

Lawyers Hope to Fix Catastrophe-Related Insurance Problems

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The nation's lawyers who deal with insurance issues are developing policy recommendations designed to improve access to insurance coverage, reduce litigation over coverage and mitigate future losses involving natural catastrophes.

Insurance lawyers of the American Bar Association (ABA) see inadequate access to insurance, disputes over insurance coverage, critical need for immediate access to cash, devastating property damage as some of the problems that surface after natural catastrophes, from forest fires in Western states, to flooding in the Midwest and damage from hurricanes or other massive storms in the East and South.

The lawyers' recommendations include allowing private insurers to voluntarily broaden coverage for storm damage; imposing federal standards on insurers for the handling residential and small business insurance claims after storms; putting the federal flood insurance program on a sound actuarial basis; and stronger enforcement of building codes and mitigation efforts.

The American Bar Association Section of Tort Trial and Insurance Practice has developed the series of proposals. They are to be considered by the ABA House of Delegates, the association's policy-making body, when it meets in Boston Feb. 11-17.

Proposals include ones that:

1. Aim to broaden the availability of insurance protection for storm damage by eliminating the restrictions on insurance providers.

This proposal distinguishes damage caused by wind, wind-driven rain, flood and storm surge from other forms of flood damage, for purposes of making broadened insurance protection available. It would define floods as overflowing water on areas of land that are normally dry, and storm surges as water being pushed toward the shore by the force of winds swirling around storms. Storm surge coverage would be limited to damage directly caused by the force of the storm surge, unless an insurer explicitly chooses to provide broader coverage. The proposal recommends federal, state and territorial governments eliminate prohibitions or restrictions on private insurance providers making broadened coverage available for storm damage, provided the insurers do so on a voluntary basis operating in competitive markets under regulatory systems permit-

ting flexible pricing and product development.

2. Implore Congress to enact programs to increase the availability of affordable insurance in areas of high catastrophe exposure as well as improve the federal flood insurance program.

This proposal urges Congress to increase availability of affordable catastrophe insurance in vulnerable areas, without competing with the private insurance market. Any such measures should protect taxpayers from inappropriate subsidies, and ensure sufficient capacity exists before, during and after catastrophes. Any subsidies should be transparent and not hidden in insurance costs. Additionally the measure urges putting the National Flood Insurance Program on a sound actuarial basis, through such changes as upgrading flood maps, encouraging citizens in flood zones to purchase flood insurance and requiring purchase of flood insurance with mortgages made by state-chartered financial institutions.

3. Urge government to encourage capital markets to finance catastrophic risk, including supporting the issuance of securities that will limit the pricing of insurance.

This urges a study by the U.S. Treasury Department of potential changes in federal laws and regulations to reduce barriers to issuing catastrophe-linked securities, reforms to state insurance and public accounting rules to facilitate issuing such



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securities and research by the National Association of Insurance Commissioners and state governments into other potential changes in state laws and regulations covering such securities.

4. Address the financial needs of those suffering harm from natural disasters through methods that include distribution of government support for emergency liquidity, forbearance of mortgage loans and modifications to the distribution system for federal assistance.

5. Seek to ensure available and affordable insurance by mitigating loss from future catastrophes.

This proposal urges improved building codes for new construction, and vigorous code enforcement, including civil, criminal and regulatory penalties for negligent or intentional substandard construction; requiring cost-effective residential retrofitting, and encouragement to homeowners to mitigate risk; adopting land use policies that discourage construction in areas that pose unusually high risk to personal safety or are difficult to evacuate; developing standardized formats to disclose information about property at the time of sale, including about its resistance to damage and damage mitigation measures; encouraging cooperation among lenders and insurers to plan for mitigation improvement loans to homeowners to reduce the risk of future loss; enacting grants and property tax credits for homeowners and businesses to invest in damage mitigation; and adopting, updating and routinely testing emergency preparedness plans. It also would urge state, territorial and local governments to allow insurers to charge risk-based prices reflecting best available actuarial information.

6. Urge federal standards requiring strong, damage-resistant building codes for new construction and aggressive code enforcement.

It urges federal standards requiring strong, damage-resistant building codes for new construction and vigorous code enforcement; requiring cost-effective retrofitting measures in substantial modifications to residences and encouraging such measures through tax incentives regardless of modifications, and land use policies that discourage or prevent construction in areas that are difficult to evacuate or pose unusually high risk to personal safety or property loss. It also would require the Federal Emergency Management Agency to adopt and enforce statewide building codes in its Hazard Mitigation Grant Program, and encourage FEMA and Congress to implement a preference when making pre-disaster grants to proposals to train and support state and local building code inspectors. Finally, it would urge Congress to appropriate funds for disaster prevention and preparedness

activities, for adoption and enforcement of modern building codes, for mitigation grants for tax credits and for direct insurance subsidies where they meet a needs test.

7. Advocate federal standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms.

It urges application by all insurers of uniform standards for procedures in claims adjusting, consistent with the Unfair Claims Settlement Act of the National Association of Insurance Commissioners, but also including provisions for training and certification, licensing or other regulation of claims adjusters. It also urges creation of mediation programs before new disasters occur, modeled on programs made available by Mississippi, Louisiana and Florida, and requiring good faith participation by insurers at the request of any insured.

No proposal becomes ABA policy until it is approved by the House of Delegates.