



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

2011

January 1, 2012





Dora
Department of Regulatory Agencies

Division of Insurance
Jim Riesberg
Commissioner of Insurance

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

December 23, 2011

Dear Committee Members,

I am pleased to submit the 2011 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 calendar year 2011. 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,

Jim Riesberg
Commissioner of Insurance



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

2011

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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 2011:

- Division staff conducted seminars and training in an effort to educate the title insurance industry and the general real estate marketplace on rules and requirements.
- While still somewhat volatile, the title insurance market in Colorado has begun to stabilize.
- The Division handled approximately 260 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.
- There were 59 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2011 and 26 that became licensed. The current closure rate for title agencies is approximately 54% over a ten-year period; however, this rate has had a marked decrease over the last three years, at 19%. This demonstrates that the title insurance marketplace is stabilizing.

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).

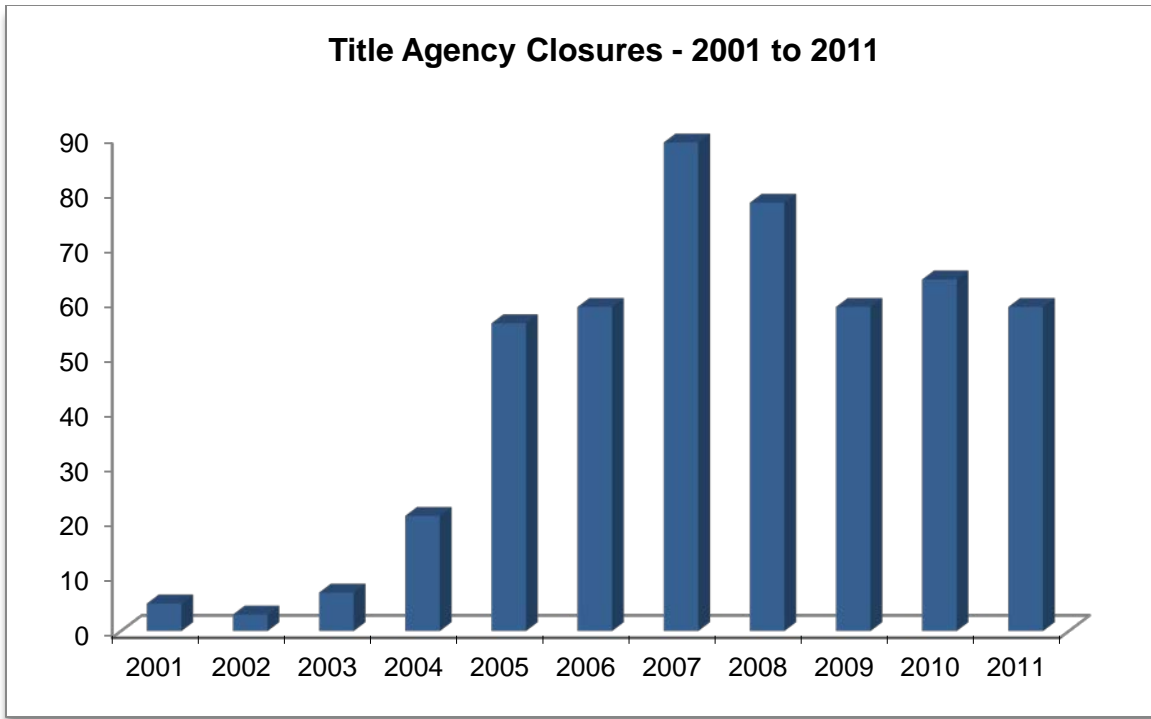
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.

Market Trends Associated with Title Insurance

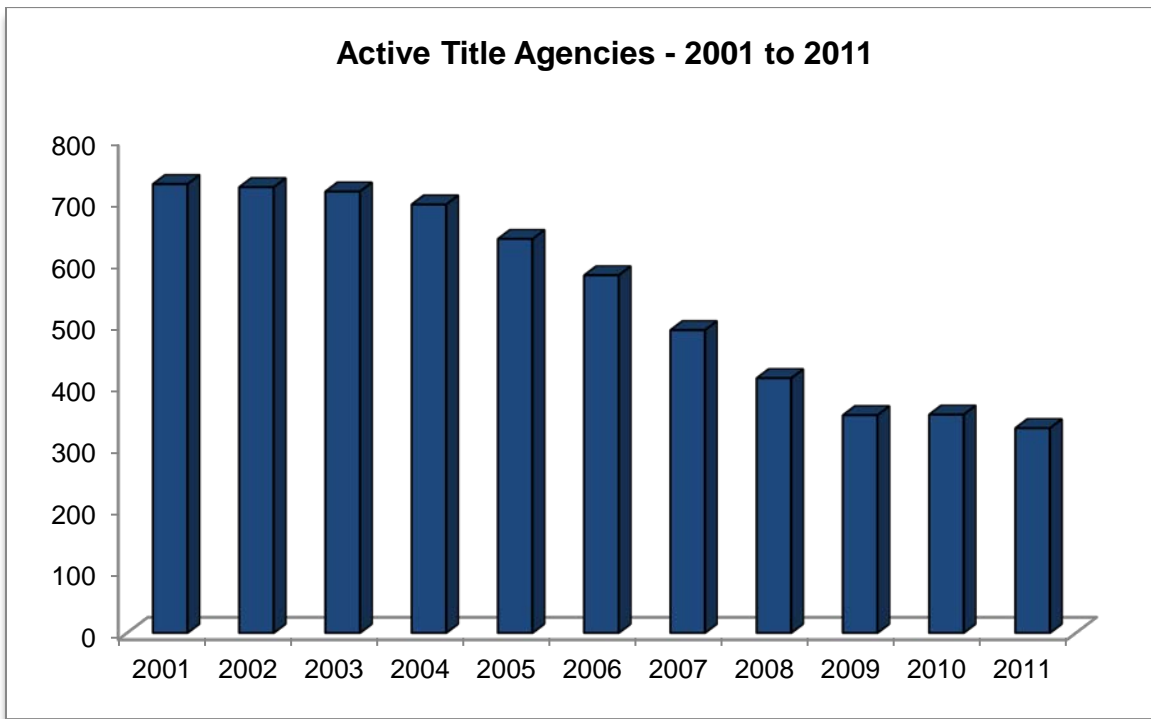
Market Dynamics

The Colorado title insurance industry experienced significant change over the past few years as has the entire housing and real estate market. The number of active title agencies and active title insurance underwriters declined rapidly for a number of years. This trend has slowed down.

In 2011, 59 title agencies allowed their license to lapse or cancelled their license and 26 new title agencies were licensed to transact business.

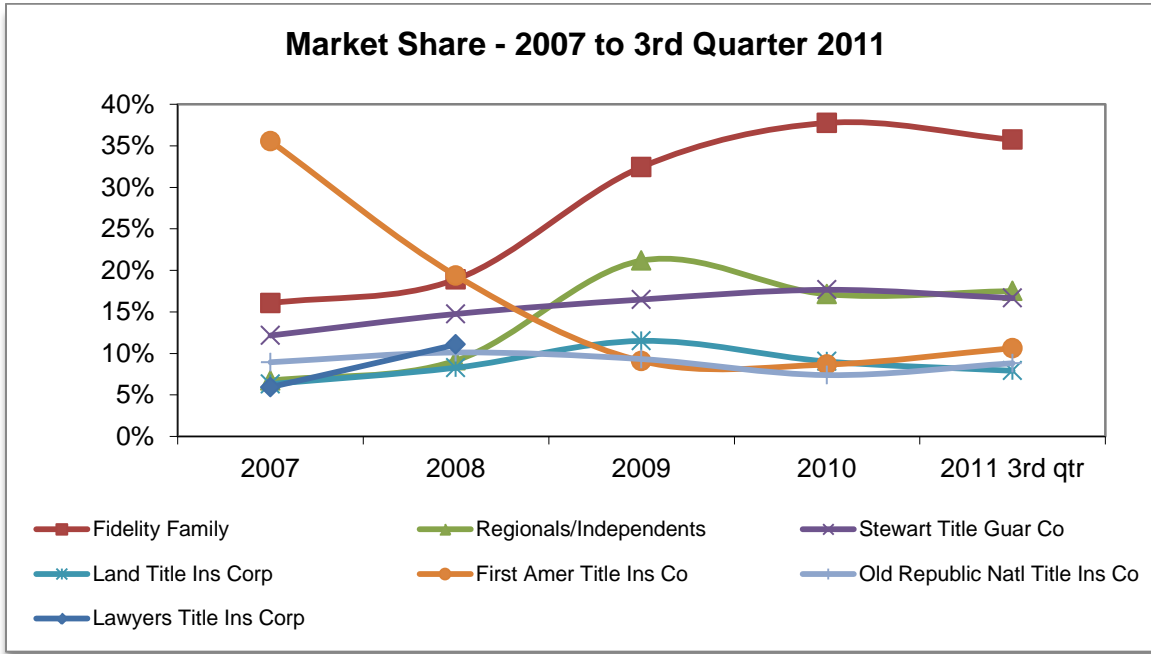


Today, 332 title agencies hold active Colorado insurance producer licenses; in December 2001, there were 727 active title agencies.



Title Insurance Underwriters

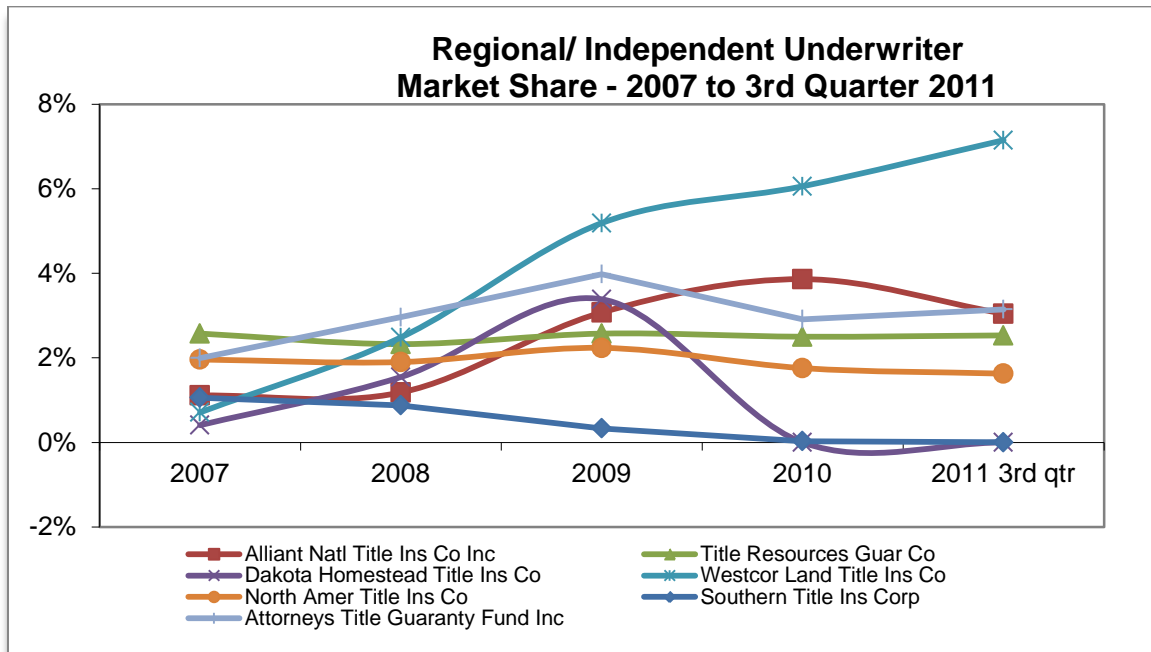
For title insurance underwriters, 2011 shows continued stabilization in the marketplace. With the exception of First American Title Insurance Company, the large underwriters experienced either static growth or modest loss in market share.



As the graph above shows, there is minimal growth in market share for Colorado's group of regional, smaller underwriters.

Regional/Independent Underwriters

With five companies currently competing for roughly eighteen 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 reflects a changing market place, and the competitive environment each year can result in different leaders emerging.

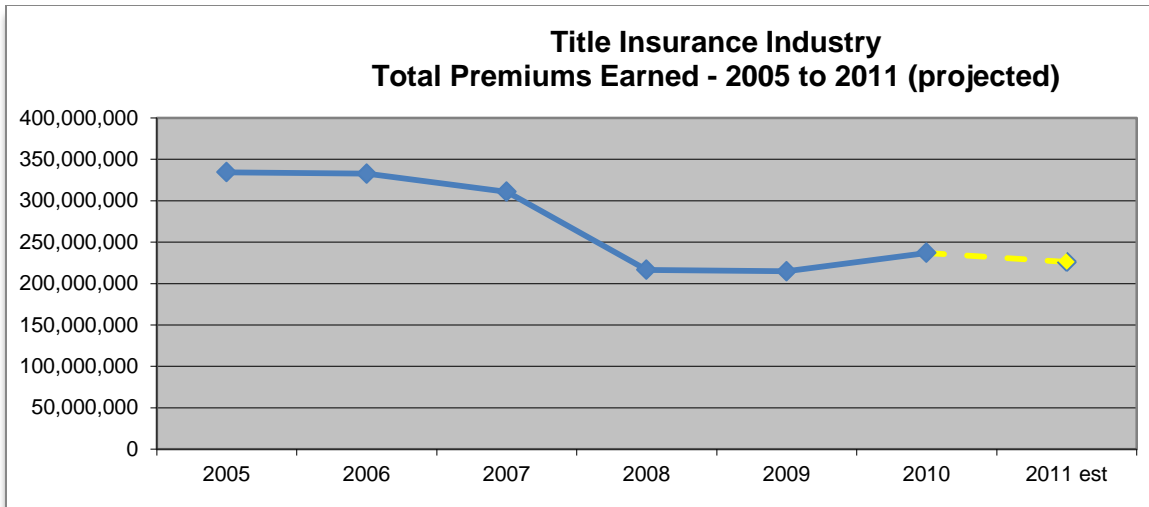


Even with volatility in the smaller market, Colorado's smaller underwriters control nearly eighteen percent of the market, making Colorado one of the more competitive title insurance markets in the country.

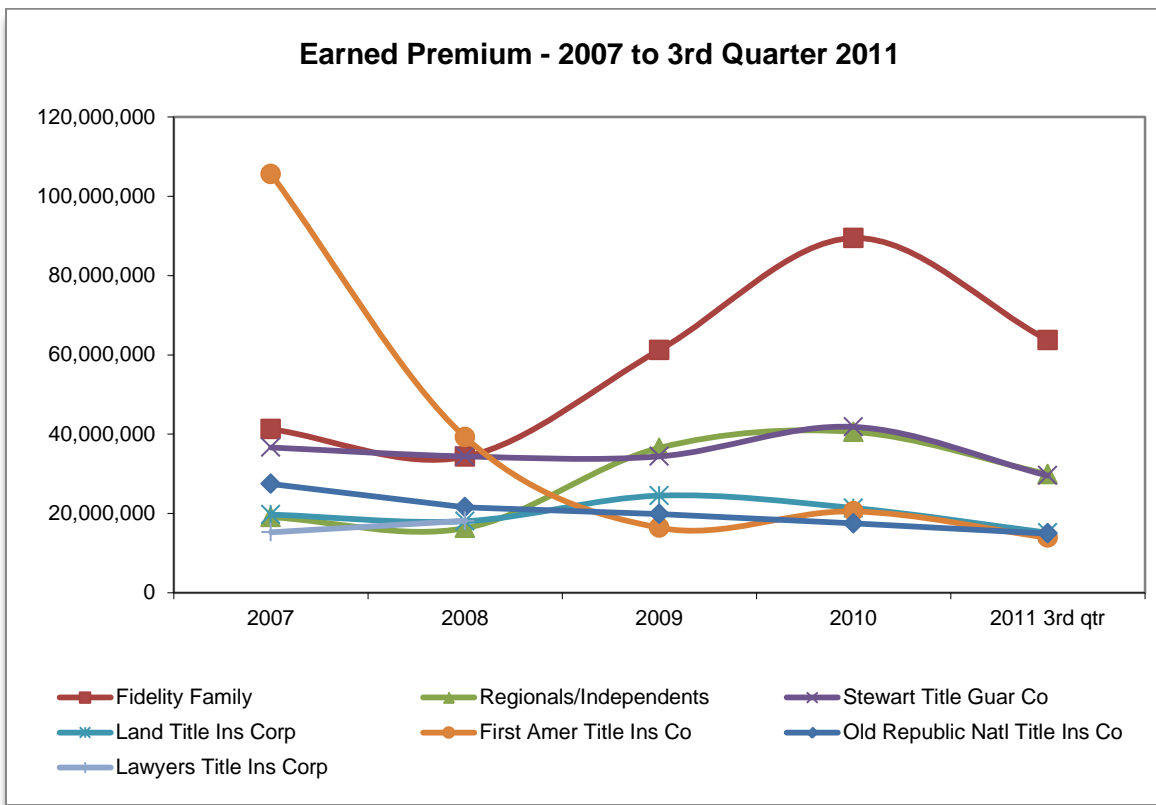
Title Insurance Losses

Prior to the housing collapse, title insurance losses were between 3-5%. The American housing market has changed and as a result, title insurance losses are expected to remain at a level above previous trends. Additionally, premium earnings in 2011 are still considerably lower than five years ago.

From 2005 to 2009, title insurance premiums in Colorado dropped 35%, from \$334 million a year to \$215 million at the end of 2009. There was an improvement in 2010 to approximately \$237 million. Little movement occurred in the first three quarters of 2011 with approximately \$226 million in premium.

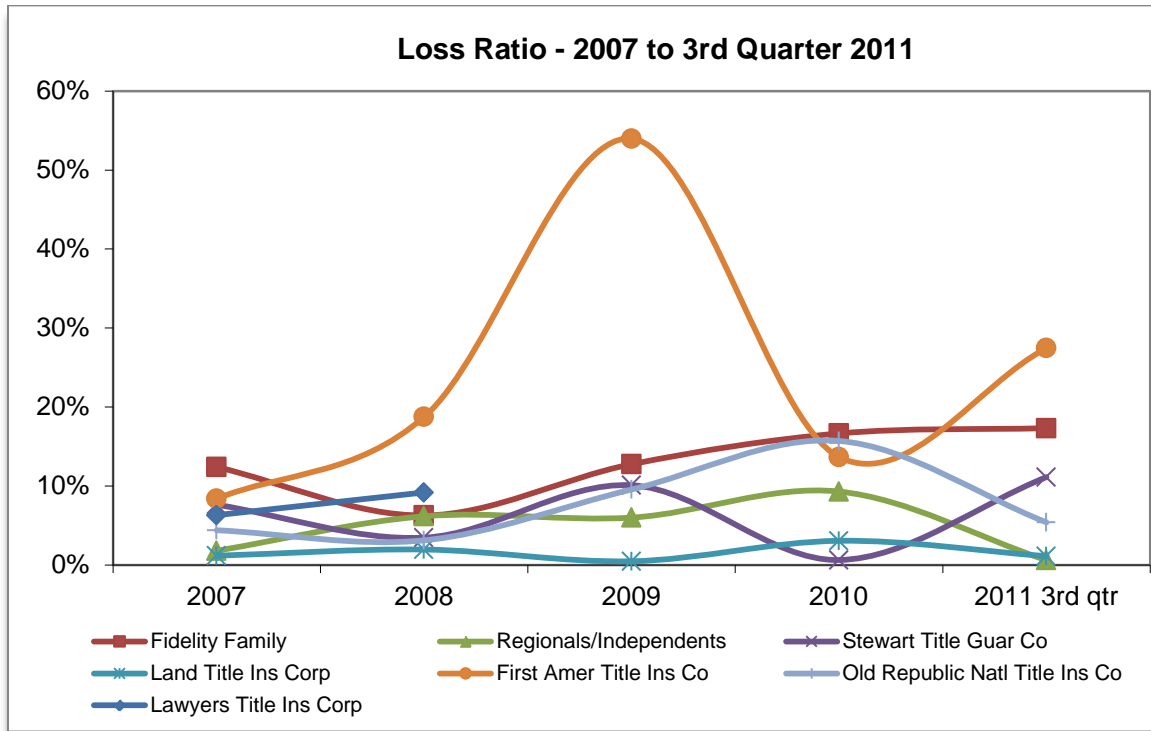


If earnings continue on the same average trend of the first three quarters of 2011, projections show a slight decline in total industry earnings for the balance of 2011 and 2012. While there has been stabilization from the marked decline of 2007 and 2008, the industry continues to experience contraction in the market.



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.



While Colorado’s regional/independent underwriters and a few of the large underwriters saw a decrease in losses, First American Title and Stewart Title experienced over a 10% increase in their loss ratio compared to last year based on the information available through the third quarter of 2011. Title insurance losses remain somewhat volatile, presumably due to the issues of agency defalcation and foreclosure rates. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.

Enforcement Actions

Investigations Activity

The Compliance and Investigations section 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 Compliance and Investigations section conducts outreach with the industry to try to encourage industry to refer alleged acts of wrongdoing to the Division for investigation. The outreach is effective and the Division opened an average of one title insurance investigation per week since June 1, 2011. Many of these cases will be resolved in early 2012.

Colorado saw an increase in the number of title agency defalcations this year. Division staff spent over 500 hours handling two major title agent defalcations in the third quarter of 2011. These types of investigations are labor intensive and generally require the immediate attention of more than one Division staff person. Title agent defalcations are of great concern to the Division because they have tremendous potential for consumer harm. Specifically, defalcations may result in loss of funds, loss of title to property, compromise of personal financial information and may negatively affect a consumer's credit history. The Division generally seeks administrative action against any licensed person involved in a defalcation and forwards the Division's case to the appropriate law enforcement agency for them to consider for criminal prosecution.

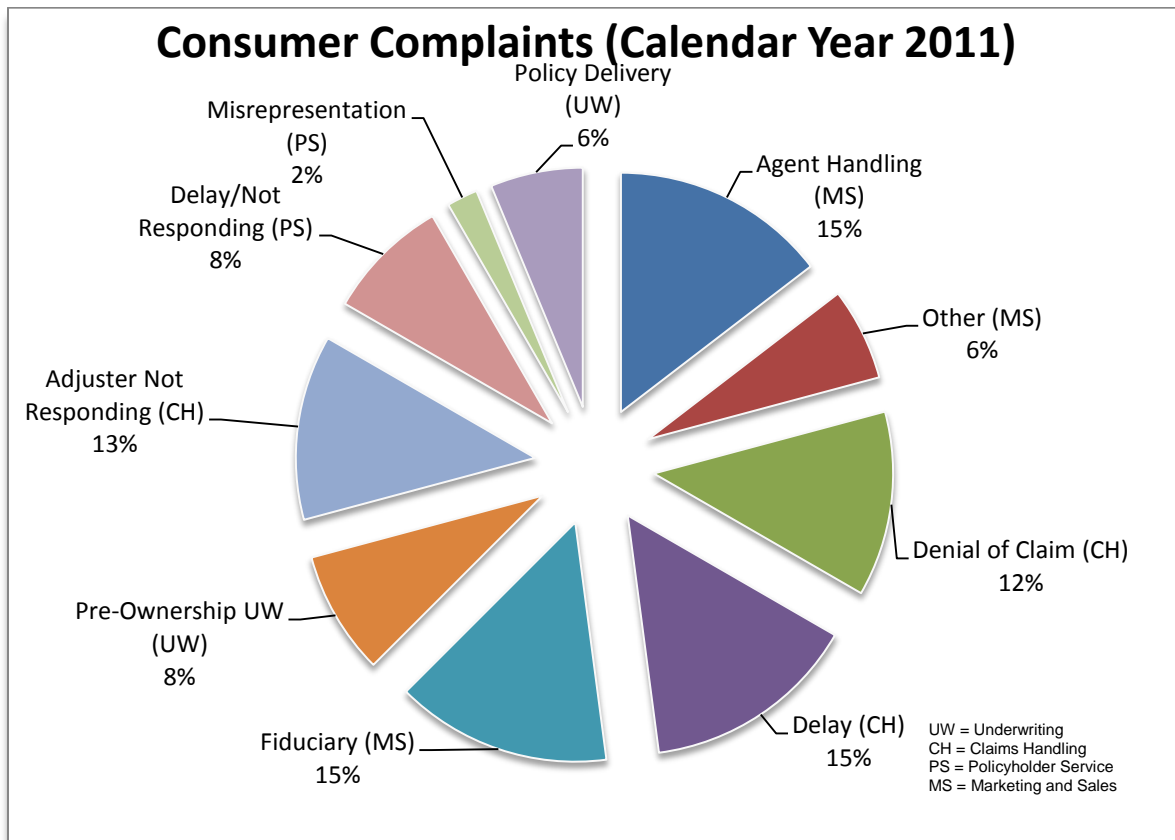
Market Conduct

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. The Market Regulation section has three market conduct examinations in various stages of completion for 2011. These exams include a review of company operations and management, licensing, underwriting, rating and claims.

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 2011, the Division handled approximately 37 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 agent handling (7), denial of claims (6), delay of claims (7), and adjuster not responding (6). The second area is marketing and sales and is broken down into subcategories of fiduciary (7), and other, which include disputes of earnest money and rate disclosures (3). The third area is underwriting and is broken down into subcategories of pre-ownership underwriting (4), and policy delivery (3). The fourth area is policyholder services and is broken down into subcategories of delay or no response (4) and misrepresentation (1). The total number of reasons for the complaints exceed the number of complaints because some complaints included more than one reason for the complaint.



Compliance Activities – Industry Outreach and Education

In 2011, 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 company, agency, producer or consumer outside of an investigation or consumer complaint, in which some question of rules or issues in the industry is discussed or resolved. In 2011, the Division handled over 260 compliance contacts.

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

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. The Council continues to examine, discuss and address issues affecting the title insurance industry in Colorado.

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):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. Division staff attended LTAC's fall convention in Lone Tree, and gave a presentation on the laws that pertain to title insurers, agencies and producers.

National Association of Insurance Commissioners (NAIC): Division staff acts as vice-chair of the NAIC Title Insurance Task Force and as the chair of the NAIC Title Insurance Agent Statistical Data Plan 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.

