



COLORADO

**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

2018



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**Department of
Regulatory Agencies**

Division of Insurance

Michael Conway
Commissioner of Insurance

March 18, 2019

Dear Committee Members,

I am pleased to submit the 2018 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 2018. 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
Commissioner of Insurance



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

2018

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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 2018:

- 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 24 title agencies that allowed their license to lapse or cancelled their license in Colorado in 2018 and 18 that became newly licensed;
- The Division handled 51 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 and one executive session meeting during 2018. The TIC discussed a variety of important 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).

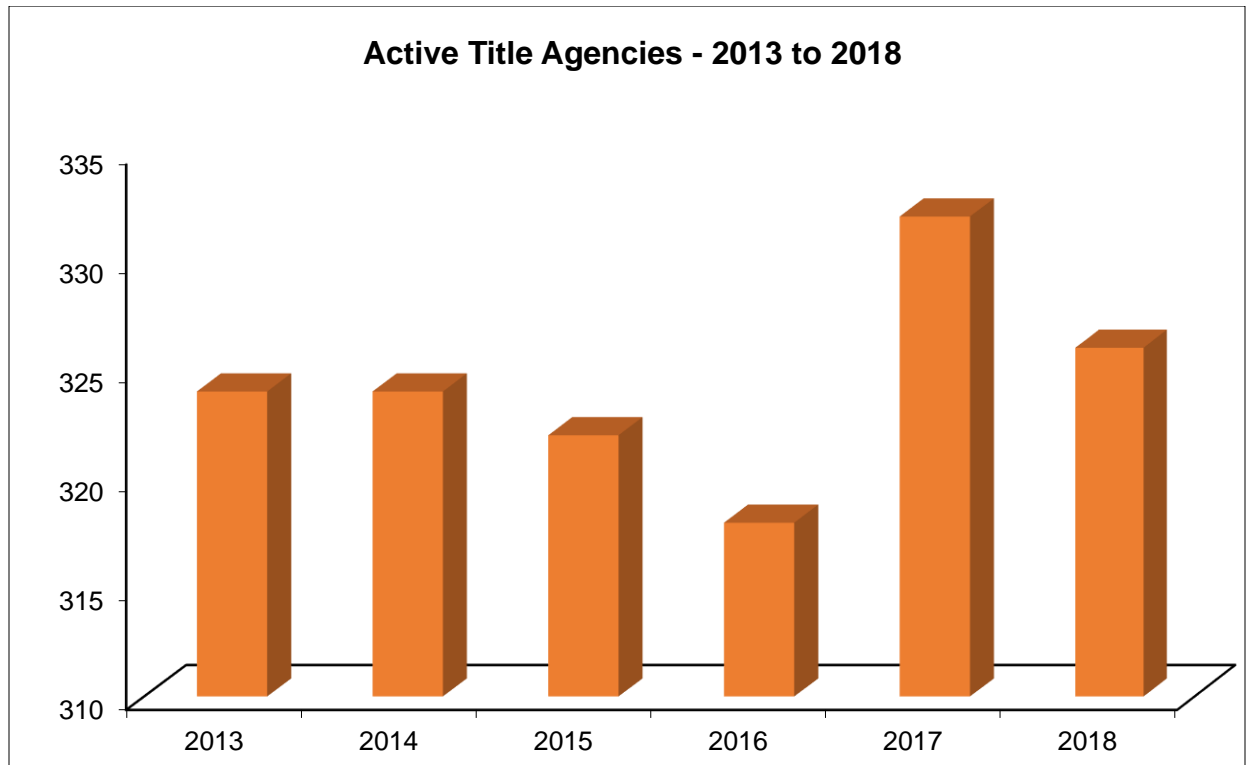
This report is prepared under the above authority and provisions. It provides a statistical report of the enforcement and regulatory actions, market trend tracking, compliance and consumer contacts, and miscellaneous activities of the Division in the regulation of title insurance entities in Colorado.



Market Trends Associated with Title Insurance

Market Dynamics

Today, 326 title insurance agencies hold active Colorado insurance producer licenses; in 2013 and 2014, there were 324 active title agencies. The data shows modest growth supported by uninterrupted market stabilization during the last five years. The number of licensed title agencies has remained steady with 322 and 318 in 2015 and 2016 respectively with a slight increase in 2017 with 332 licensed agencies.

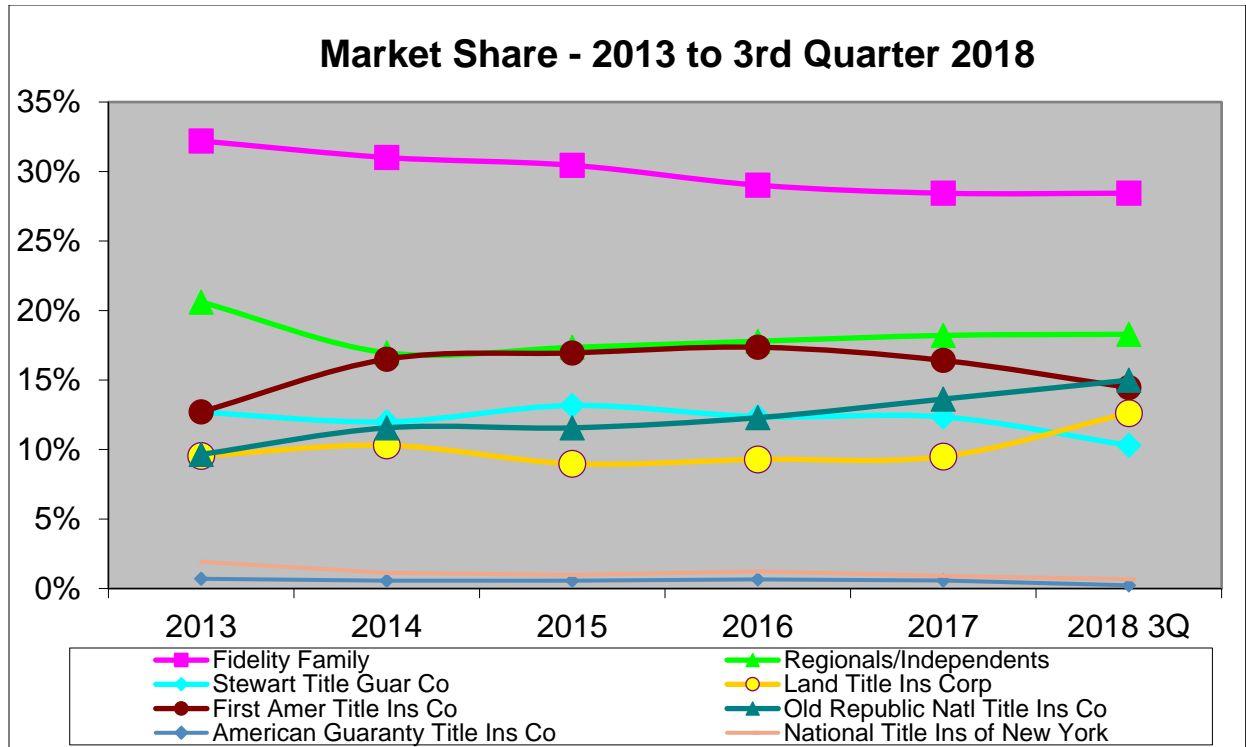


In addition to regulating title insurance entities, the Division of Insurance regulates the activities of individual title insurance producers. Currently, 2,838 individuals hold a title insurance producer's license in Colorado.

Title Insurance Underwriters

Overall, 2018 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.





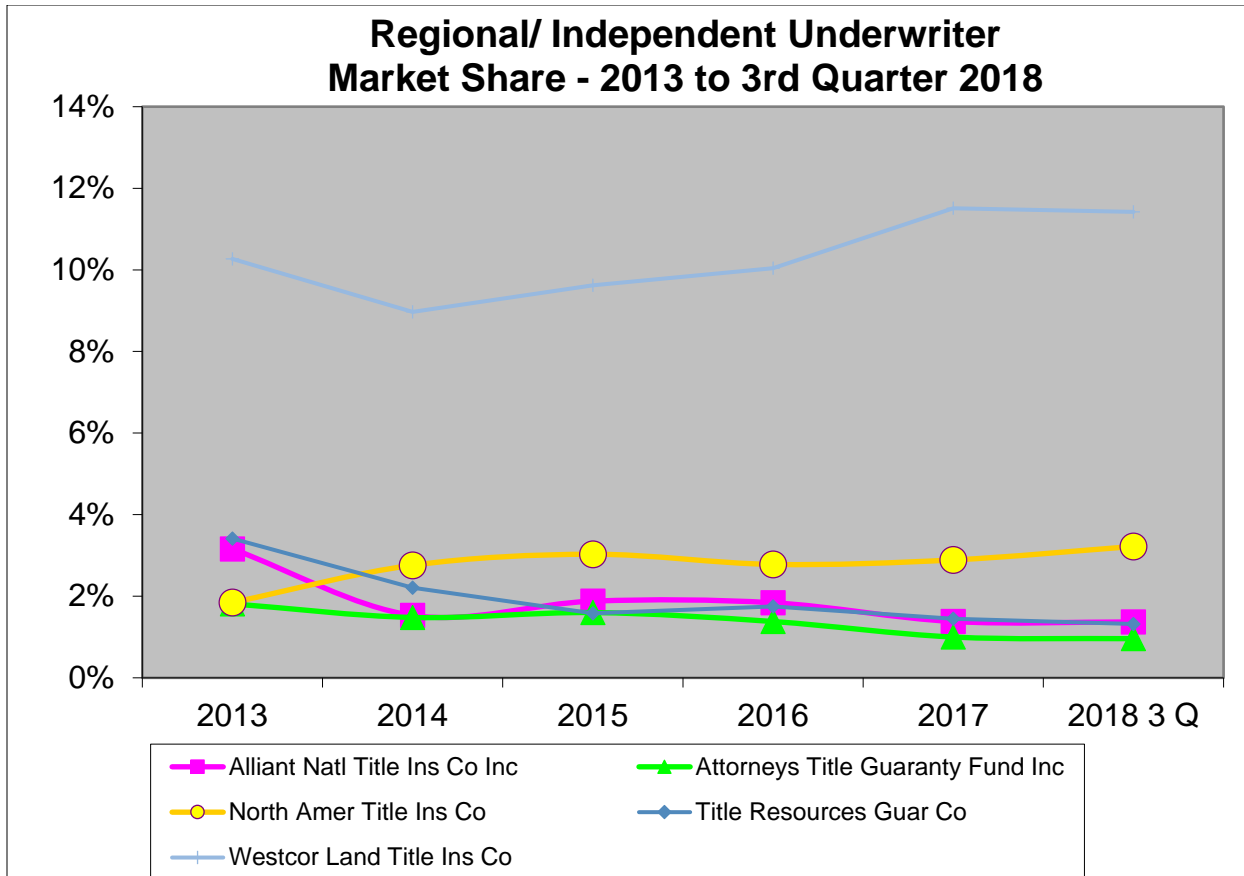
As the graph above shows, Colorado's group of regional/independent underwriters experienced a small increase in market share. The title industry's approximate market share analysis from 2013 to third quarter 2018 includes the following:

Market Share	2013	2014	2015	2016	2017	2018 3Q
Fidelity Family	32.20%	31.01%	30.45%	29.02%	28.44%	28.44%
Regionals/Independents	20.61%	16.96%	17.35%	17.79%	18.21%	18.29%
First American Title Insurance Company	12.71%	16.50%	16.95%	16.95%	16.41%	14.46%
Old Republic National Title Ins Co	9.65%	11.56%	11.56%	12.29%	13.63%	14.99%
Stewart Title Guaranty Company	12.68%	11.99%	13.17%	12.36%	12.34%	10.30%
Land Title Insurance Corporation	9.54%	10.30%	8.98%	9.29%	9.50%	12.62%

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 2013 to third quarter 2018 includes the following:

Regionals/Independents	2013	2014	2015	2016	2017	2018 3Q
Alliant National Title Insurance Company	3.15%	1.53%	2.02%	1.84%	1.38%	1.37%
Attorneys Title Guaranty Fund	1.74%	1.48%	1.59%	1.38%	1.00%	0.96%
North American Title Insurance Company	1.86%	2.76%	2.91%	2.78%	2.89%	3.22%
Title Resources Guaranty Company	3.13%	2.21%	1.42%	1.75%	1.45%	1.32%
Westcor Land Title Insurance Company	9.98%	8.97%	9.42%	10.04%	11.51%	11.42%

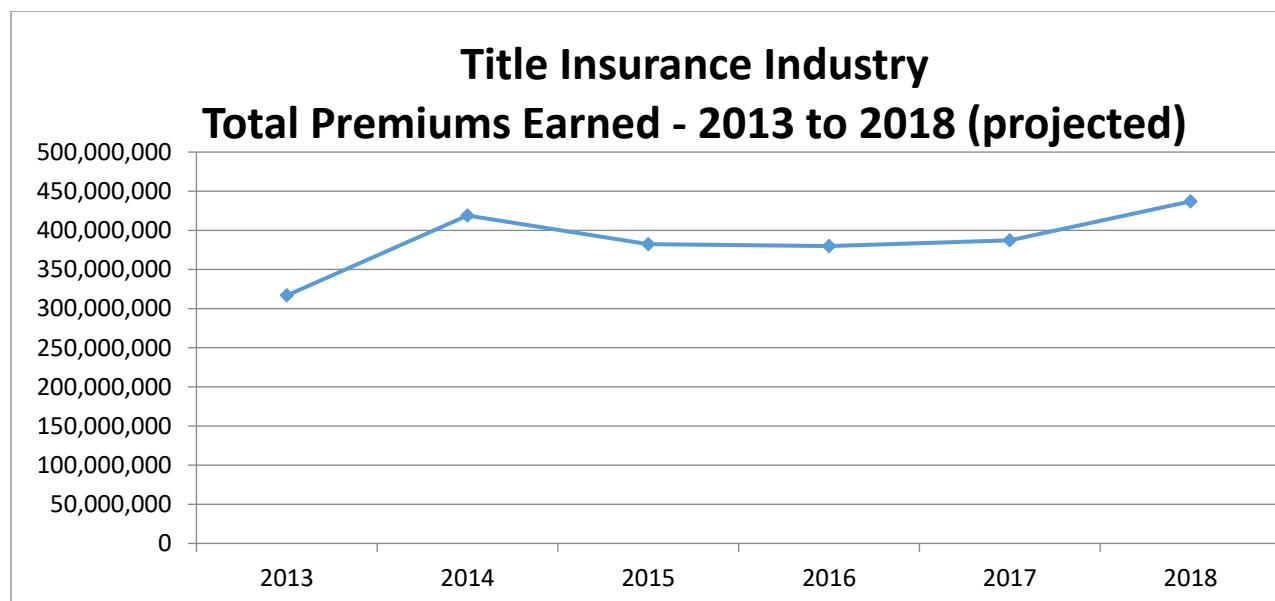
Title Insurance Losses

The title insurance industry experienced high losses as a result of the housing collapse. As the economy recovered, premium earnings and market growth increased and losses returned to their historic range of three to five percent.

With the recovery of the real estate market in Colorado, title insurance premiums have steadily increased from \$316 million in 2013 to \$387 million through 2017. As a

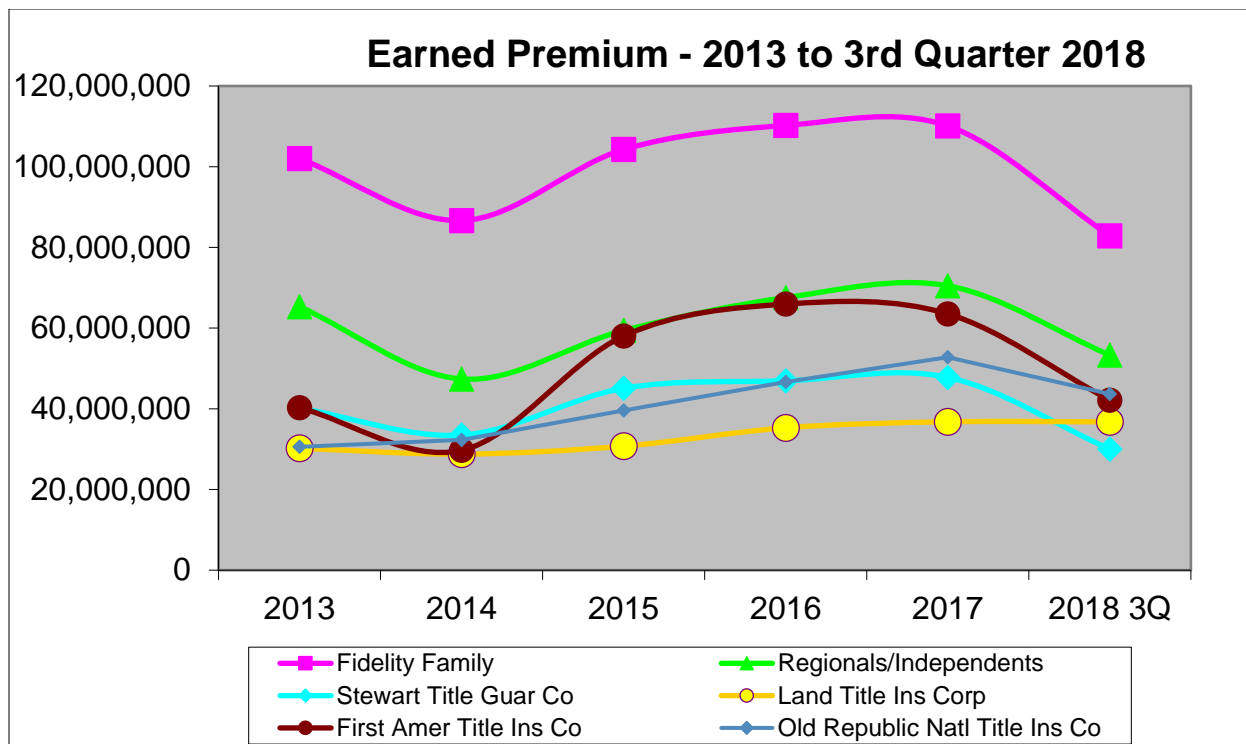


result of steady growth in the real estate market during 2016 and 2017, the first three quarters of 2018 reflect continued market growth with the projected total premiums for the first three quarters in 2018 topping at approximately \$291 million.

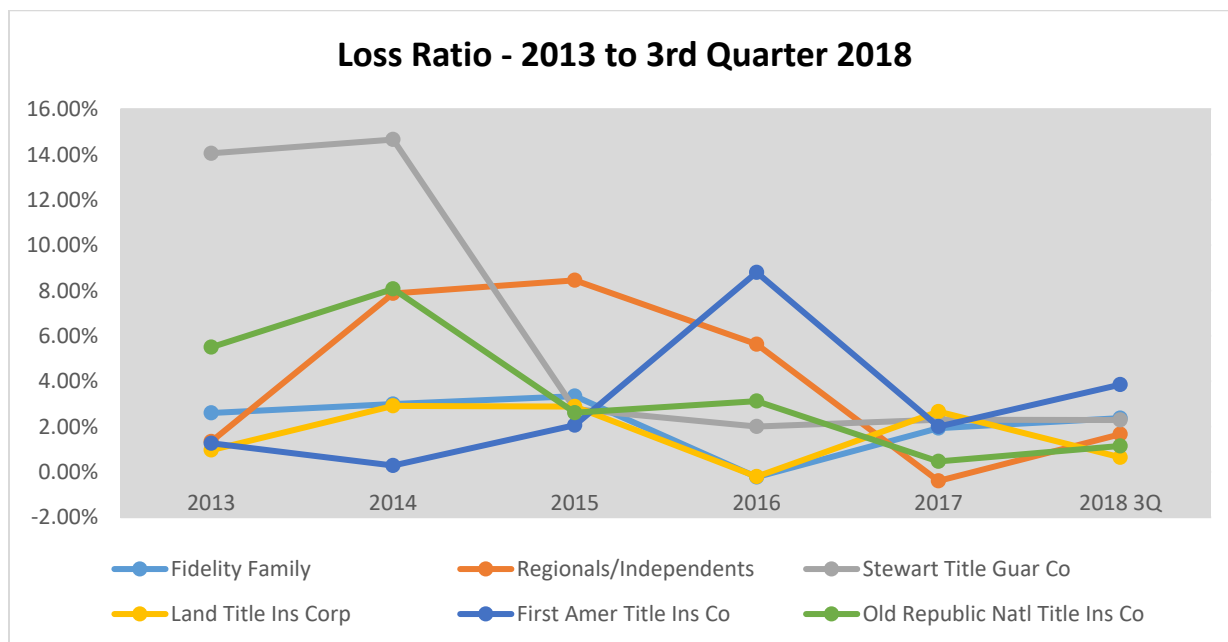


If earnings continue on the same average trend of the first three quarters of 2018, there will be an increase in total industry earnings for the balance of 2018 totaling approximately \$437 million .





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 some of Colorado's regional/independent and large underwriters experienced decreases in loss ratio during the past five years, the overall steady decline in title insurance losses since the housing collapse continues to demonstrate a sound market. It can be extrapolated that this market constancy will continue into 2019. 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 2018.

The Division took one enforcement action during 2018 and closed two investigations resulting in warnings issued to the title insurance producer. The enforcement action taken by the Division resulted in the permanent revocation of the insurance producer's license involving the charging unauthorized fees to consumers during real estate transactions. The enforcement action has 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 two continuum actions and one exam in 2018 and anticipates the exam to be finalized February



2019.¹ 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:

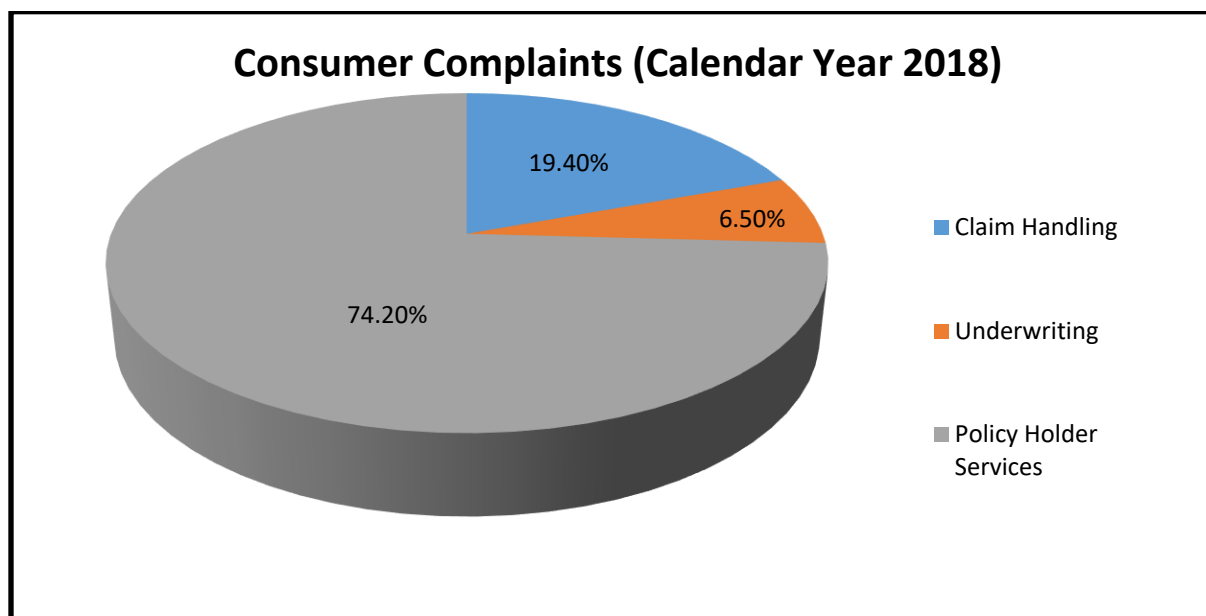
- Unlicensed Producers
- Charging consumers incorrect rates and fees
- Use of generic exceptions on owner’s title insurance commitments and policies
- Failure to provide consumers with required disclosures
- Failure to timely remit premiums

Market conduct examination reports and final agency orders can be reviewed via the Division’s website at: DORA.Colorado.gov/insurance. 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.



¹ This was equal to the number of examinations conducted in 2017, but 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 2018, the Division handled approximately 31 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 6 consumer complaints and is broken down into the following subcategories:

- denial of claim (2)
- delay of claim (3)
- and questionable claim (1)

The second area is Policy Holder Services and includes approximately 23 consumer complaints and is broken down into the following subcategories:

- delays/no response (7)
- coverage question (1)
- state specific (9)
- abusive service (1)
- access to fee schedules/rates (1)
- unfair negotiation (2)
- policy delivery (1)
- and premium refund (1)

The third area is Underwriting and includes approximately 2 consumer complaints and is broken down into the following subcategories:

- state specific/delay (2)

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 2018, 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 2018, the Division handled 51 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.

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 8-1-4 Title Insurance-Fiduciary Duties

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.

Upon the Committee's vote not to extend Regulation 8-1-4, the Division immediately began to work with the Office of Legislative Legal Services to draft proposed legislation authorizing the Commissioner of Insurance to promulgate rules regulating the handling of fiduciary funds by title insurance entities.

On January 29, 2018, Senate Bill 18-125 was introduced in the Senate and it authorized the Commissioner of Insurance to promulgate rules that were necessary for the preservation and protection of fiduciary funds. The bill also granted the Division the authority to regulate closing and settlement funds held by title insurance entities.

Senate Bill 18-125 was passed by the legislature and signed by the Governor on March 29, 2018. The bill requires title insurance companies, agents and their affiliates to hold funds in a fiduciary capacity.

With the passage of SB 18-125 (currently § 10-11-127, C.R.S) the Division amended Regulation 8-1-4 to address the issues raised by the Committee. Amended Regulation 8-1-4 became effective July 15, 2018.



Title Insurance Regulation Performance Audit

On September 24, 2018 the Colorado Office of the State Auditor completed an audit of the Department of Regulatory Agencies Title Insurance Regulation and issued a report which included audit findings and recommendations.

The performance audit identified four specific areas concerning insufficient internal controls and procedures in the reviewing and processing of title insurance rate filings and potential conflicts of interest.

The four areas of concern include the following:

- Title Insurance Rate Filings
- Evaluating Title Insurance Rates
- Posting Rate Filing Summaries
- Conflict of Interest

Upon completion of the performance audit, the Division agreed with the audit findings and recommendations and agreed to implement specific procedures to address the issues identified during the audit.

As a result, the Division agreed to provide clarification in existing Regulation 8-1-1 by providing title insurers guidance concerning the requirements for the justification of new or amended title insurance rates. Additionally, the Division agreed to implement specific internal procedures that provide guidance for the analysis, review and processing of title insurance rate filings. The Division also agreed to improve upon the posting of title insurance rate filing summaries and to provide consumers more accurate information regarding the impact of the changes on title insurance rates.

Within the Division's continued efforts to collaboratively work with the title insurance industry and the other stakeholders, the Division established a work group consisting of title insurance subject matter experts and other stakeholders to begin work on providing clarification of title insurance rate justification requirements and procedures in existing Regulation 8-1-1.

Between November 2018 and December 2018, the Division held four (4) title insurance rate and fee work group meetings. The Division worked together with the industry to address various title rate issues identified in the audit. As a result of the meetings, the Division revised Regulation 8-1-1 to provide the necessary clarification for rate justification and created new rate filing forms to provide guidance to title insurers on specific requirements for each title rate filing.

Upon completion of the work group meetings, a revised proposed draft of Regulation 8-1-1 is being prepared for the rule-making process and is anticipated being noticed for hearing in early spring 2019.



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 executive session meeting during 2018. They discussed a variety of important title insurance topics including, but not limited to, closing protection letters, unauthorized insurance business, wire fraud and the legislative audit on title insurance. 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.

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) 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.



