Attachment A

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.