



**CO L O R A D O**

**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

2016



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

Marguerite Salazar  
Commissioner of Insurance

January 31, 2017

Dear Committee Members,

I am pleased to submit the 2016 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 2016. 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,

Marguerite Salazar  
Commissioner of Insurance



Title Insurance  
Enforcement Actions, Market Trends  
and Consumer Complaints

2016

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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 2016:

- 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 25 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2016 and 19 that became newly licensed;
- The Division handled 330 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 conducted four quarterly meetings and one special meeting during 2016. They discussed and proposed a number of recommendations to the Commissioner covering a variety of title insurance industry 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).

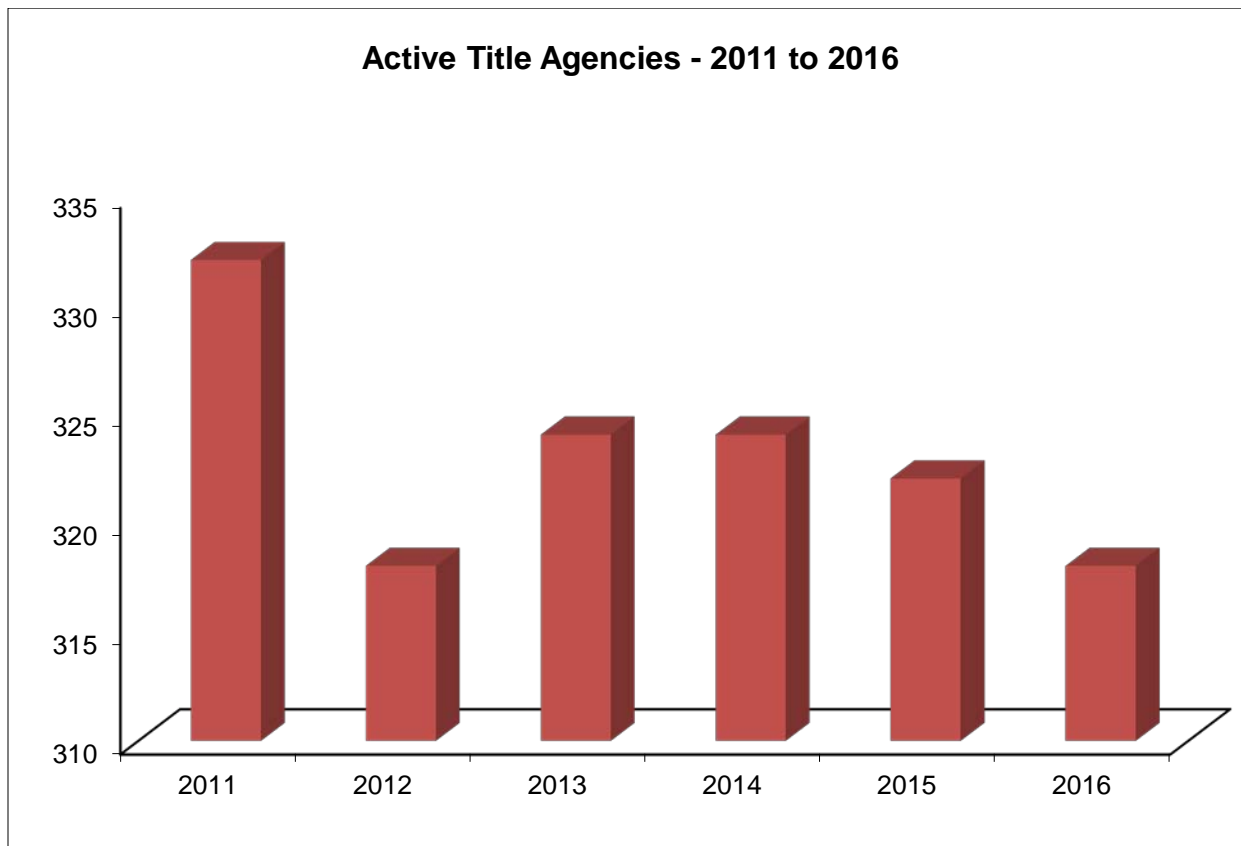
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.



## Market Trends Associated with Title Insurance

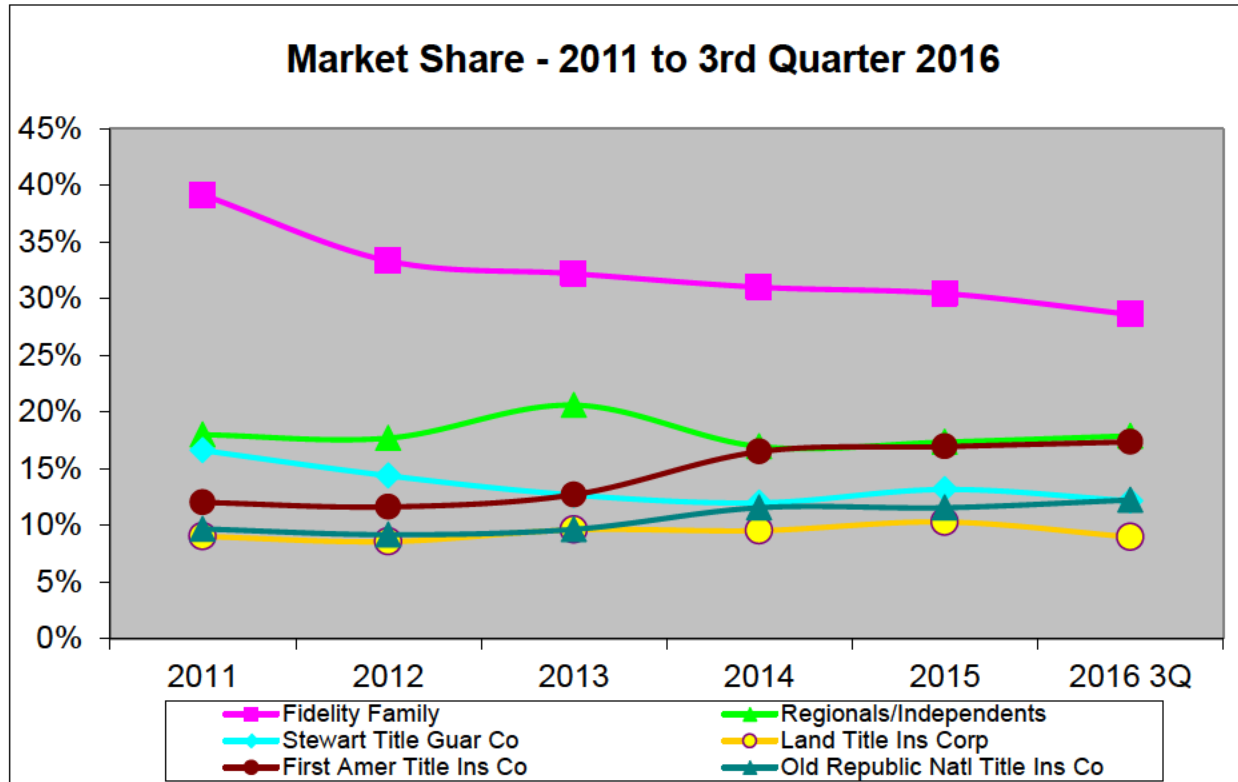
### Market Dynamics

Today, 318 title agencies hold active Colorado insurance producer licenses; in December 2011, there were 332 active title agencies. After a decline in active agency licenses from 332 in 2011 to 318 in 2012, the number of licensed title agencies increased to 324 in 2013, stabilized in 2014 and 2015 with 324 and 322 licensed agencies respectively and continued to remain steady through 2016.



## Title Insurance Underwriters

Overall, 2016 data shows continued stabilization and growth in the marketplace. Some of the large underwriters experienced modest or marginal growth in market share while others remained stable.



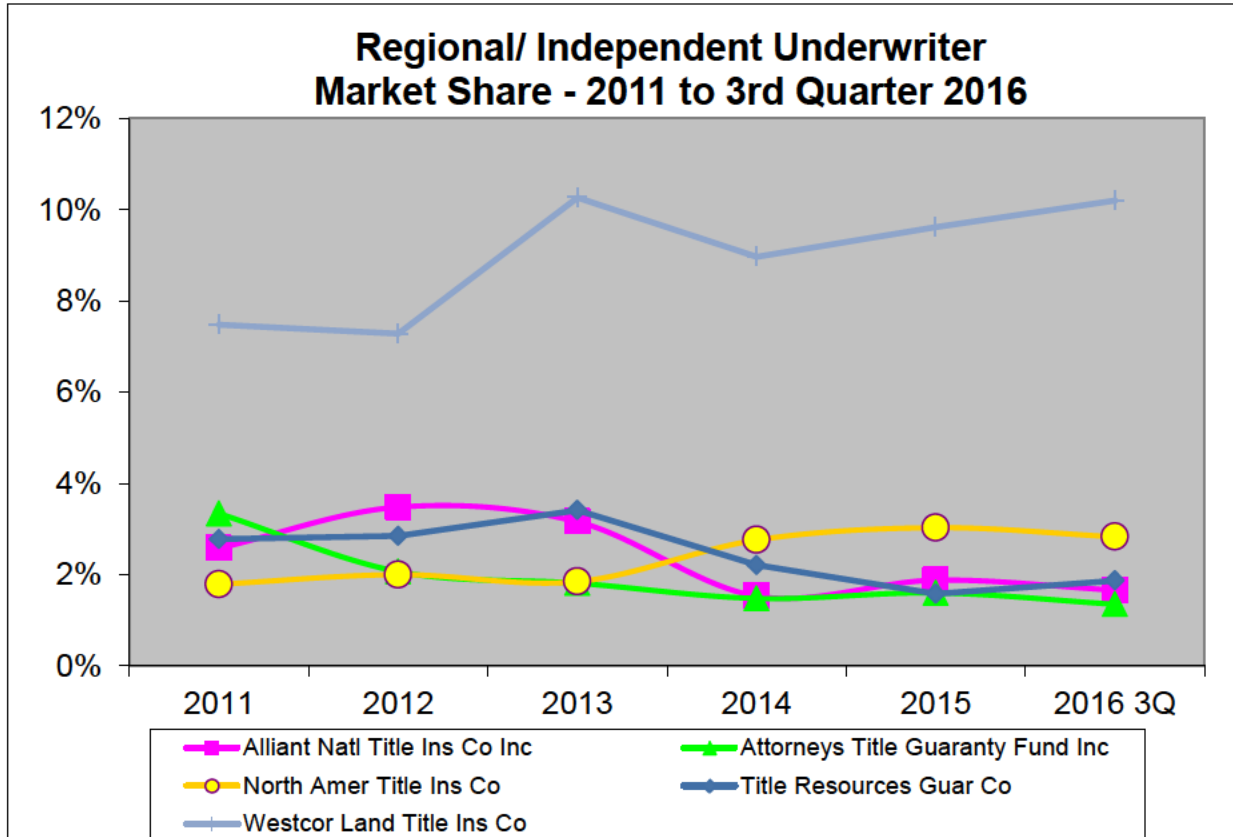
As the graph above shows, Colorado's group of regional/independent underwriters experienced a small increase in market share. The title industry's approximate market share analysis from 2011 to third quarter 2016 includes the following:

Market Share	2011	2012	2013	2014	2015	2016 3Q
Fidelity Family	39.16%	33.33%	32.20%	31.01%	30.45%	28.61%
Regionals/Independents	18.00%	17.70%	20.61%	16.96%	17.35%	17.90%
First American Title Insurance Company	12.03%	11.63%	12.71%	16.50%	16.95%	17.37%
Old Republic National Title Ins Co	9.69%	9.18%	9.65%	11.56%	11.56%	12.24%
Stewart Title Guaranty Company	16.61%	14.38%	12.68%	11.99%	13.17%	12.17%
Land Title Insurance Corporation	8.57%	9.61%	9.54%	10.30%	8.98%	9.98%



## Regional/Independent Underwriters

With five companies continuing to compete for approximately 18 percent of the market, even small increases or declines in premiums can be volatile 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 18 percent of the market, making Colorado one of the more competitive title insurance markets in the country. The Regionals/Independents approximate market share analysis from 2011 to third quarter 2016 includes the following:

Regionals/Independents	2011	2012	2013	2014	2015	2016 3Q
Alliant National Title Insurance Company	3.05%	3.12%	3.15%	1.53%	2.02%	1.66%
Attorneys Title Guaranty Fund	3.15%	2.46%	1.74%	1.48%	1.59%	1.35%
North American Title Insurance Company	1.63%	1.91%	1.86%	2.76%	2.91%	2.83%
Title Resources Guaranty Company	2.53%	3.13%	3.88%	2.21%	1.42%	1.87%
Westcor Land Title Insurance Company	7.15%	7.86%	9.98%	8.97%	9.42%	10.20%

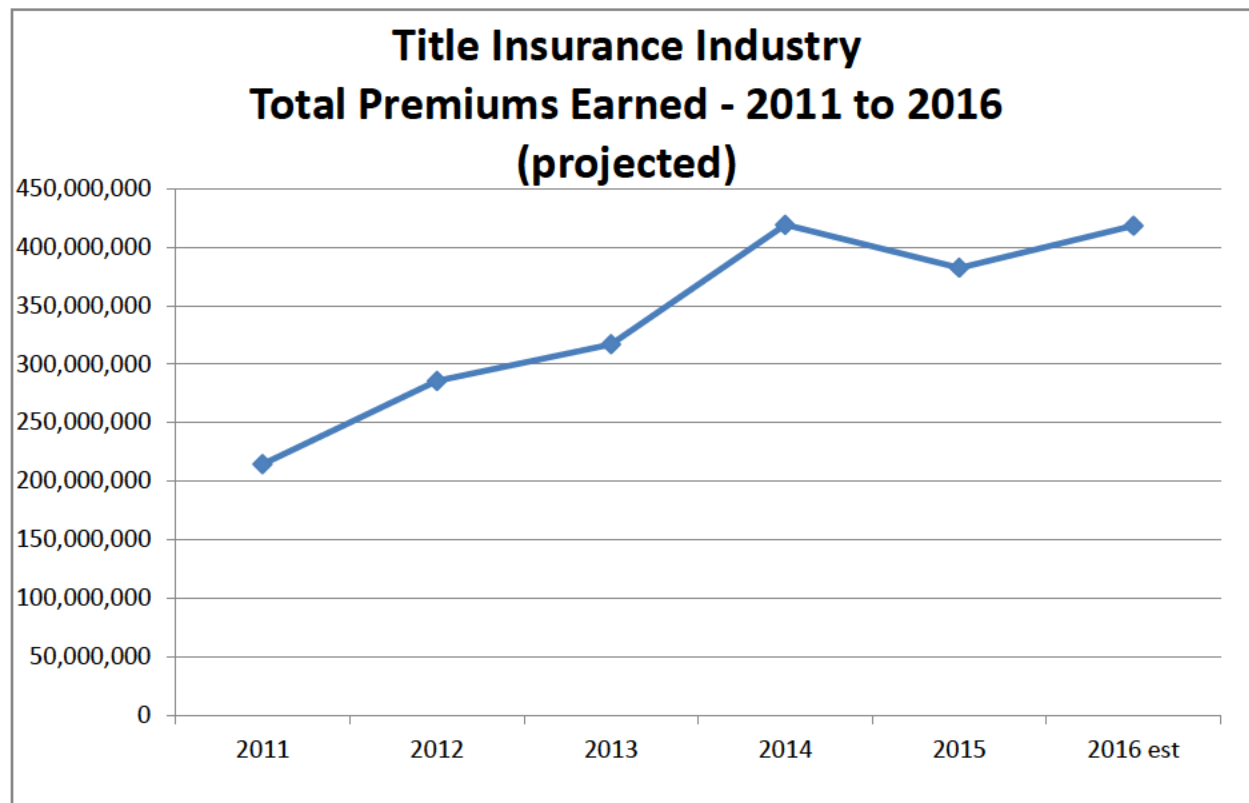




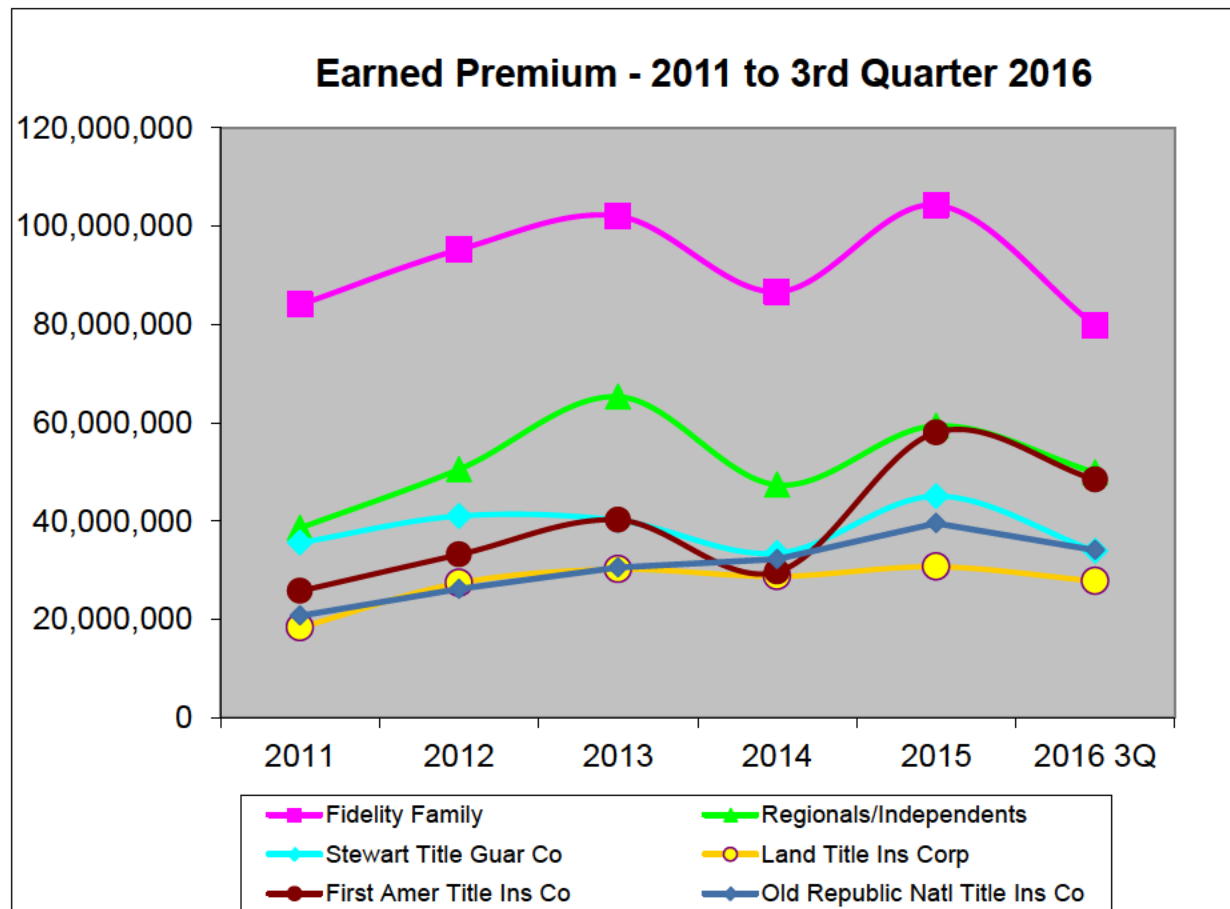
## Title Insurance Losses

Prior to the housing collapse, title insurance losses were between 3-5%. The American housing market changed and as a result, title insurance losses had been at historically high levels. With increased premium earnings and growth in the market, losses continue to return to a range of three percent or below for the insurers.

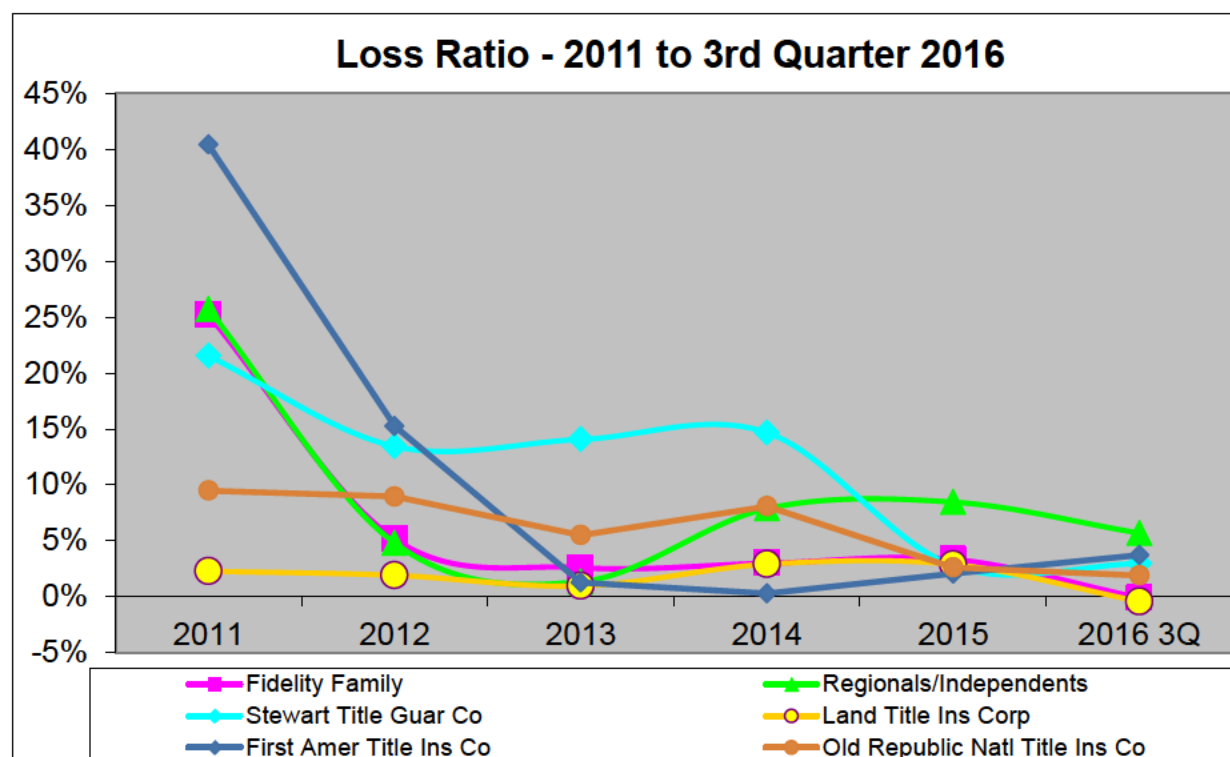
With sustained recovery of the real estate market in Colorado, title insurance premiums have steadily increased from \$214 million in 2011 to \$382 million through 2015. As a result of steady growth in the real estate market during 2014 and 2015, the first three quarters of 2016 reflect continued market growth with the projected total premiums for 2016 topping at approximately \$418 million.



If earnings continue on the same average trend of the first three quarters of 2016, there will be an increase in total industry earnings for the balance of 2016 totaling approximately \$418 million .



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 below is an estimate based on those numbers.



Although Colorado's regional/independent and large underwriters experienced significant decreases in loss ratio from 2011 through 2013, the steady decline in title insurance losses from 2012 through 2016 continues to demonstrate stabilization and recovery in the market. It can be extrapolated that this market constancy will continue into 2017. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.



## Enforcement Actions

### Enforcement Activity

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 are fines, license revocations and orders to cease and desist the unauthorized transaction of the business of insurance.

The Producer Enforcement unit investigated matters concerning industry standards of conduct, consumer protections, and fiduciary duties which comprised the majority of the Division's opened and closed title investigations in 2016.

During 2016, the Division opened eight title insurance investigations and closed ten title insurance investigations. Five of the closed investigations resulted in no action, three closed investigations resulted in warnings and the remaining two resulted in enforcement actions. 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 also continues to work 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.



## 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. The Market Regulation Section completed an exam in the fall of 2016 and is in the process of conducting an examination that was initiated in the summer of 2016. Market conduct examinations include a review of company operations and management, producer licensing, sales and marketing, underwriting, rating and claims.

Common examination findings include, but are not limited to:

- Unlicensed Producers
- Charging consumers incorrect rates and fees
- Use of generic exceptions on owner's title insurance commitments and policies
- Failure to provide consumers with required disclosures
- Failure to timely remit premiums

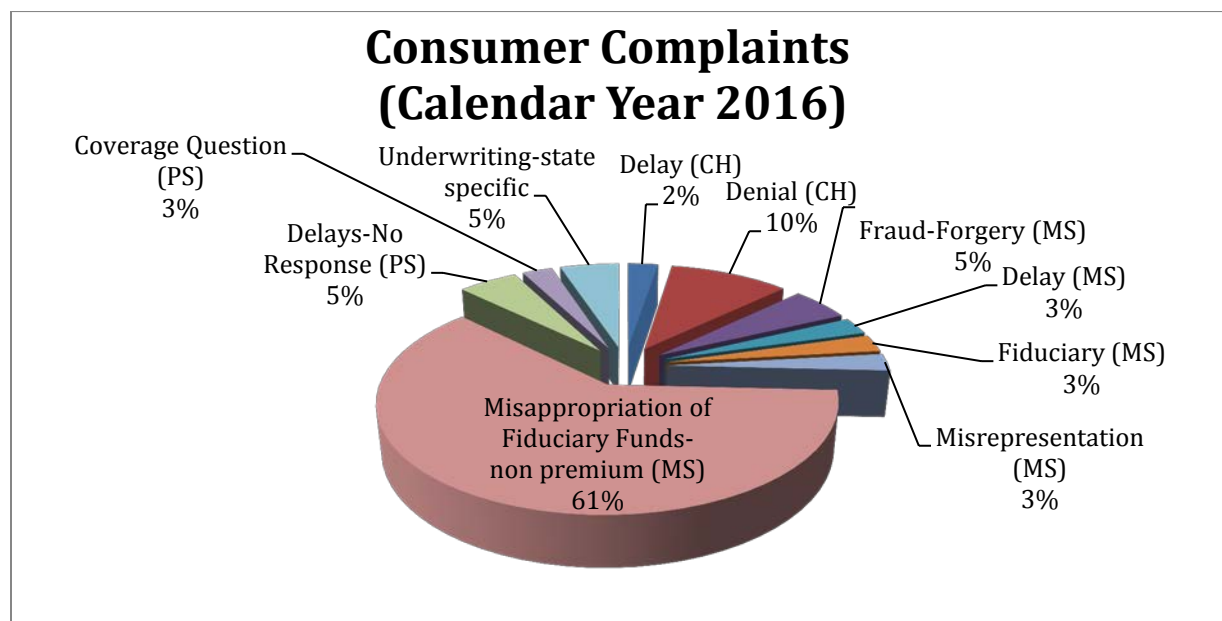
Market conduct examination reports and final agency orders can be reviewed via the Division's website at: [DORA.Colorado.gov/insurance](http://DORA.Colorado.gov/insurance). Follow the links for "Enforcement Actions" and then "Market Conduct Examinations."



## 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 2016, the Division handled approximately 38 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 denial of claim (4), delay of claim (1). The second area is Marketing and Sales and is broken down into subcategories of misappropriation of fiduciary funds-non-premium (24), fraud/forgery (2), delay (1), and misrepresentation (1). The third area is Policyholder Service and is broken down into a subcategory of delays/no response (2), coverage question (1). The fourth area is Underwriting and is broken down into a subcategory of state specific/delay (2).



### Compliance Activities - Industry Outreach and Education

In 2016, the Division continued its focus 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 2016, the Division handled 330 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 upon its website to ensure that 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.

The Division is working on the development and implementation of the National Association of Insurance Commissioners (NAIC) Title Shopping Tool through the Title Consumers Shopping Tools Working Group. The goal of this guide is to assist consumers with understanding the basics of title insurance and offers tips on how to shop and compare title insurance and closing services.

In 2017, the Division renews 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.



## Regulation 3-5-1 Title Insurance

In 2016, the Division completed its work on dividing Regulation 3-5-1 into separate regulations addressing particular aspects of title insurance. The Division established work groups to complete the partitioning of Regulation 3-5-1 and addressed the remaining two sections including Standards of Conduct and Fiduciary Duties.

The work groups included subject matter experts from the title insurance industry, consumer representatives and other stakeholders. The following organizations participated in and were represented at the work group meetings:

- Land Title Association of Colorado
- Real Estate Section of the Colorado Bar Association
- Colorado Mortgage Lender's Association
- Consumer protection and advocacy representatives and other stake holders

Within the Division's continued efforts to collaboratively work with the title insurance industry and the other stakeholders to complete the partitioning of Regulation 3-5-1, during the past two years, the Division devoted a significant amount of its time and resources conducting over 30 work group meetings, six of which were during the first half of 2016.

Of the final two completed work groups, Regulation 8-1-3-Title Insurance Standards of Conduct became effective August 15, 2016. The Division anticipates proposed Regulation 8-1-4- Fiduciary Duties, Regulation 8-1-5-Title Insurance Producer Licensing and the repeal of Regulation 3-5-1 to become effective in early March 2017.

## 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 subject to the approval of the Commissioner.

The TIC conducted four quarterly meetings and one special meeting during 2016. They discussed and proposed a number of recommendations to the Commissioner covering a variety of title insurance industry topics.

The majority of the TIC's recommendations in 2016 included technical changes to language in proposed regulations and frequently asked questions (FAQs) in order to provide further clarification pertaining to title industry standards and practices .

In addition, the TIC included a recommendation in the interest of consumer protection by proposing that the Commissioner require a mandatory Consumer Protection Letter (CPL) to be issued on residential real estate transactions for buyers, sellers and lenders.

Further, the TIC also submitted a recommendation requesting the Commissioner to prepare and send a letter to the Director of the Consumer Financial Protection Bureau





(CFPB) calling for modifications to the CFPB's method of disclosure for title insurance premiums on the consumer's Loan Estimate and Closing Disclosure forms.

The TIC recommendations and the Commissioner's responses are posted on the Division of Insurance web page at [DORA.Colorado.gov/insurance](http://DORA.Colorado.gov/insurance).

## Miscellaneous Activities

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

*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):* 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.

*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. Additionally, Division staff monitors and participates in meetings of the Escrow Theft White Paper Subgroup, Title Insurance Financial Reporting Working Group, Title Insurance Guaranty Fund Working Group, Title Insurance Risk-Based Capital Subgroup and the Consumer Shopping Tools 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.

