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Reg. Guid. FL CLAIMS SETTLEMENT - P&C

REGULATORY GUIDANCE

P&C CLAIMS SETTLEMENT - FL

Florida

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SPECIAL NOTICE

Hurricane Michael

Emergency Order 234790-18-EO

DEFINITIONS

1. "Independent entity" means a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles. The term does not include a wrecker operator, towing company, or a repair facility.

[FL ST s 319.30\(1\)\(g\)](#)

2. "Notice of loss" is: a. written notice, such as claim forms, medical bills, medical authorizations or other reasonable evidence of the claim that is ordinarily required of a claimant; or, b. any notice by or on behalf of a claimant that reasonably informs the insurer that: I. a loss has occurred; and II. the claimant wishes to make a claim under a policy or against a person insured under an insurance policy for such loss.

[69 FL ADC 690-166.021\(9\)](#)

3. An inquiry into coverage regarding a loss is not a "claim."

[FL Informational Bulletin 94-035](#)

COMMUNICATIONS

1. A communication made to or by an agent with respect to a claim shall constitute communication to or by the insurer. 2. An insurer must provide proof of loss forms upon notice of a claim, or upon a claimant's written request.

[FL ST s 627.425](#)

[FL Informational Bulletin 86-3](#)

3. An insurer has 14 calendar days to acknowledge notice of claim unless: a. the claim is paid during this timeframe; or b. the failure to acknowledge was caused by factors beyond the control of the insurer. 4. If the acknowledgement is not in writing, the claim file must be so noted and dated. 5. The acknowledgement must either: a. reasonably advise the claimant that the claim appears to not be covered; or b. provide the proof of loss forms and instructions for completion, and an appropriate telephone number.

[FL ST s 627.70131](#)

[69 FL ADC 690-166.024\(1,2\)](#)

6. An insurer must provide an appropriate response to a Department of Insurance inquiry concerning a claim within 21 calendar days of its receipt. The Department may require a written response.

[69 FL ADC 690-166.025](#)

7. The insurer should provide a copy of the Homeowner Claims Bill of Rights to an insured within 14 days of receipt of an initial communication concerning a claim on a personal lines residential property policy. This requirement does not apply if the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. "HOMEOWNER CLAIMS BILL OF RIGHTS This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy. YOU HAVE THE RIGHT TO: 1. Receive from your insurance company an acknowledgement of your reported claim within 14 days after the time you communicated the claim. 2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated. 3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim. 4. Free mediation of your disputed claim by the Florida Department of Financial Services Division of Consumer Services, under most circumstances and subject to certain restrictions. 5. Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy. 6. Contact the Florida Department of Financial Services Division of Consumer Services'

toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at (toll free phone number), or you can seek assistance online at the Florida Department of Financial Services Division of Consumer Services' website at (website address) YOU ARE ADVISED TO: 1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors. 2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs of damage before and after any repairs. 3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property. 4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work. 5. Require all contractors to provide proof of insurance before beginning repairs. 6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached."

[FL ST s 627.7142](#)

SETTLEMENT

GENERAL REQUIREMENTS

1. The insurer must begin investigating a claim within 10 working days of the receipt of the proof of loss forms unless the failure to start an investigation was caused by factors beyond the control of the insurer.

[FL ST s 627.70131\(3\)](#)

[69 FL ADC 690-166.024\(3\)](#)

2. Once a settlement amount has been agreed to in writing, the insurer must pay within 20 days. a. If payment is not made within 20 days, it will earn interest at 12% per year from the date of the settlement agreement. b. If execution of a release is a condition of payment, then interest will not accrue until the release is executed and given to the insurer.

[FL ST s 627.4265](#)

3. Settlements must be made in the form of cash, checks, drafts, or money orders. Electronic transfers are allowed if the recipient approves in writing, unless waived by the recipient or his representative and the insurer verifies the identity of the insured or his recipient and does not charge a fee.

[FL ST s 627.4035\(3\)](#)

4. For first party property claims, the insurer must pay or deny the claim, in whole or in part, within 90 days of receiving notice of claim unless the delay is caused by factors beyond the control of the insurer. This requirement applies to: a. claims under policies providing residential coverage; b. claims for structural or contents coverage under commercial property policies if the insured structure is 10,000 square feet or less; or c. claims for contents coverage under a commercial tenants policy if the insured premises is 10,000 square feet or less. d. This requirement does not apply to claims under policies covering nonresidential commercial structures or contents in more than one state.

[FL ST s 627.70131\(5\)](#)

5. Payment of undisputed benefits under first-party property insurance policies must be made within 90 days of the insurer: a. receiving notice of a residential property insurance claim; b. determining the amount of full or partial benefits; and c. agreeing to coverage. 6. Failure to pay undisputed benefits within 90 days will be excused if: a. prevented by an act of God; b. prevented by the impossibility of performance; or c. due to the actions of the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation concerning the claim.

[FL ST s 626.9541\(1\)\(i\)\(4\)](#)

NONWAIVER INSURER ACTS

None of the following acts by the insurer constitute a waiver of a policy provision or a defense of the insurer: a. acknowledging a notice of loss or claim; b. furnishing proof of loss forms, providing related information, or making proof complete or incomplete; or c. investigating the claim or engaging in negotiations for settlement of the claim.

[FL ST s 627.426\(1\)](#)

PROHIBITED ACTS

A person must not: a. try to settle a claim using an application that has been altered without the consent of the insured; b. misrepresent facts or policy provisions in order to settle a claim for less than the amount called for in the policy; c. fail to implement reasonable standards for prompt investigation of claims; d. misrepresent facts or policy provisions relating to coverage; e. fail to acknowledge and act promptly upon notification of a claim; f. refuse to pay a claim without reasonable investigation of all available information; g. fail to affirm or deny coverage within 30 days of the completion of proof of loss forms; h. fail to promptly provide a reasonable explanation, in writing, of why the claim was denied or why a settlement was not offered; i. fail to promptly notify the insured of additional information needed to process the claim or fail to clearly explain the nature of the additional information and the reasons why the information is necessary; or j. fail to pay personal injury protection claims within 30 days of receipt of notice of claim.

[FL ST s 626.9541\(1\)\(i\)](#)

[FL ST s 634.336\(5\)](#)

DISPUTES

1. Mediation is an option for first party commercial and personal residential property claims. It is not available for: a. commercial coverage; b. personal auto insurance; or c. disputes involving liability coverage on property insurance policies. 2. Mediation is available before the appraisal process or before starting litigation. a. The insurer must inform the first party claimant of the right to mediation when the claim is filed. b. A third-party assignee of the policy benefits may also request mediation, however the insurer is not required to participate in mediation requested by a third-party. c. All parties must negotiate in good faith and have the authority to immediately settle the claim. 3. The insurer is responsible for the costs of mediation. a. If the insured fails to appear at the mediation conference, he must pay the costs of rescheduling the conference. b. If the insurer fails to appear, it must pay the insured's actual cash expenses if the failure to appear was without good cause. c. Failure to appear will be attributed to the insurer if its representative lacks authority to settle the full value of the claim. d. The insurer will pay all costs of rescheduling a conference at which it fails to appear. 4. Mediation is nonbinding, but if a written settlement is reached, the insured has 3 business days to rescind the settlement, unless he has cashed or deposited a check as settlement of the disputed matters settled at the conference. If the settlement is not rescinded, it will be binding on both parties and act as a release of all claims presented at the conference. 5. If the insurer requests mediation and a settlement is not reached, the insured will not have to submit to any loss appraisal process as a precondition to legal action for breach of contract against the insurer for failing to pay the claim.

[FL ST s 627.7015](#)

[FL Informational Bulletin 94-030](#)

6. For commercial residential property claims, the insurer should notify a first party claimant of the right to participate in mediation at the time a claim is filed. The insurer should make a claim determination before sending the notice. Notice is not required to be sent when no payment is made on the claim due to the determination by the insurer that the damages are less than the insured's deductible. The notice must be writing, conspicuous, printed in at least 12-point type and be no smaller than any other text in the notice. The first paragraph of the notice must state: "The Chief Financial Officer for the State of Florida

has adopted a rule to facilitate the fair and timely handling of commercial residential property insurance claims. The rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process after receipt of this notice by calling the Department of Financial Services at 1 (877) 693-5236. The parties will have 21 days from the date the request is received by the Department to otherwise resolve the dispute before a mediation conference can be scheduled." The notice must also: a. include detailed instructions on how the insured is to request mediation, including the address, phone number and fax number for requesting mediation through the Department; b. state that the parties have 21 days from the date the request is received by the Department within which to settle the claim before the Department will assign a mediator; c. include the insurer's address and phone number for requesting additional information; d. state that the Administrator will select the mediator; e. refer to the parties' right to disqualify a mediator for good cause and paraphrase the definition of good cause; and f. indicate that the insured is to notify the mediator 7 days before the mediation conference if the insured will bring counsel to the conferences, unless the insurer waives the right to the notice of counsel. 7. For commercial residential property claims, the insurer should notify the Mediation Section within 3 business days of receiving a request for mediation by email to Mediation@myfloridacfo.com. The insurer can request mediation by submitting a completed Request for Commercial Residential Insurance Mediation to the Mediation Section. A copy of the form should be given to the insured at the same time. 8. For commercial residential property claims, the insurer can choose to reject mediation if the dispute does not meet the definition of a claim. To reject mediation, the insurer should reference the mediation process and specify in writing to the insured and the administrator the reasons for the rejection. The Department will determine if the claim will be mediated. For this purpose, a claim is defined as any dispute between the insurer and insured relating to a material issue of fact other than: a. a dispute as to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the Department's Division of Insurance Fraud; or b. a dispute where, based upon agreed facts as to the cause of loss, there is no coverage under the policy. A claim must involve a request of \$500 or more to settle the dispute or the difference between the parties is \$500 or more regardless of any deductible. The parties can agree to mediate claims for lesser amounts. 9. For commercial residential property claims, the representative of the insurer at the mediation conference should have full knowledge of the facts of the dispute and be authorized to make an agreement to completely resolve the claim. The insurer's representative must be able to pay the full settlement amount within 10 days of the conclusion of the conference. 10. For commercial residential property claims, the parties should prepare a "mediation conference statement" that: a. summarizes the claim and the costs or damages sustained; b. identify prior demands and offers; c. provide the party's assessment of a fair resolution; d. identify the location of the damaged property; e. the claim and policy number of the insured; and f. identify and provide the address and phone number for any professional advisor who will accompany the party to the mediation conference. The statement should be exchanged between all parties and the mediator at least 10 days before the mediation conference. 11. For commercial residential property claims, the insurer's representative should bring a copy of the policy and the entire claims file to the mediation conference. Any inspection or adjustment of the property at issue should occur before the mediation conference.

[69 FL ADC 69J-166.002](#)

12. For residential property claims, the insurer should notify a first party claimant of the right to participate in mediation at the time a claim is filed. The insurer should make a claim determination or choose to repair the property before sending the notice of the right to mediate. Notice is not required to be sent when no payment is made on the claim due to the determination by the insurer that the damages are less than the insured's deductible. The notice must be writing, conspicuous, printed in at least 12-point type and be no smaller than any other text in the notice. The first paragraph of the notice must state: "The Chief Financial Officer for the State of Florida has adopted a rule to facilitate the fair and timely handling of residential property insurance claims. The rule gives you the right to attend a mediation conference with your insurer in order to settle any claim you have with your insurer. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process after receipt of this notice by calling the Department of Financial Services at 1 (877) 693-5236. The parties will have 21 days from the date the request is received by the Department to otherwise resolve the dispute before a mediation conference can be scheduled." The notice must also: a. include detailed instructions on how the insured is to request mediation, including the address, phone number and fax number for requesting mediation through the Department; b. state that the parties have 21 days from the date the

request is received by the Department within which to settle the claim before the Department will assign a mediator; c. include the insurer's address and phone number for requesting additional information; d. state that the Administrator will select the mediator; e. refer to the parties' right to disqualify a mediator for good cause and paraphrase the definition of good cause; and f. indicate that the insured is to notify the mediator 14 days before the mediation conference if the insured will bring counsel to the conference, unless the insurer waives the right to the notice of counsel. 13. For residential property claims, the insurer should notify the Mediation Section within 2 business days of receiving a request for mediation by email to Mediation@myfloridacfo.com. 14. The insurer can request mediation by submitting a written mediation request to the Mediation Section. A copy of the request should be given to the insured at the same time. The request must include: a. the name, address, email address and daytime phone number of the insured and the location of the property if different from the address given; b. the claim and policy number of the insured; c. a brief description of the nature of the dispute; d. the full name of the insurer and the name, address, email address and phone number of the contact person for scheduling mediation; and e. information with respect to any other insurance policies that may provide coverage of the insured property for named perils like flood or windstorm. 15. For residential property claims, the insurer can choose to reject mediation if the dispute does not meet the definition of a claim. To reject mediation, the insurer should reference the mediation process and specify in writing to the insured and the administrator the reasons for the rejection. The Department will determine if the claim will be mediated. For this purpose, a claim is defined as any dispute between the insurer and insured relating to a material issue of fact other than: a. a dispute as to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the Department's Division of Insurance Fraud; or b. a dispute where, based upon agreed facts as to the cause of loss, there is no coverage under the policy. A claim must involve a request of \$500 or more to settle the dispute or the difference between the parties is \$500 or more regardless of any deductible. The parties can agree to mediate claims for lesser amounts. 16. For residential property claims, the representative of the insurer at the mediation conference should have full knowledge of the facts of the dispute and be authorized to make an agreement to completely resolve the claim. The insurer's representative must be able to pay the full settlement amount within 10 days of the conclusion of the conference. 17. For residential property claims, the insurer's representative should bring a copy of the policy and the entire claims file to the mediation conference. 18. For residential property claims, if the claim is settled prior to the mediation conference, the insurer should notify the mediator of the outcome of the issue prior to the scheduled hearing. 19. For residential property claims, if settlement is reached at a mediation conference, the insured will have 3 business days from the date of written settlement to rescind the settlement. The insured cannot have cashed or deposited any check or draft disbursed as a result of the conference.

[69 FL ADC 69J-166.031](#)

20. For sinkhole claims, if the policy provides coverage and the claim is submitted within 2 years after the insured knew or should have known about the loss, after the receipt of the report and certification by the professional engineer or professional geologist or after denial of the claim, the insurer must notify the insured of his right to have a neutral evaluation. The insurer must provide a copy of the consumer information pamphlet prepared by the Department concerning this program. a. Neutral evaluation is nonbinding but mandatory if requested by one party. b. The request must be filed on a form approved by the Department. c. The insurer's representative at the neutral evaluation must have the authority to make a binding decision on behalf of the insurer. d. The insurer must pay the costs of the neutral evaluation. e. The parties must select a neutral evaluator from the list provided by the Department and notify the Department of the selection. If the parties cannot agree on a neutral evaluator within 14 business days, the Department will appoint one. f. If the insurer agrees, in writing, to comply with the recommendation of the neutral evaluator and does comply in a timely manner but the policyholder refuses to resolve the matter, the insurer: I. is not liable for extra contractual damages for issues determined by the neutral evaluation process; and II. is not liable for attorney's fees unless the policyholder obtains a judgment more favorable than recommended by the neutral evaluator.

[FL ST s 627.7074](#)

SPECIFIC LINES OF INSURANCE

GENERAL REQUIREMENTS

The statute of limitations for property damage is 4 years.

[FL ST s 95.11](#)

AUTOMOBILE INSURANCE

General Requirements

1. When liability is reasonably clear, the insurer cannot recommend that a third-party claimant make a claim under his own policy solely to avoid paying the claim.

[FL ST s 626.9743\(2\)](#)

2. The insured must receive at least 72 hours advance notice before termination of payment for storage charges. 3. The insurer can delay payment of sales taxes that would be incurred for repair or replacement of a vehicle until repaired or replaced.

[FL ST s 626.9743\(8,9\)](#)

4. The insurer should notify an independent entity to release a damaged or dismantled vehicle to the vehicle owner or lienholder using the release statement form prescribed by the Department.

[FL ST s 319.30\(9\)\(a\)](#)

Total Vehicle Losses

1. A total loss occurs: a. when an insurer pays a claimant to replace a vehicle, but it is not a total loss if the insurance company and the vehicle owner agree to repair a vehicle; or b. when the cost of repairing or rebuilding a motor vehicle, at the time of loss, is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle with one of like kind and quality.

[FL ST s 319.30\(3\)\(a\)](#)

FL Informational Bulletin 80-229

2. A first party total loss vehicle claim must be settled by either providing a replacement motor vehicle or cash settlement. a. If a replacement vehicle is offered it must: I. be in as good or better overall condition than the insured vehicle; II. made by the same manufacturer; III. be of the same or newer model year; IV. be of a similar body type; and V. have similar mileage and options as the insured vehicle; VI. be available for inspection within a reasonable distance from the insured's residence. b. If a cash settlement is offered, it must be based on the actual cost to purchase a comparable motor vehicle. I. The settlement must include sales tax. II. The actual cost must be determined by: (1) the cost of 2 or more comparable vehicles available in the local market within the last 90 days; (2) if comparable vehicles are not available then the retail cost determined by a generally recognized used motor vehicle industry source such as: (a) an electronic database provided that the valuation documents generated are provided to the insured upon request; or (b) a guidebook available to the general public provided that the insurer identifies the guidebook to the insured upon request; or (3) the retail cost determined by two or more quotations from two or more licensed dealers in the local market; or (4) a basis that deviates from the rules so long as the deviation is supported by documentation in the claim file giving the particulars of the condition of the vehicles involved; or (5) any other method agreed to by the claimant.

[FL ST s 626.9743\(1-5\)](#)

3. For third party total loss vehicle claims or where damages are greater than \$2,000.00, the insurer must determine if there are any liens on the vehicle. If so, payment must be made jointly to the vehicle owner and the first lienholder.

[FL ST s 627.743\(1\)](#)

[FL Informational Bulletin 82-5](#)

4. On a total loss vehicle settlement, the insurer must notify the National Motor Vehicle Title Information System and forward the certificate of title to the Department of Motor Vehicles (DMV) within 72 hours of receiving the title by U.S. Postal Service, other commercial delivery service or electronic means if made available by the Department. a. A copy of an estimate of the costs of repairing the vehicle must accompany the certificate of title sent to the Department. b. The vehicle cannot be sold by the insurer until a salvage certificate of title or certificate of destruction is received from the Department. c. These requirements do not apply to stolen vehicles recovered substantially intact and resalable without extensive repairs or replacement of the frame or engine. 5. Effective 1/1/2020, 30 days after payment of a claim, the insurer can receive a salvage certificate of title or destruction from the Department if the insurer cannot obtain an assigned certificate of title from the owner or lienholder. The vehicle should not have an electronic lien and the insurer should: a. obtain a release of all liens on the vehicle; b. provide proof of payment for the total loss; and c. provide an affidavit on letterhead signed by the insurer or its agent listing the attempts made to obtain the title from the owner or lienholder and stating that all attempts are to no avail. The affidavit should include a request that a salvage certificate of title or destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. I. Attempts to contact the owner can be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address. II. If the request is made in person, the insurer should provide an affidavit attesting to the in-person request for the certificate of title. III. The request for the certificate of title should include a complete description of the vehicle and a statement that a total vehicle loss claim has been paid on the vehicle.

[FL ST s 319.30\(3\)\(b\)](#)

[FL Memorandum 2005-017](#)

6. If the settlement amount is reduced due to betterment or depreciation, any deductions must be itemized, of an appropriate value and documented in the claim file and the basis for the settlement must be provided to the claimant in writing upon request and a copy of the letter kept in the claim file.

[FL ST s 626.9743\(6\)](#)

Non-Total Vehicle Losses

1. For third party non-total loss vehicle claims, an insurer must print the following on any loss estimate: "Failure to use the insurance proceeds in accordance with the security agreement, if any, could be a violation of s 812.014, Florida Statutes. If you have any questions, contact your lending institution." 2. If a non-total loss is settled based on a loss estimate, the insurer must provide a copy of the estimate to the claimant.

[FL ST s 626.9743\(7\)](#)

[FL ST s 627.743\(2\)](#)

3. If a loss estimate is not prepared, the above requirement may be ignored.

[FL ST s 627.743](#)

4. If the policy requires the insurer to use like kind and quality parts in order to return the vehicle to its pre-accident condition, and the insurer chooses to use non-original manufactured parts, then the insurer can be subject to investigation by the Department for failing to use like kind and quality parts. Adjustment practices that consistently utilize non-original manufacturer parts may be considered an unfair trade practice.

[FL Memorandum 2001-034](#)

5. The insurer must compensate the claimant for any diminished value if the vehicle cannot be restored to its pre-accident condition.

[FL Informational Bulletin 84-270](#)

6. If the insurer requires repairs to be done at a particular repair shop, it must restore the vehicle to its pre-accident condition and performance at no additional cost to the claimant. 7. The insurer

cannot require the use of replacement parts that are not at least equivalent to the damaged parts in fit, appearance and performance.

[FL ST s 626.9743\(3,4\)](#)

FIRE INSURANCE

General Requirements

1. In first party losses based on repair or replacement cost: a. when the loss requires repair or replacement of an item, any damage caused in making the repair or replacement shall be included as part of the loss unless excluded by the policy; and b. when the loss requires replacement and the replacement parts do not match, the insurer must replace items in adjoining areas to conform to a reasonably uniform appearance.

[FL ST s 626.9744](#)

2. For damaged dwellings insured on the basis of replacement costs, the insurer should initially pay at least half the actual cash value of the loss minus the deductible. The insurer should pay any remaining amounts for repairs as work is performed and expenses are incurred. For total losses, the insurer should pay the replacement cost of the dwelling without reservation or holdback of any depreciation in value.

[FL ST s 627.7011\(3\)](#)

Valued Policies

For total losses on valued policies, the insurer is liable for the amount the building, structure, mobile home or manufactured building was insured for and a premium was paid for. This does not apply to: a. insurance policies issued or renewed by more than one company insuring the same building or structure if the existence of the additional insurance is not disclosed by the insured to all insurers issuing policies; b. two or more building or structures insured under a blanket form for a single amount of insurance; c. the completed value of the building or structure is insured under a builder's risk policy; or d. losses caused by non-covered perils. The insurers' liability for losses caused by both non-covered and covered perils is limited to amount of loss caused by the covered peril. If covered perils alone would have caused the total loss, the insurer is liable for the entire loss.

[FL ST s 627.702](#)

MEDICAL/PROFESSIONAL MALPRACTICE

1. An insurer providing liability insurance must maintain records available for examination by the Office of Insurance Regulation for all claims or actions resulting in: a. a final judgment; b. a settlement; or c. a final disposition resulting in no indemnity payment. 2. If requested, the insurer must file a report with the Office of Insurance Regulation within 60 days. The report must contain: a. the insured's name, address and class or line of coverage; b. the insured's policy number; c. the date of the incident resulting in claim; d. the date the claim was reported to the insurer; e. the date suit was filed, if filed; f. the injured person's name, age and sex; g. the total number and names of all defendants; h. claims settled after suit was filed; i. claims paid based on a judgment; j. judgments appealed by the insurer, including the total results of the appeals; k. the date and amount of any judgment or settlement, including itemization of the verdict and copy of the settlement or judgment; l. for settlements, any information the office may require regarding the incurred and anticipated medical expenses, wage loss and other expenses; m. the loss adjustment expense paid to defense counsel and all other allocated loss adjustment expense paid; n. the date and reason for final disposition if there is no judgment or settlement; o. a summary of the incident leading to the claim including: I. the name of the institution or business and the location within the institution or business where the injury occurred; II. a description of the injury giving rise to the claim; III. the safety management steps that have been taken by the insured to lessen the likelihood of similar injuries or occurrences in the future; and p. any other information required by the Office to assist the office in analysis and evaluation of the nature, cause, location, cost and damages involved in liability cases.

[FL ST s 627.912](#)

[FL ST s 627.9126](#)

4 FL ADC 4-171.003

3. An insurer providing professional liability insurance to a licensed medical practitioner or member of the Florida Bar must file a report with the Office of Insurance Regulation within 30 days of: a. entry of a judgment where all appeals as a matter of right have been exhausted or where the time for filing the appeals has expired; b. execution of an agreement between the insurer and claimant to settle damages with an indemnity payment of at least \$1; but if the approval of the court is required, then when the agreement is approved; c. final payment of indemnity money by the insurer; or d. after final disposition when no indemnity payment is made but where loss adjustment expenses of more than \$5,000 are paid. e. Reports may be filed electronically using the Professional Liability Claims Reporting System (PLCR) at: http://www.floir.com/siteDocuments/PLCR_Instructions.pdf 4. The report must contain: a. the insured's name, address, professional license number and specialty; b. the insured's policy number; c. the date of the incident resulting in claim; d. the date the claim was reported to the insurer; e. the name and address of the injured person; f. the date suit was filed, if filed; g. the injured person's age and sex; h. the total number and names, including professional license numbers of all defendants; i. the date and amount of any judgment or settlement, including itemization of the verdict; j. for settlements, any information the office may require regarding the incurred and anticipated medical expenses, wage loss and other expenses; k. the loss adjustment expense paid to defense counsel and all other allocated loss adjustment expense paid; l. the date and reason for final disposition if there is no judgment or settlement; m. a summary of the incident leading to the claim including: I. the name of the institution and the location within the institution where the injury occurred; II. the final diagnosis for which treatment was sought including the patient's actual condition; III. a description of the misdiagnosis, if any; IV. the operation, diagnostic or treatment procedure causing the injury; V. a description of the principal injury leading to the claim; VI. the safety management steps that have been taken by the insured to lessen the likelihood of similar injuries or occurrences in the future; and n. any other information required by the commission to assist the office in analysis and evaluation of the nature, cause, location, cost and damages involved in professional liability cases.

[FL ST s 627.912](#)

4 FL ADC 4-171.003

[FL Memorandum DFS-2004-007](#)

5. An insurer providing officers' and directors' liability insurance to a must file a report with the Office of Insurance Regulation within 60 days of: a. a final judgment; b. a settlement; or c. a final disposition resulting in no indemnity payment. 6. The report must contain: a. the insured's name, address, position held by the insured and the type of corporation or organization including classifications as provided in 26 U.S.C.A. s 501(c) of the Internal Revenue Code; b. the insured's policy number; c. the date of the incident resulting in claim; d. the date the claim was reported to the insurer; e. the name of the injured person; f. the date suit was filed, if filed; g. the total number and names of all defendants; h. the date and amount of any judgment or settlement, including a copy of the settlement or judgment; i. for settlements, any information the office may require concerning the claimant's anticipated future losses; j. the loss adjustment expense paid to defense counsel and all other allocated loss adjustment expense paid; k. the date and reason for final disposition if there is no judgment or settlement; l. a summary of the incident leading to the claim including: I. whether the injuries claimed resulted from physical damage to the claimant, damage to the reputation of the claimant, based on self-dealing by the defendant or a shareholder dispute; II. a description of the type of activity that caused the injury; III. the steps that have been taken by the officers or directors to assure that similar occurrences are less likely to happen in the future; and m. any other information required by the Office to assist the office in analysis and evaluation of the nature, cause, costs and damages involved.

[FL ST s 627.9122](#)

4 FL ADC 4-171.006

SINKHOLE COVERAGE

1. When a claim is received, the insurer must: a. Inspect the premises to determine if damage to the structure was caused by a sinkhole. b. If the insurer determines structural damage exists and is unable to identify a cause or determines the damage is consistent with a sinkhole loss, the insurer should have a professional engineer or professional geologist conduct testing to determine the cause of the loss. A

report should be issued by the professional engineer or professional geologist if sinkhole loss is covered under the policy. c. After inspection, provide written notice to the insured stating: I. what the insurer determined to be the cause of damage, if determined; II. the circumstances where the insurer is required to hire a professional engineer or professional geologist to determine the cause of loss and to hire a professional engineer to make recommendations concerning land and building stabilization and foundation repair; and III. the right of the insured to request testing by a professional engineer or professional geologist, the circumstances when this is applicable and the circumstances where the insured could incur testing costs. d. If loss is caused by a sinkhole, pay to stabilize the land and building and repair the foundation according to the recommendations of the professional engineer. I. Payment for repairs to the structure and contents must meet the terms of the policy. II. The insurer may limit payment to the actual cash value of the loss, until the insured enters into a contract for building stabilization or foundation repair. Payment for underpinning, grouting and any other repair technique performed below the existing foundation cannot be limited. III. If repairs have begun and the professional engineer determines that repairs cannot be completed within policy limits, the insurer must either: (1) complete the professional engineer's recommended repair; or (2) tender the policy limits to the insured without reduction for repair expenses that have already been incurred. IV. The insurer can make direct payments to the persons selected by the policyholder to perform land and building stabilization and foundation repair, if the policyholder and a lienholder approve in writing. V. If the professional engineer determines that repairs cannot be completed within policy limits, the insurer can choose to complete the repairs recommended by the professional engineer or pay the policy limits to the insured. 2. If coverage for sinkhole loss is available and the claim is denied and the insurer has not performed testing, the insured can make written demand that testing be performed. 3. The insurer can obtain reimbursement for 50% of the costs of analyses and services from the insured for a bad faith sinkhole claim, up to \$2,500. The insurer must: a. have written certification that there is no sinkhole loss or that the damage was not caused by a sinkhole; and b. have sent written notice to the insured, before ordering the analysis, of the insured's potential liability for reimbursement and gives him the opportunity to withdraw the claim.

[FL ST s 627.707](#)

4. Once a claim has been paid and a report and certification have been prepared by a professional engineer or professional geologist, the insurer must file a copy of the report and certification, legal description of the real property, the name of the property owner, the neutral evaluator's report if any, a copy of the certification showing stabilization has been completed, if applicable, and the amount of the payment with the county clerk of court.

[FL ST s 627.7073\(2\)](#)

5. If the policy provides coverage and the claim is submitted within 2 years after the insured knew or should have known about the loss, after the insurer receives the report prepared by a professional engineer or professional geologist or denies a sinkhole loss claim, the insurer must inform the insured of his right to participate in the neutral evaluation program in writing. The pamphlet, Settling Your Sinkhole Claim: Where to Find Help, Form DFS-I4-1788, should also be provided to the insured. The pamphlet can be sent to the insured by US mail or electronically.

[FL ST s 627.7074\(3\)](#)

[69 FL ADC 69J-8.006](#)

a. Neutral evaluation is nonbinding. b. Either party can request neutral evaluation by filing a request with the Department by: I. submitting the request online at: <https://apps.fldfs.com/eservice/MediationInfo.aspx> II. submitting the Sinkhole Insurance Claims Request for Neutral Evaluation Form DFS-I4-1784. This form can be obtained by contacting the Department of Financial Services Mediation Section; or III. faxing Form DFS-I4-1784 to the Department at (850) 488-6372.

[FL ST s 627.7074\(4\)](#)

[69 FL ADC 69J-8.007](#)

c. The insurer should contact the policyholder in writing within 5 business days of being notified of the neutral evaluation request. A copy of the written correspondence should be sent to the Department at the same time as the correspondence is sent to the policyholder or his representative. If the parties agree on the selection of the neutral evaluator, they should notify the Department by email to

NeutralEvaluation@MyFloridaCFO.com. If they cannot agree within 14 business days, they must notify the Department that they are unable to agree by email to NeutralEvaluation@MyFloridaCFO.com or phone at 1(850) 413-5818. The Department will then select the neutral evaluator. Either party can reject the neutral evaluator selected by the Department up to 2 times, without cause, by email to NeutralEvaluation@MyFloridaCFO.com, within 3 business days of receipt of the notice of selection by electronic means or fax or within 6 business days after receipt if sent by US mail or other means. Requests for disqualification of the evaluator for cause should be submitted to the Department immediately or as soon as the cause is known.

[FL ST s 627.7074\(7\)](#)

[69 FL ADC 69J-8.008](#)

d. The evaluation is an informal conference. Both parties can submit evidence, testimony, or other information to assist the evaluator to determine the existence, nature, and scope of a sinkhole loss and the nature, extent and cost of repairs. All reports related to the claim should be submitted to the neutral evaluator at least 7 days prior to the conference. If the parties settle the claim prior to the conclusion of the neutral evaluation, they should notify the neutral evaluator and the Department in writing. The recommendations of the neutral evaluator are not binding on the parties. I. If the neutral evaluator determines the existence of a sinkhole and recommends repairs in excess of the amount the insurer offered to pay the insured, the insurer is liable for up to \$2,500 in attorney's fees for the attorney's participation in the neutral evaluation. II. If the insurer agrees in writing to comply with the recommendations of the neutral evaluator and does comply in timely manner but the insured refuses to resolve the matter: (1) the insurer is not liable for extracontractual damages related to issues determined by the neutral evaluation; and (2) the insurer is not liable for attorney's fees under FL ST s 627.428 or other provisions of the insurance code unless the insured obtains a judgment more favorable than the recommendation of the neutral evaluator.

[FL ST s 627.7074\(14,15\)](#)

[69 FL ADC 69J-8.009](#)

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WHAT'S NEW

The following is a description of the changes made to this document since the last published version.

FL ST s 319.30 (Effective 7/1/2019) - Per 2019 FL H.B. 301 (NS) - SPECIFIC LINES OF INSURANCE: AUTOMOBILE INSURANCE: TOTAL VEHICLE LOSSES - Updated insurer requirements for total loss settlements.

FL ST s 626.9541 and FL ST s 627.426 (Effective 7/1/2019) - Per 2019 FL H.B. 301 (NS) - REFERENCES - Changed effective date.

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REFERENCES

- [FL ST s 95.11](#) (07/01/2018 FL)
- [FL ST s 319.30](#) (07/01/2019 FL)
- [FL ST s 626.9541](#) (07/01/2019 FL)
- [FL ST s 626.9743](#) (07/01/2004 FL)
- [FL ST s 626.9744](#) (07/01/2004 FL)
- [FL ST s 627.425](#) (08/01/2005 FL)
- [FL ST s 627.426](#) (07/01/2019 FL)
- [FL ST s 627.702](#) (07/01/2007 FL)
- [FL ST s 627.707](#) (07/01/2012 FL)
- [FL ST s 627.743](#) (10/01/2019 FL)
- [FL ST s 627.912](#) (09/15/2003 FL)
- [FL ST s 627.4035](#) (06/23/2017 FL)
- [FL ST s 627.4265](#) (1983 FL)

[FL ST s 627.7011](#) (07/01/2019 FL)
[FL ST s 627.7015](#) (07/01/2019 FL)
[FL ST s 627.7073](#) (05/17/2011 FL)
[FL ST s 627.7074](#) (07/05/2017 FL)
[FL ST s 627.7142](#) (10/01/2014 FL)
[FL ST s 627.912](#) (07/01/2009 FL)
[FL ST s 627.9122](#) (06/26/2003 FL)
[FL ST s 627.9126](#) (06/26/2003 FL)
[FL ST s 627.70131](#) (05/17/2011 FL)
[FL ST s 634.336](#) (06/01/2010 FL)
[4 FL ADC 4-171.003](#) (06/13/1999 FL)
[4 FL ADC 4-171.006](#) (06/13/1999 FL)
[69 FL ADC 69O-166.021](#) (11/02/1992 FL)
[69 FL ADC 69O-166.024](#) (11/02/1992 FL)
[69 FL ADC 69O-166.025](#) (01/27/1992 FL)
[69 FL ADC 69J-8.006](#) (07/29/2015 FL)
[69 FL ADC 69J-8.007](#) (07/29/2015 FL)
[69 FL ADC 69J-8.008](#) (04/04/2016 FL)
[69 FL ADC 69J-8.009](#) (04/04/2016 FL)
[69 FL ADC 69J-166.002](#) (04/20/2016 FL)
[69 FL ADC 69J-166.031](#) (04/20/2016 FL)
[FL Informational Bulletin 80-229](#) (1980 FL)
[FL Informational Bulletin 82-5](#) (1982 FL)
[FL Informational Bulletin 86-3](#) (1986 FL)
[FL Informational Bulletin 94-030](#) (1994 FL)
[FL Informational Bulletin 94-035](#) (1994 FL)
[FL Informational Bulletin 84-270](#) (12/31/1984 FL)
[FL Memorandum 2001-034](#) (10/31/2001 FL)
[FL Memorandum DFS-2004-007](#) (07/30/2004 FL)
[FL Memorandum 2005-017](#) (10/10/2005 FL)
[Emergency Order 234790-18-EO](#) (10/15/2018 FL)

End of Document

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