NAIC
National Association of Insurance Commissioners
& The Center for Insurance Policy and Research

2019 Fall National Meeting

Title Insurance (C) Task Force

Sunday, December 8, 2019
Austin, TX

Date: 11/5/19

2019 Fall National Meeting
Austin, Texas

TITLE INSURANCE (C) TASK FORCE
Sunday, December 8, 2019
3:00 – 4:00 p.m.
JW Marriott Austin —JW Grand Ballroom 3-4—Level 4

ROLL CALL

James J. Donelon, Chair	Louisiana	Barbara D. Richardson	Nevada
David Altmaier, Vice Chair	Florida	Marlene Caride	New Jersey
Lori K. Wing-Heier	Alaska	John G. Franchini	New Mexico
Peter Fuimaono	American Samoa	Mike Causey	North Carolina
Michael Conway	Colorado	Jillian Froment	Ohio
John F. King	Georgia	Glen Mulready	Oklahoma
Colin M. Hayashida	Hawaii	Jessica Altman	Pennsylvania
Dean L. Cameron	Idaho	Raymond G. Farmer	South Carolina
Vicki Schmidt	Kansas	Larry Deiter	South Dakota
Al Redmer Jr.	Maryland	Todd E. Kiser	Utah
Steve Kelley	Minnesota	Michael S. Pieciak	Vermont
Chlora Lindley-Myers	Missouri	Scott A. White	Virginia
Bruce R. Ramge	Nebraska		

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

1. Consider Adoption of its Sept. 25, 2019, and 2019 Summer National Meeting Minutes —*Commissioner James J. Donelon (LA)* — Attachments 1-2

2. Hear an Update on Recent Fraudulent Activities—*Open to Anyone with Updates to Share*

3. Hear a Presentation on the Title Industry, Including Types of Endorsements, Market Statistics, Closing Protection Letter Statutes, and the Effect of Mandatory Title Insurance —*Joseph L. Petrelli (Demotech)* — Attachment 3

4. Hear a Presentation on the History of Closing Protection Letters—*Jim Gosdin (Stewart Title) and Diane Evans (Land Title Guarantee Company of Colorado)* — Attachment 4

5. Receive Compiled NAIC Information on Closing Protection Letters —*Commissioner James J. Donelon (LA)* — Attachment 5

6. Discuss Any Other Matters Brought Before the Task Force—*Commissioner James J. Donelon (LA)*

7. Adjournment

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Attachments One and Two

Consider Adoption of the Sept. 25 and Summer National Meeting Conference Call Minutes

—Commissioner James J. Donelon (LA)

Draft: 10/8/19

Title Insurance (C) Task Force
Conference Call
September 25, 2019

The Title Insurance (C) Task Force met by conference call on Sept. 25, 2019. The following Task Force members participated: James J. Donelon, Chair, represented by Warren Byrd (LA); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Joanne Bennett (AK); Michael Conway represented by Dennis Newman (CO); John F. King represented by Margaret Witten (GA); Dean L. Cameron represented by Jim Scanlon (ID); Vicki Schmidt represented by James Norman (KS); Mike Causey represented by Timothy Johnson (NC); Bruce R. Ramge represented by Matt Holman and Barbara Peterson (NE); Marlene Caride represented by Carl Sornson (NJ); John G. Franchini represented by Otis Phillips (NM); Jillian Froment represented by Michelle Brugh Rafeld (OH); Glen Mulready represented by Joel Sander (OK); Jessica Altman represented by Michael McKenney (PA); Todd E. Kiser represented by Jay Sueoka (UT); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Karen Ducharme (VT). Also participating were: Emma Hirschhorn and Susan Stapp (CA); Holly Zhu (MI); Marianne Baker and Ronda Lee (TX); Eric Slavich (WA); and Donna Stewart (WY).

1. Discussed and Adopted its 2020 Proposed Charges

Mr. Byrd stated comments on its exposed 2020 proposed charges were due Sept. 16. Its 2020 proposed charges include disbanding the Title Insurance Financial Reporting (C) Working Group and moving its charges into the Task Force directly (proposed charge D). They also include additional charges for revising the *Title Insurance Consumer Shopping Tool* (proposed charge E) and evaluating the effectiveness of closing protection letters (CPLs) (proposed charge F).

Its 2020 proposed charges are as follows:

A. Monitor issues and developments occurring in the title insurance industry, and provide support and expertise to other NAIC committees, task forces and/or working groups, or outside entities, as appropriate.
B. Review and assist various regulatory bodies in combating fraudulent and/or unfair real estate settlement activities. Such efforts could include working with the Antifraud (D) Task Force and other NAIC committees, task forces and/or working groups to combat mortgage fraud and mitigating title agent defalcations through the promotion of closing protection letters (CPLs) and other remedies. Report results at each national meeting.
C. Consult with the Consumer Financial Protection Bureau (CFPB) and other agencies responsible for information, education and disclosure for mortgage lending, closing and settlement services about the role of title insurance in the real estate transaction process.
D. As necessary, consider the effectiveness of changes in financial reporting by title insurance companies and identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools and other matters. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.
E. Revise the *Title Insurance Consumer Shopping Tool Template* to include questions and answers about title insurance-related fraud topics, including, but not limited to, CPLs and wire fraud.
F. Evaluate the effectiveness of CPLs, including, but not limited to, intent, state regulation and requirements, consumer protections offered and excluded, and potential alternatives for coverage.

a. Proposed Charge E

Brenda J. Cude (University of Georgia) and Birny Birnbaum (Center for Economic Justice—CEJ) suggested the charge regarding consumer information be expanded to include the revision of the *Title Insurance Consumer Shopping Tool Template* (Shopping Tool). Specifically, they suggested revisions include questions and answers about title insurance-related fraud topics, including, but not limited to, CPLs and wire fraud.

Ms. Rafeld stated it is a good suggestion to incorporate discussion on fraud topics into the Shopping Tool given the numerous related consumer complaints, especially on wire fraud.

Justin Ailes (American Land Title Association—ALTA) stated the Federal Bureau of Investigation (FBI) attributes $5 billion to business email compromise. Of that, $149 million in attributed to criminal real estate closing activities alone, affecting 11,300 victims. However, the FBI estimates this likely represents only 10% to 15% of the full criminal activity, since much is not reported. ALTA supports the incorporation of fraud topics into the Shopping Tool.

Mr. Byrd stated there seems to be a consensus to add a charge to "revise the *Title Insurance Consumer Shopping Tool Template* to include questions and answers about title insurance-related fraud topics, including, but not limited to, closing protection letters and wire fraud."

b. Proposed Charge F

Andrew Liput (Secure Insight) suggested the charge regarding CPLs should be expanded to include the formation of a subgroup to evaluate whether the CPL is the most effective and appropriate manner and method to protect/cover borrowers, lenders and subsequent lienholders from risk of loss from mortgage closing negligence and fraud. This evaluation should include considering adding a new product option or replacing the CPL with an insurance policy covering consumers, lenders, future lienholders and other relevant stakeholders to a mortgage closing. This insurance policy would have the advantage of being subject to traditional insurance ratings, premium approvals, terms and conditions reviews, consumer education/opt-out requirements, and traditional risk underwriting processes. Additionally, its pricing would be as a transaction-based product commensurate with the current market for a fraud/negligence hybrid policy. Alternately, such a policy could be approved as an alternative to the CPL, with consumers choosing which type of protection they would like to purchase. He advised replacing the CPL with an insurance policy is advisable because the CPL is: 1) a form of warranty letter and not a true insurance product included in the title insurance policy; 2) not available in every state; 3) being billed to consumers as a title charge and packaged in a letter format that appears to a layperson to be a form of insurance; 4) not regulated by state insurance laws addressing claims practices, licensed sales activity and typical transparency/terms explanation/notice provisions usually found when marketing and selling insurance; 5) is not being underwritten like typical insurance policies; 6) not an optional charge to consumers, with charges from $50 to $125 per transaction in many states; and 7) does not cover all potential risk to a consumer, lender and future lienholder from negligence and intentional acts that might occur at a mortgage closing. He suggested the Task Force analyze prior discussions it had in 2008–2010 on an initiative to review the CPL to determine whether an insurance alternative made sense. Additionally, the *Title Escrow Theft & Title Insurance Fraud* white paper adopted by the Task Force in 2013 includes a section on CPLs that the Task Force should review again.

Mr. Byrd stated he believes this to be an important issue to look at and would fit under the Task Force's current charges, requiring no additional charge to be developed. Additionally, he stated the Task Force should undertake the initial discussions before considering the formation of a subcommittee to examine the issue. The Task Force's recently concluded survey of state laws related to title insurance would provide a great resource in examining how the CPL is being handled across the states. Louisiana took a positive step in 2011 when it enacted La. R.S. 22:515 of the Louisiana Insurance Code with specific revisions that brought CPLs into the title insurance arena fully.

Ms. Rafeld stated this proposal would be interesting for the Task Force to investigate. Ohio requires title agents to offer the option of a CPL to consumers. However, many consumers do not fully understand closing protections, many title agents gloss over them, and disreputable title agents are not likely to offer them at all.

Mr. Byrd stated he agrees. He stated there are only a few states that handle CPLs in the same manner as Louisiana. The Task Force should gain an understanding of how other states handle CPLs by reviewing a cross-section of information related to CPLs from the survey of state laws at the Fall National Meeting.

Ms. Rafeld stated it would also be beneficial for the Task Force to review any discussions on CPLs it has had in prior years. Mr. Byrd directed NAIC to include this information in the Fall National Meeting. Jennifer Gardner (NAIC) stated the NAIC will provide materials at the Fall National Meeting that include questions related to CPLs, including the related statutes, from the survey of state laws that was just updated earlier this year. NAIC staff will also compile discussions on CPLs from old proceedings it has collected for the Fall National Meeting.

Mr. Ailes stated ALTA supports looking into CPLs and would be available to present on the history of CPLs at the Fall National Meeting. He noted charge B and charge F both address CPLs. Mr. Byrd stated while they do cross over, charge F provides more focus on how CPLs should be addressed by the Task Force. Mr. Byrd stated there seems to be a consensus that the Task Force should address this issue at the Task Force level, as drafted in the 2020 proposed charges.

c. Proposed Additional Considerations

Mr. Philips suggested the Task Force consider the following: 1) whether searches and title plants should remain a requirement to issue title insurance when it is issued based on algorithms and if they need to be under separate regulations; 2) if CPLs should be available upon request to everyone; 3) if insurers should back-up CPLs and hold the agents liable for error; 4) the relation of bonding and error and omissions; 5) best practice requirements; 6) assessing the current accountability of financial fiduciary responsibilities; and 7) if the Consumer Financial Protection Bureau (CFPB) enforces the federal Real Estate Settlement Procedures Act (RESPA).

Mr. Byrd stated these questions are important for the Task Force to consider and can be done within its currently drafted charges. The Task Force should consider discussing the CFPB's potential enforcement of RESPA at the Fall National Meeting. Mr. Philips supported this approach.

Ms. Rafeld made a motion, seconded by Mr. McKenney, to adopt the Task Force's 2020 proposed charges. The motion passed unanimously.

2. Discussed Other Matters

Mr. Byrd stated it should be noted that the Federal Trade Commission (FTC) issued an administrative complaint on Sept. 6 seeking to block the merger of Fidelity National Financial and Stewart Information Services. The FTC alleged the merger would substantially reduce competition in state markets for commercial title insurance underwriting. On Sept. 10, Fidelity National Financial stated it would pay $50 million to Stewart Information Services to terminate their $1.2 million merger.

Ms. Rafeld stated her state had a situation recently where a legitimate title company's web presence was hijacked by a Mexican timeshare resale scam operation. They were made aware of it after a consumer went to the legitimate company's location and was told they did not know anything. Other states are experiencing similar activity. The scam looks credible because it hijacks the corporate identity of a legitimate company from corporate registration information at the Secretary of State's Office by altering the names of corporate officers.

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

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Draft Pending Adoption

Draft: 8/7/19

Title Insurance (C) Task Force
New York, New York
August 4, 2019

The Title Insurance (C) Task Force met in New York, NY, Aug. 4, 2019. The following Task Force members participated: James J. Donelon, Chair, represented by Warren Byrd (LA); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Michael Ricker (AK); Michael Conway represented by Damion Hughes (CO); John F. King represented by Margaret Witten (GA); Colin M. Hayashida represented by Paul Yuen (HI); Dean L. Cameron represented by Geoff Baker (ID); Vicki Schmidt represented by Tate Flott (KS); Al Redmer Jr. represented by Erica Bailey (MD); Steve Kelley represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Causey represented by Fred Fuller (NC); Bruce R. Ramge represented by Matt Holman (NE); Marlene Caride (NJ); John G. Franchini represented by Andy Romero (NM); Barbara D. Richardson represented by David Cassetty (NV); Glen Mulready represented by Landon Hubbart (OK); Jessica Altman represented by Michael McKenney (PA); Raymond G. Farmer represented by Joe Cregan (SC); Larry Deiter represented by Dan Nelson (SD); Todd E. Kiser represented by Reed Stringham (UT); Scott A. White represented by Richard J. Tozer (VA); and Michael S. Pieciak represented by Karen Ducharme (VT). Also participating were: Susan Stapp (CA); Michele Riddering (MI); Stephen Doody (NY); and Tashia Sizemore (OR).

1. Adopted its Spring National Meeting Minutes

Mr. Nelson made a motion, seconded by Mr. Baker, to adopt the Task Force's April 7 minutes *(see NAIC Proceedings – Spring 2019, Title Insurance (C) Task Force*). The motion passed unanimously.

2. Exposed its 2020 Proposed Charges

Mr. Byrd said the 2020 proposed charges include disbanding the Title Insurance Financial Reporting (C) Working Group. The Task Force would retain the Working Group's ongoing charge to, "[c]onsider the effectiveness of recent changes in financial reporting by title insurance companies and to identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools, and other matters. Coordinate efforts with the Statutory Accounting Principles (E) Working Group." Comments on the proposed charges will be collected through Sept. 16. The Task Force will meet via conference call after Sept. 16 to discuss the comments received and consider its 2020 proposed charges for adoption.

3. Heard a Presentation from CertifID Regarding Wire Transfer Fraud

Tom Cronkright (CertifID), co-founder and chief executive officer (CEO) of CertifID, said CertifID was developed as a result of a fraudulent event that took place at Mr. Cronkright's title agency, Sun Title Agency. According to the National Association of Realtors (NAR), on average, more than 16,000 real estate transactions closed per day, representing $3.8 billion transferred in 2018. Information regarding transactions can be found readily online. Wire fraud via business email compromise is among the fastest growing cybercrimes. According to the Financial Crimes Enforcement Network (FinCEN), there were $1.5 billion in losses in 2018, with monthly reported incidents increasing by 120% from 2016 to 2018. Mr. Cronkright said 91% of cybercrimes begin with phishing. Phishing is the process of obtaining personal information, such as credit card numbers, social security details, or login credentials via fraudulent emails. The top brands used for impersonation attacks tend to be ones known and used frequently. Typically, fraudsters use phishing attacks to gain access to email accounts, utilize the email to gain transaction details, and trick the transaction participants into wiring funds straight to cybercriminals. Mr. Cronkright said the top three trends in real estate wire transfer fraud are: 1) sending fraudulent wire transfer instructions to the buyer; 2) diverting seller proceeds; and 3) diverting mortgage payoffs. All three trends require falsifying documents, which cybercriminals are doing with increasing accuracy.

Mr. Cronkright said an ideal risk management strategy for cybersecurity includes system hardware, software, training, process protocol and coordination. System hardware includes routers, firewalls and intrusion detection. Software includes email monitoring, frequent software updates, and virus detection. Employees need to be trained on cybersecurity measures, including how to identify phishing attempts. Security protocols include limiting account access, dual wire controls, identity verification, and an incident response plan. An ideal risk management strategy needs to be a coordinated effort between all of the parties to the transaction because of the shared personally identifiable information. Mr. Cronkright said banks and insurers offering errors and omissions coverage are attempting to exclude liability and coverage for wire transfer fraud through contract clauses and policy exclusions.

Mr. Byrd asked about who is most frequently targeted. Mr. Cronkright said the buyers are frequently targeted because they are typically transferring the largest sum of money. Mr. Hanson asked why the title insurer would be responsible for recovering lost funds. Mr. Cronkright said in the case of *O'Neill, Bragg & Staffin, P.C. v. Bank of America Corporation*, the law firm identified falsified documents and notified the bank shortly after the wire transfer, but the bank was unable to reverse the transaction. Once a wire transfer takes place, there is little the bank can do to recover the stolen funds, and they have been successful in litigation to limit their liability. Banks verify the identity of the individual requesting the wire transfer, but they will send the money to whomever is specified on the request forms. Mr. Cronkright said it is the duty of the title industry to protect consumers. Information and education regarding the prevalence of wire transfer fraud should be communicated to the consumer early in the transaction. Mr. Byrd asked about what coverage exists for title insurers to protect themselves against losses due to wire transfer fraud. Mr. Cronkright said more writers are excluding coverage from errors and omissions policies, so businesses must also purchase cyber policies to protect themselves from the stated risks. Mr. Nelson asked how fraudsters infiltrate email accounts. Mr. Cronkright shared that email accounts with weak security, as well as successful phishing attacks, can result in breached email accounts. Justin B. Ailes (American Land Title Association—ALTA) said effective regulatory controls should include both title and real estate regulation, cumbersome in states where the industries are regulated by separate state departments.

Brenda J. Cude (University of Georgia) suggested updating the NAIC title insurance consumer shopping tool and information guide to include information on wire transfer fraud. She said the New Jersey Division of Banking and Insurance regulates the title and real estate industries in the state, and it recently released Bulletin 18-04 regarding wire transfer fraud.

4. <u>Heard a Presentation from ALTA Regarding its Homebuyer Outreach Program</u>

Elizabeth Berg (Agents National Title Insurance Company) said homebuyers want more information about the real estate process, and it is critical for ALTA members to take control of the message. In particular, ALTA seeks to explain to consumers how an owner's title insurance policy helps protect their property rights. Ms. Berg said the results of ALTA's 2014 survey of 1,000 homebuyers showed that less than half of respondents received information about an owner's title insurance policy; of those who would have appreciated that information, most preferred to receive it from their real estate agent. A majority of survey respondents said they were familiar with the title search process; yet, they still selected their title company based on a recommendation from a realtor, lender or attorney. Ms. Berg said her job as a title agent is to help people protect their property rights and give them peace of mind during one of, if not the, largest purchases they will make during their lifetime. ALTA is conducting training through the state land title associations regarding the Homebuyer Outreach Program in order to better inform their customers throughout the title and closing process. ALTA is focused on helping its members build their business models to create trust with its clients by providing practical, relevant and timely information throughout the title and closing process. ALTA identified several key facts in order to inform consumers in a concise, comprehensible way. ALTA defined title as, "your ownership right to your property, transferred from seller to buyer at closing."

According to the NAR Home Buyer and Seller Generational Trends Report 2017 and 2016 Profile of Home Buyers and Sellers, 99% of millennials, 89% of older boomers, and 77% percent of the silent generation are shopping for homes online. The homebuyer guide includes blogs, videos, templates, Power Point presentations, rack cards, and educational one-pagers. ALTA is working with title agents to encourage members to market their products and services directly to consumers. ALTA created content to be used by its members for consumers, lenders, and real estate agents. The content can be customized according to state law and local practice. Additionally, ALTA created a publicly available video regarding wire transfer fraud, accessible at *https://www.alta.org/wirefraud*. ALTA has over 100 marketing and educational items available to its members; many are also available in Spanish.

Mr. Nelson asked if ALTA maintains statistics on the number of owners and lenders policies purchased throughout a given year, countrywide and by state. Mr. Ailes said he believes that to be part of the quarterly financial statements, compiled by ALTA, available at *https://www.alta.org*. Ms. Caride asked how agents inform consumers in attorney states where only a licensed attorney may provide legal advice in connection with a contract. Ms. Berg said the program intends to generally inform consumers, not provide legal advice on more specific legal matters.

5. Heard a Presentation from First American Title Insurance Company and Old Republic National Title Insurance Company Regarding Blockchain Innovation in Title Insurance

Justin Earley (First American Title Insurance Company) said multiple blockchains exist, all with their own purpose and content to be captured. Blockchains are not infallible; they are reliant on good design and sound practice regarding data quality and security infrastructure. Blockchain creates duplicate storage of encrypted information for various participants in the blockchain. The value it creates is transparency, efficiency and accountability. The use of encryption, in this case a digital seal, keeps it transparent and the parties accountable to each other. There are three basic questions for determining a good use case for blockchain. The first question is whether there are multiple parties involved, sharing information, possibly even confidential in nature. Blockchain can create a network for sharing information. The second question is whether there is an intermediary for efficiently sharing and retaining information between the parties currently in place. Blockchain in its current form is somewhat slow and cumbersome to create. If there is an efficient system in place, blockchain may not be the best option. The third question is whether the parties need to track each element of shared data, including how its accessed and utilized. If the answer to all three questions is yes, it is probably a good candidate for blockchain. Title underwriters indemnify one another if their work, the title record, is inaccurate. In order to facilitate indemnification in an efficient, transparent manner, Old Republic National Title Insurance Company and First American Title Insurance Company have teamed up to develop a blockchain. Mr. Earley said the blockchain creates trust because the information is unalterable and encrypted, so individuals are not able to alter or modify the data in any way. Mr. Nelson asked when the blockchain would be implemented. Mr. Earley said the companies have found blockchain to be very complicated to setup, and the completion date is unknown at this time.

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

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Hear an Update on Recent Fraudulent Activities

—Open to Anyone with Updates to Share

Attachment Three

Hear a Presentation on the Title Industry, Including Types of Endorsements, Market Statistics, Closing Protection Letter Statutes, and the Effect of Mandatory Title Insurance

—Joseph L. Petrelli (Demotech)

Attachment Four

Hear a Presentation on the History of Closing Protection Letters

—Jim Gosdin (Stewart Title) and Diane Evans (Land Title Guarantee Company of Colorado)

Attachment Five

Receive Compiled NAIC Information on Closing Protection Letters

—*Commissioner James J. Donelon (LA)*