

## **TITLE INSURANCE (C) TASK FORCE**

Title Insurance (C) Task Force March 16, 2021, Minutes

Title Insurance (C) Task Force Feb. 23, 2021, Minutes (Attachment One)

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## Draft Pending Adoption

Draft: 4/1/21

Title Insurance (C) Task Force  
Virtual Meeting (*in lieu of meeting at the 2021 Spring National Meeting*)  
March 16, 2021

The Title Insurance (C) Task Force met March 16, 2021. The following Task Force members participated: Judith L. French, Chair, represented by Michelle Brugh Rafeld (OH); David Altmaier, Vice Chair, represented by Jeffrey Joseph (FL); Peni Itula Sapini Teo represented by Elizabeth Perri (AS); Karima M. Woods represented by Angela King (DC); Colin M. Hayashida represented by Martha Im and Paul Yuen (HI); Vicki Schmidt represented by Heather Droge (KS); James J. Donelon represented by Warren Byrd (LA); Kathleen A. Birrane represented by David Zitterbart (MD); Chlora Lindley-Myers represented by Carrie Couch (MO); Troy Downing and Tyler Spady (MT); Mike Causey represented by Timothy Johnson (NC); Bruce R. Range (NE); Marlene Caride represented by Randall Currier (NJ); Russell Toal (NM); Jessica K. Altman represented by Michael McKenney (PA); Raymond G. Farmer represented by William Starks (SC); Larry D. Deiter represented by Maggie Dell (SD); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Kevin Gaffney (VT). Also participating was: Adam Martin (UT).

### 1. Adopted its Feb. 23 Minutes

The Task Force met Feb. 23 and took the following action: 1) adopted its Oct. 21, 2020, minutes; 2) discussed its 2021 work plan; and 3) heard a presentation on effects of the COVID-19 pandemic on the title insurance industry.

Mr. Byrd made a motion, seconded by Superintendent Toal, to adopt the Task Force's Feb. 23 minutes (Attachment One). The motion passed unanimously.

### 2. Discussed its Revised 2021 Work Plan

Ms. Rafeld stated that the revised list of work plan ideas for 2021 is as follows:

1. Explore the effects of the COVID-19 pandemic on the title insurance industry through presentations.
  - a. Presentation, Part 1 from the American Land Title Association (ALTA) on the Feb. 23 call.
  - b. Presentation, Part 2 from ALTA on the March 16 call.
  - c. Possible presentations from other interested parties.
  - d. Produce a brief summarizing the findings.
2. Revise the *Title Insurance Consumer Shopping Tool Template*.
  - a. Discuss comment letters on revision suggestions during the March 16 call.
  - b. Member drafting sessions begin March 23.
  - c. Drafting members: Ms. Rafeld; Mr. Joseph and Anoush Brangaccio (FL); Mr. Byrd; Marianne Baker (TX); Sharon Richetti (MT); Mr. Johnson; Erica Bailey (MD); Dorcas Voyles (FL DFS); Marjorie Thompson (MO); and Mr. Beavers.
3. Monitor issues and developments occurring in the title insurance industry, including profitability and claims settlement.
  - a. Presentation by AM Best on the latest Best's Market Segment Report on the U.S. Title Insurance Market on **TBD**.
  - b. Presentation by Demotech on their recent defalcation study on **TBD**.
  - c. Presentation by consumer representatives on consumer protection issues they are hearing on **TBD**.
  - d. Potential presentation by the Federal Bureau of Investigation (FBI) on cybercrime and business email compromises.
  - e. Explore a presentation regarding criminal investigations of wire fraud.
4. Assist the Antifraud (D) Task Force in combating fraud through joint calls and meetings.
  - a. A request was sent Jan. 28 to Antifraud (D) Task Force members asking them to share reports of title insurance fraud and/or mortgage fraud trends in their states. Responses will be used to develop sharing opportunities through future calls and meetings.

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5. Will consult with the Consumer Financial Protection Bureau (CFPB) through regulator-only and/or open calls with the CFPB.
  - a. Presentation from the CFPB on recent changes and priorities.
  - b. Determine if joint regulator-only calls are needed.
  
6. Determine the role of the Task Force in exploring race and insurance implications in the title insurance space.
  - a. Confer with the Special (EX) Committee on Race and Insurance and the Property Casualty Insurance (C) Committee.

Ms. Rafeld stated that the first work plan item remains to explore the impact of the COVID-19 pandemic on the title insurance industry through presentations, such as the one ALTA is finishing during the current meeting. Based on the Task Force's mutual agreement on its Feb. 23 call, the work plan now also includes potential presentations from other interested parties, such as consumer representatives, title underwriters, and state insurance regulators. This includes a suggestion to take a deeper look into how consumers responded to virtual closings.

The second work plan item remains to update the *Title Insurance Consumer Shopping Tool Template* through member drafting sessions beginning March 23. Nine states have signed on to participate in the drafting sessions. Thus far, two states have submitted suggested revisions. Ms. Rafeld also discussed Birny Birnbaum's (Center for Economic Justice) suggestion to conduct testing on the *Title Insurance Consumer Shopping Tool Template*. She indicated that while the suggestion is not without merit, the specific charge of the Task Force is to make updates to include information regarding fraud. She suggested the Task Force discuss any additionally proposed revisions when it discusses its 2022 charges.

The third work plan item now includes the addition of "monitor issues and developments occurring in the title insurance industry, including profitability and claims settlement." This includes presentations by AM Best on its latest Best's Market Segment Report, Demotech on its recent defalcation study, and consumer representatives on any related issues. Additionally, as recommended by Virginia, the Task Force will reach out to the FBI to hear about cybercrime and business email compromises, which is one of Virginia's biggest issues. Other presentations on criminal investigations of wire fraud may be contemplated too.

The fourth work plan item is to assist the Antifraud (D) Task Force in combating fraud through future calls and meetings based on responses received from Antifraud (D) Task Force members on trends in their states.

Under the fifth work plan item, the Task Force will still consult with the CFPB to receive an update. Based upon the outcome of discussions with the Antifraud (D) Task Force, the Title Insurance (C) Task Force may hold regulator-only calls with the CFPB.

The sixth work plan item relates to the suggestion by some Task Force members to look into race and insurance implications in the title insurance space. The Special (EX) Committee on Race and Insurance has several workstreams. The third workstream is charged to examine and determine which practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups in the property/casualty (P/C) line of business. This workstream is currently determining if and what tasks it should delegate to specific subject matter expert (SME) groups. The workstream plans to take up the Task Force's request for clarification on what role it should play in this area on a call in the near future. An update will be provided once a decision has been communicated by the Committee.

Mr. Byrd asked if the role of exploring race and insurance would focus on more minorities working in the field of title insurance or on the sale of a policy in areas that may be populated by minorities. Ms. Rafeld stated that it is her general impression that the Task Force members want to look into all of the issues in this space.

Steve Gottheim (ALTA) said ALTA is finalizing new base policy forms, and he would be happy to present on them during a future Task Force meeting. Ms. Rafeld stated that she would add the proposed presentation to the work plan for 2021.

### 3. Heard Part Two of a Presentation on the Effects of the COVID-19 Pandemic on the Title Insurance Industry

Mr. Gottheim, Mary Payne Thomas (Stewart Title Guaranty Company), and Nick Hacker (Guaranty & Title Co.) continued their presentation that began during the Feb. 23 meeting. The early days of the pandemic brought much uncertainty. Most companies experienced a 40% drop in volume. County closures created barriers to conducting searches and closing deals. This was followed by a rebound in volume, driven by mortgage refinances. The industry met these challenges and worked to ensure that closings occurred safely and efficiently. Costs increased due to personal protection equipment (PPE) purchases and digital

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closings, which rose by over 500%. Flexible contingency plans were put in place to address staffing challenges presented by infection.

2020 was an unusual year with staggering levels of volume. The outlook for 2021 is also very strong if interest rates remain low. Existing home sales increased to \$5.65 million in 2020, up from \$5.34 million in 2019. They are anticipated to increase again to \$6.04 million in 2021 before dropping to \$5.7 million in 2022. New home sales increased to \$811,000 in 2020, up from \$682,000 in 2019. They are anticipated to increase again to \$860,000 in 2021 before dropping to \$851,000 in 2022. New purchase mortgages and refinances trend accordingly with existing and new home sales. The federal government is staying foreclosures and evictions through June, and states have similar limits in place. Once the limits are no longer in place, the market will face distress. Black Knight reported that 2.7 million Americans have active forbearance plans, with 308,000 already in modifications. However, only 1% of commercial sales are distressed, which is a significant difference from 2010, when about 20% were distressed. It should be noted that in nonjudicial foreclosure states, title companies are often listed as the trustee in a consumer's mortgage. The current low foreclosure rate brings additional reserving uncertainty. The mix of claims is changing with more people at home. Neighbor disputes and issues related to renovations are more prevalent. Delayed mail delivery and service is also affecting the receipt of policies and claims notifications.

State insurance regulators have helped ease the strain of the pandemic by relaxing in-person audit or examination requirements. This includes allowing more audits to be conducted electronically. State insurance regulators have also waived notary and original signature requirements on filed forms. Additionally, education and testing for licensing was allowed to be done virtually.

The title insurance industry also dedicated time, effort and money to strengthening communities through charitable acts like donations of PPE, food and other services. In October 2020, ALTA launched the ALTA Good Deeds Foundation to bolster charitable efforts of its members in its communities. The Foundation's aid goes to help those adversely affected by national emergencies, such as the COVID-19 pandemic, or with housing needs.

Ms. Rafeld stated that the presentation was very eye opening on the level of creativity the industry was forced to use as soon as the pandemic hit.

Mr. Byrd asked if the additional costs incurred due to the pandemic were passed on to the participants in the closing. Mr. Hacker said the costs were not passed on, and the pricing has remained the same for over a year. Ms. Thomas said costs in the early days of the pandemic included innovative things like partnering with local distilleries for hand sanitizer because PPE was not readily available during this time.

Mr. Martin asked if there is the potential for loans and foreclosures to cause significant fraud issues similar to what happened during the Great Recession. Mr. Hacker said it is a distinct worry because the foreclosures that came to fruition during the Great Recession were the result of fraud that happened during the run up to that recession. Additionally, a lot of fraud claims during the Great Recession related to issues with the mortgage modification process. There is a lot of work going on to find ways to speed up the modification process, including with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). The faster a consumer is transitioned from initial contact into active modification, the higher the success.

Ms. Thomas said there is the expectation of increased claims from fraudulent foreclosures. The industry must deal with these new issues while also still managing ongoing fraud issues, such as wire fraud, that has been sustained due to the increasing savvy of fraudsters. State insurance regulators should be aware of the potential for increased consumer complaints, since many complaints are centered around how a claim has been handled and how claims have increased.

Mr. Byrd asked for clarification on the process that occurs between a foreclosure and a title insurance issue. Ms. Thomas said there are many different ways, including intervening loans that might result in a lender claim during the foreclosure process, someone filing a claim to avoid foreclosure, and simply being included as a party because the company was involved in the policy issued and therefore listed as the trustee on the deed of trust. Mr. Gottheim said there are also circumstances beyond the standard types of claims just mentioned. One common way closure can add to the claims experience is an issue not being discovered until someone runs the title for foreclosure for the lenders. Mr. Hacker said there can also be legal description disputes. His company had a recent claim in which the mortgage encumbered a small piece of land that was not owned by the property owner. This resulted in the purchase of an additional four feet of the neighbor's land during the foreclosure process.

Mr. Byrd said Louisiana is introducing legislation to remove the reference to "on-site audit" in its law so audits may also be done electronically.

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### 4. Discussed Comments Received on Revision Suggestions to the *Title Insurance Consumer Shopping Tool Template*

Ms. Rafeld stated that following the Feb. 23 call, a request was sent out for members, interested state insurance regulators, and interested parties of the Task Force to submit revision suggestions for the *Title Insurance Consumer Shopping Tool Template* for the drafting group to consider in its drafting sessions by March 12. Revision suggestions were received from Virginia and Louisiana. Virginia and Louisiana's suggested edits included the following:

#### Virginia

- Revising the “If you’ve found the perfect home or property” subsection to: 1) combine the fifth and sixth bullets to: “You’ll buy homeowners insurance through a licensed property and casualty insurance agent who can also assist you in determining if you need additional coverages, such as flood or earthquake”; and 2) add that closings may be held in person or virtually.
- Revising the “If you’re refinancing your home or property” subsection to identify lenders and owners.
- Revising the “Two Types of Title Insurance—Owner’s and Lender’s Policies” section to note that coverage can also apply to heirs.
- Revising the “What Doesn’t Title Insurance Cover?” section to add a comment that encourages consumers to contact their title insurance company if there are any questions regarding coverage of a possible claim.
- Revising the “The Right to Choose Your Own Title Agent/Company” section to delete the reference to “in the phone book.”
- Revising the “Closing Agents” section to include banks and real estate brokers handling some settlements.
- Revising the “Shop Around for Title Insurance and Closing Services” section to mention some states allow for negotiated rates.
- Revising the “Final Tips to Remember” section to add fraud tips from the FBI and red flags and prevention methods for business email compromises (BECs), personal email compromises, phishing, etc.

#### Louisiana

- Replacing “agent” with “producer” and adding clarifying language to include “property” in addition to “home” throughout the document.
- Revising the “Introduction” section to change “good” to “wise” and move “however” to the beginning of the sentence.
- Revising “The Difference Between Title and Homeowners Insurance” section to create separate bullets for multi-sentenced bullets and support the statement on how a homeowners policy is paid and renewed.
- Adding a “The Role of Fraudsters in Real Estate Transactions” section.

Mr. Beavers stated that his proposed revisions focus primarily on information to assist consumers when they have an issue with fraud, such as email compromise.

Mr. Byrd stated that his proposed revisions include considering if “producer” should be used in place of “agent,” changing the format, and adding a new section on fraud.

Ms. Rafeld asked that any additional proposed revisions be submitted to NAIC staff by March 19.

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

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Draft: 3/12/21

Title Insurance (C) Task Force  
Virtual Meeting  
February 23, 2021

The Title Insurance (C) Task Force met Feb. 23, 2021. The following Task Force members participated: Judith L. French, Chair, represented by Michelle Brugh Rafeld (OH); David Altmaier, Vice Chair, represented by Jeffrey Joseph and Anoush Brangaccio (FL); Lori K. Wing-Heier (AK); Karima M. Woods represented by Angela King (DC); Colin M. Hayashida represented by Martha Im (HI); Vicki Schmidt represented by James Norman (KS); James J. Donelon represented by Charles Hansberry (LA); Kathleen A. Birrane represented by David Zitterbart (MD); Grace Arnold represented by Phil Vigliaturo (MN); Chlora Lindley-Myers (MO); Troy Downing (MT); Mike Causey represented by Timothy Johnson (NC); Bruce R. Range (NE); Marlene Caride represented by Randall Currier (NJ); Russell Toal (NM); Jessica K. Altman represented by Michael McKenney (PA); Raymond G. Farmer represented by Daniel Morris (SC); Larry D. Deiter represented by Maggie Dell (SD); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Kevin Gaffney (VT).

1. Adopted its Oct. 21, 2020, Minutes

The Task Force met Oct. 21, 2020, to adopt its 2021 proposed charges.

Superintendent Toal made a motion, seconded by Ms. Brangaccio, to adopt the Task Force's Oct. 21, 2020, minutes (*see NAIC Proceedings – Fall 2020, Title Insurance (C) Task Force, Attachment One*). The motion passed unanimously.

2. Discussed its 2021 Work Plan

Ms. Rafeld stated that the proposed list of work plan ideas for 2021 is as follows:

1. Will explore the effects of the COVID-19 pandemic on the title insurance industry through presentations.
  - a. The first presentation will be from the American Land Title Association (ALTA) during the Feb. 23 meeting.
2. Revise the *Title Insurance Consumer Shopping Tool* (Shopping Tool) template through member drafting sessions beginning March 23.
  - a. Please notify NAIC staff Anne Obersteadt ([aobersteadt@naic.org](mailto:aobersteadt@naic.org)) by March 12 if you would like to participate.
  - b. The drafting group would like to solicit revision suggestions for its consideration. Please submit revision suggestions to NAIC staff Anne Obersteadt ([aobersteadt@naic.org](mailto:aobersteadt@naic.org)) by March 12.
3. Will assist the Antifraud (D) Task Force in combating fraud through joint calls and meetings.
  - a. A request was sent Jan. 28 to Antifraud (D) Task Force members asking them to share reports of title insurance fraud and/or mortgage fraud trends in their state. Responses will be used to develop sharing opportunities through future calls and meetings.
4. Will consult with the Consumer Financial Protection Bureau (CFPB) through regulator-only calls with the CFPB.

Ms. Rafeld stated that the first item in the proposed work plan should also include inviting consumer representatives, title underwriters, and state insurance regulators to provide presentations on this topic. She stated that Birny Birnbaum (Center of Economic Justice—CEJ) brought up some very interesting questions related to virtual closings in his submitted comment letter. Answering these questions, concerns or issues consumers have raised since the pandemic through a presentation from Mr. Birnbaum and other consumer representatives would be beneficial to the Task Force.

On its last call in 2020 to discuss its 2021 proposed charges, the Task Force decided it should prioritize updating the Shopping Tool. As such, the second work plan item is to do so through member drafting sessions beginning March 23. Members of the Task Force interested in participating were directed to notify NAIC staff by email by March 12. Also, to get the drafting process started, revision suggestions from members, interested state insurance regulators, and interested parties for the drafting group to consider in its drafting sessions were requested to be submitted by March 12 to NAIC staff.

Mr. Birnbaum stated that the Task Force should take an analytic approach to evaluate how the Shopping Tool should be updated by establishing criteria that helps determine what is or is not useful. Criteria includes determining how or if the Shopping Tool

has been used by states and consumers. It also includes evaluating if the format needs to be revised and if the distribution channel needs improvement.

The third work plan item meets the Task Force's charge to assist the Antifraud (D) Task Force in combating fraud. On January 28, a request was sent out to Antifraud (D) Task Force members asking them to share reports of title insurance fraud and/or mortgage fraud trends in their state. NAIC staff compiled the responses, and at a high level, states reported some of the following issues: consumer protection letter (CPL) concerns, defalcations, fraudulent settlement transactions, wire fraud complaints, cybercrime, improper rebating and discount offerings, payment of unlawful compensation to realtors, and using higher priced owners' policies of title insurance without notice or consent of the policyholder. Including a regulator-only call with Antifraud (D) Task Force members to discuss these issues in greater detail could be helpful in determining if further such meetings are needed.

The fourth agenda item is designed to meet the Task Force's charge to consult with the CFPB. An email was sent to the CFPB about this charge and the Task Force's desire to work with them once again. If the CFPB is open to the suggestion, receiving an update from them on a future call would be very helpful. There may even be a need to have regulator-only calls with the CFPB and the Antifraud (D) Task Force.

Ms. Rafeld stated that AM Best sent NAIC staff its recently released *Market Segment Outlook: US Title Insurance* report. She proposed that hearing a presentation from AM Best on the report may address the comments received from Mr. Birnbaum on the need to examine title insurance profitability. She further proposed that Mr. Birnbaum's questions on race and title insurance be referred to the Special (EX) Committee on Race and Insurance since they fall in line with the charges that the Committee is exploring.

Superintendent Toal stated that he has concerns in referring race and insurance issues to the Special (EX) Committee on Race and Insurance. He stated that it deserves the attention of the Title Insurance (C) Task Force. Mr. Birnbaum stated that the CEJ's preference was to keep the issue at the Task Force level and inform the Committee that this is the Task Force's preference. The Committee is examining global issues in this area. The Task Force should look into title insurance specific considerations. Steve Gottheim (ALTA) stated that he agrees with Mr. Birnbaum because there are many differences in the way title insurance operates, including in its rate structures and the proxies it uses for risk. Ms. Rafeld stated that the proposed 2021 work plan is a fluid document, and she said she would examine before the next call whether there is a place within the Task Force's charges that the race and insurance issues could be taken up. She also stated that she would reach out to the Committee NAIC staff support to get feedback on how best to coordinate.

Mr. Gottheim stated that ALTA is in the final stages of updating its policy forms, and it would like to present on the updates to the Task Force during the Summer National Meeting or a later meeting.

Mr. Beavers requested that the AM Best report be distributed to the Task Force. Ms. Rafeld said NAIC staff would distribute it to the Task Force after the meeting.

### 3. Heard Part One of a Presentation on the Effects of the Pandemic on the Title Insurance Industry

Mr. Gottheim, Mary Payne Thomas (Stewart Title), and Nick Hacker (Guaranty & Title Co.) outlined how the title insurance industry was able to pivot its services during the early stages of the pandemic. In mid-March 2020, many states issued stay-at-home orders, and companies were suddenly left to figure out how to operate remotely. Volatile swings in demand in these early weeks drove uncertainty on how the pandemic and the resulting recession would affect home buying and the title business, potentially leading to furloughs. A number of companies saw volume drop over 40% in March and early April. Over five thousand title companies took Paycheck Protection Program (PPP) loans. Volume then spiked from new interest in home ownership and low interest rates.

The industry met these challenges and worked to ensure that closings occurred safely and efficiently. Closing options employed were in-person with accommodations for social distancing, curbside where the customer remained in the car during the closing, and remote via the internet with a webcam. Notarization methods used include: 1) remote online notarization (RON) of electronic documents with use of multi-factor authentication; 2) remote online notarization of paper documents (PRON) delivered via mail or courier with use of multi-factor authentication; 3) remote notarization of paper documents via audio-video (RIN); 4) traditional wet in-person notarization (TWIN); and 5) in-person notarization of electronic documents (PEN). Twenty-nine states had passed online notary legislation by November 2020. Online closing is useful, but it is still cumbersome due to the multi-factor authentication needed to keep the transaction safe and the large number of partners involved in the

process.

There were many operational logistics that had to be worked out to produce a policy and close remotely. This included how to access needed public records when county recording offices are shut down, operating remotely, or operating on a skeleton staff. Some offices did not provide the ability to do a title search or record a document. Offices providing online services still came with the challenge of getting land records with sufficient history. Companies were faced with making a risk judgment on how comfortable they were with the limited data available to do the transaction. Since the operating procedure at each county office varied greatly, constant monitoring was needed to evaluate each individual county situation. It was of great help when several states partnered with the U.S. Department of Homeland Security and the General Services Administration (GSA) to put out a list of central services that included title insurance and county recorders.

To stay open, companies incurred many extra costs, including personal protection equipment—masks, sanitizer, Plexiglas, single-use pens—for employees and customers, new equipment to allow work from home and digital closing, internet access, and training on new protocols and technology. Not every job could be done remotely. Contingency plans were developed to keep operations going when an employee had to quarantine. This was especially challenging in rural operations where there may have been only one person doing that job with the nearest overflow staff two hours away. Safety protocols with little information, such as how long the coronavirus lasts on paper, also had to be addressed.

The innovation that occurred out of necessity was spectacular in the industry. For example, there were companies that partnered with local distilleries to produce hand sanitizer. Other local offices rented wedding tents to set up drive through closings. Much of the innovation was due to technology. Technology will continue to be important to innovation in the title industry. However, technology is also driving up the cost of transactions. RON on average doubles staff time. These systems come with per transaction fees, require more training, new equipment, and other systems to be able to set it up. The industry's challenge will be providing local service to home buyers (or homeowners refinancing) and balancing it with the needs of its staff.

Ms. Rafeld stated that the presentation had been very eye opening on the level of creativity the industry was forced to use as soon as the pandemic hit. She invited Mr. Gottheim, Ms. Thomas and Mr. Hacker to continue their presentation at the Task Force's March 16 call.

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

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