

Clients & Friends Memo

Cat Bond Update: Florida Assignment of Benefits

May 1, 2019

On April 24, 2019, the Florida Legislature passed a bill (the “[Act](#)”)¹ to reform the requirements for the assignment of benefits of claims for residential and commercial property insurance. The Act is expected to become law. Assignment of benefits in Florida has been a concern for the ILS market as related litigation has become a significant factor in losses and claims development for a number of outstanding catastrophe bonds.

Background

For a number of years, legislators in Florida had attempted to address perceived abuses in the assignment of benefits of property insurance claims. Attorneys and contractors would find homeowners, identify a basis for a potential claim and offer “free” repairs in exchange for an assignment of these claims. Often an inflated or spurious claim would then be submitted to the insurer. In a legal dispute, under the prior statute, the insurer would be liable to pay attorney’s fees in the event the insurer was found to be liable, whereas the plaintiff could not be liable to pay the insurer’s attorney’s fees. The resulting increase in claims and litigation has led to higher insurance rates in Florida and much greater uncertainty in loss development.

The Act

The Act, which passed the legislature and is expected to be signed by Governor Ron DeSantis, creates new sections 627.7152 and 627.7153, and amends certain existing statutes. Notable provisions of the Act include:

- conditions² for an effective assignment and other rules for the effectiveness of such assignment and the availability of assignment. Such an agreement must, among other things:
 - be in writing, executed and contain an itemized estimate of services; and
 - provide notice to the insurer upon the earlier of three (3) business days from execution of the assignment or the day of commencement of the related work.

¹ [Florida House of Representatives Bill 7065](#), Senate Bill SB 122

² Fla. Stat. § 627.7152 (2)(a)(1)-(7). All references to the Florida Statutes are upon effectiveness of the Act.

In addition, the Act:

- provides conditions for the insurer to recover attorney fees,³ including that the insurer inspects the property or authorizes repairs within specified time periods, and limitations on the availability of attorney fees to the assignee, subject to the following;
 - If the difference between the judgment obtained by the assignee and the presuit settlement offer is:
 - less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees;
 - at least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees;
 - at least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees;
- shifts to the assignee (i) specified duties under relevant policy and (ii) the burden to prove that any failure to carry out such duties has not prejudiced the insurer, including, without limitation, the duty to maintain and provide a record of services performed;
- allows insurers to offer an insurance policy which prohibits, under certain conditions, the assignment of benefits;⁴
 - such conditions include making available an alternative policy which permits assignment of benefits at a higher premium rate, and the inclusion of a boldfaced legend specifying the policy is not assignable, where applicable;
 - Section 627.422 is also amended to provide that post-loss benefits will be assignable or not assignable, pursuant to the terms of the policy; and
- provides for advance notice of a threatened litigation to the insurer and the assignor as a precondition to filing suit, including a detailed invoice or estimate of the disputed services.

The Act, upon being signed by the Governor, will be effective July 1, 2019, and will not apply to ongoing assignment of benefits litigation. The Act could rationalize loss development for Florida catastrophe bonds as incentives for opportunistic litigation would be reduced while requiring the provision of detailed claims information; consequently, predictability of claims and losses for such bonds could improve.

³ Fla. Stat. § 627.7152 (10)

⁴ Fla. Stat. § 627.7153

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If you have any questions, please contact any of the following attorneys, or your usual contacts at Cadwalader.

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