COLLECTIVE COVERAGE: HOW GROUP HOMEOWNERS INSURANCE COULD PROMOTE CLIMATE ADAPTATION AND RESILIENCE

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Abstract

Property insurers have long been heralded as potential leaders in driving adaptation and resilience to the accelerating impacts of climate change. In practice, however, insurers have largely fallen short of these expectations. Premiums frequently fail to reflect even near-term climate risks, discounts for climate-linked property hardening remain limited, and insurers regularly withdraw from the regions most exposed to climate change. Several structural features of contemporary property insurance markets help explain this disappointing track record, including annual policy terms, individualized underwriting, and purchasers' informational, cognitive, and financial constraints. This Article argues that these structural barriers to insurers promoting climate adaptation and resilience can be mitigated through a largely overlooked legal reform: modernizing state insurance laws that prohibit insurers from providing group insurance coverage to homeowners living within geographically defined communities. Such group property insurance, this Article argues, could enable insurers and communities to better coordinate and finance climate adaptation and resilience strategies, while also producing more accurate and durable pricing signals. Historical experiments with group property insurance and the success of group models in health and life insurance demonstrate both the feasibility and potential benefits of such arrangements. Yet in most states, "fictitious group" laws and restrictive interpretations of state prohibitions against "unfair discrimination" render such group property insurance arrangements legally unworkable. Updating these laws would open the door to much-needed experimentation in homeowners insurance markets, creating the prospect of better aligning these markets with the urgent risks posed by climate change.

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Introduction

The impacts of climate change have become increasingly apparent in recent years, as evidenced by the growing frequency and severity of extreme weather events such as droughts, wildfires, intense rainfall, and severe storms.[1] Few sectors are more directly exposed to these realities than property

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[1] *See generally* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), CLIMATE

insurance, where they translate directly into mounting claims and disappearing coverage.[2] For this reason, observers have long suggested that property insurers could play a pivotal role in advancing adaptation and resilience to climate change.[3] The hope was that insurers would not only make the financial consequences of climate change harder to ignore, but also that they would become active agents of risk reduction: inducing individuals and communities to counteract climate risk through premium incentives, technical guidance, and public policies that reduce exposure to future harms.[4]

Over recent years, homeowners insurers have indeed taken limited steps

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CHANGE 2023: SYNTHESIS REPORT (2023); EXTREME WEATHER AND CLIMATE CHANGE, NASA (Oct. 23, 2024), https://science.nasa.gov/climate-change/extreme-weather.

[2] FEDERAL INSURANCE OFFICE, U.S. DEPARTMENT OF THE TREASURY, ANALYSES OF U.S. HOMEOWNERS INSURANCE MARKETS, 2018-2022: CLIMATE-RELATED RISKS AND OTHER FACTORS (2025); Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors*, 63 ARIZ. L. REV. 679, 681 (2021); Mark Nevitt & Michael Pappas, *Climate Risk, Insurance Retreat, And State Response*, 58 GA. L. REV. 1603, 1603 (2024); Peter Molk, *Florida's Homeowners Insurance Problems*, 31 CONN. INS. L.J. 40 (2024); CAROLYN KOUSKY, UNDERSTANDING DISASTER INSURANCE: NEW TOOLS FOR A MORE RESILIENT FUTURE (2022).

[3] See Sean B. Hecht, *Climate Change and the Transformation of Risk: Insurance Matters*, 55 UCLA L. REV. 1559, 1585 (2008); David A. Dana, *Incentivizing Municipalities To Adapt to Climate Change: Takings Liability and FEMA Reform as Possible Solutions*, 43 B.C. ENVTL. AFF. L. REV. 281 (2016); Christopher C. French, *America on Fire: Climate Change, Wildfires & Insuring Natural Catastrophes*, 54 U.C. DAVIS L. REV. 817 (2020); Anthony J. Webster & Richard H. Clarke, *Insurance Companies Should Collect a Carbon Levy*, 549 NATURE 152 (2017); EUROPEAN COMMISSION & EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY, USING INSURANCE IN ADAPTATION TO CLIMATE CHANGE: CURRENT PRACTICE, CHALLENGES AND OPPORTUNITIES (Apr. 2018); W.J.W. Botzen, J.C.J.H. Aerts & J.C.J.M. van den Bergh, *Willingness of Homeowners to Mitigate Climate Risk Through Insurance*, 68 ECOLOGICAL ECON. 2265 (2009) Amanda Savitt, *Insurance as a Tool for Hazard Risk Management? An Evaluation of the Literature*, 86 NAT. HAZARDS 583 (2017).

[4] *See, e.g.*, Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129 (2013); Madison Condon, *Market Myopia's Climate Bubble*, 2022 UTAH L. REV. 63 (2022); Cary Coglianese & Jennifer Nash, *Motivating Without Mandates: The Role of Voluntary Programs in Environmental Governance, in* DECISION MAKING IN ENVIRONMENTAL LAW (LeRoy C. Paddock et al. eds., 2016); Kelly Cusick et al., *Climate Change and Home Insurance: US Insurers Have Been Hit Hard by Severe Weather-related Claims*, Deloitte Ctr. for Fin. Servs. (May 29, 2024), https://www2.deloitte.com/us/en/insights/industry/financial-services/financial-services-industry-predictions/2024/climate-change-home-insurance-resiliency.htmll. *See generally* Omri Ben-Shahar & Kyle D. Logue, *Outsourcing Regulation: How Insurance Reduces Moral Hazard*, 111 MICH. L. REV. 197 (2012); Tom Baker & Anja Shortland, *Government and Insurance: Lessons for Ransomware*, 17 REG. & GOVERNANCE 1000 (2023); FRANZISKA ARNOLD-DWYER, INSURANCE, CLIMATE CHANGE AND THE LAW (2024).

to promote climate change resilience and adaptation.[5] But by most measures, they have not met lofty expectations that they would spearhead such efforts. Homeowners insurance premiums frequently fail to accurately communicate to property owners even near-term climate-related risks,[6] let alone the longer-term trajectory of these risks.[7] And insurers rarely offer meaningful incentives for climate-resilient improvements, at least in the absence of state laws requiring them to do so.[8] In many cases, they do the opposite—raising premiums or withdrawing coverage altogether from homeowners who have invested in well-supported risk-reduction measures.[9] Insurers have also remained largely on the sidelines of public policy debates over climate

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[5] *See generally* Aisha I. Saad, *The Regulatory Paradox of Climate Insurance,* WASH. U. L. REV. (forthcoming 2026).

[6] *See* S. S. Oh, I. Sen & A.M. Tenekedjieva, Pricing of Climate Risk Insurance: Regulation and Cross-Subsidies (2023) (unpublished manuscript); Benjamin J. Keys & Philip Mulder, *Property Insurance and Disaster Risk: New Evidence from Mortgage Escrow Data*, NAT'L BUREAU OF ECON. RSCH., Working Paper No. 32579, June 2024), http://www.nber.org/papers/w32579.

[7] See Daniel Schwarcz, *Obamacare For Homeowners Insurance: Fixing America's Broken Insurance Markets In A Time Of Climate Change*, 82 HARV. ENV. L. REV. (2025); Kenneth S. Abraham & Daniel Schwarcz, *The Limits of Regulation by Insurance,* 98 IND. L.J. 215, 263 (2022).

[8] *See* The Nature Conservancy, *Linking Forest Treatment to Insurance Benefits by Reducing Wildfire Risk* June 27, 2021 ("Despite being a proven tool in mitigating wildfire risk, insurance pricing models don't currently recognize the value of forest restoration."); Cal. Dep't of Ins., *Commissioner Lara Enforces Nation's First Wildfire Safety Regulation to Help Drive Down Cost of Insurance* (Oct. 17, 2022), https://www.insurance.ca.gov/0400-news/0100-press-releases/2022/release076-2022.cfm ("When Commissioner Lara took office in 2019, insurance companies representing 7 percent of the residential market provided insurance discounts and, under his leadership, that figure has grown to 40 percent."); Avery Ellfeldt, *California Insurers Begin Giving Discounts for Fire-Proofed Homes*, POLITICO (Sept. 19, 2024). ("The discounts offered by State Farm and dozens of other property insurers in California are too small to encourage wildfire mitigation — at least for several years, experts say."); Carolyn Kousky, *Insurance-Sector Tools to Combat Biodiversity Loss*, 377 SCI. 714, 714 (2022) ("Despite myriad reports and papers suggesting possible approaches for insurers to have an impact in this area, the number of pilots or programs that have actually been implemented is much smaller and is the focus of this discussion."); Carolyn Kousky & Sarah E. Light, *Insuring Nature*, 69 DUKE L.J. 323, 364–65 (2019); Cal. Dep't of Ins., FAQ: Safer from Wildfires (2023), https://www.insurance.ca.gov/01-consumers/105-type/95-guides/03-res/Insurers-Currently-Offering-Discounts.cfm ("As of August 2023, only 14 out of 102 admitted insurers writing homeowner's insurance policies in California offered discounts for parcel-level hazard mitigation actions, and just 15 offered discounts for community actions.").

[9] *See* Megan Fan Nunce, *California Homeowner Did Everything Insurer Asked, Still Got Dropped from Coverage*, S.F. CHRON. (Dec. 1, 2024); Saad, *supra* note 5; Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors*, 63 ARIZ. L. REV. 679 (2021).

change, especially in recent years.[10]

Although many factors help explain property insurers' limited role in advancing climate change adaptation and resilience, three stand out as especially significant.[11] First, many of the most effective climate change adaptation and resilience strategies, such as controlled burns and systematic brush clearance, must be implemented at the community level, rather than by individual property owners.[12] Because insurers sell coverage to individual property owners, they have limited reason to affirmatively incentivize such collective risk-mitigation efforts.[13] Second, the annual terms of nearly all homeowners insurance policies mean that insurance prices and discounts do not reflect the long-term risks of climate change, which are more significant than the near-term risks.[14] Finally, because nearly all property owners face significant informational, behavioral, and financial constraints, insurance prices often send signals that homeowners misinterpret or that tend not to result in meaningful risk mitigation.[15]

This Article argues that targeted reforms to outdated and little-known state insurance laws and regulations could help counteract these three key barriers to insurers playing a more active and effective role in advancing

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[10] *Cf.* Amelia Miazad, *D&O Insurers as Climate Governance Monitors*, 104 B. U. L. REV. 1181 (2024). In the United States especially, insurers' retreat from climate leadership has become increasingly visible, marked by high-profile exits from climate alliances and the continued underwriting and investment in carbon-intensive industries. *See* Saad, *supra* note 5.

[11] State rate regulation and resulting distortions in insurance pricing also contribute to this gap. See Daniel Schwarcz, *Ending Public Utility Style Rate Regulation in Insurance*, 35 YALE J. REG. 941, 946–47 (2018).

[12] *See* WILLIS TOWERS WATSON & NATURE CONSERVANCY, WILDFIRE RESILIENCE INSURANCE: QUANTIFYING THE RISK REDUCTION OF ECOLOGICAL FORESTRY WITH INSURANCE (2021) (reviewing variety of wildfire risk mitigation strategies); INSURANCE INSTITUTE FOR BUSINESS AND HOME SAFETY, THE RETURN OF CONFLAGRATION IN OUR BUILT ENVIRONMENT (2023); Hayley Hesseln, *Wildland Fire Prevention: a Review*, 4 CURRENT FORESTRY REPS. 178 (2018). See also Wenchao Qi et al., *A Review on Applications of Urban Flood Models in Flood Mitigation Strategies*, 108 NATURAL HAZARDS 31 (2021) (reviewing flood risk mitigation strategies).

[13] *See* Part I.B, *infra*.

[14] Howard Kunreuther, *Reducing Losses from Catastrophic Risks Through Long-Term Insurance and Mitigation*, 75 SOC. RSCH. INT'L Q. 905 (2008); Madison Condon, *Market Myopia's Climate Bubble*, 2022 UTAH L. REV. 63, 84 (2022). KENNETH S. ABRAHAM & DANIEL SCHWARCZ, INSURANCE LAW AND REGULATION (8th ed. 2025).

[15] *See* HOWARD C. KUNREUTHER, MARK V. PAULY & STACEY MCMORROW, INSURANCE AND BEHAVIORAL ECONOMICS: IMPROVING DECISIONS IN THE MOST MISUNDERSTOOD INDUSTRY (2013); Daniel Schwarcz, Brenda J. Cude, Kyle D. Logue & German Marquez Alcala, *Read But Not Understood? An Empirical Analysis of Consumer Comprehension in Homeowners Insurance*, 112 VA. L. REV. (forthcoming, 2026); Daniel Schwarcz, *Reevaluating Standardized Insurance Policies*, 78 U. CHI. L. REV. 1263 (2011).

climate adaptation and resilience. Specifically, it proposes that states eliminate rules that limit or outright prohibit property insurers from offering group homeowners insurance policies to geographically defined local communities.[16] Such group property insurance arrangements would parallel the familiar model of group health or life insurance: the group—in this case, a local government, municipality, or community—would negotiate coverage terms and pricing structures with one or more insurers. These insurers would then make the coverage available to homeowners living in the community, pursuant to the negotiated rating and underwriting terms. As with many forms of group insurance, insurers would likely refine premiums for homeowners who opted for coverage based on individual, risk-based characteristics of those homeowners. Additionally, enrollment would remain voluntary, allowing homeowners in the community to choose between group coverage and the traditional individual homeowners insurance market.[17]

Such group property insurance, this Article contends, could help counteract all three of the major barriers that have historically limited property insurers' role in climate risk adaptation and resilience.[18] Geographically defined communities are particularly well suited to negotiate and implement collective risk mitigation strategies in exchange for premium concessions from participating insurers. The efficiencies of insuring risk at the group level and monitoring homeowner compliance with risk-mitigation measures, combined with the long-term benefits of structuring and maintaining such group insurance arrangements, could foster more durable partnerships between insurers and communities. And local governments negotiating on behalf of their residents could engage professional insurance advisors to assess their coverage options and tap debt markets to finance long-term risk mitigation projects that yield tangible insurance benefits.

Despite the significant promise of group property insurance, such markets do not currently exist in the United States.[19] This absence is not primarily due to insurers' lack of interest as a historical matter, nor to technical or logistical hurdles. To the contrary, several property insurers experimented with group property insurance in the mid-twentieth century,[20] and the core infrastructure

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[16] *See* Part II, *supra*. In previous work, I argued that aspects of health insurance reform could inform regulatory approaches to homeowners insurance in the context of climate change. Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7. This Article is similarly inspired by considering the extent to which rules and market structures existing in insurance domains outside of property insurance can be adapted to address the pressing problems facing property insurers in a time of climate change.

[17] *See* Part II.A, *infra*.

[18] *See* Part II.B, *infra*.

[19] *See* Part III, *infra*,

[20] *See* Bernard L. Webb & John R. Lewis, *Fictitious Group Statues: Diminishing Legal*

for group insurance is already well established in domains like health, life, and disability insurance.

Instead, the main reason group property insurance has failed to take hold in the United States lies in obscure state laws and regulatory interpretations that render such arrangements legally unworkable. In many states, so-called "fictitious group" laws prohibit insurers from issuing policies to groups of policyholders who lack a shared insurable interest in a common property, effectively banning most forms of group property insurance.[21] And even in the relatively small number of states that permit limited forms of group property insurance, existing statutes typically envision groups organized only around employers, labor unions, or professional associations, as in group health and life insurance. Importantly, these state restrictions on group property insurance did not emerge from principled debates over the structure of insurance markets. Instead, they were largely the product of self-interested lobbying by insurance agents seeking to preserve their central role in the distribution of property and casualty policies.[22]

Although not all states expressly prohibit or restrict group property insurance, every state maintains more general prohibitions on insurance discrimination that could independently constrain such arrangements, depending on how they are enforced. Most prominently, all states prohibit "unfair discrimination" in property insurance markets,[23] and regulators in some jurisdictions have interpreted this prohibition to bar or substantially limit group property insurance.[24] In addition, most states prohibit race-based insurance discrimination.[25] Because insurers historically used geographic

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Barriers to the Mass Marketing of Property and Liability Insurance, 38 INS. COUNSEL J. 637 (1971); JAMES JUDSON CHASTAIN, AN EVALUATION OF GROUP PROPERTY INSURANCE, PhD Dissertation, 1962; SPENCER KIMBALL & HERBERT DENENBERG. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE (1970); Bernard L. Webb, *The Regulation of Group Property and Liability Insurance*, 20 J. PUB. L. 479 (1971).

[21] *See* Insurance Risk Management Institute, Fictitious group laws, at https://www.irmi.com/term/insurance-definitions/fictitious-grouping-law.

[22] See sources in note 19, supra. *See also* Daniel Schwarcz, Tom Baker, & Kyle Logue, *Regulating Robo-Advisors in an Age of Generative Artificial Intelligence*, 82 WASH. & LEE L. REV. 775 (2025).

[23] Ronen Avraham, *Discrimination and Insurance*, in THE ROUTLEDGE HANDBOOK OF THE ETHICS OF DISCRIMINATION 335, 335–47 (Deborah Hellman & Sophia Moreau eds., 2018).

[24] See N.Y. Dep't of Fin. Servs., OGC Op. No. 06-04-08, Group Property Policy (Apr. 2006). *See generally* Daniel Schwarcz, *Towards a Civil Rights Approach to Insurance Anti-Discrimination Law*, 69 DEPAUL L. REV. 657 (2020).

[25] Ronen Avraham, Kyle Logue, & Daniel Schwarcz, *Understanding Insurance Antidiscrimination Laws*, 87 S. CAL. L. REV. 195 (2014).

location as a proxy for race,[26] states commonly enforce these prohibitions through regulatory scrutiny of geographic rate variation. Geographically defined group property insurance could be interpreted to circumvent this framework, creating a risk that insurers indirectly discriminate against low-income, minority communities.

Ultimately, this Article argues that states should both repeal laws that expressly foreclose geographically based group property insurance and interpret their more general insurance antidiscrimination laws in ways that affirmatively permit such arrangements. Doing so could catalyze group insurance markets that actively promote climate adaptation and resilience at the community level. And while there is some risk that these arrangements could disadvantage low-income or minority communities, the Article concludes that this risk is both limited in scope and amenable to mitigation through familiar forms of state insurance regulation.

This Article develops these arguments in four Parts. Part I examines both the potential for homeowners insurers to play a leading role in promoting climate adaptation and resilience, while also highlighting property insurers' failure to live up to this potential in recent years. Part II introduces the concept of group property insurance and explains how such arrangements could address many of the shortcomings identified in Part I. Part III analyzes the state laws and regulations that currently restrict group property insurance, arguing that repealing these barriers would enable much-needed experimentation with models that better position the insurance industry to support proactive climate adaptation and resilience. Finally, Part IV addresses potential complications, objections, and alternative design choices, while emphasizing that permitting local governments to sponsor group property insurance aligns with, and in many cases complements, nearly all other leading proposals to reform property insurance markets in ways that promote climate adaptation and resilience.

I. Unmet Expectations: The Mixed Track Record of Insurers In Promoting Climate Adaptation and Resilience

For decades, commentators have suggested that property insurers could play a key role in communicating climate risks to homeowners and encouraging climate change adaptation and resilience. Consistent with these expectations, at times property insurers have indeed funded important

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[26] Gregory D. Squires & William Velez, *Insurance Redlining and the Process of Discrimination*, 16 REV. BLACK POL. ECON. 63 (1988); Mary L. Heen, *Nondiscrimination in Insurance: The Next Chapter*, 49 GA. L. REV. 1 (2014); Daniel Schwarcz, *Towards a Civil Rights Approach to Insurance Anti-Discrimination Law*, 69 DEPAUL L. REV. 657 (2019).

climate-related research and played a leading role in pushing for more effective building codes. But in practice, insurers' climate efforts have often fallen short of commentators' expectations for three main reasons: insurers assess and price risk on a short-term, annual basis; many effective adaptation and resilience strategies must be implemented collectively at the community level, rather than by individual homeowners; and homeowners often lack information or financial resources or experience cognitive biases that limit the risk-mitigating potential of insurance.

This Part examines how these three factors have constrained insurers' ability to contribute meaningfully to climate adaptation and resilience. Part A explains why homeowners insurance pricing often fails to provide effective signals of climate risk to current and prospective homeowners, tracing this failure to two of the three factors identified above: the short-term nature of homeowners insurance and the cognitive and informational limits facing insurance purchasers. Part B then turns to insurers' more affirmative efforts to address climate risk, including the use of targeted discounts for risk-mitigation measures and engagement with public policy. The mixed success of these efforts, this Part argues, reflects the combined influence of all three factors, including the structural disconnect between individual insurance contracts and community-level adaptation and resilience.

A. Climate Risk Signaling and Homeowners Insurance

1. The Mixed Track Record on Risk Signaling

Commentators concerned about climate change have long argued that insurance pricing would serve as an early warning system by signaling to homeowners that their properties face growing exposure to climate-related perils.[27] This logic is straightforward: as the risk of loss from climate change increases, insurers will adjust premiums accordingly. Any insurer that failed to reflect this risk in its pricing would suffer losses as high-risk policyholders file claims exceeding their premiums, while lower-risk policyholders migrated to competitors offering more accurate, risk-based pricing. Over time, these market dynamics would tend to produce premiums that reflect true climate risk, thereby forcing homeowners to confront the consequences of climate change—whether by relocating, absorbing declining property

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[27] *See, e.g.*, Dave Jones, *The Uninsurable Future: The Climate Threat to Property Insurance, and How to Stop It*, 135 YALE L.J. ONLINE 181, 181 (2025); FRANZISKA ARNOLD-DWYER, INSURANCE, CLIMATE CHANGE AND THE LAW (2024); KOUSKY, *supra* note 2; Omri Ben-Shahar & Kyle D. Logue, *The Perverse Effects of Subsidized Weather Insurance*, 68 STAN. L. REV. 571, 611–16 (2016); Keys & Mulder, *supra* note 6.

values, or avoiding moves to high-risk areas altogether.[28]

In some respects, this account of insurer-driven climate adaptation is already unfolding in parts of the United States. Insurance premiums are indeed markedly higher in climate-exposed states, such as California, Florida, and Louisiana, than they are in regions with lower climate risk.[29] To illustrate, between 2018 and 2022 consumers in the top 20 percent of ZIP Codes with the highest projected climate-related building losses paid average inflation-adjusted premiums 82 percent higher than those in the bottom 20 percent of ZIP Codes.[30] And in recent years, homeowners in these states have faced increasing difficulty obtaining coverage, as insurers withdraw from the market or decline to write new policies.[31] These insurance-market dynamics have garnered increasing public attention, and are often paired with anecdotal reports suggesting that insurance costs are influencing real estate markets and homeowners' decisions about where to live.[32]

Yet the available evidence presents a more nuanced and complicated picture than this simple model of insurance rates as a climate signal suggests. Aggregate trends in real estate prices, for example, do not consistently reflect these insurance market dynamics.[33] To illustrate, some of the areas experiencing the fastest growth in home values in recent years—such as Miami, Tampa, San Diego, and New York—are also among the most vulnerable to climate-related risks.[34] And while insurance premiums are indeed rising as a result of increased severity and frequency of perils with a clear link to climate change like wildfire, other factors such as non-insurance inflation, litigation costs, and increased losses from perils with a less clear link to climate change (like hail) may also significantly impact premiums in ways that muddy the climate-signal of insurance prices.[35] In fact, recent evidence shows that average homeowners insurance premiums are still

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[28] *See* Keys & Mulder, *supra* note 6; Ben-Shahar & Logue, *supra* note 27.

[29] *See* FEDERAL INSURANCE OFFICE, INSURANCE SUPERVISION AND REGULATION OF CLIMATE-RELATED RISKS (U.S. Dep't of the Treasury 2023).

[30] *See id.*

[31] *See* Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7; Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors*, 63 ARIZ. L. REV. 679, 681 (2021); Mark Nevitt & Michael Pappas, *Climate Risk, Insurance Retreat, And State Response*, 58 GA. L. REV. 1603, 1603 (2024); Molk, supra note 2, at 40.

[32] *See* Alice Farmer, Disasters in Slow Motion: Why Climate Displacement Tests International Legal Frameworks, and What To Do About It (Draft, on file with author) (2025).

[33] *See* Oh, Sen, & Tenekedjieva, supra note 6; Keys & Mulder, *supra* note 6.

[34] See S&P Cotality Case-Shiller Metro Area, at https://www.spglobal.com/spdji/en/index-family/indicators/sp-cotality-case-shiller/sp-cotality-case-shiller-metro-area/#indices

[35] *See* FEDERAL INSURANCE OFFICE, *supra* note 29.

shaped more by the socio-economic features of homeowners, such as their credit score, than by the disaster risk posed by the location of an insured home.[36]

2. *Explaining the Mixed Track Record*

A range of market and regulatory dynamics help explain these outcomes.[37] But, two factors are especially important: the short-term nature of property insurance contracts and the limited information possessed by the individual homeowners who purchase these policies. Consider first the short-term nature of homeowners insurance.[38] Homeowners policies are almost always issued on a one-year basis, and insurers generally have no obligation to renew those policies.[39] As a result, premiums reflect only expected losses over the coming year rather than longer-term risks.[40] Although climate-related catastrophes such as wildfires attract considerable attention and represent the fastest-growing share of annual losses, they still account for only a relatively small proportion of overall claims on an annual basis. Instead, over the short-term most homeowners insurance payouts continue to stem from more idiosyncratic losses or from perils with unclear connections to climate change, such as hail. This is especially true because flooding, which is perhaps the peril most clearly linked to climate change, is excluded from typical homeowners policies altogether and therefore not reflected in the pricing of these policies.[41]

The short-term nature of homeowners insurance interacts with a second key factor – persistent gaps in consumer insurance knowledge – to substantially undermine the ability of homeowners insurance prices to communicate climate risks. Most notably, homeowners often do not

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[36] Joshua A. Blonz, Mallick Hossain & Joakim Weill, Pricing Protection: Credit Scores, Disaster Risk, and Home Insurance Affordability (Nov. 1, 2024), https://ssrn.com/abstract=5026600.

[37] State insurance regulation, for example, often dampens the extent to which premiums reflect actual risk, effectively requiring homeowners in less exposed areas to subsidize coverage for those in more hazardous regions. See Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7; Keys & Mulder, *supra* note 6; ARNOLD-DWYER, *supra* note 4, at sec. 7.5.4.

[38] *See generally* Kunreuther, *supra* note 14.

[39] *See id.*

[40] *See* Dwight M. Jaffee, Howard C. Kunreuther & Erwann Michel-Kerjan, *Long-Term Property Insurance*, 29 J. INS. REG. 167 (2010); Madison Condon, *Market Myopia's Climate Bubble*, 2022 UTAH L. REV. 63.

[41] *See* Jesse D. Gourevitch et al., *Unpriced Climate Risk and the Potential Consequences of Overvaluation in U.S. Housing Markets*, 13 NATURE CLIMATE CHANGE 250 (2023); Mark Nevitt, *The Legal Crisis Within the Climate Crisis,* 76 STAN. L. REV. 1051, 1114 (2024).

appreciate that their insurers can non-renew coverage or substantially raise premiums at the end of an annual policy term.[42] To the contrary, they typically budget for the cost of insurance at the time they first purchase a home, under the implicit assumption that insurance will remain available for decades to come at a reasonably stable price.[43] As a result, homeowners often ignore or unduly discount the long-term risks to their property posed by climate.[44]

Just as importantly, virtually all homeowners lack a clear understanding of what their insurance policies cover. Consumer misunderstandings of coverage are well documented in the context of flood, where a large segment of homeowners wrongly believe they are covered for this risk by typical homeowners insurance policies.[45] But consumers are often unaware of other increasingly common terms and conditions that limit coverage for climate-related risks, such as wildfire- or hurricane-specific deductibles or provisions limiting replacement value recovery for roof damage.[46] These provisions shift climate risk onto homeowners in ways that are not captured in premiums and that are largely ignored by homeowners unless and until they experience a loss.[47]

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[42] *See* Jim Rossi & J.B. Ruhl, *Adapting Private Law for Climate Change Adaptation*, 76 VAND. L. REV. 827, 874 (2023) (noting the unavailability of insurance for adaptation risk).

[43] *See* Laurence Darmiento, *California's Home Insurance Crisis: What Went Wrong, How it Can Be Fixed and What Owners Can Do*, L.A. TIMES (Mar. 29, 2024), https://perma.cc/LE5K-YNG8; Christopher Flavelle, Jill Cowan & Ivan Penn, *Climate Shocks Are Making Parts of America Uninsurable. It Just Got Worse*, N.Y. TIMES (May 31, 2023), https://perma.cc/86QJ-9ZTX; Levi Sumagaysay, *350,000 Californians Are Now on the FAIR Plan, the Last Resort for Fire Insurance. Now What?*, CALMATTERS (Jan. 23, 2024), https://perma.cc/7PSR-DLW9. *See* Christopher Flavelle, *California Wildfires Threaten Insurers Already Teetering From Climate Shocks,* N.Y. TIMES (Jan. 8, 2025), https://perma.cc/7246-DPH4. Partially for this reason, when insurers do raise rates or withdraw from high-risk areas, homeowners often respond through political channels, securing short-term regulatory interventions that cap rate increases or expand access to subsidized, quasi-public insurance programs.

[44] *See generally* ARDEN ROWELL & KENWORTHEY BILZ, THE PSYCHOLOGY OF ENVIRONMENTAL LAW 219-259 (2021).

[45] Michelle Boardman, *Insuring Understanding: The Tested Language Defense*, 95 IOWA L. REV. 1075 (2010); Carolyn Kousky & Noelwah R. Netusil, *Flood Insurance Literacy and Flood Risk Knowledge: Evidence from Portland, Oregon*, 26 RISK MGMT. & INS. REV. 175 (2023). *See also* Stephanie M. Stern, *Climate Transition Relief: Federal Buyouts for Underwater Homes*, 72 DUKE L.J. 161, 211 (2022).

[46] *See* Schwarcz, Cude, Logue & Marquez Alcala, *supra* note 15; Daniel Schwarcz, *Coverage Information in Insurance Law*, 101 MINN. L. REV. 1457 (2017); Michael Blasie, *Regulating Plain Language*, 2023 WISC. L. REV. 687; John Aloysius Cogan Jr*., Readability, Contracts of Recurring Use, and the Problem of Ex Post Judicial Governance of Health Insurance Policies*, 15 ROGER WILLIAMS U. L. REV. 93, 119 (2010).

[47] See Franziska Arnold-Dwyer, Insurance in Douglas Kysar and Ernest Lim (eds), THE

Another increasingly relevant informational limitation of homeowners involves the risk that their insurer will be financially unable to pay covered claims in the event of a catastrophic loss.[48] Most homeowners simply do not factor this risk into their insurance purchases, both because they lack good information about this risk and because they rightly assume that state laws will limit this risk for individual homeowners.[49] But increasingly, this results in homeowners in climate-exposed regions purchasing coverage from insurers that are financially weaker than traditional carriers.[50] This once again results in the transfer of climate risk to homeowners in ways that are not reflected in insurance premiums, and hence largely invisible to most homeowners.[51]

B. Affirmative Risk Mitigation by Insurers

1. The Mixed Track Record on Affirmative Risk Mitigation

Commentators envisioned that insurers would take an active and leading role in promoting climate adaptation and resilience not merely by signaling risk through prices, but by directly encouraging risk mitigation and adaptation efforts. They expected insurers to offer premium discounts for effective risk-reduction measures, educate policyholders on how to limit their climate exposure, offer technical guidance and support, and shape public policy to support broader adaptation and resilience goals.[52]

OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW sec 3.2 (Oxford University Press, 2026).

[48] *See* Jones, *supra* note 27; Parinitha Sastry et al., When Insurers Exit: Climate Losses, Fragile Insurers, and Mortgage Markets 19 (Dec. 23, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4674279.

[49] Most state guaranty funds ensure that policyholders can recover up to $300,000 of claims irrespective of their insurers' capacity to pay. However, the extent of guaranty fund protection varies by insurance product and state. See NAIC, PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION MODEL ACT, MODEL LAW 540 (2009).

[50] *See* Saad, *supra* note 5.

[51] There is some variation in how guarantee funds are financed that could mean these costs are borne not just by impacted homeowners, but by all homeowners in a state or perhaps even more broadly. *See* Michael Pappas, *Climate Last Resorts*, UC IRVINE L. REV. (forthcoming 2025).

[52] *See* JARZABKOWSKI, PAULA, ET AL. INSURANCE FOR CLIMATE ADAPTATION: OPPORTUNITIES AND LIMITATIONS (2019); Linda Shi & Susanne Moser, *Transformative Climate Adaptation in the United States: Trends and Prospects,* 372 SCIENCE (2021); Saad, supra note 5; Madison Condon, *Climate Services: The Business of Physical Risk*, 55 ARIZ. ST. L.J. 147 (2023); David P. Vincent, *AES v. Steadfast and the Concept of Foreseeability in Climate Change Litigation*, 44 ENV'T L. 201, 216 (2014); Amanda Shanor & Sarah E. Light, *Anti-Woke Capitalism, the First Amendment, and the Decline of Libertarianism*, 118 NW. U.

These expectations have not gone entirely unmet in the United States.[53] Insurers have, at times, taken affirmative steps to promote climate adaptation and resilience. Some have voluntarily offered modest discounts for wildfire risk-reduction measures such as installing fire-resistant roofing, clearing vegetation, and maintaining defensible space around homes.[54] Others provide premium reductions to homeowners in communities recognized by third-party organizations like Firewise USA.[55] Insurers have also funded nonprofit research on climate-related property risks, particularly through the Insurance Institute for Business and Home Safety (IIBHS).[56] In the policy arena, they have at times supported both broad climate action and specific reforms, including stronger building codes.[57]

In practice, however, insurers' efforts to promote meaningful climate

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L. REV. 347, 360 (2023); EUROPEAN CENTRAL BANK AND EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY, POLICY OPTIONS TO REDUCE THE CLIMATE PROTECTION GAP (Apr. 24, 2023), https://www.ecb.europa.eu/pub/pdf/other/ecb.policyoptions_EIOPA~c0adae58b7.en.pdf; Julia Plass & Jens O. Zinn, *The Mixed Blessing Of Shifting Responsibilities: Challenges For Introducing Compulsory Elemental Insurance In Germany*, 127 INT'L J. DISASTER RISK REDUCTION 105670 (2025); ARNOLD-DWYER, *supra* note 4.

[53] Insurer-driven adaptation and resilience efforts have also, at times, proven effective outside the United States, although the international record remains uneven. In Australia, for example, Suncorp Insurance offers homeowner policies that provide reinstatement with additional recommended resilience upgrades designed to protect against severe weather, typically in the range of AUD $5,000 to $10,000. In the United Kingdom, the Flood Re "Build Back Better" scheme allows homeowners to install property-level flood resilience measures worth up to £10,000 when repairing their homes following a flood loss. And in New Zealand, the Court of Appeal in *Medical Assurance Society New Zealand Ltd v East* interpreted a policy requiring the insurer to rebuild a dwelling "to a condition substantially the same as new, so far as modern materials allow" as incorporating contemporary quality and regulatory standards. As a result, the court held that the insurer was required to rebuild the property in accordance with current planning consent requirements, even though doing so produced improvements relative to the pre-loss condition. *See* Arnold-Dwyer, *supra* note 47, at sec 3.3.

[54] *See* Saad, *supra* note 5 ("Allstate, Farmers, and State Farm, all provide premium discounts to home owners who adopt various damage-mitigating measures.").

[55] *See* Firewise USA, NAT'L FIRE PROT. ASS'N, https://www.nfpa.org/education-andresearch/wildfire/firewise-usa (last visited Dec. 10, 2024); Kousky & Light, supra note 8, 364; Christopher C. French, America on Fire: Climate Change, Wildfires & Insuring Natural Catastrophes, 54 U.C. DAVIS L. REV. 817 (2020).

[56] FORTIFIED HOME, REGULATORY FRAMEWORK FOR FORTIFIED INSURANCE INCENTIVES, https://disastersafety.org/wp-content/uploads/FORTIFIED-Home-Incentives_IBHS.pdf (last visited Dec. 10, 2024).

[57] *See* Emily Flitter, *By Burning Down Buildings, Insurers Want to Change How They're Built*, N.Y. TIMES (Jul. 15, 2024), https://www.nytimes.com/2024/07/15/business/wildfires-home-insurance-building-standards.html (noting the efforts of insurers to promote new building standard standards that can reduce the risk of wildfire).

adaptation and resilience often fall short of what their websites and promotional materials suggest. Most notably, insurers have shown marked reluctance to offer discounts for either individual or community-level risk mitigation measures.[58] For instance, as of August 2023, only 14 of 102 admitted insurers writing homeowners policies in California provided discounts for parcel-level wildfire mitigation, and just 15 offered discounts for community-wide actions.[59] Similar patterns of resistance to insurance discounts for risk-mitigation measures have been documented in other wildfire-prone states, including Colorado and Washington.[60] This hesitation persists despite multiple studies estimating that community-level wildfire management strategies—such as forest thinning and prescribed burning—could reduce insurer losses by 40 to 60 percent in many regions.[61]

In response to insurers' reluctance to offer discounts for wildfire risk mitigation, some states have enacted laws or adopted regulations requiring them to do so. California's "Safer from Wildfires" framework, for example, mandates that insurers provide premium reductions for specific home-hardening measures, including fire-resistant roofs, ember-resistant vents, and property maintenance efforts like creating defensible space.[62] Insurers are also required to support community-level mitigation by offering discounts to policyholders in areas recognized by programs such as Firewise USA for implementing best practices in wildfire risk reduction.[63]

So far, these regulatory efforts have had limited success.[64] Multiple independent assessments have found that the discounts insurers offer are too small to meaningfully influence homeowner behavior.[65] For instance, State

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[58] *See* Jones, *supra* note 27, at 218-220.

[59] Cal. Dep't of Ins., *FAQ: Safer from Wildfires* (2023), https://www.insurance.ca.gov/01-consumers/105-type/95-guides/03-res/Insurers-Currently-Offering-Discounts.cfm.

[60] *See* Robert Tann, *Colorado Will Soon Force Insurance Companies to Recognize Homeowners' Wildfire Mitigation Efforts. Will It Lower Premiums?*, SUMMIT DAILY (June 10, 2025).

[61] WILLIS TOWERS WATSON & THE NATURE CONSERVANCY, WILDFIRE RESILIENCE INSURANCE: QUANTIFYING THE RISK REDUCTION OF ECOLOGICAL FORESTRY WITH INSURANCE (2023).

[62] Cal. Dep't of Ins., *Commissioner Lara Enforces Nation's First Wildfire Safety Regulation to Help Drive Down Cost of Insurance* (Oct. 17, 2022), https://www.insurance.ca.gov/0400-news/0100-press-releases/2022/release076-2022.cfm.

[63] Cal. Dep't of Ins., *supra* note 59.

[64] Conrad A. Sproul, *"Safer from Wildfires"? - Viewing California's Novel Insurance Regulation Through a Law and Economics Lens*, 44 STAN. ENVTL. L. J. 71 (2025).

[65] *See* United Policyholders, *California Insurers Must Give Discounts for Wildfire Mitigation. Have Homeowners Benefited?* (Apr. 18, 2024); Carmen Balber, *Wildfire Mitigation Discounts Too Low, Insurance Companies Fail to Explain How They Rank*

Farm offered just a 0.1 percent premium reduction for installing fire-resistant windows.[66] Farmers Insurance estimated that even homeowners in high-risk areas who completed all recommended mitigations would save only $42 to $75 per year.[67] Beyond the modest size of these discounts, insurers have often tried to shift costs or impose additional hurdles on policyholders seeking these discounts. To illustrate, Farmers initially proposed charging homeowners approximately $125 every three years for mitigation inspections—effectively nullifying the value of its discount—until regulators intervened and required the company to absorb the cost.[68] Other insurers, including State Farm and CSAA, similarly sought to make inspection costs the responsibility of homeowners seeking credit.

Wildfire is not the only context in which states have found it necessary to mandate insurance discounts for risk mitigation, and to actively monitor compliance to ensure those discounts are meaningful. Several states, including Florida, Louisiana, and Alabama, have required insurers to offer premium reductions for wind mitigation measures, such as hurricane shutters or reinforced roof attachments.[69] Others, like Texas, have mandated discounts for installing hail-resistant roofs.[70] The fact that many of these states generally favor limited regulation underscores a broader point: even in traditionally deregulatory environments, policymakers have concluded that insurers are unlikely to offer appropriate incentives for risk mitigation without regulatory intervention.

As with California's experience with wildfire, many states that have mandated insurer discounts for wind have struggled to translate those

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Homeowners' Wildfire Risk, CONSUMER WATCHDOG CHALLENGES (May 1, 2024).

[66] Avery Ellfeldt, *California Insurers Begin Giving Discounts for Fire-Proofed Homes*, E&E NEWS BY POLITICO (Climatewire) (Sept. 19, 2024, 6:33 AM EDT) (reporting that "State Farm policyholders in California who install or have fire-resistant windows became eligible for premium reduction of 0.1 percent," and highlighting the view of several experts that the "discounts offered by State Farm and dozens of other property insurers in California are too small to encourage wildfire mitigation — at least for several years").

[67] United Policyholders, *supra* note 65.

[68] Consumer Watchdog, *supra* note 65.

[69] Florida Office of Ins. Regulation, *Premium Discounts for Hurricane Loss Mitigation* (2005), https://floir.com/docs-sf/default-source/property-and-casualty/oir-05-022m.pdf; Sabrina Wilson, *New Law Will Force Insurers to Give Discounts to Homeowners Under Certain Circumstances*, FOX 8 LIVE (June 2, 2023), https://www.fox8live.com/2023/06/03/new-law-will-force-insurers-give-discounts-homeowners-under-certain-circumstances/; Ala. Dep't of Ins. & Ctr. for Risk & Ins. Rsch., Univ. of Ala., *Performance of IBHS Fortified Home Construction in Hurricane Sally* (May 5, 2025).

[70] Tex. Dep't of Ins., *Products Qualifying for Impact-Resistant Roofing Credits* (Feb. 24, 2023).

mandates into meaningful incentives for risk mitigation. In Florida for instance, early efforts to require wind mitigation discounts fell short, with the state's insurance regulator concluding that the credits did not adequately reflect the value of the mitigation measures. In response, the Office of Insurance Regulation ordered insurers to increase the size of their discounts and to clearly disclose the dollar value associated with each approved feature.[71] While these reforms led to a roughly 20% reduction in statewide wind insurance premiums within a few years, subsequent research revealed that most of the savings resulted from risk reclassification rather than new retrofit activity.[72] About 20% of homeowners obtained wind inspections to claim discounts, but only around 2% undertook any actual fortification. Most simply identified preexisting features—such as hip roofs or reinforced fasteners—and received credits without making improvements. As a result, insurers collected significantly less premium, particularly in high-risk counties where average premiums dropped by 40% or more despite little change in underlying risk. In short, while mandated wind mitigation credits delivered savings to consumers, the implementation overshot its mark, reducing premiums more than warranted by actual reductions in exposure.

On the other hand, at least some state laws requiring insurers to offer discounts for risk-mitigation have proven remarkably effective. In the wake of Hurricane Ivan in 2004, Alabama required insurers to offer minimum insurance discounts for homes meeting IBHS Fortified Home standards. It later established a grant program to help fund retrofits. This combination of mandated sizable premium discounts and grants "worked like gangbusters," according to Alabama's Insurance Commissioner.[73] A recent study of thousands of claims found that fortified homes had 55–74% fewer claims than similar non-Fortified homes, and when they were damaged, losses were 14–40% lower in severity.[74] Despite roughly one-quarter of the insured properties being fortified in the study, they accounted for only 9% of the paid claims.[75] The data suggested that if every house in the affected area had been built or retrofitted to fortified standards, insurers' wind damage payouts

[71] Fla. Admin. Code r. 69O-170.017 (Fla. Dep't of Ins., Dec. 2006), https://flrules.org/gateway/ruleNo.asp?ID=69O-170.017.

[72] RISK MGMT. SOLS., INC., STUDY OF FLORIDA'S WINDSTORM MITIGATION CREDITS: ASSESSING THE IMPACT ON THE FLORIDA INSURANCE MARKET (report prepared for the Fla. Legislature under contract with the Fla. Dep't of Fin. Servs. 2010), https://forms2.rms.com/rs/729-DJX-565/images/tc_2010_rms_study_florida_windstorm_mitigation_credits.pdf.

[73] See *Performance of IBHS Fortified Home Construction in Hurricane Sally*, *supra* note 69.

[74] *See id.*

[75] *Id.*

might have been cut by 75% (saving over $100 million in that single storm).[76]

The success of Alabama's legal efforts to require insurers to offer minimum insurance discounts is particularly notable because it undermines the view that insurers' reluctance to provide such discounts reflects the limited long-term value of risk-mitigation measures. To the contrary, it suggests that insurance markets often fail to reward risk-mitigation measures that are clearly cost-effective over the long run. Consistent with this interpretation, the evidence suggests that building to IIBHS Fortified Home standards in hurricane-prone areas is only one of many interventions that can produce substantial long-term benefits. Comparable benefits are likely achievable through a range of measures, including more consistent forest thinning and maintenance of defensible space in wildfire-prone regions, as well as elevating homes in flood-prone areas.[77]

U.S. insurers' mixed track in promoting adaptation and resilience is hardly limited to their reluctance to reward effective risk-mitigation measures; it also applies to the industry's influence on public policy linked to climate resilience. On the positive side, the industry has played an important role in advocating for stronger building codes and improved construction standards to reduce damage from climate-exacerbated hazards such as hurricanes, wildfires, and floods.[78] Most importantly, insurer-funded organizations have helped translate scientific insights into actionable reforms. Chief among them is the aforementioned IIBHS, which is a nonprofit research center backed by dozens of insurers and reinsurers.[79] For instance, the IIBHS developed the FORTIFIED Home program that proved so successfully in Alabama, and it has more recently played a leading role in developing standards for limiting wildfire risk in urban areas.

Insurers have also actively lobbied for stronger building codes at the state and local levels. For instance, they have consistently advocated for integrating fortified construction methods into local regulations.[80] The

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[76] *Id.*

[77] *See, e.g.*, Winston P. Harrington & Katherine R. H. Wagner, *Efficient Adaptation to Flood Risk*, 113 AEA PAPERS & PROC. 191 (2023) (finding that elevating one's house is socially optimal, but it requires living in the house for a longer time than the average time someone owns their home).

[78] *See* Saad, *supra* note 5; *see also* Ben-Shahar & D. Logue, *supra* note 4, at 197.

[79] *See* Mark Berven, *Weathering the Storm: How IBHS Is Revolutionizing Building Safety*, INS. J. (Aug. 29, 2024), https://www.insurancejournal.com/news/national/2024/08/29/790606.htm. The IBHS research center cost on the order of $40 million to build and is funded by about 100 insurance company members contributing annually to its operations. *See id.*

[80] For instance, Nationwide's chief of property insurance stated: "The time for updating our building codes to align with IBHS's FORTIFIED standards is NOW. We cannot afford

BuildStrong Coalition—which includes major insurance industry associations—has spent more than a decade pushing Congress and state legislatures to adopt modern codes and invest in pre-disaster mitigation.[81] These efforts helped secure key policy changes, including provisions in the 2018 Disaster Recovery Reform Act that direct more FEMA funding toward hazard mitigation and reward states that update their codes.[82] More recently, following the 2025 Los Angeles wildfires, insurance-backed organizations such as the IBHS called on state and local officials to require the most rigorous wildfire-resistant building standards and to accelerate implementation of new "Zone 0" defensible space rules, which mandate the removal of flammable materials within five feet of structures.[83]

On the other hand, U.S. insurers have also largely avoided involvement in broader efforts to mitigate the underlying sources of climate change. In 2021, several global carriers launched the Net-Zero Insurance Alliance (NZIA), pledging to align their underwriting portfolios with net-zero emissions by 2050.[84] By early 2023, the alliance had nearly 30 members representing 15% of global insurance premiums. Yet U.S.-based insurers were notably absent, and the alliance failed to gain meaningful traction in the American market.[85] In mid-2023, a coalition of Republican state attorneys general accused NZIA members of engaging in anti-competitive "activist

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to wait any longer." *See id.*

[81] BuildStrong America, About, BuildStrong America, https://buildstrongamerica.com/about/#:~:text=About%20,and%20fostering%20resilience%20across%20America (last visited Jan. 12, 2026).

[82] Establishing and Enforcing Stronger Building Codes, *Community Fire Protection News*, Summer 2013, https://www.isomitigation.com/newsletter/summer-2013/establishing-and-enforcing-stronger-building-codes/#:~:text=Establishing%20and%20enforcing%20stronger%20building,officials%20dedicated%20to%20promoting (last visited Jan. 12, 2026)

[83] *See* Broad Coalition Urges California Governor, Legislative Leaders and Local Elected Officials to Rebuild Los Angeles to Country's Strongest Building Code, IBHS (Feb. 14, 2025), https://ibhs.org/ibhs-news-releases/broad-coalition-urges-california-governor-legislative-leaders-and-local-elected-officials-to-rebuild-los-angeles-to-countrys-strongest-building-code/#:~:text=%E2%80%9CEnsuring%20the%20next%20generation%20of,%E2%80%9D (last visited Jan. 12, 2026) ("Ensuring the next generation of homes are survivable and insurable is not a barrier to rebuilding – it is a necessity.").

[84] Mark Segal, *Insurers Exit Net Zero Insurance Alliance as U.S. Political Pressure Builds*, ESG Today (May 30, 2023), https://www.esgtoday.com/insurers-exit-net-zero-insurance-alliance-as-u-s-political-pressure-builds/ (last visited Jan. 12, 2026); Miazad, *supra* note 10, at 1181.

[85] Tommy Reggiori Wilkes, *U.S. Regulation Fears Drive Insurers' Climate Alliance Break-Up,* REUTERS (June 2, 2023), https://www.reuters.com/sustainability/us-regulation-fears-drive-insurers-climate-alliance-break-up-2023-06-01/ (last visited Jan. 12, 2026).

climate" collusion and threatened legal action.[86] These attacks prompted a wave of defections and effectively led to the alliance's collapse. Facing political and legal pressure, U.S. insurers declined to defend the alliance or advocate for similar climate commitments domestically.[87]

Moreover, the insurance industry continues to finance activities that accelerate climate change. A 2023 scorecard by the Insure Our Future campaign found that most major insurers still underwrite and invest in fossil fuel expansion, even as they promote sustainability.[88] Insurance for new oil and gas development remains highly profitable; the report estimated that insurers earned over $21 billion in premiums from fossil fuel projects in 2022 alone. Several large U.S. insurers—including Chubb, AIG, and W. R. Berkley—rank among the top 10 global underwriters of coal, oil, and gas by premium volume.[89]

2. *Explaining The Mixed Track Record*

Insurers' general reluctance to voluntarily offer discounts for climate-adaptation and resilience measures, and their resistance to regulatory mandates requiring such discounts, can be traced to several core factors. Chief among them is that many of the most effective adaptation and resilience strategies must be carried out at the community level.[90] For example, wildfire risk is best reduced through coordinated efforts like controlled burns and systematic removal of flammable vegetation.[91] Similarly, flood exposure often depends on collective infrastructure such as levees and stormwater systems, which require public investment and maintenance. Another critical community-level determinant of risk is the strength and enforcement of

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[86] Segal, *supra* note 84; Albert C. Lin, *Fixing Net Zero Leakage*, 58 WAKE FOREST L. REV. 119 (2023); Franziska Arnold-Dwyer, *A Legal Framework for Net Zero Aligned Insurance Products*, 29 CONN. INS. L.J. 1 (2023).

[87] Wilkes, *supra* note 85.

[88] Insure Our Future, *Insurers Withdraw Cover for Climate Risks While Backing Increased Fossil Fuel Production, Industry Must Act to Support 1.5°C Climate Target After 50 Years of Failure* (Nov. 9, 2023), https://us.insure-our-future.com/scorecard-2023/ (last visited Jan. 12, 2026). *See also* Lin, supra note 86, at 152.

[89] *See* Lin, supra note 86, at 152.

[90] *See* Jim Rossi & Michael Panfil, *Climate Resilience and Private Law's Duty to Adapt,* 100 N.C. L. REV. 1135 (2021); Sarah J. Adams-Schoen, *Beyond Localism: Harnessing State Adaptation Lawmaking to Facilitate Local Climate Resilience*, 8 MICH. J. ENV'T & ADMIN. L. 185 (2018); Sarah Fox, *Localizing Environmental Federalism*, 54 U.C. DAVIS L. REV. 133 (2020); Katrina M. Wyman & Danielle Spiegel-Feld, *The Urban Environmental Renaissance*, 108 CALIF. L. REV. 305 (2020).

[91] Gregory E. Frey, *Managed Burning of Forests: Balancing Economic Incentives, Risks, and Liability*, 26 ENVTL. L. REV. 259 (2024).

building codes and land use regulations.[92]

Insurers face inherent limitations in using premium discounts to incentivize community-level risk mitigation, as these measures lie outside the control of individual policyholders. Offering discounts to individual insureds does little to influence broader community decisions, as any one insurer typically covers only a small share of the homes in a given area.[93] As a result, the benefits of community-wide climate adaptation and resilience efforts, such as improved infrastructure or stricter land use policies, often accrue to a broad set of residents and insurers alike. This misalignment between who bears the cost of the incentive and who reaps the benefits—a classic public goods problem—weakens insurers' motivation to affirmatively promote such measures through pricing.[94]

Although the disconnect between community-level adaptation and resilience and individual insurance policies constrains insurers' incentives to promote community-wide risk reduction, it does not follow that insurers are unable or unwilling to incorporate community-level factors into risk-based pricing. To the contrary, insurers routinely account for a wide range of community characteristics when pricing individual coverage, a practice reinforced by ordinary competitive pressures: absent such pricing, insurers risk losing lower-risk homeowners to competitors offering more accurately calibrated premiums.[95]

There are, however, several critical distinctions between risk-reducing measures that insurers merely reflect in premiums and those they actively encourage through discounts or other affirmative interventions. First, only in the latter case do insurers highlight and publicize the relationship between risk-mitigation measures and pricing.[96] By contrast, when insurers are simply pricing risk rather than seeking to reduce it, they often take steps to limit disclosure of how particular mitigation measures affect premiums, out of concern that transparency could weaken their competitive position or

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[92] Jonathan D. Rosenbloom, *Fifty Shades of Gray Infrastructure: Land Use & the Failure to Create Resilient Cities*, 93 WASH. L. REV. 317 (2018).

[93] *See* Abraham & Schwarcz, *The Limits of Regulation by Insurance, supra* note 8, at 261-63.

[94] *See id.*; Mark Carney, *Breaking the Tragedy of the Horizon: Climate Change and Financial Stability* (speech delivered at Lloyd's of London, Sept. 2015), https://www.bankofengland.co.uk/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability.

[95] *See* Logue & Ben-Shahar, *The Perverse Effects of Subsidized Weather Insurance*, supra note 27.

[96] Abraham & Schwarcz, *The Limits of Regulation by Insurance, supra* note 8, at 226-27.

facilitate cherry-picking by rivals.[97]

Second, only in the latter case do insurers deploy non-price tools to limit risk, such as sharing technical expertise or data with insureds, or offering consulting and advisory services aimed at reducing underlying risk.[98] In fact, when insurers are confident in their ability to price risk accurately, they may have little incentive to promote risk mitigation at all. In some cases, they may even face perverse incentives to tolerate or prefer rising risk, insofar as increased risk sustains demand for insurance coverage.[99]

Third, insurers that are focused on pricing risk rather than affirmatively reducing it often find it cost-effective to tie premiums to imperfect but easily observable proxies for risk instead of verifying compliance with specific mitigation measures. Insurers invest in gathering information about risk only when the expected benefits of doing so exceed the costs.[100] When the relevant benefit is more accurate risk classification, insurers will frequently rely on proxies that are cheap to measure even if they are only partially correlated with the underlying hazard.[101] For example, rather than monitoring whether an insured consistently limits vegetation growth near the property, an insurer may rely on the insured's credit score as a rough proxy for overall risk-management behavior.[102] Although this approach does nothing to improve vegetation management itself, it allows the insurer to predict wildfire risk cheaply and at scale. By contrast, when insurers aim not merely to classify risk but to reduce it, reliance on crude proxies is insufficient. Insurers cannot induce behavioral change through pricing unless they can reliably observe whether insureds have actually adopted, implemented, and maintained the

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[97] *See id.* at 239-40.

[98] *See id* .at 226-27.

[99] Ronen Avraham & Ariel Porat, *The Dark Side of Insurance*, 19 REV. L. & ECON. 13, 13–45 (2023).

[100] Abraham & Schwarcz, *The Limits of Regulation by Insurance, supra* note 8, at 238-39; see also KENNETH S. ABRAHAM, DISTRIBUTING RISK: INSURANCE, LEGAL THEORY, AND PUBLIC POLICY 15 (1986).

[101] This tension surfaced in disputes between insurers and regulators over whether insurers should be permitted to charge policyholders for the cost of periodic inspections to confirm compliance. Recall that one major insurer proposed a fee for inspections conducted once every three years that was nearly equal to the total discount homeowners would receive over that same period. *See* Part I.B, *supra*. Compounding the issue, infrequent inspections provide little assurance that mitigation measures remain in place and effective throughout the policy term.

[102] *See* Anya E.R. Prince & Daniel Schwarcz, *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, 105 IOWA L. REV. 1257, 1273 (2020); Darcy Steeg Morris, Daniel Schwarcz & Joshua C. Teitelbaum, *Do Credit-Based Insurance Scores Proxy for Income in Predicting Auto Claim Risk?*, 14 J. EMPIRICAL LEGAL STUD. 397, 418-21 (2017).

relevant risk-mitigation measures.[103]

The disconnect between community-level risk mitigation and individual insurance policies is not the sole explanation for insurers' uneven record in promoting climate adaptation and resilience. Two additional factors highlighted above—the annual term of most insurance policies and the informational and cognitive limitations of insurance purchasers—also play a substantial role.

Consider how the short-term structure of homeowners insurance significantly compounds the challenges of incentivizing risk mitigation. Because most policies are written on a one-year basis, insurers cannot capture the long-term benefits of either individual or community-level mitigation efforts. Yet many of the most effective measures—such as structural retrofits or community infrastructure improvements—require substantial upfront investment.[104] Insurers are poorly positioned to offer front-loaded premium discounts that align with these costs, since there is no guarantee that the same policyholder will remain with the insurer long enough for the investment to pay off.[105] Homeowners can switch carriers or sell their homes, leaving the insurer to bear the cost without reaping the long-term reduction in claims.

Demand-side factors further limit the effectiveness of insurance-based incentives for risk mitigation. Many homeowners lack the financial capacity to make large upfront investments, even when those measures are likely to yield long-term savings through reduced insurance premiums.[106] In addition, homeowners often lack the information or tools needed to accurately assess the cost-effectiveness of mitigation efforts. Cognitive biases also play a role: many underestimate their exposure to catastrophic loss or believe that disaster will not strike them, reducing their motivation to invest in protective measures—even when the rationale extends beyond insurance considerations.[107]

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[103] *See* Abraham & Schwarcz, *The Limits of Regulation by Insurance, supra* note 8, at 240.

[104] Michael B. Gerrard & Deborah R. Hodas, *Climate Change and State Adaptation Law*, 78 ALB. L. REV. 31 (2015); J.B. Ruhl, *Climate Change Adaptation and the Structural Transformation of Environmental Law*, 40 ENVTL. L. 363 (2010); Katrina M. Wyman, *Adaptive Cities*, 50 LOY. U. CHI. L.J. 321 (2018).

[105] *See* Abraham & Schwarcz, *The Limits of Regulation by Insurance, supra* note 8, at 257-58; ARNOLD-DWYER, *supra* note 4, at sec. 6.2.1. Analogizing to health insurance, it was for similar reasons that health insurers before the Affordable Care Act were often seen to invest insufficient efforts in promoting preventive care. For that reason, the Affordable Care Act mandated that insurers cover preventive care with no cost sharing. *See* Amy Monahan & Daniel Schwarcz, *Will Employers Undermine Health Care Reform by Dumping Sick Employees?*, 97 VA. L. REV. 125 (2011).

[106] *See* Sastry et al., *supra* note 48; KOUSKY, *supra* note 2.

[107] *See* KUNREUTHER, PAULY, & MCMORROW, *supra* note 15; Tom Baker & Peter

None of these challenges is insurmountable. As noted above, insurers have at times addressed collective-action problems through industry associations and jointly funded organizations, which helps explain some of the most notable examples of insurers affirmatively promoting climate adaptation and resilience, including the work of the IIBHS.[108] Taken together, however, the mismatch between individual insurance policies and community-level climate adaptation and resilience, the short time horizons of homeowners insurance, and consumers' informational, cognitive, and financial constraints go a long way toward explaining insurers' underwhelming track record in actively promoting climate adaptation and resilience.

II. One Potential Solution: Group Homeowners Insurance for Localities

Part I argued that homeowners insurers have a decidedly uneven record in promoting climate adaptation and resilience. This Part contends that group homeowners insurance organized around geographically defined communities could enable more sustained and effective insurer engagement with climate risk. Part A lays the groundwork for this argument by outlining a basic model for group property insurance sponsored by local governments. It emphasizes that such arrangements would almost certainly preserve a layer of individual rating and underwriting of homeowners who opted for coverage within the group, while also leaving homeowners free to obtain coverage on the individual market. Part A also acknowledges inherent challenges to this model for group insurance, including the complexities of involving local governments in insurance negotiations and the possibility that such arrangements may increase insurers' exposure to correlated losses.

Part B then argues that notwithstanding these difficulties, community-sponsored group homeowners insurance could help address each of the core structural features of contemporary insurance markets that have constrained insurers' climate efforts: the mismatch between community adaptation and resilience and individual underwriting; the short-term character of homeowners coverage; and the informational, cognitive, and financial constraints faced by purchasers of homeowners insurance.

Siegelman, *"You Want Insurance with That?"; Using Behavioral Economics to Protect Consumers from Add-on Insurance Products*, 20 CONN. INS. L.J. 1, 4 (2013); Arden Rowell, *Time in Cost-Benefit Analysis*, 4 UC IRVINE L. REV. 1215 (2014).

[108] *See* Part I.B, *supra*.

A. Group Homeowners Insurance with Local Governments as Plan Sponsors

1. Group Insurance Basics

Today, nearly all homeowners policies are sold on individual insurance markets, where a homeowner purchases coverage directly from an insurer, often with the assistance of an agent or broker.[109] By contrast, many other forms of insurance—such as health, life, disability, and long-term care—are frequently offered through group policies.[110] The most common example is employer-sponsored health insurance.[111] In a group insurance arrangement, the group (also known as the "sponsor") typically (i) selects the insurer, (ii) negotiates the terms and prices of a master policy, and (iii) administers key aspects of the transaction, such as premium collection.[112] The insurer then offers coverage to group members on the terms established between the insurer and the sponsor, typically by making use of the communication channels and resources of the sponsor.[113] Members may elect to purchase coverage through the group, but they remain free to obtain insurance independently on the open market.

Although group insurance is often made available to all members of a group on uniform terms, both the availability and the pricing of coverage can sometimes also depend on the individual characteristics of an insured. For example, group life insurance frequently requires individual underwriting if an employee seeks coverage outside the initial enrollment period or requests coverage above a specified threshold.[114] Similarly, group long-term care insurance is typically subject to individual-level medical underwriting, though often in a streamlined form; as a result, an applicant's health status commonly affects eligibility and, in some cases, premiums or available benefits.[115]

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[109] *See* ABRAHAM & SCHWARCZ, *supra* note 14, at 59-61.

[110] *See id.* at 76-78. *See generally* DANIEL D. SKWIRE ET AL., GROUP INSURANCE (8th ed. 2019).

[111] *See* Monahan & Schwarcz, *supra* note 105, at 125.

[112] ABRAHAM & SCHWARCZ, *supra* note 14, at 76-78.

[113] *See* Randy E. Dumm & Robert E. Hoyt, *Insurance Distribution Channels: Markets in Transition*, 22 J. INS. REGUL. 27 (2003).

[114] *See, e.g.*, Standard Ins. Co., Frequently Asked Questions About Evidence of Insurability for Applicants 1 (Apr. 2024), https://www.standard.com/eforms/15506_645746.pdf.

[115] *See* U.S. Gov't Accountability Off., *Long-Term Care Insurance: Partnership Programs Include Benefits That Protect Policyholders and Are Unlikely to Result in Medicaid Savings* 10–12, GAO-07-231 (2007), https://www.gao.gov/products/gao-07-231.

Group insurance is conventionally understood to offer several advantages that are especially relevant here.[116] First, group insurers typically incur lower marketing and acquisition costs than insurers operating in the individual market. Second, administrative costs may be reduced by shifting certain record-keeping and management tasks to the sponsoring group—particularly when the group already performs these functions for other reasons or can do so more efficiently than the insurer. Third, group insurance can improve decision-making by insureds, as the group can rely on experts to help select coverage terms and pricing structures that best serve the collective interests of its members.[117] Finally, group insurance can help reduce risk by motivating the group to engage in collective risk-reduction efforts. This potential is reflected in employer-sponsored wellness programs in the health insurance setting, which are designed not only to lower insurance costs through improved employee health, but also to generate broader benefits for the employer, such as increased productivity and reduced absenteeism.[118]

At the same time, group insurance arrangements can entail important disadvantages relative to individually purchased policies. One well-known concern, especially salient in the health insurance context, is that linking coverage to group membership can cause insurance to be disrupted when that membership changes. In employment-based health insurance, this dynamic has produced "job lock," inducing some individuals to remain in jobs they would otherwise leave in order to retain coverage, while leaving others uninsured when they lose employment. *See* David A. Hyman & Mark Hall, *Two Cheers for Employment-Based Health Insurance,* 2 YALE J. HEALTH POL'Y L. & ETHICS 23 (2001). This concern, however, does not translate to group property insurance. Property insurance coverage must be terminated and replaced whenever a homeowner sells one property and purchases another, a transition that mirrors exit from a geographically defined community and would occur regardless of whether coverage is purchased individually or through a group arrangement.

[116] *See generally* John Aloysius Cogan Jr., *Does Small Group Health Insurance Deliver Group Benefits? An Argument in Favor of Allowing the Small Group Market to Die*, 93 WASH. L. REV. 1121 (2018). Other important benefits of group insurance are less relevant here, so not emphasized. First, group insurance can help to combat adverse selection because group membership is not driven principally by risk-profiles and insurance demand. That is less relevant in the context of property insurance, where there are relatively limited information asymmetries between insurers and insureds at the time of purchase. Second, group health and life insurance enjoy important tax benefits. Again, such benefits do not extend to group property insurance, and the normative case for making tax benefits available for group, rather than individual, insurance policies is limited given the reality that this tends to distort market structures and potentially subsidize comparatively high-income insureds.

[117] Of course, this is more possible in markets where there are multiple competing insurers. In at least some group health insurance settings, there is remarkably limited choice. But property insurance markets have significantly fewer barriers to entry than health insurance markets, meaning that this benefit could be significant in the context of group property insurance. *See* Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7.

[118] To date, the evidence is mixed about the extent to which employer-sponsored wellness programs achieve their risk-reducing potential. *See* Jill R. Horwitz, Brenna D. Kelly

2. *Geographically Defined Communities as Plan Sponsors for Group Homeowners Insurance*

Because employers and voluntary associations typically sponsor group health and life insurance, the limited literature addressing group insurance in the context of property tends to assume a similar model, in which an employer or association serves as the plan sponsor.[119] But for reasons explored in greater detail below,[120] the most logical entities to organize group homeowners insurance arrangements aimed at promoting climate adaptation and resilience are local governments or other geographically defined community organizations. Depending on regional context, these may include neighborhoods, municipalities, counties, or flood control and fire protection districts. Importantly, community-sponsored group property insurance differs from existing community-based insurance, which is purchased by communities to cover their own losses rather than the losses of individual homeowners.[121]

This approach to group property insurance, under which geographically defined communities serve as plan sponsors, could largely build on the familiar structure of existing group health and life insurance models. The plan sponsor would negotiate a baseline framework governing coverage terms and pricing with a group property insurer of its choosing. That framework would almost certainly permit some degree of individual rating and underwriting of specific homeowners within the group, reflecting the fact that homeowners insurance risk depends heavily on property- and owner-specific factors, in addition to community-level characteristics.[122] As noted above, such layered

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& John E. DiNardo, *Wellness Incentives in the Workplace: Cost Savings Through Cost Shifting to Unhealthy Workers*, 32 HEALTH AFF. 468, 468–476 (2013); Anya E.R. Prince, *Hidden Trade-Offs in Insurance Wellness Programs*, 2021 MICH. ST. L. REV. 34; Leonard Berry, Ann M. Mirabito & William B. Baun, *What's the Hard Return on Employee Wellness Programs?*, HARV. BUS. REV. (2020).

[119] Bernard L. Webb & John R. Lewis, *Fictitious Group Statues: Diminishing Legal Barriers to the Mass Marketing of Property and Liability Insurance*, 38 INS. COUNSEL J. 637 (1971); JAMES JUDSON CHASTAIN, AN EVALUATION OF GROUP PROPERTY INSURANCE, PHD Dissertation, 1962; SPENCER KIMBALL & HERBERT DENENBERG. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE (1970); Bernard L. Webb, *The Regulation of Group Property and Liability Insurance*, 20 J. PUB. L. 479 (1971).

[120] *See* Part II.B, *infra*.

[121] See Kat Kerlin, *With Flood Risk Rising, Can Community-Based Insurance Fill a Gap?*, UC Davis Climate News (Feb. 26, 2024), https://www.ucdavis.edu/climate/news/flood-risk-rising-can-community-based-insurance-fill-gap.

[122] In the homeowners setting, individual underwriting could reflect factors such as a

individual underwriting is already a common feature of certain group insurance arrangements.[123] Coverage negotiated under this framework would then be made available to community members, subject to individualized underwriting. As with other forms of group insurance, residents would remain free to opt out and obtain coverage in the individual market if they preferred different terms or identified lower prices elsewhere.[124]

Although community-sponsored group property insurance could be structured using familiar insurance mechanisms, such arrangements would raise distinctive challenges that may make them unattractive or impractical for some insurers or localities. A central complication is that, unlike most group insurance plans, these arrangements would typically be sponsored by public rather than private entities. As a result, the negotiation and administration of coverage would be embedded in ordinary political processes. Local officials would need to decide which insurers to contract with, what coverage terms to pursue, and how to structure pricing at both the community and individual levels. Inevitably, political considerations would shape these decisions, and in some communities those dynamics could impede compromise or stall agreement altogether. In other communities, however, these challenges may be more manageable, particularly given that residents would remain free to obtain coverage in the individual market.[125] In any event, the political tradeoffs implicated by community-sponsored group property insurance are unlikely to be more difficult or contentious than those associated with other complex policy choices that local governments routinely confront, including decisions about schools, policing, infrastructure, and zoning.[126]

Another potentially serious challenge to a group property insurance model in which local governments operate as plan sponsors is that it could increase insurers' exposure to correlated risks. Insurers generally struggle to cover large, correlated risks that can affect many policyholders simultaneously.[127] They prefer to underwrite independent risks, which allow for more predictable claims payouts across a diversified pool of insureds. In

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home's projected replacement cost, construction type, exposure to perils like fire or flooding, and proximity to emergency services such as fire stations. Insurers might also consider applicant-specific characteristics, including credit-based insurance scores.

[123] *See* Part II.A.1, *supra*.

[124] *See* Monahan & Schwarcz, *supra* note 105, at 125.

[125] The political choice problems that will arise here are in a way analogous to some of the "governance" issues described in Kenneth S. Abraham, *Four Conceptions of Insurance*, 161 U. PA. L. REV. 653 (2012).

[126] For further discussion of this complication, see Part IV, *infra*.

[127] Kenneth S. Abraham & Daniel Schwarcz, *Courting Disaster: The Underappreciated Risk of a Cyber-Insurance Catastrophe*, 27 CONN. INS. L. J. 1 (2021).

contrast, when risks are highly correlated, as with wildfires, hurricanes, or other natural disasters, a single event can trigger a surge of simultaneous claims. Maintaining sufficient liquidity to cover such losses is both costly and challenging, especially when catastrophic events strike early in the policy period, before the insurer has had time to accumulate adequate premium reserves from the affected group.[128] These factors may well make some insurers reluctant to offer group policies to large, at-risk communities because property insurance risk is, of course, highly correlated within geographically defined communities.

In short, group homeowners insurance sponsored by local governments could operate in ways that closely resemble familiar group insurance arrangements, while still preserving individualized underwriting and meaningful consumer choice. Although such arrangements would likely pose distinct political and actuarial challenges, those challenges need not preclude their viability and instead help explain why the model may prove more attractive in some jurisdictions or to some insurers than others.

B. How Group Homeowners Insurance Might Promote More Robust Insurer Involvement in Climate Risk Mitigation, Adaptation, and Resilience

Although group property insurance sponsored by geographically defined local communities would pose certain challenges for insurers and communities, these arrangements also have the potential to counteract the three core factors identified in Part I that have constrained insurers' ability to promote climate adaptation and resilience: individualized contracting; informational, financial, and cognitive limits faced by homeowners; and short policy horizons relative to climate change.

1. Community Adaptation and Resilience Incentives and Monitoring

As Part I explains, a central reason for homeowners insurers' limited engagement in climate adaptation and resilience is the mismatch between the community scale at which many of the most effective measures must be planned and coordinated, and the individualized structure of homeowners

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[128] *See* Dwight M. Jaffee & Thomas Russell, *Catastrophe Insurance, Capital Markets, and Uninsurable Risks*, 64 J. RISK & INS. 205, 207 (1997); Adam F. Scales, *A Nation of Policyholders: Governmental and Market Failure in Flood Insurance*, 26 MISS. COLL. L. REV. 3, 9 (2006); Michelle E. Boardman, *Known Unknowns: The Illusion of Terrorism Insurance,* 93 GEO. L. J. 783, 784 (2005).

insurance contracts.[129] Although insurers often incorporate the risk-reducing effects of community-level adaptation and resilience measures into their pricing decisions, this misalignment leaves them with little incentive to take an active or affirmative role in promoting or supporting those efforts.[130]

Group property insurance arrangements sponsored by local communities would respond directly to this misalignment by creating a mechanism through which insurers and communities could jointly overcome the underlying collective action problem. By negotiating a shared framework for coverage terms and pricing, insurers and local governments could commit ex ante to specific community-level adaptation and resilience measures and to the insurance consequences that follow from them. For example, a hypothetical insurer and community might agree that the insurer would offer homeowners in the community coverage at a base annual premium of $1,000 per $500,000 in coverage, subject to standardized adjustments for individual property and policyholder characteristics, such as construction type and credit score. That pricing, in turn, could be expressly conditioned on the community's commitment to implement a well-defined subset of IBHS standards for fire-prone regions,[131] with clear milestones and third-party verification at specified intervals.

To be sure, as with other forms of group insurance, a potential obstacle to the development of such insurer–community partnerships is the possibility that a substantial share of homeowners in the community will decline to enroll in the group plan and instead purchase coverage on the individual market.[132] But if insurers and communities can design a group offering that attracts a meaningful portion of local homeowners, partial participation need not undermine the collective logic of the arrangement. When an insurer covers a substantial share of homes within a community, it can internalize a significant portion of the loss-reduction benefits generated by community-level mitigation efforts, rather than seeing those gains dispersed among competitors. Reaching this point does not require universal enrollment; it requires only a critical mass of participants. Over time, moreover, successful group arrangements can reasonably be expected to expand through informal diffusion and peer effects, which are likely to operate more powerfully in localized communities than in broader, anonymous insurance markets.

There is strong reason to believe that insurer–community partnerships in climate adaptation and resilience can meaningfully reduce losses in many settings, and in doing so attract participation from a sufficiently large share

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[129] *See* Part I.B, *supra*.
[130] *See id.*
[131] *See id.*
[132] *See* Monahan & Schwarcz, *supra* note 105, at 125.

of communities to make such arrangements viable. From the community side, a substantial body of scholarship recognizes that adaptation and resilience efforts undertaken at the local community level are often especially effective, precisely because they can be tailored to place-specific risks, infrastructure, and patterns of collective behavior.[133] Indeed, flood protection, wildfire mitigation, heat management, and grid resilience all turn on neighborhood-level conditions such as land use, building patterns, drainage systems, and social networks. Local governments and community organizations are uniquely positioned to tackle these reforms, embedding climate responses into routine public services, land-use planning, and infrastructure decisions.

For these reasons, a growing set of community-scale adaptation and resilience experiments across the United States are already gaining traction. In Hoboken, an integrated "Resist–Delay–Store–Discharge" strategy combines flood defenses with resilience parks that double as everyday amenities,[134] while San Mateo County has piloted a county–community partnership model that funds neighborhood organizations to build durable heat, smoke, and outage preparedness.[135] Along the Hampton Roads coastline, cities such as Norfolk are treating living shorelines as a default erosion and flood-mitigation tool, pairing nature-based infrastructure with regional coordination.[136] And Houston has supported distributed resilience hubs and "hub homes" with backup power to sustain communities during outages.[137] This is just a small sampling of the many community experiments throughout the US that are designed to promote long-term climate adaptation

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[133] Shelley Ross Saxer, *Building Climate Resilience with Local Tools*, 58 GA. L. REV. 1663, 1668 (2024) (describing the various local land use tools communities can use to promote climate resilience, including "planning, zoning, sustainable and green development, eminent domain, inverse condemnation, nuisance, renewable energy incentives, and smart cities."); Katrina M. Wyman & Danielle Spiegel-Feld, *The Urban Environmental Renaissance*, 108 CAL. L. REV. 305, 306 (2020) (highlighting the advantages that state and liocal governments have relative to the federal government to promote climate adaptation and resilience); John R. Nolon, *In Praise of Parochialism: The Advent of Local Environmental Law*, 26 HARV. ENV'T L. REV. 365, 374 (2002).

[134] Project Pages: Hudson River Project: Resist, Delay, Store, Discharge, https://rebuildbydesign.org/work/funded-projects/hudson-river-project-resist-delay-store-discharge/?utm.

[135] San Mateo County, CA: Community-led resilience pilotshttps://www.smcsustainability.org/wp-content/uploads/Community-Led-Resilience-Pilot-Program-Report.pdf?utm.

[136] Hampton Roads Urban Restoration Project, https://storymaps.arcgis.com/stories/d52899d5f5014f70b0b4289038205eb3?utm.

[137] Lacking community resilience centers, Houston neighbors opt for solar-powered 'hub homes', https://apnews.com/article/disasters-solar-for-all-epa-hubs-d6bbdf03758eb2b2f50e6cac003d8acb.

and resilience.[138]

Just as the scale and governance structures of local communities situate them well to promote climate adaptation and resilience, the technical expertise and necessity of homeowners insurance situate insurers well to be partners in these endeavors. In the limited settings where insurers have engaged in such programs, their participation has often strengthened program design and implementation. Consider, for instance, the IBHS Fortified Roof program in Alabama, which shows that insurers bring distinctive expertise and operational capacity to resilience efforts.[139] The insurance industry's technical strengths in risk modeling, loss prevention, and identifying cost-effective mitigation investments are well established, and they help explain why insurers have been comparatively successful at reducing losses in areas such as workers' compensation and arctic shipping.[140] Extending that expertise into community-scale climate adaptation efforts could materially improve their effectiveness.

Even more importantly, insurers can materially broaden both the number of communities willing to undertake meaningful adaptation and resilience efforts and the scale of resources devoted to those efforts. They are uniquely positioned to supply credible, actuarially grounded information about the premium savings that such measures can generate, translating abstract risk-reduction benefits into concrete financial terms. And unlike many public investments whose payoffs are distant or uncertain, insurers could begin passing through those savings to community members relatively quickly, in the form of reduced premiums.

One prominent example of these dynamics involves the National Flood Insurance Program (NFIP).[141] Although the NFIP does not provide group coverage, its unique status as a federally administered program enables it to overcome many of the structural obstacles that private insurers face in

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[138] See Georgetown climate center maintains great list on this Jesse D. Gourevitch & Nicholas Pinter, *Federal Incentives for Community-Level Climate Adaptation: An Evaluation of FEMA's Community Rating System*, 18 ENVTL. RES. LETT. 034037 (2023); Abdul-Akeem Sadiq et al., *Review of the Federal Emergency Management Agency's Community Rating System Program*, 21 NAT. HAZARDS REV. 0000320 (2019); Wesley E. Highfield & Samuel D. Brody, *Evaluating the Effectiveness of Local Mitigation Activities in Reducing Flood Losses*, 14 NAT. HAZARDS REV. 0000114 (2012).

[139] *See* Part I, B, *supra*; Lars Powell, R.J. Lehmann, & Ian Adams, *Rethinking Prop 103's Approach to Insurance Regulation*, 31 CONN. INS. L.J. 1, 14 (2024).

[140] *See* Ben-Shahar & D. Logue, *supra* note 4, at 197; Tom Baker & Anja Shortland, *The Government Behind Insurance Governance: Lessons for Ransomware*, 17 REG. & GOVERNANCE 1000 (2023); Arnold-Dwyer, *supra* note 4, at 7.4.3-.7.4.6.

[141] *See generally* Alexander B. Lemann, *Assumption of Flood Risk*, 51 ARIZ. ST. L.J. 163 (2019).

affirmatively promoting community-wide risk reduction. Homeowners may purchase NFIP coverage only if their community adopts and enforces minimum floodplain management standards, such as restricting development in 100-year flood zones unless new structures are elevated, or otherwise protected, above the base flood elevation.[142] These requirements, widely incorporated into local zoning and building codes, are credited with preventing an estimated $1–2 billion in flood losses annually.[143] Beyond these baseline requirements, the NFIP's Community Rating System (CRS) rewards community-level investments in flood risk mitigation—such as adopting more stringent building codes, creating green infrastructure to manage stormwater, preserving wetlands, improving drainage systems, or conducting public education campaigns—with discounted premiums for all policyholders in the community.[144] Although the NFIP's programs face significant limitations, most of these challenges stem more from the constraints of government-administered insurance than from the underlying potential of well-structured insurance to drive community-level risk mitigation.[145]

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[142] U.S. Gov't Accountability Off., National Flood Insurance Program: Actions to Address Repetitive Loss Properties, GAO-04-401T (Mar. 25, 2004); Jared T. Brown, Introduction to FEMA's National Flood Insurance Program (NFIP), Cong. Rsch. Serv. (Aug. 16, 2016).

[143] Brown, *supra* note 142. Empirical evidence further shows that post-FIRM houses, constructed under NFIP flood maps and regulations, consistently sustain less damage than older pre-FIRM houses. Oliver E. J. Wing, Nicholas Pinter, Paul D. Bates & Carolyn Kousky, *New Insights into U.S. Flood Vulnerability Revealed from Flood Insurance Big Data*, 11 NAT. COMMC'NS 1444 (2020).

[144] Under the CRS, communities earn points for exceeding minimum floodplain management standards – doing things like improving drainage, preserving open space, strengthening building codes in flood zones, and public education on floods. In participating CRS communities, NFIP flood insurance premiums are discounted 5% to 45% depending on the community's CRS class (each class increment requires more risk reduction efforts). See FEMA, Community Rating System, FEMA (last visited Jan. 26, 2026), https://www.fema.gov/floodplain-management/community-rating-system#:~:text=Flood%20insurance%20premium%20discounts%20in,premium%20discount.

[145] For example, many older structures remain exempt from NFIP building requirements due to political compromises that accompanied the program's creation. See U.S. Gov't Accountability Off., National Flood Insurance Program: FEMA Can Improve Community Oversight and Data Sharing, GAO-20-396 (May 5, 2020). Accelerating climate change has also rendered many FEMA flood maps outdated, leading to continued development in areas outside officially designated flood zones—a problem exacerbated by the program's bureaucratic pace. Participation in FEMA's Community Rating System (CRS) is another shortcoming: only about 5 percent of NFIP communities take part, though these include many of the nation's most populous and high-risk jurisdictions, particularly in coastal states such as Florida and Texas. Abdul-Akeem Sadiq, Jenna Tyler, Doug Noonan, Richard K.

Another way that group homeowners insurance could foster community–insurer partnerships is through active monitoring of risk-reduction measures among community members. A persistent challenge for homeowners insurers operating in individual markets is their limited ability to observe how carefully individual policyholders maintain their properties. This information asymmetry contributes to moral hazard and constrains the savings that can be realized from rewarding mitigation measures that require ongoing upkeep or compliance. Indeed, some insurers contend that the costs of monitoring policyholder compliance with policyholder measures that insurers are required to reward with premium discounts can exceed the risk-reduction benefits those measures actually deliver.[146]

Local communities are well positioned to partner with insurers in monitoring parcel-level compliance with risk-reduction measures tied to premiums or rebates.[147] Communities already maintain extensive infrastructure for related tasks, including property tax assessments, zoning enforcement, and inspections for construction projects. With appropriate incentives, they could extend these efforts to track homeowner compliance with insurer-imposed mitigation requirements. They might also build on grassroots initiatives by establishing hotlines or websites for reporting noncompliance—for example, homeowners failing to maintain defensible

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Norton, Shannon E. Cunniff & Jeffrey Czajkowski, A Review of the Federal Emergency Management Agency's Community Rating System Program (Univ. of Cent. Fla., Sch. of Pub. Admin. 2016) (unpublished manuscript) (on file with author); *see also* Mark Nevitt, *Destroy, Rebuild, Repeat: How to Break the Climate Disaster Cycle*, 78 VAND. L. REV. 493, 540 (2025).

Private insurers offering group policies could develop community-level underwriting and rating practices that drive risk-mitigation more effectively than the NFIP. Many of the obstacles that have limited the NFIP's effectiveness are precisely the kinds of barriers that private insurers are well positioned to overcome. Unlike the NFIP, private insurers are not constrained by political compromises that prevent higher premiums for long-standing structures. They are also better equipped than government agencies to continuously update the information used to underwrite and price risk, incorporating the most accurate projections available. Insurers that fail to do so will be penalized by the market, while those that succeed will be rewarded. Finally, because profit provides a strong incentive, private insurers can pay employees at competitive levels and invest in the development of more fine-grained data and analytic tools.

[146] *See generally* ABRAHAM, DISTRIBUTING RISK, *supra* note 100, at 16 (noting that insurers will only discriminate among insureds when the potential costs of doing so are less than the potential benefits).

[147] Stephen R. Miller, *Planning for Wildfire in the Wildland-Urban Interface: A Guide for Western Communities*, 49 URB. LAW. 207 (2017) ("Effective wildfire planning, however, requires active involvement of those governmental functions that entitle and regulate development, as well as on-going engagement by the local community that ultimately lives in those fire-prone communities.").

space around structures or improperly storing flammable materials. To illustrate, reconsider the example of the hypothetical group insurer offering homeowners coverage at a base annual premium of $1,000 contingent on the community's implementation of specified IBHS standards for fire-prone regions. The same group insurer might further offer a $100 premium discount to individual homeowners in the group who maintain defensible space consistent with those standards. It might then agree that the community sponsor of this plan will periodically assess compliance for participating households using defined auditing methods, including the collection of verifiable visual records.

2. *Group Insurance and Overcoming Informational, Cognitive, and Financial Constraints of Individual Purchasers*

A second way in which group property insurance could promote climate adaptation and resilience is by improving insurance choices, promoting accurate information about those choices, and overcoming the financial constraints that normally shape individual insurance purchasing decisions.

Consider first how group insurance could improve insurance choices. Insurance agents who facilitate the purchase of individual property insurance policies often operate under significant conflicts of interest and may have limited expertise or incomplete access to the full range of available insurance options.[148] At the same time, a growing share of homeowners receive no expert advice at all, instead purchasing coverage directly from insurers without meaningful guidance on pricing, coverage terms, or exclusions.[149]

By contrast, when local communities negotiate coverage with a single group insurer, they can obtain access to professional insurance expertise that is better aligned with their interests than the advice typically available to individual homeowners through retail insurance markets. These insurance advisors can provide communities with informed and comprehensive evaluations of coverage terms, pricing, insurer solvency, and risk-transfer mechanisms than most households can realistically receive through

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[148] See Daniel Schwarcz, *Beyond Disclosure: The Case for Banning Contingent Commissions*, 25 YALE L. & POL'Y REV. 289 (2007); Daniel Schwarcz & Peter Siegelman, Insurance Agents in the Twenty-First Century: The Problem of Biased Advice, in RESEARCH HANDBOOK ON THE ECONOMICS OF INSURANCE LAW 36, 41–43 (Daniel Schwarcz & Peter Siegelman eds., 2015); Benjamin L. Collier & Marc A. Ragin, *The Influence of Sellers on Contract Choice: Evidence from Flood Insurance*, WHARTON (Sept. 17, 2018), https://riskcenter.wharton.upenn.edu/wp-content/uploads/2019/01/CollierRagin_Influence-of-Sellers-on-NFIP-contract-choice.pdf [https://perma.cc/KVH9-AM2X].

[149] Schwarcz, Baker & Logue, *supra* note 22.

individual agents.[150] To illustrate, again consider the community homeowners policy available to homeowners for a base annual premium of $1,000, contingent on the community implementing specified IBHS standards. The community might select this insurer in part because it is financially strong and offers more generous coverage than other insurers, such as the absence of a wildfire-specific deductible. It might do so even though another insurer, with weaker financial capacity, offers coverage at a slightly lower base rate of $950, but conditions that coverage on atypical exclusions for pre-loss neglect and imposes a series of unusual internal sublimits on wildfire losses.[151]

To the extent that well-informed communities opted for more comprehensive coverage, group property insurance could also strengthen the risk-signaling function of insurance premiums. Rather than masking heightened climate risk through narrow exclusions or reliance on insurers with limited capacity to absorb large losses, premiums would more transparently reflect underlying exposure. In the above example, the modestly higher premium associated with broader, more reliable coverage would convey risk more accurately than cheaper policy whose apparent affordability depends on hidden limitations and shaky financial reliability. Community members, in turn, might respond to these clearer signals by making different choices about development, land use, and investment in household- and neighborhood-level resilience measures. At the same time, insurers that provide more comprehensive coverage or that are less at risk of insolvency would have stronger incentives to invest in community-level adaptation and resilience, as they would bear a larger share of the downside risk from catastrophic events affecting the community.

Separate from the possibility that group insurance sponsors might select relatively broad or financially reliable coverage arrangements, the group purchasing process itself could improve policyholder understanding of the scope and limits of coverage. A central reason coverage information is so opaque under the status quo is that homeowners insurance policies are not

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[150] Group property insurance could also serve as a platform for incorporating innovative coverage models, such as parametric insurance. Parametric policies, which pay out based on a triggering event like a wildfire crossing a geographic threshold or a storm reaching a certain intensity, can supplement traditional indemnity coverage by providing faster, more predictable payouts. When embedded within a group program, these products could be deployed at scale, offering communities an additional layer of resilience that reduces delays in recovery and facilitates collective adaptation measures.

[151] Such tradeoffs are routine in commercial property insurance markets, where sophisticated purchasers, advised by brokers whose incentives are closely aligned with their clients, regularly balance price, coverage scope, financial security, and claims-paying practices when selecting insurance. *See* Schwarcz, *Beyond Disclosure*, *supra* note 148.

standardized.[152] With only a few narrow exceptions, such as the near-universal flood exclusion, it is therefore difficult to make clear and definitive statements to large groups of homeowners about what their policies do and do not cover. Instead, homeowners are routinely directed to consult their individual policies, even though those documents are notoriously difficult for most consumers to interpret.[153]

A group homeowners insurance policy would address these problems directly by providing uniform coverage terms to all participating households within a community. That uniformity would make it feasible to undertake community-wide education about the precise contours of coverage, its exclusions, and the conditions required to preserve coverage. This learning process could be further reinforced by involving community members directly in the group purchasing decision, increasing both transparency and engagement. Thus, the community that sponsors the hypothetical group policy described above, could use familiar community-based channels such as town meetings, social media, and local news outlets to explain what the group policy does and does not cover, while clearly communicating the policyholder obligations that must be satisfied to maintain coverage under the policy's specific terms.

As discussed in Part I, improved comprehension would enable community members to better recognize which climate-related risks remain uninsured and to respond by adopting appropriate adaptation and resilience measures. At the same time, clearer and more widely shared knowledge of coverage conditions and exclusions could allow insurers to use those tools to shape insured behavior ex ante, rather than simply to shift climate risk onto policyholders who misunderstand the scope of their protection.[154]

A final way in which group insurance policies negotiated by local communities could overcome individual-level purchasing barriers concerns the financing of adaptation and resilience measures. Individual homeowners often forgo even economically efficient investments in resilience simply because they face binding budget constraints or lack access to affordable financing. Local governments, by contrast, possess tools that allow them to overcome these constraints when projects are expected to generate net social benefits, particularly when future insurance savings make those benefits credible and measurable.

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[152] Daniel Schwarcz, *Reevaluating Standardized Insurance Policies*, 78 U. CHI. L. REV. 1263 (2011).

[153] See Kyle D. Logue, Daniel Schwarcz & Brenda J. Cude, *The Value of Understandable Consumer Insurance Contracts*, 8 INT'L REV. FIN. CONSUMERS 1 (2023).

[154] *See* Kenneth S. Klein, *The Unnatural Disaster of Insurance, Underinsurance, and Natural Disasters*, 30 CONN. INS. L.J. 1 (2023).

Perhaps the most directly relevant example is the use of resilience bonds—financial instruments designed to fund climate-resilience projects such as flood defenses, wildfire mitigation, or grid hardening.[155] These bonds allow communities to finance upfront investments by monetizing future risk reductions, with lower insurance premiums or reduced expected catastrophe losses helping to repay investors. Communities also have access to more conventional financing tools. For example, local governments can impose targeted tax levies to fund resilience projects, justifying these costs by demonstrating that they are likely to be more than offset by reductions in insurance premiums or expected losses. Alternatively, they may offer tax credits or abatements in exchange for household-level adaptation investments, or issue municipal bonds to finance larger-scale resilience initiatives whose benefits accrue over time.[156]

Relatedly, local communities could support the financing and planning of community-level adaptation and resilience efforts by pairing their sponsorship of group property insurance for individual homeowners with the direct purchase of community-based insurance.[157] Recall that this coverage insures a community's own direct losses, not the losses suffered by individual homeowners within the community.[158] This structure would allow communities to protect their investments in collective resilience and adaptation initiatives. In some cases, communities might even distribute the proceeds of these community-based insurance to individual homeowners who suffer losses not fully covered by their own group-sponsored coverage.

3. Long-Term Partnerships and Risk-Mitigation Planning and Financing

Group property insurance arrangements sponsored by local communities could also promote climate adaptation and resilience by inducing participating insurers to take a longer-term view of risk at the community

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[155] *See* Farinaz Motlagh, Sara Hamideh, Megan Gallagher, Guirong Yan & John W. van de Lindt, *Bonds for Disaster Resilience: A Review of Literature and Practice*, 104 INT'L J. DISASTER RISK REDUCTION 104318 (2024).

[156] Communities might combine these efforts with parametric insurance policies that protected the community itself from potential correlated losses. *See* Andrew Hammond, *Climate Strains and the Safety Net,* 111 IOWA L. REV. 155, 209 (2025).

[157] *See* Alex Bernhardt, Carolyn Kousky, Andy Read & Christopher Sykes, Community-Based Catastrophe Insurance (White Paper, Marsh & McLennan 2021), https://www.corporate.marsh.com/assets/insights/publications/2021/february/Community--Based--Catastrophe--Insurance--(Final).pdf.

[158] This community based coverage would most naturally take the form of parametric insurance, with payouts triggered by objective measures tied to anticipated losses, such as wind speed within the community.

level. In some cases a group insurer and a community might well agree to a multi-year framework agreement. But a long-term shift in perspective would not necessarily require such an arrangement.[159] Some insurers might be reluctant to enter into such a long-term arrangement given volatile loss experience, evolving market conditions, inflation, and litigation risk.[160] Local communities might also be warry of entering into formal long-term commitments with insurers, as doing so could diminish community leverage in the event of deficient claims-handling practices or a deterioration in an insurer's financial position.

Even so, durable relationships between group insurers and communities could be achieved through a combination of noncontractual expectations and carefully designed contractual structures. A substantial literature on relational contracting demonstrates that contracting parties can sustain stable, long-term relationships even when formal agreements preserve broad exit rights.[161] Building on these informal dynamics, contractual design can further reinforce continuity by encouraging insurers and communities to make upfront, relationship-specific investments. Such investments raise the practical costs of exit and, in turn, strengthen incentives for both sides to remain engaged over time despite the formal availability of termination. Crucially, such an ongoing insurer–community relationship would remain compatible with group insurers retaining discretion to nonrenew or cancel coverage for individual households presenting unusually high risks, while preserving a continuing contractual relationship with the community as a whole.

To illustrate, consider again a hypothetical group insurer that offers homeowners coverage at a base annual premium of $1,000, contingent on the community's implementation of IBHS standards, with an additional $100 discount for homeowners who maintain defensible space consistent with those standards. The insurer would almost certainly retain the ability to non-renew individual policies at the end of their annual terms and to stop offering new policies in the community. Even so, as part of the broader negotiations, the insurer might agree to invest $100,000 upfront to help launch the community's IBHS compliance efforts. That investment would reduce the

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[159] *See* Dwight Jaffee, Howard Kunreuther & Erwann Michel-Kerjan, *Long-Term Property Insurance*, 29 J. INS. REG. 167 (2010).

[160] See Peter Molk, *The Government's Role in Climate Change Insurance*, 43 B.C. ENVTL. AFF. L. REV. 411 (2016).

[161] *See, e.g.*, Ian R. Macneil, *The Many Futures of Contracts*, 47 S. CAL. L. REV. 691 (1974); Charles J. Goetz & Robert E. Scott, *Principles of Relational Contracts*, 67 VA. L. REV. 1089 (1981); Gillian K. Hadfield & Iva Bozovic, *Scaffolding: Using Formal Contracts to Support Informal Relations in Support of Innovation*, 2016 WIS. L. REV. 981 (2016); Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724 (2001).

insurer's incentive to withdraw, since doing so would forfeit the opportunity to recoup the value of its initial outlay. At the same time, the community would retain the right to terminate the arrangement if the insurer failed to pay legitimate claims or imposed excessive premium increases. But if the community also committed to monitoring compliance for homeowners receiving the defensible-space discount, it would be less inclined to switch to an insurer that did not offer a comparable discount on similar terms. Having already invested in compliance-monitoring infrastructure, the community would have strong incentives to maintain a relationship with an insurer that continued to recognize and reward those efforts.

Having clarified the basic dynamics through which a long-term relationship might emerge between a group insurer and a sponsoring community, the question remains why both parties would prefer to structure that relationship to endure over time, either formally or informally. The answer follows largely from the considerations already discussed: many of the most significant benefits of these arrangements will only materialize over time. As discussed above, sustained partnerships make it possible to capture long-term returns from community-level investments in adaptation and resilience that progressively reduce insured losses.[162] In a similar vein, many of the informational and decision-making advantages described earlier are inherently dynamic, depending on consistent coverage relationships rather than policies that are frequently renegotiated or replaced.[163]

There are, however, additional insurance-related benefits not yet discussed that likewise depend on continuity and therefore create further incentives for both communities and group insurers to favor relationships that are more likely to persist over time. Consider first the cost-side implications of continuity. A long-term relationship between a community and a community-based group insurer would allow insurers to reduce marketing and administrative expenses, a familiar efficiency advantage of group insurance that could be shared with the community through lower premiums.[164] Reliance on agents and brokers could be reduced, as insurers could instead work through community institutions and established communication channels to interact more efficiently with insureds. Insurers might also sponsor local events or initiatives to build trust and goodwill among policyholders, which could modestly reduce claims costs by weakening incentives to exaggerate losses. In some cases, premium collection could even be integrated into local tax or fee systems, paralleling the way employer-sponsored insurance leverages payroll infrastructure.

[162] *See* Part II.B.1, *supra*.
[163] *See* Part II.B.2, *supra*.
[164] *See* Part II.A, *supra*.

Traditional individual homeowners insurance, by contrast, requires substantial and recurring expenditures to acquire, service, and retain policyholders across dispersed geographic markets.

A further long-term advantage of collective homeowners coverage is its potential to support more viable subrogation following large, shared losses.[165] When harm affects an entire community, group insurers that cover large swaths of an impacted community may be better positioned than traditional insurers to pursue recovery against responsible third parties, such as utilities or other infrastructure providers.[166] Historically, property insurers sometimes struggle to pursue such recoveries because losses are fragmented across large numbers of individual policyholders, making coordinated litigation costly and difficult. By pooling claims through a collective policy, group coverage can potentially transform dispersed losses into a more coherent and economically viable bundle capable of supporting a single subrogation action in response to a community-wide event.[167]

Yet another potential long-term advantage of group coverage arrangements concerns claims handling. Because losses would be geographically concentrated, group insurers would have greater opportunities to adopt streamlined and efficient claims-handling practices within the community. For example, insurers could more easily deploy adjusters locally and coordinate prompt, cost-effective repairs through established relationships with local contractors.[168] Over time, a sustained presence within the community could also support more consistent and transparent claims processes. For instance, insurers operating within a longer-term community relationship may be better positioned to evaluate claims with an eye toward future risk reduction and resilience, rather than focusing narrowly on short-term expediency in the aftermath of a loss.

The possibility that group property insurance arrangements with local communities could foster more durable, risk-management-oriented relationships between insurers and insureds is supported by existing practices in commercial property insurance. Community-level group policies would, in important respects, resemble commercial property insurance more than

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[165] I thank Aisha Saad for suggesting this point.

[166] Some commentators have even suggested that insurers could pursue subrogation claims against fossil fuel companies when climate-related harms generate widespread insured losses. *See* Jones, *supra* note 27.

[167] To the extent this occurs, group insurance could also indirectly discipline third-party risk creation, reinforcing coordinated risk mitigation before losses occur.

[168] At present, insurers operating in the individual insurance market often resist suggesting contractors because they worry that doing so could be understood as an endorsement of that work; there is also risk that this process will undermine their adjustor's estimate of the price of repair.

individual homeowners policies, particularly because both the scale of the insured risk and the scope of feasible mitigation strategies are comparable. In that setting, long-term, prevention-focused partnerships between insurers and insureds are relatively common. Some insurers make substantial, relationship-specific investments in reducing property risk, betting that sustained engagement will yield benefits they can capture over time through trust and accumulated relationship capital.[169] Recent reporting on Tokyo Marine, Japan's largest non-life insurer, illustrates the point. Tokyo Marine is acquiring a disaster-mitigation engineering consultancy to help address rising insurance costs linked to climate-driven extreme weather.[170] By integrating engineering and loss-prevention services directly into its insurance offerings, the insurer seeks to narrow the gap between insured losses and actual recovery costs by shifting corporate clients toward prevention rather than repeated repair. That strategy is viable precisely because Tokyo Marine expects to sustain long-term partnerships in which the returns to upfront risk-reduction investments can be realized over time.

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[169] For example, commercial property insurer FM Global has pioneered a "Resilience Credit" program to financially support clients' climate safety upgrades. *See* FM Global Puts Aside $300 Million for Policyholders' 'Resilience Credit,' INS. J. (Aug. 8, 2022), https://www.insurancejournal.com/news/national/2022/08/08/679176.htm. Chubb Resilience Services combines historic loss data with advanced climate models to project how a client's risk from perils like floods or extreme wind will evolve over coming decades, and then provide actionable recommendations for adaptation, such as relocating critical equipment to higher floors or. Chubb Resilience Services, Chubb, https://www.chubb.com/us-en/business-insurance/services/resilience-services.html (last visited Jan. 9, 2026). Similarly, Zurich Insurance formed a dedicated unit called Zurich Resilience Solutions (ZRS) to offer climate risk assessments and adaptation consulting services, in which Zurich engineers partner closely with clients' sustainability and finance teams to identify vulnerabilities and devise adaptation plans, aiming to harden assets against future disaster. *See* Agnes K. Y. Tai, *How Innovative Insurance Products Help Boards Ensure Business Resilience Amidst Climate Uncertainty*, WORLD ECON. FORUM (Dec. 15, 2025), https://www.weforum.org/stories/2025/12/how-innovative-insurance-products-and-services-help-boards-ensure-business-resilience/. Another example involves Munich Re's Specialty Insurance unit in North America, which emphasizes that its focus is on "underwriting for long-term partnerships" – aiming to stay on a risk for years and support insureds in mitigating wildfire risk. *See* Munich Re, Why Insureds Need Comprehensive Wildfire Protection, https://www.munichre.com/us-non-life/en/insights/natural-disaster-and-climate-change/wildfire-protection.html (last visited Jan. 26, 2026).

[170] *See* David Keohane, *Japan's Top Insurer Bets on Engineering Acquisition to Mitigate Climate Risk*, FIN. TIMES (Oct. 8, 2025), https://www.ft.com/content/e2f90357-b0b6-4ca2-8b10-26ffa5af51ef.

III. Regulatory Barriers to Group Homeowners Insurance

Despite the substantial promise of community-sponsored group homeowners insurance as a tool for promoting climate adaptation and resilience, no such markets currently exist in the United States. The principal explanation lies in two bodies of state law. The first, and more direct, set of constraints consists of state laws specific to group property insurance. Many states maintain so-called "fictitious group" statutes, which prohibit insurers from issuing property insurance policies to groups that lack a shared insurable interest in common property. These laws effectively bar most forms of group property insurance altogether. By contrast, a small number of states expressly authorize limited forms of group property insurance, but confine eligibility to groups like employers, labor unions, or professional associations. None appear to permit group property insurance sponsored by geographically defined communities. Section A of this Part traces the development and scope of these laws.

Section B then turns to the second core legal barrier to geographically based group property insurance: state prohibitions on insurance discrimination that are not specific to group property insurance. Nearly all states ban "unfair discrimination" in insurance pricing and underwriting, a concept that precludes insurers from differentiating among individual insureds for reasons unrelated to risk of loss or the cost of providing coverage. State regulators frequently interpret these provisions to restrict group insurance arrangements. Separately, many states prohibit insurers from discriminating on the basis of specific policyholder characteristics, including race. Although these restrictions are often interpreted narrowly, some states apply them to certain forms of insurance discrimination that can be understood as proxies for race. Historically, geography has been one of the most salient such proxies, as insurers have used geographic redlining to discriminate against racial minorities. This reality thus operates as a significant impediment to geographically defined group property insurance arrangements.

A. State Laws Explicitly Governing Group Property Insurance

1. Fictitious Group Laws

In the early twentieth century, insurers began experimenting with group property insurance arrangements, prompting coordinated and sustained opposition from insurance agents and their trade associations. These agents viewed mass-marketed and group-based insurance as a direct threat to the traditional agency system, and they responded by pressing legislatures and regulators to erect legal barriers to such innovations.[171] The most prominent early episode involved Chrysler's 1925 partnership with Palmetto Fire Insurance, which bundled fire, theft, and transportation coverage with the purchase of new automobiles.[172] Under the plan, Chrysler purchased a master policy and individual buyers received certificates of coverage at rates substantially below prevailing rates.[173]

Insurance agents, acting collectively through their trade associations, immediately mobilized against the Chrysler–Palmetto arrangement. Their initial objection was framed in terms of "unfair discrimination."[174] When that argument proved insufficient, agents shifted their strategy, invoking state countersignature laws that required insurance covering in-state risks to be written or countersigned by a licensed resident agent.[175] Under sustained pressure from agent associations, insurance commissioners in several states initiated proceedings to revoke Palmetto's license for violating these requirements. Although Palmetto initially prevailed in federal district court, the U.S. Supreme Court ultimately upheld the constitutionality of countersignature statutes and related enforcement actions, effectively shutting down the Chrysler program within a year of its launch.[176]

Agent resistance to group property insurance did not end with the collapse of the Chrysler–Palmetto plan. Instead, it hardened into a sustained and increasingly institutionalized campaign by insurance agents and their trade associations, which systematically monitored subsequent group insurance experiments and repeatedly mobilized legislative and regulatory interventions to prevent such arrangements from gaining traction.[177] For instance, in the years immediately following the Chrysler–Palmetto plan, insurers began experimenting with "fictitious fleet" or "synthetic fleet" policies that covered employee-owned automobiles under policies issued to employers.[178] Once again, agent associations mounted campaigns to halt these arrangements, successfully persuading regulators in several states to

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[171] See Bernard L. Webb & John R. Lewis, *Fictitious Group Statutes: Diminishing Legal Barriers to the Mass Marketing of Property and Liability Insurance*, 38 INS. COUNSEL **J.** 637, 639–40 (1971) (describing early mass marketing experiments and sustained resistance from agent organizations); JAMES JUDSON CHASTAIN, AN EVALUATION OF GROUP PROPERTY INSURANCE, PHD Dissertation iii-iv & 89-97 1962.

[172] Webb & Lewis, *supra* note 171, at 639.

[173] *Id.*

[174] *Id. See generally* Avraham, Logue, & Schwarcz, *supra* note 25, at 195.

[175] *See* Webb & Lewis, *supra* note 171, at 639.

[176] Palmetto Fire Ins. Co. v. Conn, 272 U.S. 295 (1926).

[177] *See* CHASTAIN, *supra* note 171, at iii-iv & 6-7.

[178] *See* Flat Top Ins. Agency v. Sims, 178 S.E. 518 (1935).

prohibit the practice through administrative rulings.[179] By the mid-1930s, courts had upheld these regulatory interventions, reinforcing the agents' ability to block group-based property insurance through appeals to existing law. The resulting threat of adverse administrative action, in turn, discouraged insurers from further experimentation with group property insurance.[180]

Although experimentation with group property insurance slowed for a time, interest revived in the early 1950s as insurers began marketing property and liability coverage through trade associations, franchising firms, and other collective arrangements.[181] These developments triggered a renewed and more systematic lobbying effort by insurance agents. This time, rather than relying primarily on countersignature laws or ad hoc regulatory rulings, agent associations pressed state legislatures to adopt explicit statutory prohibitions on group insurance arrangements that offered preferential rates or terms to aggregations of insureds.[182] Beginning in the mid-1950s, states responded by enacting so-called "fictitious group" statutes, often modeled on Florida's pioneering law, which broadly barred insurers from offering property or casualty insurance on preferential terms based on membership in a group formed for the purpose of obtaining insurance.[183]

Within a few decades, roughly twenty states had enacted fictitious group statutes restricting the sale of group property insurance. Many of these laws remain in force today. Although their precise wording varies, most define a prohibited "fictitious group" in sweeping terms, encompassing any aggregation of insureds formed through membership, employment, franchise, contract, or similar affiliation whenever that grouping produces any preference as to rates, premiums, policy forms, or other conditions of insurance.[184] As contemporaneous commentators emphasized, these statutes were deliberately drafted to reach not only formal group policies but also mass-marketing arrangements, fleet and "synthetic fleet" policies, and other collective merchandising techniques that might yield averaged rates or underwriting concessions for a subset of insureds within a state.[185] By defining fictitious grouping largely by effect rather than organizational form, the statutes effectively foreclosed virtually any group property insurance

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[179] *See* Webb & Lewis, *supra* note 171, at 640.
[180] CHASTAIN, *supra* note 177, at 6-7.
[181] *See* Webb & Lewis, *supra* note 171, at 640.
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] CHASTAIN, supra note 177, at 1; SPENCER KIMBALL & HERBERT DENENBERG. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE (1970); Bernard L. Webb, *The Regulation of Group Property and Liability Insurance*, 20 J. PUB. L. 479 (1971).

arrangement that conferred price or coverage advantages unavailable to similarly situated individual insureds.

2. *State Laws Permitting Specific Types of Group Property Insurance*

A small number of states—roughly eight, according to the NAIC—have moved in recent years toward modestly more permissive statutory frameworks for group property insurance[186] Even these reforms, however, stop well short of authorizing community-based group property insurance arrangements, like those contemplated in Part II.[187] Instead, these reforms typically permit group property insurance only for a narrow and familiar set of entities, such as employers, labor unions, professional associations, or trusts, closely tracking the organizational models long used in group life and health insurance.[188] Although many of these statutes include residual "catch-all" provisions allowing coverage for other types of groups, approval under those provisions is usually discretionary and contingent on demanding findings by the insurance commissioner, including that the arrangement is not contrary to the public interest, generates genuine economies of acquisition or administration, and offers benefits that are reasonable in relation to the premiums charged.[189]

Apart from states that explicitly permit limited forms of group property insurance, at least one state has adopted different reforms that indirectly allow group property insurance where the group is indeed geographically defined: Utah now allows homeowner associations to form captive insurers that insure their own members.[190] A captive insurer is an insurance company formed and owned by one or more non-insurance entity primarily to insure the risks of its owners or their affiliates, rather than to sell insurance to the general public.[191] In this respect, homeowner-association captives share several key

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[186] See Group Personal Lines Property and Casualty Insurance Model Act, Nat'l Ass'n of Ins. Comm'rs Model L. No. 760-6 (1996), https://content.naic.org/sites/default/files/model-law-760.pdf.

[187] *See* Part II.A, *supra*.

[188] *See* Group model Act, supra note 186.

[189] *See id.*

[190] *See* Robert J. Walling III & Gregory W. Fears, Jr., *Captives Filling the Void for Homeowners Insurance*, PINNACLE ACTUARIAL RES. (Apr. 25, 2024), https://www.pinnacleactuarial.com/insights/captives-filling-the-void-for-homeowners-insurance/.

[191] Historically, states have barred captives from personal lines insurance markets because they are less regulated, lack access to state guarantee funds, and are typically less capitalized than traditional insurers. *See* Daniel Schwarcz, *The Risks of Shadow Insurance*, 50 GA. L. REV. 163 (2015).

features with community-sponsored group insurance: risk is pooled and priced at the community level, and the arrangement is typically structured with the assistance of sophisticated insurance and actuarial advisors. Indeed, a central aim of Utah's reform is to enable neighbors to bear risk collectively while strengthening incentives and institutional capacity for coordinated loss prevention, such as uniform wildfire or hurricane mitigation standards.[192]

Although Utah's experiment with captive insurance arrangements for homeowners' associations represents a promising initial foray into geographically-based group property insurance, the captive model represents only a narrow and incomplete substitute for true group property insurance. Because captive insurers pool risk within a single community, rather than across multiple communities, they remain highly exposed to correlated losses.[193] Captives are also subject to lighter regulation than personal lines insurers, lack access to state guaranty funds, and are typically far less capitalized than traditional insurers.[194] These limitations underscore both the promise of community-level risk aggregation and the costs imposed by current legal constraints on more robust group insurance models.

The bottom line is that, where states have adopted laws specifically regulating group property insurance, geographically defined group arrangements are effectively foreclosed, either by outright prohibition or by overwhelming legal and regulatory constraints.

B. State Prohibitions on Insurance Discrimination

Not every state has enacted statutes that expressly address the permissibility of group property insurance arrangements. Even in those states, however, a second and more pervasive barrier limits both the development of group property insurance generally and, in particular, the availability of arrangements organized around geographically defined communities: state insurance anti-discrimination law. These laws typically constrain insurers through two distinct mechanisms, each of which poses obstacles for place-based group property insurance. First, all states prohibit "unfair discrimination" in insurance pricing and underwriting. Second, nearly every state separately bars discrimination on the basis of specified policyholder characteristics, including race.

1. State Prohibitions on "Unfair Discrimination" in Insurance

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[192] *See* Walling & Fears, *supra* note 190.
[193] *See* Schwarcz, *The Risks of Shadow Insurance*, *supra* note 191, at 163.
[194] *See id.*

The first and most longstanding variety of state insurance anti-discrimination law dates back more than a century, and still exists in virtually every state.[195] These statutes prohibit "unfair discrimination" in property insurance, though typically not in health or life insurance.[196] This statutory language is widely understood to bar property insurers from charging different premiums or applying different underwriting standards to individual insureds who present materially similar risks of loss and comparable administrative costs of coverage.[197] These prohibitions emerged in the early twentieth century in response to pervasive collusion among property insurers in rate setting. They were subsequently entrenched in 1945 with the enactment of the McCarran–Ferguson Act.[198] That statute implicitly endorsed insurer cooperation in rate making on the theory that collective rate setting was necessary for insurers to predict losses accurately and to prevent destructive price competition that could leave insurers unable to pay claims after catastrophic events.[199] At the same time, Congress conditioned this tolerance on the continued regulation of insurance by state law.[200] At the time, the prevailing understanding of this requirement was that it mandated the preservation and systematization of state oversight of insurers' rates, including the prohibition on "unfair discrimination" in the setting of such rates. For that reason, every state that did not ban "unfair discrimination" in property insurance before the McCarran Ferguson Act adopted this statutory language shortly thereafter.[201]

As noted above, concerns that state prohibitions on "unfair discrimination" might constrain group property insurance were first articulated by insurance agents in the early twentieth century, when they mobilized to resist one of the earliest insurer experiments with group property insurance, the Chrysler–Palmetto plan.[202] The core argument was that a group arrangement inevitably produces differential pricing among otherwise similarly situated insureds. For instance, two individuals presenting equivalent risks and seeking identical coverage—one who purchased a Chrysler automobile and one who purchased a different vehicle—would pay different premiums solely because one had a qualifying relationship with

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[195] *See* Avraham, Logue, & Schwarcz, supra note 25, at 203.
[196] *See id.*
[197] See id.
[198] Jonathan R. Macey & Geoffrey P. Miller, *The McCarran-Ferguson Act of 1945: Reconceiving the Federal Role in Insurance Regulation*, 68 N.Y.U. L. REV. 13 (1993).
[199] Schwarcz, *Ending Public Utility Style Rate Regulation*, *supra* note 11.
[200] Macey & Miller, *supra* note 198.
[201] Schwarcz, *Ending Public Utility Style Rate Regulation*, *supra* note 11.
[202] *See* Webb & Lewis, *supra* note 171, at 640.

Chrysler and the other did not.[203]

Although this "unfair discrimination" theory gained only limited traction in the immediate aftermath of the Chrysler–Palmetto plan,[204] a number of state insurance regulators have since interpreted their unfair-discrimination statutes to restrict the availability of group property insurance. In some jurisdictions, regulators have issued interpretive opinions or comparable guidance expressly characterizing group property insurance as unfairly discriminatory.[205] In others, regulators have relied on informal enforcement practices—sometimes described, pejoratively, as "desk drawer rules"—to treat group property insurance arrangements as presumptive violations of unfair-discrimination laws.[206]

These regulatory positions are often qualified by important nuances. Some regulators, for example, permit group property insurance only insofar as any favorable pricing or coverage terms can be justified by efficiencies in marketing or administration of such plans, rather than by differences in expected losses at the group level.[207] The underlying logic of this approach is that pricing based on administrative efficiencies is defensible because all group members contribute to those efficiencies relative to nonmembers. By contrast, pricing based on group-level risk inevitably advantages some individual insureds who do not, in fact, present lower risks of a claim than similarly situated insureds outside the group.

2. *State Prohibitions on the use of Race and Potential Proxies for Race in in Insurance*

State prohibitions on "unfair discrimination" are not generally understood to bar insurers from differentiating among policyholders based on characteristics that correlate with expected losses. And yet states have long recognized that some forms of insurance discrimination are objectionable even when the characteristic in question is predictive of risk.[208] In the property insurance context, the clearest and most enduring example is race.

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[203] *Id.*

[204] *Id.*

[205] *See, e.g.*, Indiana Department of Insurance Bulletin 43 (Aug. 4, 1981), available at ttps://www.in.gov/idoi/files/Bulletin_43.pdf#:~:text=the%20Insurance%20Law,through%20the%20surplus%20lines%20market (warning that Indiana law "does not provide for property and casualty insurance to be written on a group basis in Indiana.");

[206] *See* Jerry Theodorou, 2024 R Street Institute, 2024 Insurance Regulation Report Card, https://www.rstreet.org/research/2024-insurance-regulation-report-card/.

[207] *See, e.g.*, WY Stat § 26-23-401 (2024).

[208] *See* Prince & Schwarcz, *supra* note 102; Ronen Avraham, *The Economics of Insurance Law: A Primer*, 19 CONN. INS. L.J. 29 (2012).

There are, of course, compelling normative and legal reasons to prohibit insurers from charging higher premiums to racial minorities, regardless of any statistical correlations between race and expected insured losses.[209] Accordingly, a majority of states expressly prohibit the consideration of race in property insurance rating and underwriting, and insurers nationwide comply with this principle, often by declining to collect racial data from applicants altogether.[210]

For decades, regulators and courts have also recognized that race-based discrimination in insurance can arise not only through insurers' explicit consideration of race, but through their use of policyholder characteristics that function as proxies for race.[211] Determining when such proxy discrimination exists, however, has long been a difficult and contested question, both in insurance and in other regulatory domains.[212] One point of near-universal agreement, however, is that discrimination based on geography can amount to unlawful proxy discrimination based on race.[213] That consensus reflects a well-documented history in which property insurers deliberately used geographic boundaries as substitutes for racial classification, most notably through redlining practices that segmented urban areas along racial lines and then imposed differential pricing or coverage restrictions based on those geographic distinctions.[214]

At the same time, it is equally well understood that geographic differentiation by insurers does not, by itself, automatically amount to unlawful proxy discrimination based on race. Property insurers routinely vary premiums and underwriting standards across locations because the risk of loss differs markedly from place to place for reasons entirely unrelated to race.[215] Factors such as population density, local weather patterns, wildfire or flood exposure, building characteristics, and the quality of fire protection

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[209] See Jill Gaulding, *Race, Sex, and Genetic Discrimination in Insurance: What's Fair?*, 80 CORNELL L. REV. 1646 (1995).

[210] *See* Avraham, Logue, & Schwarcz, supra note 25, at 203.

[211] Prince & Schwarcz, *supra* note 102.

[212] Stephen M. Dane, *The Potential for Racial Discrimination by Homeowners Insurers Through the Use of Geographic Rating Territories*, 24 J. INS. REG. 45 (2006).

[213] Regina Austin, *The Insurance Classification Controversy*, 131 U. Pa. L. Rev. 517, 537-38 (1983); GREGORY D. SQUIRES, INSURANCE REDLINING: DISINVESTMENT, REINVESTMENT, AND THE EVOLVING ROLE OF FINANCIAL INSTITUTIONS (1997).

[214] Gregory D. Squires, *Racial Profiling, Insurance Style: Insurance Redlining and the Uneven Development of Metropolitan Areas*, 25 J. URB. AFF. 391 (2003); Robert W. Klein, *Availability and Affordability Problems in Urban Homeowners Insurance Markets*, in INSURANCE REDLINING: DISINVESTMENT, REINVESTMENT, AND THE EVOLVING ROLE OF FINANCIAL INSTITUTIONS (Gregory D. Squires ed., 1997).

[215] *See* Don Epley, Residential Property Insurance Risk by Location, 25 *J. Real Est. Lit.* 189 (2017).

services all vary geographically and bear directly on expected losses.[216] As a result, geographically based distinctions are not only ubiquitous in property insurance, but essential to accurate pricing and sound underwriting.[217]

States vary considerably in how they navigate the resulting tension between the geographically contingent nature of property risk and the genuine danger of location-based proxy discrimination. One common regulatory strategy is to confine geographic differentiation to specifically defined geographic units known as rating territories, which are a geographically defined area created by insurers and approved by state insurance regulators for underwriting and pricing purposes.[218] These territories are typically smaller or more tailored than ZIP codes and are designed to group properties with similar expected loss experience.[219] Another, overlapping approach requires insurers to provide causal justifications for geographic rate differentials, linking those differences to permissible risk-related factors such as weather exposure, building characteristics, or fire protection, rather than to impermissible proxies for race, such as income.[220] Finally, most states affirmatively require insurers to offer coverage in low-income or predominantly minority areas, with some constraining the degree to which insurers may impose higher premiums in those locations.[221]

Against this backdrop, state regulation of race-based discrimination in insurance presents formidable obstacles to geographically defined group property insurance. Geographic variation in property insurance rates is among the most closely scrutinized aspects of insurers' rate filings and their ongoing interactions with state regulators, and it is typically managed through carefully negotiated rating territories.[222] Allowing insurers to issue group property insurance policies to discrete communities that do not align with existing rating territories would risk destabilizing this calibrated regulatory framework. Even where a group policy maps neatly onto an established rating territory, permitting insurers to negotiate rates or discounts directly with that community would threaten to bypass the broader regulatory negotiations that state regulators conduct on behalf of statewide interests, rather than the

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[216] *See* Charles M. Nyce & Patrick Maroney, *Are Territorial Rating Models Outdated in Residential Property Insurance Markets? Evidence from the Florida Property Insurance Market*, 14 RISK MGMT. & INS. REV. 201 (2011).

[217] *See id.*

[218] Dane, *supra* note 212.

[219] *See* Nyce & Maroney, *supra* note 216.

[220] See Prince & Schwarcz, *supra* note 102.

[221] See Nat'l Ass'n of Ins. Comm'rs, Unfair Trade Practices Act (Model Law No. 880) (2020).

[222] *See* Nyce & Maroney, *supra* note 216.

preferences of any single locality. In practice, such arrangements could enable insurers to extend preferential pricing to select geographic communities that are disproportionately white or affluent, while leaving predominantly minority or lower-income areas to face higher prices and diminished options in the individual market.[223]

IV. Removing Regulatory Barriers to Group Homeowners Insurance: Options and Objections

Part III demonstrated that the absence of community-sponsored group homeowners insurance does not reflect natural market forces or a lack of interest among insurers or homeowners. Rather, it is the product of a dense web of statutory and regulatory barriers embedded in state insurance law. Building on that diagnosis, this Part turns from obstacles to options. Section A outlines how states could remove or soften these barriers through relatively modest legal changes, and how they could go further by affirmatively encouraging experimentation through targeted regulatory flexibility, incentives, and support. Section B then confronts the most serious objections to such reforms, including concerns about feasibility, unfair discrimination, and distributional harm to low-income or minority communities. Together, these two Sections argue that while the risks of reform are real and warrant careful oversight, they are limited and manageable. For this reason, they do not justify maintaining an antiquated legal regime that categorically forecloses experimentation with community-sponsored group property insurance as a potential tool for promoting climate adaptation and resilience.

A. Options for Permitting or Facilitating Community-Sponsored Group Property Insurance

The analysis in Part III suggests that states interested in enabling insurers and local communities to experiment with community-sponsored group property insurance could do so through relatively modest legal or regulatory changes. In some states, facilitating such experimentation may require only clear regulatory guidance confirming that state insurance anti-discrimination laws will not be applied to prohibit these arrangements.[224] In most states, however, experimentation would also require a straightforward amendment to state insurance law. Legislative action would be necessary in jurisdictions

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[223] For further discussion of this concern and ways that regulators can ameliorate it, see Part IV.B, *infra*.
[224] *See* Part III.B, *supra*.

that retain broad fictitious group prohibitions.[225] It would also likely be required in many states whose statutes authorize only narrow categories of group property insurance that exclude geographically defined communities, although the need for statutory change would depend on whether existing catch-all provisions can reasonably be interpreted to encompass geographic groups.[226]

Although allowing experimentation with group property insurance in most states would require little more than repealing specific statutory constraints and clarifying the application of anti-discrimination laws, additional reforms could more affirmatively support the development of this market. Most importantly, states could exempt group property insurance arrangements from rate and form regulation, or subject them to a more limited version of such oversight. Doing so would expand the capacity of communities and insurers to design innovative insurance structures that promote climate adaptation, resilience, and other forms of risk mitigation. The central justification for rate and form regulation is that individual insurance consumers typically lack the information and bargaining power needed to negotiate policy terms or effectively comparison-shop for coverage.[227] That concern carries far less weight in the context of group property insurance, where communities can act collectively and often with the assistance of sophisticated advisors.[228] Consistent with this logic, most states already impose substantially lighter rate and form regulation on many forms of commercial property insurance and on surplus lines policies.[229]

States seeking to promote group property insurance arrangements that advance climate adaptation and resilience could complement these regulatory reforms with more affirmative incentives.[230] For example, they could offer targeted tax incentives to insurers and communities that enter into group property insurance arrangements, potentially conditioning those incentives on the inclusion of specified adaptation or resilience measures.[231] States

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[225] *See* Part III.A.1, *supra*.

[226] *See* Part III.A.2, *supra*.

[227] *See* ABRAHAM & SCHWARCZ, *supra* note 14, at 133-44.

[228] *See* Part II.B, *supra*.

[229] Ilana Hessing, *The Partial Deregulation of Commercial Property and Casualty Insurance: Benefits and Challenges*, 20 CPCU SOC'Y REG. & LEGIS. INT. GRP. COMPLIANCE MATTERS 3 (2013); ABRAHAM & SCHWARCZ, INSURANCE LAW AND REGULATION, *supra* note 14, at 141-42.

[230] *Cf.* Vanessa Casado-Pérez, *Missing Water Markets: A Cautionary Tale of Governmental Failure*, 23 N.Y.U. ENVTL. L.J. 157 (2015) (exploring how government can establish and maintain a functional water market).

[231] This approach would echo the preferred tax treatment of employer-sponsored health and life insurance. *See* Ari Glogower & Andrew Granato, *Reforming the Taxation of Life*

might also provide technical assistance, training, and support services to communities interested in experimenting with group property insurance. Even more, they could commit to systematically studying the development and performance of these markets and to publishing data on their effectiveness and limitations, thereby supporting future research and informing public and regulatory decision-making.[232]

Ultimately, the capacity of community–insurer partnerships to promote climate adaptation and resilience will turn less on finely calibrated regulation than on private market dynamics. That, in fact, is one of the central virtues of permitting insurers and communities to form group property insurance arrangements. By better aligning the incentives of insurers and insured communities, such arrangements create space for experimentation and competition over how best to reduce climate-related risk.[233]

Importantly, this approach has the further virtue of being compatible with most other proposed insurance-based strategies for promoting climate adaptation and resilience.[234] For example, in prior work I have argued for reforming individual homeowners insurance markets by borrowing key design features from the Affordable Care Act, including requiring insurers to offer coverage that meets comprehensive minimum standards, prohibiting forms of discrimination that do not plausibly advance social objectives such as climate resilience, and scaling back heavy-handed rate regulation in favor of managed competition through state-run insurance exchanges with progressive subsidies for low-income households.[235] Reforms of this kind could readily operate alongside state efforts to encourage group homeowners insurance arrangements. The same is true of many other proposed reforms, including expanding insurers' use of subrogation to promote loss prevention, regulating insurers' investments in fossil fuel companies, providing public insurance that is contingent on managed retreat, and reforming the structure

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Insurance, 44 VA. TAX L. REV. (forthcoming 2025); Amy B. Monahan, *Why Tax High-Cost Employer Health Plans*, 65 TAX L. REV. 749 (2011).

[232] *See* Richard L. Revesz, *The Evolution of Regulatory Review*, 77 ADMIN. L. REV. 133 (2025); Mirit Eyal-Cohen, *Unintended Legislative Inertia*, 55 GA. L. REV. 1193 (2021).

[233] *Cf.* Daniel Schwarcz & Josephine Wolff, The Limits of Regulating AI Safety Through Liability and Insurance: Lessons from Cybersecurity, Minn. Legal Stud. Rsch. Paper No. 2025-46 (Aug. 27, 2025), https://ssrn.com/abstract=5411062

[234] To be sure, the proposal is inconsistent with some proposed approached to reforming homeowners insurance markets, such as proposals to prohibit insurers from discriminating on the basis of a home's location or requiring insurers to offer coverage everywhere in a state if they offer it anywhere. *See* Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors*, 63 ARIZ. L. REV. 679 (2021).

[235] Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7.

of state guarantee funds.[236]

B. Objections to Reforming State Insurance Law to Promote Community-Sponsored Group Property Insurance

As with any reform proposal, the changes outlined above invite a range of potential objections. Several merit careful consideration, even if none ultimately proves decisive.

A first and fundamental concern is that reforms permitting localities to sponsor group property insurance may fail to generate meaningful experimentation with such arrangements. As noted earlier, insurers may be reluctant to offer group property insurance coverage because of the risk of highly correlated losses, as well as their general resistance to product innovation.[237] Geographically defined communities, in turn, may lack the political cohesion or technical capacity needed to sustain these partnerships.[238] Even where communities and insurers successfully negotiate group property insurance contracts, there is no assurance that a sufficiently large share of homeowners will opt into the group plan to realize the benefits contemplated above.[239] There is even a risk that insurers operating in the individual market could "pick off" lower-risk homeowners offered relatively favorable group premiums, resulting in adverse selection against the group insurer.[240]

Given the many contingent factors at play, these negative outcomes are certainly plausible. But they are far from inevitable. Large insurers offering group policies could mitigate concerns about correlated losses by diversifying across the communities they insure on a group basis and by transferring risk through reinsurance strategies.[241] Indeed, reinsurance may be particularly well suited to group-sponsored insurance arrangements, because it could be structured through parametric coverage tied to objective, community-level triggers.[242] Homeowners, moreover, could be drawn to a

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[236] *See* Jones, *supra* note 27; Saad, *supra* note 5; Pappas; Amelia Miazad, *Investor Climate Alliances,* 102 WASH. U.L. REV. 797, 842 (2025); Albert C. Lin, *Public Insurance As a Lever for Semi-Managed Climate Retreat*, 58 GA. L. REV. 1535, 1560 (2024).

[237] Peter Molk, *Barriers to Insurance Innovation*, 42 *Yale J. Reg.* 1071 (2025).

[238] *See* Part II.A, *supra*.

[239] *See id.*

[240] Peter Siegelman, *Adverse Selection in Insurance Markets: An Exaggerated Threat*, 113 YALE L.J. 1223 (2003).

[241] *See* Aviva Abramovsky, *Reinsurance: The Silent Regulator,* 15 CONN. INS. L.J. 345 (2008).

[242] *See* Joshua B. Horton, *Parametric Insurance as an Alternative to Liability for Compensating Climate Harms*, 12 CARBON & CLIMATE L. REV. 285 (2018); Hammond,

community-sponsored group insurer for a variety of reasons, including sustained marketing efforts, social diffusion through word of mouth, and shared enthusiasm for collective strategies to promote adaptation and resilience.

How these competing efforts play out would depend heavily on the political dynamics surrounding negotiations between communities and insurers.[243] Decisions about how resilience investments are allocated across neighborhoods and the group rates negotiated between communities and insurers would play a large role in determining whether a sufficiently large share of residents opted into a group insurance program.[244] Similarly, the ability of individual-market insurers to cherry-pick homeowners would turn significantly on the extent to which group insurers were permitted to account for a reasonable range of individual risk factors when translating group prices into individual premiums.[245]

Even if these complex dynamics ultimately render group property insurance arrangements unpopular or impracticable in most communities, the costs of the reforms described above would be minimal and their real-world effects modest. That fact alone provides strong justification for experimenting with the removal of legal and regulatory barriers to such arrangements. Doing so would allow policymakers to assess a promising, if ultimately uncertain, reform that could meaningfully contribute to broader efforts to promote climate adaptation and resilience across the United States.

A second objection is that broadly permitting group property insurance arrangements could indeed produce "unfair discrimination," insofar as similarly risky individuals inside and outside the group might be charged different premiums.[246] This risk, however, is substantially mitigated by the proposed structure of group property insurance contemplated here, which would include a layer of individual rating and underwriting for homeowners who opted for group coverage.[247] But even if this individual rating did indeed result in some amount of "unfair discrimination" as that concept is defined in the insurance setting, that raises a more fundamental question: why do state insurance laws prohibit such discrimination in the first place? Outside of insurance, it is both common and uncontroversial for consumers to pay different prices for identical goods or services, even when the seller's costs

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supra note 156.

243 *See id.*

244 *See* Part II.A, *supra*.

245 *See* Peter Siegelman, *Adverse Selection in Insurance Markets: An Exaggerated Threat*, 113 YALE L.J. 1223 (2003).

246 *See* Part III.B, *supra*.

247 *See* Part II.A, *supra*.

do not vary across buyers. Recall that the historical justification for treating insurance differently rested on the view that insurance markets were inherently anti-competitive, resembling natural monopolies in which insurers collectively set rates.[248] But as I have argued at length elsewhere, that characterization no longer reflects contemporary reality.[249] Insurers today are prohibited from fixing prices or engaging in other anticompetitive practices.[250] Although they continue to share loss data, they do not share pricing information or other competitively sensitive inputs that would undermine robust market competition.[251] In light of these changes, there is little reason, as a matter of public policy, to be concerned that residents of participating communities might receive more favorable pricing than similarly risky individuals outside those communities.

The third and final objection is the most serious. There are legitimate concerns that community-sponsored group property insurance could disadvantage low-income or minority communities by indirectly increasing prices or reducing the availability of coverage in those areas.[252] One pathway for such harm would arise if, as described above, insurers disproportionately entered into group arrangements with higher-income, predominantly white communities. In that scenario, the reforms would primarily promote adaptation and resilience in more advantaged communities without necessarily imposing direct harms on lower-income or minority communities. Standing alone, that outcome does not obviously constitute a public policy failure.

A more troubling possibility is that expanding group property insurance could undermine existing rate-regulation regimes that states use, in part, to induce cross-subsidization from higher-income to lower-income communities.[253] That concern is plausible, but it is hardly inevitable. Insurers offering community-sponsored group property insurance would still have strong incentives to operate simultaneously in individual insurance markets, as they long have. And the mere fact that an insurer can offer favorable pricing to a particular community through a group arrangement does not necessarily imply that it would alter its pricing practices in the individual market. Although health and property insurance differ in important respects, experience in health insurance demonstrates that group and individual

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[248] *See* Part III.B.1, *supra*.

[249] *See* Schwarcz, *Ending Public Utility Style Rate Regulation in Insurance*, *supra* note 11, at 941.

[250] *See id.*

[251] *Id.*

[252] *See* Part III.B.2, *supra*.

[253] See id.

markets can coexist within a state without inevitably distorting one another.

Even if group-sponsored property insurance were to increase prices in some low-income or minority communities, it is still worth asking whether indirect cross-subsidization through departures from risk-based pricing is the most effective or appropriate way to support vulnerable communities.[254] In other work I have argued it is not, and that alternative approaches, such as explicit and progressive subsidies for low-income households, may achieve distributional goals more transparently and effectively, without compromising the accuracy of risk pricing or dampening incentives for climate adaptation.[255]

However one ultimately assesses these concerns, it is also important to recognize that state regulators would retain substantial tools to prevent group property insurance arrangements from functioning as proxy discrimination on the basis of race or as a modern form of redlining. Regulators could, for example, take enforcement action where an insurer appeared to be using group arrangements not to promote climate adaptation and resilience, but instead to offer more favorable pricing to predominantly white or affluent communities without adequate risk-based justification. This oversight could be implemented by requiring insurers to substantiate the basis for any favorable pricing in group policies and to demonstrate a clear connection between those pricing decisions and concrete adaptation or resilience measures. In practice, this form of scrutiny closely mirrors the review regulators already conduct when evaluating insurers' rating territories and rate filings.[256]

Conclusion

Collective coverage will not solve the climate-driven turmoil in homeowners insurance markets on its own, and it will not eliminate the hard political choices that adaptation and resilience demand. But it can change the terms of engagement between insurers, homeowners, and the local institutions that actually control many of the most important risk drivers. By allowing municipalities and other geographically defined communities to

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[254] *See* Travis Luis Pantin, Premium Justice: An Egalitarian Defense of Risk-Based Insurance Pricing, SSRN (2025), https://ssrn.com/abstract=5415514.

[255] Schwarcz, *Obamacare for Homeowners Insurance, supra* note 7. *But see* Kyle Logue & Ronen Avraham, *Redistribution Optimally: Of Tax Rules, Legal Rules, and Insurance*, 56 TAX L. REV. 157 (2002). *See generally* John R. Brooks, *Cross-Subsidies: Government's Hidden Pocketbook*, 106 GEO. L.J. 1229 (2017).

[256] Schwarcz, *Towards a Civil Rights Approach to Insurance Anti-Discrimination Law*, *supra* note 24, at 657.

sponsor group homeowners insurance, states can create a practical vehicle for insurers to translate risk analytics into coordinated adaptation and resilience efforts, credible monitoring, and financeable long-term investments, while also improving the clarity and durability of the price signals that households receive.

The fact that this market does not exist today reflects less an absence of economic logic than a legacy of statutory prohibitions and regulatory interpretations that were built for different distribution systems and different policy priorities. Repealing fictitious group restrictions and modernizing the application of state antidiscrimination rules would not mandate any particular model, nor would it require regulators to abandon vigilance against proxy discrimination or distributional harm; it would simply open space for experimentation with partnerships that better align private insurance incentives with public resilience goals. In an era when climate change is already eroding both the availability and legitimacy of homeowners insurance, states should at least permit communities and insurers to try a collective approach that could make insurance a more effective tool for adaptation rather than a mechanism of retreat.