



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

2010

January 1, 2011





Dora
Department of Regulatory Agencies

Division of Insurance
John J. Postolowski
Interim Commissioner of Insurance

Bill Ritter, Jr.
Governor

Barbara J. Kelley
Executive Director

December 29, 2010

Dear Committee Members,

I am pleased to submit the 2010 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 2010. Also included, where appropriate, are comparisons of prior years.

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

Sincerely,

John J. Postolowski
Interim Commissioner of Insurance



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

2010

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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 2010:

- The Division repealed and repromulgated Colorado Insurance Regulation 3-5-1, enacting important consumer protections against mortgage fraud, clarifying permitted and prohibited marketing practices, and ensuring a fair and competitive market environment for Colorado title insurance entities.
- Division staff conducted numerous seminars in an effort to educate the title insurance industry and the general real estate marketplace on changing rules and requirements.
- While still somewhat volatile, the title insurance market in Colorado began to settle and, although still slight, improve in some areas.
- The Division handled approximately 350 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.)
- Colorado saw the closure of at least 64 title agencies, and the opening of 65 new title agencies. While the current closure rate for title agencies is approximately 54% for a ten-year period, the market is showing some signs of stabilization.

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.

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.

Christine Nelson – Ms. Nelson joined the Division on January 11, 2010 as a market conduct examiner. She has over 23 years of experience in the title insurance industry, and her knowledge covers both the title and closing/escrow sides of the business. Ms. Nelson's duties include the performance of comprehensive market conduct examinations of title insurance companies, and she acts as the Division representative to the Colorado Bar Association's Interprofessional Committee of Lawyers and Realtors.

Colorado Title Insurance Reform – Regulation 3-5-1

In May 2010, a repealed and repromulgated version of Insurance Regulation 3-5-1, 3 CCR 702-3 took effect. The new regulation was a result of nearly one-and-a-half years of investigation, research, and collaborative work with industry stakeholders in order to reform many provisions of the original regulation.

Some highlights of the new Regulation 3-5-1 include:

- Clarified rules on justifications of rates and fees, pursuant to HB09-1155;
- Established new prohibitions on free products from title entities to settlement producers;
- Imposed revised rules on providing classes to settlement producers;
- Instituted new protections against industry collusion in mortgage fraud;
- Incorporated default instructions to title entities for proper handling of consumer funds.

Any discussion of the new Regulation 3-5-1, however, would be remiss without acknowledging the many hours of hard work and collaboration put in by Colorado's Title Insurance Advisory Council (the Council). Formed in 2003 by the Division and industry participants, the Council convened a special subgroup to examine and provide proposed language and comments to the Division. The result is a regulation that effectively fulfills the Division's mission of consumer protection, while ensuring that title insurance entities in Colorado continue to operate in a fair and competitive market.

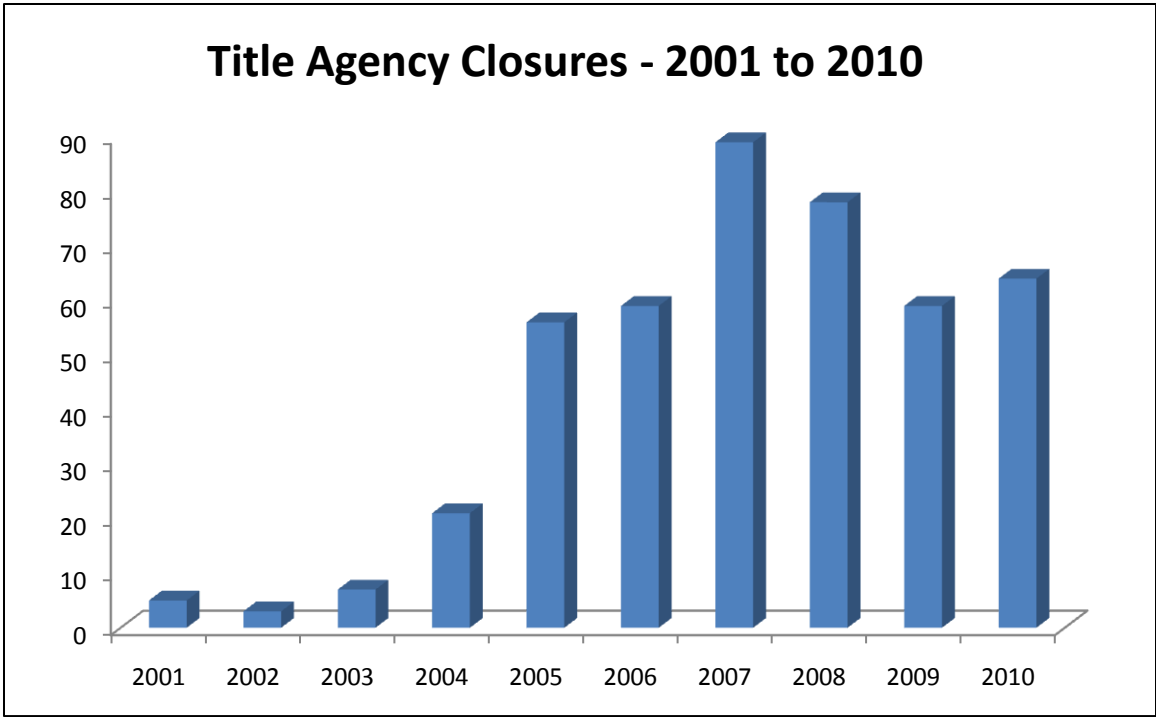
Market Trends Associated with Title Insurance

Market Dynamics

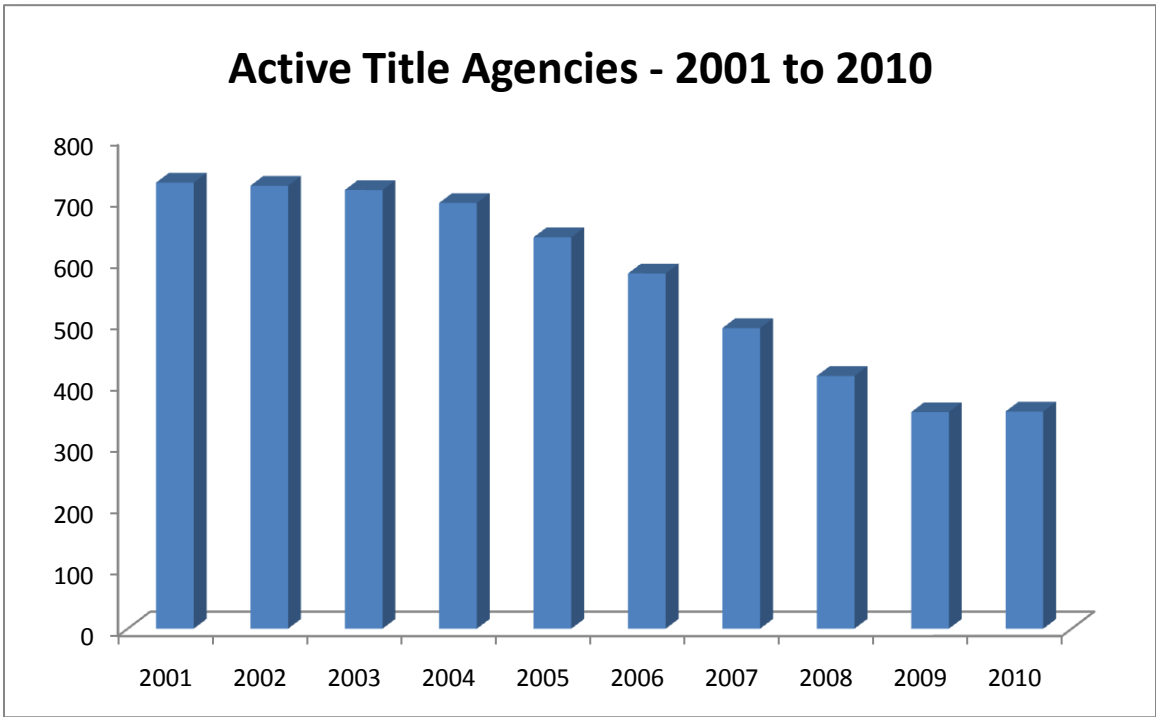
The Colorado title insurance industry experienced many changes over the last five years. In the past few years, the number of active title agencies has dropped significantly, as did the number of active title insurance underwriters. In 2010, the dust began to settle, and new marketplace demographics emerged, including increased stratification of underwriters, near-equal turnover of closing and opening title agencies, and somewhat stabilized loss ratios.

Title Insurance Agencies

In 2010, the trend of closing title agencies continued unabated, with 64 closures. However, 65 new title agencies opened, offsetting any losses. While this high turnover indicates a continued volatility in the market, there are signs of equilibrium emerging.



Today, there are 354 title agencies that hold active Colorado insurance producer licenses; in December 2004, there were 715 active title agencies.

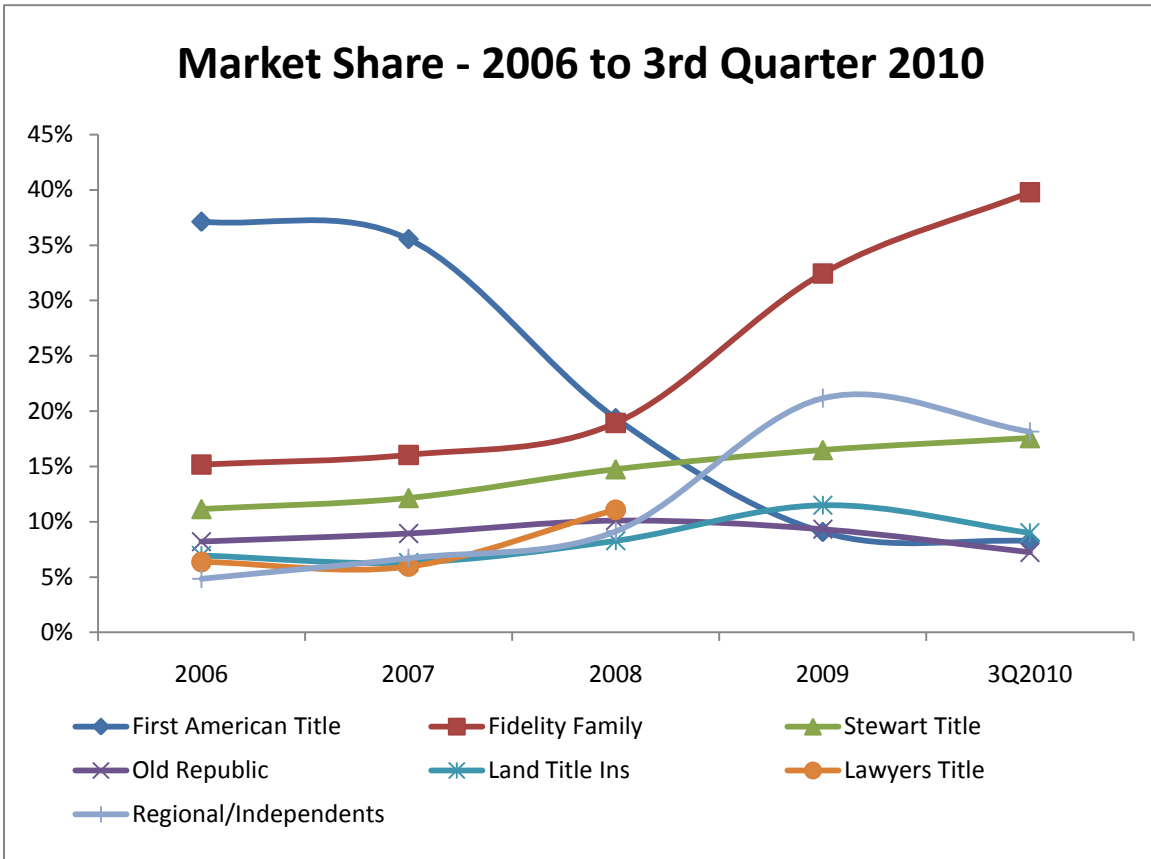


This chart shows the number of active title agencies by year since 2001. While the number of closures since 2007 is starting to decline, it is important to note that by 2007

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

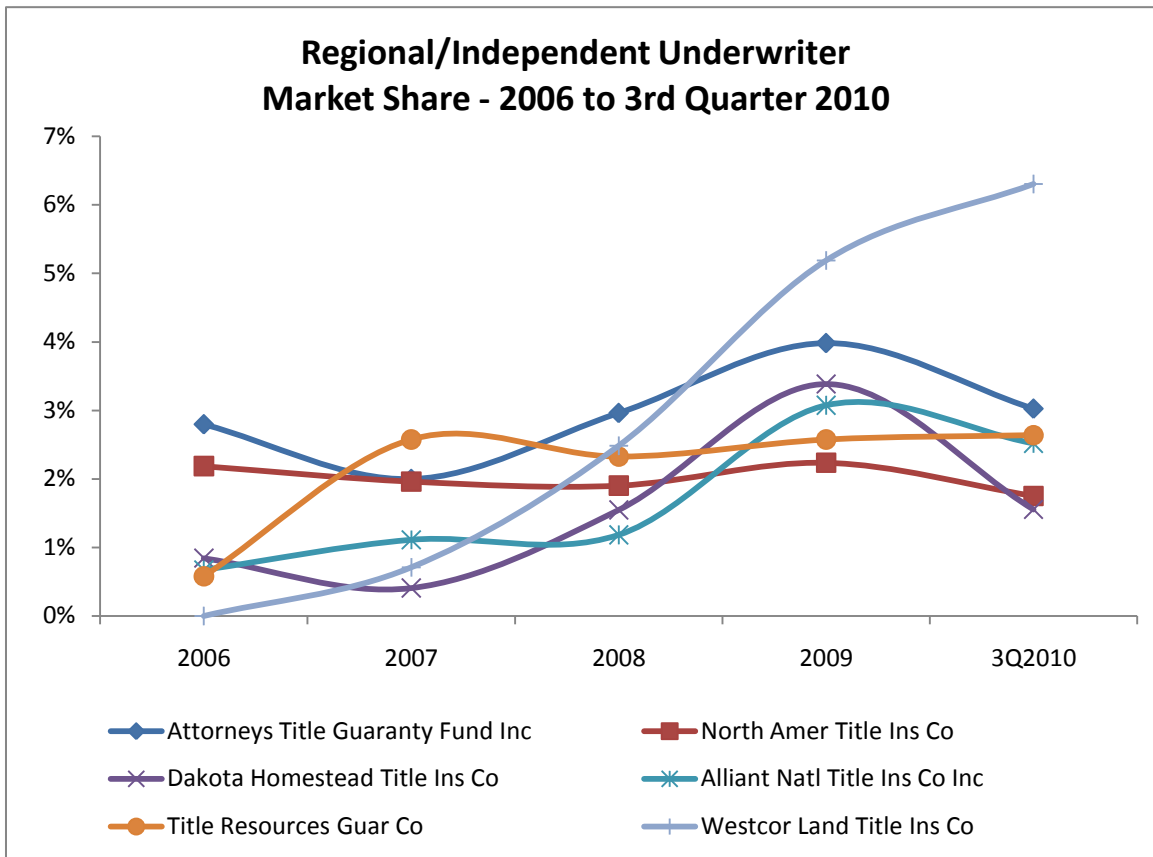
For title insurance underwriters, 2010 was also year of settling in the marketplace. With the exception of the Fidelity National family of companies, the large underwriters experienced either static or very modest growth in market share.



As the graph above shows, the only significant drop in market share in 2010 was by Colorado’s group of regional, smaller underwriters.

Regional/Independent Underwriters

With six companies competing for roughly twenty percent of the market, even small increases or declines in premiums can be volatile for Colorado regional and independent underwriters. As seen below, the market share picture of these smaller companies is not very stable, and the competitive environment each year can result in different leaders emerging.

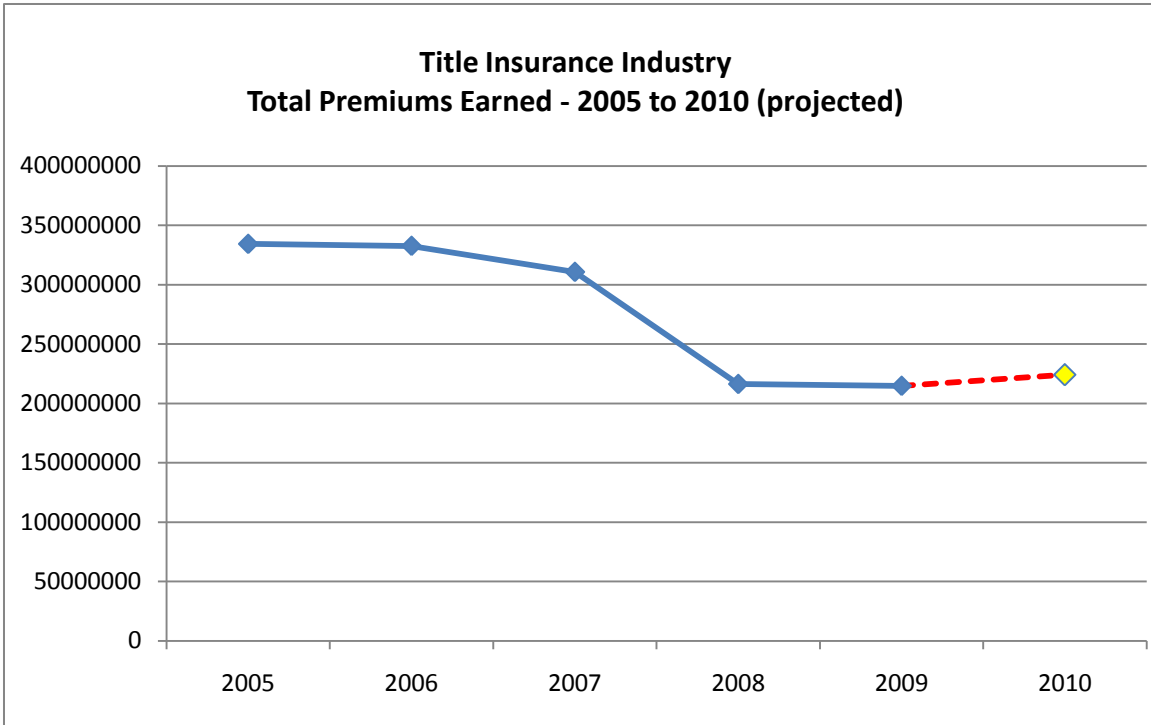


Even with such volatility in the smaller market, Colorado's smaller underwriters, controlling nearly twenty percent of the market, make Colorado one of the more competitive title insurance markets in the country.

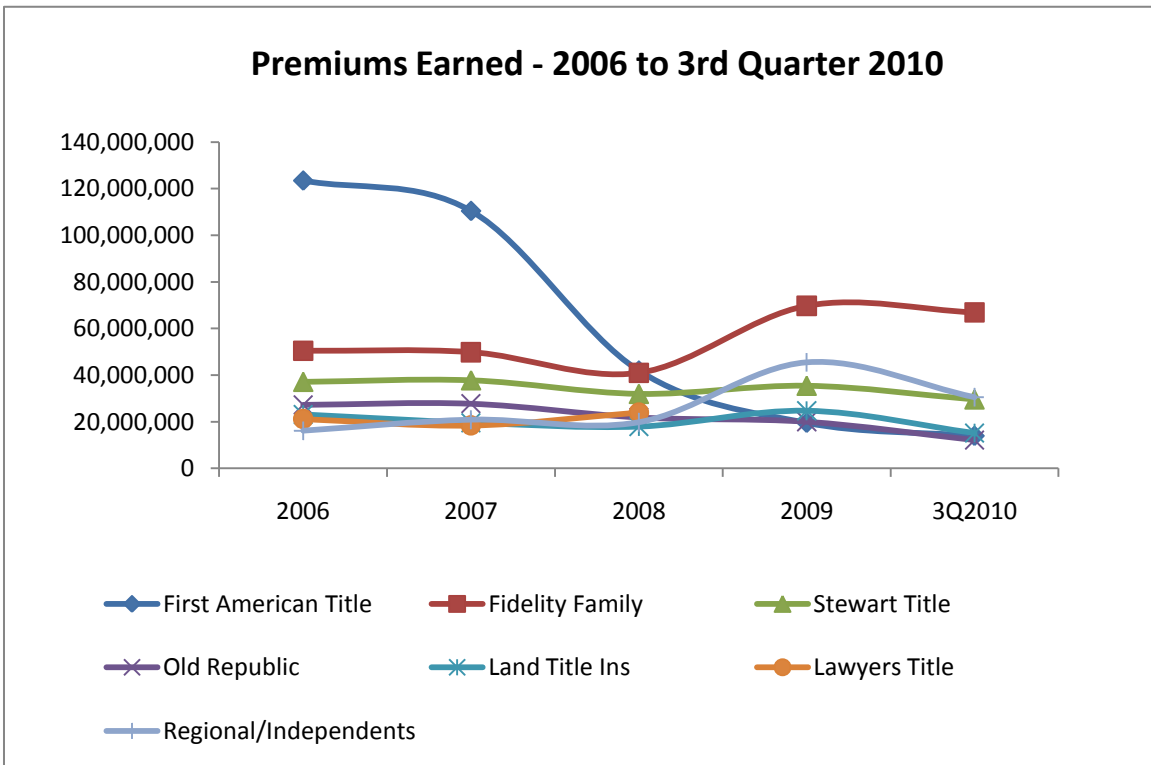
Title Insurance Losses

The leveling of earned premiums also continued in 2010, with industry losses at least slowing down, if not turning around. However, premium earnings in 2010 are still considerably lower than five years ago.

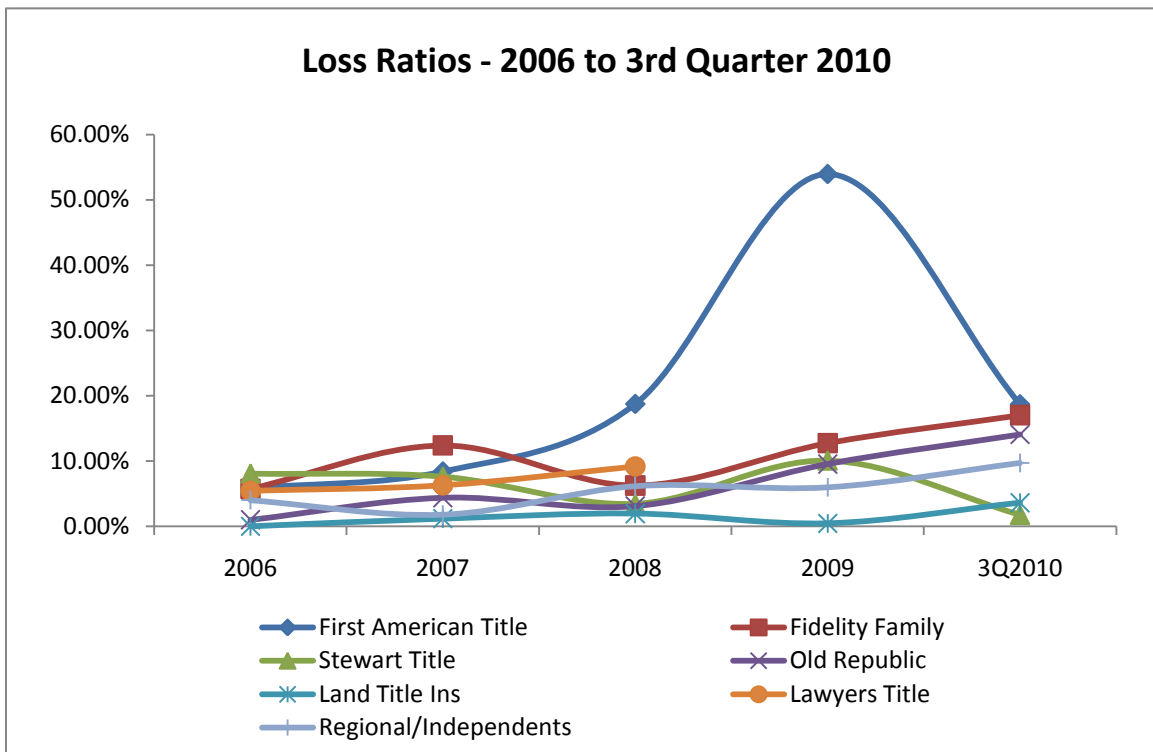
From 2005 to 2009, title insurance premiums dropped 35%, from \$334 million a year to \$215 million at the end of 2009.



If earnings continue on the same average trend of the first three quarters of 2010, projections show slight growth in total industry earnings for the first time in five years. Even without future projections, earnings through third quarter 2010 appear to have stabilized across the board:



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



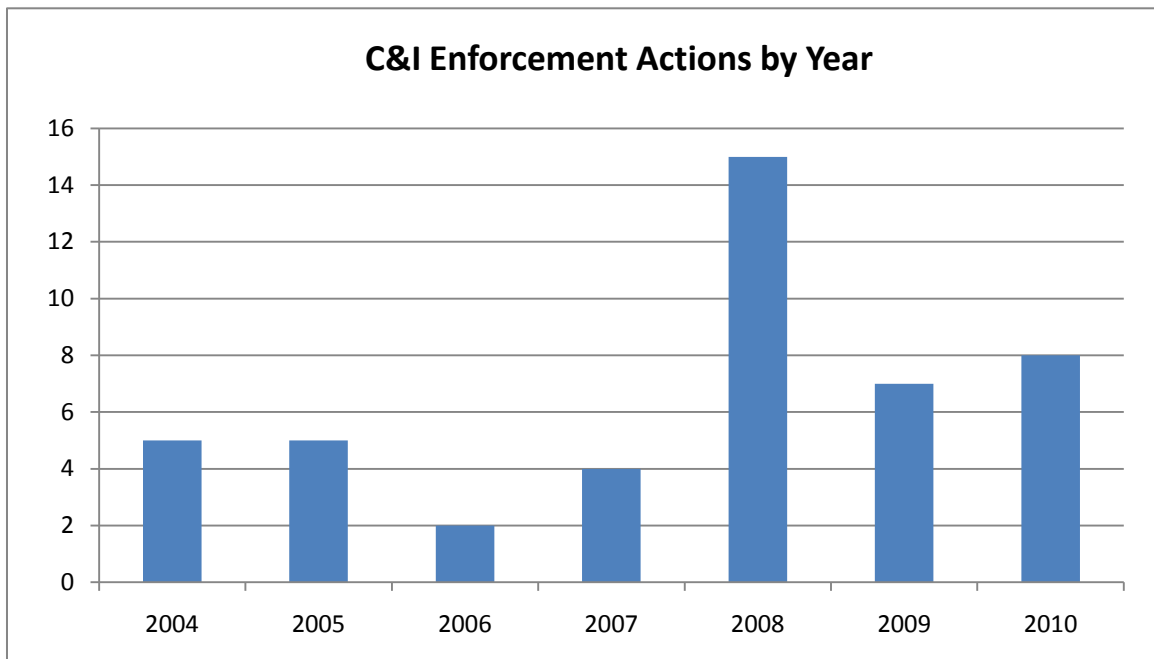
In 2008, First American’s main source of revenue in Colorado, the Mercury Companies agency group, transformed to wholly owned subsidiaries of Fidelity National Title. As predicted in the Division’s 2009 report, First American’s loss ratios have stabilized somewhat as claims from this previously underwritten agency operations continue to resolve. 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 2010, the Division took eight regulatory enforcement actions against title insurance entities. In 2009, the Division took seven actions, and in 2008, there were 15. The drop in enforcement actions comes from numerous causes, most notably the large amount of agency closures as well as the focus on teaching compliance with new regulations.



While Colorado has fortunately avoided many of the problems of title agency theft experienced by other states for the past few years, recently there has been an uptick in reported thefts. With two hearings already pending in 2011 for such theft, the Division is anticipating continued investigative activity into theft of consumer funds.

Market Conduct Actions

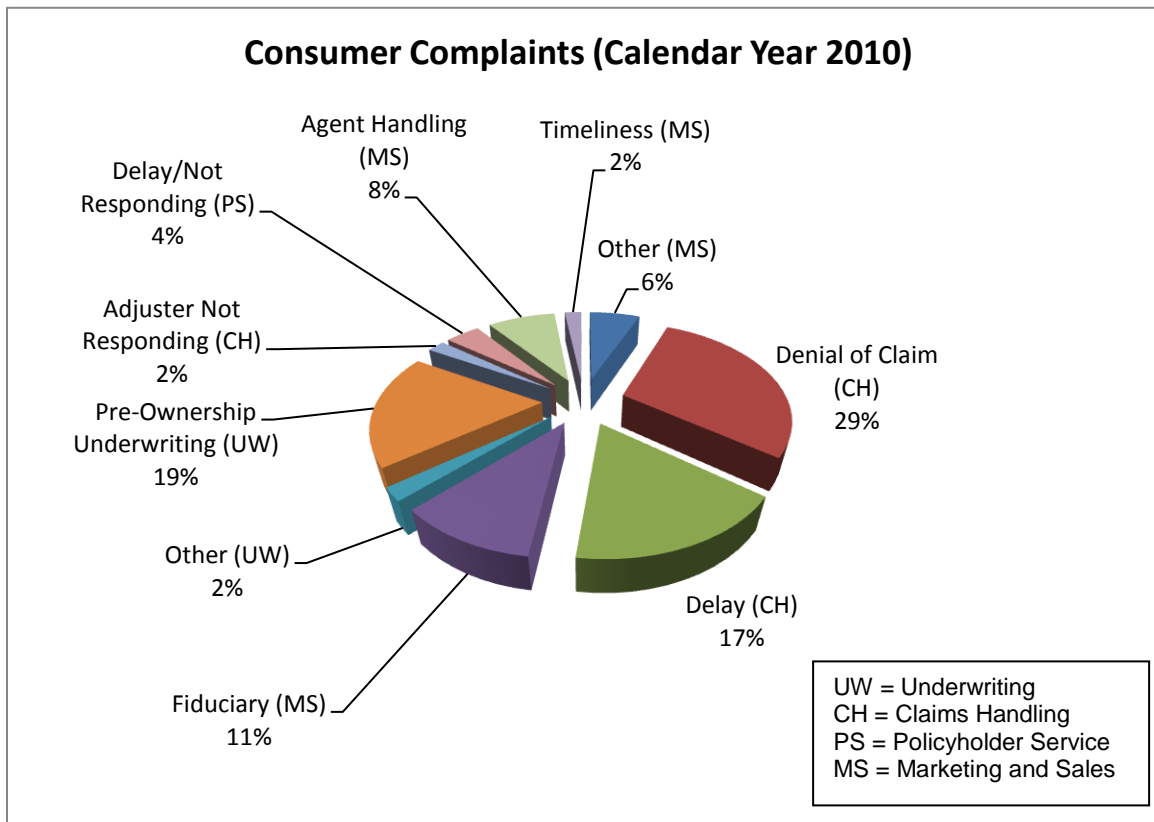
The Market Regulation section of the Division researches and tracks the overall title insurance market in Colorado, as well as performs market conduct examinations of title insurance underwriters. Market regulation accomplishments for 2010 include:

- Called a comprehensive market conduct examination of a title insurer, which is currently in progress. This examination encompasses 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 2011.

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 2010, issues with claims (both denial and delay) experienced a ten percent increase over 2009, possibly due to general increases the amounts of claims experienced by title insurers. Examples of “Other” complaints for Marketing and Sales in title insurance

include earnest money disputes and rate disclosure issues. In the Policyholder Services category, “Other” includes an agent’s failure to follow written closing instructions and failure to timely release deeds of trust or other liens. Underwriting “Other” 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 50 consumer complaints on title insurance.

Compliance Activities – Industry Outreach and Education

In 2010, the Division continued to focus 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 2010, 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. Additionally, Andy Helm and Christine Nelson conducted industry seminars on the changes to Regulation 3-5-1, striving to reach as much of the title insurance industry as possible to ensure understanding and compliance with the new rule.

Miscellaneous Activities

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

Title Advisory Council: In 2003, the Division formed the Title Insurance Advisory Council. The mission of the Council is to provide the Division insight and advice regarding the promotion of fair competition and regulatory compliance within the Colorado title insurance industry. Recently, the Council formed a subcommittee that was instrumental in developing amendments to the Colorado title insurance regulation. Andy Helm serves as the Division liaison on the Council.

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), and the Colorado Division of Real Estate. Christine Nelson 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. 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 developments for 2011.

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, Andy Helm, and Christine Nelson are active participants in the title insurance task force, sponsored by the NAIC. In 2010, they spearheaded a new working group, focusing on the development of a statistical plan for title agents. The NAIC Title Insurance Working Group adopted the statistical plan, and the working group is now in the process of developing implementation guidelines for the plan. In addition, they continue to monitor revisions to the title insurance chapter of the Market Regulation Handbook.

Colorado Bar Association/Continuing Legal Education (CBA/CLE) Annual Real Estate Symposium: Andy Helm presented at the Colorado Bar Association's Annual Real Estate Symposium in Snowmass, CO. The subject of Andy's presentation was the regulatory reform of title insurance in Colorado, as well as the Division's integral role in the development and implementation of a title agent statistical plan.

Outreach and Educational seminars: Andy Helm and Christine Nelson taught numerous seminars in 2010, detailing the changes promulgated in the revised Regulation 3-5-1. Well received by the industry, the Division anticipates that speaking engagements and outreach will continue through 2011.

Looking Ahead

In 2010, the dust of the past five years started to settle. While numerous title agencies closed, new ones took their place, and signs are starting to point towards recovery of the real estate and title insurance marketplace. In 2011, 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 continues its recovery.

The focus for 2011 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, performing comprehensive market conduct examinations of title insurers, taking enforcement actions when necessary, and maintaining 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.

