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Florida Enacts Significant Reform Impacting Property Insurance Claims

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Insights for Insurers

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Earlier this month, Florida Governor Ron DeSantis signed into law S.B. 76, enacting significant property insurance claim reform in the State of Florida that becomes effective on July 1, 2021. We summarize some of the highlights below.

Regulation of Contractors and Public Adjusters

Section One creates Florida Statutes section 489.147, which prohibits contractors from: (a) soliciting a residential property owner by means of a "prohibited advertisement" (defined as "any written or electronic communication by a contractor that encourages, instructs, or induces a consumer to contact a contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage"); (b) offering to a residential property owner anything of value in exchange for allowing the contractor to inspect the property owner's roof or making an insurance claim for damage to the roof; (c) offering, delivering, receiving, or accepting any compensation, inducement, or reward, for the referral of any services for which property insurance proceeds are payable (excluding payment for roofing services rendered); (d) interpreting or advising about property insurance policy provisions or adjusting a property insurance claim on behalf of an insured without a public adjuster license; or (e) providing an insured with an agreement authorizing repairs without providing a good faith estimate of the itemized cost of services and materials. (§ 489.147 (2).)

A contractor who engages in any of the foregoing is subject to disciplinary proceedings and may receive up to a $10,000 fine for each violation. (§ 489.147 (3).) An unlicensed person who engages in any of the foregoing is subject to the same sorts of fines and is also guilty of unlicensed contracting, subject to penalties set forth in existing Florida Statutes section 489.13. (§ 489.147(4).) For purposes of this section, the acts of any person on behalf of a contractor are deemed the actions of the contractor. Finally, the statute provides that, if a contractor executes a contract with a residential property owner to repair or replace a roof without including a notice that the contractor may not engage in the aforementioned practices, then the residential property owner may void the contract within 10 days after executing it. (§ 489.147(5).)

Section Five amends Florida Statutes section 626.854 to prohibit licensed contractors or their subcontractors from "advertis[ing], solicit[ing], offer[ing] to handle, handl[ing], or perform[ing] public adjuster services," unless licensed and

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compliant as a public adjustor. The statute previously prohibited the unlicensed "adjust[ing of] a claim on behalf of an insured." The statute will now also prohibit the following acts by a public adjuster, public adjuster apprentice, or person acting on behalf of a public adjuster or public adjuster apprentice, and sets forth fines and disciplinary proceedings for violations: (a) offering anything of value to a residential property owner in exchange for conducting an inspection of the property owner's roof or making an insurance claim for damage to the roof or (b) offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacements.

Office of Insurance Regulation Oversight

The legislation affects the scope and breadth of the Office of Insurance Regulations' examination and oversight of property insurers.

Section Two adds two subsections to existing Florida Statutes section 624.424 to require property insurers, beginning January 1, 2022, to include supplemental information regarding closed claims (excluding liability only claims) in their annual reports to the Office of Insurance Regulation, including, among other things, information regarding the location, date, type, cause, and payments for/of the loss, as well as information about when the claim was reported, closed, and reopened, if applicable. The legislation additionally requires each insurer doing business in Florida which pays a fee, commission, or other financial consideration or payment to any affiliate to provide the Office of Insurance Regulation "any information the office deems necessary" to facilitate a determination as to whether the fee, commission, or other financial consideration or payment is "fair and reasonable" based upon, among other unspecified factors, "the actual cost of the service being provided."

Section Four amends Florida Statute section 626.7452 to provide that a managing general agent may be examined as if it were the insurer, even if the managing general agent solely represents a single domestic insurer. Previously, the statute had an exception for managing general agents who solely represent a single domestic insurer.

Section 14 amends subsection (3) of section 627.801 to expressly grant the Office of Insurance Regulation additional enumerated powers in connection with its examination of insurers. Specifically, the section now also permits the office to: (a) require insurers to produce "such records, books, or other information and papers in the possession of the insurer or its affiliates as are reasonably necessary"; (b) retain outside attorneys, actuaries, accountants, and other experts, at the insurer's expense, to "assist in the conduct of the examination" and act "in a purely advisory capacity"; and (c) "examine the affiliates of the registered insurer" so long as "limited to information reasonably necessary." (§ 628.801(3)(a), (b), (d).) The section further provides that the insurer producing materials for examination "is liable for and shall pay the expense of examination in accordance with s. 624.320." (§ 628.801(3)(c).)

Elimination of Exception for Managing General Agent Contracts

Section Three amends Florida Statute section 626.7451 to require managing general agents, as a precondition to placing business with an insurer, to enter into written contracts with the insurers specifying appropriate underwriting guidelines, even when the managing general agents control, or are controlled by, the insurer. Previously, the statute had an exception for managing general agents who controlled, or were controlled by, the insurer.

Deadlines for Notice of Claims

Section 10 amends existing section 627.70132 adding new definitions for the terms "reopened claim" (defined as "a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer") and "supplemental claim" (defined as "a claim for additional loss or damage from the same peril which the insurer has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer") and expanding the scope of the statute from covering only windstorm or hurricane damage claims to claims for loss or damage caused by "any peril." The statute previously provided that claims, supplemental claims, or reopened claims were barred

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unless notice of the claim given to the insurer within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. It will now be amended to provide that (a) claims and reopened claims (not supplemental claims) are barred unless notice of the claim was given to the insurer within 2 years after the date of loss and (b) supplemental claims are barred unless notice of the supplemental claim was given within 3 years after the date of loss. The statute now includes an additional section clarifying that, for claims resulting from "weather-related events," the "date of loss" will be "the date that the . . . weather-related event is verified by the National Oceanic and Atmospheric Administration."

Section 11 amends section 627.7015, concerning alternative procedure for resolution of disputed property insurance claims, by deleting the words "windstorm or hurricane" from subsection (9)(e) thereof, thereby conforming and updating a statutory cross-reference to section 627.70132.

Notice of Intent to Initiate Litigation, Consolidation of Related Lawsuits, and Claims for Attorneys' Fees

One of the most significant parts of legislation is the creation of Florida Statutes Section 627.70152, a comprehensive statute relating to property insurance litigation.

Section 12 creates section 627.70152, entitled "suits arising under a property insurance policy." The new section "applies exclusively to all suits not brought by an assignee arising under a residential or commercial insurance policy," and provides that, as a condition precedent to filing a suit under a property insurance policy and unless the suit is a counterclaim, a claimant must first await the insurer's coverage determination and provide the department with written notice of intent to initiate litigation ten business days prior to filing suit. The section requires that a notice state "with specificity" (and may support with documentation) the following:

1. that the notice is provided pursuant to this section;
2. the alleged acts or omissions of the insurer giving rise to the suit, which may include a denial of coverage;
3. if provided by an attorney or other representative, that a copy of the notice was provided to the claimant;
4. if the notice is provided following a denial of coverage, an estimate of damages, if known;
5. if the notice is provided following acts or omissions by the insurer other than denial of coverage, both of the following – a. the presuit settlement demand, which must itemize the damages, attorney fees, and costs [and] b. the disputed amount.

The section also imposes duties upon the insurer, requiring it to have a procedure to investigate, review, and evaluate the dispute and respond in writing to the notice within 10 business days of receipt. If the notice was served following a denial of coverage, the insurer must respond by either (1) accepting coverage; (2) continuing to deny coverage; or (3) asserting the right to reinspect the damaged property within 14 business days (in which case the applicable statute of limitations will be tolled during the reinspection period). If the notice alleges an act or omission by the insurer other than a denial of coverage, the insurer must respond by "making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution" (and again, the statute of limitations will be tolled as long as the appraisal or other alternative dispute resolution is ongoing).

Evidence of the notice is admissible as evidence only in a proceeding regarding attorney fees, and the statute sets forth a framework for calculating fees in a suit arising under a residential or commercial property insurance policy not brought by an assignee. Specifically, the statute calculates attorneys' fees as follows:

1. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is less than 20 percent of the disputed amount [(i.e., the difference between the pre-suit demand and pre-suit settlement offer)], each party pays its own attorney fees and costs and a claimant may not be awarded attorney fees under s. 626.9373(1) or 627.428(1).
2. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is at least 20 percent but less than 50 percent of the disputed amount [(i.e., the difference between the pre-suit demand and pre-suit settlement offer)], the insurer pays the claimant's attorney fees and costs

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under s. 626.9373(1) or 627.428(1) equal to the percentage of the disputed amount obtained times the total attorney fees and costs.

3. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is at least 50 percent of the disputed amount [(i.e., the difference between the pre-suit demand and pre-suit settlement offer)], the insurer pays the claimant's full attorney fees and costs under s. 626.9373 (1) or 627.428(1).

The foregoing framework governs claims for attorney's fees in lawsuits brought under property insurance policies.

Section Six amends Florida Statutes section 626.9373 so as to make clear that "[i]n a suit arising under a residential or commercial property insurance policy not brought by an assignee, the amount of reasonable attorney fees shall be awarded only as provided in s. 57.105 or s. 627.70152, as applicable." Section nine adds language to section 627.428 to limit an assignee's ability to recover attorney fees in a suit arising under a residential or commercial property insurance policy to the extent provided for in sections 57.105 or 627.70152.

Section 13 creates section 627.70153, entitled "consolidation of residential property insurance actions." The new section provides that a court may order consolidation and transfer of "ongoing multiple actions involving coverage provided under the same residential property insurance policy for the same property with the same owners."

Citizens Property Insurance Corporation

Section Seven amends Florida Statutes section 627.351(6), a subsection that concerns the Citizens Property Insurance Corporation and serves "to ensure that there is an orderly market for property insurance for residents and businesses of this state." Specifically, the legislation revises a procedure that the plan of operation of Citizens Property Insurance Corporation must provide for determining the eligibility of a risk for coverage. It also requires that the corporation include the costs of catastrophe reinsurance to its projected 100-year probable maximum loss in its rate calculations, even if the corporation does not purchase such reinsurance. The legislation also deletes obsolete language relating to the corporation's rate filings and now requires the corporation to annually implement a rate increase that does not exceed a certain percent for specified years (11% for 2022, 12% for 2023, 13% for 2024, 14% for 2025, and 15% for all subsequent years). In addition, the legislation requires approval by the corporation's board of governors for the corporation's employee compensation plan, for the corporation's budget allocations for salaries, and for all raises exceeding 10%.

Section Eight of the legislation conforms and updates a statutory cross-reference contained within Florida Statutes section 627.3518, a section that serves to provide a framework for the Citizens Property Insurance Corporation to implement a clearinghouse program.

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