



## MEMORANDUM ON RECENT FLORIDA LEGISLATIVE CHANGES

The Governor of Florida has recently signed two very important pieces of legislation into law that affect policyholders' rights and substantially alter their contractual obligations. The noticeable changes to insureds can be seen across several of the Florida Statutes. As a result, several significant insurance issues have been impacted, including solicitation, statute of limitations, litigation, and attorney fees.

Pertinent to policyholders, alterations to Fla. Stat. §627.70132 adjust the time frame for when a claim must be filed. Prior to this passage of this law, there was no statute of limitations on filing claims other than hurricane claims, which were previously limited to 3 years. **Now, an insured has only two years to file any claim, hurricane or otherwise.** Ultimately, this encourages insureds to give notice of claims as soon as possible, even if they may not be sure of the damages in order to prevent a situation where insureds would be barred from making a claim.

Perhaps the largest change of all is that insureds are required to give notice of intent to initiate litigation under Fla. Stat. §627.70152. **Importantly, an insured must now provide notice of intent to initiate litigation at least 10 business days before filing suit.** However, the notice may not be given before the insurer has determined coverage pursuant to Fla. Stat. §627.70131. Additionally, the notice must detail the alleged acts or omissions of the insurer giving rise to suit and, if the insurer denied coverage, an estimate of damages. Alternatively, if the insurer did not deny coverage, the insured must present a pre-suit settlement demand that contains itemized damages, attorney fees, costs, and the disputed amount.

There are also considerable changes in §627.70152 that impact an insured's ability to recover attorney fees. Under this new law, an insured will not recover any attorney fees or costs if the amount obtained by the insured in litigation is less than 20 percent of the disputed amount. The disputed amount is defined as "the difference between the claimant's pre-suit settlement demand, not including attorney fees and costs listed in the demand, and the insurer's pre-suit settlement offer, not including attorney fees and costs, if part of the offer." *See*, Fla. Stat. §627.70152(2)(c). If the amount recovered by an insured is between 20 and 50 percent, then an insured will be entitled to recover a portion of the attorney fees and costs. Finally, if the amount obtained by an insured is at least 50 percent of the disputed amount, then the insurer must pay the insured's full attorney fees and costs. **Clearly, this will significantly impact when litigation is commenced and places a substantial burden on an insured to determine the correct amount of a pre-suit settlement offer.**

New legislation also prescribes what a public adjuster and contractor can advertise for residential properties. It is important to know that the modifications to Florida Statute §489.147 now prohibit contractors from soliciting services to residential property owners. Recently, there was a large surge in solicitation by roofing contractors throughout the state after Irma's damage. Many of these roofers solicited homeowners and offered roofing inspections to check for damages. Now, under the language of the new statute, such solicitations are likely outlawed. However, due to a recent lawsuit contesting the constitutionality of these laws against contractors, a Judge has ordered a temporary injunction pending further review of the issues.



The legislature also amended several subsections of Fla. Stat. §626.854, which covers residential and condominium unit owner claims. One of the noticeable revisions provides an increase in time for the cancellation of a contract with a public adjuster to ten days. The statute also states that a public adjuster must provide an estimate of damages to the insured within 60 days after the execution of contract.

Senate Bill 630 was also signed into law and took effect July 1, 2021. This statutory addition materially impacts community associations under Fla. Stat. 627.714(4) by limiting subrogation against an association. The legislation effectively prohibits unit owner insurance policies from providing rights of subrogation against condominiums unless the association's insurance policy provides for rights of subrogation against its unit owners. This is yet another piece of legislation designed to reduce the amount of litigation arising out of insurance matters.

The recent changes to Florida law will impact insureds throughout the state. **Disappointingly, the legislature has once again chosen to prejudice the citizens it represents and protect the larger insurance companies.** It is important for an insured to know its rights and to stay educated on the material changes to the insurance process being made by the government. If you have a claim, it is critical to make sure any insurance professional you are working with is educated and knows the changes in the law in order to protect your rights.

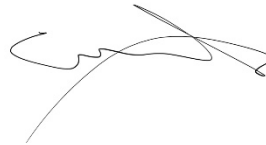
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Daniel B. Odess  
President



Craig Applebaum  
SVP & General Counsel