



**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**

**2017**



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

**Michael Conway**  
Interim Commissioner of Insurance

January 5<sup>th</sup>, 2018

Dear Committee Members,

I am pleased to submit the 2017 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 2017. 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,

**Michael Conway**  
Interim Commissioner of Insurance



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

**2017**

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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 2017:

- 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 22 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2017 and 34 that became newly licensed;
- The Division handled 205 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 (TIC) conducted four quarterly meetings during 2017. The TIC discussed 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).

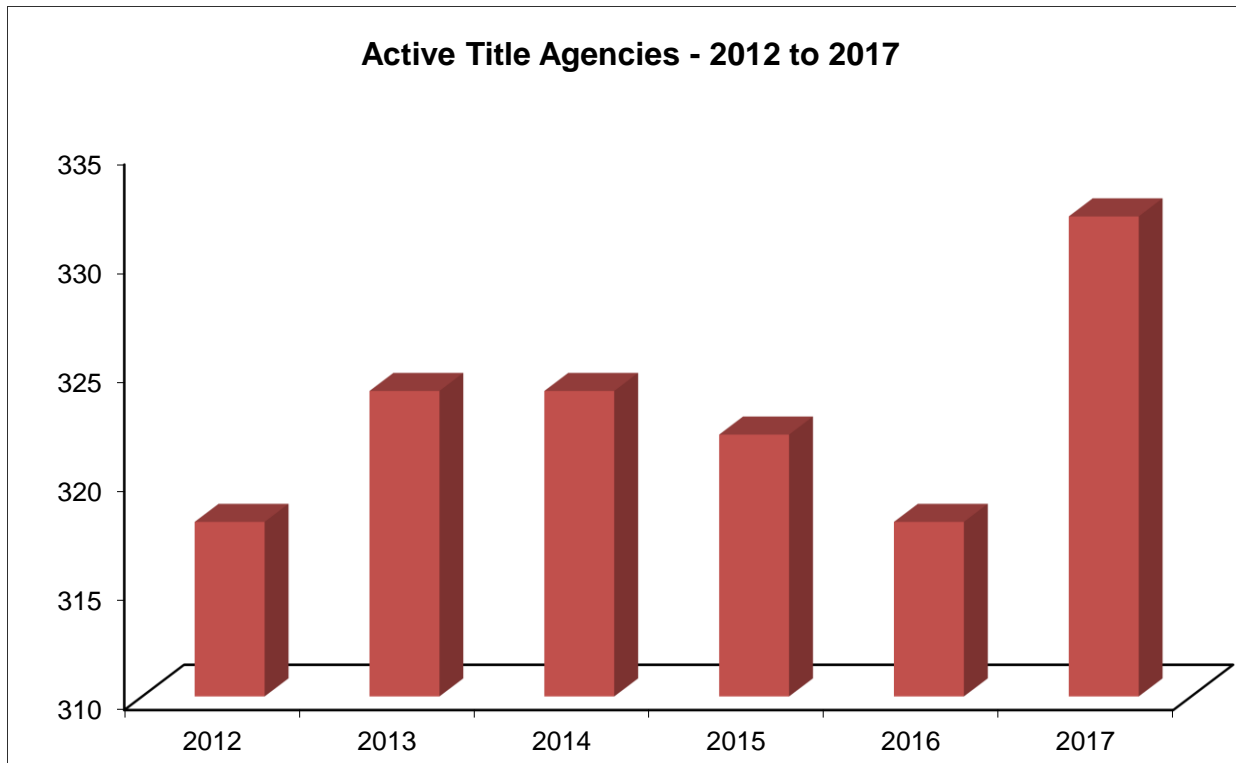
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.



## Market Trends Associated with Title Insurance

### Market Dynamics

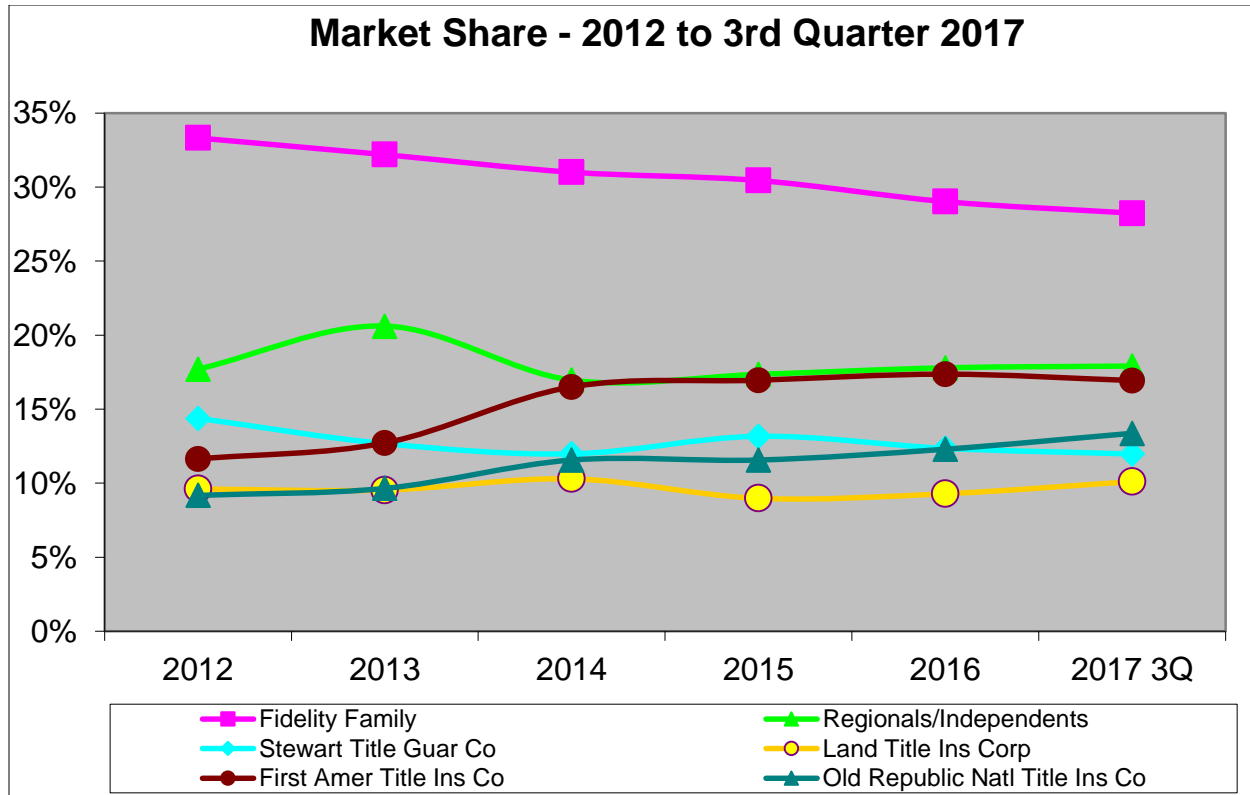
Today, 332 title agencies hold active Colorado insurance producer licenses; in December 2012, there were 318 active title agencies. After an increase in active agency licenses from 318 in 2012 to 324 in 2013, the number of licensed title agencies remained steady at 324 in 2014, stabilized in 2015 and 2016 with 322 and 318 licensed agencies respectively and Colorado demonstrated an increase of 14 agencies in 2017.



### Title Insurance Underwriters

Overall, 2017 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.





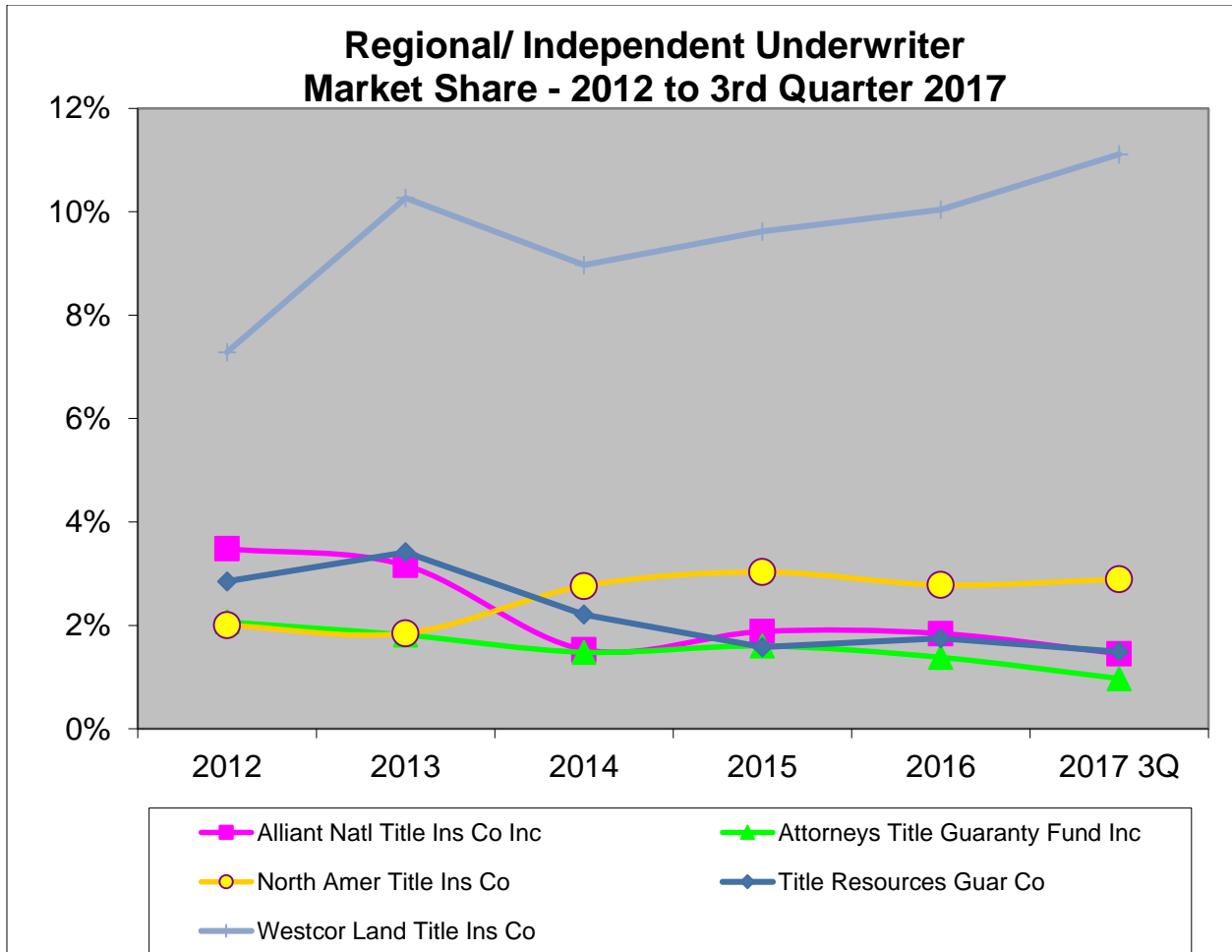
As the graph above shows, Colorado's group of regional/independent underwriters experienced a small increase in market share. The title industry's approximate market share analysis from 2012 to third quarter 2017 includes the following:

Market Share	2012	2013	2014	2015	2016	2017 3Q
Fidelity Family	33.33%	32.20%	31.01%	30.45%	29.02%	28.24%
Regionals/Independents	17.70%	20.61%	16.96%	17.35%	17.79%	17.91%
First American Title Insurance Company	11.63%	12.71%	16.50%	16.95%	17.36%	16.93%
Old Republic National Title Ins Co	9.18%	9.65%	11.56%	11.56%	12.29%	13.36%
Stewart Title Guaranty Company	14.38%	12.68%	11.99%	13.17%	12.36%	11.98%
Land Title Insurance Corporation	9.61%	9.54%	10.30%	8.98%	9.29%	10.11%

### 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 2012 to third quarter 2017 includes the following:

Regionals/Independents	2012	2013	2014	2015	2016	2017 3Q
Alliant National Title Insurance Company	3.12%	3.15%	1.53%	2.02%	1.84%	1.45%
Attorneys Title Guaranty Fund	2.46%	1.74%	1.48%	1.59%	1.38%	0.97%
North American Title Insurance Company	1.91%	1.86%	2.76%	2.91%	2.78%	2.89%
Title Resources Guaranty Company	2.53%	3.13%	2.21%	1.42%	1.75%	1.49%
Westcor Land Title Insurance Company	7.86%	9.98%	8.97%	9.42%	10.04%	11.11%

## Title Insurance Losses

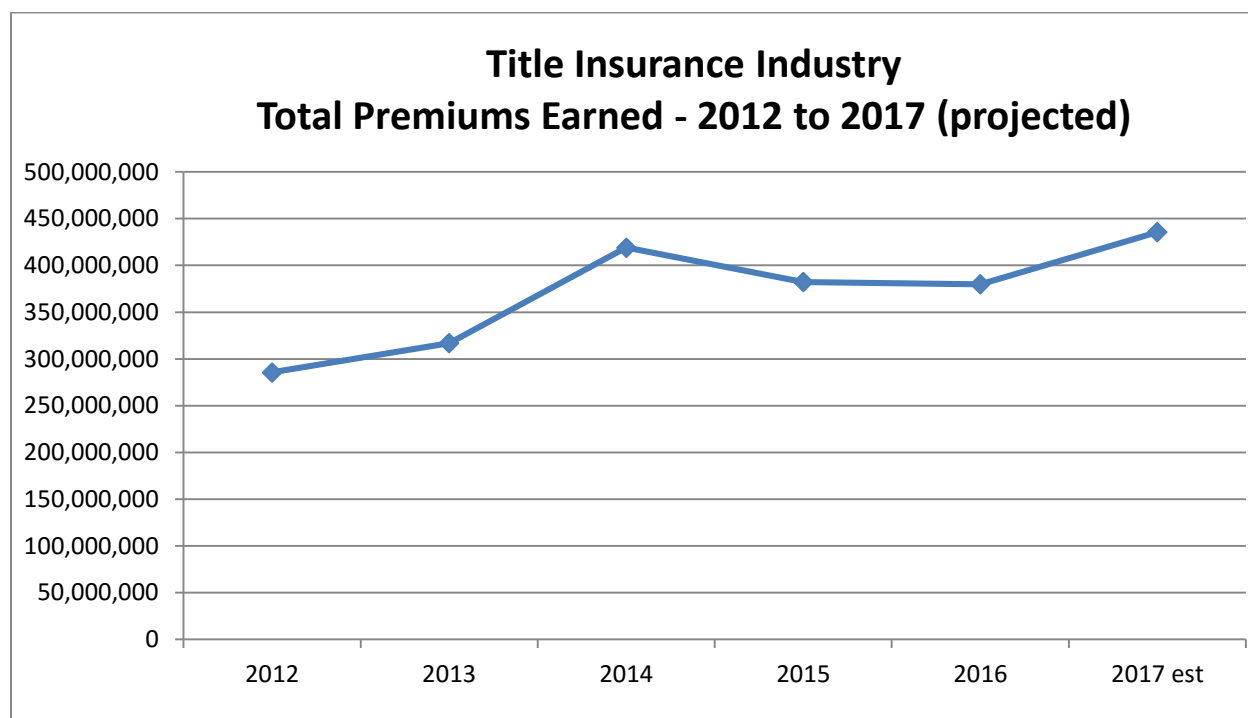
Prior to the housing collapse, title insurance losses were between 3-5%. The American housing market changed and as a result, title insurance losses had been at historically





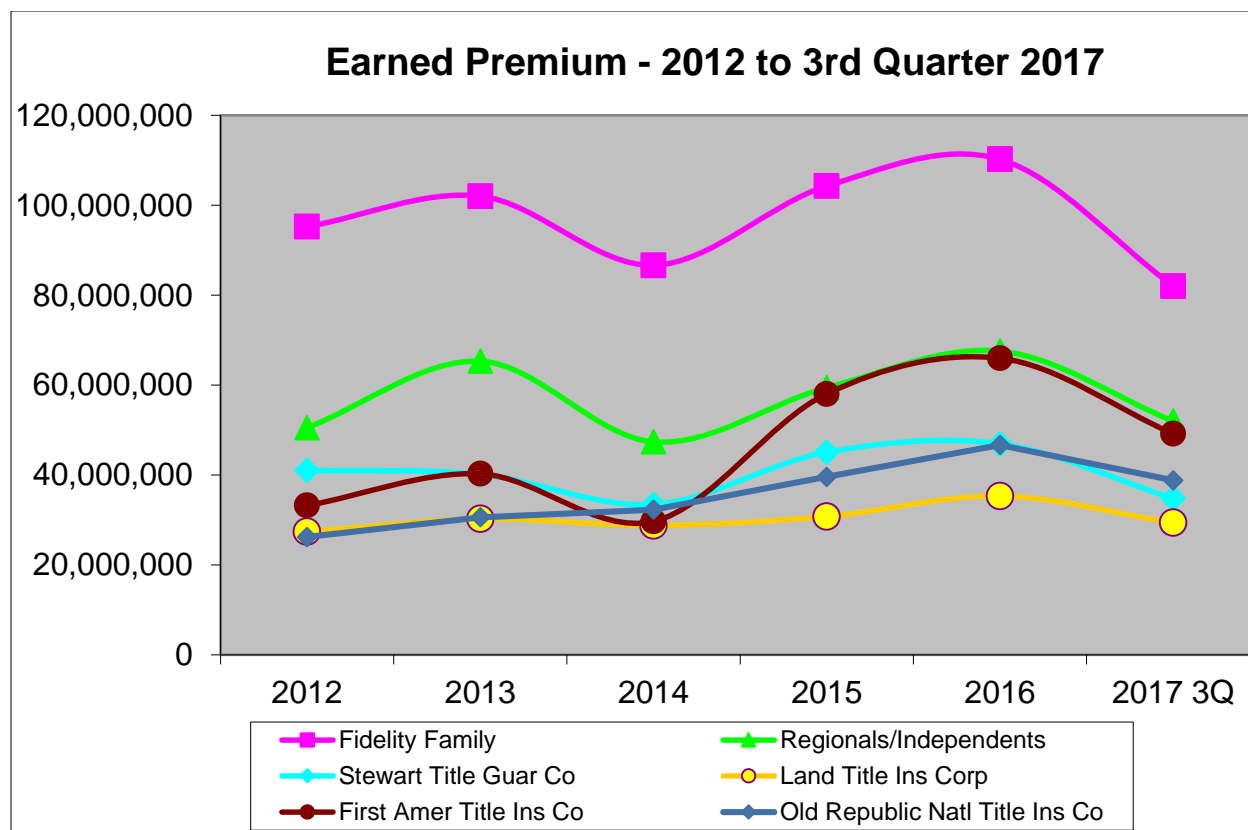
high levels. With increased premium earnings and growth in the market, losses continue to return to a range of three percent or below for the insurers.

With sustained recovery of the real estate market in Colorado, title insurance premiums have steadily increased from \$285 million in 2012 to \$379 million through 2016. As a result of steady growth in the real estate market during 2015 and 2016, the first three quarters of 2017 reflect continued market growth with the projected total premiums for 2017 topping at approximately \$435 million.



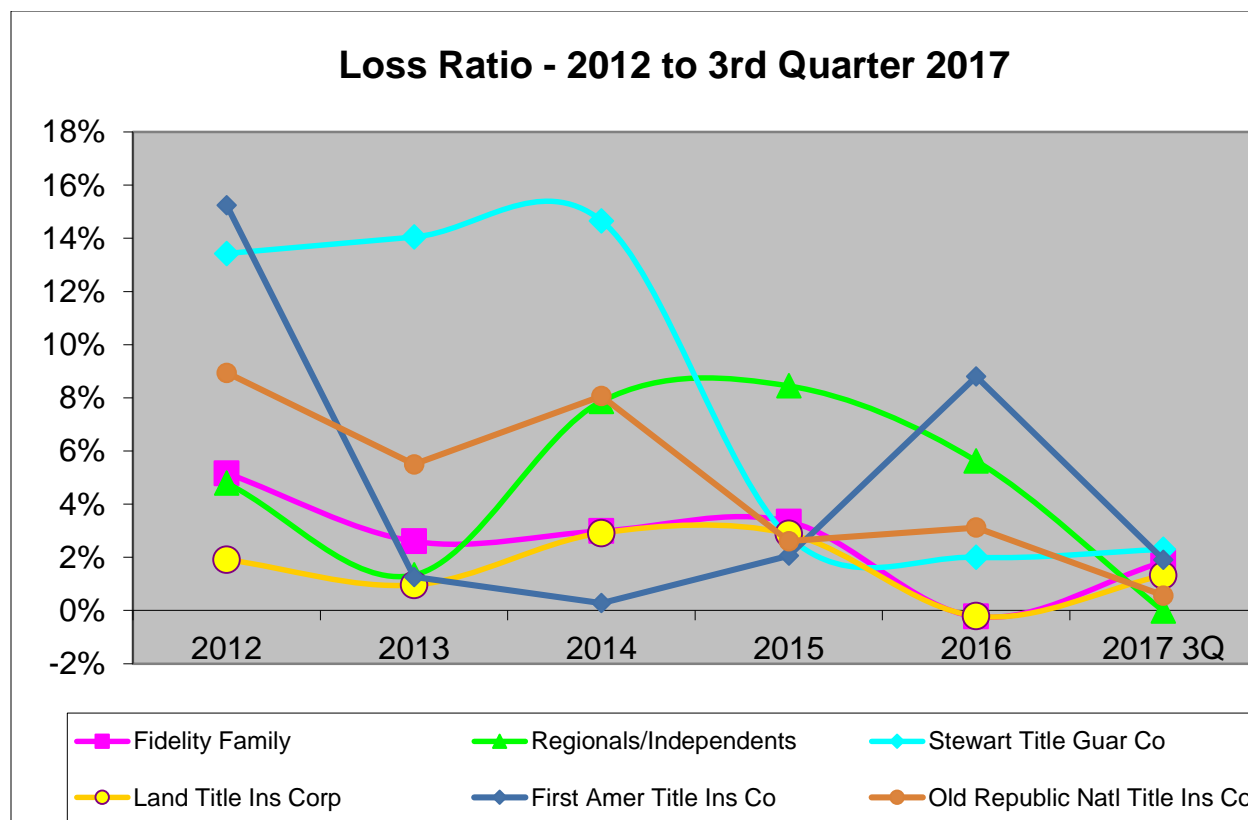
If earnings continue on the same average trend of the first three quarters of 2017, there will be an increase in total industry earnings for the balance of 2017 totaling approximately \$435 million .





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 on the following page is an estimate based on those numbers.





Although Colorado's regional/independent and large underwriters experienced significant decreases in loss ratio from 2012 through 2014, the steady decline in title insurance losses from 2012 through 2017 continues to demonstrate stabilization and recovery in the market. It can be extrapolated that this market constancy will continue into 2018. Title insurers in Colorado have strict reporting, reserve, and capitalization requirements and remain supervised and solvent.

## Enforcement Actions

### Enforcement Activity

The 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, civil restitution 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, marketing activities, consumer protections, and fiduciary duties which comprised the majority of the Division's opened and closed title investigations in 2017.

The Division took five enforcement actions during 2017 and closed four investigations resulting in warnings issued to the title insurance producer. Four out of the five enforcement actions taken by the Division resulted in the permanent revocation of the insurance producer's license involving the commingling and misappropriation of trust



funds. The remaining enforcement action involved the denial of a license. All five enforcement actions have been reported to the National Association of Insurance Commissioners (NAIC).

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 conducted an exam in 2017 and anticipates it to be finalized January 2018.<sup>1</sup> 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

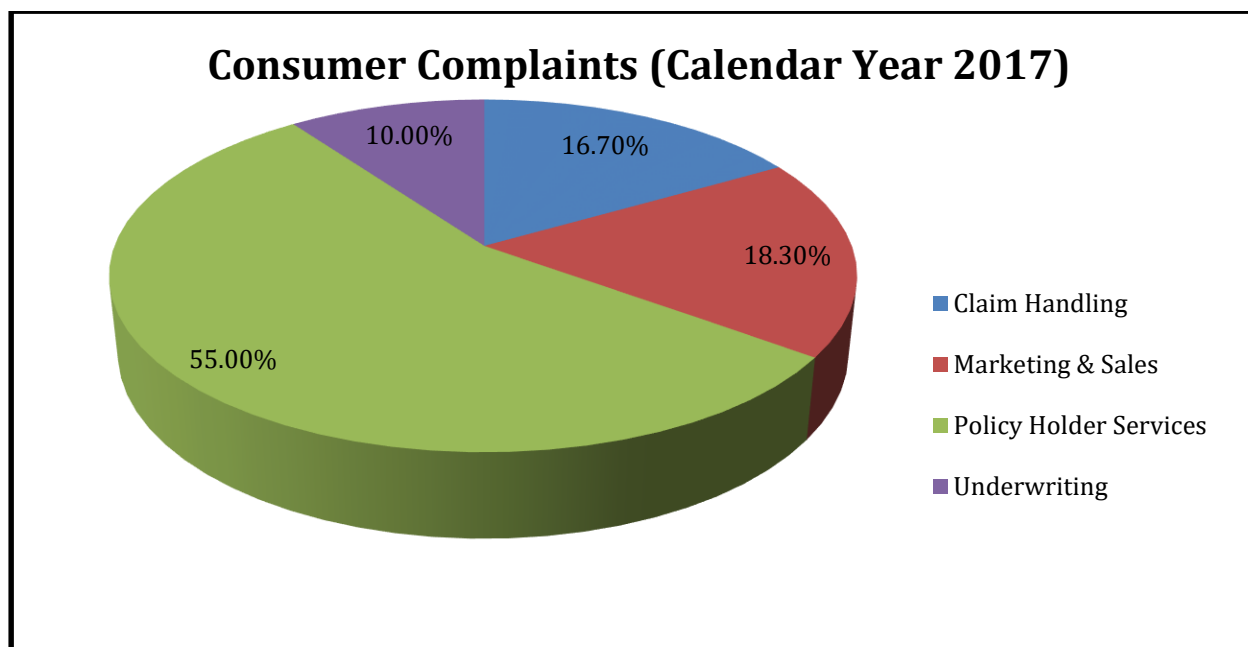
### Consumer Complaints

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.

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<sup>1</sup> This was a reduction in the number of examinations conducted from past years. That was due in large part to a vacancy for a portion of the year in the market conduct examiner position dedicated to examining the title industry.





In 2017, the Division handled approximately 51 consumer complaints on title insurance. The complaints include a variety of title insurance related topics including, but not limited to, real estate closing and escrow fees and charges, delay or denial of title insurance claims, and compromised consumer and business emails (email scams). These complaints are categorized into the following four areas.

The first area is Claims Handling and includes approximately 11 consumer complaints and is broken down into the following subcategories:

- denial of claim (3)
- delay of claim (6)
- and adjuster handling (1)

The second area is Marketing and Sales and includes approximately 11 consumer complaints and is broken down into the following subcategories:

- misrepresentation (6)
- fraud/forgery (2)
- delay (1)
- and fiduciary (2)

The third area is Policy Holder Services and includes approximately 33 consumer complaints and is broken down into the following subcategories:

- delays/no response (5)
- coverage question (2)
- state specific (18)
- payment not credited (3)
- unfair negotiation (2)



- notice requirements (1)
- policy delivery (1)
- and premium refund (1)

The fourth area is Underwriting and includes approximately six consumer complaints and is broken down into the following subcategories:

- state specific/delay (2)
- cancellation (2)
- nonrenewal (1)
- and reduced coverage (1)

The “State Specific” code is used when a complaint reason does not fit in any of the other categories. Escrow and closing related complaints often fall under the “State Specific” code.

## Compliance Activities - Industry Outreach and Education

In 2017, 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 2017, the Division handled 205 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 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 2018, 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

At the end of 2016, the Division completed its work on dividing Regulation 3-5-1 into separate regulations addressing particular aspects of title insurance. During the first quarter of 2017, Regulation 3-5-1 was completely repealed effective March 15, 2017, and Regulation 8-1-4 Fiduciary Duties and Regulation 8-1-5 Title Insurance Producer Licensing became effective March 15, 2017.

On December 12, 2017, the Office of Legislative Legal Services challenged the Division's rule-making authority for Regulation 8-1-4 in front of the Committee on Legal Services. By a vote of 5-4, the Committee on Legal Services voted not to extend the regulation.

## Title Insurance Commission

The 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 during 2017. They discussed a variety of important title insurance topics including, but not limited to, licensing standards for entry into the title industry, closing protection letters, standards of conduct, and wire fraud. There were no specific consumer protections recommended by TIC this year.

The TIC meeting agendas, minutes and all correspondence between the Division and the TIC 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.

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. The Division meets with LTAC on a recurring basis throughout the year.

*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.

