NAR Insurance Task Force

Final Report

Submitted by
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Introduction

Beginning in the summer of 2002, property casualty insurance became increasingly more expensive and more difficult to obtain in the conventional and government assisted residential and the commercial markets.

The availability and affordability of property and casualty insurance is essential to the real estate market's functioning. Property casualty coverage is an underwriting requirement for conventional, government-assisted and commercial mortgages. Without insurance, lenders will not lend; without mortgages the great majority of sales transactions cannot be consummated. Without continuing insurance coverage, existing homeowners cannot remain current on their mortgage obligations and may find themselves subject to expensive lender forced-place coverage or possibly foreclosure.

Recognizing the major challenge that finding affordable and adequate insurance has become for REALTORS®, the NAR leadership created an Insurance Task Force in September, 2002. Comprised of REALTORS® representing all specialties, the Task Force was charged with assessing state of affairs, exploring solutions and developing an appropriate role for NAR to help its state associations address what is now a serious availability/affordability problem.

Over the course of the past six months, the Task Force has met on seven separate occasions and over the course of twelve 12 days. During that time, the group has met with the major insurers, the insurance trade groups, insurance regulators, the reinsurance trades, the insurance brokerage trades as well as consumer groups. On April 2, 2003, a subset of the Task Force will meet with commercial insurance firms to round out its efforts. Failing the discovery of any new information at that meeting, however, this report contains the final recommendations of the Insurance Task Force.

Findings

Hit by a number of forces over the course of the past few years, the insurance industry in 2002 was in the midst of a particularly difficult period as insurers experienced a surge in the number and size of property casualty claims. Wildfire, flood, storm-related damage, lead paint, mold and terrorism claims all contributed to generate a negative net income after taxes for property casualty companies.

According to the Insurance Services Office, Inc. (ISO) and the National Association of Independent Insurers (NAII), the property/casualty insurance industry posted a $7.9 billion net loss in 2001, its first-ever net loss with a statutory rate of return of negative 2.7, down 6.5 percent from the year 2000. In the first quarter of 2002, the rate of return was 6.9, down from 7.4 during the first quarter of 2001. Net written premium rose 10.3 percent. Net income after taxes dropped 7.3 percent to $5.1 billion in the first quarter from $5.5 billion in the first quarter 2001.

In addition to rising claims, industry performance was jeopardized by recent large court judgments against insurers. Recognizing the opportunity that the latest household hazard - invasive mold - offered for lucrative lawsuits, the trial bar had begun to file and win mold lawsuits. One well-publicized Texas lawsuit, for example, resulted in a $32.1 million judgment. While this judgment was subsequently reduced, most legal experts expect mold judgments to continue as mold cases are introduced in more states.

The events of September 11th also impacted the financial state of the insurance industry. The Insurance Information Institute estimated September 11th-related claims would total $40.2 billion. Other estimates range as high as $70 billion. These claims have taxed insurance company reserves and the level of demand for and cost of future reinsurance coverage.

Finally, the impact of the decline in the stock market cannot be ignored. Historically low interest rates took their toll on investment income, which fell 5.5 percent. On an annualized basis, insurance industry investment income was estimated at $35.8 billion in 2002, down $1.3 billion from $37.1 billion in 2001.

For much of the 1990's, insurance companies competed for market share as a way to grow more profitable. The primary means of competition used was price. Consequently, homeowner premiums had not kept pace with the risk companies assumed along with this growth. Record stock gains on investment portfolios had been used to make up any losses with investment income. With the decline in the financial markets, this source of revenue no longer exists and premiums increased.

Putting all of these factors together **-** increasing claims, large judgments, terrorism and the meltdown in the stock – the insurance industry faced the "perfect storm".

Insurance Industry Reactions

In reaction to rising claims and losses, insurers took somewhat predictable steps to limit their risk. These steps included limiting the number of new policies written, increasing premiums, instituting new policy exclusions for some hazard claims and tightening their underwriting criteria for both borrowers and properties.

Limitations on new policies. The most common reaction has been to limit the number of new policies written. One of the largest property casualty companies, State Farm, initially declined to write policies for new customers in 30 states nationwide. Late last year, Farmers Insurance announced that the company would not renew any homeowners' policies in the state of Texas once coverages in effect expired. This action could have forced approximately 700,000 homeowners to find a new insurance company to provide their insurance coverages. Luckily, this possibility was adverted as the result of discussions between the Texas insurance commissioner and Farmers.

Premium increases. Annual premium increases averaged 8 percent in 2002 while a 9 percent average increase is expected for 2003, according to the Insurance Information Institute. In some areas, the increases have been higher. The North Carolina Department of Insurance, for example, approved higher homeowners insurance premiums, effective Aug. 15, 2002. Rates there increased an average of 5 percent statewide, with the increase in coastal areas averaging 30 percent.

Tighter underwriting. In addition to raising premiums, insurers also tightened their underwriting criteria for both potential policyholders and the homes themselves. A homeowner who files "too many" claims can find himself or herself notified that their insurer will not renew their coverage for the coming year. Potential policyholders are now underwritten for risk through the use of insurance risk scores - a hybrid of the credit scoring methodology used by lenders to evaluate credit risk. According to the developers of the methodology - Fair, Issac and Company - while they have not shown a causal relationship between insurance claims and an insurance score based on credit history, there is a correlation between the two. One common explanation of the relationship between credit history and the likelihood that an individual will file insurance claims is that individuals who are not careful about paying their bills on time and managing their credit are likely to be similarly careless when it comes to dealing with routine maintenance or how they use their property and, therefore, will generate excessive claims.

In terms of underwriting the physical structures, insurers have slowly tightened underwriting requirements for structures. Bans on wood shake roofs, requirements for circuit breakers rather than fuses, field inspections, and mandatory repair requirements are examples of insurers' increased attention to property condition.

These has also been an increase in the use and sharing of databases among the industry, like the Comprehensive Loss Underwriting Exchange (CLUE) database, that record 90 percent of all insurance claims made in the U.S. The CLUE database is a service of the Choice Point. ChoicePoint is part of the Equifax credit-reporting agency. The database contains name, address, telephone number, credit report, claims history and motor vehicle report. The company uses the information for credit scoring, claims history reporting and driving-record reporting.

Increased exclusions. Mold claims and judgments have lead many insurers to seek exclusions for mold coverage from the basic homeowners policy terms mandated by state insurance commissioners. To date, 20 state legislatures have authorized policy exclusions for mold problems.

Impact on Real Estate

The availability and affordability of property casualty insurance is critical to well being of homeownership efforts in this country and the real estate industry – the one sector of the economy that has continued to perform well in recent weeks and which is commonly cited as keeping the economy afloat.

Insurance is a necessary component in securing a mortgage. Ongoing insurance coverage is a necessary condition for meeting the terms of most mortgages. Increases in premiums can prohibit the marginal homebuyer from being able to afford homeownership and can severely strain the ability of existing homeowners on fixed incomes to continue to meet the ongoing costs of homeownership. Housing affordability is already a problem in many parts of the nation – escalating insurance premium costs only exacerbate the problem.

Insurance affects affordability in more ways, though, than just increased premium costs. Multifamily practitioners report that insurance costs are increasing also due to lender demands for additional insurance coverages over and above what has traditionally been required for mortgage underwriting purposes.

On a micro-level, NAR has done survey work to gauge the impact that these events have had on transactions. In general, the member reports received indicate that transactions are oftentimes problematic, often delayed and some are falling through due to insurance availability or affordability problems. In some cases, inspections by insurers are resulting in repair requirements as a condition of insurance that also adds to the cost of a transaction.

Typically, though, buyers have gotten coverage, albeit at higher rates. In order to reduce premiums, some buyers and owners are increasing deductibles from the $100-$500 range that has been most commonly used to $1000 or more as higher deductibles can lower premiums.

Prior water damage claims have stigmatized properties resulted in some refusals to write coverage. Additionally, poor credit has priced some individuals out of the insurance marketplace. In these cases and some extreme markets, consumers have had to turn to surplus line carriers like a Lloyd's of London who are not regulated by the insurance commissioner rate-setting process and are able to offer coverage at rates that are higher and, therefore, acceptable to the insurer or to state-managed FAIR Plans.

Perhaps the most troubling reports uncovered by the survey work are those that indicate that new homeowners are being informed after the close of escrow but prior to the end of the time period for which a binder is effective that the insurer will not offer the coverage indicated in the binder. This obviously is troublesome and, at best, leaves new homebuyers without recourse to negotiate with the seller over any newly required repairs that may be a mandate for any insurance coverage and, at worst, forces a new homeowner to find coverage at any cost and therefore shoulder insurance cost far beyond what was anticipated.

Final Recommendations

In developing its recommendations, the Task Force was committed to a number of specific goals. These included: (1) development a set of recommendations that would allow the NAR to address both the short term and long-term needs of the membership for a source of available and affordable insurance coverage; (2) provide state associations with the information and resources to address insurance legislative and regulatory issues at the state level, (3) take any needed action at the federal level, and (4) educate the REALTOR® community about the new realities of the insurance market.

The final recommendations of the Task Force are organized into the following categories: (1) recommendations for state association consideration, (2) recommendations for NAR assistance for state Association legislative/regulatory insurance dealings, (3) federal policy recommendations, (4) alternative insurance product recommendations, and (5) REALTOR® education recommendations.

I. NAR Recommendations for State Association Consideration and Activity

1. Recommendation: That state associations consider advocating the creation or expansion of state insurance FAIR plans to include basic homeowners and commercial property coverage so that a robust alternative insurance mechanism exists in all states.

Rationale: State FAIR insurance plans can provide homebuyers and existing homeowners with property insurance when no private insurer is willing to write coverage. FAIR plan coverages typically meet the basic insurance requirements for lenders and the secondary mortgage market entities. States can protect the functioning of their real estate markets in hard market conditions by creating FAIR plans and offering robust insurance coverages through those plans.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

2. Recommendation: That state associations consider advocating for state legislation/regulation that would require insurance companies to file their credit-based insurance scoring methodology and formulas with the state department of insurance providing that such methodology and formulas are held confidential and treated as a trade secret under state law.

Rationale: Insurance firms have traditionally opposed the disclosure of underwriting criteria arguing that such types of information are proprietary trade practices/secrets. However, consumers should be assured that that such practices are appropriate and not discriminatory. In order to allow for such assurances, state insurance regulators should be given access to firm underwriting criteria and risk methodology. In order to balance the interests of the insurers such disclosures may need to be held confidential and accorded the same treatment as more traditional trade secrets.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

3. Recommendation: That state associations consider opposing the use of credit scoring as the sole criteria for the acceptance, denial, renewal or rating of a potential insured for insurance underwriting purposes.

Rationale: To date insurers have not provided proof of the causal relationship that they contend exists between an individual's insurance score and the likelihood that an individual will file future insurance claims. Instead, insurers have relied on correlation studies to justify the use of insurance scores. Lacking any substantive, valid proof of the causal relationship between risk and insurance scores, REALTORS® should oppose the use of credit scoring as the sole determinant for insurance underwriting and rate-setting purposes.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

4. Recommendation: That state associations consider supporting legislation/regulation that would limit the ability of insurance companies to refuse to provide insurance coverage after the issuance of an insurance binder and close of escrow.

Rationale: Current technology allows insurers and even their agents to access claims databases such as the Comprehensive Loss Underwriting Exchange (CLUE) via their desktops or fax in a matter of moments. There is no rationale for why an insurer should have to cancel an offer of insurance based on information contained in a claims database once a binder of insurance has been offered.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

5. Recommendation: That state associations consider supporting legislation/regulation that would allow consumers one free copy of their credit report, CLUE report, credit score and insurance score per year.

Rationale: Some states have recognized the importance of consumers having access to their credit reports on a regular basis. As such, these states have implemented legislation and regulations that require consumer report repositories to make a free credit report available on an annual basis. Given the increasing problem of identity theft and the importance of consumer reports and risk scores in determining a consumer's ability to access any number of important products – mortgages, car loans, insurance, etc – consumer repositories should make a free copy of their credit report, CLUE report, insurance score and credit score available to consumers annually.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

6. Recommendation: That state associations consider advocating the creation of a consumer ombudsman in state insurance commissioner offices.

Rationale: Patterned after consumer advocates for utility issues, an insurance ombudsman would be responsible for representing consumers' insurance interests with the state insurance regulatory agencies. The advocate would watch for trends in market practices and report on their consequences. If new consumer protections or educational campaigns are needed, the advocate could be a voice for those serving as an independent expert on the consumers' side. Having an insurance-consumer advocate would correct an imbalance that's currently lacking in any discussions of policy and regulation.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

7. Recommendation: That state associations consider:

- The creation of a state insurance task force to examine the use of credit reports, credit scores and CLUE databases in the insurance underwriting process,
- The need for an insurance contingency in any standard contract form, and
- The development of an ongoing relationship with state insurance commissioners as well as the insurance industry so as to promote future communication and cooperation.

Rationale: The use of credit reports, credit scores and CLUE databases in the insurance underwriting process are rapidly changing the availability and affordability of property casualty insurance coverages. Since insurance is regulated at the state level, local REALTORS® have a responsibility to become educated about the process and represent the real estate industry and consumers.

Implementation: The recommendations of the Task Force will be communicated to state associations via all available communication vehicles.

II. NAR Assistance for State Association Legislative/Regulatory Insurance Dealings

1. Recommendation: That NAR create a program to provide state associations with access to consultants with expertise in insurance necessary for them to effectively address legislation or

regulation dealing with insurance issues at the state level. The proposed program would be modeled after the successful Land Use Initiative program.

Rationale: Insurance is regulated at the state level. As such, the state associations are and will continue to be the REALTOR® organizations dealing with efforts to change the practice of insurance. Given the specialized nature of the insurance business and the relative lack of familiarity that most state associations have with insurance regulation, many state associations may benefit from access to consultants with insurance expertise. A survey of state associations on the extent of the insurance crisis and state association and legislative activities to address the situation was conducted. While the responses are still being received, a copy of the survey and the tabular results are included in the Appendix of this final report.

Implementation: If approved in concept, a Request For Proposals would be developed and circulated to those consulting and law firms best suited to provide such expertise. Based on feedback from the state association executives and government affairs directors and feedback from the RFP process, staff would then develop a proposed program outline that would be submitted for consideration by the budgeting and finance structure of the NAR.

2.That NAR create/maintain a web-based resource center on insurance issues that would provide state and local associations with easy access to commonly needed insurance advocacy information including NAR sponsored research results and databases of state legislative and regulatory efforts re: insurance scoring and claim database usage and news of the latest in industry news and developments.

Rationale: Information sharing can help promote the REALTOR agenda at the state level. In order to allow associations to learn from one another and from the analytical resources developed by any national Insurance Initiative consulting program, the currently existing Insurance web resource pages would be maintained and expanded.

Implementation: Staff would continue to maintain the existing insurance web pages and explore the necessity for a password protected site that might be developed to house the analytic and strategic resources submitted by state associations and any consultant engaged to assist state associations.

III. Federal Legislative/Regulatory Options

A. Transparency and Accuracy of Credit/Insurance Scores and Claims Databases

1. Recommendation: That NAR support disclosure of insurance scores, the key factors influencing the insurance score, the date of the score, and sufficient explanation to facilitate understanding what impact the insurance score may have on the insurance underwriting decision in accordance, in accordance with existing policy on credit score disclosure.

Rationale: Insurance scores are increasingly being utilized to underwrite homeowners and property/casualty insurance policies. These scores often include a mix of credit report and claims report information. Disclosing these scores to the consumer, along with the factors influencing the score, will allow the consumer to better evaluate their ability to obtain insurance.

Implementation: NAR has policy supporting the disclosure of credit scores. The leadership team may want to make a finding that insurance score disclosure falls within the purview of the existing policy. If not the Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy action.

2. Recommendation: That NAR support amendment of the Fair Credit Reporting Act to shorten the time frame available for consumer reporting agencies to investigate and correct consumer reports.

Rationale: Currently, consumer-reporting agencies are granted 30 days to investigate alleged mistakes in consumer reports. Given the increased use of technology and consolidation of the credit reporting business, it should be possible to complete any investigation of inaccuracies in less than 30 days. A shorter time frame will force reporting agencies to complete their investigations in a timely manner and help prevent delays or cancellations of real estate closings.

Implementation: NAR has no policy supporting a shortened correction timeframe. The Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy action.

3. Recommendation: That NAR support legislation to increase the penalties for entities that repeatedly report inaccurate information to consumer reporting agencies.

Rationale: Critics of the existing system argue that the current penalties are insufficient to discourage those firms that report information to the consumer reporting agencies from continuing to report inaccurate information to the reporting agencies, especially when that information has been resubmitted following a consumer inquiry.

Implementation: NAR has no policy supporting increased penalties. The Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy action.

4. Recommendation: That NAR support legislation that would regulate the manner in which multiple inquiries generated when consumers shop for mortgages or insurance over an extended time period are evaluated by lenders and insurers.

Rationale: Many consumers shop for major purchases like an automobile, mortgage or insurance over an extended period of time. Multiple “credit” inquiries can result from this shopping process and lower a consumer’s credit score. In order to more correctly reflect reality, credit reports and credit scoring models must recognize when a consumer is shopping for the best terms as opposed to seeking numerous loans/lines of credit/etc. Currently, credit-scoring model providers have voluntarily agree to aggregate inquiries occurring within a specified period of time (typically one month) for mortgages or auto loan into one inquiry. However, consumers seeking the best deal or facing a marketplace with few providers as is the case with today’s insurance market may choose or be forced to shop over a longer time period. Given the importance of credit scoring in underwriting, a more regulated approach to the treatment of multiple inquiries resulting from shopping must be developed.

Implementation: NAR has no policy addressing how multiple inquiries should be treated for mortgage or insurance shopping purposes. The Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy action.

5. Recommendation: That NAR support legislation/regulation that would allow consumers one free copy of their credit report, property claims report, credit score and insurance score per year.

Rationale: Some states have recognized the importance of consumers having access to their credit reports on a regular basis. These states have implemented legislation and regulations that require consumer report repositories to make a free credit report available on an annual basis. Given the increasing problem of identity theft and the importance of consumer reports and risk scores in determining a consumer's ability to access any number of important products – mortgages, car loans, insurance, etc – consumer repositories should make a free copy of their credit report, CLUE report, insurance score and/or credit score available to consumers annually.

Implementation: NAR has no policy supporting a requirement that a free copy of consumer reports or risk scores be made available to consumers on an annual basis. The Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy action.

B. Access to Insurance Measures

1. Recommendation: That NAR examine legislation/regulations that would extend Community Reinvestment Act– investment in community requirements, regulatory evaluations, etc. - to insurance companies.

Rationale: Regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business. Federal financial supervisory agency are required to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution." Since the passage of the *Gramm-Leach-Bliley Act*, community groups have been advocating for an extension of CRA to all sectors of the financial services industry. Advocates argue that insurance companies receive government benefit – they are exempt from anti-trust laws – and as a result, have a responsibility to meet social obligations.

Implementation: NAR has no policy position supporting Community Reinvestment Act requirements for insurance companies. NAR has no policy position supporting Community Reinvestment Act requirements for insurance companies. The Conventional Finance & Lending Committee would be the appropriate committee to consider such a policy after further research has been done.

2. Recommendation: That NAR Legal Counsel examine the need for legislation/regulations that would extend and enforce Fair Housing requirements to insurance companies.

Rationale: Insurance discrimination is not specifically covered in the Fair Housing Act. In -1989, HUD issued a regulation that prohibited "Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin."

Many lawsuits have been filed under the FHA. In 1996, the Supreme Court refused to overturn a decision supporting HUD's regulatory authority and interpretation that the Fair Housing Act prohibits insurance redlining. Since that decision, many insurance companies have changed their practices in response to lawsuits alleging discrimination in the provision of property hazard insurance.

Implementation: NAR policy currently opposes discrimination in the provision of property hazard insurance. In additional to the referral to the Legal Division, this recommendation should be reported to the Equal Opportunity Cultural Diversity Committee.

3. Recommendation: That NAR examine legislation/regulation that would extend HMDA- like data-collection and reporting requirements, including use of claims history (CLUE), to insurance companies.

Rationale: The tools available to hold insurance companies accountable for equitable service are very limited. For other financial institutions, the *Home Mortgage Disclosure Act* (HMDA) requires financial institutions to provide data to determine if the institution is serving the housing needs of all community residents and to assist in identifying possible discriminatory lending practices, including gender, race and income of mortgage applicants and borrowers. Regulation C further requires lenders to report data regarding loan applications, including information on origination and purchases.

Similar to the post- *Gramm-Leach-Bliley* CRA-extension efforts, community groups have advocated for requiring insurance companies to report HMDA-like data for policy placement including race, income, gender, census tract, action taken (approvals, denials, non-renewals), coverage characteristics (full replacement cost, market value, etc.) policy type (government-backed FAIR plan or conventional market policy) and claims history data (CLUE).

Implementation: NAR has no policy supporting HMDA-like data-collection and reporting requirements for insurance companies. The Conventional Finance and Lending Committee would be the appropriate committee to consider such a policy action.

4. Recommendation: That NAR research the ramifications for the real estate marketplace of proposals that would create a federal charter for property casualty insurers.

Rationale: State insurance commissioners often come from the industry and are elected or appointed with the political support of the insurance industry. Consequently, the current system is designed to assure the financial safety and soundness of the firms engaged in the business of insurance and fails to serve the public interest in regulating the insurance industry. A federal regulator is needed to provide the level of expertise and authority needed to adequately regulate the industry.

Implementation: NAR has no policy supporting a federal charter for property casualty insurers. Given the potential ramifications of such a change for the insurance industry, competition, etc. further research is necessary to provide the sound basis necessary for any further policy positions on the matter taken by NAR. The Research Division would be the appropriate group to conduct such research.

5. Recommendation: That NAR research proposals that would provide a more robust regulatory framework for surplus lines/non-admitted insurance carriers.

Rationale: During hard markets, non-admitted carriers are often the companies writing what insurance is available. A non-admitted/surplus lines carrier is an insurance company not licensed by a particular state to sell and service insurance policies within that state.

While not licensed in a given state, a non-admitted carrier must be regulated by at least one *U.S.* jurisdiction or a *non-U.S.* jurisdiction. A non-admitted carrier may be either eligible or ineligible to sell insurance in a given state, depending on the statutes and regulations of the jurisdiction, which may require proof of financial soundness, among other conditions, before eligibility is granted. Most states allow the placement of surplus lines policies only with insurance companies that the states have approved. These states publish a list of eligible excess & surplus lines insurers, which specify the carriers that surplus lines brokers can use. And while the exact mechanics of the process may vary in each state, in most states an account must be declined by the standard (licensed) market a number of times in order for it to be written in the surplus lines market.

Though regulated by the states, a non-admitted carrier is subject to less regulation than an admitted carrier, especially when it comes to allowable premium rates and policy form. While proponents of the non-admitted carriers have argued that it is this unique structure that allows non-admitted carriers to provide coverages in hard markets, critics have argued that this structure disadvantages consumers who may be forced to turn to non-admitted carriers.

Implementation: NAR has no policy re: non-admitted insurance companies. Given the importance of non-admitted carriers in providing alternatives to the conventional insurance market and the need for regulatory structures that can assure that these carriers are addressing the need of consumers and firms, further study is needed. The Research Division would be the appropriate group to conduct such research.

C. Alternative Insurance Vehicles

Recommendation: That NAR support passage of an amendment to the federal Risk Retention Act (RRA) to expand its provisions to property and casualty insurance.

Rationale: The RRA currently allows entities to operate risk retention groups under streamlined rules that require licensure under the laws of a single state. It only applies to liability insurance presently. Expansion of RRA to include property and casualty coverage would provide opportunities for the real estate industry to provide insurance coverage for commercial property and casualty claims. These opportunities would serve as a pressure release during hard insurance markets to increase availability and affordability.

Implementation: Currently NAR has no policy supporting the expansion of the Risk Retention Act. New policy would need to be adopted. Business Issues would be the appropriate committee to consider this motion.

D. Natural Disaster Risks

Recommendation: That NAR aggressively pursue creation of a federal natural disaster insurance program.

Rationale: Currently, the losses due to natural disasters are uninsured risks. This liability not only impacts homeowners who may suffer losses during a natural disaster but also the federal taxpayer who is called upon to fund any disaster relief measures undertaken by the federal government following a major disaster.

Implementation: Policy supporting the creation of a federal disaster program exists. No additional actions are needed. Recommendation will be reported to Land Use, Property Rights and Environment Committee.

E. Tort and Class Action Reform

Recommendation: That NAR more actively participate in federal tort reform and class action reform legislative debates.

Rationale. Large court awards are a major factor pushing up the cost of insurance premiums. Tort reform would limit the ability of the courts to impose excessive damage awards. With such limits in place, insurers would be better able to underwrite the risk inherent in property insurance purposes.

Implementation: NAR has policy supporting tort reform. While no further actions would be necessary to implement this policy, the Business Issues Committee could consider further refinements to the existing policy to address questions raised by current legislative proposals.

F. Utilization of The Information Quality Act

Recommendation: That NAR utilize, where appropriate, the Information Quality Act of 2001 to review the information, particularly the scientific assumptions, information and research, that underlies the federal government regulatory decision-making process. NAR should also utilize, where appropriate, the appeal provisions of the IQA to appeal and correct information that is developed for regulatory decisions.

Rationale: In 2001, Congress passed the Information Quality Act, that: (1) encourages the federal government to utilize quality information in its policy and regulatory deliberations; (2) ensures consistency regarding the kinds of information that is disseminated to the public by federal agencies; and (3) establishes mechanisms for the public to review, critique and correct that information. This Act will provide NAR with critical opportunities to review information that is part of a regulatory process that may adversely affect the regulated community.

The NAR Insurance Task Force has expressed concern about the role of scientific information in regulatory decision- making and how that type of information may impact the insurance market. The Task Force is concerned that poor science is conducted that is then used as the basis for regulations and standards. These regulations and standards are then included as components of litigation, in which large settlements are made that subsequently put pressure on insurance companies to raise premiums, tighten underwriting standards and generally contribute to, and worsen, the current insurance crisis. Information, in particular scientific information, is a critical underlying component of many regulatory mandates, particularly in the case of environmental health and safety rules such as lead-based paint, endangered species, water quality, radon, asbestos, and air pollution. The ability to review information and the underlying scientific models developed to support the policy and regulatory mandates will go a long way to "level the playing field" in a federal agency's capacity to implement regulatory requirements.

Implementation: No action needed. Staff has already begun to consider ways in which the provisions of the Act can be utilized to promote REALTOR® policy positions. Land Use, Property Rights and Environment Committee will be apprised of this new tool.

III. Alternative Insurance Products Options

1. Recommendation: That NAR explore the creation of a preferred partner relationship with established insurance firms or brokerages to provide affordable homeowners insurance coverage to REALTOR® clients.

Rationale: Using the leverage that an organization of 880,000 members can have, NAR currently has a preferred partner relationship with Liberty Mutual. Through this partnership, Liberty Mutual makes insurance coverage available to REALTORS®. Using that same "power of large numbers," NAR may have the ability to negotiate preferred partner relationships with established insurers that could make affordable insurance coverage available to REALTOR® clients.

Implementation: The Marketing and Business Development division would be the appropriate division to oversee implementation of this recommendation.

2. Recommendation: That NAR explore the feasibility of NAR providing informational resources on the process of creating and administering a self-insurance, captive and reinsurance capacity for those NAR members and their clients interested in creating such a self-insurance program.

Rationale: Some firms may be in a position to benefit from participation in a self-insurance and/or captive insurance program. NAR currently provides information on a variety of topics that assist members with their business dealings. Information on alternative insurance mechanisms would be a useful addition to available educational materials.

Implementation: The Marketing and Business Development division would be the appropriate division to oversee implementation of this recommendation.

3. Recommendation: That NAR undertake the initial research necessary to explore the feasibility of NAR creating and administering captive for the purpose of providing errors and omission insurance to NAR members.

Rationale: Errors and omission insurance has become increasingly difficult and expensive to obtain. The number of top rated insurance companies providing the coverage has declined precipitously in the past few years (2 companies versus 12 companies a decade ago). In order to assure NAR's members access to affordable E&O coverage, the Task Force believes that it is appropriate for NAR to once again explore the feasibility of such an undertaking.

Implementation: The Marketing and Business Development division has circulated a RFP focused on doing the initial analysis necessary for any decisions as to whether or not NAR can and should undertake such an offering.

IV. REALTOR® Education

1. **Recommendation: That NAR develop informational resources for REALTORS® to use to educate consumers about how to deal with their property casualty insurance needs, including informational brochures that could be easily downloaded, reproduced and used by members to educate their clients and a consumer-oriented website on insurance topics.**

Rationale: REALTOR® members serve as the transaction experts for their current and former clients. Any resources that NAR can make available to members advise clients will help the REALTOR® provide correct and timely information, conduct their businesses in a professional manner and remain a primary source of expertise.

Implementation: Development of an informational brochure is pending the Risk Management Committee's review of the best practice recommendations of a joint working group of the Risk Reduction committee and the Task Force.

2. Recommendation: Than a workgroup of the Insurance Task Force and the Risk Management committee be created to develop a set of best practices for REALTORS® that would guide the membership on how to advise their buyers and sellers on insurance issues.

Rationale: REALTORS® advise their clients on all parts of the homebuying process including obtaining insurance. In order to provide their buyers and sellers with advice that serves the clients best interests and addresses the professional's need for a reasonable risk management, REALTORS® can benefit from a set of 'best practices' that recognizes both sets of needs. The members of the Insurance Task Force and the Risk Reduction Committee are uniquely positioned to provide advice that serves both interests.

Implementation: The Leadership Team appointed a joint working group. A copy of the work group's final recommendations is attached to this final report and will be reviewed by the Risk Management Committee.

Appendix

Final Recommendations of the Joint Working Group of the Insurance Task Force and the Risk Management Committee on Insurance Best Practices
March 26, 2003

Recommendation #1

That NAR develop a guide for use by members in advising consumers, whether they are buying or selling a home, on the impact changing insurance market conditions may have on their real estate transaction. The guide should be an electronic document that may be downloaded and used by members as required by the circumstances in their market area and their office policies.

The guide should explain in very brief terms why insurance might be needed to complete a real estate transaction, the changing market for homeowners insurance and the steps that may be taken to avoid having their transaction delayed or interrupted due to the availability of insurance for the property being transferred. The guide should be in two parts, an informational piece and a transaction checklist for distribution to buyers and sellers.

The guide should include a warning that insurance is no longer a minor issue and that it has caused some transactions to completely fail because the parties haven't adequately planned to assure its availability. No party to the transaction should assume that insurance will be available for a particular property. The guide should, as necessary, explain terms that may not be familiar to consumers, such as C.L.U.E. Reports and insurance scoring, and offer suggestions for both buyers and sellers regarding steps that may be taken beginning even before there is a contract to buy or sell a property to avoid having a transaction delayed or cancelled due to problems in securing insurance on the property.

Recommendation #2

That the consumer information be developed in a simple, easy to read question and answer format and should include:

Q. How has the insurance availability/affordability affected the real estate transaction?

A. The affordability and availability of insurance affects both buyers and sellers. Buyers will typically be obtaining mortgage financing to pay the purchase price of the property. The lender will require that there be property insurance to cover their interest in the property, and if proof of insurance is not available at closing the lender will likely refuse to release the funds and therefore delaying or even derailing the transaction, either of which can impose both inconvenience and cost to both the buyer and seller. Even in a "cash" transaction the buyer may be hesitant to complete a transaction where insurance is not available to cover the buyer's equity in the property.

Q. When should a buyer apply to obtain an insurance policy to cover the property being purchased?

A. The interest of both buyers and the sellers now suggest that the buyers should contact one or more insurance agents to begin their search for insurance for their new property no later than the time of the contract to purchase the property is signed to assure a firm commitment for the issuance of a policy is in place well in advance of the settlement of the transaction. Waiting until the last days or even weeks before the closing will limit the opportunities of the buyers and sellers to address the affordability and availability issue and, if needed, to find alternatives for difficult to insure properties. We have had many examples of transactions which have been adversely affected in some manner because of problems associated with insurance availability.

Q. What kinds of events/records can affect the ability to obtain insurance on a property being purchased?

A. A number of factors can affect the availability and cost of homeowner insurance on a property being purchased. For example, they include:

a. past claims filed on the property owned by the current owner (up to previous five years)
b. poor insurance credit score of the prospective purchaser
c. past claims filed by the property purchaser on other properties
d. physical characteristics of property (e.g., leaky roof)
e. characteristics of the property's location (e.g., proximity to fire station, regional weather conditions)

Q. How does the insurance company know what claims have been filed in connection with the property?

A. Approximately 90% of all insurance companies contribute information regarding claims to an insurance industry database. When underwriting a new policy the insurance company may obtain a report from this system from one of a couple different sources to determine the property's claims history. This report is most often identified as a comprehensive loss underwriting experience report or a "C.L.U.E. Report." The report contains information regarding property claims filed in connection with a particular property and claims filed by a particular insured person. For a fee the current owner of the property may obtain a copy of this report. A copy of the report is available to the property owner through companies such as ChoicePoint, Inc, either by writing to ChoicePoint, Inc. located in Alpharetta, Georgia, or by going to their website, choicetrust.com, and A-Plus, either by writing to A-Plus located in Jersey City, New Jersey or calling 800/709-8842.

Q. Should I get a copy of the C.L.U.E. Report?

A. While this decision is up to the property owner, it is important to understand the limitations of the report. The report contains only raw information and how that information will affect the insurability of a property isn't explained as a part of the report. Moreover, not all insurance companies use the report and those that do use it don't all use the information in the same way. As a result having the report may not enable you to predict whether a particular company will insure the property. If you want information on how a C.L.U.E. Report or other similar report may affect your ability to obtain insurance contact your insurance agent.

Q. Are there factors unique to a buyer that can affect their ability to obtain insurance?

A. Yes, although not used by all insurance companies in determining eligibility for insurance, some companies do review the claims filed by the buyer on properties owned by the buyer during the preceding five years. This is another aspect of the C.L.U.E. Report database that focuses upon the insured individual rather than the insured property.

Another more controversial factor is the use of Insurance Scores. Insurance Scores, which are formulas developed by insurance companies in an effort to predict the likelihood of an individual filing claims, are sometimes used to determine to whom or at what price an insurance policy will be issued.

Insurance scores are not standardized within the insurance industry and both how they are calculated and how they are used is generally not known outside of individual insurance companies. If you want additional information on how insurance scoring may affect your ability to obtain insurance contact your insurance agent.

Q. Can a seller include a requirement that the buyers demonstrate their insurability as a condition of the sales contract?

A. Yes, although not common, such a requirement could be included in an agreement. However, the specific language of such a condition should be carefully considered. Check with your real estate agent to find out if any standardized language has been developed in your community and/or consult with your attorney. As discussed herein the factors used to determine a particular buyer's insurability will vary from one insurance company to another and can leave questions regarding whether and when such a condition had been satisfied.

Q. Can a buyer include a requirement that property be insurable and/or the insurance be affordable as a condition of the sales contract?

A. Yes, but the specifics of such a condition should be carefully considered. Check with your real estate agent to find out if any standardized language has been developed in your community and/or consult with your attorney. There are multiple factors which might be used to determine a property's insurability or the "affordability" of the insurance in such a clause. The factors used in a contract clause could include, but are certainly not limited to:

a. acceptable C.L.U.E. report
b. purchaser is satisfied of the insurability of property
c. secure binder of property insurance on property
d. cost of insurance doesn't exceed specified threshold

Both buyers and sellers should be aware that there are advantages and disadvantages to such a clause that should be considered. The advantage of such a contingency is that it may allow the buyer to cancel the transaction if the property proves uninsurable or insurance is unaffordable. This avoids reliance on a financing contingency and any question regarding its application where the property and borrower would otherwise qualify for a loan. On the other hand, the inclusion of such a clause may affect the acceptability of an offer, particularly if the offer is being made in a competitive environment.

Transaction Checklist – Insurance Issues

- Discuss current insurance market conditions with your insurance agent and any problems you may have in obtaining insurance on the home you are purchasing
- Review offer to purchase to identify insurance issues/contingencies or need for such contingencies with your attorney
- Contact one or more insurance agents immediately following acceptance of purchase contract by both parties to begin process of obtaining necessary insurance.
- Obtain commitments to issue an insurance policy from an insurance company in writing and carefully review it with your attorney or insurance agent to determine scope of that commitment.
- Be aware of alternative insurance sources that may be available if a problem develops
    - Know available sources of insurance (i.e., what other insurance companies are in market by calling different insurance agencies in the community)
    - Check with Seller's current insurer to determine if that insurer will continue to insure property with new owner
    - Check with Buyer's current insurer to determine if that insurer will continue to insure buyer in a new property
    - Alternative forms of coverage that may allow transaction to proceed (RISK Plans, Fire & E.C., etc.)

Insurance Task Force Roster

Mike Schmelzer, Chair
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Great Neck, NY

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Chesterfield, MO

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Coldwell Banker Fleck Agency
Danville, PA

Nick French
Sothebys International Realty
Santa Fe, NM

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Wichita, KS

Robert M. Kulick
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Charles M. (Mickey) McFadden
Trident Insurance
Cherry Hill, NJ

Benny McMahan
Texas Association of Realtors
Austin, TX

Ronald L. Myles
Denver, CO

Dean Saunders
Saunders Real Estate
Lakeland, FL

Gary Thomas
Re/Max Real Estate Services
Mission Viejo, CA

Ken Warden
Warden & Associates, REALTORS®
Fort Thomas, Kentucky

Alan Yassky
Rockland Realty
Spring Valley, NY

Meetings with Outside Organizations

INSURERS

Allstate Insurance
Aon
Farmers Insurance
Lexington/AIG
Liberty Mutual Insurance
State Farm Insurance
Travelers Insurance

INSURANCE TRADE GROUPS

Alliance of American Insurers
Council of Independent Agents and Brokers
Insurance Information Institute
National Association of Independent Insurers
National Association of Insurance Commissioners
Reinsurance Association of America

CONSUMER REPORT DEPOSITORIES

ChoicePoint

SECONDARY MARKET ENTITIES

Fannie Mae
Freddie Mac

FEDERAL GOVERNMENT AGENCIES

Federal Trade Commission, FCRA Enforcement Division

RESEARCHERS

Bob Klein, Georgia State University
Ernst & Young

CONSUMER ADVOCATES

Center for Economic Justice
National Community Reinvestment Coalition

To State Association Executives and State Government Affairs Directors

The NAR Insurance Task Force has asked NAR staff to determine what the state associations are doing to address the insurance issue at the state level. The information gathered will allow the task force to tailor its recommendations designed to serve the needs of state associations as the associations deal with state insurance legislation or regulations. The survey can be emailed back to msalkin@realtors.org or printed, filled out and faxed back to 202-434-9659.

Insurance Survey Questions for State Government Affairs Directors

1. Have your members experience problems with the availability or affordability of property casualty insurance?
☐Yes
☐no
2. Does your association have an established working relationship with your state insurance commissioner?
☐yes
☐no
3. Has your association met with - or plan to meet with - your state insurance commissioner to discuss the current insurance situation?
☐yes
☐no
4. Has your association established an insurance task force/working group/etc. to examine the issue of property casualty insurance availability and/or affordability?
☐yes
☐no
If yes, when will the group report its conclusions?

5. Has your association introduced or supported - or plan to introduce or support - legislation/regulations that would attempt to address any property casualty insurance availability problems ?
☐yes
☐no
If yes, please list bill numbers for any legislation already introduced:

If yes, does/will the legislation/regulation deal with any of the following?
☐ Use of credit reports, credit scores or insurance scores for underwriting/cancellation/non-renewal of insurance
☐ Use of claims (CLUE) databases for underwriting/cancellation/non-renewal of insurance
☐ Allowable exclusions for property casualty coverages like mold

6. Contact information for the staff member who can be contacted for further information.
Name:

State Association:

Email Address:

SURVEY OF STATE INSURANCE ACTIVITIES

STATE	INSURANCE PROBLEMS 1		RELATIONSHIP W/INS. COMM. 2		MEETINGS W/INS. COMM. 3		STATE INS. TASK FORCE 3		DATE REPORT EXPECTED	LEGISLATION INTRODUCED 4		LEGISLATION TOPIC			CONTACT EMAIL
	YES	NO	YES	NO	YES	NO	YES	NO		YES / BILL NR.	NO	CR SC	CLUE	EXC	
ARIZONA	X		X		X			X		SB1265 SB1266			X		tomfarley@aaronline.com
ALABAMA	X		X		X			X			X				jeff@alabamarealtors.com
ALASKA		X		X		X		X			X				sforrest@anchoragerealtors.com
ARKANSAS	X			X		X	X		June 2003		X				andy@arkansasrealtors.com
CALIFORNIA	X		X		X		X		No answer	X / No bill nr		X			Stanw@car.org
COLORADO	X		X			X	X		May, 2003	X / Credit Report Disclosure Bill					bscully@colorealtor.org
CONNECTICUT		X		X		X		X			X				calnent@ctrealtor.com
DELAWARE	X		X		X		X		Ongoing at this point		X				mike@delawarerealtor.com
FLORIDA	X		X		X			X			X				genea@far.org
GEORGIA	X			X		X		X			X				keithhatcher@garealtor.com
HAWAII	X		X			X		X			X				kiwamoto@hawaiirealtors.com
IDAHO	X			X		X		X		H-92 Tort Reform					alabeau@idahorealtors.com
ILLINOIS	X		X		X			X			X				gclayton@iar.org
INDIANA	X			X		X		X			X				rnye@indianarealtors.com
IOWA	X			X		X		X			X				jen@iowarealtors.com
KANSAS	X		X		X			X			X				byanek@kansasrealtor.com
KENTUCKY	X		X		X		X		June 2003	SB12HB 142, 143		X			judyp@kar.com
LOUISIANA	X		No answer		X		X		No answer		X				
MAINE	X			X	X		X		Feb	X / No bill nr		X			cindybutts@aol.com
MARYLAND	X			X	X		X		May/June	SB174		X			Bill.Castelli@mdrealtor.org
MASSACHUSETTS	X			X		X		X			X				sryan@marealtor.com

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	YES	NO	YES	NO	YES	NO	YES	NO		YES / BILL NR.	NO	CR SC	CLUE	EXC	
MICHIGAN	X		X		X			X			X				bward@mirealtors.com
MINNESOTA	X			X		X		X							cgaller@mnrealtor.com
MISSISSIPPI	X		X		X			X			X				qwhitwell@msrealtors.org
MISSOURI	X		X		X			X		HB532/ SB539		X	X		sglgov@aol.com
MONTANA	X			X		X				SB349/ HB184		X			ptrenk@montanarealtors.org
NEBRASKA	X		X		X			X		487 & LB 693		X	X		perre@nebraskarealtors.com
NEVADA	X		X		X		No answer				X				jeff@nvar.org
NEW HAMPSHIRE	X		X		X			X		HB115 HB557		X	X	X	kipp@nhar.com
NEW JERSEY	X			X		X		X							jgrasso@njar.com
NEW MEXICO	X			X	No answer			X		SB811, HB598		X	X		mary@nmrealtor.com
NEW YORK		X	X			X		X			X				dmakenzie@nysar.com
NORTH CAROLINA	X		X		X		X		We had several	HB1120					ssimpson@ncrealtors.com
NORTH DAKOTA	X		X		X			X		HB1142, HB1290, SB2251		HB 1290			claus@btinet.net
OHIO	X		X		X			X			X				hilz@ohiorealtors.org
OKLAHOMA	X		X			X		X		HB1629 HB1659 HB1751 SB0539 SB0684 SB0763		X			charla@oklahomarealtors.com
OREGON	X			X		X		X			X				abushnell@oregonrealtors.org
PENNSYLVANNIA	X			X		X		X							dupdegrave@realtors.org
PUERTO RICO															
RHODE ISLAND	X			X		X		X							susan@riliving.com

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	YES	NO	YES	NO	YES	NO	YES	NO		YES / BILL NR.	NO	CR SC	CLUE	EXC	
SOUTH CAROLINA	X		X			X		X			X				nick@screaltors.org
SOUTH DAKOTA	X		X		X			X			X				mkleven@sdrealtor.org
TENNESSEE	X		X		X			X		SB0122/ HB0284/ SB0638/ SB 1553/ HB1165/ SB1555/ HB1164/ SB1616/ HB0022		X			rbroome@tarnet.com
TEXAS	X		X		X		X		Already reported	X/ No bill nr.		X	X		bstinson@tar.org
UTAH	X			X		X		X			X				pat@utahrealtors.com
VERMONT	X		X			X		X			X				rgolden@vtrealtor.com
VIRGINIA	X		X		X		X		Fall/2003	HB1948 SB1284		X	X		jen@varealtor.com
VIRGIN ISLANDS	X		X		X		X		Monthly at each Assoc. Meeting	HR 785 (proposed)					stcroixrealstate@usa.com
WASHINGTON	X		X		X		X		Developing an industry response in the form of an "insurance contingency"	SB 5395 HB1582		Statute 19.182			Bob.Mitchell@warealtor.com
WASHINGTON, D.C.	X		X			X		X			X				damian@gcaar.com
WEST VIRGINIA	X		X			X		X			X				evp@wvrealtors.com

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	YES	NO	YES	NO	YES	NO	YES	NO		YES / BILL NR.	NO	CR SC	CLUE	EXC	
WISCONSIN		X		X		X		X			X				wem@wra.org
WYOMING	X			X	X			X		X/ No bill nr.		X			mikebrown@realtor.com