



**TEXAS DEPARTMENT OF INSURANCE / FINANCIAL REGULATION DIVISION
FINANCIAL EXAMINATIONS / TITLE EXAMINATIONS**

**SUMMARY OF OPERATIONS FOR 4TH QUARTER, FY 2013
JUNE – AUGUST, 2013
for presentation to the
Texas Title Insurance Guaranty Association Board of Directors
October 21, 2013**

COMPLIANCE AUDITS AND ESCROW AUDIT REPORTS

	Qtr	FY 13	FY 12	FY 11	FY 10	FY 09	FY 08
Field audits completed	93	340	343	300	322	369	254
Field audit reports processed	104	344	333	298	319	360	241
Section 2651.151 audit reports received	51	569	580	612	618	652	638
Section 2651.151 audit reports reviewed	63	558	576	604	608	657	627

Analysis of Title Insurance Agencies Licensed as of 8/31/13

		Breakdown of Comprehensive Audit Status			
		Agencies audited within last 2 years	Agent's last audit was 2 - 3 years ago	Agent's last audit was over 3 years ago	# of (new) Agents Never Audited
Region	# of agencies				
NTX	198	183	7	0	8
CTX	115	112	1	0	2
WTX	100	100	0	0	0
HOU	127	117	6	0	4
STX	33	33	0	0	0
Totals:	573	545	14	0	14
	% of Total:	95.2%	2.4%	0.0%	2.4%

REVISED Goal: In order to comprehensively audit every agent at least once every 2 years, we need to conduct 287 comprehensive audits per year, which amounts to 72 audits per quarter.

Last 12 months (9/1/12 – 8/31/13): 340 audits (53 over goal)

Last 3 months (6/1/13 – 8/31/13): 93 audits (21 over goal)

Orders signed by Commissioner Rathgeber during quarter (7):

DATE	Order #	AGENCY/PERSON	REASON	FINE AMT
6/14/13	2593	JMC Title Agency, Katy	Failed to timely remit guaranty fees.	\$7,900
6/14/13	2594	Smarter Title & Escrow, Houston	Violated Section 2501.006.	\$1,000
7/1/13	2622	Commonwealth Land Title Insurance Company, Jacksonville	Violated Section 2703.052.	Penalty of \$5,000 plus Restitution of \$36,979.50
7/9/13	2637	Philip Postel & Johnny Collins	Violated Sec. 2502.051 & 2652.201.	\$55,000
7/18/13	2659	Julia Elizabeth Neely, Austin	Prepared commitments with false information.	Escrow officer lic. revoked
7/18/13	2660	Century Oaks Title, Lake Jackson	Violated Section 2502.051.	\$40,000
8/19/13	2701	Orange Coast Title Company of Texas, Sugar Land	Failed to timely remit annual escrow audit report.	\$9,000

Active cases in Financial, Enforcement & Fraud:

	Active cases at 6/1/13	Cases referred Qtr. 13-4	Cases cleared Qtr. 13-4	Active cases at 8/31/13
Financial Program				
Confidential Supervision	1	0	0	1
Receivership	5	0	1	4
Troubled title agents	12	3	3	12
Enforcement				
Miscellaneous violations of the TIC	5	2	5	2
Rebating	1	2	2	1
License revocation (agent and/or escrow officer)	3	3	3	3
Late escrow audit rept. &/or stat rept. &/or guaranty fees	9	5	5	9
Fraud Unit				
Misappropriation of fiduciary funds	26	1	0	27
Total	62	16	19	59

STATISTICAL REPORT LIMITED REVIEWS

Out of 93 comprehensive audits completed during the quarter, 40 (43%) included a limited review of the agent's latest statistical report. The following results were reported.

	QTR	FY 13	FY 12	FY 11	FY 10	FY 09
Number of statistical reports reviewed.	40	238	178	152	149	116
1. No material discrepancies noted.	40	228	170	147	143	113
2. Income and/or expense amounts reported in wrong categories.	0	4	4	2	0	0
3. Total income and/or expense amounts reported didn't agree with agency's financial statements.	0	6	4	3	6	3
4. Forms missing or incomplete.	0	0	0	0	0	0
5. Miscellaneous other discrepancies.	0	0	0	0	0	0

RESULTS OF COMPLIANCE AUDITS DURING QUARTER

Listed below are audit findings for June through August of 2013, the 4th quarter of the State's fiscal year 2013. Numbers represent the number of agencies where the infraction occurred, not the number of times it occurred.

VIOLATION OR DISCREPANCY	QTR	YTD
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INSOLVENCY

Financial statements indicated agent was insolvent or had cash flow problems.	4	19
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ABSTRACT PLANT

Abstract plant not in compliance with Article 9.02(i) and Procedural Rule P-12.	3	10
Agency personnel unable to retrieve instrument information. Unable to verify legal plant.	0	0

TEXAS INSURANCE CODE

§ 101.102 – Conducted unauthorized business of insurance.	1	4
Section 2502.051 (formerly Art. 9.30) – Gave/received thing of value for referral of title insurance business.	2	7
Section 2704.001 (formerly Art. 9.34) – Provided policies to non-licensed entity and sold title evidence for counties for which agent was not licensed	0	2
Section 2704.001 (formerly Art. 9.34) – Policy not based on evidence from a legal abstract plant and/or no attempt made to contact out-of-county agents for title evidence.	0	4

VIOLATION OR DISCREPANCY	QTR	YTD
TEXAS INSURANCE CODE, cont.		
Section 2704.001 (Art. 9.34) – Issued policies for property in county where not licensed.	5	16
Section 2704.001 (formerly Art. 9.34) – Signed commitments not maintained as part of complete evidence of insurability or countersigned policies not maintained.	11	37
Section 2651.002 (formerly Art. 9.36) – Agent used an unlicensed name or dba name.	7	15
Section 2651.301 (formerly Art. 9.37B) – Misappropriation or conversion to own use of money belonging to another person.	0	1
Section 2651.301 (formerly Art. 9.37B) – Failed to maintain separate escrow account (commingled escrow & operating funds).	11	36
Section 2651.101 and/or 2652.101 (formerly Art. 9.38 and/or 9.45) – No agency/escrow officer bond or insufficient bond.	2	9
Section 2651.151 (formerly Art. 9.39) – Annual escrow audit report prepared incorrectly or contained material inaccuracies or other problems.	7	20
Section 2652.001 (formerly Art. 9.41) – Unlicensed person acting as an escrow officer.	10	42
Section 2602.151 (formerly Art. 9.48) and Administrative Rule G-1 – Failure to collect Policy Guaranty Fee or failure to maintain the policy fees in an escrow account.	10	21
Section 2602.103 (Art. 9.48) – Failure to produce requested files or other records.	1	4
Section 2702.053 (formerly Art. 9.53) – Actual receipts and/or disbursements not in agreement with settlement statement or premium split not disclosed.	48	181

BULLETINS

Title Bulletin No. 152 – Policy dates incorrect.	1	4
Title Bulletin No. 160 – All parties receiving portions of the real estate commission not disclosed on settlement statement.	27	115

PROCEDURAL RULES

P-18: Commitment not issued as required in rule or commitment incomplete.	2	10
P-21: Schedule D of commitment not in file or premium split not disclosed on commitment.	26	119
P-22: No T-00's in files or T-00's incorrect or incomplete.	24	68
P-27 (“Good Funds”) violations: Unauthorized checks over \$1,500. Receipts not deposited timely or not received and posted before disbursements made.	10	47
P-35: Verbal or written guaranty, affirmation, indemnification, or certification issued.	3	7
P-61: Failure to issue title policy timely.	1	8
P-62: Operated in county for which not licensed.	0	1

RATE RULES

Incorrect premium charged (violation of one or more rate rules).	17	58
R-1: Unauthorized fee charged for closing (or tax search) in addition to premium.	5	19
R-2: Premium remittances to underwriters not timely or amounts incorrect.	2	3
R-2: Premium collected in installments or premium not collected at all.	0	0
R-8: Refinance credit not given or not calculated correctly.	5	17

MINIMUM ESCROW ACCOUNTING PROCEDURES & INTERNAL CONTROLS

#1 - Monthly escrow trial balances not prepared or not prepared timely.	9	20
#1 - Testing proved escrow trial balances unreliable.	0	0
#1 - Escrow trial balances not prepared correctly.	8	21
#2 - Three-way reconciliations not prepared or not prepared timely or portions of records not available.	9	21
#2 - Escrow trial balances and/or book balances and/or reconciled bank balances not in agreement. Differences unreconciled.	0	0

VIOLATION OR DISCREPANCY	QTR	YTD
MINIMUM ESCROW ACCOUNTING PROCEDURES & INTERNAL CONTROLS, cont.		
#2 - Bank reconciliations, book balances, or three-way reconciliations prepared incorrectly.	9	20
#3 – Reconciliations not approved by management or reviewed by another employee.	7	22
#4 - Accounting duties not segregated sufficiently and reconciliations not reviewed by manager or owner.	0	0
#5 - Only one signature on escrow checks when agency's size required two signatures.	2	14
#6 - Records did not include copies of all checks, invoices, deposit slips and receipt items.	6	33
#7A - Invested escrow accounts not styled correctly.	2	11
#7B - No written authorization to invest escrow funds.	0	5
#7C - Invested escrow account used agent's tax ID number instead of that of beneficiary.	1	2
#7D – No control ledger for invested escrow accounts. Interest not posted timely.	1	2
#8 - Guaranty files used name identification instead of unique numbers. Same file number used for more than one transaction.	2	5
#9 - Escrow bank accounts not styled as “escrow” or “trust”.	17	71
#10 - No management approval for disbursements made on accounts open for more than six months or no review for disposition of funds.	6	27
#12 - No management approval for transfers of funds between guaranty files and/or transfers not documented in the files.	1	1
#13 - Seller not properly notified of NSF checks.	1	1
#14 - Guaranty file number not displayed on all escrow checks, deposit tickets or other documents.	2	9
#15 – Disbursement sheets missing, incomplete or incorrect.	27	89
#16 - Every disbursement not supported by invoice or sufficient other evidence.	50	159
#17 - Escrow receivables not cleared timely.	17	45
#18 – Settlement statement changes not initialed or supported adequately or contained white-out corrections.	0	3
#19 – Signed, pre-numbered receipts not issued for cash.	6	8
#20 – Images of checks did not meet requirements.	6	32
#21 – Escrow bank account not maintained at a financial institution in Texas.	0	1

AGENCY

Agent breached fiduciary responsibility to buyer and seller by engaging in “self-dealing”.	1	4
Failed to disclose affiliated business arrangement as required by RESPA § 3500.15.	3	14

ESCROW ACCOUNTING

Material escrow funds irregularity or irregularities [i.e., escrow bank account overdrawn, receipt posted but never actually received or check-clearing date problems].	3	6
Deposits and/or disbursements not booked in appropriate month.	14	39
Receivable(s) created by depositing into one bank account and disbursing from another account.	2	6
Reconciling items not posted timely and/or not cleared timely and/or not supported by adequate documentation.	5	15
Pattern of posting errors.	4	14
Signature on checks not on bank signature card or previous employees still on bank signature card.	3	6
Outstanding checks not cleared timely.	45	179
Deposit-in-transit list and/or outstanding checklist prepared incorrectly.	28	77
Duplicate check numbers in same escrow account; checks written out of numerical sequence or more than one check number used for same disbursement.	0	1

VIOLATION OR DISCREPANCY	QTR	YTD
GUARANTY FILES		
Original legal documents found in guaranty files after title policies issued.	1	2
Legal documents not recorded timely with county clerk or evidence of timely recording not in file.	26	85
Cash or disbursement check found in file.	0	1
Funds not disbursed or escheated to state.	22	78