

Chapter 7 Florida Insurance Law Updates

House Bill 301:

Applications for Insurance - provides that workers compensation insurance applicants and their agents are not required to have their sworn statements notarized.

Surplus Lines Export Eligibility - Lowers the home value threshold (dwelling replacement cost) to \$700,000 or more for exporting a residential property insurance policy to a surplus lines insurer with only one declination. Three declinations are still required for exporting residential property insurance policies for dwellings with a replacement cost under \$700,000). Amends the definition of "Diligent Effort", s. 626.914(4), F.S.

Lowers the threshold for the dwelling replacement cost of a residential structure from \$1 million to \$700,000 when requiring only one declination. Any dwelling with a replacement cost of less than \$700,000 will require three declinations as part of the diligent effort done by the retail (general lines) agent. If the home is valued at \$700,000 or more, then only one declination will be required, although agents are free to obtain more.

Unfair Insurance Trade Practices/Loss Control and Mitigation - Permits an insurer or agent to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.

Secondary Notice to Life Insurance Policy Lapse - Requires a life insurer to notify the servicing agent at least 21 days before a life insurance policy lapses in addition to the insured and a second person designated by the insurer, except when the insurer provides an online method for the agent to identify lapsing policies or a process for the agent to determine that the pre-lapse notice was sent to the insured; the insurer has no record of the agent servicing the policy or the agent is employed by the insurer.

Prepayment of Motor Vehicle Insurance Premium - Reduces the minimum amount of premium which must be collected for motor vehicle insurance at the initial issue of a policy from two months' premium to one month.

Agent Fees - removes the \$35 cap on the per-policy fee surplus lines agents may charge for each policy exported to the surplus lines market. The filing surplus lines agent may charge a reasonable policy fee that must be itemized separately for the customer before purchase and enumerated in the policy

Allows retail agents to receive a reasonable per-policy fee on exported policies; the per-policy fee must be itemized separately for the consumer before purchase. This fee must be itemized separately to the customer before purchase. This fee is not required to be shown in the policy.

Residential Flood Protection s. 627.715(4), F.S.

Currently, the law allows a surplus agent to export a personal lines residential flood policy without requiring a diligent effort. This exemption will expire on July 1, 2019. No extension was passed; thus all residential flood risks will be subject to Diligent Effort requirements on July 1, 2019.

House Bill 1393

Allowing licensees who currently hold a limited license as an industrial fire or burglary agent to renew their license but prohibiting new licenses from being issued; Authorizing DFS discretion to deny an application for an insurance agency license, suspend, revoke or refuse to continue the license of any insurance agency on the grounds that another jurisdiction has taken an adverse action against a professional license held by the agency or a person who manages or controls such

agency and to suspend or revoke; and allowing formerly disqualified agents who have served half of the disqualifying period to apply for a probationary license. Requiring suspended bail bond agent to file a new application to be considered for reinstatement of their license. Reducing qualification criteria for non-resident public adjusters applicants.

House Bill 7065

Insurance Assignment Agreements; Providing requirements and limitations for property insurance assignment agreements; providing a burden of proof; providing that an assignment agreement does not affect managed repair arrangements under a property insurance policy; providing that an acceptance by an assignee of an assignment agreement is a waiver by the assignee and its subcontractors of certain claims against an insured; specifying an insured's payment obligations under an assignment agreement; requiring notice of intent to initiate litigation, etc.

HB 337

Also signed by the Governor and it included Section 23, which made subsection (10) of HB 7065 effective as soon as the Governor signed HB 7065. Subsection (10) in HB 7065 provides new limits on attorney fees and costs. These new limits are now effective.

House Bill 7071

Financial literacy is vital to making informed financial decisions and building a foundation for life-long financial wellness. Specifying that school districts must offer at least a half-credit financial literacy course as an elective.

Note: The legislation noted is not exhaustive of all newly-created laws or pending legislation which may be of interest to Department licensees. Information about the laws passed or pending can be searched at the House or Senate websites. We may cover additional legislation in future issues.

House Bill 1011

HB 1011 was initiated in the 2018 legislative session, requiring homeowners' insurance policies to make it clear that they do not have coverage for flood insurance. Too often policyholders assume that their hurricane coverage will also cover flooding. This is especially a problem in areas of Florida where higher sea levels are seen and stronger storms are occurring from climate change.

HB 1011 amended subsection (4) of section 627.7011, of the Florida Statutes to read:

Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage

(4) An insurer that issues a homeowner's insurance policy must include with the policy documents at initial issuance and every renewal in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE; LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS THIS WITH YOUR INSURANCE AGENT."

It goes on to say: "Flood Insurance: You may also need to consider the purchase of flood insurance. Your homeowner's insurance policy does not include coverage for damage resulting from flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent."

The intent of this change in law is to encourage policyholders to purchase sufficient coverage to

protect them in case events excluded from the standard homeowner policies, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agents.

This change took effect January 1, 2019.

House Bill 483

This is an act relating to unfair insurance trade practices, amending s. 626.9541, F.S.; revising the types, values, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing insurers and agents to make specific charitable contributions on behalf of insureds or prospective insureds; prohibiting title insurance agents, title insurance agencies, or title insurers from giving insureds, prospective insureds, or others any article of merchandise in excess of a specified value; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (m) of subsection (1) of section 17 626.9541, Florida Statutes, is amended to read:

UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(m) Advertising and promotional gifts and charitable 24 contributions permitted.

1.The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a licensed insurer or its agents from:

a.Giving to insureds, prospective insureds, or others any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of \$100 or less per insured or prospective insured in any calendar year.

b.Making charitable contributions, as defined in s. 36 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds, of up to \$100 per insured or prospective insured in any calendar year.

2.The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than \$25.

A person or entity governed by this subparagraph is not subject to subparagraph 1.

Section 2. House Bill number 483 became effective July 1, 2018.

House Bill 409

Authorizes remote notarization and the use of an electronic will. The bill provides definitions for online notarization and the technology required; procedures, standards, and requirements for online notarization; registration requirements for online notaries; a certificate to be used by online notaries; standards for supervising the witnessing of electronic records; authorizes the use of an

electronic will; and provides a means for self-proving, storing, and filing an electronic will.

House Bill 633

This bill relates to the Florida Smart City Challenge Grant Program, creating s. 316.0899, F.S. The program is created within the Department of Transportation, providing program goals, grant eligibility requirements and requiring the department to issue a request for proposals. It will provide proposal requirements, as well as award of grants and use of grant funds, provide reporting requirements, provide administrative support by the department and give an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.0899, Florida Statutes, is created to read:

Rule Chapter 69B-220

Rule Chapter 69B-220 experienced changes that pertain to Public Adjusters. For example, some of the definitions contained in this section experienced changes, as reviewed in this text.

The Florida Bar recently made it clear that if a public adjuster files a claim of lien against a customer on their behalf or on behalf of their adjusting firm, which is a fictitious entity requiring representation by a lawyer, it would be considered engaging in the unlicensed practice of law. There is no statutory authority to authorize the conduct as section 713.03 of Florida's statutes creates lien rights in favor of numerous occupations and professions, but fails to include public insurance adjusters.

Any public adjuster that engages in this type of activity is subject to disciplinary action by the Florida Bar and the Florida Department of Financial Services if a violation of the Florida insurance Code is committed.

A licensed contractor or a subcontractor, may not adjust a claim on behalf of an insured unless he or she is licensed and compliant as a public adjuster. However, Florida Statute 626.854(16), F.S., clarifies that a licensed contractor may discuss or explain their bid for construction or repair of covered property with the owner of the residential property or the insurance company that is covering the property if they are doing so for the usual and customary fee that applies to the work they will be performing as stated in the contract between the contractor and the insured.

Statute 626.854(16) states: "A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured."

Contractors that assist their customers with their insurance claims may illegally be engaging in the practice of public adjusting without being properly licensed by the Department of Financial Services.

The definition of a public adjuster is any person, except an attorney, who, for money or any other thing of value (which would include securing a contract for repairs):

- 1.Pre pares, completes or files an insurance claim form for an insured.
- 2.Aids in any manner on behalf of an insured in negotiating for or effecting the settlement of a claim.
- 3.Advertises or solicits for employment as an adjuster of such claims.

Individuals acting as public adjusters in any manner by negotiating or effecting the settlement of an insurance claim on behalf of an insured and who is performing any of these services for

money, commission or anything of value without being licensed as a public adjuster, could be subject to arrest and may be charged with a third-degree felony.

An individual licensed as a public adjuster cannot enter into a contract to do both the public adjusting and construction work on the same property. As stated in 626.8795:

"A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract or an agreement to adjust."

The Department of Financial Services has acted in the past against licensed contractors for illegally acting as a public adjuster or advertising the services performed by a public adjuster without being licensed. The Department will continue to monitor this.

Federal Law that is Pertinent to Florida

The federal False Claims Act, the federal Program Fraud Civil Remedies Act and some state laws can subject individuals and organizations to penalties and fines if fraud is committed against either the federal or state governments.

Under the False Claims Act (31 U.S.C. §§ 3729-3733), false claims include knowingly submitting false or fraudulent claims to the government with the intention of receiving payment, making or using false records or statements in connection with claims, or obtaining money from the government that one is not actually entitled to, and then using false statements or records to keep the money.

While this might typically bring to mind medical claims, it can also apply to other types in the property/casualty field requiring the attention by adjusters.

The federal Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3802) imposes penalties on individuals and organizations that deliberately submit false statements or claims to certain federal agencies. Unlike the False Claims Act, however, under this program the violation occurs when a false claim is submitted, not when it is paid.