2009, the Division took seven regulatory enforcement actions against title insurance entities. In 2008, the Division took fifteen actions, and in 2007, there were four. The drop in enforcement actions comes from numerous causes, most notably the large amount of agency closures.



The Division is currently conducting an industry-wide investigation into the payment of referral fees and inducements for the referral of business, and anticipates that this investigation will result in significant enforcement actions in 2010.

## **Market Conduct Actions**

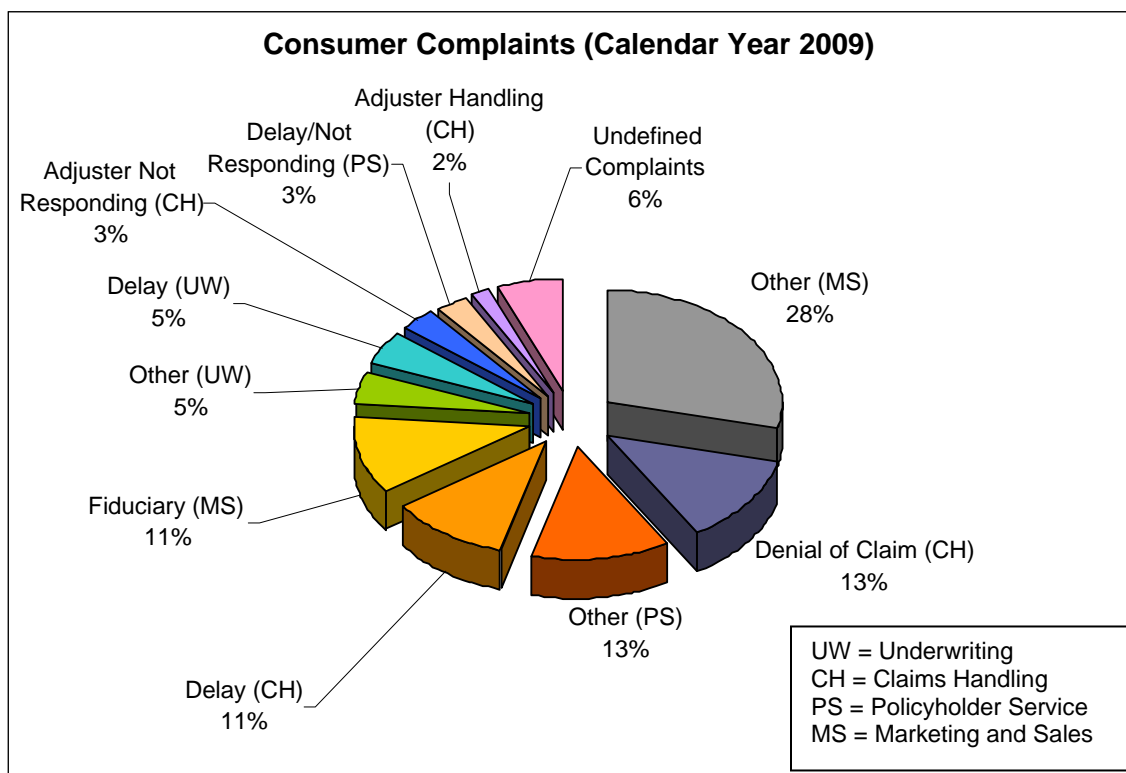
The Market Regulation section of the Division researches and develops analysis, tracks the overall title insurance market in Colorado, and performs market conduct examinations of title insurance underwriters. Market regulation accomplishments for 2009 include:

- 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 resulted in refunds of \$393,000 to Colorado consumers. In all, approximately 3500 consumers received refunds ranging from \$25 to \$1,500.
- Completed a comprehensive market conduct examination of Southern Title Insurance Corporation, encompassing analysis of operations/management, complaint handling, marketing, producer licensing, policyholder services, underwriting and rating, claims, escrow, settlement, closing funds, agency licensing, and agency relations. The Division fined the Company \$227,000 and assessed a surcharge of \$30,000, pursuant to §24-34-108, C.R.S., for the purpose of development, implementation, and maintenance of a consumer outreach and education program. Additionally, the company has been ordered to perform a self-audit of all policies issued from January 1, 2006 to July 15, 2009, and to refund to consumers all overcharges that are found in self-audit. This self-audit is in progress.
- Prepared and analyzed comprehensive data surveys for all title insurers authorized in Colorado with an emphasis on insurer-agent relationships and claims handling. The survey provided data for an updated market analysis of the title insurance industry in Colorado. Continued market analysis will identify issues that need to be addressed and will help identify which companies will receive market conduct examinations in 2010.

## 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.



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.

In 2009, the Division handled approximately 60 consumer complaints on title insurance.

## **Compliance Activities – Industry Outreach and Education**

In 2009, the Division focused on identifying potential problems in the title insurance industry and addressing them directly. Generally, a compliance contact is contact with title companies or agencies outside of an investigation, in which some question of rules or issues in the industry is discussed or resolved. In 2009, the Division handled over 350 compliance contacts.

Paula Sisneros (Director of Compliance and Investigations) and Andy Helm made presentations and conducted seminars to industry trade groups regarding current issues in Colorado title insurance, as well as general education seminars on the laws and regulations that affect the Colorado title insurance industry.

The Compliance and Investigations section of the Division is currently working on drafting amended language for Regulation 3-5-1, the insurance regulation that governs title insurance in Colorado. In preparation for this project, the Division has been soliciting comments and working with industry groups in order to determine the best language possible to regulate the industry during these constantly shifting market dynamics. The new regulation will be effective in early 2010.

## Miscellaneous Activities

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

**Title Advisory Council:** The Title Insurance Advisory Council (the Council) was formed by the Division in 2004. The mission of the Council is to provide the Division insight and advice regarding the promotion of fair competition and regulatory compliance within the Colorado title insurance industry. Recently, the Council formed a subcommittee that has been working with other trade groups to provide comments on regulations and recommendations of 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. Paula Sisneros and Andy Helm attended LTAC's fall convention in Lone Tree, and gave a presentation on the current state of title insurance in Colorado and anticipated regulatory changes for 2010.

**American Land Title Association (ALTA):** Paula Sisneros, the Division's Director of Compliance and Investigations, traveled to Washington, D.C. for a symposium on efforts to collect annual data from title insurance agencies.

**National Association of Insurance Commissioners (NAIC):** Paula Sisneros and Andy Helm are active participants in the title insurance working group, sponsored by the NAIC. In 2009, they completed draft revisions to the title insurance chapter of the Market Regulation Handbook, and will be leading nationwide efforts in 2010 for the collection of annual data from title insurance agencies. The Division has also contributed on the creation of a stage page for the title insurance Financial Annual Statement blank.

**Outreach and Educational seminars:** Paula Sisneros and Andy Helm taught a seminar on the current state of the Colorado title industry and regulatory issues facing the industry, as well as a general overview of the laws and regulations that govern Colorado title insurance.

## Looking Ahead

In 2009, the Colorado title insurance industry experienced shifting demographics and a changing market – with multiple closures and bankruptcy of agents and insurers alike, and a down real estate market in which to conduct business. In 2010, it will be important to maintain a close regulatory eye on the industry, as well as to identify ways in which the Division can help a struggling industry as the real estate market recovers.

The focus for 2010 will continue to be on collaborating with the title insurance industry, answering questions on regulatory compliance, amending our rules and regulations to address current issues, continuing to develop appropriate and effective market analysis, 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.*

