

REPORT ON EXAMINATION  
OF THE  
TITLE INSURANCE RATE SERVICE ASSOCIATION, INC.  
AS OF  
June 30, 2006

DATE OF REPORT:

March 3, 2009

EXAMINER:

ERIC L. WILLIAMS

Appointment No 22581

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

*Eric Williams*

*as proper person to examine into the affairs of the*

**Title Insurance Rate Service Association**

*and to make a report to me in writing of the condition of the said*

**Association**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 15<sup>th</sup> day of December 2006*



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HOWARD MILLS  
*Superintendent of Insurance*

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David A. Paterson  
Governor

STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

Eric R. Dinallo  
Superintendent

March 3, 2009

Honorable Eric R. Dinallo  
Superintendent of Insurance  
New York, NY 10004

Sir:

Pursuant to instructions contained in Appointment No. 22581, dated December 15, 2006, I have made an examination into the conditions and affairs of the Title Insurance Rate Service Association, Inc., as of June 30, 2006 and the following report thereon is respectfully submitted.

Whenever the designations "TIRSA" or "The Association" appear herein without qualification, they should be understood to indicate the Title Insurance Rate Service Association, Inc.

Whenever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at TIRSA's office located at 370 Lexington Avenue, Suite 704, New York, New York 10017.

## 1. SCOPE OF EXAMINATION

The Department's previous examination of TIRSA was conducted as of June 30, 2001. Pursuant to §309(b)(3) of the New York Insurance Law ("NYIL"), the superintendent is charged with conducting an examination, at least once in every five years, of every rate service organization which makes or files rates. Accordingly, the current examination covers the period of July 1, 2001, through June 30, 2006. The examination included a review of those items called for in the Rating/Statistical Organization section of the Examiners Handbook of the National Association of Insurance Commissioners, as well as a review of income (assessments), disbursements and those records deemed necessary to accomplish an analysis of TIRSA's operations. In addition, the examination included an in-depth review of TIRSA's role as the statistical agent for the Insurance Department, as well as TIRSA's function as a rate service organization, and in that regard, TIRSA's responsibility to file rates and forms with the Department, on behalf of its members and subscribers.

## 2. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Department retained a consulting actuary to assist the Department in conducting an examination of TIRSA by performing a review of: (1) the data provided to TIRSA by its members pursuant to annual data calls; (2) TIRSA's management of the data; and (3) TIRSA's 2001 rate filing to the Department. The examination resulted in the following findings:

TIRSA manages data through its statistical consultant, Regulatory Research Corp. ("RRC"). RRC does not audit the data and does not reconcile the data to the filed statutory annual statements (Form 9) of TIRSA's members, although it does perform certain cross checks of the data.

TIRSA's 2001 rate filing was not verified by an actuary. Many of the data errors discovered during the examination, except those discovered in the reconciliation of the data to the financial statements, might have been discovered based on an actuarial review of the data for reasonableness and consistency.

The Department found errors in the loss data provided by some TIRSA members and in the compilation of the triangular data used to calculate loss development factors ("LDF") in the 2001 rate filing that TIRSA submitted to the Department.

TIRSA's rating structure is divided into two types of policies and two zones. Different rates are charged for the two different basic policies (owner's and loan) and the rates further differ depending on whether the property is located in either Zone 1 or Zone 2. In addition, the rating structure contains credits and discounts for specific circumstances, such as simultaneous issue of both an owner's and loan policy, and the refinancing of a mortgage within ten years. TIRSA did not maintain actuarial data to support its zone differential, discounts, and incremental rates of insurance.

Based on these findings, the Department is making the following recommendations:

TIRSA is to prepare an updated data call to send to all licensed title insurers. The data call is to incorporate parameters established by the Department and is to be approved by the Department prior to being sent out.

TIRSA is to prepare a prospective rate filing using reconciled data for the most current ten year period. This rate filing will become effective upon approval by the Superintendent. All of the data used in the new filing must be attributable to title insurance business for the state of New York, compiled on a policy year basis, and reconciled, to the extent possible, to statistical reports and filed financial statements of each TIRSA member. TIRSA is to provide an actuarial certification by a credentialed actuary with this and all future rate filings certifying that the data was reviewed for reasonableness and consistency; that the methodologies and assumptions in TIRSA's rate filing are reasonable and comply with actuarial standards of practice appropriate to the title insurance industry; and that the rates are in accord with the NYIL.

TIRSA is to maintain statistical and actuarial data appropriate to title insurance, as directed by the Department, to support zone differentials, discounts and incremental rates of insurance.

TIRSA has informed the Department it will abide by the foregoing recommendations.

### 3. ORGANIZATION AND MANAGEMENT

#### A. History

NYIL §6409(b) provides that every title insurer in New York must file with the superintendent a rate manual which sets forth "its basic schedule of rates and classification of risks, [and] its rating plan and rules, in connection with the writing or issuance of title insurance." Article 23 of the NYIL, which governs rate filings by property/casualty companies, and specifically NYIL §2306, allows insurers to discharge their rate filing obligations by using rates and rate information prepared by a designated rate service organization.

From 1917 to 1985, the New York Board of Title Underwriters ("NYBTU") served as the rate service organization for New York title insurers. In September 1985, largely as a result of a Federal Trade Commission administrative complaint against certain title insurers in six states (but not New York) alleging anti-trust violations, the NYBTU surrendered its license to the Department.

In August 1991, a majority of title insurance companies licensed in New York filed an application with the Insurance Department requesting that TIRSA be licensed as their new rate service organization. By Memorandum Decision and Opinion dated November 19, 1991, the Department approved the application and licensed TIRSA, pursuant to NYIL §2313, as a rate service organization for the title insurance industry in New York, and pursuant to NYIL §2315, as the Department's statistical agent. The Department's Memorandum Decision and Opinion designating TIRSA described its functions as follows:

Upon licensing, TIRSA will serve in an advisory capacity only in regard to title insurance rates and forms on behalf of its members. While all title insurers must report statistics to TIRSA, every licensed title insurer may file for title insurance rates above or below the advisory rate level, if such differences can be justified.

Given the extreme importance of expenses in the realm of title insurance, we contemplate title insurance filings on a full rate, and not a loss cost only, basis in New York State. Given the peculiar nature of title insurance, TIRSA shall maintain statistics that track losses as well as expenses with specificity, segregated on an industry aggregate as well as individual insurer basis. In conjunction with TIRSA, the Insurance Department will consider what basic rate methodology is optimal to ensure equitable premium allocation and to minimize controlled business abuses in regard to title insurance.

Existence of TIRSA as a licensed advisory rate organization in New York for title insurance purposes will, in turn, facilitate statistical compilation with rapidity and integrity. Statistical data submitted in a correct and consistent format will help the Insurance Department evaluate industry-wide experience of title insurance, and also the appropriateness of the premium split between title insurer and title agent.

After analysis of information from the market survey and public hearing, we believe that, with a designated statistical agent and advisory rate organization in operation in the future, fair pricing in the title insurance industry will be enhanced and consumer protection elevated. This mechanism will heighten title insurance accountability and strengthen regulatory oversight.

Thus, TIRSA's purpose is two-fold. First, TIRSA serves as a licensed rate service organization that proposes rates, forms and endorsements, on behalf of its members, for approval by the Department. In that regard, it files with the Department proposed rates and forms on behalf of its members and maintains the TIRSA Rate Manual, which includes the rates and description of various types of policies issued by New York licensed title insurers that are members of TIRSA. As per the Department's Memorandum Decision and Opinion, dated August 12, 1993, title insurance rates in New York are "expressly subject to the Superintendent's prior approval." Although TIRSA files proposed rates on behalf of all of its members, such rates are not required to be followed by every title insurer in New York. While all licensed title insurers must report annual statistics to TIRSA, any licensed title insurer may file its own rates, and any TIRSA member may file for a deviation above or below the filed rates.

Second, TIRSA serves as the Department's statistical agent, and as such, is responsible for collecting from every licensed title insurer in New York statistical information relating to the title insurance industry by means of an annual data call. The purpose of collecting the information contained in these data calls is to provide the Department with an annual assessment of the status of the title industry in New York. The Department relies on TIRSA to provide proper industry statistics.

On December 22, 1993, TIRSA became a not-for-profit corporation. Its territory and area of authority is the State of New York.

#### **B. Articles of Association and By-Laws**

The provisions of its Articles of Association and its By-Laws govern the operations of TIRSA. Since the last examination, the Articles of Association were amended once, effective June 12, 2002, but no changes were made to the By-Laws.

i) Objectives of TIRSA

According to its Articles of Association, TIRSA is a voluntary not-for-profit rate service organization whose purpose is to carry out the activities permitted by Article 23 of the NYIL, and to do so under the supervision of the Department. The function of a rate service organization is to make or file rates as permitted by NYIL Article 23, or assist insurers by collecting, compiling and furnishing loss or expense statistics. In addition, a rate service organization prepares and files policy forms and endorsements for the Department's approval and may formulate rules or establish standards, as such activities relate to rate making or to administration of rates on behalf of insurers. As the Department's statistical agent for the title insurance industry in New York State, TIRSA is charged with sending out annual data calls on behalf of the Department.

ii) Membership and Subscribers

Pursuant to TIRSA's Articles of Association and By-Laws, any licensed insurer engaged in the business of title insurance in New York may apply for membership, provided that at the time of acceptance for membership it is licensed by the Department to write title insurance in New York. Any licensed insurer engaged in the business of title insurance may subscribe to the rating services of the Association. As of the date of this report, twenty-three companies were licensed to write title insurance in New York State. As set forth in correspondence from TIRSA's Executive Director, eighteen companies are members of TIRSA and one company is a subscriber. Only member companies have the right to vote at all meetings of the Association. Subscribers can attend meetings and, upon recognition by the meeting officer, may take part in discussions, but may not vote.

iii) Internal Organization

a) Officers

Pursuant to Article VII of TIRSA's Articles of Association, the President of TIRSA is elected at each annual meeting. Article V of the By-Laws bestows on the President the office of Chief Executive Officer, who is authorized, subject to review by TIRSA, to direct the work of TIRSA, supervise the activities of all other officers and employees, and represent TIRSA in any matter. Subject to the

Articles of Association, the President may appoint such special committees as may be necessary in connection with TIRSA's work.

The officers of TIRSA as of June 30, 2006 were as follows:

President	John Welling - Stewart Title Insurance Co.
Vice President	Theodore Werner - Chicago Title Insurance Co.
Alternate Vice President	Barry Balonek - Monroe Title Insurance Co.
Treasurer	Felice Shapiro - Old Republic Title Insurance Co.
Secretary	David Sidikman - TIRSA

b) Employees of TIRSA

TIRSA currently has a staff of two full-time employees. The positions are Executive Director and Executive Assistant. David Sidikman currently serves as the Executive Director of TIRSA. TIRSA's Articles of Association charge the Executive Director with the responsibility for management functions of TIRSA as its Chief Administrative Officer. These duties include directing TIRSA's activities in accordance with its Articles of Association, By-Laws and regulations; executing contracts on behalf of TIRSA with the express approval of the President of TIRSA; acting as liaison with the Department, all member companies, and TIRSA's statistical consultant; calling meetings of TIRSA and its committees; preparing agendas in advance, and taking and distributing minutes; maintaining sufficient records and books of account for TIRSA to provide an accurate reflection of the financial status and condition of TIRSA; and handling management of all information regarding filing new rates, forms, and endorsements.

c) Executive Board

A representative of every TIRSA member sits on the Executive Board. The Board meets regularly to discuss TIRSA's activities.

iv) Association Meetings

Regular meetings of TIRSA are scheduled as needed by the President in consultation with the Executive Director. There is no set frequency of meetings, other than the Annual Meeting in June as required by the Articles of Association. During the period of this examination there were a total of 58

meetings: five annual meetings, thirty-one Executive Committee meetings, ten Law and Forms Committee meetings, six Rate Committee meetings, and six Budget Committee meetings. Minutes of meetings of the Board of Directors and committees thereof were presented to the Department and reviewed. The minutes noted that a quorum was present for each meeting, and that the discussions related to the activities of TIRSA.

v) Committees

Article VIII of the Articles of Association gives the President the power to appoint any committees deemed necessary to carry on the work of TIRSA. Each member company must designate an individual, and not more than two alternates, to be its representative on TIRSA's committees. A majority of committee members at committee meetings constitutes a quorum (other than the Law and Forms Committee, where 30% is sufficient), and a majority of committee members are required to give their affirmative vote before any action is taken.

There are two committees: the Law and Forms Committee, which is responsible for reviewing all approved policies and forms in the TIRSA Rate Manual and for making any recommendations for changes or additions, and the Rates Committee, which is responsible for reviewing rates and charges in the Rate Manual and recommending any changes or additions. In addition, there is one sub-committee, the Budget Sub-Committee, which reviews the proposed budget for the upcoming fiscal year and makes any recommendations for any changes. There is no committee, however, responsible for reviewing external audit reports or conducting internal audit procedures. It is imperative that every organization engage in constant review of its ongoing operations in order to assess the effectiveness of its operations. One mechanism frequently used by other organizations is an internal audit. The Department recommends that TIRSA's President appoint a committee to be responsible for conducting a periodic internal audit of TIRSA's operations, and to make appropriate recommendations to address any shortcomings noted in the internal auditor's report. TIRSA has agreed to comply with this recommendation.

vi) Indemnification Of Members, Subscribers, Officers And Employees

Article XIII of the Articles of Association provides for indemnification for any individual who is, has been, or becomes an officer, an accredited representative of a member company, or a member of a committee of TIRSA, from any action, suit or proceeding, or threat thereof resulting from that individual having been an officer, member company representative, or committee member, except in cases where that person has been judged to have been guilty of willful misconduct or gross negligence in the performance of his or her duties. As of the date of the examination, TIRSA had Directors and Officers liability insurance with the Philadelphia Insurance Company of Pennsylvania for the policy period July 17, 2006 through July 17, 2007, providing coverage limits of one million dollars.

C. Organizations That Provide Services to TIRSA

During the examination period, TIRSA had agreements for services with the following entities:

- Regulatory Research Corp. (RRC) – Statistical consultant
- Gibson, Dunn & Crutcher LLP – Outside counsel
- Kevin Mullins – Certified Public Accountant
- InfoHighway – Telecommunications
- Netserv Solutions – IT Consultants
- Konica Minolta – Copier Equipment and Service

TIRSA provided for the Department's review its contract with RRC in effect at the time of the examination. The three-page contract provides for RRC and its President, Nelson Lipshutz, to work as a consultant, together with TIRSA's outside counsel, in assisting TIRSA in the collection, analysis and compilation of statistical data in connection with the 2005 Call for Statistical Data made by TIRSA as statistical agent for the Insurance Department. The contract provides that TIRSA will pay a consulting fee, as well as expenses for travel, communications, report production, and purchase of data. In addition, the contract provides that TIRSA will pay for professional time expended, and incidental expenses and disbursements, in connection with an employee of RRC having to testify or respond to a subpoena, and counsel, if needed, will be provided by TIRSA. There are no provisions defining the analysis to be undertaken by RRC, or any specific guidelines relating to RRC's methodology in the compilation of the statistical data. Accordingly, the Department recommends that

in the future, TIRSA provide, in accordance with the recommendations contained in this Report, written guidelines for the compilation and analysis of statistics to be undertaken by TIRSA's statistical consultant. TIRSA has agreed to comply with this recommendation.

The remaining entities, including TIRSA's outside counsel, are paid when invoices are submitted for services rendered to TIRSA. Given the significant amounts paid to outside counsel, TIRSA should have a written agreement that describes the functions to be performed by outside counsel and includes an estimate of the charges for particular services to be rendered and the rates billed. The Executive Board should continue to periodically review expenditures paid to outside counsel, to determine if amounts billed are prudent expenditures. Likewise, TIRSA should have written agreements with other service providers that delineate the scope of services to be provided and terms of payment. Accordingly, the Department recommends that TIRSA reduce to writing its service agreements with all outside entities retained to provide services to TIRSA. TIRSA has agreed to comply with this recommendation.

#### 4. STATISTICS

TIRSA filed annual statistical plans for the title insurance industry with the Insurance Department for the years 2001 through 2005 as follows:

<u>Statistical Year</u>	<u>Date Filed</u>
2001	July 23, 2002
2002	July 30, 2003
2003	August 25, 2004
2004	July 11, 2005
2005	December 13, 2006

TIRSA gathers statistical information in accordance with a statistical plan on file with, and approved by, the Insurance Department. TIRSA's statistical data call consists of numerous schedules that must be completed by all licensed title insurance companies. TIRSA retained RRC to compile statistical data on its behalf and to act as its agent to assist in TIRSA's role as statistical agent for the Department. RRC is under direction, in accordance with TIRSA's anti-trust compliance program, not to

reveal or discuss any individual company's data with TIRSA's members or the Executive Director. Consequently, all reports are submitted by each individual member company directly to RRC. RRC is charged with reviewing individual company submissions for mathematical accuracy, consistency between schedules, and internal consistency, using built in formulas. RRC is further charged with dealing directly with the individual companies to resolve any questions, inconsistencies, or invalid submissions. The composite statistical report completed by RRC is furnished to TIRSA on an annual basis. TIRSA then reviews the report, distributes it to its members, and files the composite with the Department.

The Department's examination found that the procedures followed by RRC were not always effective in uncovering errors in the data submitted to RRC by the title insurers. Consequently, the Department recommends that TIRSA implement enhanced verification and data gathering procedures that will reduce data errors in the compilation of statistical data by TIRSA's statistical consultant. TIRSA has agreed to comply with this recommendation.

##### 5. RATES AND RATING PROCEDURES

As the rate service organization for title insurance companies licensed in New York, TIRSA is charged with filing rates and forms with the Department on behalf of member and subscriber companies. Members and/or subscribers are notified of the filings made to the Insurance Department by email distribution. Individual companies have the right to file with the Department deviations to the rates and forms filed by TIRSA. Any revisions to TIRSA's filed rates must first be approved by TIRSA's Law and Forms Committee or the Rate Committee, after which the committee sends its recommendations to the full membership for a vote.

TIRSA's rating program is divided into primarily two categories of policies and two zones. The two categories of policies are owner's policies and loan policies. Owner's policies assure a purchaser that the title to the property is vested in that purchaser and that the property is free from all defects, liens and encumbrances except for those listed as exceptions in the policy or which are excluded from the scope of the policy's coverage. An owner's policy also covers losses and damages suffered if the

title is unmarketable. The liability limit of the owner's policy is typically the purchase price paid for the property, although pursuant to NYIL §6409(c), purchasers of owner-occupied residential premises must be offered an optional policy for an amount equal to the market value of the property at the time the loss is discovered. In addition, some coverages can be added or deleted by means of various endorsements. Although the premium is paid only once, at the time of purchase, title insurance coverage lasts as long as the policyholder retains an interest in the property insured. Loan policies are issued to mortgage lenders and protect the owner of the loan up to the amount of outstanding indebtedness.

The two zones in New York are designated as Zone 1, which constitutes most of upstate New York north and west of Albany, and Zone 2, which covers Greater New York City and north to Albany. In Zone 1, the abstract system is predominantly used. Under the abstract system, documentation proving the chain of title to each parcel of real property is maintained by the property owner. When a sale or refinancing occurs, the abstract is updated and transferred to the new owner of the property, and a title insurance policy is issued based on the abstract. Often, however, an abstract company represents that the abstract is correct and the purchaser pays only for a loan policy as required by the lender. Title insurance rates in Zone 1 cover the issuance of the title insurance policy, but not the cost of a title search.

In Zone 2, when a sale or refinancing occurs, a new title search of the public record is conducted. Title premiums in Zone 2 cover the cost of the issuance of the title policy, including the new search and examination. Most purchasers in Zone 2 purchase an owner's policy and also pay for a loan policy as required by the lender.

Regardless of the type of policy or zone being rated, the program starts with a base rate for policies with coverage for a \$35,000 purchase price, and contains incremental premium increases for increased coverage. The rating program contains credits and discounts for specific circumstances, such as the simultaneous issuance of both an owner's and loan policy, and the refinancing of a mortgage within ten years.

The base rates for the current program of owner's policies and loan policies, together with the TIRSA rate manual, were originally filed with the Department on March 3, 1993 and approved effective September 1, 1993. Since July 1, 2001, TIRSA has submitted filings to the Department and received approval/acknowledgement for the following:

<u>Description</u>	<u>Approval/Acknowledgment Date</u>
Section 14 – Refinance and Subordinate Mortgage – Rule Revised	02/15/2006
Section 6 – Minimum Insurance Loan Policy - Revised	02/15/2006
Section 36 – Loan Policy Reverse Mortgage – Introduced	02/15/2006
Section 3 - Coinsurance policy endorsement and revised page 2 of rate manual	06/21/2006

During the period under review, one rate change of +8.25% was approved by the Department, effective November 5, 2001.

#### 6. REVIEW OF TITLE INSURANCE RATES AND DATA

The Department included in the scope of its examination both TIRSA's data and data management, and TIRSA's rate filing methodology and assumptions.

##### A. Review of TIRSA's Data and TIRSA's Data Management

In connection with its review of TIRSA's data and data management functions, the Department undertook the following:

- i. A review of TIRSA's premium, loss and expense data reconciliation process, and verification of the implementation and reasonableness thereof, with respect to data submitted by title insurers licensed in New York, in order to evaluate TIRSA's data collection, data handling procedures, and the quality of TIRSA's data.
- ii. A review of TIRSA's reconciliation of the premium, loss and expense data reported by insurers with the data in the insurers' filed annual statements.
- iii. A review of the procedures used by TIRSA members to allocate data between New York and other states in the preparation of their statistical reports.

iv. An examination of how reconciliations of the rate filing with the Department, statistical reports, and financial reports are accomplished, and what steps, if any, are taken when these data do not match.

The Department reviewed TIRSA's data and data management by reconciling the rate filing to the statistical reports, by reconciling statistical reports to the filed statutory annual statements of member title insurers, and by reviewing the procedures for allocating income and expenses for New York specific filings.

The Department performed a reconciliation of the 2001 rate filing to the statistical reports to test whether the data submitted by TIRSA in connection with its 2001 rate filing matched the composite data in the supporting statistical reports. The Department found some errors in the manner in which the data was used to calculate LDFs in the rate filing that TIRSA submitted to the Department. Accordingly, the Department recommends that going forward, TIRSA ensure that its statistical consultant resolve all data inconsistencies within statistical reports. TIRSA has agreed to comply with this recommendation.

The Department attempted to reconcile the individual TIRSA member's responses to the data call to each member's filed statutory annual statement. The results of this reconciliation review found that for some TIRSA members there were differences between the member's filed statutory annual statement and the member's response to the data call. In addition, title insurers currently file statutory annual statements that report expenses in the aggregate, on a national basis, and not specific to New York. Based solely on these filed statutory annual statements, it is impossible to determine which expenses are attributable to New York. The Department recommends that all future responses to data calls submitted to TIRSA be reconciled, to the fullest extent possible, to the applicable member's filed statutory annual statement. The Department further recommends that a new schedule be added to the data call requiring the reconciliation of New York specific expenses, and other expenses, to title insurers' filed statutory annual statements. TIRSA has agreed to comply with these recommendations.

B. Review of TIRSA's Rate Filing Methodology and Assumptions

i) Review of Overall Rate Change Indication

Although TIRSA provided both calendar year and policy year data to the Department, TIRSA has used a calendar year approach in its rate filing methodology. The Department has come to the conclusion that ratemaking using a calendar year basis may be less accurate than a policy year approach because there is no proper matching between losses and premiums from common policies. The Department recommends that in the future, TIRSA utilize a policy year based approach in its rate filings to the Department. TIRSA has agreed to comply with this recommendation.

The Department found the 2000 statistical report did not include triangular data (an array of loss development data that shows how losses for a given period develop from one year to the next) for some of TIRSA's members for some of the required years.

The Department also determined that the reported losses and loss adjustment expense and the associated LDFs reported in the 2000 statistical report for some insurers appear to be inconsistent. RRC used the composite triangular data for all calendar years in selecting its LDFs, even though some of the triangular data was missing. This resulted in RRC selecting LDFs which may have been inaccurate and thus may have affected the accuracy of TIRSA's rate filing.

In addition, the Department notes that TIRSA included ceded reinsurance premiums, net of assumed premiums, as an expense in its filing. The Department has determined that ceded reinsurance should not be included in a statewide ratemaking calculation because ceded reinsurance decisions are made at the individual company and often are not consistent among companies. While the impact of this practice on rates may be minimal, in the future, TIRSA should not consider assumed and ceded premiums in its rate filings to the Department.

Based on the findings of this examination, the Department recommends that TIRSA develop enhanced procedures for its overall management of data to better enable the Department to utilize the statistical data provided to the Department by TIRSA. TIRSA has agreed to comply with this recommendation.

The Department further recommends that TIRSA prepare a prospective rate filing using reconciled data for the most current ten year period. The rate filing will become effective upon approval by the Superintendent. All of the data used in that filing must be reasonably attributable to title insurance business in New York, on a policy year basis, and reconciled, to the fullest extent possible, to filed statutory annual statements of each TIRSA member. TIRSA has agreed to comply with this recommendation.

Lastly, the Department recommends that TIRSA provide an actuarial certification by a credentialed actuary with each future rate filing certifying that the data was reviewed for reasonableness and consistency; that the methodologies and assumptions in TIRSA's rate filing are reasonable and comply with appropriate standards for the title insurance industry; and that the rates are in accord with the NYIL. TIRSA has agreed to comply with this recommendation.

ii) Review of Differentials and Discounts

The Department requested certain actuarial and statistical data from RRC to support the rate differentials and incremental rates for Zones 1 and 2; to support the rate differentials between owner's and loan policies; and regarding discounts given in connection with certain categories of policies. TIRSA was not previously required to maintain actuarial support. The Department has determined that rate differentials and rate discounts must be supported by actuarial data. Accordingly, the Department recommends that in the future, TIRSA maintain actuarial data appropriate to the title insurance industry, as directed by the Department, to support any zone differential, discounts and incremental rates of insurance. TIRSA has agreed to comply with this recommendation.

7. FILINGS

TIRSA's committee minutes state that the Laws and Forms Committee as well as the Rate Committee periodically review relevant issues associated with the TIRSA rate manual, including forms and rates, to determine whether any changes and/or additions are required. Any changes must be approved by TIRSA's Rate Committee or its Laws and Forms Committee and then by the full TIRSA

membership before being filed with the Department. The Executive Director of TIRSA is responsible for making all filings with the Department and sending the final drafts of all form filings to the member companies.

A review of the method employed by TIRSA to safeguard the filings showed that TIRSA keeps all rate and form filings made with the Department in separate folders, labeled according to the year of the submission. The folders contain all correspondence between the Department and TIRSA, with all proposed and finalized changes in the forms, rates and rules including actuarial data and other support for the filings. TIRSA keeps its files in annual chronological order in a secure steel cabinet.

#### 8. BOOKS AND RECORDS

TIRSA derives its income from dues and assessments charged to its members and subscribers. The Executive Director advised the Department that dues are billed at the beginning of the fiscal year (July) and assessments are divided into two payments, invoiced in July and December. Article III of TIRSA's By-Laws states that each member is subject to an annual fee of \$5,000 and an assessment based upon a pro-rata basis according to each member's direct premiums written in New York State, as reported in schedule T of the Annual Statement for the preceding year.

Article IV, Section 3 of TIRSA's Articles of Association states that a member automatically forfeits its membership if any assessment against it remains unpaid for a period of thirty days after formal notice of default by the Secretary. A review of the assessment letters indicated that the requests to members were timely. A review of receipts of assessments levied for the fiscal years 2004/2005 and 2005/2006 found that not all remittances from members were received within 30 days as required by TIRSA's By-Laws. During this review it also was noted that four members failed to make timely payments and three members failed to submit payments during the fiscal year. Once TIRSA was made aware of the non-receipts, reminders were forwarded to the three members and remittance checks were received.

The Department recommends that TIRSA's President conduct follow-up investigations on a regular basis to assure that members make timely payments as required by the Articles of Association.

TIRSA does not maintain a separate register to record the receipt of dues, assessments, and special assessments. In order for the examiner to verify that a remittance had been received from each member a cross check, utilizing the assessment letters and deposit slips, had to be carried out. Therefore, the Department recommends that a separate register be maintained to record the receipt of dues, assessments, and special assessments. TIRSA has agreed to comply with this recommendation.

## 9. FINANCIAL STATEMENTS

TIRSA's financial statements are compiled annually by a public accounting firm. The audited financial report rendered by the accounting firm was reviewed. The report, dated October 5, 2006, states that the financial statements were prepared on a cash basis and in conformity with the standards promulgated by the American Institute of Certified Public Accountants (AICPA). Under such rules, income is recorded when received and expenses are booked when actually paid. A review of the cash receipts and disbursements register attest to the AICPA standards.

The Executive Director informed the Department that TIRSA maintains a checking account and a savings account at Citibank. The checking account is used for the day-to-day operating activities, while the savings account is a non-operating account with a minimal balance. The Department's examination team reviewed TIRSA's bank statements for the period July 1, 2003 to June 30, 2006. The review included tracing checks and receipts recorded in the cash receipts and disbursement register to the bank statements. The receipts included assessments and annual dues from members, interest on balances in the bank, and miscellaneous revenue, which represents amounts received for the sale of rate manuals to non-members and non-subscribers. The receipts were deposited in a timely manner and the checks represent payments for the day-to-day office operation expenses incurred by TIRSA. Payments were made using invoices received from suppliers or service providers. TIRSA's Executive Director further advised that the invoices are not physically date stamped upon receipt; rather, they are put into an accounts payable file and processed twice a month after review by the Executive Director. The Executive Director gives oral authorization to the Executive Assistant to

pay reviewed invoices. An Executive Board member signs checks written for amounts between \$500 and \$10,000, and two Executive Board members sign checks in amounts of \$10,000 or more. Checks for less than \$500 are signed by the Executive Assistant.

Cashed checks returned by the financial institution were reviewed and found to comply with check signatory procedures. Unmatched and duplicate invoices are processed on an individual basis by contacting the vendor in question and reviewing the account standing. A review of the cash disbursement register did not reveal the payment of any duplicate invoices. However, the Department recommends that TIRSA institute a system of internal controls whereby prior to making any payments, invoices are date stamped upon receipt and duly signed as approved. TIRSA has agreed to comply with this recommendation.

#### 10. INSURANCE COVERAGE OF THE ASSOCIATION

For its own protection, the Association carries the following policies:

Type of Policy	Company	Coverage	Limits
Workers' Comp and Employers' Liability	Zurich	Workers' Comp.	
Directors' & Officers	Philadelphia Ins. Co.	Liability	\$1,000,000
General Liability	Zurich	Commercial General Liability	\$2,000,000
Excess/Umbrella	Zurich	Commercial Liability	\$1,000,000
Property	Zurich	Business Personal Property	\$15,000
Medical	Oxford	Group Health	

11. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report contained a recommendation as follows (page number refers to the prior report on examination):

Item

- A. It was recommended that the financial statements of the Association be audited by a certified public accountant and submit a report to the Association. (Page 8)

The Association has complied with this recommendation.

12. SUMMARY OF COMMENTS AND RECOMMENDATIONS

In accordance with NYIL §§ 309(b)(3) and 2313(r), the following is a summary of comments, and recommendations for actions to be implemented by TIRSA, as set forth in the body of this report:

Item

Page No.

- |     |  |      |
|-----|--|------|
| A.  | <u>Committee</u><br>The President is to appoint a committee to conduct a periodic internal audit of TIRSA's operations.  | 8    |
| B.  | <u>Organizations Employed By TIRSA</u>   |      |
|     | ii. TIRSA must specify, in accordance with the recommendations contained in this Report, written guidelines for the compilation and analysis of statistics to be undertaken by TIRSA's statistical consultant. | 9-10 |
|     | ii. TIRSA should reduce to writing its service agreements with all entities retained to provide services to TIRSA.   | 10   |
| C . | <u>Review of TIRSA's Rate Filing Methodology and Assumptions</u>   |      |
|     | i..TIRSA is to implement enhanced verification and data gathering procedures that will reduce data errors in the compilation of statistical data by TIRSA's statistical consultant.                            | 11   |
|     | ii. TIRSA will ensure that going forward its statistical consultant resolve all data inconsistencies within statistical reports.   | 14   |
|     | iii. All future responses to data calls submitted to TIRSA are to be reconciled, to the fullest extent possible, to the applicable member's filed statutory annual statement.                                  | 14   |

<u>Item</u>	<u>Page No.</u>
iv. A new schedule is to be added to the data call requiring the reconciliation of New York specific expenses, and other expenses, to title insurers' filed statutory annual statements.	14
v. In the future, TIRSA will utilize a policy year based approach in its rate filings to the Department.	15
vi. In the future, TIRSA should not consider assumed and ceded premiums in its rate filing with the Department.	15
vii. TIRSA will develop enhanced procedures for its overall management of data to better enable the Department to utilize the statistical data provided to the Department by TIRSA.	15
viii. TIRSA must prepare a prospective rate filing using reconciled data for the most recent ten year period. All of the data used in that filing must be reasonably attributable to title insurance business for the state of New York, on a policy year basis, and reconciled, to the fullest extent possible, to filed statutory annual statements of each TIRSA member.	16
ix. TIRSA must provide an actuarial certification by a credentialed actuary with each future rate filing certifying that the data was reviewed for reasonableness and consistency; that the methodologies and assumptions in TIRSA's rate filing are reasonable and comply with appropriate standards for the title insurance industry; and that the rates are in accord with the NYIL.	16
x. TIRSA must maintain actuarial data appropriate to the title insurance industry, as directed by the Department, to support its zone differentials, discounts and incremental rates of insurance.	16
<b>D. <u>Books And Records</u></b>	
i. The President should conduct follow-up investigations on a regular basis to assure that members make timely payments as required by the Articles of Association.	17
ii. A separate register should be maintained by TIRSA to record the receipt of dues, assessments, and special assessments.	18
<b>E. <u>Financials</u></b>	
TIRSA should institute a system of internal controls whereby invoices are date stamped upon receipt and prior to making any payments, duly signed as approved.	19