

# COLORADO OFFICE OF THE STATE AUDITOR



DEPARTMENT OF REGULATORY AGENCIES

## TITLE INSURANCE REGULATION



SEPTEMBER 2018

PERFORMANCE AUDIT

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# OFFICE OF THE STATE AUDITOR



September 7, 2018

DIANNE E. RAY, CPA  
—  
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of title insurance regulation at the Department of Regulatory Agencies. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Regulatory Agencies.

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# REPORT HIGHLIGHTS



TITLE INSURANCE REGULATION  
PERFORMANCE AUDIT, SEPTEMBER 2018

DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE

## CONCERN

The Division of Insurance (Division) lacks controls and processes to ensure that title insurance rate filings justify the rates charged by title insurance companies.

## KEY FINDINGS

- Only one of 11 Calendar Year 2017 title insurance filings that the Division closed as filed included all justification documents listed in rule. The other 10 filings were missing between one and five pieces of justification for each of the changes the filing were making to rates. For example, in one filing a company was adding two new rates and increasing four other rates; each of these changes were missing information about the company's expenses and profits to justify the rates. Without expense and profit information, the company has not demonstrated through its filing that rates are not excessive.
- The Division's rate review process is vital for consumer protection, but it may not always achieve this intent. The Division lacks written guidance for staff to consistently analyze expense, loss, and profit data to assess whether rates meet the statutory standards of not being excessive, inadequate, or unfairly discriminatory.
- The Division did not post on its website a summary of five of the 15 Calendar Year 2017 title insurance filings. In addition, the summaries that are posted lack information that would be useful to the public, such as the impact of changes to existing rates. The summaries also do not indicate if the Division rejected the filing.
- The Division could not provide annual conflict-of-interest forms for seven of eight employees involved in title insurance regulation in Calendar Years 2015 through 2017 and could only provide a form for 1 year for the eighth employee. The Division also lacks adequate policies and procedures for identifying, assessing, and mitigating potential conflicts of interest.

## BACKGROUND

- Title insurance protects lenders and owners against defects in a property title and is typically purchased during a real estate transaction or when refinancing a mortgage.
- Statute prohibits insurance rates from being excessive, inadequate, or unfairly discriminatory [Section 10-4-403(1), C.R.S.] and generally charges the Division with supervising the business of insurance [Section 10-1-108(7), C.R.S.].
- Title insurers are required by statute to file with the Division any new or amended rates they charge consumers for title insurance policies and justification for those rates [Sections 10-4-401(3)(b) and 10-11-118(2), C.R.S.].
- Statute requires the Division to post summaries of title insurance rate filings on its website [Section 10-4-401(3)(b), C.R.S.].
- The Division does not pre-approve rates, but either closes filings as filed, indicating approval to use the new rates, or rejects rate filings. In Calendar Year 2017, title insurers submitted 15 rate filings, of which the Division closed 11 as filed. These 11 filings introduced or changed 29 unique rates.

## KEY RECOMMENDATIONS

The Division agreed with our four recommendations to:

- Clarify in rule and written guidance the documentation necessary for a rate file to be complete and how the Division will handle incomplete filings.
- Ensure the rate review process is consistent and designed to determine whether title insurance rates are excessive, inadequate, or unfairly discriminatory.
- Implement a summary that will provide useful information to the public about each title insurance rate filing.
- Strengthen controls to identify, assess, and mitigate conflicts of interest for staff involved in regulating title insurance.



# CHAPTER 1

## OVERVIEW

Title insurance is an insurance product protecting lenders and owners against defects in a property title. Consumers typically purchase title insurance during a real estate transaction or when refinancing a mortgage.

In a real estate transaction, the lender providing the mortgage needs assurance that the buyer will have clear ownership of the property. Title agents perform a search of public records to determine if the title has problems, such as unpaid tax liens, or if the title is free and clear. Title insurance guarantees compensation to either the lender (through a lender's policy) or the buyer (through an owner's policy) up to the amount of the loan or

purchase price in the event that the title has problems that were not discovered during the title search. A lender's policy is in force as long as the loan is outstanding, and an owner's policy remains in effect as long as the purchaser of the policy owns the property. The consumer purchases *both* the lender's and the owner's policies.

According to the Division of Insurance (Division), within the Department of Regulatory Agencies (Department), a title insurance policy is a one-time payment, and the rate is typically between \$1,000 and \$2,000 for a standard or basic residential policy, depending on the real estate purchase price. In certain circumstances, consumers may be eligible for a discounted rate, such as on a lender's policy for a mortgage refinance. A property owner may receive a discounted rate on the lender's policy when refinancing their property because the title of the property did not change; only the mortgage on the property changed. Endorsements, or additional coverage options, are also available for consumers who wish to purchase additional items in their title search, such as searching for covenants that apply to the property.

As a product that is typically purchased during a real estate transaction, it is common for real estate brokers to refer their clients to title insurers. In fact, title insurers typically market their products to real estate brokers, as opposed to consumers directly. In 1974, the U.S. Congress found that referral or kickback payments for title insurance artificially drove up the cost of real estate purchases because such costs were being passed on to consumers. As a result, the federal Real Estate Settlement Procedures Act (RESPA) was enacted that year to provide consumer protection during home buying. RESPA requires that consumers receive disclosures during the home-buying process on specific forms and prohibits certain practices that increase the costs of settlement services, such as kickbacks for referrals.

In addition, state law and federal regulations address affiliated business arrangements, which are arrangements in which a person, such as a real estate broker, has an ownership interest in a provider of settlement services, such as title insurance. When a real estate broker refers clients

to a title insurance company in which the broker has an ownership interest, there is a risk that the referral is not in the best interests of the client. In an effort to mitigate this risk, federal regulations stipulate that consumers have the right to select their own title insurance insurers [12 CFR 1024.15].

## PROGRAM ADMINISTRATION

The Division regulates all insurance in Colorado, including title insurance. The Division is headed by the Commissioner of Insurance (Commissioner), who is generally charged with, among other things, supervising the business of insurance to protect policyholders and the general public [Section 10-1-108(7), C.R.S.] and has authority to promulgate rules [Section 10-1-109, C.R.S.]. In carrying out supervision of the business of title insurance, the Division does the following:

- Certifies title insurance companies to conduct business in Colorado [Sections 10-1-108(8) and 10-3-105(1), C.R.S.]. Companies remain certified unless the Division revokes the certification. A total of 18 title insurance companies held certifications in Calendar Year 2017.
- Collects rate and fee filings from title insurance companies and agencies. Title insurers are required to file rating data and justification for any new or amended rate or fee [Sections 10-4-401(3)(b) and 10-11-118(2), C.R.S.]. In Calendar Year 2017, title insurers submitted 15 title insurance rate filings and 39 title insurance fee filings to the Division.
- Licenses agencies and agents, also known as producers, who sell title insurance in Colorado [Section 10-2-406, C.R.S.]. Title insurance agencies and agents sell policies on behalf of companies and can be associated with a company or can be independent. Agencies and agents can sell only title insurance; they cannot sell other types of insurance products. As of December 2017, about 300 agencies and 2,700 agents held active licenses in Colorado. Licenses are renewed every 2 years.

- Performs periodic market conduct exams of title insurance companies to ensure compliance with state and federal laws [Section 10-1-305, C.R.S.]. The Division completed one title insurance company exam in Calendar Year 2017.
- Investigates complaints of title insurance companies, agencies, and agents, and takes enforcement actions.
- Collects affiliated business arrangement disclosures from title companies and agents [Section 10-2-401(6), C.R.S.]. Separately, real estate brokers are required to submit disclosure of any affiliated business arrangement to the Real Estate Commission [Section 12-61-113.2(3), C.R.S.].

In 2015, the General Assembly created the Title Insurance Commission (Commission) within the Division to serve as an advisory body to the Commissioner in matters of title insurance [Section 10-11-201 *et seq.*, C.R.S.]. The Commission may propose rules, bulletins, positions statements, and consumer protections, among other duties. The Commission consists of nine governor-appointed members.

In Fiscal Year 2018, the Division reported expending approximately \$12.7 million and had about 85 full-time equivalent staff (FTE). Pursuant to Section 10-3-207(1)(f)(I), C.R.S., two FTE at the Division are dedicated to title insurance industry analyses and market conduct exams. Recently, the Division dedicated one additional FTE to reviewing title insurance rates and fees. According to the Division, the two FTE dedicated to title insurance cost approximately \$230,000 per year in salaries and benefits. The Division is transitioning one FTE from handling property and casualty insurance rates in general to focus on reviewing title insurance rates. Four other Division staff have responsibilities for overseeing licensing, complaints, investigations, enforcement, and market conduct exams for all insurance lines, including title insurance. According to the Division, title insurance is only a small portion of the work duties of these four staff, and the Division does not track the time they spend on each type of insurance.

## AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. The audit was conducted in response to a legislative request, which expressed concerns regarding the regulation of title insurance. Audit work was performed from November 2017 through August 2018. We appreciate the assistance provided by the management and staff of the Department of Regulatory Agencies during this audit.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to evaluate the Department's (1) processes for reviewing title insurance rates, (2) controls for addressing risks with affiliated business arrangements, (3) processes for planning market conduct activities of title insurance companies, and (4) approach to providing information to the public about title insurance.

To accomplish our objectives, we performed the following audit work:

- Reviewed applicable statutes, rules, policies, and procedures.
- Interviewed Department staff.

- Reviewed and analyzed documentation for all 15 title insurance rate filings that were submitted to the Division in Calendar Year 2017, including summary information about the filing available to the public on the Division’s website.
- Contacted each of the 12 title insurance companies that sold title insurance policies in Colorado in 2016, which was the most recent data available at the time of our audit, to inquire about title insurance quotes and other information about title insurance.
- Reviewed the Division’s conflict-of-interest disclosure forms and regulatory assignments for the eight employees who worked on title insurance regulation in Calendar Years 2015 through 2017.
- Reviewed information on the Department’s website available for consumers about title insurance and other lines of property and casualty insurance, such as price comparison tools.
- Reviewed the Division’s processes for implementing laws related to affiliated business arrangements, including its coordination with the Division of Real Estate related to affiliated business arrangement disclosures.
- Reviewed the Division’s process for planning market conduct exams of title insurance companies.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. We worked closely with Division staff to gain an understanding of their processes related to title insurance regulation and how title insurance is designed and operating in Colorado, and to confirm our conclusions about the title insurance filings that we reviewed.

With respect to the Department’s controls for affiliated business arrangements and planning process for market conduct activities, we did not have any findings or recommendations. Our conclusions on the

effectiveness of controls related to the Department's processes for reviewing title insurance rates, managing conflicts of interest for staff involved in regulating title insurance, and approach to providing information to the public about title insurance, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2.

A draft of this report was reviewed by the Department. We took into account the Department's feedback and have incorporated its comments into the report where relevant. The recommendations are addressed to the Department and the written responses to the recommendations and the related implementation dates are the sole responsibility of the Department. A draft of this report was also reviewed by the Title Insurance Commission within the Division of Insurance, without comment.



# CHAPTER 2

## REGULATING TITLE INSURANCE RATES

According to its annual report to the General Assembly, the mission of the Division of Insurance (Division) is consumer protection. One of the main controls to detect and prevent consumer harm related to title insurance is through the Division's collection and review of rate filings submitted by title insurers. We assessed the Division's processes related to title insurance rate filings, including its collection of filings, review of rates, and posting of summary rate filing information on its website. In addition, we reviewed the Division's processes related to staff conflicts of interest. In this chapter, we provide recommendations for improvement in these areas of the Division's operations.

# TITLE INSURANCE RATE FILINGS

Title insurance is regulated in Colorado through a method of regulation known generally as “file and use,” meaning that insurers file their rates with the Division, but the Division does not pre-approve rates before insurers offer them in the market. Specifically, property and casualty insurers, including title insurers, are required by statute to file “rating data” with the Commissioner of Insurance (Commissioner) [Section 10-4-401(3)(b), C.R.S.], but “prior approval of rates, schedules of rates, rating plans, rating classifications and territories, rating rules, and rate manuals...shall not be required” [Section 10-4-401(4), C.R.S.]. Title insurers have an additional statutory requirement to file new or amended rates or fees “with justification for the new or amended rate or fee” [Section 10-11-118(2), C.R.S.].

A title insurance rate filing consists of documentation submitted by the insurance company. The filing documentation shows how the rates that the company plans to charge consumers are justified and meet statutory standards. Statute prohibits insurance rates from being excessive, inadequate, or unfairly discriminatory [Section 10-4-403(1), C.R.S.]. Companies can only offer products at the rates filed with the Division. Specifically, Division rule states that, “No title entity may charge a rate or fee unless it is on file with the Division...” [3 CCR 702-8, Regulation 8-1-1(6)(G)].

Insurance companies file their rates with the Division electronically using a national online system provided by the National Association of Insurance Commissioners (NAIC). NAIC created the System for Electronic Rate Form Filing (SERFF) to coordinate the submission, management, and review of rates for those states accredited by the NAIC. The Division uses SERFF to:

- Review the filings, which consist of documentation submitted by the company and data fields completed in SERFF by the company.

- Communicate with the company, such as requesting additional documentation when needed.
- Close the filing as (1) “filed,” meaning that the company can use the rate, or (2) “rejected,” meaning that the company cannot use the rate.

In Calendar Year 2017, title insurers submitted a total of 15 rate filings to the Division. The Division closed 11 of the filings as filed, and closed three of the filings as rejected; the other filing was still pending at the time of our audit. Companies can make more than one rate change in a filing. For example, one Calendar Year 2017 filing modified existing rates for its basic coverage and three other existing products and added rates for two new products. The 11 title insurance rate filings submitted to the Division in Calendar Year 2017 that were closed as filed dealt with 29 unique rate changes.

## WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed filing documentation for each of the 11 title insurance rate filings submitted to the Division in Calendar Year 2017 that the Division closed as filed. The purpose of our audit work was to determine whether the rate filings met requirements.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

**RATE FILINGS MUST INCLUDE JUSTIFICATION.** Statute requires the Commissioner to promulgate rules requiring “each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply...” with the standards set forth in statute that rates are not excessive, inadequate, or unfairly discriminatory [Sections 10-4-403(1) and 10-4-404(1), C.R.S.]. Statute also requires title insurers to submit with a filing for a new or amended rate “justification for the new or amended rate...” [Section 10-11-118(2), C.R.S.]. Division rule defines

justification as “information that establishes the rate or fee is not excessive, inadequate, or unfairly discriminatory...[and that] must qualify, quantify, and demonstrate the facts and figures to support, defend, and substantiate a proposed rate or fee” [3 CCR 702-8, Regulation 8-1-1(4)(D)]. The rule delineates filing requirements, including that, “Each filing must include justification for the new or amended rate being submitted. Justification must include data to support the rate. Justification includes but is not limited to” the items listed in the following bullets [3 CCR 702-8, Regulation 8-1-1(5)(C)]:

- **EXPENSES**, including an itemization of actual or average expenses associated with each rate. The Division uses expenses to evaluate what factors or costs are driving the rate charged to consumers. According to the Division, expenses associated with performing a title search prior to issuing the policy and other expenses in producing the policy account for about 85 percent of a title insurance rate in Colorado.
- **Expected LOSSES** and loss ratios. The Division reviews losses to evaluate if the rate can sustain the expected losses over time. According to the Division, the rate of loss on title insurance in Colorado is about 5 to 6 percent. The industry expects that a small amount of the rate charged to consumers will be used to cover losses.
- **Amount and description of all PROFIT** and contingencies built into the rate. The Division uses profit information to evaluate if the rate charged to consumers would result in profit that is unreasonably high, thereby making the rate excessive.
- **METHODOLOGY** and material assumptions in developing the rate. The Division reviews methodologies to understand how a company derived the rate.
- **RATE HISTORY** listing the effective date and percentage of any rate changes made in the past 3 years. The Division uses the rate history to see how much the rate has increased over time to determine if the rate change appears reasonable.
- If the company used a **COMPARATIVE ANALYSIS** as a portion of rate justification, the names of other insurers used in the analysis and

information to demonstrate how rates are comparable in service and expense. The Division uses the comparative analysis to review how this analysis influenced the rate in comparison with the company's own expenses and losses.

Statute generally requires property and casualty insurers to base rates on the loss experience specifically in Colorado. However, statute allows that "if there is insufficient experience within Colorado upon which a rate can be based, the insurer may consider experiences within any other state or states which have a similar cost of claim and frequency of claim experience as the state of Colorado; and, if insufficient experience is available, the insurer may use a countrywide experience" [Section 10-4-403(2)(b), C.R.S.]. Therefore, we would expect information in filings to show how the insurer derived a rate, even for new rates in which there is currently no Colorado-specific data.

**RATE FILINGS MUST CLEARLY SHOW WHAT THE FILING IS CHANGING.** Division rule requires title insurance filings to include, "Side-by-side comparison...indicating the changes made in the current filing, the rate(s) prior to change, and the new or amended rate(s)" [3 CCR 702-8, Regulation 8-1-1(5)(C)(4)].

**RATE FILINGS ARE REQUIRED TO BE SUBMITTED 30 DAYS BEFORE THE EFFECTIVE DATE.** For title insurance, statute requires that, "Each filing shall set forth its effective date, which shall be no earlier than thirty days after its receipt by the commissioner" [Section 10-11-118(2), C.R.S.]. Division rule reiterates the requirement that each filing must be received by the Division at least 30 days prior to the effective date of the new or amended rates [3 CCR 702-8, Regulation 8-1-1(5)(C)(2)].

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

**RATE FILINGS DID NOT INCLUDE ALL JUSTIFICATION LISTED IN RULE.** Only one of 11 Calendar Year 2017 filings that the Division closed as filed included all justification listed in rule. The other 10 filings were missing between one and five pieces of justification for each of the changes that

the filing was making to rates. For each item marked as missing, not only did the filing not include the information, but there was also no information in the filing to indicate why it was missing or why it would not be needed to justify the rate. The Division reported that staff sometimes look for documentation in previous filings where a particular rate was changed for information they determined was missing from the file. However, for the filings we reviewed, there was no evidence that staff had looked for missing justification documents in previous filings.

**EXHIBIT 2.1. TITLE INSURANCE RATE FILINGS CLOSED AS FILED  
CALENDAR YEAR 2017**

FILING	RATE CHANGES MADE BY THE FILING <sup>1</sup>	EXPENSES	LOSSES	PROFITS	METHODOLOGY	HISTORY	COMPARATIVE ANALYSIS <sup>2</sup>
1	Add Rate	No	✓	No	✓	✓	No
	Add Rate	No	✓	No	✓	✓	✓
	Increase Rate	No	No	No	No	No	✓
	Increase Rate	No	No	No	No	No	✓
	Increase Rate	No	No	No	No	No	✓
	Increase Rate	No	No	No	No	No	✓
2	Increase Rate	✓	✓	No	✓	No	No
	Decrease Rate	✓	No	No	No	No	N/A
3	Add Rate	✓	No	No	✓	✓	N/A
	Add Rate	✓	No	No	✓	✓	✓
4	Add Rate	✓	✓	✓	No	✓	No
	Add Rate	✓	✓	✓	No	✓	No
5	Add Rate	No	✓	No	✓	✓	✓
6	Increase Rate	✓	✓	✓	✓	No	No
7	Add Rate	✓	✓	✓	✓	No	N/A
	Add Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
8	Add Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
9	Add Rate	✓	✓	✓	✓	No	N/A
	Increase Rate	✓	✓	✓	✓	No	N/A
10	Add Rate	✓	No	✓	✓	✓	✓
11	Increase Rate	✓	✓	✓	✓	✓	N/A

SOURCE: Office of the State Auditor analysis of Calendar Year 2017 title insurance filings closed by the Division as filed.

<sup>1</sup> Rate changes identified by auditors, in consultation with the Division of Insurance, through analysis of filing documentation including the rate manual, filing description submitted by the company in SERFF, and justification documentation.

<sup>2</sup> N/A. Justification type not needed because the company did not indicate that it set the rate based on comparative analysis.

**RATE FILINGS DID NOT CLEARLY SHOW HOW THE RATES WERE CHANGING.** For two of the 11 filings, the side-by-side comparison did not indicate the rate changes that the filing was making.

- For one filing, the side-by-side comparison did not show a new rate the company was adding with the filing.
- For the second filing, the side-by-side comparison showed a broad re-organization and rewording of the rates document, rather than the substantive rate changes the filing was making. Based on the other documentation in the filing, the company was increasing existing rates for several products. These changes were not clear in the side-by-side comparison.

**RATE FILINGS HAD EFFECTIVE DATES LESS THAN 30 DAYS OUT.** For two of the 11 filings, the Division closed them as filed even though the company had provided an effective date less than 30 days after the Division received the filing. In one filing, the time between the filing submission and the rate effective date was 27 days and the analyst's note in SERFF acknowledged that the effective date was less than the required 30 days. In the second filing, the time between the filing submission and rate effective date was 2 days.

## WHY DID THIS PROBLEM OCCUR?

**THE DIVISION TREATS THE DOCUMENTS LISTED IN RULE AS EXAMPLES FOR COMPANIES RATHER THAN REQUIREMENTS.** The Division told us that it considers the justification documents listed in rule to be "examples" of the kind of information companies can file, rather than being required documentation for each filing, and that each item listed as justification in rule is not always available for the company to file or necessary to justify rates. The Division also told us that it changed its rule in 2015 to no longer require that each justification document be included with each filing. Specifically, a rule established in 2010 stated that "the justification *shall* include but not be limited to..." [Emphasis added]. In 2015, the Division struck "shall" from the rule, which the Division felt had meant that not each justification document was required for each filing.

However, the current rule does not appear to contemplate that the listed pieces of justification are only needed in certain circumstances. Rule does call out needing information about how services and expenses compare to competitors only, “If a comparative analysis is used as a portion of the rate justification....” However, no other listed items in rule outline the circumstances when it may or may not be relevant to the filing. In addition, the Division has no process or criteria to assess whether alternate or lesser documentation a company submits with its filing constitutes a filing that the Division should close as filed.

For other property and casualty insurance filings, the Division does not interpret the list of documentation outlined in rule to be optional or examples. The rule for those lines of insurance states that, “Each rate filing must include [the listed items]” [3 CCR 702-5, Regulation 5-1-10(5)(A)(7)]. The Division interprets the list of approximately 10 items listed in this rule as required for each filing. The items required for submission for other property and casualty filings are essentially the same kinds of items listed in the rule for title filings.

**THE DIVISION DOES NOT PROVIDE CLEAR GUIDANCE TO COMPANIES ABOUT TITLE INSURANCE RATE FILINGS.** The Division posts guidance in SERFF for title insurers to use in submitting their filings, but the guidance does not list all of the required justification items noted in the rule. Specifically, the guidance excludes profits from the list of items that companies should submit. The guidance also references property and casualty insurance rules, which do not apply to title insurers, but fails to provide the reference to title insurance rules.

**THE DIVISION HAS NO WRITTEN GUIDANCE ON MANAGING LATE FILINGS OR MISSING DOCUMENTATION.** Division rules related to title insurance filings have no provisions regarding how staff should handle late or incomplete filings. In contrast, the rule related to property and casualty filings states that, “Failure to supply the information required [by rule] would render the filing incomplete. Incomplete filings will be rejected on or before the 15th business day after receipt...Filings that have either been...returned by the Division as incomplete, and subsequently resubmitted, will be considered new filings...” [3 CCR 702-5, Regulation 5-1-10(5)]. In addition, the Division said that missing pieces

of justification may be found in a company's previous filings, but has no guidance for staff on when to research previous filings. Staff reported that they may look in a previous filing sometimes "if something doesn't make sense," but they do not have a consistent process for looking in a past filing if a current filing is incomplete.

**DIVISION STAFF MADE EXCEPTIONS TO THE 30 DAY REQUIREMENT.** For the filings closed with effective dates less than 30 days after submission, the Division gave the companies special permission to use these effective dates because the companies were re-filing previously rejected information.

**THE DIVISION HAS NOT PROVIDED ADEQUATE GUIDANCE ON SIDE-BY-SIDE COMPARISONS.** The Division's guidance for title insurance filings lacks specificity regarding the side-by-side comparison; it does not direct companies on what form the comparison should take or exactly what information to include. In contrast, Division rule for other property and casualty filings states that side-by-side comparisons "should include three columns: the first containing the current rates, rating factor, rating variable, or rules; the second containing proposed rates, rating factor, rating variable, or rules; and the third containing the percentage increase or decrease of each proposed change(s). If the proposed rates are not replacing existing rates, then the filing must specifically state that the rates proposed are new rates" [3 CCR 702-5, Regulation 5-1-10(5)(A)(7)(d)].

## WHY DO THESE PROBLEMS MATTER?

**RISK THAT NOT ALL RATES ARE JUSTIFIED.** By closing filings without all the documentation listed in rule, the Division is not ensuring that companies have demonstrated how the rates are justified and are not excessive, inadequate, or unfairly discriminatory.

- Without **EXPENSE** and **PROFIT** information, the company has not demonstrated through its filing that its rates are not excessive. According to statute, "Rates are excessive if they are likely to produce

long run profit that is unreasonably high...or if expenses are unreasonably high in relation to services rendered” [Section 10-4-403(1)(a), C.R.S.]. In addition, since expenses traditionally constitute about 85 percent of the title insurance rate, without expense information, the company has not demonstrated through its filing what constitutes the most significant portion of the cost of the rate.

- Without **LOSS** information, the company has not demonstrated through its filing that its rates are adequate. According to statute, rates may be inadequate if they are not sufficient to sustain projected losses and expenses [Section 10-4-403(1)(b), C.R.S.]. Statute also emphasizes the importance of basing rates on the Colorado loss experience when possible, as opposed to basing rates on countrywide loss experience or loss experience in another region [Section 10-4-403(2)(b), C.R.S.]. Without any loss information, a company has not demonstrated how it determined its rates to be adequate. Without Colorado-specific loss information when available, a company has not demonstrated that its rates are appropriate to Colorado.
- Without a **METHODOLOGY**, the company has not demonstrated through its filing how it derived the rate. According to the Division, the methodology can help the Division see how expenses, losses, and profits make up the rate amounts.
- Without **RATE HISTORY**, the company has not demonstrated through its filing how much the rate has increased over time. According to the Division, rate history is important for the Division to review to evaluate whether the rate appears reasonable and in line with the company’s explanation of cost drivers. A large increase over a short amount of time could signal unjustified costs.
- Without information supporting the company’s **COMPARATIVE ANALYSIS**, the company has not demonstrated through its filing that its analysis of competitors’ rates, as the basis of setting its own rates, is an appropriate comparison. Division rule requires the comparative analysis information to “demonstrate how the rates being compared

are comparable in services and expenses” [3 CCR 702-8, Regulation 8-1-1(5)(C)(3)]. If a company increases its rates, solely because a competitor did so, there is a risk that title insurance rates ratchet up without a basis.

The Division’s role in ensuring that companies provide all the elements of justification is an important control in ensuring that rates offered in the market place are not excessive, inadequate, or unfairly discriminatory.

**LESS TRANSPARENCY ABOUT WHAT THE FILING IS CHANGING.** When filings do not clearly show how rates are changing and by how much, the filings do not serve an important purpose of providing transparency to the Division and to the public about the rates charged by companies.

**COMPANIES ARE NOT HELD TO THE SAME STANDARD.** When some companies file all pieces of justification listed in rule, but others omit key information from their filings, such as expenses and profits, companies are not equally required to share potentially sensitive company information. One company did not submit any expense information for Calendar Year 2017, unlike six other competing companies. Two companies did not submit loss or profit information, and a third company did not submit profit information; the other four companies did submit this data. In addition, companies that prepare and submit all types of justification listed in rule are placed under greater burden than those companies that do not submit all of the documentation.

Similarly, when a company submits a late filing, it may be able to offer the rate sooner than another company that waited for the full 30 days for the rate to be effective.

When the Division does not enforce filing requirements for all companies, it may be perceived as providing preferential treatment to some companies over others.

# RECOMMENDATION 1

The Division of Insurance (Division) should ensure title insurance filings adhere to all applicable statutory and rule requirements by:

- A Clarifying in rule whether each listed piece of justification is required for each rate filing and, if not, the circumstances when the piece of justification should be filed or could be omitted from the filing.
- B Revising guidance provided to title insurers to reflect the filing requirements developed in PART A.
- C Clarifying in rule how the Division will handle incomplete or late filings.
- D Clarifying, through written guidance, under what circumstances staff should search in past filings for justification documents that are missing from a current filing.
- E Clarifying, through written guidance, that staff may not make exceptions to the statutory requirement for the rate effective date to be at least 30 days after the Division received the filing.
- F Clarifying in rule the required elements of the side-by-side comparison.

# RESPONSE

## DEPARTMENT OF REGULATORY AGENCIES

- A AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division agrees with the recommendations and will amend Colorado Insurance Regulation 8-1-1 to clarify that not every piece

of information listed in the regulation may be necessary to justify a rate filing and the procedure for companies to explain the rationale for not including one or more of the listed pieces of information. The Division will follow its normal stakeholder process in developing the necessary amendments to the regulation. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

B AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division concurs with this recommendation and will revise the guidance provided to title insurers to reflect the filing requirements developed in Part A. The Division will follow its normal stakeholder process in developing the necessary amendments to Regulation 8-1-1. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

C AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division agrees with this recommendation and will clarify in Colorado Insurance Regulation 8-1-1 how it handles incomplete or late filings. The Division will follow its normal stakeholder process in developing the necessary amendments to Regulation 8-1-1. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

D AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

The Division agrees with this recommendation and will develop written guidance regarding the circumstances that staff should search past filings for justification that is missing from a current filing. After internal deliberation, the draft guidance may call for a filing to be rejected rather than allowing for past filings to be searched for justification in order to maintain consistent review of rate filings. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

E AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

The Division agrees with this recommendation and will ensure through written guidance that staff may not make exceptions to the statutory requirement for the rate effective date to be at least thirty days after the Division received the filing. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

F AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division concurs with this recommendation and will clarify in Colorado Insurance Regulation 8-1-1 the required elements of the side-by-side comparisons. The Division will follow its normal stakeholder process in developing the necessary amendments to Regulation 8-1-1. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

# EVALUATING TITLE INSURANCE RATES

Insurance products regulated as Type II, or “file and use,” are not subject to prior approval by the Commissioner. However, as part of the Commissioner’s role of supervising the business of insurance, the Division can perform a review of the rates to ensure that they meet statutory standards. For title insurance, the Division performs a substantive review of the rates to judge whether they meet the statutory standards of not being excessive, inadequate, or unfairly discriminatory. Specifically, statute states that, “Nothing in [the section of statute establishing Type II types of insurance] shall be construed...to impair the commissioner’s ability to review rates and determine that the rates are not excessive, inadequate, or unfairly discriminatory” [Section 10-4-401(3)(b), C.R.S.]. The Division’s description for the rates analyst position is to “review, analyze, and study title insurance rates...[and] the justification used for development...”

## WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed 15 filings submitted by companies in Calendar Year 2017, of which the Division closed 11 as filed. These 11 filings introduced or changed 29 unique rates. We spoke with staff who conduct rate reviews about their process and reviewed related documentation. To get a sense of how consumers might shop for title insurance, we searched websites and called 12 title insurance companies who sold policies in 2016 in Colorado, which was the most recent data available at the time of our audit, to ask questions about purchasing title insurance. The purpose of our audit work was to determine whether the Division’s rate review process for title insurance filings is designed to achieve its objectives to protect consumers by determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

**THE DIVISION’S RATE REVIEW PROCESS SHOULD BE DESIGNED TO MEET ITS OBJECTIVES.** According to the position description for the rate analyst position, one of the Division’s objectives is to evaluate title insurance rates against the statutory standards. The position description states that the analyst “reviews and *determines if title insurance rates and fees are excessive, inadequate, or unfairly discriminatory in accordance with Colorado law.* This position analyzes and studies data submitted by insurance companies and compares to industry information and other support for validity. This position reconciles rate and fee irregularities or other rating information from title entities to ensure accuracy by investigating, communicating, and asking targeted questions of the title entity through the filing in an online database” [Emphasis added].

Statutes describe the standards for insurance rates, as follows:

- Rates are considered excessive if they are likely to produce an unreasonably high profit or the expenses are unreasonably high [Section 10-4-403(1)(a), C.R.S.].
- Rates are considered inadequate if companies cannot cover losses and expenses and could be so low as to create a monopoly [Section 10-4-403(1)(b), C.R.S.].
- Rates are considered unfairly discriminatory if the price differences do not equitably reflect the differences in losses and expenses [Section 10-4-403(1)(c), C.R.S.].

**THE DIVISION’S RATE REVIEW PROCESS SHOULD TREAT SIMILAR FILINGS CONSISTENTLY.** Statute generally charges the Commissioner with supervising the business of insurance [Section 10-1-108(7), C.R.S.] and doing so with “justice and impartiality” [Section 10-1-108(1)(d), C.R.S.]. As such, we would expect the Commissioner to carry out any

procedures it has for the review of rate filings with consistency. Specifically, with regard to substantive review of rates, we would expect that the Division consistently require companies to provide follow-up filings when information about the Colorado experience of losses and expenses is not sufficient. As a component of the company's filing, property and casualty rates charged in Colorado should reflect Colorado loss experience whenever possible. However, insurers may not always have information about Colorado loss experience or other necessary components of a filing, especially when introducing a new product. For filings in which information is not available, the Division has an internal procedure to close the filing as filed with the condition that the insurer provide additional justification about the Colorado experience once the product has been available in Colorado for 1 year.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

THE DIVISION'S RATE REVIEW PROCESS IS NOT DESIGNED TO DETERMINE WHETHER RATES ARE EXCESSIVE, INADEQUATE, AND UNFAIRLY DISCRIMINATORY. First, the Division does not ensure that it receives needed expense, loss, and profit information in order to determine whether rates meet standards, as described in RECOMMENDATION 1. Expense, loss, and profit information is needed to evaluate whether the filed rates may (1) produce an unreasonably high profit, and therefore be excessive; (2) be too low to cover losses and expenses, and therefore be inadequate; and (3) not charge rates according to the associated risk, and therefore be discriminatory. Second, when the Division has expense, loss, and profit information, it lacks a framework and definition of key terms needed to analyze whether the rate meets standards, as described in the following bullets.

- THE DIVISION'S PROCESS DOES NOT APPLY THE ANALYTICAL FRAMEWORK OUTLINED IN STATUTE TO CONSISTENTLY REVIEW FILINGS. Specifically, staff report that they consider a number of factors when reviewing rates, such as whether there is another similar rate on file,

the percentage the rate is increasing, whether other competitors offer a similar product that the company is adding to stay competitive, and whether the product addresses a consumer need. However, there is no written guidance indicating whether and how the analyst should use the expense, loss, and profit data to analyze if the submitted information will result in enough money to cover expenses and losses and produce a profit that is not unreasonable.

- **THE DIVISION’S PROCESS LACKS DEFINITIONS FOR KEY TERMS.** For example, it is unclear what will constitute “profit” and what the threshold for “unreasonably high” might be in analyzing whether a rate is excessive. Staff report that they bring in a supervisor if a rate increase amount seems high, but they use their experience and judgment, rather than any established threshold or framework, to conclude on whether the company’s rate is excessive. The Division has not defined what will constitute “losses” and what the threshold is to “sustain” projected losses and expenses might be in analyzing whether the company’s rate is inadequate. The Division has not defined what will constitute the “price differentials” and what the threshold for “equitably” might be in analyzing whether the company’s rate is unfairly discriminatory. Statute defines “expenses” but does not define these other key terms [Section 10-4-402(1.5), C.R.S.].

**THE DIVISION LACKS CONSISTENT POLICIES TO REQUIRE COMPANIES TO SUBMIT FOLLOW-UP INFORMATION.** The Division collects follow-up information to demonstrate the company’s actual Colorado experience of expenses and losses for new products. The Division told us that obtaining follow-up information supports the Division’s regulation of rates by allowing it to monitor the company’s experience and rate performance in Colorado. Out of 29 Calendar Year 2017 rates closed as filed, 12 were for new rates in which actual experience data was not available for the Colorado market. The Division requested Colorado-specific data as a follow-up filing for three of the 12 new rates (25 percent). The Division said it should have requested the follow-up data for some new rates. The Division does not have written guidance for staff outlining when they should require companies to submit follow-

up filings with Colorado-specific information. In addition, rule does not address situations in which the Division requests follow-up filings. The rule related to title insurance rate filings addresses how companies submit filings for “new or amended” rates, but does not contemplate that companies would submit follow-up information for rates that are no longer new and have not changed. Finally, the Division does not have a process for ensuring that it receives follow-up information that it asks companies to submit. For example, the Division does not have a mechanism in its filings system, or otherwise maintain a list or spreadsheet, to track the requests that it makes to companies to submit follow-up information.

## WHY DO THESE PROBLEMS MATTER?

The Division described its rate review function as vital for consumer protection, but the problems we identified indicate the function may not always be achieving this intent. Strengthening the rate review process is important because consumers cannot easily influence title insurance pricing or make informed decisions among products, as outlined in the following bullets.

- Most consumers purchase title insurance infrequently and, as a result, are not familiar with what it covers, what it should cost, and what product options are available. A number of responses to an American Land Title Association survey conducted in 2016 help illustrate that consumers are not familiar with title insurance in general, including what it should cost them. According to the survey, more than one in four consumers surveyed reported that they were unsure what title insurance was, and the “overwhelming majority” of respondents either could not tell what the cost of title insurance would be from reading a closing disclosure document or elected not to answer the question.
- Title insurance is a small but required part of a larger transaction that consumers may not be willing to disrupt or delay. For example, according to the Jefferson County Assessor, the median home sales

price in Jefferson County was \$474,500 in Calendar Year 2017. From our review of rate filing documents submitted in Calendar Year 2017, the cost of a basic title policy in that county in 2017 ranged from about \$1,580 to \$1,720 with an average of \$1,600. This means that the title insurance policy would account for about one-half of 1 percent of the total transaction for a home purchase in Jefferson County in 2017. Consumers may place a higher priority on a timely completion of the transaction than on attempting to compare rates and features of such a small part of the overall transaction.

If consumers are inclined to shop around for title insurance, they cannot easily access information about prices and product offerings, such as endorsements (additional coverages) and discounts. Specifically:

- Consumers cannot easily obtain quotes or product information from companies to comparison shop. First, basic title insurance rates are not easily found online; we searched the website of the 12 title insurance companies that issued policies in Colorado in 2016 and were not able to locate price tools on the websites of 11. Second, some insurance companies are not prepared to provide pricing and product information to consumers by phone. We approached the title insurance purchasing process as a consumer might do and called the same 12 companies to obtain quotes and information about title insurance offerings. Overall, we were able to obtain price quotes from six companies. Four companies were also able to provide answers to our questions about what title insurance covers. The other companies told us that they were not prepared to answer consumer questions because they were underwriters and not agents, referred us to an agent who sells title insurance, or did not return our call. If consumers cannot easily find information about prices or coverage options, they will not have the knowledge to make a decision about their title insurance policy. For example, if a consumer wanted additional coverage, such as having their title agent search for affordable housing covenant restrictions, the consumer may not know this additional coverage is an option or how much it would cost to add it to the policy.

- Consumers cannot easily obtain price or product information from the Division. The Division's website does not have a price comparison tool for title insurance as it does for other lines of insurance, including homeowners and auto insurance. The comparison tools allow consumers to input scenarios with certain factors to get quotes from several companies. Additionally, the filing information and documentation posted online is technical and lengthy; it is not designed to help consumers compare across companies or to understand the coverage options.
  
- Consumers generally do not have a direct relationship with a title insurance agent who may be well positioned to explain product prices and options. Instead, real estate brokers generally work directly with title insurance agents. However, while brokers can discuss title insurance as part of the real estate transaction, they are prohibited from providing any information that may be perceived as advice regarding title insurance, which may include explaining the details of the coverage.

In addition, the Division may not be using resources efficiently and effectively. The Division estimates that its rate analyst position will spend 60 percent of their time on rate and fee review. However, without guidance or objective criteria against which to judge the rates, it is not clear that this will be an effective use of the position's time.

Finally, the Division may not be treating companies equitably when it inconsistently requires follow-up filings with Colorado-specific expense and loss experience.

## RECOMMENDATION 2

The Division of Insurance (Division) should ensure that its rate review process is consistent and meets its objectives of determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory by:

- A Implementing a framework for staff to use in analyzing expense, loss, and profit information to determine whether profits are unreasonable, rates are set to be sustainable, and price differences are equitable.
- B Defining in writing key terms, including what constitutes a company's profit, loss, and expenses; the threshold for reasonable profit; the threshold for sustainable; and the threshold for equitable price differences.
- C Promulgating rules and developing written guidance for Division staff on when to require companies to submit follow-up filings.
- D Developing a mechanism to track that the Division has received requested follow-up information from companies and taking action when the information has not been received.

## RESPONSE

### DEPARTMENT OF REGULATORY AGENCIES

- A AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division agrees with this recommendation and agrees that there is a need to consistently analyze title rate filings. The Division will draft internal guidelines and, if necessary, amend relevant regulations to in large part mirror the standards set forth in statute regarding excessiveness, inadequacy, and unfair discrimination. The

Division will follow its normal stakeholder process in developing any necessary amendments to the relevant regulations. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

B AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division agrees with this recommendation. The Division will draft internal guidelines and, if necessary, amend relevant regulations to mirror the standards set forth in statute regarding profit, loss and expenses for rate filings for title insurance and to develop standards for those terms if the statutory standards are not sufficient for title insurance. The Division will follow its normal stakeholder process in developing the necessary amendments to the regulation. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

C AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division will formalize internal procedures through written guidance for team members and amend Regulation 8-1-1 to address when companies will be required to submit follow-up filings. The Division will follow its normal stakeholder process in developing the necessary amendments to the regulation. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

D AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division will develop internal procedures and amend Regulation 8-1-1 to address when companies will be required to submit follow-up filings and to ensure that the follow up filings are actually received. The Division will follow its normal stakeholder process in developing the necessary amendments to the regulation. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

# POSTING RATE FILING SUMMARIES

Title insurance, along with other “file and use” property and casualty insurance products, are “regulated by open competition between insurers” [Section 10-4-401(3)(b), C.R.S.], meaning that consumers help regulate the rates insurers charge by making choices about the products and pricing that are most attractive to them. In order to “provide notice to the public” of rate changes that property and casualty insurers are charging consumers, statute requires the Division to post on its website “a rate filing summary” for each rate filing that property and casualty insurers, including title insurers, submit to the Division [Section 10-4-401(3)(b), C.R.S.].

The Division maintains a searchable grid on its website showing a summary of rate filings submitted by insurers. For each filing, the grid reports the name of the company that submitted the filing, the effective date of the rate change, whether the filing is “open” or “closed,” and other statistical information about the rate change, such as the number of policyholders affected by the rate change. The grid also contains the filing number, which would allow users to separately search for and view the rate filing detail and supporting documentation that has not been marked confidential by the company. The Division populates the grid from information submitted electronically by insurers as part of filing their rates with the Division.

## WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed the filing documentation for each of the 15 title insurance rate filings submitted to the Division in Calendar Year 2017, the information posted in the grid on the Division’s website for these filings,

and the Division's procedures to collect and post filing summary information. The purpose of the audit work was to determine whether the summaries posted in the grid on the Division's website provide information that promotes the accomplishment of the Division's responsibility to help inform consumers about their insurance options. This responsibility is reflected in Section 10-1-108(10), C.R.S., which states, "It is the duty of the commissioner to encourage the dissemination to the public of general information concerning insurance by those engaged in the business of insurance, so as to work toward informed choices of insurance needs and options," and in Section 10-4-401(3)(b), C.R.S., which requires the Division to post "a rate filing summary" for each filing for title insurance, to "provide notice to the public." We evaluated the summaries to determine if they reasonably further the goal of informing the public about title insurance options, specifically with respect to rates. We assessed whether the summaries (1) accurately reflect information from the filings and (2) provide information in a manner that appears useful to the public.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

**THE DIVISION DID NOT POST A SUMMARY OF EACH CALENDAR YEAR 2017 TITLE INSURANCE FILING.** Of 15 title insurance rate filings submitted in Calendar Year 2017, the Division did not post a summary for five filings, or 33 percent. The Division populates its rate summary grid by pulling data from SERFF, the rate filing system used by the Division. For the five filings submitted by two different companies for which there was no summary, the companies had failed to complete key fields in SERFF that the Division uses to populate the summary. The Division has no requirement for companies to enter data into all the fields in SERFF used for the summaries. In addition, the Division has not established processes and controls for Division staff to review the fields in SERFF to ensure that they are complete or that the rate filing summary was uploaded for that filing. There is also no guidance for staff on how to take action if all needed data are not entered into the SERFF fields.

**THE DIVISION DOES NOT POST TITLE INSURANCE RATE FILING SUMMARIES THAT PROVIDE USEFUL INFORMATION TO THE PUBLIC.** Of the 10 Calendar Year 2017 filings for which the Division posted a summary to its website, we found gaps in the information that would help a member of the public understand the information posted to the Division’s website, as follows.

- **THE SUMMARIES DO NOT CONSISTENTLY REPORT ON THE IMPACT OF CHANGES TO EXISTING RATES.** Four summaries were for filings that were changing existing rates. Two of these summaries quantified the percentage impact of the rate change and the number of affected policyholders. One summary quantified the rate impact, but not the number of policyholders affected. However, the fourth summary, which was for a filing increasing existing rates for four different products, indicated that there would be a 0 percent impact on the rates and no affected policyholders.

The Division has not defined or provided guidance on whether or how title insurance companies should report on the number of policyholders affected by a change to existing rates. It can be difficult for title insurers to quantify the number of policyholders who will be impacted by a rate change because title premiums are paid once for a given policy at the time the policy goes into effect; premiums are not paid on an ongoing basis like other property and casualty insurance, such as home and auto insurance. Therefore, if a company changes rates for an existing product, only future policyholders will be affected. It is not clear what methodology or assumptions the two companies used to quantify the number of policyholders affected by their rate changes.

The Division has not required title insurers to complete the fields in SERFF related to quantifying the impact of a percentage change to existing rates. As a result, the summary posted to the Division’s website does not always report the data on how much a rate will go up or down due to the filing. In addition, the Division has not provided guidance to companies on how to report on rate impacts

when the filing is making more than one type of change. One of the filings we reviewed increased rates for one product and decreased rates for a second product; the summary reported a rate impact of 105 percent. It is not clear whether the reported rate impact was an average of the two changes or based on some other methodology.

- **THE SUMMARIES DO NOT CONSISTENTLY REPORT ON THE INTRODUCTION OF NEW PRODUCTS.** Nine summaries were for filings introducing rates for one or more new products. Three of these summaries quantified a percentage impact of the new rates and the number of affected policyholders. A fourth summary quantified the rate impact, but not the number of policyholders affected. The remaining five summaries indicated that there would be 0 percent impact on the rates and no policyholders would be affected. Since the rates being filed were for new products, it is not clear what methodology or assumptions the three companies used to quantify the rate and policyholder impact. The Division has not defined or provided guidance on whether or how title insurance companies should report information about the percent impact on rates and number of policyholders affected when filing rates for new products.
  
- **THE SUMMARIES DO NOT SHOW IF THE DIVISION REJECTED THE FILING.** Two summaries were for filings rejected by the Division, but the summaries implied that the rates were in effect. For one filing, the Division's website showed that the filing was "closed" with an effective date for the new rate of June 2017; the Division had actually rejected the filing in May 2017. For the second filing, the Division's website showed the filing was "closed" with an effective date for the new rates of October 2017; the Division had actually rejected the filing in September 2017. The Division's grid does not pull information from SERFF to indicate whether a filing has been rejected or filed as closed.

Overall, the Division reports that it does not think that the rate filing summaries are useful to the public for title insurance filings, but has not developed a summary format that would provide useful information.

The Division uses the same summary grid as those for other lines of property and casualty insurance, such as auto insurance, rather than tailoring it to reflect the unique characteristics of title insurance.

## WHY DO THESE PROBLEMS MATTER?

When the Division does not post summaries for all rate filings, it does not ensure that the public is given notice of all filings, which reduces transparency of the rate filing process. The five Calendar Year 2017 filings for which no summary was posted collectively increased rates for 13 different existing products and introduced rates for four new products, all without public notice of the filings.

The lack of summaries and inconsistent reporting of information in the summaries limit their usefulness to the public. The Division reported that it does not know what the intent of the General Assembly was in requiring the posting of a summary for each filing. However, it is the Division's responsibility to implement the law, and ideally, to do so in a way that adds value. Possible users of title insurance filing summaries could be: (1) consumers looking to shop for title insurance and be informed about which companies are making changes to their rates and products, (2) real estate brokers looking to recommend title insurance companies to their clients and wanting to know which companies are changing their rates, and (3) other title insurance companies looking to stay abreast of changes in the industry. If summaries are not posted for all filings, and the summaries contain inconsistent information, they are not useful to any of these individuals and are not serving as reliable public notice.

Not requiring companies to populate fields in SERFF to provide summary information about their filings results in inconsistent treatment of those companies filing their rates. The 15 rate filings submitted in Calendar Year 2017 were made by eight different companies, seven of which had summaries of their rate filings posted. The remaining company did not have a summary posted for any of its three Calendar Year 2017 filings. As a result, this company was able to increase existing rates and add rates for products without public notice

of the changes. Another company submitted three filings in Calendar Year 2017, but had a summary posted for only one of the three filings. The other two filings increased existing rates and added new rates without public notice of the changes.

## RECOMMENDATION 3

The Division of Insurance should ensure that it complies with statute requiring posting of a summary of each title insurance rate filing by:

- A Implementing a rate filing summary that will provide useful information to the public about title insurance filings.
- B Developing written guidance for companies about how to interpret and report on the data that will be used to populate the summary.
- C Requiring companies to provide information in their filings that will be used to populate the summary.

## RESPONSE

### DEPARTMENT OF REGULATORY AGENCIES

- A AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division will be designing a title insurance specific Rate Summary for the public. The Division will work to improve the usefulness of the Rate Summary for the public by posting title insurance specific data accompanied by explanations. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

- B AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division will update instructions and regulations to provide clear guidance for title companies regarding what data should be used and completed in order to populate the Rate Summary. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

C AGREE. IMPLEMENTATION DATE: OCTOBER 2019.

The Division will update the regulation that applies to rate filing requirements to clarify and to provide better direction regarding the information that will be used for the Rate Summary. New leadership of the property and casualty rate review team will be charged with implementing the auditors' recommendations.

# CONFLICTS OF INTEREST

Article XXIX of the Colorado Constitution states that government employees should carry out their duties for the benefit of the people and avoid conduct that violates the public trust. The Division has adopted a conflict-of-interest policy emphasizing that, “Conducting regulatory work in a fair, consistent and ethical manner requires the utmost attention to ensuring that decisions are free from inappropriate pressures and conflicts of interest.... Decisions must always be made in an objective and independent manner based in the public trust and relying on the best available information at that time.” The Division’s policy outlines specific requirements for employees, including completion of an annual affidavit of disclosure of specified conflicts of interest and being mindful of maintaining impartiality and the appearance of impartiality.

## WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We compared the Division’s disclosure form to its policy and to what the Division told us about what it views as risks of conflicts of interest for staff regulating title insurance. We requested disclosure forms for Calendar Years 2015 through 2017 for the eight staff involved in title insurance regulation. We reviewed documentation about how a disclosed potential conflict of interest was assessed. Finally, we reviewed how potential conflicts for two employees in a position to regulate prior employers were handled. The purpose of the audit work was to assess the Division’s processes for identifying, assessing, and mitigating potential conflicts of interests for employees regulating title insurance.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Colorado Constitution and statutes collectively outline the

expectation that employees avoid conflicts of interest in conducting state business, and statute specifically prohibits the Division from assigning staff to a market conduct exam if the employee directly or indirectly has a conflict of interest [Sections 10-1-206(1) and 10-1-306(2), C.R.S.]. We reviewed the Division's conflict-of-interest policy and processes and looked to other guidance about conflicts of interest. Specifically, we used the Office of the State Controller's *Conflicts of Interest Technical Guidance*, issued June 2017, for general standards related to conflicts of interest. This guidance recommends that agencies implement processes for:

- Identifying potential conflicts of interest. For example, new employees should complete conflict-of-interest disclosure forms and then update the disclosure as needed or at least annually.
- Reviewing potential conflicts of interest. For example, supervisors should review conflict-of-interest disclosures to assess whether there is an actual or perceived conflict that requires mitigation.
- Mitigating conflicts, such as by following a plan that makes necessary modifications to the employee's duties to avoid the conflict.

While the State Controller's guidance is specific to procurement, we used it as a general source of information to help identify potential improvements in the Division's handling of conflicts of interest.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

**THE DIVISION DID NOT HAVE CONFLICT-OF-INTEREST FORMS FOR MOST OF THE EMPLOYEES WE REVIEWED.** We requested Division disclosure forms for Calendar Years 2015 through 2017 for eight employees involved in title insurance regulation. The Division provided one employee's form for Calendar Year 2015, but could not provide the employee's forms for Calendar Years 2016 and 2017. The Division could not provide any forms for the other seven employees for any of the years they were employed during the 3-year period we reviewed.

**EMPLOYEES MAY NOT DISCLOSE SITUATIONS THE DIVISION CONSIDERS A POTENTIAL CONFLICT.** The Division’s policy specifically requires disclosure of “members of your immediate family or household that are employed by entities subject to the regulations of the Division of Insurance.” Although the form also prompts employees to disclose “other types of situations that would constitute a conflict of interest,” neither the policy nor form discuss other types of relationships that may present a conflict or potential conflict of interest. For example, although the Division reports that regulating a prior employer may create a conflict of interest, neither the policy nor form mention this type of relationship as needing disclosure. Without mention of the types of relationships that the Division feels could present a conflict or potential conflict of interest, there is a risk that employees will not consider such relationships to be potential conflicts that should be disclosed. The one disclosure form we could review included the employee’s disclosure of non-family relationships with individuals employed in the title insurance industry. However, without clearer guidance, there is a risk that other employees will not consider such relationships for disclosure or that employees will disclose a broader range of “other types of situations” than the Division feels is necessary for employees to disclose.

**THE DIVISION DOES NOT ASSESS DISCLOSURES.** On the one disclosure form we could review, the employee disclosed that they had “former coworkers/friends still employed in the title industry.” The employee noted on the form that they would “not discuss any business matters with them.” However, the employee’s supervisor did not assess this disclosure or the employee’s stated intent to avoid discussing business with the former coworkers/friends to determine whether the situation required further mitigation. Division staff agreed that there is no established process for reviewing employee disclosures or establishing documented plans to address conflicts.

**THE DIVISION DID NOT FOLLOW ITS MITIGATION PRACTICE FOR ONE EMPLOYEE.** Two of the employees involved in title insurance regulation came to the Division from positions in the title insurance industry. The Division reports that its practice is to have new employees wait 1 year

to review rates and fees of a former employer and 2 years to conduct exams of a prior employer. For one of the employees, the Division assigned a rate review of their former employer 11 months after the employee started working for the Division. The Division followed its stated plan for the other employee and did not assign them to conduct an exam of their former employer during the first 2 years of employment at the Division. Further, the Division does not routinely document how a conflict will be mitigated or whether the standard practice is appropriate for a given circumstance.

## WHY DID THIS PROBLEM OCCUR?

**LACK OF PROCESS FOR COLLECTING EMPLOYEES' ANNUAL DISCLOSURE FORMS.** The Division reports that supervisors are responsible for collecting and maintaining the forms, but has not communicated this expectation to supervisors or employees or documented it in the policy.

**NARROW DEFINITION OF RELATIONSHIPS THAT NEED DISCLOSURE.** Neither the policy nor the form indicate that employees should disclose whether family members other than "immediate family" work for a regulated entity. In addition, neither the policy nor form indicate whether employees should consider disclosing other types of relationships, such as close friends or business associates who work for regulated entities, or how the employee might assess whether those types of relationships require disclosure. Further, neither the policy nor the form include other situations the Division considers to present possible conflicts, such as the employee having previously worked for a regulated entity. To broaden the guidance to employees on the types of relationships they should disclose, the Division could expand the policy and form to specify that other types of relationships should be disclosed.

**LACK OF PROCEDURES FOR ASSESSING POTENTIAL CONFLICTS.** The Division has not established a procedure for assessing employees' disclosures or a policy to guide supervisors on how to evaluate whether a conflict exists and how to mitigate it. The disclosure form has lines for the supervisor to sign, but it is not clear what their signature signifies

since the form has no place for the supervisor to indicate an assessment of the disclosure and whether mitigation is needed.

**LACK OF POLICIES ON DEVELOPING MITIGATION PLANS.** The Division has no policy or guidance for supervisors or employees to determine what type of action to take when an employee has a conflict of interest. For the employee who was assigned rate review of his prior employer before the 1-year waiting period had expired, the Division had no written mitigation plan, and the practice reported by the Division of waiting 1 or 2 years before assigning a new staff person to regulation of his or her prior employer is not otherwise documented as policy.

## WHY DO THESE PROBLEMS MATTER?

The lack of a comprehensive conflict-of-interest processes could result in Division employees having actual or perceived conflicts of interest in carrying out their work and lead to reduced public confidence in the Division's work.

First, if employees do not disclose relationships that could present an actual or perceived conflict of interest, Division supervisors may not be aware of the conflicts. Division supervisors are generally responsible for assigning work and are a key control for making sure that any conflicts of interest are mitigated. However, if they do not know about potential conflicts, they cannot ensure that employees avoid conflicts, such as carrying out exams or reviewing rates of regulated entities with which they have a current or past relationship.

Second, without direction from Division management in the form of policies and guidance on assessing disclosures and identifying appropriate mitigation measures, there is a risk that supervisors will be inconsistent in how they treat employees with similar circumstances. As stated in the Department's conflict-of-interest policy, "There is a presumption of a conflict of interest and loss of independence when circumstances are such that the average reasonable individual would be led to believe that the employee's ability to make a fair and honest

judgment in the public interest is or would be impaired.” Written policies can help supervisors take action that avoids both actual and apparent conflicts. For example, one supervisor may consider a circumstance to be a significant conflict and prohibit the employee from any duties related to the area of conflict, whereas another supervisor may consider the same circumstance to be a minor conflict and take no action to address it.

Without guidance on both assessing and mitigating the specific circumstances of an employee’s prior employment with a regulated entity, the Division’s general practice to wait 1 or 2 years to assign a new employee to a rate review or exam of the prior employer could create unequal treatment of companies and/or a gap in consumer protection. For example, if one of the 18 companies certified to do business in Colorado is due for exam, either because it has not been examined in a long time or because the Division is responding to a complaint, there is a risk that consumers will be harmed by putting off the examination until the examiner has been with the Division for 2 years. The Division told us that because title insurance is specialized it does not have back-up staff to perform exams, and, therefore, it does not have the flexibility to assign other staff while waiting for its examiner to reach 2 years of employment with the Division. Guidance to supervisors about the types of mitigation available, such as targeted supervisory review in lieu of a waiting period, could help the Division address conflicts while ensuring that its work is completed without delay.

Third, the lack of policies on documenting the assessment and mitigation of conflicts is particularly important because Division employees who work on title insurance regulation get rate review assignments from individuals who are not their primary supervisors. Therefore, if mitigation plans are not documented, there is a risk that employees will be assigned duties that are not in line with mitigation efforts. For example, the Division reported that it did not know whether the supervisor who assigned an employee a rate review of their prior employer at 11 months was aware of the conflict or of the Division’s practice of waiting 1 year before assigning staff to conduct rate reviews of prior employers.

## RECOMMENDATION 4

The Division of Insurance should strengthen controls for identifying, assessing, and mitigating conflicts of interest by:

- A Revising the conflict-of-interest policy to broaden the definition of situations that may create conflicts of interest, including identifying the types of non-familial relationships with the regulated industry that employees should disclose.
- B Implementing a policy and process for collecting employees’ annual disclosure forms.
- C Implementing written policies and guidance for supervisors to use in assessing employees’ potential conflicts of interest and documenting the assessment.
- D Implementing written policies and procedures for supervisors to use in identifying appropriate mitigation efforts and documenting mitigation plans.

## RESPONSE

### DEPARTMENT OF REGULATORY AGENCIES

- A AGREE. IMPLEMENTATION DATE: OCTOBER 2018.

The Division agrees with the recommendation and will expand its conflict of interest policy to address the issues raised in the report that could rise to potential conflicts of interest. The expanded policy will define the types of relationships that require disclosure. The policy will also ask Division team members to disclose “any other type of situation that could constitute a conflict of interest” to allow employees to report any other potential conflicts not captured in the specified categories that the employee feels should be disclosed.

B AGREE. IMPLEMENTATION DATE: OCTOBER 2018.

The Division agrees with this recommendation and will develop a formalized process for collecting a conflict of interest disclosure form from each employee on an annual basis.

C AGREE. IMPLEMENTATION DATE: OCTOBER 2018.

The Division will work to expand the conflict of interest policy to include guidance to assist supervisors in assessing a reported conflict of interest and documenting the assessment.

D AGREE. IMPLEMENTATION DATE: OCTOBER 2018.

The Division will work to expand the conflict of interest policy to include guidance to assist supervisors in determining how to mitigate a reported conflict of interest.

