

MEASURES TO REDUCE HARM AND LITIGATION AFTER CATASTROPHES LEAD ISSUES FOR ABA POLICY BODY IN BOSTON IN FEBRUARY

The following information provides detail on the ABA House of Delegates resolutions related to catastrophes, which the policy-making body will consider next month at the ABA Midyear Meeting in Boston.

All recommendations for House of Delegates consideration, including reports advocating their adoption, are posted [here](#). To access the reports, click on the link to the Summary of Recommendations. To read any individual report, click on the report number. The proposals related to catastrophes are in a series of seven reports with recommendations, identified as numbers 107A through 107G.

Report 107A distinguishes damage caused by wind, wind-driven rain, flood and storm surge from other forms of flood damage, for purposes of making broadened insurance protection available. It would define floods as overflowing water on areas of land that are normally dry, and storm surges as water being pushed toward the shore by the force of winds swirling around storms. Storm surge coverage would be limited to damage directly caused by the force of the storm surge, unless an insurer explicitly chooses to provide broader coverage. The proposal recommends federal, state and territorial governments enact legislation and provide appropriate funding to eliminate prohibitions or restrictions on private insurance providers making broadened coverage available for storm damage, provided the insurers do so on a voluntary basis operating in competitive markets under regulatory systems permitting flexible pricing and product development.

Report 107B addresses insurance availability in areas of high catastrophe exposure. It urges Congress to strengthen the insurance financial infrastructure to deal with natural catastrophes through programs to increase availability of affordable insurance in such areas, without competing with the private insurance market. Any such measures should protect taxpayers from inappropriate subsidies, and ensure sufficient capacity exists before, during and after catastrophes. Any subsidies should be transparent and not hidden in insurance costs. Additionally the measure urges putting the National Flood Insurance Program on a sound actuarial basis, through such changes as upgrading flood maps, encouraging citizens in flood zones to purchase flood insurance and requiring purchase of flood insurance with mortgages made by state-chartered financial institutions.

Report 107C is directed at financing catastrophic risks. It urges a study by the U.S. Treasury Department of potential changes in federal laws and regulations to reduce barriers to issuing catastrophe-linked securities, reforms to state insurance and public accounting rules to facilitate issuing such securities and research by the National Association of Insurance Commissioners and state governments into other potential changes in state laws and regulations covering such securities.

Report 107D addresses the immediate financial needs of individuals and businesses suffering harm from natural catastrophes. It urges distribution of emergency funds through accountable and traceable means, such as debit cards, and temporary forbearance by regulators and lenders on mortgage loans, commensurate with the severity of damage in given areas. It also urges changes in methods of distributing financial assistance, such as urging the Small Business Administration to permit authorized financial institutions to directly offer SBA-guaranteed loans and to review its underwriting standards to support low-income borrowers and reduce delays in issuing loans, having government agencies coordinate their valuation and appraisals of damaged property, urging Congress to modify National Environmental Policy Act requirements that may impede disaster recovery and urging the Federal Reserve to fulfill its lender-of-last-resort functions in mega-catastrophes. It also would call on Congress to authorize the Treasury Department to lend funds to states to ensure prompt claim payments when a catastrophe poses a grave risk of forcing states into insolvency, and to provide tax incentives for private insurers to insure against catastrophic risks.

Report 107E would encourage mitigation of loss from future mega-catastrophes to ensure ongoing availability and affordability of insurance. It urges improved building codes for new construction, and vigorous code enforcement, including civil, criminal and regulatory penalties for negligent or intentional substandard construction; requiring cost-effective residential retrofitting, and encouragement to homeowners to mitigate risk; adopting land use policies that discourage construction in areas that pose unusually high risk to personal safety or are difficult to evacuate; developing standardized formats to disclose information about property at the time of sale, including about its resistance to damage and damage mitigation measures; encouraging cooperation among lenders and insurers to plan for mitigation improvement loans to homeowners to reduce the risk of future loss; enacting grants and property tax credits for homeowners and businesses to invest in damage mitigation; and adopting, updating and routinely testing emergency preparedness plans. It also would urge state, territorial and local governments to allow insurers to charge risk-based prices reflecting best available actuarial information.

Report 107F involves federal tools to mitigate loss. It urges federal standards requiring strong, damage-resistant building codes for new construction and vigorous code enforcement; requiring cost-effective retrofitting measures in substantial modifications to residences and encouraging such measures through tax incentives regardless of modifications, and land use policies that discourage or prevent construction in areas that are difficult to evacuate or pose unusually high risk to personal safety or property loss. It also would require the Federal Emergency Management Agency to adopt and enforce statewide building codes in its Hazard Mitigation Grant Program, and encourage FEMA and Congress to implement a preference when making pre-disaster grants to proposals to train and support state and local building code inspectors. Finally, it would urge Congress to appropriate funds for disaster prevention and preparedness activities, for adoption and enforcement of modern building codes, for mitigation grants for tax credits and for direct insurance subsidies where they meet a needs test.

Report 107G addresses standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms. It urges application by all insurers of uniform standards for procedures in claims adjusting, consistent with the Unfair Claims Settlement Act of the National Association of Insurance Commissioners, but also including provisions for training and certification, licensing or other regulation of claims adjustors. It also urges creation of mediation programs before new disasters occur, modeled on programs made available by Mississippi, Louisiana and Florida, and requiring good faith participation by insurers at the request of any insured.

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