

CHAPTER 2019-57

Committee Substitute for Committee Substitute for House Bill No. 7065

An act relating to insurance assignment agreements; creating s. 627.7152, F.S.; providing definitions; 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 assignment agreement does not confer or create authority to adjust, negotiate, or settle a claim without authorization under part VI of chapter 626; 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; specifying requirements for such notice; requiring a written response to the notice of intent to initiate litigation; specifying requirements for such response; providing for an award of reasonable attorney fees for certain claims arising under an assignment agreement; providing for an award of reasonable attorney fees following a voluntary dismissal under certain circumstances; requiring the court to stay proceedings under certain circumstances; directing the Office of Insurance Regulation to require insurers to report specified data; requiring the Financial Services Commission to adopt rules; providing applicability; creating s. 627.7153, F.S.; defining the term "assignment agreement"; authorizing insurers to make available property insurance policies restricting the assignment of post-loss benefits under certain conditions; requiring annual notice of coverage options; requiring a written or electronic waiver under certain circumstances; requiring the office to approve a waiver form; providing applicability; amending s. 627.422, F.S.; providing that residential or commercial property insurance policies may not prohibit the assignment of post-loss benefits; providing an exception; prohibiting Citizens Property Insurance Corporation from implementing rate changes for certain policies; providing an exception; requiring certain rate filings to include specified information; requiring the corporation to inform policyholders of certain information; providing severability; providing an effective date.

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

Section 1. Section 627.7152, Florida Statutes, is created to read:

627.7152 Assignment agreements.—

(1) As used in this section, the term:

(a) "Assignee" means a person who is assigned post-loss benefits through an assignment agreement.

(b) “Assignment agreement” means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property.

(c) “Assignor” means a person who assigns post-loss benefits under a residential property insurance policy or commercial property insurance policy to another person through an assignment agreement.

(d) “Disputed amount” means the difference between the assignee’s presuit settlement demand and the insurer’s presuit settlement offer.

(e) “Judgment obtained” means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.

(f) “Presuit settlement demand” means the demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (9)(a).

(g) “Presuit settlement offer” means the offer made by the insurer in its written response to the notice of intent to initiate litigation as required by paragraph (9)(b).

(2)(a) An assignment agreement must:

1. Be in writing and executed by and between the assignor and the assignee.

2. Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

3. Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier. Delivery of the copy of the assignment agreement to the insurer may be made:

a. By personal service, overnight delivery, or electronic transmission, with evidence of delivery in the form of a receipt or other paper or electronic acknowledgement by the insurer; or

b. To the location designated for receipt of such agreements as specified in the policy.

4. Contain a written, itemized, per-unit cost estimate of the services to be performed by the assignee.

5. Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or structure or to mitigate against further damage to such property.

6. Contain the following notice in 18-point uppercase and boldfaced type:

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

7. Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

(b) An assignment agreement may not contain:

- 1. A penalty or fee for rescission under subparagraph (a)2.;
- 2. A check or mortgage processing fee;
- 3. A penalty or fee for cancellation of the agreement; or
- 4. An administrative fee.

(c) If an assignor acts under an urgent or emergency circumstance to protect property from damage and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage to the property, an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or 1 percent of the Coverage A limit under such policy. For

purposes of this paragraph, the term “urgent or emergency circumstance” means a situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage.

(d) An assignment agreement that does not comply with this subsection is invalid and unenforceable.

(3) In a claim arising under an assignment agreement, an assignee has the burden to demonstrate that the insurer is not prejudiced by the assignee’s failure to:

(a) Maintain records of all services provided under the assignment agreement.

(b) Cooperate with the insurer in the claim investigation.

(c) Provide the insurer with requested records and documents related to the services provided, and permit the insurer to make copies of such records and documents.

(d) Deliver a copy of the executed assignment agreement to the insurer within 3 business days after executing the assignment agreement or work has begun, whichever is earlier.

(4) An assignee:

(a) Must provide the assignor with accurate and up-to-date revised estimates of the scope of work to be performed as supplemental or additional repairs are required.

(b) Must perform the work in accordance with accepted industry standards.

(c) May not seek payment from the assignor exceeding the applicable deductible under the policy unless the assignor has chosen to have additional work performed at the assignor’s own expense.

(d) Must, as a condition precedent to filing suit under the policy, and, if required by the insurer, submit to examinations under oath and recorded statements conducted by the insurer or the insurer’s representative that are reasonably necessary, based on the scope of the work and the complexity of the claim, which examinations and recorded statements must be limited to matters related to the services provided, the cost of the services, and the assignment agreement.

(e) Must, as a condition precedent to filing suit under the policy, and, if required by the insurer, participate in appraisal or other alternative dispute resolution methods in accordance with the terms of the policy.

(5) An assignment agreement and this section do not modify or eliminate any term, condition, or defense relating to any managed repair arrangement provided in the policy.

(6) An assignment agreement does not transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person or entity not authorized to adjust, negotiate, or settle a claim on behalf of an assignor or a claimant under part VI of chapter 626.

(7)(a) Notwithstanding any other provision of law, and except as provided in paragraph (b), acceptance by an assignee of an assignment agreement is a waiver by the assignee and its subcontractors of claims against a named insured for payments arising from the assignment agreement. The assignee and its subcontractors may not collect or attempt to collect money from an insured, maintain any action at law against an insured, claim a lien on the real property of an insured, or report an insured to a credit agency for payments arising from the assignment agreement. Such waiver remains in effect after the assignment agreement is rescinded by the assignor or after a determination that the assignment agreement is invalid.

(b) A named insured is responsible for the payment of all of the following:

1. Any deductible amount due under the policy.
2. Any betterment ordered and performed that is approved by the named insured.
3. Any contracted work performed before the assignment agreement is rescinded.

(8) The assignee shall indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, or electronic delivery at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

(b) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in paragraph (a) by making a presuit settlement offer or requiring the assignee to participate in appraisal or other method of alternative dispute resolution under the policy. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.

(10) Notwithstanding any other provision of law, in a suit related to an assignment agreement for post-loss claims arising under a residential or commercial property insurance policy, attorney fees and costs may be recovered by an assignee only under s. 57.105 and this subsection.

(a) If the difference between the judgment obtained by the assignee and the presuit settlement offer is:

1. Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.

2. At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees.

3. At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.

(b) If the insurer fails to inspect the property or provide written or oral authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to an award of attorney fees under this subsection. If the failure to inspect the property or provide written or oral authorization for repairs is the result of an event for which the Governor had declared a state of emergency under s. 252.36, factors beyond the control of the insurer which reasonably prevented an inspection or written or oral authorization for repairs, or the named insured's failure or inability to allow an inspection of the property after a request by the insurer, the insurer does not waive its right to an award of attorney fees under this subsection.

(c) If an assignee commences an action in any court of this state based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed in a court of this state, the court may order the assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the assignee has complied with the order.

(11) This section does not apply to:

(a) An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss;

(b) A power of attorney under chapter 709 that grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim; or

(c) Liability coverage under a property insurance policy.

(12) The office shall require each insurer to report by January 30, 2022, and each year thereafter data on each residential and commercial property insurance claim paid in the prior calendar year under an assignment agreement. The Financial Services Commission shall adopt by rule a list of the data required, which must include specific data about claims adjustment and settlement timeframes and trends, grouped by whether litigated or not litigated and by loss adjustment expenses.

(13) This section applies to an assignment agreement executed on or after July 1, 2019.

Section 2. Section 627.7153, Florida Statutes, is created to read:

627.7153 Policies restricting assignment of post-loss benefits under a property insurance policy.—

(1) As used in this section, the term “assignment agreement” has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts in whole or in part an insured’s right to execute an assignment agreement only if all of the following conditions are met:

(a) The insurer makes available to the insured or potential insured at the same time the same coverage under a policy that does not restrict the right to execute an assignment agreement.

(b) Each restricted policy is available at a lower cost than the unrestricted policy.

(c) The policy prohibiting assignment in whole is available at a lower cost than any policy prohibiting assignment in part.

(d) Each restricted policy include on its face the following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE

TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

(3) The insurer shall notify the insured at least annually of the coverage options the insurer makes available under this section. Such notice must be part of and attached to the notice of premium.

(4) A named insured must reject a fully assignable policy in writing or electronically. The rejection of a fully assignable policy shall be made on a form approved by the office. The form must state that the policy restricts the assignment of benefits. The heading of the form shall be in 18-point uppercase and boldfaced type and state:

YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART. PLEASE READ CAREFULLY.

(5) This section applies to a policy issued or renewed on or after July 1, 2019.

Section 3. Section 627.422, Florida Statutes, is amended to read:

627.422 Assignment of policies or post-loss benefits.—A policy may be assignable, or not assignable, as provided by its terms. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE POLICIES.—A residential or commercial property insurance policy may not prohibit the assignment of post-loss benefits unless it complies with s. 627.7153.

Section 4. Citizens Property Insurance Corporation may not implement rate changes in 2019 for DP-3 and HO-3 policies unless the rate filing reflects projected rate savings from this act. Such rate filing must include an exhibit demonstrating the impact of this act on indicated rates for DP-3 and HO-3 policies. Citizens Property Insurance Corporation shall provide policyholders with details on the projected rate savings from this act.

Section 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect the remaining provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. This act shall take effect July 1, 2019.

Approved by the Governor May 23, 2019.

Filed in Office Secretary of State May 23, 2019.