

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
WORKING SESSION ON NCOIL INSURANCE BINDER MODEL
WASHINGTON, DC
MARCH 10, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at The Hyatt Regency on Capitol Hill in Washington, DC, on Sunday, March 10, 2013, at 8:00 a.m.

Rep. Matt Lehman of Indiana, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Jason Rapert, AR	Sen. James Seward, NY
Sen. Travis Holdman, IN	Sen. Kevin Bacon, OH
Sen. Dan Morrish, LA	Rep. Michael Stinziano, OH
Rep. Pete Lund, MI	Sen. Jake Corman, PA
Rep. George Keiser, ND	Rep. Bill Botzow, VT

Other legislators present were:

Rep. Bryon Short, DE	Sen. David O'Connell, ND
Rep. Jane Pringle, ME	Rep. Bob Hackett, OH
Sen. Jim Marleau, MI	Rep. Mary Czaja, WI
Rep. Don Gosen, MO	Sen. Mike Hall, WV
Sen. Norman Sanderson, NC	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs–DC
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

Interested parties who offered comments included:

Lenders:

Tom Alleman of Cox Smith Law Firm, on behalf of the Independent Bankers Association of Texas
Kathy Marquardt, Mortgage Bankers Association (MBA)
Catherine Rodewald, Prudential Asset Resources

P-C Agents:

Wes Bissett, Independent Insurance Agents & Brokers of America (IIABA)
David Eppstein, National Association of Professional Insurance Agents (PIA)

P-C Insurers:

Scott Gilliam, Cincinnati Insurance Companies
Eric Goldberg, American Insurance Association (AIA)

PROPOSED AMENDMENTS TO NCOIL INSURANCE BINDER MODEL

Rep. Lehman said that he supported the July 2012 NCOIL *Model Act Regarding Use of Insurance Binders as Evidence of Coverage* as a way to address lender concerns regarding certificates of insurance “information only” disclosure. He said, however, that he was sponsoring new Mortgage Bankers Association (MBA) proposed amendments for discussion purposes so that the Committee could determine whether improvements were needed.

The Committee voted unanimously to waive the 30-day deadline rule to consider the amendments, as they had been submitted after the deadline.

LENDER COMMENTS AND Q&A

Mr. Alleman of Cox Smith Law Firm overviewed the proposed lender amendments and said, among other things, that:

- It was important to specify that a binder related to “real property” because real property insurance was distinct from other coverages. (Sec. 3 Definitions, subsection A)
- Lenders needed specifics—“including but not limited to covered perils including limits, sub-limits, exclusions and deductibles”—pertaining to the nature and amount of coverage. (Sec. 3 Definitions, subsection A.3)
- The NCOIL model should establish, consistent with certain judicial cases, that a binder remained in force until the insurer “delivered” rather than “issued” a policy or cancelled the binder. (Sec. 4 Insurer Obligations, subsection A)
- Because banks needed to have a physical piece of paper to prove coverage and conform to Federal Deposit Insurance Corporation (FDIC) requirements, among those of other entities, it was appropriate to establish a timeframe—as the following new NCOIL provision would—within which a lender would receive the information (Sec. 4 Insurer Obligations, subsection C):

C. An insurance agent or broker (or if there is no insurance agent or broker, then the insurer) must deliver the insurance policy or proof of coverage in the form of a real property insurance binder to both the insured and the lender within five business days following a request from either the insured or the lender.

- Entities such as the National Flood Insurance Program (NFIP) required the policy or at least the policy declaration page to prove flood insurance coverage, and so it was critical to add the following provision to the NCOIL model in recognition of circumstances in which binders were not sufficient (Sec. 4 Insurer Obligations, subsection D):

D. Nothing in this section shall prevent a lender from requiring that a borrower provide its lender with a copy of the policy or proof of coverage, acceptable to lender, as a condition to making the loan.

In response to legislator questions, Mr. Alleman said that:

- Physical delivery “remained the benchmark at this point” but that electronic delivery of a policy may be acceptable on a case-by-case basis.
- Lenders’ overriding concern was to have a legally binding document that could be relied upon to provide insurance coverage before a policy was issued.
- An ACORD 28 insurance certificate had served lender needs until ACORD added “for information only” disclosure language in 2006.
- The NCOIL model would not need to define “delivery” because other statutes and judicial decisions already did.

Ms. Rodewald with Prudential Financial noted that third-party private-market investors who made commercial loans that Fannie Mae and Freddie Mac then purchased often dictated whether a binder was sufficient proof of coverage.

P-C INSURER/AGENT COMMENTS

In commenting on the proposed MBA amendments, property-casualty insurance industry representatives said, among other things, that:

- The model as adopted did a good job of addressing concerns related to insurance binders.
- Many agents and brokers were not authorized to issue binders, which meant they could not comply with the proposed Section 4, subsection C amendment.
- The language in proposed Section 4, subsection D was ambiguous.
- Insurers had contractual relationships with borrowers, not lenders.
- Policy issuance triggered a policy, not deliverance.
- Insurers may have difficulty complying with a requirement to issue a policy in a specific timeframe because insureds often did not give insurers all documentation they needed in a timely fashion.

PROPOSED ACORD 875 FORM

Rep. Lehman said that prior to adopting the binder model in 2012, the Committee had considered the proposed lender amendment to Sec. 3 Definitions, subsection A.3 that would require binders to list data on limits, sublimits, exclusions, and deductibles. Rather than approve the amendment, he noted, legislators had expressed interest in development of an “enhanced,” more detailed binder form, tentatively called an ACORD 875, that might address lender concerns. He asked for an update on ACORD 875 progress.

Ann Henstrand with ACORD reported that an ACORD Certificates Working Group had discussed minor and some substantive changes to certificate forms for several years. She said that ACORD members in the Fall had voted down an 875 draft submitted by the MBA and that the ACORD voting cycle had precluded in-depth consideration of the draft prior to the vote. She said that ACORD staff, among others, were compiling comments received around the time of the vote.

Ms. Henstrand said she anticipated that the Working Group would reconvene to have a “disciplined” discussion regarding possible revisions to the 875 proposal. She noted that Terrorism Risk Insurance Act (TRIA) and wind-and-hail deductible issues were among various unresolved concerns. She also said that ACORD was willing to hold a special “off-cycle” vote on a new 875 proposal, and she noted that an 875 form would officially bind coverage.

Responding to Rep. Lehman’s interest in having an 875 form completed by the NCOIL Summer Meeting, rather than having the Committee vote on the draft binder model amendments:

- Ms. Henstrand said that ACORD was willing to work toward a Summer Meeting deadline and would welcome Rep. Lehman’s participation during discussions.
- P-C industry representatives said they would commit to a Summer Meeting deadline.
- Lender representatives said they would commit to moving forward but needed to review the unresolved 875 concerns before committing to a timeframe.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:00 a.m.