

UNCOMFORTABLE ADJUSTMENT: THE FUTURE OF  
HOMEOWNERS INSURANCE IN THE ERA OF CLIMATE  
CHANGE

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*Severe weather events are becoming more frequent, as are claims submitted to homeowners insurance companies. As a result, homeowners insurance premium prices are soaring across the country, making monthly payments for homeowners more expensive and pricing potential homeowners out of the buy a home. As existing homeowners see increasing prices for homeowners insurance, some are going without insurance altogether. Current relief for homeowners, through force-placed insurance and FAIR plans, is proving insufficient to meet the current demands of the market. This Article addresses the national homeowners insurance crisis, takes a deeper look at the solutions enacted by California and Florida—two of the states most heavily affected by climate-related events—and offers insight into potential solutions for mortgage companies, states, and the federal government to address this ongoing crisis.*

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## INTRODUCTION

While the fires raged in Los Angeles in January 2025, many Angelenos watched as their homes burned to the ground.<sup>1</sup> During the peak of the wildfires, a sixty-two-year-old woman named Lynn Levin-Guzman defied evacuation orders to try to save her ninety-year-old parents' home.<sup>2</sup> She spoke to ABC7 News wearing an N95 protective face mask to minimize smoke inhalation and explained, "I know I'm not supposed to be here, but this is my parents' home . . . They just lost—they got canceled from their fire insurance."<sup>3</sup> She told the reporter that her parents have lived in the house for seventy-five years and have continuously had the same insurer, who recently canceled their fire insurance policy.<sup>4</sup> She was there desperately trying to save the house because, without insurance, they had nothing if it burned.<sup>5</sup> She was hosing her parents' home down, hoping to prevent or minimize damage. When the reporter reminded her that the area was under evacuation orders, meaning it was unsafe for her to be there, she responded, "[S]end me to jail—that's fine."<sup>6</sup>

Ms. Levin-Guzman's story about her parent's predicament, while heartbreaking, is not unique. Natural disasters and the rising costs of repairs to damaged homes have driven the rise in residential insurance premiums.<sup>7</sup> Homeowners must bear the cost of these rising premiums, straining already-tight budgets.<sup>8</sup> This is especially true in the areas most

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<sup>1</sup> Alexis Christoforous, *How Will the California Wildfires Shape the Home Insurance Industry?*, ABC NEWS (Jan. 9, 2025, 12:45 PM), <https://abcnews.go.com/US/california-wildfires-shape-home-insurance-industry/story?id=117492385> [<https://perma.cc/93GD-VZCZ>].

<sup>2</sup> ABC7, *Eaton Fire: Nurse Frustrated Her Parents' Fire Insurance Was Canceled by Company Before Fire*, YOUTUBE (Jan. 8, 2025), <https://www.youtube.com/watch?v=MFkYqUJ8KYc> [<https://perma.cc/8HUT-7JKR>].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Bill Ainsworth & Susan Milligan, *Climate Change Is Upending Homeowners Insurance Nationwide*, HARV. BUS. SCH. INST. FOR BUS. IN GLOB. SOC'Y (Aug. 21, 2025), <https://www.hbs.edu/big/climate-change-upending-homeowners-insurance> [<https://perma.cc/T59Y-D8X5>]. See also Christoforous, *supra* note 1.

<sup>8</sup> See Ainsworth & Milligan, *supra* note 7.

at risk for climate change-related disasters.<sup>9</sup> In Florida, after the back-to-back Hurricanes Helene and Milton, families resorted to crowdfunding donations on the platform GoFundMe to rebuild their homes where their insurance was inadequate.<sup>10</sup> Other families just walked away from damaged homes realizing that, even with insurance, their coverage policies and limits would hamstring their ability to rebuild.<sup>11</sup> In the Midwest, massive hailstorms are driving up insurance prices, and large tornado outbreaks are becoming more common.<sup>12</sup> Scientists estimate that around 13 million residents of the United States will have to move to areas that are more climate-safe by 2100.<sup>13</sup>

Like for the insurer covering Ms. Levin-Guzman's parents' home, high premiums are insufficient to compel some insurance companies to stay in the market, and many cancel or refuse to renew current homeowners policies.<sup>14</sup> Some companies are leaving the most vulnerable markets completely.<sup>15</sup> The current insurance industry is ill-prepared to address the problems of the climate change-induced insurance crisis. Mortgage companies require their collateral to be protected through homeowners insurance.<sup>16</sup> Servicers can force-place insurance on the collateral at often higher premiums that are passed on to the consumer.<sup>17</sup> Bankruptcy can protect homeowners to some degree, but lenders can still receive permission from bankruptcy courts to

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<sup>9</sup> Aimee Picchi, *Homes in Parts of the U.S. Are "Essentially Uninsurable" Due to Rising Climate Change Risks*, CBS NEWS (Sep. 20, 2023, 12:01 AM), <https://www.cbsnews.com/news/insurance-policy-california-florida-uninsurable-climate-change-first-street/> [https://perma.cc/5QPZ-AQZ7].

<sup>10</sup> Rob Wile, *Insurance 'Nightmare' Unfolds for Florida Homeowners After Back-to-Back Hurricanes*, NBC NEWS (Oct. 16, 2024, 9:58 AM), <https://www.nbcnews.com/business/consumer/hurricane-milton-helene-insurance-nightmares-torment-florida-residents-rcna175088> [https://perma.cc/9BLC-9S7E].

<sup>11</sup> *Id.*

<sup>12</sup> Michael Copley, *Insurance Costs Are Soaring Around Tornado Alley. Hail Is the Big Problem.*, NPR (May 23, 2025, 10:36 AM), <https://www.npr.org/2025/05/23/nx-s1-5407522/insurance-tornadoes-hail-midwest> [https://perma.cc/YW7B-A86T].

<sup>13</sup> Caleb Robinson, Bistra Dilkina & Juan Moreno-Cruz, *Modeling Migration Patterns in the USA Under Sea Level Rise*, 15 PLOS ONE 11 (2020), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0227436>.

<sup>14</sup> Christopher Flavelle & Mira Rojanasakul, *More Americans, Risking Ruin, Drop Their Home Insurance*, N.Y. TIMES (Jan. 16, 2025), <https://www.nytimes.com/interactive/2025/01/16/climate/home-insurance-cancellations.html>.

<sup>15</sup> Scott Cohn, *Insurance Crisis That Started in Florida, California Is Spreading. Your State Could Be Next*, CNBC (July 2, 2024, 9:15 AM), <https://www.cnbc.com/2024/07/02/florida-california-insurance-crisis-spreading-your-state-next.html> [https://perma.cc/Q35W-QT3F].

<sup>16</sup> *Lender-Placed Insurance*, NAT'L ASS'N OF INS. COMM'RS. (June 2, 2025), <https://content.naic.org/insurance-topics/lender-placed-insurance> [https://perma.cc/9ALB-4KYC].

<sup>17</sup> 12 C.F.R. § 1024.37 (2025).

foreclose on their collateral if homeowners do not maintain adequate insurance on their property.

This Article describes these problems and the initial steps taken to address them. It focuses on the most extreme current examples of climate change's effects on the U.S. homeowners insurance industry.<sup>18</sup> This Article also contributes to the growing academic scholarship about the rising homeowners insurance crisis. While other scholarship has addressed this problem and offered one large and novel solution,<sup>19</sup> this Article surveys the current tools that governments and private institutions can use to help homeowners address this growing crisis.

### I. CLIMATE CHANGE, MORTGAGE POLICIES, AND HOMEOWNERS INSURANCE

Increasingly frequent climate change-related disasters have prompted insurance companies to raise insurance policy premiums for homeowners. In the 1980s, damage from climate-related disasters cost, on average, \$22 billion per year in today's money; in the 1990s, that spending increased to \$33.5 billion per year.<sup>20</sup> Those costs have increased exponentially since then, rising to \$149.3 billion annually on average for the period between 2020 and 2024.<sup>21</sup> In 2024 alone, climate-related disasters caused \$182.7 billion of damage.<sup>22</sup>

Because of these climate events, homeowners insurance has become increasingly unprofitable, with insurers reporting losses in eighteen states in 2023.<sup>23</sup> Insurance companies are passing these increased costs on to their customers, with average premiums increasing by an average of 34% nationwide from 2017 to 2023, outpacing inflation by 10%.<sup>24</sup>

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<sup>18</sup> See generally Shannon O'Hara, Note, *Regulating Homeowners' Disaster Insurance Through Federal Intervention: Lessons from the Affordable Care Act*, 71 DUKE L.J. 943 (2022) (drawing parallels between owning a home in a high-risk area and having a pre-existing condition in the medical insurance context).

<sup>19</sup> *Id.* See also Daniel Schwarcz, *Obamacare for Homeowners Insurance: Fixing America's Broken Insurance Markets in a Time of Climate Change*, 49 HARV. ENV'T L. REV. 525, 591 (2025); Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors*, 63 ARIZ. L. REV. 679, 711–12 (2021).

<sup>20</sup> *United States Summary*, NAT'L. CTRS. FOR ENV'T INFO., <https://www.ncei.noaa.gov/access/billions/state-summary/US> [<https://perma.cc/842P-7JCF>].

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Christopher Flavelle & Mira Rojanasakul, *As Insurers Around the U.S. Bleed Cash from Climate Shocks, Homeowners Lose*, N.Y. TIMES (May 13, 2024), <https://www.nytimes.com/interactive/2024/05/13/climate/insurance-homes-climate-change-weather.html>.

<sup>24</sup> Tu-Uyen Tran, *Homeowners Insurance Costs Are Growing Fast but Coverage Is Shrinking*, FED. RSRV. BANK OF MINNEAPOLIS (Aug. 28, 2024),

Some policies where homeowners are not experiencing premium increases are increasing deductibles or decreasing coverage.<sup>25</sup> Other policyholders are being notified that their insurance companies are canceling their coverage completely, leaving homeowners to try, sometimes in vain, to find other coverage.<sup>26</sup>

The increase in insurance prices is affecting homeowners' ability to afford to stay in their homes. Mortgage companies include the price of homeowners insurance in monthly payments and require homeowners to pay their insurance premium with their mortgage payment. Home insurance premiums increased in California by 43.7% and in Florida by 43.2% from 2017 to 2023.<sup>27</sup> In a national survey about housing, 40% of respondents reported that they experienced an increase in their homeowners insurance premiums or had difficulty obtaining coverage between May 2023 and May 2024.<sup>28</sup> While mortgage delinquency rates thus far remain low, they have increased each quarter from the fourth quarter of 2023 to the fourth quarter of 2024.<sup>29</sup> Delinquencies increased the most where escrow payments, which include homeowners insurance and property taxes, have increased over fifty percent.<sup>30</sup>

In states like Florida and California, a property may not be insurable at all. Certain areas are more prone to natural disasters than others, leading to greater losses for insurance companies in those areas. Wildfires in California and hurricanes in Florida have increased in frequency and intensity, resulting in catastrophic damages and losses for insurers.<sup>31</sup> In California, State Farm and Allstate, the largest and fourth largest insurers in the state respectively, ceased writing new policies for homeowners.<sup>32</sup> In March 2024, State Farm announced it would not

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<https://www.minneapolisfed.org/article/2024/homeowners-insurance-costs-are-growing-fast-but-coverage-is-shrinking> [<https://perma.cc/LKZ9-BJS2>].

<sup>25</sup> *Id.*

<sup>26</sup> Flavelle & Rojanasakul, *supra* note 23.

<sup>27</sup> Tran, *supra* note 24.

<sup>28</sup> LAURA HAUSMAN ET AL., BIPARTISAN POL'Y CTR. RISING PROPERTY INSURANCE COSTS: OPPORTUNITIES FOR FEDERAL ACTION 11 (2025), [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2025/02/BPC\\_Housing-White-Paper\\_RV06.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2025/02/BPC_Housing-White-Paper_RV06.pdf) [<https://perma.cc/H67F-5CKH>].

<sup>29</sup> *Delinquency Rate on Single-Family Residential Mortgages, Booked in Domestic Offices, All Commercial Banks*, FRED (Feb. 24, 2026, 1:20 PM), <https://fred.stlouisfed.org/series/DRSFRMACBS> [<https://perma.cc/GUH4-6L6U>].

<sup>30</sup> <https://themortgagepoint.com/2026/03/04/cotality-fast-rising-escrows-leading-to-delinquency-spikes/>

<sup>31</sup> Anthony Cappelletti, *Property Insurance in California and Florida: A Problem of Availability and Affordability*, SOC'Y OF ACTUARIES (June 2024), <https://www.soa.org/publications/gi-insights/2024/june/gii-2024-06-cappelletti-2/> [<https://perma.cc/YPA5-VMXR>].

<sup>32</sup> *Id.*

renew policies for existing customers.<sup>33</sup> Florida has seen similar concerns play out, with six property insurers becoming insolvent in 2022 after the hurricane season produced \$120.4 billion in losses.<sup>34</sup>

Certain areas are already seeing few remaining voluntary insurers and high rates of non-renewals, making their properties essentially “uninsurable.” One zip code in San Bernadino, California has seen its nonrenewal rate increase by 774.04% between 2015 and 2021.<sup>35</sup> In another zip code in Santa Clara, California, 87% of properties were affected by policy non-renewals.<sup>36</sup>

The inability to find insurance for these properties affects the property values in high-risk areas. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) own most of the mortgages in the United States. *The Wall Street Journal* reported that Fannie Mae maintains a list of properties that do not meet its lending criteria—consisting mostly of condo associations in Florida and California that it has determined lack adequate property insurance or need critical repairs.<sup>37</sup> Sellers in those buildings have reduced their sale prices and may still struggle to find buyers who can secure mortgages.<sup>38</sup> At least one study has shown that higher insurance prices reduce housing prices.<sup>39</sup> This was especially true in areas in which most buyers purchased homes using mortgages.<sup>40</sup>

The implications of home values decreasing due to insurance prices are vast. At the end of 2021, home values had begun to level out from their meteoric spike in value that began shortly after the beginning of COVID-19.<sup>41</sup> A study done at the end of 2021 found U.S. homeowners derived, at the median, 45% of their net worth from their home equity.<sup>42</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> FIRST ST. FOUND., THE 9TH NATIONAL RISK ASSESSMENT: THE INSURANCE ISSUE 22 (2023), <https://assets.riskfactor.com/media/National%20Risk%20Assessment%20Insurance%20Issue%20-%20FS.pdf> [https://perma.cc/774K-WR36].

<sup>36</sup> *Id.*

<sup>37</sup> Jean Eaglesham & Nicole Friedman, *A Secret Mortgage Blacklist Is Leaving Homeowners Stuck with Unsellable Condos*, WALL ST. J. (Mar. 17, 2025, 5:09 PM), <https://www.wsj.com/finance/regulation/condo-sales-home-insurance-crisis-a921362b>.

<sup>38</sup> *Id.*

<sup>39</sup> Evan M. Eastman, Kyeonghee Kim & Tingyu Zhou, *Homeowners Insurance and Housing Prices* 37–39 (2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4852702](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4852702).

<sup>40</sup> *Id.* at 1, 4.

<sup>41</sup> *Median Sales Price of Houses Sold for the United States*, FRED (Feb. 20, 2026, 9:05 AM) <https://fred.stlouisfed.org/series/MSPUS> [https://perma.cc/VZP8-SJXH].

<sup>42</sup> Rakesh Kochhar & Mohamad Moslimani, *The Assets Households Own and the Debts They Carry*, PEW RSCH. CTR. (Dec. 4, 2023), <https://www.pewresearch.org/2023/12/04/the-assets-households-own-and-the-debts-they-carry/> [https://perma.cc/9TQ8-GPJQ].

Black and Hispanic homeowners derived, at the median, more than their white counterparts, at 63% and 66% respectively.<sup>43</sup> A drastic decrease in home values could erase trillions of dollars in net worth for American families. The greater economy would likely suffer as well. A depreciation in the value of the assets underlying mortgage-backed securities could mirror the financial crisis of 2008.<sup>44</sup>

## II. FORCE-PLACED INSURANCE: THE ORIGINAL INSURER OF LAST RESORT

Force-placed insurance is the mortgage industry's current response to lack of insurance and uninsurability. Force-placed insurance is insurance a creditor can place on its collateral if the creditor has a "reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance."<sup>45</sup> Mortgage lenders can then privately contract with an insurance company to obtain insurance on the property.<sup>46</sup> Force-placed insurance has a number of drawbacks, however, and without intervention, homes in uninsurable areas may only have access to force-placed insurance, harming consumers.

Critics argue that force-placed insurance enriches mortgage service companies at the expense of mortgage holders, especially those with lower incomes. Mortgages are originated by banks but bought by mortgage lenders like Fannie Mae and Freddie Mac. The mortgages are then managed through financial institutions, including both large banks, like JPMorgan Chase and Wells Fargo, and newer companies, like Planet Home Lending, LLC and Rocket Mortgage, LLC.<sup>47</sup>

Mortgage servicers are responsible for ensuring that the mortgage collateral is insured. Borrowers are encouraged to provide proof of insurance to their mortgage servicer, but mortgage servicers also employ force-placed insurance companies to track loans for evidence of insurance.<sup>48</sup> These force-placed insurance companies are not the big-name consumer-facing insurers, but instead companies that write these

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<sup>43</sup> *Id.*

<sup>44</sup> Ryan Kingsley, *Homeownership Is Underwater, Up in Flames, or in The Wind*, NAT'L MORTG. PRO. (Dec. 25, 2024), <https://nationalmortgageprofessional.com/news/homeownership-underwater-flames-or-wind>.

<sup>45</sup> 12 C.F.R. § 1024.37 (2025).

<sup>46</sup> Dana Cronkite, *Force-Placed Insurance: The Lending Industry's "Dirty Little Secret"*, 91 CHI.-KENT L. REV. 687, 688 (2016).

<sup>47</sup> See, e.g., *Fannie Mae Announces 2024 STAR Program Results*, FANNIE MAE (Feb. 25, 2025), <https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-announces-2024-star-program-results> [<https://perma.cc/E2M6-A5EZ>].

<sup>48</sup> Cronkite, *supra* note 46, at 691.

types of policies.<sup>49</sup> Assurant, for example, specializes in force-placed insurance.<sup>50</sup>

Force-placed insurance is often more expensive and offers less protection than traditional consumer insurance policies.<sup>51</sup> This insurance often has more limited coverage, such as not covering personal items or owner liability, leaving borrowers still at financial risk even with their homes insured.<sup>52</sup> Even with limited coverage, the policies can be four to ten times more expensive than their marketplace counterparts.<sup>53</sup> Insurance companies that specialize in force-placed insurance policies justify their higher rates by claiming that the properties they insure are higher risk, including being in higher climate risk areas.<sup>54</sup> They also argue that, without force-placed insurance, lenders would bear the risk of uninsured collateral which would drive mortgage interest rates higher.<sup>55</sup>

The costs of force-placed insurance are not borne by the mortgage lender, however. Mortgage servicers charge the borrower for the new policy, adding the premium cost to a borrower's monthly mortgage payment or charging a borrower's escrow account when possible.<sup>56</sup> Lenders, therefore, are not motivated to find the most cost-effective policies, often increasing the cost to borrowers.<sup>57</sup> The mortgage servicers also receive a commission from force-placed insurance companies, leading to accusations of collusion.<sup>58</sup>

Regulations have aimed to protect borrowers from exploitation by the force-placed insurance industry. For example, Florida House Bill 793

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<sup>49</sup> *Id.* at 692–93.

<sup>50</sup> *Understanding Lender-Placed Insurance (Force-Placed Insurance)*, ASSURANT, <https://www.assurant.com/lender-placed-insurance/force-placed-insurance-information> (last visited Feb. 20, 2026).

<sup>51</sup> John Rao, *Homeowner Tactics and Remedies When Insurance Is Force-Placed*, NAT'L CONSUMER L. CTR. (Nov. 18, 2024), <https://library.nclc.org/article/homeowner-tactics-and-remedies-when-insurance-force-placed> [<https://perma.cc/JT4C-RGV6>].

<sup>52</sup> *Force-Placed Insurance: What You Need to Know*, N.Y. DEP'T OF FIN. SERVS., [https://www.dfs.ny.gov/consumers/help\\_for\\_homeowners/insurance/force-placed\\_insurance#:~:text=Force%2Dplaced%20insurance%20is%20usually,personal%20items%20or%20owner%20liability](https://www.dfs.ny.gov/consumers/help_for_homeowners/insurance/force-placed_insurance#:~:text=Force%2Dplaced%20insurance%20is%20usually,personal%20items%20or%20owner%20liability) [<https://perma.cc/D6JN-EA37>].

<sup>53</sup> Les Masterson, *What Is Force-Placed Insurance? What Does It Cover?*, FORBES (June 9, 2023, 9:33 AM), <https://www.forbes.com/advisor/homeowners-insurance/force-placed-home-insurance/#:~:text=Force%2Dplaced%20insurance%20is%20typically,so%20and%20do%20so%20promptl>.

<sup>54</sup> Cronkite, *supra* note 46, at 695.

<sup>55</sup> *Id.* at 694.

<sup>56</sup> Masterson, *supra* note 53.

<sup>57</sup> *Lender-Placed Insurance*, *supra* note 16.

<sup>58</sup> Cronkite, *supra* note 46, at 693.

put some limits on the industry in that state.<sup>59</sup> Coverage limits for force-placed insurance companies must be capped by the replacement cost of the property and rates must be approved by the Florida Office of Insurance Regulation.<sup>60</sup> In 2023, the director of the Consumer Financial Protection Bureau (CFPB) announced an interest in monitoring the force-placed insurance market.<sup>61</sup> The Trump administration, however, attempted to close the CFPB and halted its work in February 2025, leaving the fate of its ongoing and future investigations uncertain.<sup>62</sup> Despite these developments, the force-placed insurance industry maintains exceptional power over consumers, who would benefit from further scrutiny by regulators.

### III. THE LIMITED RELIEF AVAILABLE IN BANKRUPTCY FOR AFFECTED HOMEOWNERS

The bankruptcy system is limited in its ability to help homeowners struggling to afford their home insurance payments. Mortgage holders can protect their homes from foreclosure in bankruptcy, but mortgage lenders can override that protection by demonstrating their collateral is at risk for depreciation, including from lack of insurance coverage. If a homeowner fails to maintain home insurance because they cannot afford it, the lender can implement force-placed insurance or foreclose on the property, and the debtor has little recourse to prevent it.

Declaring bankruptcy imposes the automatic stay on all the debtor's property.<sup>63</sup> The automatic stay is an injunction on repossession, sale, disposal, and other actions imposed on property owned by the debtor.<sup>64</sup> When imposed, the stay is in place during the pendency of a bankruptcy case unless lifted by the court.

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<sup>59</sup> *Starting July 1, Florida Insurers Face New Guardrails on Force-Placed Insurance*, INS. J. (June 30, 2023), <https://www.insurancejournal.com/news/southeast/2023/06/30/727953.htm> [<https://perma.cc/882D-4HUM>].

<sup>60</sup> *Id.*

<sup>61</sup> Rohit Chopra, *Prepared Remarks of CFPB Director Rohit Chopra at the Federal Housing Finance Agency's Symposium on Property Insurance*, CONSUMER FIN. PROT. BUREAU (Nov. 14, 2023), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-federal-housing-finance-agencys-symposium-on-property-insurance/> [<https://perma.cc/DU23-PFQX>].

<sup>62</sup> Joe Hernandez, *The Trump Administration Has Stopped Work at the CFPB. Here's What the Agency Does*, NPR (Feb. 10, 2025, 4:35 PM), <https://www.npr.org/2025/02/10/nx-s1-5292123/the-trump-administration-has-stopped-work-at-the-cfpb-heres-what-the-agency-does> [<https://perma.cc/LLB8-26GR>].

<sup>63</sup> 11 U.S.C. § 362. In some cases, the automatic stay is not automatically imposed. *See id.* § 362(e)(3) (providing an exception for the imposition of the automatic stay for cases filed by individuals who have cases that were filed and dismissed within the previous year). This Article, however, will assume that the stay is in place at the filing of the case.

<sup>64</sup> *Id.* § 362.

Section 362(d) of the Bankruptcy Code enumerates circumstances under which the stay should be lifted, including that the stay can be lifted “for cause, including the lack of adequate protection of an interest in property of such party in interest.”<sup>65</sup> While not defined in the Bankruptcy Code, Black’s Law Dictionary defines “adequate protection” as “[c]onsideration that a debtor provides to secured creditors to protect them from the deteriorating condition or diminishing value of their collateral during the pendency of the bankruptcy. The consideration, which can be in any form, is most commonly an additional payment, additional lien, or replacement lien.”<sup>66</sup>

Failure to maintain insurance on a mortgaged property is one of the factors the courts will look at to determine whether the creditor lacks adequate protection.<sup>67</sup> Courts can rule that a creditor lacks adequate protection and grant relief from the stay solely on that ground, but instead they often order that the borrower obtain insurance or make reimbursement payments to the creditor.<sup>68</sup> Failure to comply with court-ordered adequate protection payments could lead to courts being more willing to grant a motion for relief from the stay.

Failure to maintain insurance alone often does not lead to relief from the stay and subsequent foreclosure, partly because of a creditor’s right to impose force-placed insurance. Much like in other business practices outside of bankruptcy,<sup>69</sup> mortgage servicers will pass on the costs of force-placed insurance to borrowers.

If the insurance was imposed on the property before a borrower declares bankruptcy, the lender can claim the expenses for the insurance as part of the arrearages of the mortgage. Lenders can generally claim arrearages owed pre-petition if the creditor shows that the policy was

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<sup>65</sup> *Id.* § 362(d)(1).

<sup>66</sup> *Adequate Protection*, BLACK’S LAW DICTIONARY (12th ed. 2024).

<sup>67</sup> *See, e.g., In re McCullough*, 495 B.R. 692, 696 (W.D.N.C. 2013); *Ukrainian Sav. & Loan Ass’n v. Trident Corp.*, 22 B.R. 491, 496 (E.D. Pa. 1982); *In re Barrows*, 15 B.R. 338, 340 (Bankr. M.D. Pa. 1981).

<sup>68</sup> *See, e.g., In re Fox*, 83 B.R. 290, 303 (Bankr. E.D. Pa. 1988); *In re Rice*, 82 B.R. 623, 627 (Bankr. S.D. Ga. 1987).

<sup>69</sup> Mortgage companies can charge borrowers for fees including deed and tax recording fees, credit reports, surveys, title examinations, title insurances, appraisals, flood certifications, and more. 24 C.F.R. § 206.31 (2025). In the summer of 2024, the Consumer Financial Protection Bureau noticed a Request for Information about the rising closing costs and fees paid by borrowers to mortgage companies. *Request for Information Regarding Mortgage Closing Costs*, CONSUMER FIN. PROT. BUREAU (May 30, 2024), <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notice/request-for-information-regarding-mortgage-closing-costs/> [<https://perma.cc/AN8W-RC3M>].

necessary at the time because the property was otherwise uninsured.<sup>70</sup> Proof of claims for pre-petition debts have a presumption of validity.<sup>71</sup>

For post-petition charges, however, there is a different standard for creditors seeking to recover the full amount of the insurance premiums, fees, and charges. Section 506(c) allows a creditor to recover post-petition contractual expenses, charges, and fees, only when:

- (i) the expenses are “necessary” to preserve or dispose of the collateral, (ii) they are “reasonable,” and (iii) the incurrence of the expenses provided a “benefit” to the secured creditor. Similarly, expenses may be recoverable where the secured creditor expressly or impliedly consented to the incurrence of the expense, or caused the expense.<sup>72</sup>

Section 506(b), however, states that these charges are only available to creditors who are oversecured to the extent the claim is oversecured.<sup>73</sup> Unlike the prima facie validity of a proof of claim, the creditor bears the burden of demonstrating the factors are met.<sup>74</sup>

The case *In re Blakey* is an excellent example of the bounds in which post-petition expenses for force-placed insurance would be, or, in this case, would not be, allowed by the bankruptcy court.<sup>75</sup> The debtors’ home insurance policy lapsed in May 2023 and the creditor, Federal Savings & Loan of Greene County, obtained force-placed insurance for the property.<sup>76</sup> The outstanding balance of the debtors’ mortgage was \$87,541.77.<sup>77</sup> The debtors stated that the fair market value of the house was \$135,000, but online estimates placed the value range between \$179,000 and \$202,000.<sup>78</sup> The creditor did not contest or offer its own valuation.

The creditor imposed a force-placed insurance policy providing \$895,000 of coverage with an annual premium of \$9,437.<sup>79</sup> In March 2024, the debtors reinstated their traditional consumer homeowners insurance providing \$491,139 in coverage with an annual premium of \$2,488.12.<sup>80</sup> The creditor canceled the force-placed insurance policy.

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<sup>70</sup> See, e.g., *In re Whitfield*, 578 B.R. 273, 278 (Bankr. E.D. Pa. 2017); *In re Mesich*, No. 09-bk-24910, 2014 WL 979188, at \*2 (Bankr. W.D. Pa. Mar. 12, 2014).

<sup>71</sup> Fed. R. Bankr. P. 3001(f).

<sup>72</sup> 4 COLLIER ON BANKRUPTCY ¶ 506.05 (16th ed. 2025).

<sup>73</sup> *Id.* ¶ 506.04.

<sup>74</sup> *Id.* ¶ 506.05.

<sup>75</sup> 664 B.R. 221 (Bankr. W.D. Pa. 2024).

<sup>76</sup> *Id.* at 222.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 223.

The lenders then filed a notice of post-petition expenses by Federal Rules of Bankruptcy Procedure Rule 3002.1(c), requesting \$7,742.28 in post-petition fees.<sup>81</sup> The debtors objected to the fees, claiming that they were unreasonable.<sup>82</sup>

The court specifically looked at the language in the mortgage contract in determining whether the creditor's fees were unreasonable.<sup>83</sup> The language of the contract stated that the debtors had the obligation to maintain homeowners insurance, but, if the debtors failed to do so, the creditor could impose an insurance policy "to protect [the] Lender's rights in the Property."<sup>84</sup> The court highlighted that the creditor's rights were the mortgage lien and the \$87,000 debt it secured and said it might be reasonable to insure, at most, the full market value of the property, but not over four times that amount.<sup>85</sup> Therefore, they found that a policy for \$895,000 was unreasonable to protect the creditor's rights under its contract.<sup>86</sup>

The court included an enlightening discussion as to what it did and did not consider in making its determination. The court noted that the coverage amounts for the debtors' previous policies were not indicative of what is reasonable for force-placed insurance coverage.<sup>87</sup> The debtors previously had policies with coverage amounts of \$834,000 to \$992,000 which the creditor pointed to as evidence that its coverage amount was reasonable and that the higher coverage was a benefit to the debtors.<sup>88</sup> The court noted, however, that force-placed insurance is a "financial burden" for the debtor and was likely placed at the higher amount because of "administrative convenience, not altruism."<sup>89</sup> Where the creditor complained that this would "adversely impact[] its existing business practices," the court suggested that the creditor should conform its business practices with the contractual rights to which it agreed.<sup>90</sup>

The *Blakey* case demonstrates that Section 506 does offer debtors some protection against potential abuses by mortgage lenders. However, it offers that protection in the limited circumstance that the charges were incurred during the pendency of the bankruptcy case and the debtor

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 224.

<sup>84</sup> *Id.* (internal quotation marks omitted).

<sup>85</sup> *Id.* at 224–25.

<sup>86</sup> *Id.* at 225.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 223.

<sup>89</sup> *Id.* at 225.

<sup>90</sup> *Id.*

otherwise has equity in their home.<sup>91</sup> Otherwise, bankruptcy offers very little protection for debtors for whom homeowners insurance is either unavailable or prohibitively expensive.

#### IV. HOW AFFECTED STATES HAVE RESPONDED TO THIS CRISIS

Because states are the primary regulators of their insurance markets, they are also the first to address this crisis. While many states have suffered from increasing homeowners premiums due to climate change, state programs in California and Florida have begun to address these concerns while still battling major climate disasters. Neither of the policies that those states have enacted, however, is alone sufficient in addressing the underlying problems and the concern for future, worsening climate-related events.

##### A. California and the FAIR Plan

California created the Fair Access to Insurance Requirements (FAIR) Plan for homeowners unable to obtain homeowners insurance in the traditional insurance marketplace.<sup>92</sup> The FAIR Plan system is not unique to California. FAIR Plans originated from redlining, where traditional insurers would not offer insurance policies on properties in areas that were deemed by the Federal Housing Administration (FHA) as high risk.<sup>93</sup> Congress issued subsidies through the Urban Property Insurance Protection and Reinsurance Act of 1968 to incentivize the states to create FAIR Plans.<sup>94</sup> Initially, twenty-six states created FAIR Plans.<sup>95</sup> As of October 2024, that number had increased to thirty-three.<sup>96</sup>

FAIR Plans offer high premiums to policyholders, and while their coverage is limited, it is sufficient to fulfill mortgage companies' insurance requirements.<sup>97</sup> While initially created by the government, a FAIR Plan is a private association that is controlled by insurance

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<sup>91</sup> COLLIER ON BANKRUPTCY, *supra* note 72, ¶ 506.05.

<sup>92</sup> *About the California FAIR Plan*, CAL. FAIR PLAN PROP. INS., <https://www.cfpnet.com/about-fair-plan/> [<https://perma.cc/MB7V-UZ7L>].

<sup>93</sup> Ramzee Nwokolo, *How FAIR Plans Confronted Redlining in America*, 484 CHI. FED. LETTER (2023), <https://www.chicagofed.org/publications/chicago-fed-letter/2023/484> [<https://perma.cc/TD8H-5UD5>].

<sup>94</sup> Pub. L. No. 90-448, §§ 1221–22, 82 Stat. 555, 560–61 (1968).

<sup>95</sup> *Fair Access to Insurance Requirements Plan*, NAT'L ASS'N OF INS. COMM'RS, <https://content.naic.org/insurance-topics/fair-access-to-insurance-requirements-plans#:~:text=via%20FAIR%20plans,-,Actions,operated%20by%20different%20insurance%20companies> [<https://perma.cc/YWX8-JHYC>].

<sup>96</sup> *Id.*

<sup>97</sup> John Egan, *California FAIR Plan Insurance: What You Need to Know*, INVESTOPEDIA (Mar. 15, 2025), <https://www.investopedia.com/california-fair-plan-insurance-8706549>.

companies rather than taxpayers.<sup>98</sup> For example, insurers that operate in California are required to pay into the general FAIR Plan funds and are responsible for its payouts.<sup>99</sup> The insurance companies fund their required contribution through increased premiums for those households that have policies with that company.<sup>100</sup>

California's FAIR Plan offers wildfire insurance, making its vulnerability to climate change more acute currently than other states' FAIR Plans. After a massive fire event, the California FAIR Plan is required to make the total payouts of the damages to policyholders, even if the funds are unavailable from the already pooled resources.<sup>101</sup> For example, after the wildfires in Los Angeles in January 2025, the FAIR Plan expected \$4 billion in losses.<sup>102</sup> The Plan received approval from the insurance commission to assess its members, the private insurance companies, for \$1 billion for residential damages and \$1 billion for commercial damages.<sup>103</sup> The California insurance commissioners capped the amount that insurers could directly pass to their policyholders at \$1 billion.<sup>104</sup>

The FAIR Plan traditionally covered a small number of Californians, but that number is growing. In 2015, the FAIR plan had 141,391 residential policies.<sup>105</sup> At the end of 2025, that number had ballooned to 646,892 residential policies: a 357% increase over ten years.<sup>106</sup> Between 2020 and 2024 alone, the FAIR Plan's exposure increased from \$153 billion to \$458 billion.<sup>107</sup> The plans are intended to be temporary until

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<sup>98</sup> *California FAIR Plan*, CAL. DEP'T. OF INS., <https://www.insurance.ca.gov/01-consumers/200-wrr/California-FAIR-Plan.cfm> [<https://perma.cc/5USX-EK2K>].

<sup>99</sup> *California's Insurer for People Without Private Coverage Needs \$1 Billion More for LA Fires Claims*, CNN (Feb. 12, 2025, 1:45 AM), <https://www.cnn.com/2025/02/12/business/california-fair-plan-insurance-funding/index.html>.

<sup>100</sup> Laurence Darmiento, *FAIR Plan to Assess Insurers \$1 Billion for L.A. Fires; Consumers May Be on the Hook for Nearly Half*, L.A. TIMES (Feb. 11, 2025, 3:33 PM), <https://www.latimes.com/business/story/2025-02-11/fair-plan-to-assess-insurers-1-billion-for-l-a-fires-with-consumers-on-hook-for-nearly-half> [<https://perma.cc/7ATD-BB5M>].

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> CAL. DEP'T. OF INS, FACT SHEET: INSURANCE POLICY COUNT DATA 2015-2021, <https://www.insurance.ca.gov/01-consumers/200-wrr/upload/CDI-Fact-Sheet-Residential-Insurance-Market-Policy-Count-Data-December-2022.pdf> [<https://perma.cc/NDD7-846Y>].

<sup>106</sup> *Key Statistics & Data*, CAL. FAIR PLAN PROP. INS., <https://www.cfpnet.com/key-statistics-data/> [<https://perma.cc/GQ7Y-9MYE>].

<sup>107</sup> Zora Law & Nickolas Alvarado, *California Homeowners Insurance: Current State of the Market and Implications of the Los Angeles Wildfires*, MILLIMAN (Jan. 22, 2025), <https://www.milliman.com/en/insight/california-homeowners-insurance-los-angeles-wildfires> [<https://perma.cc/22T7-73T3>].

homeowners can find traditional policies but, as more insurers leave the marketplace, FAIR Plan renewal rates are at 90%.<sup>108</sup>

The FAIR Plan helps individuals who could otherwise not obtain property insurance, but it is an imperfect solution to a growing problem. The FAIR Plan worked well as an insurer of last resort during temporary lapses in insurance, but it will be insufficient to address the growing number of Californians relying on it as their primary insurance due to climate change. The FAIR Plan provides coverage, but at a much more expensive rate than traditional insurers, squeezing household budgets for those who can no longer obtain traditional coverage. Homeowners face the difficult decision of choosing between paying a higher premium with the FAIR Plan, potentially paying even higher premiums from force-placed insurance, or risking the loss of their homes by going without any insurance. Shortfalls in FAIR Plan funding are passed to customers with traditional insurance whose premiums have also increased from climate change, creating a cycle of prohibitively expensive insurance for all homeowners in California. As enrollees increase, neither policyholders nor homeowners with traditional insurance are best served by the FAIR Plan model.

### *B. Florida and Tort Reform*

Florida has a similar issue to California but has addressed the crisis differently. Much like California, Florida has a very high-risk index for severe weather.<sup>109</sup> Florida, instead of relying on the FAIR Plan and accepting increased potential liability, enacted tort reforms aimed at decreasing insurance liability and encouraging insurance companies to participate in the market.<sup>110</sup> Florida's tort reform bill focused on medical malpractice and tort claims unrelated to property insurance, but proponents argued that a generally healthy insurance environment will drive homeowners insurance rates down.<sup>111</sup>

The bill's major provisions include reducing the statute of limitation for negligence actions, reducing liability for multifamily residential

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<sup>108</sup> Levi Sumagaysay, *350,000 Californians Are Now on the FAIR Plan, the Last Resort for Fire Insurance. Now What?*, CAL MATTERS (Jan. 23, 2024), <https://calmatters.org/economy/2024/01/california-fire-insurance-2/> [https://perma.cc/5UDZ-BFRC].

<sup>109</sup> *National Risk Index Data*, FEMA (Jan. 6, 2026), <https://www.fema.gov/about/openfema/data-sets/national-risk-index-data> [https://perma.cc/9J3R-6CQC].

<sup>110</sup> *Florida vs. California Insurance, Round 2*, WALL. ST. J., (Feb. 17, 2025, 3:14 PM), <https://www.wsj.com/opinion/florida-vs-california-insurance-round-2-regulators-rate-increases-claims-7263cb04>.

<sup>111</sup> *Id.*

premises with security systems, allowing evidence of amounts actually paid for medical expenses during trial, and reducing liability for insurers if claims are paid.<sup>112</sup> It also included various provisions about legal fees, including provisions limiting contingency fees and favoring hourly rates.<sup>113</sup>

Florida Governor Ron Desantis credited these tort reform measures with homeowners insurance rate reductions in Florida, including the coastal Miami-Dade, Broward, and Palm Beach Counties.<sup>114</sup> His office noted that the average homeowner policy rate increase dropped from “over 21% in 2023 to a projected 0.2% for 2025.”<sup>115</sup> Citizens Property Insurance Corporation, the Florida equivalent of the California FAIR Plan, has fewer than one million policies for the first time in two years.<sup>116</sup>

While these reforms seem to be successful, critics believe that the Governor’s assessment of the insurance reform success is overly favorable. The underlying success of these reforms may be hurting consumers for the benefit of insurance companies. Insurance policyholders who believe their insurance companies have violated their agreements by refusing to pay claims have traditionally hired representation on a contingent basis.<sup>117</sup> The reforms, as enacted, disfavor contingency fees for an hourly model which is often cost-prohibitive for these claims.<sup>118</sup> Insurance costs decreasing due to individuals being unable to afford representation against potential abuses by insurance companies does consumers a disservice.

The basis of the reforms has also been questioned by legal experts. Tort reform proponents claimed that frivolous and expensive litigation hinders the ability of insurance companies to affordably do business in

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<sup>112</sup> Madeleine Vaughn & Wicker Smith, *Tort Reform Arrives In Florida: A Summary of How HB 837/SB 238 Will Impact Litigation in the Sunshine State*, U.S. L. MAG., Spring 2023, at 28.

<sup>113</sup> *Id.* at 29.

<sup>114</sup> Press Release, Ron DeSantis, Governor of Florida, Governor Ron Desantis Announces Rate Reductions for Miami-Dade County, Auto Insurance Reductions Statewide, and 11 New Companies Entering Florida’s Market, (Feb. 5, 2025), <https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-announces-rate-reductions-miami-dade-county-auto-insurance> [<https://perma.cc/S697-H7ED>].

<sup>115</sup> *Id.*

<sup>116</sup> Press Release, Citizens Property Insurance Corporation, Citizens’ Policy Count Drops Below 1 Million (Dec. 4, 2024), <https://www.citizensfla.com/-/20241204-citizens-policy-count-below-1m> [<https://perma.cc/E4HH-49GF>].

<sup>117</sup> Susan Odess & Andrew Miller, *Reports of Stabilization in Property Insurance Due to Tort Reform May Be Premature*, LAW.COM, (June 18, 2024, 11:41 AM), <https://www.law.com/dailybusinessreview/2024/06/18/reports-of-stabilization-in-property-insurance-due-to-tort-reform-may-be-premature/>.

<sup>118</sup> *Id.*

states without reforms.<sup>119</sup> Experts studied the arguments made by tort reform proponents about the increase in the average personal injury judgment and nuclear verdicts, however, and found that the problems tort reforms attempt to address are likely overblown.<sup>120</sup> For example, the study found that, while tort reformers claim that median judgments have increased by 24.8% from 2018 to 2020, they only increased by 0.3% from 2017 to 2020, demonstrating that proponents had cherry-picked the best data to make their argument.<sup>121</sup> The study highlights Florida's insurance industry, noting that hurricanes and the state's geographic vulnerability are to blame for its insurance crisis, and that tort reform's "stabilization will be outweighed by the cost of leaving harmed Floridians with inadequate recompense."<sup>122</sup>

Florida's insurance reform measures do not directly address the climate-related disasters that it has and will continue to experience. Florida's insurance reform focused on reducing current costs for insurers and inhibiting adequate representation for individuals who cannot afford hourly representation. Without directly addressing Florida's growing climate problem, however, homeowners in areas with significant climate exposure will continue to see their premiums increase like their counterparts in California. At best, Florida's policies could be considered a stop-gap measure to prevent insurance companies from increasing prices in the short term by incentivizing business, but in the long term, they will not address the underlying problems of increasing exposure for insurance companies and the eventual uninsurability of many homes in high-risk climate zones.

#### V. SOLUTIONS: ARE THERE ANY?

Addressing uninsurability due to climate change likely has no easy answer. FAIR Plans can continue to bridge the gap between traditional insurers and those lacking insurance, individuals can be incentivized to move, or government and traditional insurers can allow markets to naturally abandon uninsurable areas. Those solutions, however, each have advantages and drawbacks.

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<sup>119</sup> Kenneth S. Klein, *The Case for Pausing Any Immediate Embrace of the Social Inflation Argument for Legal System Reforms*, 42 J. INS. REGUL. 1, 3 (2023).

<sup>120</sup> *Id.* at 21–23.

<sup>121</sup> *Id.* at 19–21.

<sup>122</sup> *Id.* at 24–25.

### A. Eventual Forced Migration

One solution is having no solution. Eventually, climate change will force a natural migration of individuals who lose their homes to climate-related disasters and have no means to rebuild. Fewer insurance policies being written at more expensive costs will encourage individuals to go without insurance after paying off their mortgage. Nearly 40% of U.S. homeowners do not have mortgages and so they have no requirement to have homeowners insurance.<sup>123</sup> Those homeowners are more frequently forgoing homeowners insurance, with 5% of homeowners going without insurance in 2015 and 12% in 2024.<sup>124</sup> After a large storm, individuals who have experienced catastrophic damage to their homes with no means to rebuild will be forced to relocate to a safe shelter, ultimately leaving the climate-unsafe zone.

This, of course, is an imperfect system. Those homeowners without homeowners insurance risk catastrophic financial losses due to extreme weather.<sup>125</sup> Florida had the highest rate of homeowners forgoing homeowners insurance, at between 15 and 20%, likely because of the high cost of insurance premiums.<sup>126</sup> Allowing the market to naturally dispossess individuals would lead to a massive economic loss. An estimated \$1.6 trillion worth of property was uninsured in 2021.<sup>127</sup> Homeowners of color and homeowners making less than \$50,000 are more likely to go without homeowners insurance, potentially further exacerbating race and wealth gaps for families unable to afford repairs after extreme weather events.<sup>128</sup>

Homeowners may take less drastic steps toward reducing their home insurance burden than going totally without. Homeowners with mortgages can reduce their coverage limits to the bare minimum required by the mortgage company. Generally, homeowners can reduce their coverage or increase their deductible, which will reduce their

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<sup>123</sup> Sarah Marx, *Share of Mortgage-Free Homeowners Hits All-Time High in 2022*, HOUSINGWIRE (Nov. 22, 2023, 8:00 AM), <https://www.housingwire.com/articles/share-of-mortgage-free-homeowners-hits-all-time-high-in-2022/#:~:text=In%202022%2C%20nearly%2040%%20of%20U.S.%20homeowners,to%2025.4%20million%20homes%20a%20decade%20ago>.

<sup>124</sup> Chris Taylor, *The Risky Economics of Living Without Homeowners Insurance*, REUTERS (Mar. 28, 2024, 6:10 AM), <https://www.reuters.com/markets/us/risky-economics-living-without-homeowners-insurance-2024-03-28/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> SHARON CORNELISSEN, DOUGLAS HELLER & MICHAEL DELONG, EXPOSED: A REPORT ON 1.6 TRILLION DOLLARS OF UNINSURED AMERICAN HOMES 5 (2024), <https://consumerfed.org/wp-content/uploads/2024/03/Exposed-UninsuredHomes-1.pdf> [<https://perma.cc/NZ9J-KVVE>].

<sup>128</sup> *Id.*

premiums.<sup>129</sup> This would still leave homeowners with more financial risk, but not the total loss they may experience without home insurance at all.

Over time, demand to live in high-risk climate areas will decrease. This process, however, will be expensive and leave many homeowners without financial recourse. Those homeowners will be constantly risking the loss of their most valuable asset. Policymakers should not leave homeowners to suffer forced migration when mitigating policies could help.

### *B. Reliance on FAIR Plans*

FAIR Plans and governments can continue to provide insurance for areas in which private insurers have deemed the risk too great, essentially redistributing the risk. FAIR Plans are a great short-term solution for individuals unable to find private insurance before they experience a lapse of coverage. FAIR Plans avoid the additional costs and fees associated with force-place insurance and cover the value of the home, not just the value of the outstanding mortgage, better protecting consumers. For most states in which the FAIR Plan serves as the temporary insurer of last resort, FAIR Plans are very effective and a great tool for consumers.

FAIR Plans, however, are insufficient to sustain the traditional insurance market through the massive increase in potential exposure due to climate change. As discussed, the FAIR Plan works by offering less coverage to consumers at a higher price to account for some of the increased risk, with budget shortfalls, or the rest of the risk, being borne by other insurance customers in the state. This leads to a lose-lose for policyholders, the consequences of such being already felt by Californians. California policyholders are paying a higher premium just to maintain basic insurance to satisfy FHA requirements. That higher premium may already be out of reach for some Californians, leading to a risk of foreclosure. Other Californians, also suffering from high insurance prices, bear the additional financial burden of paying a portion of the assessment levied due to FAIR Plan shortfalls. Individuals across the state, regardless of their personal exposure to climate-related disasters, pay a portion of an assessment levied on traditional insurers in the state through increasing premiums.

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<sup>129</sup> *The Rising Cost of Homeowners Insurance and Its Impact on Housing Affordability*, FED. RSRV. BANK OF RICHMOND (Aug. 21, 2024), [https://www.richmondfed.org/podcasts/speaking\\_of\\_the\\_economy/2024/speaking\\_2024\\_08\\_21\\_homeowners\\_insurance](https://www.richmondfed.org/podcasts/speaking_of_the_economy/2024/speaking_2024_08_21_homeowners_insurance) [https://perma.cc/227M-885F].

Essentially, even Californians living in climate-safe areas subsidize insurance for individuals who live in climate high-risk zones. This begs the question of whether this arrangement is fair.

Proponents of a more robust FAIR Plan would argue that it is essential to help homeowners afford insurance even in high climate-risk zones. As mentioned before, areas deemed uninsurable by the FHA have seen property values cratering. If 500,000 property owners, roughly the number of current enrollees in the FAIR Plan in California, had a sudden massive decline in their home equity, it could decimate local economies and have significant negative effects on the state and national economy. *The Wall Street Journal* reported that a decline in home values could significantly weaken the economy because of an increased reliance on the economy of spending by the most affluent.<sup>130</sup> However, strapping other consumers with high insurance prices feels like an imperfect solution. Homeowners in climate-safer areas are burdened by high insurance prices and still have their home values hindered by high insurance costs and the risk of further insurance assessments.

Reforming the FAIR Plan system to promote economic equity could be a first step to helping address this issue. The equity in a family's home is typically the largest asset that contributes to net worth.<sup>131</sup> This is especially true in California where home values are some of the highest in the country.<sup>132</sup> By either implementing an income cap or lowering the coverage limit for residential policyholders, FAIR Plans could focus on protecting individuals most in need of assistance for whom their household's wealth is mostly derived from their home equity. In 2019,

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<sup>130</sup> Rachel Louise Ensign, *The U.S. Economy Depends More Than Ever on Rich People*, WALL. ST. J. (Feb. 23, 2025, 9:00 PM), [https://www.wsj.com/economy/consumers/us-economy-strength-rich-spending-2c34a571?mod=livecoverage\\_web](https://www.wsj.com/economy/consumers/us-economy-strength-rich-spending-2c34a571?mod=livecoverage_web). This is especially disconcerting in a period of a "K-shaped" economy, where the affluent economically prosper but middle- and lower-income individuals suffer. Economists worry that K-shaped economies are more fragile and the economy decisions of the wealthy can have an outsized impact on the economy. If those individuals pull back on spending, the entire economy could collapse. Nicole Goodkind, *What Is the K-Shaped Economy, and Why Is It a Problem?*, BARRON'S (Nov. 14, 2025, 12:01 AM), [https://www.barrons.com/articles/k-shaped-economy-wages-consumers-federal-reserve-e6171791?gaa\\_at=eafs&gaa\\_n=AWetsqcxT80STNF7oUI1QPPcAINIISPdyuwiGJFXMvDse7flvqBy\\_1tjK7bCNptC54%3D&gaa\\_ts=695be427&gaa\\_sig=AKTrv2HmWSNzblfIO7ZTNepwfcLMil7AChzcGA7\\_4qAwuGpcvb1mdW4\\_P1duXytbn06Y3B8CWjAQfTrFicr9g%3D%3D](https://www.barrons.com/articles/k-shaped-economy-wages-consumers-federal-reserve-e6171791?gaa_at=eafs&gaa_n=AWetsqcxT80STNF7oUI1QPPcAINIISPdyuwiGJFXMvDse7flvqBy_1tjK7bCNptC54%3D&gaa_ts=695be427&gaa_sig=AKTrv2HmWSNzblfIO7ZTNepwfcLMil7AChzcGA7_4qAwuGpcvb1mdW4_P1duXytbn06Y3B8CWjAQfTrFicr9g%3D%3D).

<sup>131</sup> RAKESH KOCHHAR & MOHAMAD MOSLIMANI, PEW RSCH. CTR., WEALTH SURGED IN THE PANDEMIC, BUT DEBT ENDURES FOR POORER BLACK AND HISPANIC FAMILIES 23 (2023), <https://www.pewresearch.org/2023/12/04/the-assets-households-own-and-the-debts-they-carry/> [<https://perma.cc/VVH4-4G37>].

<sup>132</sup> Kiah Treece, *Median Home Price By State: How Much Do Houses Cost?*, FORBES (Sep. 18, 2025, 11:21 AM), <https://www.forbes.com/advisor/mortgages/real-estate/median-home-prices-by-state/>.

California Insurance Commissioner Ricardo Lara ordered the FAIR Plan to “double its coverage limit for residential properties to \$3 million to account for increased home values and building costs.”<sup>133</sup> Realtor.com’s Residential Real Estate Data Library reports that the median listing price for homes in California was \$531,500 in January 2019. It has increased to \$736,550 as of March 2026, still well below the FAIR Plan’s \$3 million coverage limit.<sup>134</sup> Therefore, in its current iteration, the FAIR Plan requires California homeowners to subsidize the insurance of homeowners with property values of \$3 million, more than four times the price of the average home being listed.

Implementing a lower coverage cap could make the FAIR Plan more affordable to Californians, but this tactic has its drawbacks. Reducing the coverage cap to \$1.5 million would reduce the liability exposure and shortfalls for the FAIR Plan while still providing coverage for most Californians. Some areas with high home prices like the Bay Area, where the average home value tops \$2 million, would see many homes not completely covered.<sup>135</sup> Still, most homes in California would be covered, and subsidizing higher-value homes at the expense of average Californians is inequitable. High-value housing markets could, and should, adjust naturally, either by reducing the value of the home to account for their high-risk geography or by implementing additional high-cost private insurance for individuals that can afford \$1.5 million-plus homes. While individuals in those homes would see a reduction in home value and equity that could destabilize the local economy, the financial burden of subsidizing the FAIR Plan affects less wealthy Californians struggling with increasing home insurance rates that are subsidizing high-value houses in unsafe areas. The FAIR Plan’s focus should be helping individuals who cannot afford to relocate, not high-value homeowners who have houses in uninsurable areas.

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<sup>133</sup> Bulletin from Richard Lara, Ins. Comm’r, to All Admitted Property & Casualty Insurers and Other Interested Parties, Re. Insurer Recoupment Procedures in the Highly Unlikely Event of Assessment by the FAIR Plan (Sep. 3, 2024), [https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/BULLETIN\\_2024-8\\_RE\\_INSURER\\_RECOUPMENT\\_PROCEDURES\\_IN\\_THE\\_HIGHLY\\_UNLIKELY\\_EVENT\\_OF\\_ASSESSMENT\\_BY\\_THE\\_FAIR\\_PLAN.pdf](https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/BULLETIN_2024-8_RE_INSURER_RECOUPMENT_PROCEDURES_IN_THE_HIGHLY_UNLIKELY_EVENT_OF_ASSESSMENT_BY_THE_FAIR_PLAN.pdf) [<https://perma.cc/P52U-2SST>].

<sup>134</sup> *California–Median Home Listing Price (2016-2026)*, MACROTRENDS, <https://www.macrotrends.net/3720/california-median-home-listing-price> [<https://perma.cc/2H5Q-PFZJ>]; *Research*, REALTOR.COM, <https://www.realtor.com/research/data/> [<https://perma.cc/8G4M-KK5N>].

<sup>135</sup> Stephanie Sierra, *FAIR Plan Coverage Caps at \$3 Million: Here’s Why Experts Are Worried About Bay Area Housing Market*, ABC7 NEWS (Jan. 13, 2025), <https://abc7news.com/post/california-wildfires-fair-plan-costs-fire-coverage-caps-add-worries-housing-market-recovery-bay-area-ca/15796812/> [<https://perma.cc/D5L6-HW8X>].

Still, even with lower coverage caps, general reliance on FAIR Plans alone is likely insufficient to address the growing climate crisis. As more areas lose access to traditional insurers, FAIR Plans would become unaffordable both for policyholders and for traditional insurance customers. FAIR Plan policyholders contend with higher premiums, making coverage unaffordable for many customers. Traditional policyholders would continue to have their premiums increase to fund the FAIR program's funding shortages as climate change-related disasters become more frequent and more severe, and, inevitably, more costly. In turn, as traditional insurance prices increase, more homeowners will be forced to turn to FAIR Plans, increasing their demand, their liabilities, and their subsidies from traditional premiums, perpetuating the cycle until it breaks. FAIR Plans should continue to be offered to help individuals in short-term insurance crunches, but the increasing reliance on the programs as long-term insurance coverage in unsafe climate zones will end up harming FAIR Plan participants and traditional insurers in the area.

### C. Managed Retreat Efforts

Different levels of government have enacted “managed retreat” efforts, or combinations of incentives and interventions that encourage communities in climate-unsafe areas to move to safer locations.<sup>136</sup>

#### 1. FEMA Buyouts

The federal government, through the Federal Emergency Management Agency (FEMA), created a program to buy out homeowners from locations deemed unsafe because of climate change.<sup>137</sup> After a natural disaster, FEMA will give money to affected states, which includes money allocated through the Hazard Mitigation Grant Program to “reduce future disaster losses.”<sup>138</sup> Through the grant,

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<sup>136</sup> Jake Bittle, *Climate Change Is Destroying American Homes. Who Should Have to Move?*, GRIST (Oct. 2, 2024), <https://grist.org/migration/climate-change-home-buyouts-displacement-managed-retreat/> [<https://perma.cc/6UBV-4HDK>].

<sup>137</sup> *Buyout Brings Peace of Mind*, FEMA (Feb. 11, 2021), <https://www.fema.gov/case-study/buyout-brings-peace-of-mind> [<https://perma.cc/ZPY4-2JBJ>]. See also Robert Benincasa, *Search the Thousands of Disaster Buyouts FEMA Didn't Want You to See*, NPR (Mar. 5, 2019, 5:44 AM), <https://www.npr.org/2019/03/05/696995788/search-the-thousands-of-disaster-buyouts-fema-didnt-want-you-to-see> [<https://perma.cc/V3FW-FKU3>].

<sup>138</sup> *Fact Sheet: Acquisition of Property After a Flood Event*, FEMA (May 2, 2023), <https://www.fema.gov/press-release/20250121/fact-sheet-acquisition-property-after-flood-event> [<https://perma.cc/V8SM-H5TH>]; *Assistance for Governments and Private Non-Profits After a Disaster*, FEMA (Jan. 15, 2026), <https://www.fema.gov/assistance/public#:~:text=FEMA's%20Public%20Assistance%20Program>

FEMA pays 75% of the buyout costs and the state or local government would pay the other 25%.<sup>139</sup>

The federal government does not determine which properties are eligible for the buyout. Instead, local governments make the decision of whether to request the funds from the state and the state reviews the request and determines which communities, if any, would be eligible.<sup>140</sup> States set priorities for how to spend FEMA mitigation funds, which may or may not include funding for buyouts.<sup>141</sup> Properties are often in Special Flood Hazard Areas and are primary residences.<sup>142</sup>

Eligible homeowners are offered a “pre-disaster fair-market value for the property” through an appraisal, which homeowners can appeal if they disagree with the value.<sup>143</sup> After the homeowner receives the payment, the homeowner transfers the deed to the local government, and the structure is demolished.<sup>144</sup> The deed received by the local government restricts the land to open space use in perpetuity.<sup>145</sup>

The FEMA program has been successful, though slow and expensive. Since this program’s introduction about 40 years ago, FEMA has purchased 50,000 homes for a total cost of about \$3.4 billion.<sup>146</sup> At the current rate of 1,250 homes per year, it would take FEMA 4,000 years to purchase all the homes in climate-unsafe areas.<sup>147</sup>

A study by NPR found that these buyouts have been enacted inequitably. NPR, through Freedom of Information Act requests and information provided by the Census Bureau, researched the FEMA program and determined that white, non-Hispanic neighborhoods have received an outsized benefit from this program.<sup>148</sup> From 1989 to 2017, most of the homes purchased with FEMA funds were in neighborhoods where 85% or more of residents were white and non-Hispanic.<sup>149</sup> This is partially because FEMA prioritizes minimizing future taxpayer risk and, through a cost-benefit analysis of potential future liabilities, prioritizes

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%20provides%20supplemental%20grants,as%20a%20result%20of%20the%20declared%20incident [https://perma.cc/QZ8T-H4W5].

<sup>139</sup> *Fact Sheet: Acquisition of Property After a Flood Event*, *supra* note 138.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Shelterforce, *We Must Relocate to Prepare for Climate Change, and We Must Do It Now*, PLANETIZEN (Aug. 8, 2024, 9:00 AM), <https://www.planetizen.com/news/2024/08/130862-we-must-relocate-prepare-climate-change-and-we-must-do-it-now>.

<sup>147</sup> *Id.*

<sup>148</sup> Benincasa, *supra* note 137.

<sup>149</sup> *Id.*

purchasing homes that would cost more to repair.<sup>150</sup> Those houses are often not in areas of the highest need, but in areas in which the property is worth more, often in whiter communities.<sup>151</sup> As houses that remain in climate-unsafe areas will continue to lose value, this will continue to exacerbate an already existing racial wealth gap increased by a gap in homeownership and home values.

## 2. Eminent Domain

Eminent domain allows the taking of private property for public use with just compensation.<sup>152</sup> Both state and federal governments can exercise their eminent domain power as enumerated in the Fifth Amendment. The Fifth Amendment forbids the federal government from taking private property for “public use, without just compensation,”<sup>153</sup> and this power is incorporated and applies to the fifty states and subsidiary governments through the Fourteenth Amendment. Invoking eminent domain would allow governments to evict individuals in unsafe climate zones that do not otherwise move or accept buyouts.<sup>154</sup>

The U.S. Army Corps of Engineers (USACE) is tasked with “protecting Americans from flooding and coastal storms.”<sup>155</sup> USACE builds and typically pays for two-thirds of the cost of protective measures, and the local government pays the remaining bill.<sup>156</sup> In 2015, USACE, when tasked with flood risk management and coastal storm risk management, stated that, in order to participate, “the ability to use eminent domain must be retained and a condition of an implementable project.”<sup>157</sup> USACE created a program in which it would estimate the cost to repair the predicted future damage a house would likely suffer in the next fifty years and compare that to the cost to buy and tear down the house.<sup>158</sup> If the buyout is less expensive than the estimated repairs, USACE would use the eminent domain power to evict the homeowner

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> U.S. CONST. amend. V.

<sup>153</sup> *Id.*

<sup>154</sup> Bittle, *supra* note 136.

<sup>155</sup> Christopher Flavelle, *Trump Administration Presses Cities to Evict Homeowners from Flood Zones*, N.Y. TIMES (June 29, 2021), <https://www.nytimes.com/2020/03/11/climate/government-land-eviction-floods.html>.

<sup>156</sup> *Id.*

<sup>157</sup> U.S. ARMY CORPS OF ENG'RS, PB 2016-01, CLARIFICATION OF EXISTING POLICY FOR USACE PARTICIPATION IN NONSTRUCTURAL FLOOD RISK MANAGEMENT AND COASTAL STORM DAMAGE REDUCTION MEASURES 2 (2015); Flavelle, *supra* note 155.

<sup>158</sup> Flavelle, *supra* note 155.

and tear down the house.<sup>159</sup> The homeowner would be given the assessed value of the house.<sup>160</sup>

This somewhat radical, although potentially necessary, program has some drawbacks. First, and most importantly for politicians and city plans, eminent domain is not popular, especially used this way.<sup>161</sup> State and city leaders have refused to participate or withdrawn from USACE projects because of the eminent domain requirement.<sup>162</sup> Evicting homeowners, especially individuals who previously refused to sell, through eminent domain is a public relations nightmare.

The “public use” requirement of the eminent domain will also necessitate justification from governmental entities as to why these houses would be subject to condemnation. Federal courts give relatively broad discretion as to what constitutes “public use.”<sup>163</sup> Still, the government would have to ensure that the demolition of condemned areas gives some benefit to the public. Some cases would be easier to demonstrate a public purpose than others. The Supreme Court referenced in a dissenting opinion that that demolishing coastal houses to rebuild or fortify a coastline constitutes a link to public benefit.<sup>164</sup> More tenuous justifications, like the public benefit of not paying for repairs through federal or state funds, may not be as convincing.

Eminent domain is also expensive. To meet the “just compensation” requirement, the Corps proposes to pay the assessed value of the property. An assessed value, however, may not be “just compensation.” Courts would have to determine what valuation to use for the house and whether to account for the future estimated damage the Corps predicts. Even still, the program would cost billions of dollars to relocate the millions of Americans in homes that are at risk for climate change-related damage.<sup>165</sup> Still, experts say that the initial expense could save \$6.50 for every \$1 spent.<sup>166</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> See, e.g., *Kelo v. City of New London*, 545 U.S. 469, 484 (2005) (holding that “economic development” is sufficient to establish a public purpose as to satisfy the requirement of eminent domain).

<sup>164</sup> *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1037 n.1 (1992) (Blackmun, J., dissenting).

<sup>165</sup> Will Bugler, *Managed Retreat: Moving 1 Million US Homes Out of Flood Zone Could Save \$1 Trillion Dollars*, PREVENTIONWEB (May 8, 2020), <https://www.preventionweb.net/news/managed-retreat-moving-1-million-us-homes-out-flood-zone-could-save-1-trillion-dollars#:~:text=According%20to%20the%20report%2C%20while,increasingly%20burdensome%20to%20the%20programme.>

<sup>166</sup> *Id.*

### 3. Regulatory Takings

Instead of explicitly evicting homeowners, governments could enact laws and ordinances that prohibit rebuilding homes in areas at high risk of floods and wildfires. Restricting building permits for areas in flood or wildfire zones would also reduce the number of homes rebuilt in unsafe areas after a storm. Regulations that prohibit building and rebuilding in unsafe areas could urge people to move to safer areas, but these regulations could be still subject to the Takings Clause and be subject, like eminent domain, to the “just compensation” requirement.

Governments have the right to enact land use regulations like zoning laws without having to compensate affected landowners, even when the land use regulation drastically affects the owner’s property rights.<sup>167</sup> Regulations that go “too far . . . will be recognized as a taking” under the Fifth Amendment.<sup>168</sup> If rebuilding restrictions were found to be sufficient to constitute a taking, governments would be required to provide homeowners with just compensation. Evading the designation of a taking would avoid the trillions of dollars needed to either buy out willing homeowners or invoke eminent domain.

The Supreme Court has interpreted the Fifth Amendment to encompass actual, physical takings, occupation of private land by the government, and regulatory takings.<sup>169</sup> Prohibiting an individual from rebuilding a home on private property may be sufficient for governments to be subject to the Takings Clause, but courts would have to determine whether the restrictions rise to the level of a regulatory taking. Regulations would have to overcome two barriers to avoid invoking the Takings Clause: whether the regulation was so restrictive that it would constitute a taking and whether the regulation transforms the land into “public use.”

Rebuilding regulations would first contend with the question of whether the regulation is restrictive enough to be a taking. The Supreme Court addressed this question in 1992 in the case *Lucas v. South Carolina Coastal Council*.<sup>170</sup> The petitioner, David Lucas, purchased two beachfront lots on the South Carolina coast in 1986 with the plan to build residential homes on the lots.<sup>171</sup> In 1988, South Carolina enacted the Beachfront Management Act which would, in essence, prohibit Mr.

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<sup>167</sup> See generally *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (finding that a municipality’s zoning laws, found not to be arbitrary or unreasonable, were a valid use of the powers and not unconstitutional).

<sup>168</sup> *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

<sup>169</sup> See *id.*

<sup>170</sup> 505 U.S. 1003, 1007 (1992).

<sup>171</sup> *Id.* at 1003.

Lucas from doing so.<sup>172</sup> Mr. Lucas sued the state agency claiming that the building restriction “deprived him of all ‘economically viable use’ of his property” and invoked the Takings Clause.<sup>173</sup> The South Carolina trial court found for Mr. Lucas and awarded him damages of \$1.2 million.<sup>174</sup> The South Carolina Supreme Court reversed, holding that the Beachfront Management Act was a proper use of its police powers and the regulation protected a public resource, exempting it from the Takings Clause.<sup>175</sup> Mr. Lucas appealed, and the U.S. Supreme Court granted certiorari.<sup>176</sup>

Before *Lucas*, the Court had been vague about what would fully constitute a regulatory taking. Previous cases had been very liberal in exempting regulations from the Takings Clause. In *Penn Central Transportation Co. v. City of New York*, the Court had differentiated constitutionally recognized takings from “interference[s] aris[ing] from some public program adjusting the benefits and burdens of economic life to promote the common good.”<sup>177</sup> Regulations that substantially hindered property owners’ economic returns were insufficient to require just compensation under the Fifth Amendment.<sup>178</sup> The *Lucas* case, however, presented the Court with a total economic value loss to the property owner, not only a substantial economic interference.

The Court found that a total economic loss of one’s property constitutes a taking under the Fifth Amendment.<sup>179</sup> The Court noted that, while some regulations that promote the public good are permissible, private property should not be “pressed into some form of public service under the guise of mitigating serious public harm.”<sup>180</sup> Forcing a property owner to “sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle” constituted, in the Court’s view, a taking.<sup>181</sup>

Whether regulations that prohibit rebuilding in unsafe climate zones constitute takings will likely be determined by courts after such regulations are enacted. Based on current case law, these regulations are likely to be determined to be takings. If regulations are found to be

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 1010.

<sup>176</sup> *Id.*

<sup>177</sup> 438 U.S. 104, 124 (1978).

<sup>178</sup> *Id.* at 125 (citing *Nectow v. Cambridge*, 277 U.S. 183, 188 (1928); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Gorieb v. Fox*, 274 U.S. 603, 608 (1927); *Welch v. Swasey*, 214 U.S. 91 (1909)).

<sup>179</sup> *Lucas*, 505 U.S. at 1019.

<sup>180</sup> *Id.* at 1018.

<sup>181</sup> *Id.* at 1019.

takings, governments could be liable for damages that exceed the budgets for these projects. Litigation on climate-related building ordinances has already touched on these issues without governments intentionally enacting laws aiming to relocate communities out of unsafe areas.<sup>182</sup> Courts would have to decide what, if any, remaining value property has if an individual is prohibited from rebuilding for governments to avoid damages under the Takings Clause.

Furthermore, state and local governments that enact these rules would also be doing so against their interests, making it difficult to persuade state and local officials. By the year 2100, large portions of the coastline of Texas, Florida, and Virginia are projected to be below the tideline.<sup>183</sup> Encouraging individuals to move, however, immediately affects local economies and would put those states at risk of losing billions of dollars. Homeowners leaving their homes would decimate communities, local businesses, and tax bases, which could essentially eliminate many coastal towns. To enact forward-thinking climate policies, elected officials would have to approve unpopular and immediately economically destructive policies justified by the future benefit to current residents. Forcing individuals to move would decimate local towns and economies but could save those residents from impending climate disaster in their current unsafe locations.

#### 4. New Building Codes

Enacting climate-resistant building codes could also mitigate the effects of climate change by making homes safer in the future. Building codes could skirt the Takings Clause by allowing rebuilding in climate-affected areas if new homes comply with the safer building restrictions.

The American Society of Civil Engineers publishes a standard guideline for structural design. The Minimum Design Loads and Associated Criteria for Buildings and Other Structures, ASCE/SEI 7-22, the current edition of the guidelines published in 2022, includes a supplement that addresses flood-mitigation planning and tornado-resistant designs for the first time.<sup>184</sup> The 2027 International Building

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<sup>182</sup> See, e.g., *Zito v. N.C. Coastal Res. Comm'n*, 8 F.4th 281 (4th Cir. 2021).

<sup>183</sup> *Land Projected to Be Below Tideline in 2100*, CLIMATE CENTRAL (2021), [https://coastal.climatecentral.org/map/7/282.706/35.0656/?theme=sea\\_level\\_rise&map\\_type=year&basemap=roadmap&contiguous=true&elevation\\_model=best\\_available&forecast\\_year=2100&pathway=rcp45&percentile=p50&refresh=true&return\\_level=return\\_level\\_0&rl\\_model=coast\\_rp&slr\\_model=kopp\\_2017](https://coastal.climatecentral.org/map/7/282.706/35.0656/?theme=sea_level_rise&map_type=year&basemap=roadmap&contiguous=true&elevation_model=best_available&forecast_year=2100&pathway=rcp45&percentile=p50&refresh=true&return_level=return_level_0&rl_model=coast_rp&slr_model=kopp_2017) [https://perma.cc/57DP-3TM3].

<sup>184</sup> Julie Strupp, *Building Codes Aren't Climate Ready, But Changes Are Coming*, CONSTR. DIVE (Sep. 14, 2023), <https://www.constructiondive.com/news/building-codes-climate-resilience-nibs/693672/> [https://perma.cc/YF34-588G].

Code update plans to include a chapter that includes extreme weather like flooding, ice, and wind.<sup>185</sup>

New building codes would likely be more akin to zoning laws that diminish a property's value but would not eliminate it completely. New buildings could be built in areas that are otherwise unsafe but may be more expensive than building under current building codes. Individuals who could not afford to rebuild under the new laws may be forced to sell, but their property would retain some value.

Strengthening building codes seems to be an elegant solution to an impossible problem, but it is not without its drawbacks. Like other solutions previously discussed, requiring expensive updates to homes would be unpopular.<sup>186</sup> While not actually evicting people from their homes, the requiring of expensive updates to homes that might not be covered by insurance could force unwilling people to move. Experts argue, however, that a homeowner's future damage costs from a climate-related event outweigh the costs to fortify homes against extreme weather.<sup>187</sup> This is especially true for individuals who have FAIR Plans and other minimum coverage policies.

Full compliance with the new building codes, too, might be too slow for individuals to avoid the worst consequences of climate change. For example, if a government requires new renovations to comply with new building codes, homes that do not need improvements may remain vulnerable to fires. This is true already in California for earthquake codes. While new structures must comply with current earthquake safety codes, the decision to renovate or retrofit existing structures is left to the owner of the property.<sup>188</sup> Older homes are especially at risk for wildfires because the materials the homes are made of catch fire more easily.<sup>189</sup>

#### *D. Home Hardening Grants*

To the extent that some homes may be fortified to withstand climate change-related disasters, home hardening grants may help homeowners prepare their homes with mitigating upgrades. Florida and California, as

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<sup>185</sup> *Id.*

<sup>186</sup> Christopher Flavelle, *Solutions to Wildfires in Time of Climate Change Are Costly, Unpopular*, *INS. J.* (Nov. 14, 2018), <https://www.insurancejournal.com/news/national/2018/11/14/507472.htm> [<https://perma.cc/C9G3-UXPH>].

<sup>187</sup> *Id.*

<sup>188</sup> *Stanford University and the 1906 Earthquake, 10: Evolution of the Code*, STAN. U., <https://quake06.stanford.edu/10-evolution-codes> [<https://perma.cc/5EWG-FW9N>].

<sup>189</sup> Flavelle, *supra* note 186.

well as a few other states, have created grant programs for homeowners to help offset the cost of climate mitigation projects.<sup>190</sup>

The My Safe Florida Home Program (MSFH) offers free inspections and grants for up to \$10,000 for Floridians to install storm and hurricane-mitigating improvements to their homes.<sup>191</sup> Eligible improvements include installing impact-resistant windows, shutters, doors, and garage doors, installing roof-to-wall attachments that reinforce roofs to reduce the likelihood the roof will blow off, and applying adhesive materials to roofs that will cover seams and prevent flooding.<sup>192</sup> Priority for grants is given to senior and low-income residents.<sup>193</sup> The program offers matching grants to most Floridians, but low-income residents can receive the full amount without having to match the awarded grant.<sup>194</sup>

The program has been successful thus far. As of February 2025, the program has allocated more than \$576 million to more than 58,000 home resiliency projects.<sup>195</sup> On average, home insurance premiums decreased by \$1,000 for participants who completed the program and installed a home hardening project.<sup>196</sup> Governor DeSantis asked the legislature for an additional \$600 million for the program in early 2025.<sup>197</sup>

California also has a grant program, but includes reconstruction costs as well as mitigation projects to prevent future damage.<sup>198</sup> Low- and

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<sup>190</sup> Letter from Ben Albritton, Fla. Sen., to All Senators, Re. Update on the My Safe Florida Home Program (Mar. 26, 2025), [https://flsenate.gov/PublishedContent/Offices/2024-2026/President/Documents/Update\\_on\\_the\\_My\\_Safe\\_Florida\\_Home\\_Program.pdf](https://flsenate.gov/PublishedContent/Offices/2024-2026/President/Documents/Update_on_the_My_Safe_Florida_Home_Program.pdf) [<https://perma.cc/LPU5-TLJT>]; *Explore All California Climate Investments Programs*, CAL. CLIMATE INVS., <https://www.caclimateinvestments.ca.gov/all-programs> [<https://perma.cc/9J66-H792>]; *Strengthen Alabama Homes*, ALA. DEP'T. OF INS., <https://www.strengthenalabahomes.com/> [<https://perma.cc/PTD4-GUNS>]; *Understanding Oregon's Fire Hardening Grant Program*, DEP'T. OF CONSUMER AND BUS. SERVS., [https://www.oregonlegislature.gov/marsh/Documents/DCBS-BCD\\_firehardening-grant-program\\_flyer.pdf](https://www.oregonlegislature.gov/marsh/Documents/DCBS-BCD_firehardening-grant-program_flyer.pdf) [<https://perma.cc/8F34-5Y9V>].

<sup>191</sup> MY SAFE FLA. HOME, <https://mysafefloridahomeprogram.org/> [<https://perma.cc/F7DE-ARBB>].

<sup>192</sup> *Eligible Improvements Guide*, MY SAFE FLA. HOME, [https://msfh-program.helpjuice.com/en\\_US/msfh-program-resources/eligible-improvements-guide](https://msfh-program.helpjuice.com/en_US/msfh-program-resources/eligible-improvements-guide) [<https://perma.cc/RX34-Q465>].

<sup>193</sup> Letter from Ben Albritton, *supra* note 190.

<sup>194</sup> *Program FAQs*, MY SAFE FLA. HOME, [https://msfh-program.helpjuice.com/en\\_US/program-faqs](https://msfh-program.helpjuice.com/en_US/program-faqs) (last visited Jan. 24, 2026).

<sup>195</sup> Letter from Ben Albritton, *supra* note 190.

<sup>196</sup> *Id.*

<sup>197</sup> Kellie Cowan, *Gov. DeSantis Pushing for More Funding for 'My Safe Florida Home' Program*, FOX13 NEWS (Feb. 7, 2025, 8:56 AM), <https://www.fox13news.com/news/gov-desantis-pushing-more-funding-my-safe-florida-home-program> [<https://perma.cc/H7G5-EZB6>].

<sup>198</sup> *ReCoverCA Aid for Homeowners*, CAL. DEP'T. OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/grants-and-funding/recoverca> [<https://perma.cc/G4CC-FZKV>].

moderate-income homeowners in select counties previously affected by wildfires can apply for financial assistance for construction and mitigation grants.<sup>199</sup> Participants can be eligible for grants of up to \$500,000 for the reconstruction of homes and \$75,000 for mitigation projects to prevent future damage.<sup>200</sup> The program also provides up to \$350,000 in assistance for low- to moderate-income Californians to purchase homes outside of high-risk wildfire zones.<sup>201</sup>

Applications for areas affected by the 2020 and 2021 fires closed in April 2025. The 2020 eligible affected areas included nine counties, and the 2021 eligible affected areas only included one county.<sup>202</sup> California has not published statistics as to the success of the program or the total costs associated with it. The program, too, has not been expanded yet to cover damages for fires after 2021, including the 2025 Los Angeles fires.

These grant programs are an excellent start to help individuals make improvements to their homes to limit future disasters. As seen in Florida, these programs can also reduce insurance premiums. Implementing these programs on a larger scale, however, could be too expensive for states to continue. Individual climate zones would require specific programs catered to the potential damage possible in that area. These programs also have varying costs, potentially affecting their universal availability. Adding hurricane roof clips, which fasten a house's roof to the walls, and impact-resistant windows in hurricane-prone areas are relatively low cost. Hurricane roof clips for an average two-story house are estimated to cost between \$1,200 and \$2,500.<sup>203</sup> Hurricane windows, or impact-resistant windows, are more expensive, ranging from \$300 to \$1,700 or more per window, depending on size and material.<sup>204</sup> The range for wildfire retrofitting measures is vast. Installing flame- and ember-resistant vents, using noncombustible mulch in a yard, and placing metal flashing along decks are lower

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<sup>199</sup> *Id.*

<sup>200</sup> *How to Begin*, CAL. DEP'T. OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/grants-and-funding/recoverca/how-to-begin> [<https://perma.cc/TAE4-GJ2B>].

<sup>201</sup> *ReCoverCA Homebuyer Assistance Program*, GOLDEN ST. FIN. AUTH., <https://gsfahome.org/programs/dpa/ReCoverCA.shtml> [<https://perma.cc/QB5M-DLQ5>].

<sup>202</sup> *ReCoverCA Aid for Homeowners*, *supra* note 198.

<sup>203</sup> *Hurricane Straps Retrofit Cost: Budgeting for Roof Reinforcement*, EMBICK ROOFING (Aug. 30, 2025), <https://embickroofing.com/hurricane-straps-retrofit-cost/> [<https://perma.cc/RH3D-ADP6>].

<sup>204</sup> Stephanie Minasian-Koncewiz, *How Much Do Hurricane Windows Cost? (2026 Guide)*, THIS OLD HOUSE (Feb. 24, 2026), <https://www.thisoldhouse.com/windows/hurricane-windows-cost> [<https://perma.cc/9H4T-7BJ8>].

cost.<sup>205</sup> While not usually necessary, retrofitting a home to the greatest extent can run up to almost \$100,000.<sup>206</sup> Each grant program would have to set its individual parameters and work covered after determining whether larger grants or many small grants would make the largest impact within the community.

As climate disasters increase in frequency nationwide, other areas can also benefit from home hardening programs before reaching the threshold of an insurance crisis. Areas in tornado valley can offer assistance for roof clips, impact resistance shutters, reinforcing walls, and adding anchor ties to homes.<sup>207</sup> Areas prone to extreme cold can offer grants for upgrading windows to retain heat or insulate attics.<sup>208</sup> Addressing these concerns before major disasters cause a crisis could mitigate affordability concerns for residents in the future.

The federal government could help fund these programs through FEMA to reduce the future burden borne by the agency to help repair communities post-disaster. States should continue to fund and publicize these programs to help reduce future damage to homes. Even still, governments publicizing smaller fixes for general climate events like keeping trees trimmed in areas prone to high winds or tornadoes or maximizing energy efficiency during extreme heat or cold events can help limit minor damage events that create claims for insurance companies. While implementation may be slow and expensive, the potential reduction in future damages and the ability to keep homeowners safely in their homes would be worth the upfront effort and expenses.

#### *E. Relocation Insurance*

Private industries can also address this problem with creative solutions or new products like relocation insurance. Relocation insurance would allow consumers to “buy insurance at a premium for a right to be relocated in the event of loss of land and livelihood due to

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<sup>205</sup> *The Cost of Retrofitting a Home for Wildfire Resistance*, HEADWATERS ECON. (June 26, 2024), <https://headwaterseconomics.org/natural-hazards/retrofitting-home-wildfire-resistance/> [https://perma.cc/XT3F-SGRQ].

<sup>206</sup> *Id.*

<sup>207</sup> *How to Prepare Your Home for a Hurricane or Tornado*, FIRST ST., <https://help.firststreet.org/hc/en-us/articles/12417489198999-How-to-prepare-your-home-for-a-hurricane-or-tornado#:~:text=Retrofitting%20the%20house%3A%20Retrofitting%20a,house%20down%20to%20the%20foundation> (last visited Jan. 24, 2026).

<sup>208</sup> JoAnna Wendel, *How to Prepare Your Home for Extreme Cold*, PNNL (Nov. 15, 2023), <https://www.pnnl.gov/news-media/how-prepare-your-home-extreme-cold> [https://perma.cc/692R-F2KB].

catastrophic climate change events.”<sup>209</sup> The original framework for the relocation insurance model was presented as a global solution for potential climate refugees in the future.<sup>210</sup> Insurance companies in the United States can use that framework, however, to create private, domestic relocation insurance.

Relocation insurance would provide the means to move to a climate-safer area. These private policies could be made available through secondary insurance companies but could mirror the benefits given to employees compensated for relocation by employers.<sup>211</sup> Benefits, funded through premiums, could include travel, short-term living and housing stipends, and temporary storage solutions.<sup>212</sup> Homeowners insurance companies could also offer these policies as supplements. Relocation insurance could potentially displace homeowners insurance for an individual whose home is in an unsafe climate zone and would be likely to suffer catastrophic damage. In that case, relocation insurance may be less expensive than the continued cost to rebuild, resulting in a lower premium for the homeowner.

Mortgage companies, however, may object to replacing homeowners insurance with relocation insurance because their lien is collateralized by the physical asset of the home. In areas in which the land itself retains some value because of continued demand despite climate risks, like the Pacific Palisades area of Los Angeles, mortgage companies may be more willing to agree to replacing their insurance. This could, however, exacerbate the wealth gap where homeowners in less desirable locations would not have the opportunity to purchase relocation insurance. Mortgage lenders and insurance companies would also have to develop a loss payee system that still allows the homeowner to have the initial funds for shelter in a new location. Lenders and insurers, however, may be incentivized to do so as fewer individuals can afford houses due to high insurance rates, decreasing their customer base as climate-related damage claims become more frequent. Furthermore, because of the additional costs and stipend included in relocation insurance, these policies would likely be more expensive. This would,

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<sup>209</sup> PAVAN SRINATH ET AL., TAKSHASHILA INST., A GLOBAL RELOCATION INSURANCE TO ADDRESS THE CHALLENGE OF INTERNATIONAL MIGRATION FROM CLIMATE CHANGE 5 (2015), <https://static1.squarespace.com/static/618a55c4cb03246776b68559/t/62b9e5017e9ebb439fabee39/1656349954379/TPB-PS-PK-Climate-Change-Insurance-2015.pdf> [https://perma.cc/PY6D-T4VJ].

<sup>210</sup> *Id.*

<sup>211</sup> For a description of what employee relocation packages often encompass, see Eduardo Vasconcellos, *The Costs of Employee Relocation*, BUS. NEWS DAILY (Oct. 23, 2023), <https://www.businessnewsdaily.com/15842-costs-of-employee-relocation.html>.

<sup>212</sup> *Id.*

again, only be justifiable for high value assets. Homeowners insurance also covers non-catastrophic damages and minor repairs like roof repairs and leaks. Relocation insurance policies would only activate during a catastrophic incident. Most homeowners would likely benefit from carrying both policies, which would price out middle- and low-income earners struggling with increased premium prices.

#### CONCLUSION

The current homeowners insurance crisis is a warning sign for the deeper, costlier problem of the impact of climate change on vulnerable communities. Florida and California have been most affected up to this point and have implemented various programs and legislation to help homeowners address their affordability concerns, but eventually, almost all states will have to contend with their own climate change problems. In 2024 alone, weather-related events in the United States caused 568 direct or indirect deaths and cost \$182.7 billion in damages.<sup>213</sup> These events only threaten to get deadlier and more expensive as the effects of climate change wreak havoc on our environment.

Having a plan will help federal, state, and local governments prepare for future climate-related disasters. Implementing programs to help homeowners reduce their homeowners insurance premium burden would help alleviate affordability concerns. The federal government, in conjunction with state and local governments, can implement a range of programs to help communities prepare for future climate change-related disasters.

Climate change will only make natural disasters more frequent and more intense. The home insurance industry and current protections for homeowners are insufficient to address this ongoing crisis. Homeowners, especially in more vulnerable areas, will continue to see rising home insurance premiums unless they fortify their homes against these weather-related disasters.

There are no easy solutions to adapting to climate change. The homeowners insurance and mortgage industries are being asked to address a problem that only systemic change can resolve. The worst course of action, however, is inaction. Creative solutions and immediate action by governments and the mortgage and home insurance industry

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<sup>213</sup> Adam B. Smith, *2024: An Active Year of U.S. Billion-Dollar Weather and Climate Disasters*, NOAA (Jan. 10, 2025), <https://www.climate.gov/news-features/blogs/beyond-data/2024-active-year-us-billion-dollar-weather-and-climate-disasters#:~:text=In%202024%2C%20the%20United%20States,NOAA%20map%20by%20NCEI> [https://perma.cc/M3DZ-A7JG].

are the only way toward a safer, more sustainable future for the insurance industry and beyond.