PROJECT HISTORY - 2015

TITLE INSURANCE CONSUMER PROTECTION FUND GUIDELINE (#1750)

1. Description of the Project

In 2011, during discussions at Title Insurance (C) Task Force meetings, it was pointed out that only a few states had guaranty funds that would protect title insurance policyholders in the event of a title insurance company insolvency. The Task Force committed to perform a review of the need for a model law or guideline that states that did not already have a title guaranty fund could use to establish a fund in their state. Working with the Receivership and Insolvency (E) Task Force, the Title Insurance (C) Task Force appointed the Title Insurance Guaranty Fund (C/E) Working Group of the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force. The Working Group was chaired by Cindy Donovan (IN) and John Finston (CA).

With the assistance of NAIC staff, the Working Group developed information about past title insolvencies and how title consumers were affected. The research focused on the following questions:

1. Is there a serious title insolvency problem?
2. Is a 50-state guaranty fund the best way to address this problem?
3. How has the public been affected by title company insolvencies?
4. What is the scope of title guaranty fund payments?
5. How have title insolvencies played out in the past (both with and without title guaranty funds)?
6. Have guaranty funds worked in the states that have them?
7. What steps would a guaranty fund take to manage insolvency?

2. Name of Group Responsible for Drafting the Model and States Participating

The Title Insurance Guaranty Fund (C/E) Working Group. Participating states include: California; Colorado; District of Columbia; Indiana; Kansas; Minnesota; Missouri; Nebraska; New Mexico; Oklahoma; Rhode Island; and Texas.

3. Project Authorized by What Charge and Date First Given to the Group

"Appoint a Title Insurance Guaranty Fund (C/E) Working Group to consider whether a title insurance guaranty fund model law or guideline should be developed. Determine the attributes of recent title company financial failures. Report the results by the Summer National Meeting."*—Fall 2012 Meeting. Charge adopted for 2013.*

4. A General Description of the Drafting Process and Due Process

- The following charge was proposed at the 2011 Fall National Meeting: "Consider Development of Model Law or Guideline on Title Insurance Guaranty Association Model Act" (Nov. 4, 2012, National Meeting). The charge was not adopted for the Property and Casualty Insurance (C) Committee, but it was decided instead to form a joint Title Insurance Guaranty Fund (C/E) Working Group.

- At the 2012 Spring National Meeting, the Task Forces authorized the Title Insurance Guaranty (C/E) Working Group to continue research on title insurance insolvencies, agent defalcations and states with existing title guaranty funds.

- In 2012, the NAIC conducted research regarding title insurance company insolvencies and title agent defalcations and presented the results to the Working Group Nov. 13, 2012.

- Other parties participating in the Working Group discussions were: Agents National Title Insurance Company; American Land Title Association (ALTA); Center for Economic Justice (CEJ); ClosingCorp; Demotech; Fidelity National Title; First American Title; October Research; Old Republic Title Insurance Company (ORTIG); PricewaterhouseCoopers; Security Title Guarantee Corporation of Baltimore; Stewart Title Guaranty Company; Title Insurance Company; and Westcor Land.

- The Working Group chairs recommended that a model law not be developed due to a lack of evidence and instead focus on continued work related to administrative controls identified in the *Title Insurance Escrow Theft White Paper* rather than develop a title insurance guaranty fund model law or guideline.

- Working Group members voted to proceed with the development of a "Title Guaranty Fund Guideline" that states could implement (Feb. 14, 2013).

- A draft guideline was developed by David Cox (MO) and modified by members of the Working Group and NAIC legal staff (May 28, 2013). The draft guideline was exposed for public comment (July 10, 2013). Written comments were received from ALTA, the American Insurance Association (AIA); and the National Conference of Insurance Guaranty Funds (NCIGF).

- ALTA submitted an alternative "Option 3" version (Dec. 30, 2013). It was rejected in a letter to ALTA after review by the Working Group chairs and NAIC legal staff (January 2014). Additional revisions to the draft were subsequently proposed by ALTA and the Working Group chair.

- The Working Group exposed a revised June 26, 2014, draft "Title Insurance Guaranty Association – Title Insurance Consumer Protection Fund Guideline" (July 8, 2014).

- Comments were received from ALTA and Fidelity National Title (August 11, 2014). In response to comments, additional edits were made to the draft, and the title of the Guideline was revised to *Guaranty Association for Title Insurance*.

- The Working Group renamed the document to "Title Insurance Guaranty Association-Title Insurance Consumer Protection Fund Guideline" (Sept. 30, 2014).

- On Oct. 23, 2014, the Working Group voted to expose the revised draft for public comment a second time for a four-week period ending Nov. 20, 2014. No additional comments were received.

- A conference call was held Dec. 10, 2014, and an e-vote was conducted to approve forwarding the document to the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force for further consideration (Dec. 15, 2014). The motion passed.

- The Title Insurance (C) Task Force and the Receivership and Insolvency (E) Task Force adopted the Guideline at the 2015 Spring National Meeting.

5. Discussion of Significant Issues

Initial studies did not indicate that there were enough title insurance company insolvencies or agent defalcations to merit the formation of an NAIC model law for all states. A consumer advocate group, the CEJ, challenged this finding and encouraged the group to continue working on a model law. The Working Group reconsidered discontinuing work on the project and decided that it would be worthwhile to develop guidelines that states that did not have a guaranty fund could consider should they decide to form one.

Initial drafts of guidelines were challenged by industry groups that disagreed with assessment language for guaranty association member companies. Numerous drafts were presented and modified before the Working Group approved a final version in December 2014.

6. Any Other Important Information

Not applicable.