

69J-166.031 Mediation of Residential Property Insurance Claims.

(1) Purpose and Scope. This rule implements Section 627.7015, F.S. The program established under this rule is prompted by the critical need for effective, fair, and timely handling of residential property claims. This program is available to all first-party claimants and insurers prior to commencing the appraisal process set forth in their policies or commencing litigation. The program is also available to litigants referred to the Department from Circuit or County court. For claims which have not previously been mediated under any Department mediation program, the mediation procedures described in this rule are available to all residential property claims for property located in the State of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance, or to liability coverage contained in property insurance policies. This program does not apply to policies issued under the National Flood Insurance Program established under the National Flood Insurance Act of 1968. Commercial residential insurance claims can be mediated pursuant to Rule 69J-166.002, F.A.C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

(2) Definitions. The following definitions shall apply for purposes of this rule:

(a) "Administrator" means the Department or its designee.

(b) "Mediator" means an individual selected by the Department pursuant to paragraph (7)(a) below.

(c) "Claim".

1. "Claim" refers to 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.

2. Unless the parties agree to mediate a claim involving a lesser amount, a claim involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, either of which is notwithstanding of any applicable deductible.

3. A policy must have been in effect at the time of the loss to qualify as a claim.

(d) "Complainant" refers to the party requesting mediation.

(e) "Department" means the Department of Financial Services.

(f) "Department office" means a designated office of the Division of Consumer Services, Department of Financial Services.

(g) "Party" or "Parties" means the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

(h) "Respondent" refers to the party not first requesting mediation.

(3) Computation of Time. In computing any period of time described by this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. All time periods specified in this rule refer to the number of calendar days, not business days, unless otherwise specified in this rule.

(4) Claim Settlement.

(a) Notification of the right to mediate.

1. Within five days of the insured filing a first-party claim which falls within the scope of this rule, the insurer shall notify the insured of their right to participate in this program. An insurer is not required to send a notice of the right to mediate claims when no payment has been made for a covered loss because the insurer concludes the amount of covered loss is less than the insured's deductible.

2. Notification shall be in writing and shall be legible, conspicuous, printed in at least 12-point type, and printed in typeface no smaller than any other text contained in the notice. The first paragraph of the notice shall contain the following statement: "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 of the notice to otherwise resolve the dispute before a mediation hearing can be scheduled."

3. The notice shall 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 of the notice 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; and

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 as set forth in paragraph (7)(e) of this rule.

f. Indicate that the insured is to notify the mediator 14 days before the mediation conference if the insured will bring representation to the conference, unless the insurer waives the right to the notice of representation. Upon receipt of such notice from the insured, the mediator shall provide notice to the insurer that the insured will be represented at the mediation conference.

4. Failure of an insurer to abide by this procedure and to notify the insured as required above will result in the insurer being referred to the Office of Insurance Regulation for administrative action pursuant to Section 624.15, F.S.

(b) Request for Mediation.

1. By the Insured. An insured may request mediation by contacting the Department at 1(877)693-5236; by faxing a request to the Department at (850)488-6372; or by writing to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212. If an insured requests mediation prior to receipt of the notice of the right to mediation, the insurer shall be notified by the Department of the existence of the dispute 21 days prior to the Administrator processing the insured's request for mediation. If an insurer receives a request for mediation, the insurer shall notify the Mediation Section within 48 hours of receipt of the request by fax or email. The Administrator shall notify the insurer within 72 hours of receipt of requests filed with the Department. The insured shall provide the following information, if known:

a. Name, address, e-mail address, and daytime telephone number of the insured and location of the property if different from the address given;

b. The claim and policy number for the insured;

c. A brief description of the nature of the dispute;

d. The full name of the insurer and the name, address, e-mail address, and phone number of the contact person for scheduling mediation; and

e. Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

2. By an Insurer. An insurer may request mediation by faxing or emailing a written request to the Mediation Section. The insurer shall provide a copy of its written mediation request to the insured at the same time it submits the request to the Department. The written request shall contain the information set forth in subparagraph (4)(b)1., if known. Mediation requests by insurers will be processed by the Administrator in the same manner as mediation requests by insureds.

(c) Upon receiving a request for mediation, and after the expiration of the 21 day resolution period, the Administrator shall randomly select from the Department's list a mediator to conduct the mediation conference. The Administrator shall notify the mediator of his or her selection and indicate the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department's file number, the date of the request for mediation, and that the mediation is to occur within 45 days of the request. The mediator will have three business days from the date of notification by the Administrator to accept or reject the selection. If the mediator rejects the selection or fails to accept the selection within three business days, or if the mediator is disqualified pursuant to paragraph (7)(e), then the Administrator shall randomly select another mediator. For all mediation requests under this rule, the time limits in this section shall not be applicable for two years following the declaration of a disaster.

(5) Rejection of Mediation. An insurer may elect to reject mediation in situations where the dispute does not meet the definition of a claim. If the insurer desires to reject mediation, the insurer shall reference this mediation process and specify in writing to the insured and the administrator the reason(s) for the rejection. The Department shall determine whether the claim shall be mediated. The parties may elect to voluntarily mediate any dispute regardless of whether the cause of loss or policy status may be in question. In the event that a claim falls within the scope of this rule, the insurer shall follow the process set forth in subsection (4) above.

(6) Mediation Costs. Pursuant to Section 627.7015(3), F.S., the insurer shall bear all of the cost of conducting mediation conferences.

(a) The total cost for residential mediation shall be \$350, with \$300 paid as the mediator's fee and \$50 paid as a fee of the Administrator.

(b) For two years following the declaration of a disaster, the amounts allocated to the mediator and the Administrator shall be modified by the Department if and to the extent necessary to cover the cost of facilities to conduct the mediation, but in no event will the total cost for mediation exceed those listed in paragraph (6)(a) above.

(c) Fees are payable within 21 days of billing by the Administrator. The Administrator will bill insurers separately for mediator fees and administrator fees for all mediations. The mediator's fee will be payable directly to the mediator by the insurer and the administrative fee paid to the Administrator by the insurer. All administrative fees received by the Department shall be placed in the Insurance Regulatory Trust Fund.

(d) Should a residential mediation conference be cancelled for any reason by the insured or the insurer after it has been scheduled, the mediator shall be paid 50% of the mediator's fee and the Administrator shall be paid the entire administrative fee.

(7) Mediators.

(a) Mediator Approval. The Bureau of Agent and Agency Licensing, Department of Financial Services, shall approve as mediators those persons who meet the qualifications set forth in Section 627.745(3)(b), F.S. Persons wishing to be approved as mediators shall submit their qualifications to the Bureau of Agent and Agency Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319, on Form DI4-591, "Application for Appointment as a Mediator", which is adopted and incorporated by reference in subsection 69B-211.002(30), F.A.C. For two years following the declaration of a disaster, this program may additionally utilize mediators selected from a panel of circuit court – civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules of Certified and Court-Appointed Mediators, which are hereby incorporated into the rule by reference.

(b) List of Approved Mediators. The Bureau of Agent & Agency Licensing, Department of Financial Services, shall maintain a list of all approved mediators, which list shall include the mediator's name, address, telephone number, a listing of counties in which each mediator is willing to mediate, and date of entry to the list.

(c) Grouping of Assignments. Requests for mediation will, if feasible, be grouped together and assigned to a single mediator. A mediator will be assigned a maximum of four mediation conferences under a single assignment.

(d) Procedure and Conduct. All mediation conferences shall be conducted in accordance with this rule, the Florida Rules for Certified and Court-Appointed Mediators as set forth in Rules 10.020-10.290, Florida Rules of Civil Procedure, as incorporated above, and other consistent rules of conduct as promulgated by the Supreme Court of Florida. Mediators shall have the same responsibilities to the Department as they have to the courts under the Florida Rules for Certified and Court-Appointed Mediators. The Florida Rules for Certified and Court-Appointed Mediators shall be read in a manner consistent with this rule and any conflict between this rule and the Florida Rules for Certified and Court-Appointed Mediators shall be resolved in favor of this rule. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this mediation program, mediators shall have the immunity from suit provided to mediators in Section 44.107, F.S. All communications with the mediator shall be confidential. All statements made and documents produced at a settlement conference constitute settlement negotiations in anticipation of litigation. The mediation proceedings are confidential and inadmissible in any subsequent adversarial proceeding.

(e) Complaints; Discipline. At any time a party may move to disqualify a mediator for good cause. Good cause consists of conflict of interest between a party and the mediator, that the mediator is unable to handle the conference competently, or other reasons which would reasonably be expected to impair the conference. Complaints concerning a mediator shall be written and submitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212. The Department shall review the following grounds for discipline:

1. Alleged instances of dishonest, incompetent, fraudulent, or unethical behavior on the part of a mediator;
 2. Instances in which the mediator allegedly failed to promptly and completely respond to requests from the Department and instances in which the actions or failure to act on the part of the mediator violate this rule including the standards set forth in this subsection or are counter to the intent and purpose of this mediation program or this rule;
 3. Administrative action by any other agency or body against the mediator, regardless of whether the agency or body's regulation relates to mediation;
 4. The mediator has been found guilty of or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.
- If the Department determines that any of the above grounds exist, the Department shall institute proceedings in accordance with

Chapter 120, F.S., to rescind the approval of the mediator to handle any mediation or arbitration program sponsored by the Department.

(8) Mediation Conference.

(a) Location.

1. The mediation conference shall be held at a reasonable location specified by the mediator within a reasonable proximity of the insured property, unless all parties agree otherwise. In times of declared disaster, the Administrator shall assign the mediation location and notify the mediator of same, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

2. The Administrator shall make available various conference locations throughout the state for possible use, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

3. Before scheduling a mediation conference the mediator may contact the Division of Consumer Services to determine the availability of office facilities to accommodate the mediation conference.

4. If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Administrator has assigned a location, the Administrator must also agree to the alternate location.

5. The mediator will notify the insured, insurer, and the Administrator in writing of the exact time, date, and location of the conference. In times of declared disaster, the Administrator shall require additional methods of communication such as telephone or email with the insured, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

(b) Timing and Continuances. The mediation conference shall be held as scheduled by the mediator. Upon application by any party to the mediator for a continuance, the mediator shall, for good cause shown or if neither party objects, grant a continuance and shall notify all parties of the date and place of the rescheduled conference. Good cause includes severe illness, injury, or other emergency which could not be controlled by the party and could not reasonably be remedied by the party prior to the conference by providing a replacement representative or otherwise. Good cause include the necessity of obtaining additional information, securing the attendance of a necessary professional, or the avoidance of significant financial hardship. If the insured demonstrates to the mediator the need for an expedited mediation conference due to an undue hardship, the conference shall be conducted at the earliest date convenient to all of the parties and the mediator. Undue hardship will be demonstrated when holding the conference on a non-expedited basis would interfere with or contradict the treatment of a severe illness or injury, substantially impair a party's ability to assert their position at the conference, result in significant financial hardship, or other reasonably justified grounds.

(c) Attendance.

1. The insured and the insurer shall attend the mediation conference, have full knowledge of the facts of the dispute, and be fully authorized to make an agreement to completely resolve the claim. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The authority to settle the claim includes the ability to disburse the full settlement amount within 10 days of the conclusion of the conference. The insurer will produce at the conference a copy of the policy. The insurer will bring the entire claims file to the conference.

2. The mediation conference also may be attended by persons who may assist a party in presenting his claim or defense in the conference, such as contractors, adjusters, engineers, and interpreters. The parties may not have separate counsel in the mediation conference unless requested by the insured or the parties agree otherwise. If the insured elects to have representation in the conference, the insured shall notify the mediator of such participation 14 days before the conference, unless the parties agree otherwise. Upon receipt of such notice from the insured, the mediator shall provide notice to the insurer that the insured will be represented at the mediation conference. A party will be determined to have not negotiated in good faith if they or a person participating on their behalf continuously disrupts or otherwise inhibits the negotiations as determined by the mediator.

(d) Good Faith Negotiation. The participants are to negotiate in good faith to attempt to resolve the dispute, however there is no requirement that the dispute must be resolved in mediation.

(e) Disposition. Mediators shall report to the Department on the status of property insurance mediation conferences by submitting Form DFS-I5-1971, "Disposition of Property Insurance Mediation Conference" (rev. 10/08), which is hereby adopted herein and incorporated by reference. If the claim is settled prior to the mediation conference being held, the insurer shall report the outcome of the issue to the mediator prior to the scheduled hearing and the mediator will submit Form DFS-I5-1971 confirming the settlement. A mediation conference will not be considered complete and the Administrator will not bill the insurer until this form is submitted.

(9) Disbursement of Costs.

(a) The insurer shall pay the mediator's fee and the Administrator's fee. All funds due the Department shall be remitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212, together with a reference to the Department's file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. These funds will be deposited in the Insurance Regulatory Trust Fund to defer Department costs.

1. Completed Mediation Conference. A mediation conference is considered complete once the date of the scheduled mediation has passed and disposition Form DFS-I5-1971 has been received by the Administrator. A mediation conference will not be considered complete and will not be billed if it is rescheduled with the agreement of all parties as specified in paragraph (8)(b) of this rule, or if Form DFS-I5-1971 is not received by the Administrator.

2. Cancellation Due To Absence. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered an absence. Payment shall be as follows:

a. If the insured fails to appear at the conference, the conference shall be considered to have been held and the insurer must make payment in accordance with paragraph (6)(a) of this rule. If the insured wishes to schedule a new conference after failing to appear, the total cost of mediation for the new conference will be borne by the insured. The new conference shall be rescheduled only upon the insured's payment of the total cost of the mediation at the rate specified in subsection (6) of this rule.

b. If the insurer fails to appear at the conference, the insurer shall make payment for the conference in accordance with paragraph (6)(a) of this rule. If the insurer fails to appear at the conference without good cause, the insurer shall pay the insured's actual cash expenses incurred in attending the conference and shall pay a second total cost of mediation for the rescheduled conference. Good cause includes severe illness, injury, or other emergency which could not be controlled by the insurer and could not reasonably be remedied by the insurer prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the Department will report the failure to appear to the Florida Office of Insurance Regulation as a potential violation of Section 626.9541(1)(i)3.c., F.S. The Florida Office of Insurance Regulation will take such administrative action pursuant to Section 624.15, F.S.

(b) Any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, shall be borne by the party, mediator or other person incurring the expense.

(10) Post-Mediation.

(a) At the conclusion of the mediation conference, the mediator will file with the Department the "Disposition of Property Insurance Mediation Conference" Form DFS-I5-1971 indicating whether or not the parties reached a settlement. If the parties reached any settlement, then the mediator shall include a copy of the settlement agreement with Form DFS-I5-1971. In the event a settlement is reached, the insured shall have 3 business days from the date of the written settlement within which he or she may rescind the settlement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and not rescinded, it shall act as a release of specific issues that were presented at the conference.

(b) Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs which would have been covered under the policy but for the release.

(11) The Department is authorized to designate an entity or person as its Administrator to carry out any of the Department's duties under this rule.

(12) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

Rulemaking Authority 624.308(1), 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 626.9541(1)(a), (e), (i), (u), 626.9561, 626.9581(1), 626.9641(1)(g), 627.7015 FS. History—New 8-18-94, Amended 5-1-96, 4-6-00, Formerly 4-166.031, 69B-166.031, Amended 9-24-09.