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Is the sun setting on the Terrorism Risk Insurance Act (TRIA)?: December 31, 2014 expiration

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In public policy, a sunset provision is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

The Terrorism Risk Insurance Act (TRIA) is facing expiration on December 31 of this year, and the issue of its renewal is likely to be debated as the expiration draws near. Why is TRIA important? Proponents of renewing TRIA will argue that the federal backstop is necessary to assure a smoothly functioning insurance marketplace that includes terrorism coverage. Property and Workers' Compensation insurers will argue without the backstop there is insufficient capacity to handle a catastrophic exposure imposed by a terrorism event, especially in heavily populated areas.

According to IRMI, RIMS, the risk management society, polled a group of risk professionals, and the majority believes TRIA's expiration would result in either a decrease of affordable terrorism coverage or the total elimination of the coverage. This would cause severe disruptions in the business world and insurance industry. TRIA seems like the type of public/private partnership that makes sense for this catastrophic exposure. TRIA provides a level of certainty that waiting for an ad hoc decision by a president or Congress after a tragedy can never provide. And it costs little or nothing until the event actually occurs.

Is the reauthorization of the Act in jeopardy? There is concern within the industry that Congressional support is limited and another industry "bailout" does not have the political capital to obtain the votes for renewal. Reauthorization of the Act without changes seems unlikely. As with most legislative agendas, our belief is the vote to reauthorize TRIA will go to the deadline without a clear picture of the outcome.

As a result, many property insurers have already inserted sunset clauses into their contracts during the 2014 renewal cycle, enabling them to alter or revoke terrorism cover in the event of a TRIA non-renewal. It is estimated 70% to 80% of the commercial property insurance market would discontinue terrorism coverage if TRIA were allowed to expire. A recent study by Fitch Ratings stated it is "unlikely that substantial private market capacity would arise as a substitute to TRIA coverage if the program is allowed to expire." Some insurance companies are offering stand-alone policies after TRIA expires, however with high deductibles and premiums that are non-refundable should TRIA be reauthorized at a later date.

Large commercial property owners are not the only ones that would suffer the negative effects of expiration. Without TRIA, workers compensation insurers will be less willing to offer policies in high risk areas. Employers with a high concentration of employees in major urban areas are already seeing workers compensation rates 5% to 10% higher in 2014 due to uncertainty over TRIA's future. If TRIA is allowed to expire, these rates may climb even higher.

Guarding against uncertainty as the industry heads towards TRIA sunset is a clear focus, alongside the creation of imaginative and innovative new ways of reserving capacity. There are several alternative structures available to address the uncertainty surrounding the end of TRIA. The decision not to extend TRIA could come late in the day, as the previous extensions to the act did, and this situation could bring its own problems. A decision close to the December end date could lead to a lack of capacity. Interest in possible solutions will continue to build as we approach the deadline and for many organizations just waiting to see what will happen is not an option.

Spencer Macalaster is the executive vice president of Risk Strategies Co., Boston.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540