



**TEXAS DEPARTMENT OF INSURANCE/PROPERTY & CASUALTY PROGRAM
TITLE DIVISION/TITLE EXAMINATIONS**

**SUMMARY OF OPERATIONS FOR 4TH QUARTER, FY 2004
JUNE, 2004 – AUGUST, 2004
for presentation to the
Texas Title Insurance Guaranty Association Board of Directors
October 26, 2004**

COMPLIANCE AUDITS AND ESCROW AUDIT REPORTS

	Qtr	FY 04	FY 03	FY 02	FY 01	FY 00	FY 99	FY 98
Field audits completed	74/5	234/30	233	250	233	261	350	282
Field audit reports processed	82	261	234	250	266	261	359	298
Article 9.39 CPA audit reports received	42	563	564	563	570	565	569	581
Article 9.39 CPA audit reports reviewed	16	556	558	568	560	567	558	589

Analysis of Title Insurance Agencies Licensed as of 8/31/04

		Breakdown of Comprehensive Audit Status		
Region	# of agencies	Agencies Audited within last 3 years	Agent's last audit was over 3 years ago	# of New Agents Never Audited
NTX	194	182	4	8
CTX	118	116	1	1
WTX	110	108	1	1
HOU	123	110	1	12
STX	45	45	0	0
Totals:	590	561	7	22
	% of Total:	95.1%	1.2%	3.7%

Goal: In order to comprehensively audit every agent at least once every three years, we need to conduct 197 comprehensive audits per year, which amounts to 49 audits per quarter.

Last 12 months (9/1/03 – 8/31/04): 234 audits (37 over goal)

Last 3 months (6/1/04 – 8/31/04): 74 audits (25 over goal)

Orders signed by Commissioner Montemayor during quarter:

<u>DATE</u>	<u>ORDER #</u>	<u>AGENCY</u>	<u>REASON</u>	<u>FINE AMT</u>
6/8/04	04-0558	San Antonio Title Co.	Failed to timely file annual escrow audit reports + major escrow accounting problems	\$50,000
7/2/04	04-0683	Benchmark Title Services, LLC, Plano	Failed to timely file annual escrow audit report + delinquent underwriter remittances.	\$15,000

Results of follow-up audits:

No. of follow-ups completed	Compliance achieved	Improvement but further action needed	Another on-site audit or stronger action needed
5	1	2	2

Active cases in Financial, Legal & Fraud:

	Total active cases at 6/1/04	Cases referred during quarter	Cases cleared during quarter	Total active cases at 8/31/04
Financial Program				
Confidential Supervision	1	0	0	1
Monitoring after Confidential Supervision	0	0	0	0
Insolvency	0	0	0	0
Legal & Compliance				
Miscellaneous violations of the TIC	12	2	1	13
Rebating	2	1	0	3
License revocation (agent and/or escrow officer)	4	0	0	4
Failure to submit escrow audit report or delinquent audit report	13	7	4	16
Fraud Unit				
Misappropriation of fiduciary funds	0	0	0	0
Total	32	10	5	37

STATISTICAL REPORT LIMITED REVIEWS

Out of 74 comprehensive audits completed during the quarter, 22 (30%) included a limited review of the agent's latest statistical report. The following results were reported.

	QTR	FY 04	FY 03	FY 02	FY 01	FY 00
Number of statistical reports reviewed.	22	61	46	59	54	45
1. No material discrepancies noted.	22	61	41	51	43	38
2. Incorrect agency number shown.	0	0	0	1	3	3
3. Total income and/or expense amounts reported didn't agree with agency's financial statements.	0	0	1	4	5	1
4. Expenses in wrong category. Not considered material.	0	0	0	0	1	2
5. Premium income not reported.	0	0	0	0	1	0
6. Difference between (tax certificate, courier, filing fee) income and expense was not considered within reasonable limits.	0	0	4	0	0	0
7. Tax certificate income and expense not reported.	0	0	0	0	0	0
8. Filing fee income and expense not reported	0	0	0	0	0	1
9. Courier expense not reported.	0	0	0	0	0	0
10. Other categories of income or expense omitted.	0	0	0	0	0	0
11. Mathematically inaccurate.	0	0	0	1	1	0
12. Miscellaneous other discrepancies.	0	0	0	0	1	0
13. Forms missing or incomplete.	0	0	0	1	1	0
14. Amount reported for remitted underwriter premiums was incorrect. It was not actual amount collected during year. Instead, it was a figure provided by the UW.	0	0	0	0	0	1
15. Premium division percentages between underwriter and agent were calculated incorrectly.	0	0	0	2	1	0
16. Records were incomplete or in such condition that report could not be verified.	0	0	0	0	0	1

RESULTS OF COMPLIANCE AUDITS DURING QUARTER

Listed below are audit findings for June through August, 2004, the fourth quarter of the state's fiscal year 2004. Numbers represent the number of agencies at which the infraction occurred, not the number of times it occurred.

VIOLATION OR DISCREPANCY	QTR	YTD
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INSOLVENCY

Financial statements or other records indicated agent insolvent.	3	14
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ABSTRACT PLANT

Abstract plant not in compliance with Article 9.02(i) and Procedural Rule P-12.	7	25
Agency personnel unable to retrieve instrument information. Unable to verify legal plant.	0	4

TEXAS INSURANCE CODE

§ 101.102 – Conducted unauthorized business of insurance.	1	3
Article 9.30 – Gave/received thing of value for referral of title insurance business.	1	6
Articles 1.14-1 and 9.34 – Provided policies to non-licensed entity and sold title evidence for counties for which agent was not licensed	0	0
Article 9.34 – Issued policy not based on title evidence prepared from a legal abstract plant and/or no attempt made to contact out-of-county agents for title evidence.	1	6
Article 9.34 – Issued policies for property located in county for which not licensed.	1	4
Article 9.34 – Signed commitments not maintained as part of complete evidence of insurability or countersigned policies not maintained.	13	44
Article 9.36 – Agent used an unlicensed name or dba name.	8	23
Article 9.37B – Misappropriation or conversion to own use of funds belonging to another person (includes depositing “overages” into operating account rather than refunding).	1	3
Article 9.37B – Failed to maintain separate escrow account (commingled funds).	6	18
Article 9.38 and/or 9.45 – No agency/escrow officer bond or insufficient bond.	7	28
Article 9.39 – Annual escrow audit report prepared incorrectly or contained material inaccuracies or other problems.	3	18
Article 9.41 – Unlicensed person performing duties of escrow officer.	16	55
Article 9.48 and Administrative Rule G-1 – Failure to collect Policy Guaranty Fee	9	22
Article 9.48 – Failure to produce requested files or other records for audit.	5	22
Article 9.53 – Actual receipts and/or disbursements not in agreement with settlement statement or premium split not disclosed.	25	71

BULLETINS

Title Bulletin No. 133 – Charged an unauthorized fee (cancellation or commitment fee).	0	0
Title Bulletin No. 160 – All parties receiving portions of the real estate commission not disclosed on settlement statement.	19	65

PROCEDURAL RULES

P-1i: Operated in county for which not licensed.	0	4
P-18: Commitment not issued as required in rule or commitment incomplete.	4	6
P-21: Schedule D of commitment not in file or premium split not disclosed on commitment.	19	68
P-22: No T-00's in files or T-00's incorrect or incomplete.	26	81
P-27 (“Good Funds”) violations: Unauthorized checks over \$1,500. Receipts not deposited timely or not received and posted before disbursements made.	13	56
P-31: No original signature on directly issued policies. Rubber stamp used.	1	2
P-35: Verbal or written guaranty, affirmation, indemnification, or certification issued or delivered	3	8

VIOLATION OR DISCREPANCY	QTR	YTD
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RATE RULES

Incorrect premium charged (violation of one or more rate rules).	18	63
R-1: Unauthorized fee charged for closing (or tax search) in addition to premium.	13	42
R-2: Premium remittances to underwriters not timely or amounts incorrect.	4	21
R-2: Premium collected but issuance of policy withheld.	1	11
R-2: Premium collected in installments or premium not collected at all.	0	1
R-19 (or other endorsement): Premium collected but endorsement not effected.	0	0

MINIMUM ESCROW ACCOUNTING PROCEDURES & INTERNAL CONTROLS

#1 - Monthly escrow trial balances not prepared or not prepared timely.	7	31
#1 - Testing proved escrow trial balances unreliable.	2	6
#1 - Escrow trial balances not prepared correctly.	16	51
#2 - Three-way reconciliations not prepared or not prepared timely or portions of records not available.	7	30
#2 - Escrow trial balances and/or book balances and/or reconciled bank balances not in agreement. Differences unreconciled.	1	7
#2 - Bank reconciliations, book balances, or three-way reconciliations prepared incorrectly.	18	59
#3 – Reconciliations not approved by management or reviewed by another employee.	7	21
#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.	5	16
#6 - Records did not include copies of all checks, invoices, deposit slips and receipt items.	8	27
#7A - Invested escrow accounts not styled correctly.	2	13
#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.	0	2
#7D – No control ledger for invested escrow accounts. Interest not posted timely.	1	8
#8 - Guaranty files used name identification instead of unique numbers. Same file number used for more than one transaction.	0	2
#9 - Escrow bank accounts not styled as "escrow" or "trust".	8	35
#10 - No management approval for disbursements made on accounts open for more than six months or no review for disposition of funds.	7	29
#12 - No management approval for transfers of funds between guaranty files and/or transfers not documented in the files.	2	4
#13 - Seller not properly notified of NSF checks.	0	0
#14 - Guaranty file number not displayed on all escrow checks, deposit tickets or other documents.	3	9
#15 – Disbursement sheets missing, incomplete or incorrect.	31	94
#16 - Every disbursement not supported by invoice or sufficient other evidence.	34	105
#17 - Escrow receivables not cleared timely.	18	67
#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.	7	19
#20 – Images of checks did not meet requirements.	7	33
#21 – Escrow bank account not maintained at a financial institution in Texas.	1	4

VIOLATION OR DISCREPANCY		
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AGENCY

Agent breached fiduciary responsibility to buyer and seller by engaging in "self-dealing".	2	7
Failed to disclose affiliated business arrangement as required by RESPA § 3500.15.	9	20

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].	1	7
Deposits and/or disbursements not booked in appropriate month.	7	30
Receivable(s) created by depositing into one bank account and disbursing from another account.	3	17
Reconciling items not posted timely and/or not cleared timely and/or not supported by adequate documentation.	7	30
Pattern of posting errors.	7	21
Signature on checks not on bank signature card or previous employees still on bank signature card.	4	7
Outstanding checks not cleared timely.	35	113
Deposit-in-transit list and/or outstanding checklist prepared incorrectly.	20	62
Duplicate check numbers in same escrow account; checks written out of numerical sequence or more than one check number used for same disbursement.	0	0

GUARANTY FILES

Actual disbursement not in agreement with invoice or evidence maintained in file.	0	0
Insufficient documentation in file to make conclusion regarding open file balance.	1	2
Balance in file not in agreement with amount shown on escrow trial balance or in annual escrow audit report.	0	0
Policy or endorsement copies not in file.	0	0
Policy not furnished to owner timely or policy prepared incorrectly.	0	0
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.	20	68
Cash or disbursement check found in file.	4	15
Funds not disbursed or escheated to state.	21	69

SETTLEMENT STATEMENTS

Required Form T-63 not prepared for POC items.	27	92
Actual receipts and/or disbursements not in agreement with settlement statement.	7	25
Amounts disclosed on settlement statements different from amounts actually disbursed.	2	4
Premium split for closing, title examination or title evidence not disclosed on settlement statement. Other information not disclosed on settlement statement.	6	27
Original or amended final settlement statements not signed by any/all parties.	7	32
Settlement statements prepared incorrectly or contained mathematical errors.	0	6
Incorrect issuing agency shown on settlement statement.	0	0