

Title Survey Question #1

- 1. Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
 - a. If so, please provide additional information and/or any appropriate laws or regulations.**

State	Comments
Arkansas	<p>Yes. We are starting to see this more and more which is what prompted my question. Arkansas has very minimal laws in place to regulate timely final policy issuance and premium remittance. For the most part, our title agencies do a good job getting final policies issued, but there are always those few who do not seem to care or feel that the guidelines in place do not apply to them. Or, there are more serious issues within that agency. This is why we feel we should perhaps expand our laws governing both issues. Ark. Code Ann. § 23-103-407(2) states The written contract shall establish the responsibilities of the title insurer and title insurance agency and specify the division of responsibilities if both share responsibility for a particular function and Ark. Code Ann. § 23-103-407(3)(G)(i) The date by which all funds and policies due under the contract shall be accounted for to the title insurer. Ark. Code Ann. § 23-103-407(3)(G)(ii) states The date shall be no later than sixty (60) days after: (a) Issuance of the policy; (b) The satisfaction of all requirements and conditions of any report; or (c) The time specified in the contract if less than sixty (60) days.</p> <p>Part II of this issue is after a defalcation or sometimes terminations of appointments, we are finding that insurers do not have any means of assuring us that all final policies have been issued on outstanding commitments and that premiums were collected. Since commitments are not numbered and not reported to the insurer, they have no means of making sure all business is wrapped up and policies have been issued and delivered unless the agent reports it to the insurer. We also find that insurers are not willing to take an active role in going into the agencies to make sure all business is finalized. For many, many years the insurers seem to have relied on the “honor system” with their appointed agents regarding final policies and premium remittance. But the insurers don’t seem to be very concerned after the appointments were terminated (even if it was for cause) or after a defalcation. If they were concerned, it seems as though they’d have a better, trackable system in place. How “honorable” do insurers continue to think these agents are if they’ve kept premium moneys and stolen payoff funds from a consumer?</p> <p>With regard to Title, I believe we can consider the honor system, at the very least, outdated. Agents/agencies need to be held more accountable to their insurers and to their regulators and the insurers need to be held more accountable to their regulators.</p>
Arizona	No
California	Yes, Our Department received four policy delivery complaints in the last three years, involving both title and title

Title Survey Question #1

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	agencies (underwritten title companies). All four complaints involved service delays due to lost or misplaced files and were deemed justified under California Code of Regulations Section 2694(a)(3) due to the licensees contravention of their own customer service rules.
Colorado	Colorado will occasionally receive a consumer complaint regarding a policy that has not been issued to the consumer timely. There are no current laws or regulations that require a title entity to issue a policy within a specific time frame.
Connecticut	<p>CT may be unique as our law requires the seller of title insurance to be an Attorney. As such, we do not license them. The survey concerns were not issues we identified in our exams and we don't have any complaints to report.</p> <p>Attached is a link to the CT statutes concerning Title Insurance: http://www.cga.ct.gov/2011/pub/chap700a.htm</p>
Dist of Columbia	The District of Columbia only began regulating title insurance in 2010. To date we have not had any issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid.
Florida	<p>Both the Office and the Department are aware that this practice occurs. However, it does not appear to be widespread. When the issue is brought to our attention, the issue is addressed with the company.</p> <p>To address the comment on “clean title”, a title insurer in Florida is under no obligation to provide consumers who purchase coverage with a clean title. Title insurers or their agents examine the state of the title and list on the commitment any defects discovered as exceptions to coverage. Any defects that can be cured before the closing will not be listed on the final policy as exceptions to coverage. Defects that cannot be cured will typically be listed on the policy as exceptions to coverage. Some defects are “insured over” rather than cured if the underwriter believes that they have little likelihood of causing a loss.</p> <p>a. If so, please provide additional information and/or any appropriate laws or regulations.</p> <p>626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.— (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices: (o) Illegal dealings in premiums; excess or reduced charges for insurance.—</p>

Title Survey Question #1

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1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments, binders, policies of title insurance, or guarantees of title.

(5) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(6) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(7) Misappropriation, conversion, or unlawful withholding of moneys belonging to title insurers or insureds or others and received in conduct of business under the license or appointment.

(9) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(10) The licensee if an individual, or the partners if a partnership, or owner if a sole proprietorship, or the officers if a corporation, having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

626.844 Grounds for discretionary refusal, suspension, or revocation of license or appointment.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency if it finds that as to the applicant or licensee or appointee, or any principal thereof, any one or more of the following grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. [626.8437](#):

Title Survey Question #1

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	<p>(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.</p> <p>(2) Violation of any provision of this act in the course of dealing under the license or appointment.</p> <p>(3) Violation of any lawful order or rule of the department.</p> <p>(4) Failure or refusal upon demand to pay over to any title insurer that the appointee represents or has represented any money coming into the hands of such appointee and belonging to the title insurer.</p> <p>(5) Engaging in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of business, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or to be detrimental to the public interest.</p> <p>(6) The licensee if an individual, or the partners if a partnership, or owner if a sole proprietorship, or the officers if a corporation, having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.</p>
Idaho	<p>We have had no issues with the title agent not providing a title policy to the insured. From time to time there is a question as to coverage which leads to a complaint by the policy owner which is reviewed by the Department to determine if the matter was handled properly by the title insurer.</p>
Indiana	<p>Indiana has no specific statutes requiring agents and insurers to provide a policy in a stated amount of time. We have discovered a handful of agents who were providing the policies but not in a timely manner. Fortunately, it has not been an overwhelming issue here and agents have taken steps to rectify the situation on their own when discovered.</p> <p>If so, please provide additional information and/or any appropriate laws or regulations.</p> <p>Indiana has not taken administrative action against an agency or insurer for failing to produce policies in a timely manner. However, we do have the following which could be used:</p> <p>IC 27-1-15.6-12</p>

Title Survey Question #1

- 1. Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
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	<p>(b) The commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any of the following causes:</p> <p>(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.</p>
Kansas	<p>Yes – once If so, please provide additional information and/or any appropriate laws or regulations. We found that title agent whose contract had been cancelled was issuing non-existent policies on forms that she had printed up herself. We worked with the County Attorney and the agent's father paid for the underwriter to issue real policies as part of a plea agreement so the agent could avoid jail time.</p>
Kentucky	<p>Kentucky does not have title Agencies or a title plant; closings are handled by independent (insured appointed) attorney/producers (not required to be licensed with the DOI). The Schedule 1 (declaration page) is completed by the producer/office and policy given to the named insured at time of closing. Money collected for the policy and premium taxes is held in escrow and required to be sent to the title insurer within 30 days of closing.</p>
Maryland	
Massachusetts	<p>The Massachusetts Division of Insurance is not aware that this is an issue in our Commonwealth.</p>
Maine	<p>No</p>
Maryland	<p>The title insurance-related complaints that have been received by the Maryland Insurance Administration (“MIA”) regarding the failure to provide the consumer with a policy, generally involve allegations that the producer failed to record the deed, which may (unless an instant policy is issued) delay the issuance of a policy. Unless there is a genuine dispute as to whether the individual purchased an owner’s title insurance policy at closing, upon notice the insurer will issue the policy. With regard to a failure to provide a “clean” title, the MIA has received complaints alleging that recorded liens were not discovered and/or not disclosed to the buyer prior to closing. To the extent that this act or omission was committed by a title insurance producer, it would be considered a violation of § 10-126 of the Insurance Article.</p>
Michigan	<p>It is difficult to quantify the number of consumer complaints related to this issue because of the data base search</p>

Title Survey Question #1

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	<p>criteria limitations. However, anecdotally, there have been a number of consumers that have had difficulty obtaining a copy of a title commitment or policy, usually issued by a now defunct title agency, or beyond the time period for which an insurer maintains the records.</p> <p>Michigan relies on the language in our agent fiduciary responsibility statute (<u>MCL 500.1207</u>), which states in pertinent part: "(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility." MCL 500.1207(2) identifies that the agent is in fact a fiduciary of "his" or "her" insurer with respect to premiums. Albeit "timely" is subjective, we feel confident that anything outside of the contract between the agent and the insurer, or beyond 60-90 days, is not timely.</p> <p>Michigan statute does not address the policy issuing question.</p>
Minnesota	<p>Yes</p> <p>If so, please provide additional information and/or any appropriate laws or regulations. Minn. Stat. § 60K.43; Minn. Stat. Chapter 72A.</p>
Missouri	<p>Yes</p> <p>If so, please provide additional information and/or any appropriate laws or regulations.</p> <ul style="list-style-type: none"> i. 381.038.3 RSMo (Supp 2011) requires policies be issued within 45 days after compliance with the requirements of the commitment, unless special circumstances delay the issuance. 20 CSR 500-7.090 sets out the circumstances that permit delay, including the fees not having been paid to the title agency and the recorder not having processed the documents to be insured. ii. 381.071.1 (2) RSMo prohibits issuance of a policy which has not first been soundly underwritten. iii. 381.071.2 RSMo prohibits issuance of commitments and of owners policies without showing all known adverse matters. iv. 381.023.2 (7) & (11) RSMo (Supp 2011) and 20 CSR 500-7.080 require a review of policy issuance time frames as part of the mandated annual on-site review of the insurer's issuing agents. v. 20 CSR 500-7.080 (2) (A) requires review of the agents' adherence to established underwriting practices as part of the onsite review mentioned above. vi. 375.141.1 (2) RSMo (Supp 2011) provides for discipline of producer licenses for violation of

Title Survey Question #1

- 1. Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
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	<p>insurance laws.</p> <p>vii. Pursuant to 375.141.1 (8) RSMo (Supp 2011) we can assert discipline on the grounds of demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business.</p>
North Carolina	No
Nevada	We may have had a few of these cases here and there but in the last year or so since I have been looking in to title issues we have not had many of these. Most of our problems are from Title/Escrow companies going out of business and taking the escrow funds with them.
New Mexico	Only problem we have had is when an agency has caused embesseed funds and the underwriter has had to issue the policies
Ohio	No. The Ohio Department of Insurance has not received any complaints with regard to this issue or identified such an issue when investigating other title related allegations.
Oklahoma	Oklahoma has received and addressed consumer complaints regarding this issue. Relevant statutes and regulations can be found here: http://www.ok.gov/oid/Public_Information/Legal/SUBCHAPTER 3. OKLAHOMA TITLE INSURANCE POLI CIES.html
Oregon	<p>Oregon received one complaint regarding a consumer paying for a title policy and the carrier denying that a policy existed. Our consumer advocacy section researched the complaint and discovered that the carrier had received the money. The carrier then agreed that a policy existed (even though it had never been issued).</p> <p>Oregon has also received several complaints over the years regarding title searches that did not reveal easements or lack of access. Carriers honored the claims, with the only argument being the difference in value.</p> <p>Several years ago one carrier was issuing title policies with exceptions for municipal liens but charging the full coverage title insurance rate for their policies. The reason the carrier gave was that the title rating organization did file rates for municipal lien searches. After our market analysis section investigated, the carrier was required to issue title insurance policies according to the rate charged for the coverage in their filed rating</p>

Title Survey Question #1

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	<p>manual. They also had to perform municipal lien searches to identify any title issues that could have affected their case and IBNR loss reserves.</p>
Rhode Island	<p>No, not that we are aware of. RI adopted the Title Insurers Model Act in 2010 (RIGL §27-2.6-1 <i>et. seq.</i>). RI has not adopted the Title Agency Model Act. Typically, title insurers stand behind actions of agents. To the best of our knowledge there have been no complaints filed with the RI Insurance Division regarding these activities.</p>
Utah	<p>Yes, on occasion. The Market Conduct Division (Title) has received complaints typically from a bank or lending institution when policy issuance is delayed for a substantial amount of the time. The amount of time differs with each bank or lending institution, depending on the purchase time line of the loan by an investor.</p> <p>Though no time period for issuance of a policy is specifically addressed in statute, the Department relies on the contractual agreement between insurers and agents, which is typically 30 to 60 days from the receipt of premium as a guideline. Most often, the title producer is required to sign the lender's instructions acknowledging acceptance of the lender's requirement to issue the policy within a specific period of time. Failure on the part of the title producer to issue in a specific period of time subjects them to penalties, litigation and in some circumstances purchasing the loan to indemnify the parties.</p> <p>31A-23a-402. Unfair Marketing Procedures (Failure to follow lender's instructions).</p>
Virginia	<p>We do not have any legislation regarding a title insurer's responsibility to issue policies. The responsibility falls to the agent/agency and is outlined in the agency agreement between the insurer and agent/agency. Policy issuance by the insurer comes into play when the agent/agency fails to adhere to their contractual agreement. This is governed by the title commitment issued and the receipt of title premium. We haven't had any issues with insurer's issuing policies in cases of agent defalcation or closure. Closing protection letters are also requested by lenders and issued by insurer's to protect the interest of the lender in cases of agent defalcation as it is related to the status of title to the property.</p> <p>Virginia Code Section 38.2-1813 addresses the requirement to remit premium in the ordinary course of business. We look to the agency/insurer contract for remittance requirements which we use as the ordinary course of business.</p> <p>A. All premiums, return premiums, or other funds received in any manner by an agent or a surplus lines broker</p>

Title Survey Question #1

- 1. Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
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shall be held in a fiduciary capacity and shall be accounted for by such agent or surplus lines broker. The agent or surplus lines broker shall, in the ordinary course of business, pay the funds to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+38.2-1813>

Virginia Code Section 55-525.24 addresses remittance requirements by title settlement agents which incorporates 38.2-1813.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with 55-525.11, except:

1. Title insurance premiums payable to title insurers under 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of 38.2-1813;

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.24>

Virginia Code Section 55-525.27 outlines the record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

Title Survey Question #1

- 1. Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
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	<p>http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.27</p>
Washington	<p>The State of Washington requires that the funds received by title agents are received in a fiduciary capacity, account for the funds, and promptly pay them to the insurer (RCW 48.17.480). Further the premiums must be deposited into a separate premium account (RCW 48.17.600 & WAC 284-12-080). A willful violation of these requirements is a crime.</p> <p>As to the delivery of the policies, Washington state has a statute (RCW 48.18.260) that requires that insurance policies (including title insurance policies) be delivered to the insured within a reasonable time after its issuance. We also have rule that makes the title insurer responsible for delivery of the policy if it relies on its appointed agents to issue the policies (WAC 384-30-580).</p> <p>Links to these statute and rules are:</p> <p>RCW 48.17.480 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.480 RCW 48.17.600 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.600 WAC 284-12-080 http://apps.leg.wa.gov/wac/default.aspx?cite=284-12-080 RCW 48.18.260 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.18.260 WAC 284-30-580 http://apps.leg.wa.gov/wac/default.aspx?cite=284-30-580</p>
Wyoming	No

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

State	Comments
Arkansas	<p>Yes. Since taking over regulation of Title in 2008, the Department has revoked the licenses of one (1) agent and two (2) agencies specifically for failure to remit premiums to their appointed insurers. One owed approximately \$44,000 in premiums; the other owed \$16,550. After license revocation, these individuals were turned over to our Criminal Investigation Division.</p> <p>We do have a law in place under Ark. Code Ann. § 23-64-232 outlining the preferred method of handling premium delinquencies by insurers, but I'm not sure if title insurers are aware of it. I have asked our legal division about putting out a bulletin or a directive outlining this information.</p> <p>I hear rumblings by insurers about a lot of agents/agencies failing to remit premiums for several months at a time, but the insurers don't want to report that to the Department. They feel they'll be able to collect it on their own and they don't want to be seen as the bad guy.</p>
Arizona	No
California	Not in the past ten years.
Colorado	Yes, Colorado has been addressing this issue through market conduct examinations of insurers and reminding insurers of their responsibility to report late remittance to the Commissioner. This issue is addressed in § 10-2-704, C.R.S.
Connecticut	<p>CT may be unique as our law requires the seller of title insurance to be an Attorney. As such, we do not license them. The survey concerns were not issues we identified in our exams and we don't have any complaints to report.</p> <p>Attached is a link to the CT statutes concerning Title Insurance: http://www.cga.ct.gov/2011/pub/chap700a.htm</p>
Dist of Columbia	The District of Columbia only began regulating title insurance in 2010. To date we have not had any issues with agencies failing to remit premiums to their appointed insurers.
Florida	We did have an issue with this, especially when the most recent real estate boom was taking place. During this period, the Department performed a number of title agency inspections where we observed that the agencies had not remitted the insurers' share of the premium. Title insurers' failure to vigorously pursue the collection of net premiums during the real estate bubble made it difficult for the Department to prosecute title agents for failing to timely remit net premiums to insurers. Agents are required to submit any

Title Survey Question #2

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premium to the underwriter on a monthly basis. During the last round of underwriter market conduct examinations; this was a common finding by examiners. They were fined and required to audit agent more frequently.

The above landscape changed drastically with the real estate market crash and the Department now routinely receives complaints from title insurers against title agents and agencies when premiums are not remitted to the insurer promptly.

- a. If so, please provide additional information and/or any appropriate laws or regulations.**

A number of statutes and administrative rules apply:

627.782 Adoption of rates.—

(1) Subject to the rating provisions of this code, the commission must adopt a rule specifying the premium to be charged in this state by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer which shall not be less than 30 percent. However, in a transaction subject to the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended, no portion of the premium attributable to providing a primary title service shall be paid to or retained by any person who does not actually perform or is not liable for the performance of such service.

627.7831 Commitments; charges; collection.—

(1) When a title insurance commitment to insure a title or risk is issued at the request of the insured or the insured's representative, agent, or agency, a portion of the premium must be charged for the commitment when issued. The portion of the premium charged for the commitment must be credited to the premium due upon issuance of the title insurance policy.

(2) The amount charged under subsection (1) must be collected no later than the date of the closing or 12 months after the date of the commitment, whichever occurs earlier, or another date agreed to in writing at the time of issuance of the commitment.

(3) This section does not apply to a transaction involving a residential property.

Title Survey Question #2

2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?
a. If so, please provide additional information and/or any appropriate laws or regulations.

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

3) The title insurer or its agent or agency must maintain a record of the actual premium charged for issuance of the policy and any endorsements in its files for a period of not less than 7 years. The title insurer, agent, or agency must produce the record at its office upon demand of the office.

627.792 Liability of title insurers for defalcation by title insurance agents or agencies.—

A title insurer is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent or agency of funds held in trust by the agent or agency pursuant to s. 626.8473. If the agent or agency is an agent or agency for two or more title insurers, any liability shall be borne by the title insurer upon which a title insurance commitment or policy was issued prior to the illegal act. If no commitment or policy was issued, each title insurer represented by the agent or agency at the time of the illegal act shares in the liability in the same proportion that the premium remitted to it by the agent or agency during the 1-year period before the illegal act bears to the total premium remitted to all title insurers by the agent or agency during the same time period.

626.8473 Escrow; trust fund.—

(1) A title insurance agent may engage in business as an escrow agent as to funds received from others to be subsequently disbursed by the title insurance agent in connection with real estate closing transactions involving the issuance of title insurance binders, commitments, policies of title insurance, or guarantees of title, provided that a licensed and appointed title insurance agent complies with the requirements of s. 626.8417, including such requirements added after the initial licensure of the agent.

(2) All funds received by a title insurance agent as described in subsection (1) shall be trust funds received in a fiduciary capacity by the title insurance agent and shall be the property of the person or persons entitled thereto.

(3) All funds received by a title insurance agent to be held in trust shall be immediately placed in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment requirements and standards established for deposits and investments of state funds in s. 17.57, where the funds shall be kept until disbursement thereof is properly authorized.

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
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(4) Funds required to be maintained in escrow trust accounts pursuant to this section shall not be subject to any debts of the title insurance agent and shall be used only in accordance with the terms of the individual, escrow, settlement, or closing instructions under which the funds were accepted.

(5) The title insurance agents shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.

(6) In the event that the department promulgates rules necessary to implement the requirements of this section pursuant to s. [624.308](#), the department shall consider reasonable standards necessary for the protection of funds held in trust, including, but not limited to, standards for accounting of funds, standards for receipt and disbursement of funds, and protection for the person or persons to whom the funds are to be disbursed.

(7) A title insurance agent, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agent, or any person who knowingly receives or conspires to receive such funds, commits:

(a) If the funds converted or misappropriated are \$300 or less, a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(b) If the funds converted or misappropriated are more than \$300, but less than \$20,000, a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(c) If the funds converted or misappropriated are \$20,000 or more, but less than \$100,000, a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(d) If the funds converted or misappropriated are \$100,000 or more, a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

Also see Sections 626.8437 and 626.844 quoted above under question 1.

690-186.003 Title Insurance Rates.

The following are risk rate premiums to be charged by title insurers in this state for the respective types of title insurance contracts. To compute any insurance premium on a fractional thousand of insurance (except as to minimum premiums), multiply such fractional thousand by the rate per thousand applicable, considering any fraction of \$100.00 as a full \$100.00.

Title Survey Question #2

2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?
a. If so, please provide additional information and/or any appropriate laws or regulations.

(9) Minimum Retention of Premium by Insurer.

(a) A title insurer shall receive and retain at least 30% of the risk premium for policies sold by agents in accordance with Minimum Insurance Retention Schedule, including risk premium for endorsements, and it shall not be decreased, directly or indirectly, by an insurer providing services to any agent for less than actual cost.

(b) Any retention of premium by an insurer in excess of 30% shall not be decreased, directly or indirectly, by providing services to an agent for less than actual cost.

(c) The required retention of funds must be remitted to the insurer by the agent at least monthly, and until remitted these funds are "collected funds" subject to the accountability provisions of Rule 69O-186.009, F.A.C.

69O-186.008 Escrow Requirements.

(3) Funds received by a licensed title insurance agent or insurer pursuant to a real estate closing transaction involving the issuance of a title insurance binder, commitment, policy of title insurance, or guaranty of title shall not be deposited or transferred to an interest-bearing trust account without the written consent of the buyer and seller.

69O-186.009 Reconciliation of Escrow Accounts.

(1) Every licensed title insurance agent shall maintain a monthly reconciliation of every escrow account required to be maintained pursuant to Section 626.8473, Florida Statutes, and shall, on a monthly basis, report such reconciliation together with appropriate supporting documentation to each title insurer which licensed the agent during the reconciliation period. The reconciliation shall be supported by appropriate documentation, including a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection (2). Licensed title insurance agents and title insurers shall provide a copy of the monthly escrow account reconciliation to the Office upon its request. Such records shall be maintained by the title insurer for a period of five years.

(2) Every licensed title insurance agent shall maintain a separate ledger card for each real estate closing transaction for which funds are received in escrow. The ledger card shall contain chronological entries of dates and amounts of moneys received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Such records shall be maintained by

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>secured by a mortgage on a one to four family dwelling shall be protected as if this letter were addressed to your borrower.</p> <p>Conditions and Exclusions</p> <p>A. The (insert title insurer) will not be liable to you for loss arising out of:</p> <ol style="list-style-type: none">1. Failure of said Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the (insert title insurer). Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent. This paragraph shall not be applicable when such binder or commitment has not been required by the lender prior to closing.2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of said Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.3. Mechanics' and materialmen's liens in connection with your purchase or lease or construction loan transactions, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of the (insert title insurer).4. The periodic disbursement of construction loan proceeds or funds furnished by the owner to pay for construction costs during the construction of improvements on the land to be insured, unless an officer of the company has specifically accepted the responsibility to you for such disbursement program in writing. <p>B. When the (insert title insurer) shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the (insert title insurer) for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.</p> <p>C. Any liability of the (insert title insurer) for loss incurred by you in connection with closings of real estate transactions by said Issuing Agent or Approved Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of (insert title insurer). The dollar amount of liability hereby incurred shall not be greater than the amount of the title insurance binder, commitment or policy of title insurance to be issued, and liability hereunder as to any particular loan transaction shall be coextensive with liability</p>
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Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>under the policy issued to you in connection with such transaction. Payment in accordance with the terms of this letter shall reduce by the same amount the liability under such policy and payment under such policy shall reduce by the same amount the company's liability under the terms of this letter.</p> <p>D. Claims of loss shall be made promptly to the (insert title insurer) at its principal office at (address). When the failure to give prompt notice shall prejudice the (insert title insurer), then liability of the (insert title insurer) hereunder shall be reduced to the extent of such prejudice. The (insert title insurer) shall not be liable hereunder unless notice of loss in writing is received by the (insert title insurer) within ninety (90) days from the date of discovery of such loss.</p> <p>E. Nothing contained herein shall be construed as authorizing compliance by any issuing agent or approved attorney with any such closing instructions, compliance with which would constitute a violation of any applicable law, rule or regulation relating to the activity of title insurers, their issuing agents or approved attorneys, and their failure to comply with any such closing instructions shall not create any liability under the terms of this letter.</p> <p>F. The protection herein offered will be effective until cancelled by written notice from the (insert title insurer). Any previous insured Closing Service letter or similar agreement is hereby cancelled, except as to closings of your real estate transactions regarding which you have previously sent (or within 30 days hereafter send) written closing instructions to said Issuing Agent or Approved Attorney.</p> <p style="text-align: center;">(Insert title insurer)</p> <p style="text-align: center;">By _____</p>
Idaho	No
Indiana	Our response here would be similar to the response to question #1. We have no specific statutes and have

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>found scattered instances of this and it has not, to date, been an overwhelming problem. I am aware of two cases where an insurer filed a complaint with the Department regarding an agent's non-payment of premium. The Department was successful in proving its charges that the agents had violated both the statute referenced above as well as:</p> <p>IC 27-1-15.6-12(b)</p> <p>(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.</p> <p>b. If so, please provide additional information and/or any appropriate laws or regulations.</p> <p>We do note, periodically during our examinations, that agents can be required by their underwriting contracts to maintain the underwriter's share of the premium in a separate trust or escrow account. It does not seem that the underwriters enforce this contract provision with regularity. Where we find the provision and it is not being followed we point it out to the agent and suggest it as a best business practice.</p>
Kansas	Not for title
Kentucky	Involving 2 title examinations (since 2008)several producers failed to remit premiums and closing transaction documents timely to the insurer(which would include policy issuance in the field).
Massachusetts	The Massachusetts Division of Insurance is not aware that this is an issue in our Commonwealth.
Maine	No
Maryland	The MIA has received complaints from title insurers alleging that a producer has failed to remit premiums. Typically, these complaints are filed along with a notice of termination for cause. The Insurance Article requires a title insurer to notify the Commissioner when it terminates an appointed producer for cause due to a reason set forth in § 10-126. See Insurance Article §10-118(e). In addition, during the course of a market conduct examination of a title insurer, the MIA has identified instances where premiums were not remitted in a timely manner. With respect to the producer, this is considered a violation of § 10-126 of the Insurance Article. An insurer's failure to report this to the Commissioner is considered a violation of § 10-121(k) of the Insurance Article.

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

Michigan	<p>There have been enforcement actions taken, including some pursuant to ‘cancel for cause’ investigations, where agents were delinquent in premium remittances to the company. Enforcement actions related to premium delinquencies are typically categorized as fiduciary violations.</p> <p>a. If so, please provide additional information and/or any appropriate laws or regulations. <u>MCL 500.1207</u></p>
Minnesota	<p>Yes If so, please provide additional information and/or any appropriate laws or regulations. Minn. Stat. § 60K.43; Minn. Stat. Chapter 72A.</p>
Missouri	<p>Yes If so, please provide additional information and/or any appropriate laws or regulations.</p> <ul style="list-style-type: none"> i. 381.038.3 RSMo (Supp 2011) requires premiums be remitted at the earlier of 60 days from receipt of an invoice from the insurer or as required by the agency agreement. ii. 381.023.2 RSMo (Supp 2011) requires review of procedures related to determining if issued policies are being reported to the insurer, a component in determination of premium remittance practices, as part of the onsite review mentioned above. 20 CSR 500-7.080 (2) (B) requires timely premium remittances be verified during the onsite review.
Nebraska	<p>Nebraska statutes require title agents to remit to the insurer all funds due within the time specified by the underwriting contract and also indicate that all funds collected for the title insurer must be held in a fiduciary capacity in a qualified financial institution. Neb. Rev. Stat. §§ 44-19,114(3)-(4) (Reissue 2010). Additionally, Nebraska statutes require a title insurer to, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of its title insurance agents. Neb. Rev. Stat. § 44-1993(3) (Reissue 2010). As part of this onsite review, the insurer must examine the timeliness of policy issuance. The delay between the date all of the requirements to insure have been met and policy issuance must be no longer than sixty (60) days. 210 Neb. Admin. R & Regs 34-006.09.</p> <p>For the text of these statutes/regs: Neb. Rev. Stat. § 44-1993: http://nebraskalegislature.gov/laws/statutes.php?statute=44-1993</p>

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	Neb. Rev. Stat. § 44-19,114: http://nebraskalegislature.gov/laws/statutes.php?statute=44-19,114 210 Neb. Admin. R. & Regs. 34: http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-34.pdf
North Carolina	No
New Mexico	This has happened in the past, but underwriters seem to be on top of it now.
Nevada	No there has not been a trend.
Ohio	Yes. Over the past few years, the Ohio Department of Insurance has opened approximately ten (10) investigations which pertain to this type of allegation. As the result of those investigations conducted, we have found that premium collection policies set by the underwriters vary by underwriter.
Oklahoma	Answer: Oklahoma has received and addressed consumer complaints regarding this issue. Preliminary findings of ongoing market conduct examinations on title insurers indicate that there <u>may</u> be violations of the following regulations: http://www.ok.gov/oid/Public Information/Legal/SUBCHAPTER 3. OKLAHOMA TITLE INSURANCE POLICIES.html
Oregon	We took one enforcement action in early 2006 against an agency for numerous instances of violating ORS 744.074(1)(d). From September to December 2004, the agency issued title insurance policies, and received premium therefore. However, the agency did not forward to the carrier any of the premium but instead used it to pay business expenses. That same agency also violated ORS 744.083(1) in numerous instances. From September 3, 1993 to sometime in February 2005, the agency received premium for title insurance and deposited it into an account containing money other than premium. The agency deposited the premium into the other account because they did not have an insurance premium trust account.
Rhode Island	No, not that we are aware of. RI adopted the Title Insurers Model Act in 2010 (RIGL §27-2.6-1 <i>et. seq.</i>). RI has not adopted the Title Agency Model Act. Typically, title insurers stand behind actions of agents. To the best of our knowledge there have been no complaints filed with the RI Insurance Division regarding these activities.
Texas	In Texas, Rate Rule R-2 requires title agents to send their premium remittances to the underwriter "no later

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>than the 15th day of the second month following the month in which the premium was collected."</p> <p>A related statute, Texas Insurance Code Section 2651.013 states that all premium remittances owed to the title underwriter "are considered to be held in trust for the title insurance company."</p> <p>Another rule, Procedural Rule P-61, requires that all Texas title insurance policies must be issued within 90 days after all Schedule C requirements have been met.</p> <p>Texas Insurance Code Section 2651.253 requires underwriters to "audit the unused forms in the possession of each of the company's title insurance agents to determine that all used forms have been reported to the company...at least once every two years..." and requires them to send a copy of each audit report to the Texas Dept. of Insurance.</p> <p>Finally, Administrative Rule D-1 outlines the requirements that must be followed when a title agency ceases operations in Texas. The rule states that if the title agent fails to wind down their operations properly, then the underwriter becomes responsible for making sure all the requirements are met.</p> <p><u>Links to text of regulations:</u> Rate Rule R-2: http://www.tdi.texas.gov/title/titlem3a.html#R-2 TIC Section 2651.013: http://www.statutes.legis.state.tx.us/Docs/IN/htm/IN.2651.htm#2651.013 Procedural Rule P-61: http://www.tdi.texas.gov/title/titlem4l.html#P-61 TIC Section 2651.253: http://www.statutes.legis.state.tx.us/Docs/IN/htm/IN.2651.htm#2651.253 Administrative Rule D-1: http://www.tdi.texas.gov/title/titlem6.html#D-1</p>
Utah	<p>Yes. This usually occurs in combination with a defalcation or insolvent agency. 31A-23a-409 31A-23a-410</p>
Virginia	<p>We do not have any legislation regarding a title insurer's responsibility to issue policies. The responsibility falls to the agent/agency and is outlined in the agency agreement between the insurer and agent/agency.</p>

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

Policy issuance by the insurer comes into play when the agent/agency fails to adhere to their contractual agreement. This is governed by the title commitment issued and the receipt of title premium. We haven't had any issues with insurer's issuing policies in cases of agent defalcation or closure. Closing protection letters are also requested by lenders and issued by insurer's to protect the interest of the lender in cases of agent defalcation as it is related to the status of title to the property.

Virginia Code Section 38.2-1813 addresses the requirement to remit premium in the ordinary course of business. We look to the agency/insurer contract for remittance requirements which we use as the ordinary course of business.

A. All premiums, return premiums, or other funds received in any manner by an agent or a surplus lines broker shall be held in a fiduciary capacity and shall be accounted for by such agent or surplus lines broker. The agent or surplus lines broker shall, in the ordinary course of business, pay the funds to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+38.2-1813>

Virginia Code Section 55-525.24 addresses remittance requirements by title settlement agents which incorporates 38.2-1813.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with 55-525.11, except:

1. Title insurance premiums payable to title insurers under 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of 38.2-1813;

Title Survey Question #2

- 2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.24</p> <p>Virginia Code Section 55-525.27 outlines the record retention requirements. The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.</p> <p>http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.27</p>
Washington	<p>The State of Washington requires that the funds received by title agents are received in a fiduciary capacity, account for the funds, and promptly pay them to the insurer (RCW 48.17.480). Further the premiums must be deposited into a separate premium account (RCW 48.17.600 & WAC 284-12-080). A willful violation of these requirements is a crime.</p> <p>As to the delivery of the policies, Washington state has a statute (RCW 48.18.260) that requires that insurance policies (including title insurance policies) be delivered to the insured within a reasonable time after its issuance. We also have rule that makes the title insurer responsible for delivery of the policy if it relies on its appointed agents to issue the policies (WAC 384-30-580).</p> <p>Links to these statute and rules are:</p> <p>RCW 48.17.480 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.480 RCW 48.17.600 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.600 WAC 284-12-080 http://apps.leg.wa.gov/wac/default.aspx?cite=284-12-080 RCW 48.18.260 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.18.260 WAC 284-30-580 http://apps.leg.wa.gov/wac/default.aspx?cite=284-30-580</p>
Wyoming	No

Title Survey Question #3

- 3. Has your state experienced or addressed issues with agents failing to send out the policies they have sold?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

State	Comments
Arkansas	<p>We have an open investigation of an agency where this issue appears to be rampant. Understandably, I cannot discuss this matter further, but will be able to give details and resolution after finalizing the investigation.</p> <p>Up until the discoveries made in the investigation referenced above, we only got reports of random policies not being issued. We get a lot of reports from Lenders with regard to Mortgagee's policies and, admittedly, sometimes the Lenders could not confirm if the policy had never been delivered or if it had been misplaced. Also, I have had several complaints of consumers not receiving their final policies. We actively address this with the agency and work towards getting the policies delivered. We then address the consequences with the agency and seek a solution to the problem.</p>
Arizona	No
California	Yes, Our Department received four policy delivery complaints in the last three years, involving both title and title agencies (underwritten title companies). All four complaints involved service delays due to lost or misplaced files and were deemed justified under California Code of Regulations Section 2694(a)(3) due to the licensees contravention of their own customer service rules.
Colorado	Colorado has had experience with this issue when it relates to an agent defalcation. In this instance, the insurer is dealing with claims and the policies have not been issued. There are no current laws or regulations that require a title entity to send out a policy within a specific time frame.
Connecticut	<p>CT may be unique as our law requires the seller of title insurance to be an Attorney. As such, we do not license them. The survey concerns were not issues we identified in our exams and we don't have any complaints to report.</p> <p>Attached is a link to the CT statutes concerning Title Insurance: http://www.cga.ct.gov/2011/pub/chap700a.htm</p>
Dist of Columbia	The District of Columbia only began regulating title insurance in 2010. To date we have not had any issues with agents failing to send out the policies they have sold.
Florida	See response to question 1.
Idaho	No
Indiana	Please see our answer to survey question #1.
Kansas	Not for title

Title Survey Question #3

- 3. Has your state experienced or addressed issues with agents failing to send out the policies they have sold?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

Kentucky	Issues with producer escrow have been addressed with the insurer on the basis of “management and oversight” , in addition to timely and adequate title producer internal audits performed by the insurer.
Massachusetts	The Massachusetts Division of Insurance is not aware that this is an issue in our Commonwealth.
Maine	No
Maryland	Please see the response to Question #1. The majority of these complaints are filed by lending institutions. This is considered a violation of § 10-126 of the Insurance Article.
Michigan	see answer to question # 1 above.
Minnesota	Yes If so, please provide additional information and/or any appropriate laws or regulations. Minn. Stat. § 60K.43; Minn. Stat. Chapter 72A.
Missouri	Yes If so, please provide additional information and/or any appropriate laws or regulations. <ul style="list-style-type: none"> i. See a. i. of our response to 1. above ii. We have entered into forfeiture agreements with companies who have failed to provide policies within the statutory period pursuant to 375.141.1 (2) RSMo (Supp 2011) which provides for discipline of producer licenses for violation of insurance laws.
North Carolina	No
New Mexico	This has happened occasionally and a complaint has been filed. Underwriters are also watching this very closely in these hard market times.
Nevada	No there has not been a trend.
Ohio	No
Oklahoma	Answer: Oklahoma has received and addressed consumer complaints regarding this issue. Preliminary findings of ongoing market conduct examinations on title insurers indicate that there may be non-compliance with <i>timely</i> remittance of policies to the underwriters, as required by the following regulations: http://www.ok.gov/oid/Public Information/Legal/SUBCHAPTER 3. OKLAHOMA TITLE IN SURANCE POLICIES.html
Oregon	Not to our knowledge.
Rhode Island	No, not that we are aware of. RI adopted the Title Insurers Model Act in 2010 (RIGL §27-2.6-1 <i>et. seq.</i>). RI has not adopted the Title Agency Model Act. Typically, title insurers stand behind actions of

Title Survey Question #3

- 3. Has your state experienced or addressed issues with agents failing to send out the policies they have sold?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	agents. To the best of our knowledge there have been no complaints filed with the RI Insurance Division regarding these activities.
Utah	Yes, on occasion. This issue can be handled by a consumer service analyst.
Wyoming	No

Title Survey Question #4

- 4. Has your state experienced or addressed issues with closers failing to perform closing services for which they received a fee?**
- a. If so, please provide additional information and/or any appropriate laws or regulations.**

State	Comments
Arkansas	We get complaints about this issue all the time, but we do not license or regulate closing agents, so we have no jurisdiction over most of the complaints I receive.
Arizona	Escrow transactions in Arizona are regulated by the Arizona Department of Financial Institutions.
California	None that we are aware. <u>Response:</u> Our Department does not capture this data. See California Insurance Code section 12376 and 12377 regarding escrows in the event of a liquidation, receivership or bankruptcy of a title agent (underwritten title company).
Colorado	Colorado has no recent issues in this area. This issue is addressed in Colorado Insurance Regulation 3-5-1 Section 7, K. Please note that Colorado only regulates the closing portion of the transaction if it is performed by a licensed title producer in conjunction with the issuance of a title insurance policy. Transactions handled by independent closers or escrow companies are not subject to regulation by the Colorado Division of Insurance
Connecticut	CT may be unique as our law requires the seller of title insurance to be an Attorney. As such, we do not license them. The survey concerns were not issues we identified in our exams and we don't have any complaints to report. Attached is a link to the CT statutes concerning Title Insurance: http://www.cga.ct.gov/2011/pub/chap700a.htm
Dist of Columbia	The District of Columbia only began regulating title insurance in 2010. To date we have not had any issues with closers failing to perform closing services for which they received a fee.
Florida	In Florida, the closer is not required to be licensed and we hold the licensed title insurance agency responsible for ensuring that a proper closing is conducted. The title agency may use a mobile notary to assist with verifying the documents were signed correctly, but it is the title insurance agency that processes the paperwork and makes the escrow distributions and records the deed and other documents, etc. Please see the Closing Protection Letter at the end of question 2. When there is no closing protection

Title Survey Question #4

- 4. Has your state experienced or addressed issues with closers failing to perform closing services for which they received a fee?**
- a. If so, please provide additional information and/or any appropriate laws or regulations.**

	<p>letter issued, the responsibility of the insurer for acts or inactions of its agents in performing their closing duties is subject to case law, a discussion of which is well beyond this questionnaire. Joyce Palomar's reference service, "Title Insurance Law" includes an extensive treatment of the subject.</p> <p>We have statutes that address an agency's failure to disburse escrow funds properly. Please see 626.8473, 626.8437, and 626.844 quoted above.</p>
Idaho	<p>The Idaho Department of Insurance only has jurisdiction of escrow closings conducted by title agents, other parties that conduct closing are licensed by the Department of Finance. We have NOT experienced issues involving title agents not performing closing services for which they have received a fee.</p>
Indiana	<p>Indiana has no statutes which regulate fees paid for services other than the premium. We have not found these types of situations during our examinations to date.</p> <p>We could attempt to employ one of the above-referenced statutes in an effort to take administrative action.</p>
Kansas	<p>Not that we are aware of.</p>
Kentucky	<p>Exam findings have revealed some abuse in 2008-09 scope with delayed reporting of closing transactions to insurers. In these cases, the agreed corrective action has been the insurer's implementation of real-time software systems where the producers reports the transaction at time of closing.</p>
Massachusetts	<p>The Massachusetts Division of Insurance is not aware that this is an issue in our Commonwealth.</p>
Maine	<p>No</p>
Maryland	<p>Most of the complaints filed by policyholders regarding fees involve allegations that either the title insurance producer or producer agency overcharged for a service or did not perform the service for which they were paid. For example, a title insurance producer agency may charge a fee to review the title search, but fail to disclose to the buyer that the search revealed recorded liens encumbering the property. This is considered a violation of § 10-126 of the Insurance Article.</p>
Michigan	<p>"Closers" or "escrow companies" are not licensed in Michigan. However, OFIR issued a press release</p>

Title Survey Question #4

- 4. Has your state experienced or addressed issues with closers failing to perform closing services for which they received a fee?**
a. If so, please provide additional information and/or any appropriate laws or regulations.

	and <u>Bulletin 2004-05-CF</u> to alert consumers and the industry that mortgage professionals are responsible to ensure that mortgage loan proceeds [including title premium] are disbursed in accordance with applicable loan agreements. a. If so, please provide additional information and/or any appropriate laws or regulations. (see answer to question #4 above)
Minnesota	Yes If so, please provide additional information and/or any appropriate laws or regulations. Minn. Stat. § 60K.43; Minn. Stat. Chapter 72A; Minn. Stat. Chapter 82.
Missouri	Yes. However, Missouri does not regulate closing agents who are not licensed insurance producers or title insurance companies. We are largely uninformed of unlicensed entities' practices.
North Carolina	No
New Mexico	We do not have administrative authority over the closers. However if we are contacted we go directly to the agent to address the matter and to report the results back to us.
Nevada	Yes mostly associated with the title agency going out of business and taking the money. Most of the losses that were not covered by the insurer were earnest money, homeowner association fees and miscellaneous closing costs or fees.
Ohio	No
Oklahoma	No
Oregon	Not to our knowledge. Escrow activity in Oregon is not regulated by the Insurance Division – it is regulated by the Oregon Real Estate Agency.
Rhode Island	No, not that we are aware of. RI adopted the Title Insurers Model Act in 2010 (RIGL §27-2.6-1 <i>et. seq.</i>). RI has not adopted the Title Agency Model Act. Typically, title insurers stand behind actions of agents. To the best of our knowledge there have been no complaints filed with the RI Insurance Division regarding these activities.
Utah	Yes. The type of closing service that is the biggest issue is a reconveyance or release fee. The title producer fails to follow up appropriately leaving another title producer to clean up the outstanding lien or deed of trust in a later transaction. This results in the consumer being charged twice.

Title Survey Question #4

- 4. Has your state experienced or addressed issues with closers failing to perform closing services for which they received a fee?**
- a. If so, please provide additional information and/or any appropriate laws or regulations.**

	31A-23a-402. Unfair Marketing Practices
Wyoming	No

Title Survey Question #5

5. How many defalcations has your state seen from 2005 to the present?

State	Comments
Arkansas	Arkansas has only regulated Title since January 1, 2008. Since that date we have seen four (4) defalcations in our state. We have revoked the licenses of all agents and agencies involved. Two (2) of the individuals are presently in prison for their roles in these thefts. Only one (1) of those individuals was a licensed title agent. The other was a title agency owner. We revoked the agency license and the owner was prosecuted. He is currently serving nine (9) years in prison.
Arizona	The Department has not collected data on this issue. Information might be available from the Arizona Department of Financial Institutions.
California	None. Our Department does not capture this data.
Colorado	The Colorado Division of Insurance is aware of at least seven defalcations since 2005. These defalcations all involved a substantial amount of money. It is anticipated that the actual number of defalcations may be much higher.
Connecticut	CT may be unique as our law requires the seller of title insurance to be an Attorney. As such, we do not license them. The survey concerns were not issues we identified in our exams and we don't have any complaints to report. Attached is a link to the CT statutes concerning Title Insurance: http://www.cga.ct.gov/2011/pub/chap700a.htm
Dist of Columbia	The District of Columbia only began regulating title insurance in 2010. The Department of Insurance, Securities and Banking is not aware of any defalcations.
Florida	The Department does not track title insurance agent or agency defalcations, per se. Although we do not separately track complete defalcations, we do track investigations of title agents and agencies who have allegedly engaged in theft, diversion, or misappropriation of title insurance trust funds. From 2005 to present, the Department has revoked or suspended the licenses of 77 title insurance agents and agencies for diversion or misappropriation of fiduciary funds.
Idaho	NONE
Indiana	The Indiana Department of Insurance has seen 9 defalcations since 2005.
Kansas	No Comment Listed
Kentucky	Since 2005, 3 title company exams have been performed, with various issues regarding premium taxes,

Title Survey Question #5

5. How many defalcations has your state seen from 2005 to the present?

	escrow, underwriting-rating, oversight of producers, internal audit procedures																								
Massachusetts	Information not available.																								
Maine	None Known																								
Maryland	<p>Approximately 30. The following information represents administrative actions taken since 2005 against a title insurance producer, specifically for theft from an escrow account:</p> <p style="padding-left: 40px;">Number of summary suspensions of a producer license (all were affirmed and resulted in an Order of Revocation): 25 Number of producer license Orders of Revocation: 72 Number of producer license Consent to Revocation Orders: 6</p>																								
Michigan	<p>Michigan Defalcations:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Year</th> <th style="text-align: left;">Approximate Total Amount</th> <th style="text-align: left;">Number of Defalcations</th> </tr> </thead> <tbody> <tr> <td>2005</td> <td>\$9.6 million</td> <td>6</td> </tr> <tr> <td>2006</td> <td>\$7.8 million</td> <td>7</td> </tr> <tr> <td>2007</td> <td>\$4.2 million</td> <td>6</td> </tr> <tr> <td>2008</td> <td>\$15 million</td> <td>7</td> </tr> <tr> <td>2009</td> <td>zero</td> <td>0</td> </tr> <tr> <td>2010</td> <td>Data Not Available</td> <td></td> </tr> <tr> <td>2011</td> <td>Data Not Available</td> <td></td> </tr> </tbody> </table>	Year	Approximate Total Amount	Number of Defalcations	2005	\$9.6 million	6	2006	\$7.8 million	7	2007	\$4.2 million	6	2008	\$15 million	7	2009	zero	0	2010	Data Not Available		2011	Data Not Available	
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Minnesota	15																								
Missouri	A total of 14, 2 of which were multistate title agencies and the funds taken were not for Missouri transactions. In 3 of the remaining 12 owners or employees embezzled but there was no loss to consumers or title insurance companies. In 1 a manager caused a title policy to be issued on personal property without showing an open mortgage, causing loss to the title insurance company.																								
North Carolina	NCDOL does not have record of such statistics.																								
New Mexico	We have had two agency defalcations in the past year. Both are still pending and the Insurance Fraud Division and the title Bureau are on top of both.																								

Title Survey Question #6

6. If it is ok for the requestor to contact your state directly regarding this issue, please provide:
Contact name, contact telephone number:

State	Contact Name	Telephone #	E-Mail
Arkansas	Sarah Harper Gray	(501) 682-5215	
Arizona	Catherine O'Neil	602-364-2496	coneil@azinsurance.gov
California	Not Provided		
Colorado	Paula Sisneros	303-894-2241	paula.sisneros@dora.state.co.us
Connecticut	Barbara C. Spear	860-297-3884	barbara.spear@ct.gov
Dist of Columbia	Philip Barlow	(202)442-7823	philip.barlow@dc.gov
Florida	Peter Rice Jeffrey Joseph, Esq. Ray Wenger	850-413-5249 850-413-4294 (850) 413-5605	peter.rice@floir.com jeffrey.joseph@floir.com Title@MyFloridaCFO.com
Idaho	Dale Freeman	208/334-4321	dale.freeman@doi.idaho.gov
Indiana	Carrie Vavul	317.234.5155	cvavul@idoi.in.gov
Kansas	Marty Hazen	(785) 296-3405	mjhazen@ksinsurance.org
Kentucky	Robin Coombs or Jim Axman	502 782 5294	Robin.Coombs@ky.gov or James.Axman@ky.gov (502-782-5279)
Maine	Frank Kimball	207-624-8451	frank.j.kimball@maine.gov
Maryland	Nancy Grodin	410-468-2002	ngrodin@mdinsurance.state.md.us
Massachusetts	Kevin Beagan, Dir, State Rating Bur	(617) 521-7323	kevin.beagan@state.ma.us

Title Survey Question #6

**6. If it is ok for the requestor to contact your state directly regarding this issue, please provide:
Contact name, contact telephone number:**

Michigan	Sherry J Bass-Pohl	517/335-2074	bass-pohls@michigan.gov
Minnesota	Paul Hanson	651-297-5281	paul.hanson@state.mn.us
Missouri	Kathleen Jolly	626 301 0733	Kathleen.jolly@insurance.mo.gov
Nebraska	Matt Holman		Matt.Holman@nebraska.gov
North Carolina	Fred Fuller	(919) 733-3368	fred.fuller@ncdoi.gov
New Mexico	Craig Dunbar	(505)827-4536	Craig.Dunbar@state.nm.us
Nevada	Peter Shaw	775-687-0707	pshaw@doi.state.nv.us
Ohio	Michelle Rafeld, Assistant Director, Office of Fraud, Enforcement & Licensing	614-728-1009	Michelle.Rafeld@insurance.ohio.gov
Oklahoma	Brian Gabbert	(405) 522-5358	brian.gabbert@oid.ok.gov
Oregon	Joyce Patton	(503) 947-7038	joyce.e.patton@state.or.us
Rhode Island	Paula Pallozzi Chief Property & Casualty Insurance Rate Analyst	401-462-9616	<u>paula_pallozzi@dbr.ri.gov</u>
Texas	Bernise Kennedy		

Title Survey Question #6

**6. If it is ok for the requestor to contact your state directly regarding this issue, please provide:
Contact name, contact telephone number:**

Utah	Tammy Greenin	801 538-3786	tgreening@utah.gov
Virginia	Brian Gaudiose		Brian.Gaudiose@scc.virginia.gov
Washington	Jim Tompkins		JimT@OIC.WA.GOV
Wyoming	Todd Schildmeier	(307) 777-7402	todd.schildmeier@wyo.gov