Title Insurance (C) Task Force
Phoenix, Arizona
March 29, 2015

The Title Insurance (C) Task Force met in Phoenix, AZ, March 29, 2015. The following Task Force members participated:
Bruce R. Ramge, Chair (NE); Kevin M. McCarty, Vice Chair, and Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Michael Ricker (AK); Dave Jones represented by Jill Jacobi (CA); Marguerite Salazar and Bobbie Baca (CO); Chester A. McPherson represented by Philip Barlow (DC); Ralph T. Hudgens represented by Margaret Witten (GA); Stephen W. Robertson represented by Debra McNeil (IN); Ken Selzer represented by Martin Hazen (KS); Sharon P. Clark represented by Ray Perry (KY); James J. Donelon represented by Warren Byrd (LA); Al Redmer Jr. represented by Victoria August (MD); Annette E. Flood represented by Jean Boven (MI); Mike Rothman represented by Paul Hanson (MN); John M. Huff represented by Carrie Couch (MO); Mary Taylor represented by Michelle Brugh Rafeld (OH); Joseph Torti III represented by Paula Pallozzi (RI); David Mattax represented by Robert Carter (TX); Todd E. Kiser represented by Brett Barratt and Suzette Green-Wright (UT); Jacqueline K. Cunningham represented by Brian Gaudiose (VA); and Mike Kreidler represented by Lee Barclay (WA). Also participating was: George Bradner (CT).

1. **Adopted its Feb. 20 Minutes**

Ms. Jacobi made a motion, seconded by Mr. Gaudiose, to adopt the Task Force’s Feb. 20 meeting minutes (Attachment One). The motion passed unanimously.

2. **Adopted the Title Insurance Financial Reporting (C) Working Group Report**

Mr. Schrader stated that the Working Group met via conference call Feb. 17 to expose for public comment a proposal to the Blanks (E) Working Group that contains a suggestion to revise the *Title Annual and Quarterly Statement Blanks* (Title Statement) and the *Title Annual and Quarterly Statement Instructions* (Title Instructions). The suggestion is to add one- and two-year loss development in the Title Insurance Five Year Historical Data Exhibit. Comments on the proposal are due April 6.

Mr. McCarty made a motion, seconded by Ms. August, to adopt the report of the Title Insurance Financial Reporting (C) Working Group (Attachment Two). The motion passed unanimously.

3. **Adopted the Title Insurance Guaranty Fund (C/E) Working Group Report**

Ms. Jacobi stated that the Title Insurance Guaranty Fund (C/E) Working Group met via conference call Dec. 1, 2014, (Attachment Three) and held an e-vote concluding Dec. 12, 2014, (Attachment Four) whereby the Guaranty Fund Guideline (Guideline) was adopted by the Working Group. The Task Force voted to expose the Guideline for public comment ending March 20, on a Feb. 20 conference call. No comments were received. Upon parent committee adoption of the Guideline, the Working Group will complete its only charge to develop a title insurance guaranty fund guideline.

Ms. Pallozzi stated her concerns regarding the feasibility for all states to create a stand-alone title guaranty fund. She suggested some states may not have the resources for such a fund and that it may be more appropriate for those states to amend existing P/C funds to include title insurance.

Ms. Wright made a motion, seconded by Mr. Byrd, to adopt the report of the Title Insurance Guaranty Fund (C/E) Working Group. The motion passed unanimously.

4. **Adopted the Title Insurance Consumer Shopping Tools (C) Working Group Report**

Mr. Hazen stated that the Title Insurance Consumer Shopping Tools (C) Working Group adopted its shopping template and best practices guide via e-vote Nov. 3. The Task Force exposed the documents for public comment Nov. 17 and met via conference call to discuss comments received on Feb. 20. Comments were received from consumer representatives, the California Department of Insurance and the Michigan Department of Insurance. During the call, several regulators expressed the importance of explaining the difference between owners and lenders policies to consumers so they can make informed decisions when choosing the title coverages to obtain. Another suggestion was made to provide a clear explanation of the
difference between title insurance and homeowners insurance. The Working Group intends to meet via conference call to integrate the suggested revisions.

The Oct. 29, 2014 minutes of the Working Group were revised pursuant to discussion at the 2014 Fall National Meeting and included for consideration in the Title Insurance Consumer Shopping Tools (C) Working Group report (Attachment Six.)

Mr. Byrd made a motion, seconded by Ms. Rafeld, to adopt the report of the Title Insurance Consumer Shopping Tools (C) Working Group. The motion passed unanimously.

5. **Adopted the Draft Title Insurance Guaranty Association—Title Insurance Consumer Protection Fund Guideline (Title Guideline)**

Ms. Jacobi made a motion, seconded by Mr. Gaudiose, to adopt the Title Insurance Consumer Protection Fund Guideline. The motion passed unanimously (Attachment Five.)

6. **Discussed CFPB’s Integrated TILA – RESPA Final Rule**

Karen Koogler (The Koogler Group) sent a letter March 2 to state governors, insurance commissioners and attorneys general regarding possible federal infringement of state title insurance laws relative to the Consumer Financial Protection Bureau’s (CFPB) November 2013 ruling on Truth in Lending Act (TILA) – Real Estate Settlement Procedures Act (RESPA) Integrated Disclosures. Ms. Koogler stated that her primary concern is consumer protection. Ms. Koogler stated that the calculation provided on the CFPB Closing Disclosure provides inaccurate title premiums in states where simultaneous issue discounts are allowed for the purchase of both a lender’s and owner’s policy. She stated that the CFPB provided a remedy for the potential confusion by indicating that the creditor may clarify the issue with consumers who are confused by the amount of the title insurance premiums shown on the Loan Estimate and Closing Disclosure. Ms. Koogler stated her concern regarding the allowance of lenders to disclose title premiums to consumers as they are not subject to the same state regulatory oversight as title insurers. She stated another potential issue is that lenders have the choice of preparing and delivering both the Loan Estimate and Closing Disclosure directly to the consumer. Additionally, Ms. Koogler stated her concern that consumers may not understand the value of the owner’s policy and choose not to purchase it because it will be shown as optional on the Loan Estimate and Closing Disclosure. Ms. Koogler suggested that two possible solutions would be to: 1) adjust rates to conform to the CFPB forms; or 2) apply the simultaneous issue discount to the owner’s policy instead of the lender’s policy.

7. **Heard a Presentation from ALTA Regarding CFPB Closing Disclosure**

Diane Evans (American Land Title Association—ALTA) stated that the TILA-RESPA Integrated Disclosures final rule: 1) creates new liability for lenders; 2) will force title producers to completely overhaul their business processes and technology systems; and 3) will likely cause disruptions in the normal course of business as the ruling become effective Aug. 1, 2015. She stated that any transaction started prior to Aug. 1 is to be completed with the prior forms even if the transaction closes after Aug. 1. This creates an issue for insurers as they must maintain two separate processes until all transactions started prior to Aug. 1 are closed.

Ms. Evans stated that the issue occurs when both lender’s and owner’s title insurance policies are purchased in a transaction, otherwise known as simultaneous issue. The CFPB final rule requires the lender or settlement agent to inaccurately disclose the title premiums on the Closing Disclosure when a simultaneous issue discount is provided. She stated that in roughly half of the states, a consumer is entitled to a discount on the lender’s policy when they purchase an owner’s policy at the same time. This creates confusion for the consumer as the actual title premium charged will not be accurate on the disclosure. In instances where the buyer pays for both policies, the policy premiums may be inaccurately disclosed but the amount to be paid at closing is correct. In instances where the buyer pays for the lender’s policy and the seller pays for the owner’s policy, both policies’ rates are inaccurate, and the total closing cost to each party is also incorrect. Ms. Evans also stated her concern that the owner’s policy will be listed as optional on the Closing Disclosure.

Ms. Evans stated that possible market reactions to the rule include: 1) providing an additional disclosure or settlement statement with correct title premiums listed; or 2) filing new rates to comply with the CFPB calculation. Ms. Evans requested the state regulators collaborate with each state’s title insurance agencies and underwriters on requests for new disclosures or change the rate structure to reflect the CFPB calculation. She also requested that state regulators continue working with industry groups to determine the evidence needed for market examinations and audits to determine that title agents are charging proper rates. Finally, she requested that state regulators work to ensure that state examiners are aware of this issue
regarding the Closing Disclosure when conducting market conduct examinations and audits of title insurers. Ms. Evans stated that ALTA is lobbying to change the regulation, working with the state regulators on training surrounding this issue and also working on a separate settlement statement to show actual rates that consumers are charged for title insurance. The separate settlement statement will accompany the Closing Disclosure and be similar to the closing and settlement statements title agents and underwriters currently utilize.

Director Ramge asked Ms. Evans if it would be a worthwhile task of the Task Force to attempt to create a disclosure that could be used in addition to the CFPB disclosure in order to provide for accurate disclosure of title premiums. Ms. Evans stated that the state law varies so significantly that it would be difficult to create one form that addresses each state’s requirements. Justin Ailes (ALTA) stated that the HUD-1 form, which will be superseded by the new Closing Disclosure, was used by many stakeholders, including investors, in the secondary market to determine if mortgage origination fees were accurately disclosed and by the U.S. Department of Justice (DOJ) to determine if there was mortgage fraud in the transaction.

Ms. August asked why the CFPB decided to develop the new forms. Mr. Ailes stated that through his discussions with the CFPB, he determined that the CFPB was seeking to provide a uniform disclosure for the entire credit transaction and to provide clarity to consumers regarding what they were quoted for the transaction versus what they were actually charged. Mr. Byrd asked if a separate model form would be in compliance with the CFPB ruling. Mr. Ailes stated that nothing in the CFPB ruling prohibits the use of additional state based forms to be used in the transaction.

Birny Birnbaum (Center for Economic Justice—CEJ) suggested that the simultaneous issue discount be applied to the lender’s policy instead of the owner’s policy, which would be in compliance with the calculation applied in the Closing Disclosure. He suggested that states consider asking the industry to refile their rates in order to comply with the Closing Disclosure.

8. Discussed the Development of a Consumer Disclosure Regarding Affiliated Business Arrangements

Ms. Brangaccio invited anyone with intent to present on affiliated business arrangements to contact NAIC staff and that a conference call will be held to discuss the issues presented. Mr. Birnbaum suggested that comments submitted to the Title Insurance Consumer Shopping Tools (C) Working Group be considered in regard to the consumer disclosure on affiliated business arrangements.

9. Heard an Update on Federal Activities

Tony Cotto (NAIC) stated that during discussion regarding the Mortgage Choice Act (HR 685), a consortium of interested parties, including the Center for Responsible Lending, referenced the March 2010 “Survey of State Title Insurance Regulation” produced by the Task Force. He suggested that the Task Force update the survey in order to ensure that the information it contains accurately reflects current state law.

10. Discussed Other Matters

Ms. Brangaccio asked the Task Force if it believes an update to that survey is necessary at this time. Ms. Witten stated that she recently reviewed the survey due to questions raised on the state attorney bulletin board and found the information contained in the survey to be outdated.

Mr. Birnbaum stated that the NAIC Compendium of State Laws on Insurance Topics (Compendium) could provide the information regarding state regulation. NAIC staff stated that the Compendium only contains a portion of the information and does not provide the level of detail included in the survey.

Ms. Jacobi made a motion, seconded by Ms. Pallozzi, to update the “Survey of State Title Insurance Regulation.” The motion passed unanimously.

Having no further business, the Title Insurance (C) Task Force adjourned.