TITLE INSURANCE (C) TASK FORCE

Draft: 12/7/23

Title Insurance (C) Task Force
Orlando, Florida
December 2, 2023

The Title Insurance (C) Task Force met in Orlando, FL, Dec. 2, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Michael Yaworsky represented by Anoush Brangaccio (FL); Doug Ommen represented by Mathew Cunningham (IA); Vicki Schmidt represented by Craig VanAalst (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane represented by Mary Kwei (MD); Mike Causey represented by Robert Croom (NC); Glen Mulready represented by Diane Carter (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Melissa Manning (SC); Larry D. Deiter represented by Tony Dorschner (SD); and Scott A. White represented by Richard Tozer (VA). Also participating were: George Bradner (CT); Patrick O'Connor (IN); Christian Citarella (NH); and Scott Kipper (NV).

1. Adopted its Oct. 20 Meeting Minutes

The Task Force conducted an e-vote that concluded Oct. 20 to adopt its 2024 proposed charges.

Commissioner Gaffney made a motion, seconded by Brangaccio, to adopt the Task Force's Oct. 20 minutes (Attachment One) The motion passed unanimously.

2. Heard an Update on the Administration of the *Survey of State Insurance Laws Regarding Title Data and Title Matters*

Director Dunning stated the *Survey of State Insurance Laws Regarding Title Data and Title Matters* is being administered using Microsoft Forms. An email was sent to the NAIC General Counsel distribution list Nov. 27, 2023, asking for its assistance in coordinating the completion and final submission of the *Survey of State Insurance Laws Regarding Title Data and Title Matters* questionnaire. This email was also forwarded to those on the Task Force's member and interested regulator distribution list Nov. 29, 2023.

The email requests responses from all parties involved in filling out the questionnaire to be coordinated, compiled, and submitted by one person designated by the Department so that one response is received from each jurisdiction. A link to the questionnaire in Microsoft Forms was included. Questions added since the last survey update in 2018 are in blue font. Questionnaire responses are requested to be completed by Dec. 22, 2023.

3. Heard a Presentation on AM Best's *Market Segment Outlook: U.S. Title Insurance*

Kourtnie Beckwith (AM Best) stated that AM Best rates six title insurance companies, including three of the 'Big 4'. It collects data from more than 30 companies and publishes the *Market Segment Report: U.S. Title Insurance Report* in the fourth quarter annually. It publishes the *Market Segment Outlook: U.S. Title Insurance Report* in the first quarter annually. The current outlook is negative for the title insurance sector. Key drivers for the negative outlook include: 1) a significant decline in home sales and refinancing activity; 2) continued economic slowdown; 3) an expected rise in unemployment; 4) continued monetary tightening and high prevailing mortgage interest rates; and 5) potential recessionary pressures.

Beckwith stated title companies experienced pressure during the housing crisis in 2008–2009. Defalcation was higher during this period. Underwriting guidelines tightened following this period, and the sector experienced recording breaking financial results in 2020 and 2022. Refinance transactions began to slow in 2022. The 2023

Market Segment Report found that despite this and lower financial indicators in 2023, the title sector still produced solid operating results. However, operating margins were compressed, and premium volume was lower. The sector had an average combined ratio of 90.8 over the past five years and 92.0 over the past 10 years. The aggregate expense ratio has remained below 90.0 since 2012.

Major themes impacting the operating performance of AM Best's rated title insurance companies from 2022 through the second half of 2023 include: 1) the Federal Reserve lifting interest rates beginning March 2022; 2) macroeconomic headwinds for the housing industry led to a 40% drop in title premium in the first half of 2023; 3) current homeowners are locked into lower rates leading to a 51% decrease in refinance activity in the second quarter of 2023 over 2022; and 4) increased title acquisitions of appraisals, other title companies, and online brokers. The title marketplace was dominated by the Big 4 (Fidelity National, First American, Old Republican, and Stewart), accounting for 86% of the market's direct written premium in 2022. Smaller companies made inroads to diversifying the title market through 2021. There is a regional carrier preference by customers.

Title insurance operations are cyclical. However, current trends are not comparable to the 2008 financial crisis. Title companies are expected to remain profitable despite the expectation of higher mortgage interest rates and decreased affordability into 2024.

4. <u>Heard a Presentation on the Impact of Current Mortgage Rates, Operating Expenses, and Housing Market Cyclicality on the Title Industry</u>

Mark Fleming (First American Financial Corporation) stated the title industry is highly cyclical and correlated to the housing market, and the housing market is highly cyclical and correlated to mortgage rates. The federal funds rate and market uncertainty have pushed mortgage rates up and increased their spread against long-term treasury rates. However, mortgage rates over the last 10 years have been unusually low compared to years prior. As a result, 66% of all households have a mortgage rate of 6% or less. The current higher-rate environment provides little incentive for these households to refinance or sell their current home and purchase another. As 90% of all home sales are from existing homeowners, this means there is little supply or demand in the housing market. The lack of housing stock inventory also provides few enticing purchase options for home buyers, discouraging them from entering the market. The U.S. also has a housing shortage from not building enough homes over the past 10–20 years. This housing shortage is the reason housing prices continue to rise despite higher mortgage rates. Housing affordability is being impacted by the mortgage dollar not going as far and increasing home prices due to short supply. Additionally, while inflation provides equity for existing homeowners, it creates affordability issues for first-time home buyers. Homebuilders are not expected to double or triple the number of homes they build and bring to market soon. However, the housing market is not expected to deteriorate further. The Federal Reserve is not expected to increase interest rates further, and housing market growth is expected to return next year.

The housing market is intertwined with the title industry. Higher loan amounts benefit the title industry through higher policy premiums. However, this is not enough to offset the lower volume of policies being issued because of fewer home sales and refinancing. Title insurers collect premiums only at policy issuance. Thus, they bear duration risk. Slower mortgage prepayment speeds increase title insurance policy duration. Policy demand is driven by the housing and mortgage market cycles. Serious delinquency and foreclosure increase the risk of title claims and losses. Risk can be insured or, because title insurance uniquely insures against past events, cured to achieve marketable title. Title insurers' losses are lower than those of insurers from other lines of business, but the addition of curative costs increases operating expenses.

Losses can typically be traced back to serious delinquency and foreclosure rates in the market. It is important to note that title insurer losses incurred today are not related to the premium the insurer is writing today. Current losses are funded from statutory reserves for losses set up at the time the premium is collected from the issued policy. Title insurers are in a unique position of insuring past events and thus have the choice to curate this. Current statistics are unlikely to show the actual stress on homeowners and mortgage holders today because of all the forbearance programs.

Title insurers' premium and expense ratios have slightly increased in the first half of 2023 due to reduced home sales volume. Unlike in other countries, a deed is not evidence of ownership. Expense ratios reflect the costs of curative work to determine whether a title is marketable and free from liens and forgery (i.e., not in public records). On average, at least one requirement on a title commitment is found 60% of the time. It is important to separate the costs of title settlement and title insurance. Settlement is a service to file the records and process the paperwork. Using Federal National Mortgage Association (Fannie Mae) data, the insurance product itself is only, on average, .42% of the lifetime costs of the mortgage. Unlike home insurance, title insurance is charged once, not monthly.

Gaffney asked how public records encumbering real estate, particularly liens and judgments, have fluctuated over the past five years with housing pressures and mortgage balances. He also asked about the trend of mortgage balances for new transactions. Additionally, Gaffney asked for the source of the number of curative transactions in the presentation. Fleming stated mortgage values have moved in lockstep with the average values of homes. When interest rates were low, principal values increased because homeowners could borrow more. For new transactions, the average house price is in the mid $300,000 range, and the average down payment is 14%, leaving a mortgage amount of $307,000. First-time home buyers average a down payment of only 8%. The analysis on curative transactions used transactions First American Financial Corporation has been an examiner on year-to-date.

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

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Draft: 10/25/23

Title Insurance (C) Task Force
E-Vote
October 20, 2023

The Title Insurance (C) Task Force conducted an e-vote that concluded Oct. 20, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Mark Fowler represented by Erick Wright (AL); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Jeffrey Joseph and Christina Huff (FL); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane (MD); Grace Arnold represented by Jacqueline Olson (MN); Troy Downing represented by Sharon Richetti (MT); Mike Causey represented by Fred Fuller (NC); Glen Mulready represented by Erin Wainner (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Will Davis (SC); and Scott A. White represented by Richard Tozer (VA).

1. Adopted its 2024 Proposed Charges

The Task Force conducted an e-vote to consider adoption of its 2024 proposed charges (*see NAIC Proceedings – Fall 2023, Executive (EX) Committee and Plenary)*. The motion passed unanimously.

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

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