

Joint Public Hearing: Cost and Availability of Insurance for Residential Property

**Senate Standing Committee on Insurance, Senate Standing Committee on Housing,
Construction, and Community Development, and Senate Standing Committee on
Investigations and Government Operations**

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November 18, 2025

My name is Patrick Boyle and I am Senior Director, Policy & Communications for the New York office of Enterprise Community Partners, a national nonprofit that exists to make a good home possible for the millions of families without one. We support community development organizations on the ground, aggregate and invest capital for impact, advance housing policy at every level of government, and build and manage communities ourselves. Since our New York office opened in 1987, we have committed more than \$5.7 billion in equity, loans and grants to affordable housing and community to create or preserve nearly 84,000 affordable homes across New York State.

On behalf of Enterprise, we would like to thank Chair Bailey, Chair Kavanagh, and Chair Skoufis for holding this important hearing and for the opportunity to testify today.

Overview: The Insurance Crisis in Affordable Housing

Over the past two years, Enterprise has been leading a diverse working group focused on insurance challenges in affordable housing. The group is made up of affordable housing developers and owner-operators, brokers, policy and advocacy organizations, and risk management experts.

We organized this group because we have seen firsthand the crisis multifamily insurance has become for affordable housing. What was once considered a predictable and steady project expense has seen rapid escalations in price. Brokers working to get bids on insurance policies for projects are getting fewer and fewer responses. Projects are being dropped at renewal, and carriers willing to write policies for affordable housing insisting on higher deductibles and more exclusions in what they are willing to cover.

The purpose of the working group is to have a regular venue for discussion of these challenges, including sharing intel on what's happening across the industry, developing policy recommendations, and advancing sound risk mitigation techniques.

What we have learned over the past two years is that for an issue as complex as multifamily insurance, there is no single solution. The state must advance a package of solutions to achieve better data and transparency, reduce runaway cost drivers on the liability front, bolster insurance participation in low-income communities, and fund risk mitigation measures while ensuring that these measures are credited by insurance carriers.

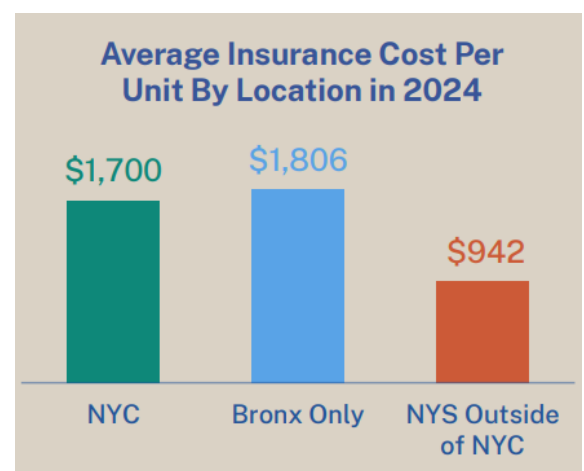
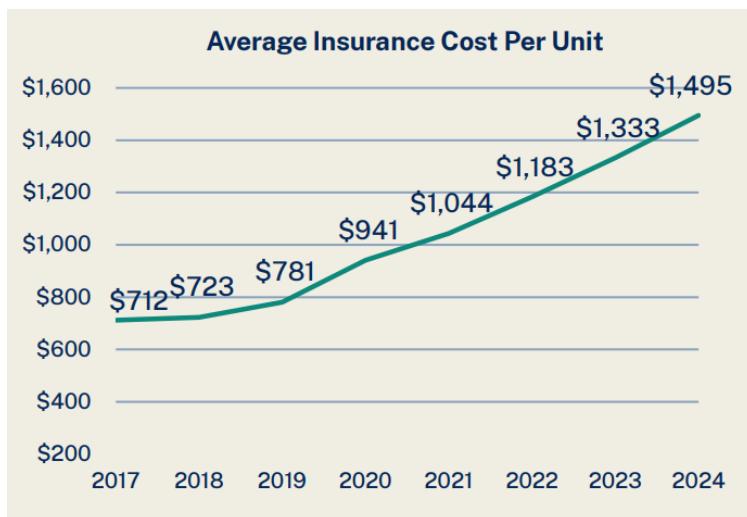
In this testimony we will share strategies informed by Enterprise’s focus on this issue. We urge this hearing to be followed by robust action in this year’s legislative session to address what has become a true crisis for affordable housing.

The Data and the Impact

Last month, Enterprise released an important report on expense challenges in affordable housing. We combined our asset management portfolios with our counterparts at National Equity Fund/LISC, leading to a data set of **428 100% affordable housing projects** and **37,130 units** statewide. We then assessed these projects’ expenses and financial performance from 2017 to 2024.

The results were stark. Rising expenses and reduced rent collection rates has led to **57% of projects** running operational deficits (taking in less money than they are expending). This has challenged the largely nonprofit owner-operators who operate these developments. If these trends continue, it can lead to a host of negative outcomes, including sales of properties, foreclosures and loss of affordability.

Insurance is the fastest rising expense which is fueling this crisis. Insurance costs have **risen 110% since 2017**.



Understanding why these insurance increases have had such an impact requires understanding of affordable housing finance and underwriting. Put simply, affordable housing properties are required to keep rents low so that low- and moderate-income New Yorkers can afford them. Low rents cannot support the expensive costs of developing, constructing, operating and maintaining housing, so federal, state and local subsidies help to make up the difference, providing things like discounted land, grants, low-interest loans, tax exemptions/abatements, and tax credit equity.

Any project's financing is a careful balancing act of underwriting. The sizing and terms of loans, and the amount and type of subsidy needed to make a project work, depend on expectations around a project's expenses.

But underwriting assumes predictability. If an affordable housing project closed on its financing in 2017 when underwriters expected it to be paying \$700/month in insurance costs with unremarkable escalation over the life of the project, then financing and reserves were sized according to that and other expectations. So less than a decade later, when that project's insurance has risen to \$1800/month and growing, and all other expense payments have not gone down to adjust – hence, financial distress.

That is what we are now seeing across affordable housing at scale.

Solutions: Improving Data and Transparency

Despite attention to the issue of insurance over the past several years, the affordable housing community still lacks clarity around fundamental questions.

In November 2022, the Department of Financial Services (DFS) and Homes and Community Renewal (HCR) released a legislatively mandated report titled [Affordable Housing and Insurance](#). It suggested possible reasons for rising insurance rates, summarized stakeholder conversations around coverage availability, and pledged follow up in some areas where data wasn't readily available.

The report confirmed anecdotal evidence that insurance carriers were asking owners to provide information on whether the building contained affordable housing or served rental assistance voucher-holders and that some carriers denied coverage as a result. The report's findings led to the banning of discriminatory practices by insurance companies against affordable housing in April 2024.

However, large gaps in understanding insurance practices and their impact on affordable housing properties remain. Some of the follow-up items discussed in the report have yet to materialize. Below are open questions that are fundamental to addressing all aspects of this problem.

- How much of the rise in insurance rates for multifamily housing is related to global factors like climate-related losses which has increased the cost of reinsurance for carriers and which is being passed down, versus tangible and local factors like claims and losses?

- Have claims and losses risen over the same time frame which has seen the sharp rise in costs? If so, at what rate? For what asset classes and for what kinds of losses?
- How do insurance rates for subsidized affordable housing compare with market rate multifamily housing in similar geographies and building profiles?
- What is the marketplace of admitted carriers who are writing new policies for multifamily housing in low-income areas of the state? How does it compare to the marketplace in high-income areas of the state?
- What has been the impact of the 2024 change in the law banning insurance carriers from discriminating against affordable housing? How many complaints have been brought? How many enforcement actions have been taken? Has there been an expansion of the insurance carrier marketplace?

Answers to these questions would help policymakers working with the affordable housing community to tailor the right solutions. To the extent that DFS does not have the data to be able to answer these questions, it speaks to where further legislative action is necessary to close the knowledge gap, and better empower our agencies while maintaining this critical housing stock.

We recommend the following steps to better address transparency and data:

- **A. 9016. Require Annual Reporting on Critical Insurance Data for Affordable Housing.** This bill requires DFS and HCR to issue annual reporting on the housing insurance marketplace for multifamily and nonprofit housing providers. Such a report should address the questions listed above.
- **A. 9015. Creates an Affordable Housing Task Force.** With broad representation across insurance, housing, and government stakeholders, this mandated task force would be helpful in opening communication across industries and advancing recommendations.

Solutions: Supporting Risk Mitigation Strategies

There are creative technologies and strategies which can help to mitigate risks which drive insurance claims and losses. For example, insurance carriers have indicated in public forums that the biggest drivers of losses on the property side are damages related to fire and water. In recent years, some affordable housing owners with the resources to do so have invested in fire suppressant canisters which have been successful in reducing stovetop fires, or in devices which can detect water leaks before the damage grows out of control.

These are two examples, but there are others. On the liability side, investments in better lighting, security camera coverage, and more building security can reduce crime incidents at properties or better protect owners against lawsuits by arming them with footage to challenge claims.

There are two problems with this approach. One is that these solutions are more available to better resourced owners because they are expensive and not factored into typical property underwriting for affordable housing programs. Two is that many affordable housing owners report that even

after undertaking these strategies, they are not credited with insurance carriers with reductions in premiums – in fact, sometimes they experience cost increases because they have raised the replaceable costs of the property.

We recommend the following steps to better address transparency and data:

- **Dedicate Funding for Risk Mitigation and Mandate Premium Relief.** New York’s insurance law already outlines mitigation measures that housing owners can undertake which may result in the DFS Superintendent mandating actuarially-supported reductions in costs. These are primarily in the single-family home realm. DFS should expand these measures to include more options for multifamily housing and funding should be available through housing programs to help affordable owners make upgrades.

Solutions: New York’s Challenging Liability Landscape

Various analyses of New York’s insurance challenges, including high prices and a reduced marketplace of carriers, have cited New York’s unique legal liability laws as a significant factor. DFS’ Affordable Housing and Insurance report listed the following as contributors to insurance challenges in affordable housing:

- “A strict liability standard in New York that is imposed on property owners and contractors when employees become injured in gravity-related construction accidents.” (i.e. Scaffold Law).
- “Escalating litigation costs and an increase in the size and frequency of massive jury awards.”

New York City ranks 2nd in the nation as a so-called “Judicial Hellhole” by the American Tort Reform Association, based on the Scaffold Law, the size and frequency of jury awards in civil cases, and what the organization views as excessively plaintiff-friendly laws.

Issues around tort reform and legal liability laws go beyond the realm of affordable housing. However, when so many experts point to these laws as a contributing factor, then the issue warrants careful study and appropriate reforms.

We recommend the following steps to better address challenges in the liability space:

- **Pilot a Carveout from the Scaffold Law for Affordable Housing Properties.** A five-year exemption from the absolute liability standard for affordable housing would allow for data collection and analysis on changes in pricing and carrier participation which would then inform policy decisions.
- **Mandate Disclosure of Third Party Litigation Funding (TPLF) to Courts and Opposing Parties in Lawsuits.** While groups have cited the increased prevalence of TPLF, its scope and impact remain obscured from policy discussions due to lack of disclosure requirements. What entities are funding lawsuits and what kind of lawsuits are

they most commonly funding? Are terms fair to the plaintiffs or are they predatory? Are affordable housing owners being targeted by firms looking to fund lawsuits? Increased transparency could help bring these issues to light.

Solutions: Funding Relief Approaches

Ultimately, the problem of rapidly rising insurance costs for affordable housing will have to be met with state funding resources. Absent actions which help projects with costs in the short term and bring down costs in the long term, the affordable housing portfolio will fall further into financial distress.

There are a number of approaches which could be taken. In the short term, emergency sources of funding help stop the bleeding for projects whose finances have been upended by skyrocketing insurance rates. However, this approach does not slow the rate of insurance increases moving forward. Therefore, approaches should be developed which bring down costs more structurally – as in insurance backstop or risk-share models which have been developed in other industries when the private market was not operating in a way that was competitive or sustainable.

- **S. 7939 / A. 7828A. Affordable Housing Insurance Relief Fund.** This funding would help qualifying projects who have experienced rapid escalation in insurance pricing with an emergency source of funding. Although a stopgap measure rather than a long-term solution, emergency funding is still necessary to stabilize a particularly vulnerable subset of the affordable housing stock.
- **Explore a New York State Reinsurance Backstop.** A state-sponsored option to step in and cover insurance losses beyond a certain excess amount for affordable housing properties would bring down the price of private insurance across the board by reducing their exposure. If this fund were set up in a way that were actuarially sound, initial capital investment and replenishment could be a better investment than the eventual preservation needs across a portfolio which is struggling with costs at scale.

Solutions: Incentivizing a Broader Marketplace

Affordable housing owners broadly report that it is more challenging to find carriers willing to bid on new policies at all. As stated earlier in the report, we are seeking more data to understand what the full marketplace of carriers looks like, how they are geographically dispersed, and what the share of coverage is by admitted versus non-admitted companies. But even absent these data points, it can clearly be concluded that the dwindling marketplace contributes to high costs due a lack of carriers competing for business.

This has caused owners to consider options like insurance captives to meet a need that was formerly met by the marketplace. While still very new, captives like the Milford Street Insurance Association are helpful in offering another option where fewer choices seem to exist in the private market.

We need more insurance carriers to competitively bid on policies and want to be in the business of covering affordable housing. Earlier recommendations in this testimony will help with that. If affordable housing is temporarily exempted from severe legal liability standards, if there are resources to fund risk mitigation measures, if there is a state reinsurance backstop which makes the risk profile more palatable – all of these can contribute to making rent regulated housing more attractive to cover.

There are other steps which can be taken by the state to play more of a role in improving the insurance carrier marketplace in New York. For example:

- **Developing Incentives for Insurance Carriers to Cover Affordable Housing.** The State can establish incentives – such as tax credits or regulatory fast tracking – for carriers who actively write new and renew affordable policies for the rent-regulated affordable housing stock.

Thank you again for the opportunity to submit this testimony.