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FLORIDA NOTICES AND BULLETINS

December 8, 1992

SUBJECT: INSURANCE

INFORMATIONAL BULLETIN 92-036

ALL INSURERS WRITING PROPERTY INSURANCE COVERAGE IN THIS STATE

HOLDBACKS PROHIBITED ON REAL PROPERTY PARTIAL LOSSES

December 08, 1992

The payment of a partial loss on real property must be handled in a manner consistent with existing statutes and case law.

Section 627.702(2) Florida Statutes, while specifying only fire and lightning losses, is instructive in discerning legislative intent in applying the Valued Policy Law to partial losses on real estate resulting from Hurricane Andrew. This statute provides that the insured is entitled to the "actual amount of such loss", not to exceed the amount of insurance specified in the policy as to such property.

The Florida Supreme Court, in *Sperling v. Liberty Mutual* So2d 297 (Fla 1973), held that the "actual amount of such loss" is the cost of placing the building in as nearly as possible the same condition that it was before the loss, without allowing depreciation for the materials used.

This authority is specifically applicable to the practice by insurers of imposing a "holdback" of insurance proceeds greater than actual cash value until replacement has taken place. While this practice is appropriate for personal property, this bulletin serves to place insurers on notice that for partial losses on real property, the "holdback" is inconsistent with established precedent.

The application of a "holdback" to repair of real property can particularly cause hardship to the insured when the actual cash value payment is insufficient to enter into a contract to make repairs. In such an instance, the insured may be forced to seek other funding sources, at his expense, in order to contract for repairs.

Insurers who have been applying "holdbacks" in claims for partial loss on real property should pay the actual amount of the loss. The best indicator of actual loss is the contract for repair entered into by the insured. Once an actual amount of loss is determined by contract, the full loss payment should be made with no hold back applied. This arrangement satisfies the public policy interests both in timely and sufficient claim payments, and in encouraging rebuilding. In instances where a holdback is currently being applied and a repair contract has been executed, the holdback should be released.

Should you have any questions regarding this Bulletin, please contact Dan Sumner, Assistant General Counsel at (904) 922-3103, extension 4904.