

**Colorado Title Insurance Trust/Escrow Account
Interest Survey – Preliminary Results**

(January 18, 2008)

Summary

On December 7, 2007, the Colorado Division of Insurance (the Division) mailed a survey to all Title Insurance Companies and Title Insurance Agents who currently hold active certificates of authority or producer licenses in Colorado. This survey was in regards to interest earned on company trust and/or escrow accounts, value received other than interest on these accounts, and closing/escrow or disbursement services that are contracted out, either as an ongoing business practice or from time to time as they may be needed.

A deadline of December 28, 2007 was given, and no extensions of time to respond were granted for this survey.

A copy of the survey is attached as Appendix "A".

Responses

At the time of mailing there were 29 Title Insurers (Underwriters) and 435 Title Agents licensed to conduct the business of Title Insurance in the State of Colorado. A total of 464 survey letters were mailed.

31 letters were received back by the Division as "Return to Sender," with 7 undeliverable (no forwarding address available.) 24 were re-mailed to new addresses with an additional letter informing the companies of their responsibility to maintain a current and correct addresses with the Division pursuant to § 10-2-412, C.R.S.

In all, 457 letters were sent to verifiable addresses.

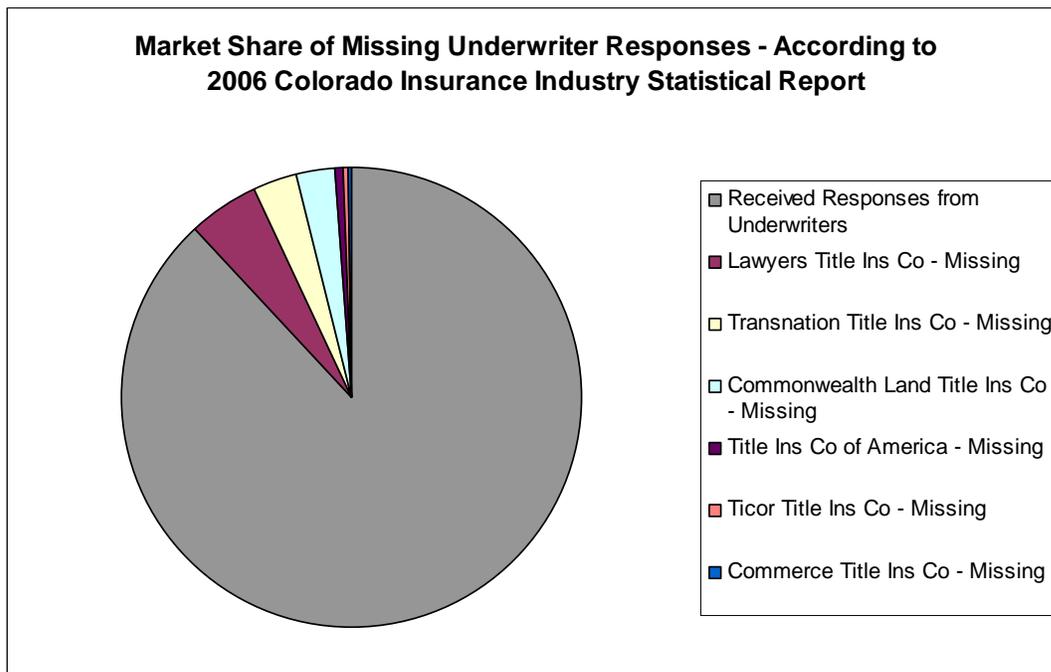
As of January 18, 2008, 318 responses had been submitted, or approximately 69% of the letters sent. 23 responses were received from Underwriters, and 295 from Title Agents.

Missing Underwriter responses:

23 responses were received from Underwriters, with 6 not responding:

- Commerce Title Insurance Company, License #50026
- *Commonwealth Land Title Insurance Company, License #50083
- *Lawyers Title Insurance Corporation, License #50024
- Ticor Title Insurance Company, License #50067
- *Title Insurance Company of America, License #50245
- *Transnation Title Insurance Company, License #50012

*(*Note: While LandAmerica (consisting of Commonwealth, Lawyers, Title Insurance Company of America, and Transnation Title) has responded in part to the survey, their answers were incomplete. The Division has been in contact with LandAmerica, and has been assured that complete responses will be received at a later time.)*



The Division anticipates taking regulatory action against non-responding entities, up to and including calling a market conduct examination of such entities to obtain the information.

Definitions of Accounts

In Colorado, there are four common types* of bank account set up in the course of conducting the business of title insurance:

- **Operating account:** The account in which monies and portions of earned premiums are deposited for the purpose of operating the business (payroll, rent, utilities, etc.)
- **Underwriting account:** The account in which an Underwriters' portion of the earned premium is deposited until issuance of policy and remittance to the Underwriter of said portion (required by Colorado Division of Insurance Regulation 3-5-1, Section 9)
- **Trust and/or Escrow Account:** An account into which is deposited funds to be held for parties to a transaction other than the company or the Underwriter.

Colorado Insurance Regulation 3-5-1, Section 9, states:

“These funds include but are not limited to, title insurance premiums, earnest money deposits, loan proceeds, seller’s proceeds, and homeowners association dues.”

*(*Some companies in Colorado are set up and maintained as “Title Only” operations, in which the company performs a title examination and then contracts out for closing and settlement/disbursement services (to a dedicated Escrow or Closing Company.) In these instances, such operations may only maintain an Operating and an Underwriting account, since they do not typically hold money in trust for other parties.)*

Operating and Underwriting accounts were not inquired about in this survey, and the results compiled are for Trust and/or Escrow accounts only.

Some agents and underwriters view “Trust Account” and “Escrow Account” to be essentially the same thing, while others view their “Trust Accounts” as accounts in which money is wired into or out of for the purposes of loan funding, loan payoff, and seller proceeds, while the “Escrow Account” is used to hold monies such as earnest money, tax escrows (in which an amount is held back in case of extra tax liabilities on the parts of buyer, seller, or borrower), and water/sewer bills to be paid by the title company after closing.

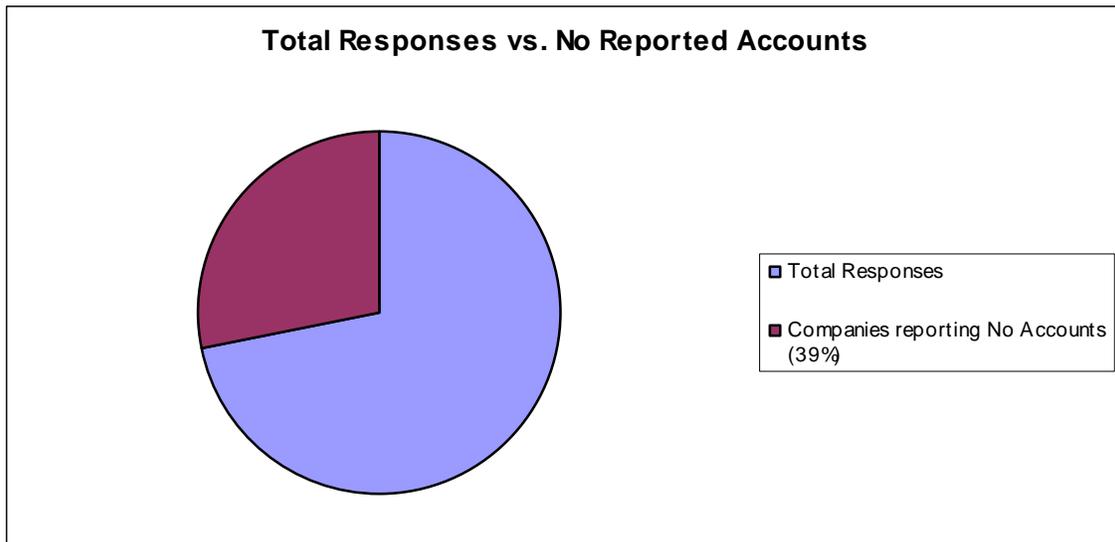
When asked for clarification by some companies as to what definitions we were using in our survey, it was explained that the questions being asked applied to any account in which the company was holding money for any purpose other than their business operations or underwriting premiums. Namely, anytime they were holding money for a party or parties other than their company or their underwriter(s).

It was further explained to inquiring parties that the survey separated out “Trust” and “Escrow” accounts to simplify the answering of questions for companies that maintain both types of accounts, and if a company maintained only one type they could answer for the appropriate account and answer questions for an account that did not apply as “NA” or “Not Applicable.”

Some companies called or e-mailed to inform us that they either do not maintain any such accounts (“Title Only” operations who contract out for closings and disbursements and therefore do not maintain accounts other than operating and underwriting), or that they were not in business during the timeframes requested. For these inquiries, the Division requested that, for the completeness and accuracy of the data, they still log on to the survey and complete it to the best of their ability and mark “NA” or “Not Applicable” for any questions they could not answer. They were also asked to provide an explanation in the space provided at the end of the survey (Question 15.)

Companies reporting no accounts or no transactions

Of the 99 responses that did not indicate data for accounts, 36 were not in business for the time period requested (2006), 31 reported no transactions for the time period, and 32 indicated they are “Title Only” operations, and therefore hold no Trust or Escrow accounts.

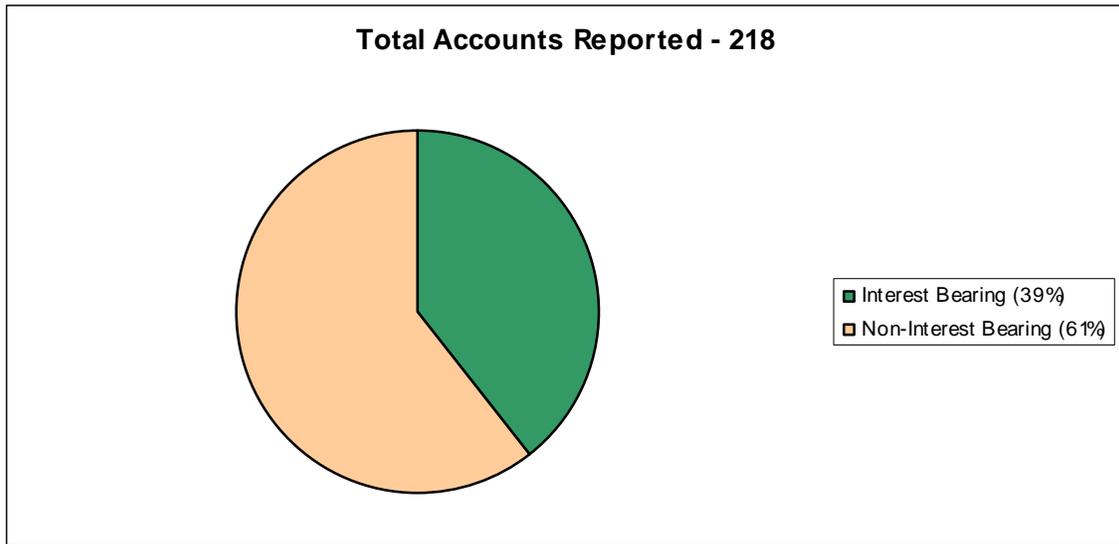


Breakdown of Accounts

Of the 317 responses received, 193 companies indicated they maintained a Trust *or* an Escrow account, and 25 of those companies indicated they maintain both, for a total of 218 accounts.

From the 218 accounts, 86 (39%) were reported as interest bearing accounts.

Earned interest for the year 2006 on interest-bearing Trust and Escrow accounts was approximately \$13.2 million, as disclosed by the responding companies.



(Note: while compiling data, it was noticed that a question regarding how much interest was earned on Escrow Accounts was inadvertently left out of the original survey. A supplementary e-mail was sent to the Respondents of the survey who had indicated they did earn interest on their Escrow Accounts, asking them for further information. As of January 18, 2008, 27 of the 61 recipients had responded, accounting for approx. 2.3 million dollars of the above figure.)

Average Daily Balances

(Note: the following numbers are sum totals of the average daily balances as reported by responding companies. They are not representative of interest earned. See following page for graphic representation)

Total Amounts held in accounts (whether interest-bearing or non-interest bearing)

Trust Accounts

Feb 06: \$208,254,033.03
May 06: \$244,198,822.75
Aug 06: \$232,393,864.34
Nov 06: \$241,103,747.64

Escrow Accounts

Feb 06: \$406,028,837.81
May 06: \$501,728,847.47
Aug 06: \$473,434,007.28
Nov 06: \$473,434,007.28

Total Amounts held in accounts in which earned interest is returned to consumer

Trust Accounts

Feb 06: \$1,078,725.77
May 06: \$1,081,471.70
Aug 06: \$1,385,078.86
Nov 06: \$750,902.54

Escrow Accounts

Feb 06: \$108,366,909.50
May 06: \$138,174,839.73
Aug 06: \$136,516,070.39
Nov 06: \$128,280,406.78

Total amounts held in accounts in which interest earned is kept by company

Trust Accounts

Feb 06: \$149,355,660.36
May 06: \$180,688,263.81
Aug 06: \$170,431,007.42
Nov 06: \$163,989,760.30

Escrow Accounts

Feb 06: \$291,100,070.31
May 06: \$357,767,062.20
Aug 06: \$330,244,234.25
Nov 06: \$337,581,080.75

Total amounts held in accounts in which interest earned is donated

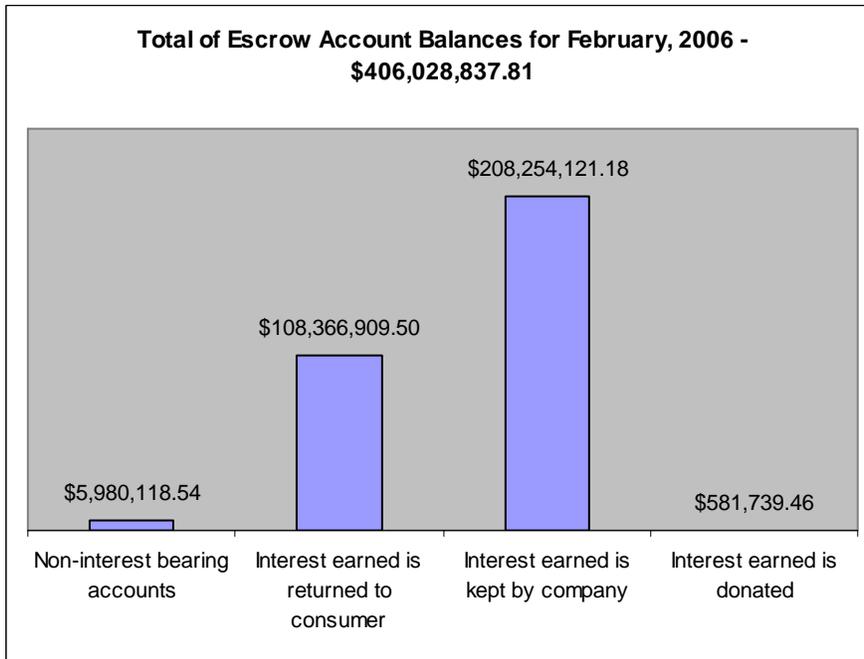
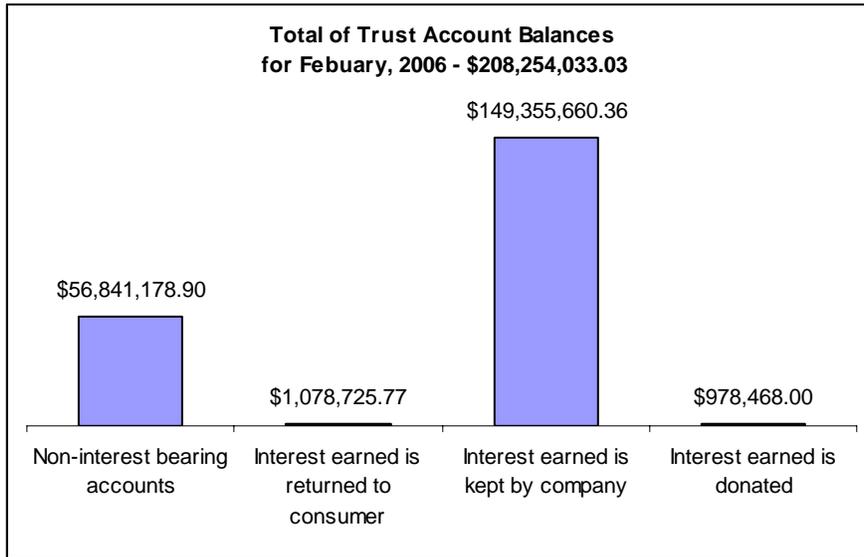
Trust Accounts

Feb 06: \$978,468.00
May 06: \$3,839,461.66
Aug 06: \$2,973,985.93
Nov 06: \$2,186,678.29

Escrow Accounts

Feb 06: \$ 581,739.46
May 06: \$ 799,140.22
Aug 06: \$ 734,607.05
Nov 06: \$ 626,864.61

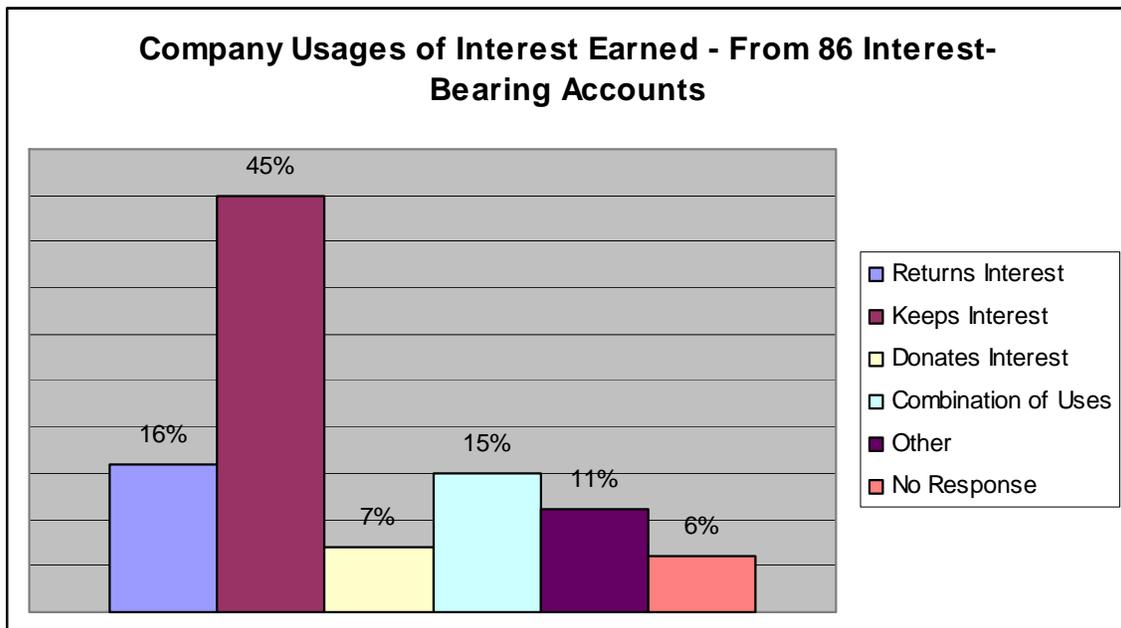
(Note: the following numbers are sum totals of the average daily balances as reported by responding companies for February, 2006. They are not representative of interest earned.)



Usages of interest

The following is a breakdown of answers in response to the question of how companies typically dispose of any interest they may earn:

- 14 indicated they return the interest to the buyer/borrower/seller (*Approximately 6.8 million dollars was reported returned.*)
- 39 indicated the company keeps any interest earned (*Approx. 6.4 million dollars reported earned*)
- 6 said they donate the money to CARHOF or another charity(*Approx. \$55,000 reported*)
- 13 said they applied the interest in a combination of the above ways (most often using some of the interest to offset bank fees while transferring the remainder to the company's operating account) (*No dollar amounts reported*)
- 9 replied "other," only one of which came with a statement attached (to the effect that the interest was automatically given to the State of Ohio, as Ohio companies are not permitted to earn interest on their accounts.)
- 5 did not respond or responded as N/A



Other value received from Accounts

For companies that did not report interest bearing accounts, many answered that they did receive value from monies deposited in their Trust or Escrow accounts in some other way than interest. A common method employed by companies is “account analysis,” in which a bank does not pay interest on an account, but instead offers credits to companies to offset account charges based on what they would have earned in interest.

Other ways in which companies make money (aside from the offsetting of bank fees) include borrowing money (that would have been interest paid) back from the bank in short term CD’s or money market accounts, and “sweep” or “reinvestment” accounts. A sweep account is often a high-yield savings or investment account into which funds (most often money reserved for mortgage payoffs that would sit in a company’s trust or escrow account overnight and earn no interest) are “swept” each night to gain interest, and are then automatically re-deposited into the trust or escrow account each morning, or when the reserved funds are called to clear the trust or escrow account.

According to the survey answers, approximately \$6.5 million were paid above and beyond account analysis on the trust/escrow accounts maintained.

Services Contracted Out

128 responses indicated the companies contracted out for at least some closing services, with 52 companies reporting that they handle any disbursements that may be needed in the transaction. 42 companies responded that they contract out all closing and disbursement services to independent escrow companies, with another 51 indicating they occasionally use notary signing services or contract closers for some of their transactions (after hours closings, out of area, etc.)

Additionally, 24 companies reported they contract out some, if not all, of their searching, abstracting, and/or title examinations.

Conclusion

Colorado title companies that responded to the Division’s survey earned approximately 19.7 million dollars last year on their trust and escrow accounts, whether through interest or other value-added services on their accounts. Of this amount, approximately 6.8 million dollars was returned to consumers, or 35%.

Appendix "A"
2007 Colorado Trust/Escrow Account Interest Survey

This survey must be submitted ONLINE, at:

<http://www.dora.state.co.us/survey/titleinterestsurvey.htm>

NO PAPER RESPONSES WILL BE ACCEPTED.

Company Name (as licensed):
Company NAIC Number (if underwriter)/License Number (if agency):
Mailing Street Address:
City:
State:
Zip Code:
Date:

As an officer of the company to whom this letter is addressed, who is authorized to sign on behalf of the company, I do hereby attest to the accuracy of the above responses.

Company Officer:
Company Officer Title:
Company Officer Telephone Number:
Company Officer E-mail Address:

We are seeking Colorado specific information only. Responses provided should only reflect monies related to Colorado transactions. If you are unable to provide Colorado-specific information please provide a detailed explanation, in the space provided under question number 15 below, of what other states are included in your figures as well as the approximate percentage that reflects Colorado transactions.

Trust Account Questions

1. Is your company's trust account an interest-bearing account? Y/N
2. If your company's trust account is interest-bearing, is the interest a fixed or variable rate?
 - 2a. If fixed, what is the interest rate?
 - 2b. If variable, please describe how the interest rate is calculated and provide the rate, effective 12/31/2006
3. Please provide the average daily balances for your company's trust account, whether interest-bearing or not, for the following months:

February, 2006 –
May, 2006 –
August, 2006 –
November, 2006 –

4. What does your company do with any interest earned from the trust account? Please select the best option and provide a detailed explanation of how the money is returned, used, donated or otherwise treated. If you select option "d" please include a breakdown, by percentage, of how each option is applied.
 - a. The interest earned is returned to the buyer/seller/borrower
 - b. The company keeps the interest
 - c. The company donates the interest
 - d. A combination of the above
 - e. Other

5. If applicable, approximately how much interest did your company's trust account earn during the calendar year 2006?

Escrow Account Questions

6. Does your company maintain any interest-bearing escrow accounts? Y/N

7. If your company's escrow account is interest-bearing, what monies are typically deposited into such accounts?

8. If your company's escrow account is interest-bearing, is the interest a fixed or variable rate?
 - 8a. If fixed, what is the interest rate?
 - 8b. If variable, please describe how the interest rate is calculated and provide the rate, effective 12/31/2006

9. Please provide the average daily balances for your company's escrow account(s), whether interest-bearing or not, for the following months:

February, 2006 –
May, 2006 –
August, 2006 –
November, 2006 –

10. What does your company do with any interest earned from escrow accounts? Please select the best option and provide a detailed explanation of how the money is returned, used, donated or otherwise treated. If you select option "d" please include a breakdown, by percentage, of how each option is applied.
 - a. The interest earned is returned to the buyer/seller/borrower
 - b. The company keeps the interest
 - c. The company donates the interest
 - d. A combination of the above
 - e. Other

Other/Combined Questions

11. If your company's trust or escrow account is not interest-bearing, do those accounts provide your company with value in some other way (through account analysis, short term CD's, value-added accounting, etc.)? Y/N
12. If your answer to question 11 is yes, please describe the nature of the value provided.
13. If your answer to question 11 is yes, please quantify to the best of your ability the value provided during calendar year 2006.
14. Does your company contract out any closing and/or settlement services?

If "yes," please complete the following:
 - 14a. What types of services do you contract out, and when do you contract these services?
 - 14b. From whom do you contract out these services? Please provide name and contact information for ALL entities with which you contract.
 - 14c. For services contracted, are escrow monies (other than title premiums) ever returned to the agency for disbursement?
15. Please provide any additional information you may deem necessary to support or explain the answers you supplied above.

If you have supplementary documents to provide in connection with this survey, please e-mail them to: DOI.Compliance@dora.state.co.us