

BROADENED HURRICANE COVERAGE

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association recommends that Congress, state and territorial governments enact legislation with appropriate funding as necessary that would enable participants in the private insurance and reinsurance markets to provide broadened insurance protection for property damage arising from storms, including damage from wind, wind-driven rain, and *flood* caused by *storm surge*, but excluding damage arising from other types of *flood*; provided that such broadened insurance coverage be offered in a competitive marketplace under a regulatory system permitting broad flexibility in insurance pricing and product development.

FURTHER RESOLVED, *flood* is defined as an overflowing of water on an area of land that is normally dry and *storm surge* is defined as water that is pushed toward the shore by the force of the winds swirling around a storm. The coverage provided for *storm surge* would be limited (unless an insurer explicitly chose to provide broader coverage) to damage directly caused by the force of the *storm surge*.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association urges the federal government to take steps to encourage capital markets to finance catastrophic risks by:

- a) undertaking a study through the U. S. Treasury Department to determine what other changes in federal laws and regulations would reduce barriers to the issuance of CAT-linked securities in the United States; and
- b) passing legislation as needed encouraging the issuance of catastrophe (CAT)-linked securities.

FURTHER RESOLVED, State and territorial governments should take steps to encourage capital markets to finance the assumption of catastrophic risks:

- a) Insurance regulators and the Financial Accounting Standards Board(FASB) should reform insurance and public accounting rules to facilitate the issuance of CAT-linked securities in the United States; and
- b) The NAIC and state governments should undertake a study to determine what other changes in state laws and regulations would reduce barriers to the issuance of CAT-linked securities in the United States.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association urges the federal government to pursue several approaches for meeting the liquidity needs of individuals and businesses in the aftermath of future natural catastrophes, including: (a) the distribution of emergency liquidity, to the maximum extent possible, through accountable and traceable means, including debit cards; (b) regulators, lenders and housing government sponsored enterprises (GSE's) should support the offering of forbearance on mortgage loans that are commensurate with the severity of damage in given areas; (c) Congress and various federal agencies should modify current distribution channels for federal disaster assistance. In particular, the Small Business Administration should permit authorized financial institutions to directly offer SBA-guaranteed loans. The SBA should define "duplicate benefits" to include only compensation beyond that necessary for repairs; relevant government agencies (SBA, FEMA and HUD) should coordinate their valuation and appraisals of damaged properties; the SBA should review its underwriting standards to support lower-income borrowers and reduce delays in the loan origination and closing process after disasters; and Congress should modify requirements under the National Environmental Policy Act that may impede recovery from disasters; and (d) the Federal Reserve should be ready to fulfill its lender-of-last-resort functions (acting through financial institutions) to meet liquidity needs of the economy, or parts thereof, in mega-catastrophes.

For catastrophic natural disasters that are certified by the Treasury Secretary as posing a grave financial risk to state insurance guaranty funds, the Congress should give the Treasury Department the authority to lend to those state funds to assure prompt payment of claims when there has been a demonstration of need to avoid guaranty fund insolvency.

FURTHER RESOLVED, that the federal government should provide incentives through the tax code to encourage catastrophic risk-taking by private insurers; under one option, the federal government and the Financial Accounting Standards Board ("FASB") could recognize and allow for multi-year tax-deferred catastrophe reserves to be established by insurers and other parties at risk for natural catastrophes and allow annual net additions to such reserves. Such tax incentives or reserves should be restricted to paying claims for future mega-catastrophes. Congress should also provide income tax credits to homeowners and businesses that invest in catastrophe mitigation measures in high-risk areas.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that to ensure the ongoing availability and affordability of insurance for natural disasters, the American Bar Association urges state, territorial and local governments to use the multiple tools available to them to mitigate losses from future mega-catastrophes:

1. Require risk appropriate state-of-the-art building codes for new construction that reflects best practices for reducing catastrophe loss exposure and vigorous enforcement of these codes including criminal, civil and regulatory penalties/liability for those who are found to have negligently or intentionally used or produced substandard building products or compounds;
2. Require cost-effective retrofitting measures when residences are modified substantially and otherwise encourage homeowners to invest in mitigation retrofitting; and
3. Require cost-effective retrofitting measures even when residences are not modified substantially and otherwise encourage homeowners to invest in mitigation retrofitting;
4. Adopt land use policies that discourage construction in areas that are difficult to evacuate or that pose unusually high risk to personal safety (to consumers and first responders) or property loss.
5. Encourage development of information that can be disclosed in a standardized format at the time of sale regarding the property's resistance to damage from natural disasters and any mitigation efforts made during construction or through retro-fitting.
6. Encourage lenders, housing Government Sponsored Enterprises ("GSEs") and insurers to work together to develop a plan for providing mitigation improvement loans (or similar incentives) to

homeowners (that GSEs can package and sell as securities) to finance mitigation investments that will reduce the risk of loss from natural catastrophes to insurers and homeowners.

7. Enact property tax credits and enable grants to homeowners and businesses that invest in catastrophe mitigation measures. State and local governments should not penalize homeowners and businesses with higher property tax valuations due to improvements to property values that stem from mitigation activities.
8. Adopt, regularly update and routinely test emergency preparedness plans for dealing with mega-catastrophes.

FURTHER RESOLVED, that for the private insurance market for homeowners insurance to remain competitive, the American Bar Association urges state, territorial and local governments to allow insurers to charge risk-based prices and reflect the best available actuarial and scientific information. States that choose to subsidize the purchase of insurance by individuals of limited means should do so through transparent direct subsidies rather than through government-sponsored "residual markets plans," which are not means-tested and for which the subsidies are non-transparent.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association recommends that the appropriate branch or agency of the national, state, and territorial governments adopt the following standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms:

1. Uniform minimum standards should be established for all insurers as to the procedures used in the adjusting of property damage claims.
 - A. Such standards should be drafted in reliance on the Unfair Claims Settlement Act of the National Association of Insurance Commissioners.
 - B. Such standards should also contain requirements for training and certification, licensing, or other appropriate form of oversight and regulation of all adjustors who engage in claims procedures.
2. Mediation programs should be created that will be in place, rather than ad hoc for a particular disaster.
 - A. Such programs could be modeled on the programs made available by Mississippi, Louisiana, and Florida with the assistance of qualified dispute resolution administrators, state bars, courts, or insurance companies.
 - B. Mediation programs should allow any insured to request mediation and require the good faith participation of the insurer or insurers. The mediation fee should be paid by the insurer. Both the insured and the

insurer or insurers should be able to be represented by an attorney if they so choose, the process should be non-binding unless the parties agree otherwise and qualitative measures of programs effectiveness should be tracked and publically reported.

3. A study should be undertaken to create a data base of reliable current information on the costs of items and services required for the repair or replacement of real property for various geographical areas. This data base would be made available to insurers and insureds, adjustors, claims representatives, mediators, and others involved in the claims process to provide greater accuracy and uniformity in the adjusting of property damage claims.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association urges Congress to consider ways to strengthen the financial infrastructure to deal with the consequences of natural catastrophes by developing programs that increase availability of affordable insurance in areas highly-exposed to catastrophes while not competing with the private market. Any federal program should be appropriately designed to protect taxpayers from unfair subsidies, and be structured to ensure that sufficient capacity exists before, during and after mega-catastrophic events. To enable policy makers to properly allocate limited fiscal resources, any subsidies should be transparent and not be imbedded in insurance costs.

FURTHER RESOLVED, that the Congress is urged to enact multiple changes to the flood insurance program to put it on a sound actuarial basis, including:

- a) Phase out subsidies in existing premiums;
- b) Educate citizens in flood zones better to promote awareness on their part that they are either obligated or strongly encouraged to purchase flood insurance;
- c) Prioritize the upgrading of existing flood maps; and
- d) Extend the flood purchase requirement to properties financed with mortgages made by state-chartered financial institutions. In addition, Congress should raise the coverage limits, but only if the premiums charged are risk-based and adequate to pay the losses.

THIS IS A RECOMMENDATION TO BE PRESENTED TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS MID-YEAR MEETING IN FEBRUARY 2009 AND DOES NOT REPRESENT POLICY OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association urges the federal government to use the multiple tools available to them to mitigate losses from future mega-catastrophes:

- a) Establish risk appropriate federal standards requiring strong, damage-resistant building codes for new construction that reflects best practices for reducing catastrophe loss exposure and vigorous enforcement of these codes;
- b) Require cost-effective retrofitting measures when residences are modified substantially and otherwise encourage homeowners to invest in mitigation retrofitting through federal tax incentives, including when substandard construction techniques are discovered after the fact, or better practices are available, and
- c) Adopt land use policies that discourage or prevent construction in areas that are difficult to evacuate or that pose unusually high risk to personal safety (to consumers and first responders) or property loss, and require FEMA to incorporate the adoption and effective enforcement of statewide building codes in its Hazard Mitigation Grant Program. In addition, FEMA and the Congress should implement a preference in making pre-disaster grants to proposals by states and localities seeking support for the training of state and local building code inspectors to improve enforcement.

FURTHER RESOLVED, that Congress is urged to authorize additional funds for disaster prevention and preparedness activities and should appropriate money for this purpose, including additional funds (on a matching basis) to states and localities in areas of high catastrophic risk to support adoption and enforcement of modern building codes, and for mitigation grants, tax credits, and needs tested direct insurance subsidies.