



ALERTS

Florida Property Insurance Reforms To Lead To Major Hurdles For Policyholders

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Highlights

With the new Florida property insurance reform, policyholders are not likely to see any immediate reduction to the cost of insurance

Policyholders who are forced to bring a lawsuit against their property insurer will now face major hurdles as they will no longer be able to assign their insurance benefits from their claims to contractors nor recover their attorneys' fees they are forced to spend

The new Legislation will shrink the insurance market for policyholders, reduce the time period for policyholders to pursue claims and create a state-funded pool of money to bail out financially insolvent insurance companies

In the aftermath of Hurricane Ian and the great devastation it caused, Florida policyholders will face new and substantial hurdles when seeking to obtain any insurance coverage in 2023, particularly insurance for losses sustained by future hurricanes. On Dec. 16, 2022, Gov. Ron DeSantis approved a bill, SB 2A (identical to HB 1A, hereinafter referred to as the "Legislation"), which will completely reform and overhaul how policyholders in the state of Florida are able to obtain, or rather not

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obtain, property insurance coverage in the aftermath of losses such as those sustained from Hurricane Ian. House sponsor of the Legislation, Tom Leek (Republican from Ormond Beach), proudly stated that this new Legislation represents the “biggest, meatiest, beefiest property insurance reform legislation that the state has ever seen.” While the Legislation originally was touted to other members of the House and the public as a means of reducing litigation costs, speeding up the claims process, and preventing “fraudulent claims,” the reality is that this Legislation will harm individual and corporate policyholders in the state of Florida by reducing the availability of insurance, increasing the cost of insurance, and making it much more challenging for a policyholder to enforce and collect on their valid claims against their insurers in the aftermath of losses such as those sustained by Hurricane Ian.

Here are a few salient points about this new Legislation that Florida policyholders should be aware of going forward:

1. The Legislation will not bring any immediate or short term financial relief to policyholders in the form of reduction to the high cost of insurance in the state of Florida. Lawmakers, including Leek, have been clear in taking the position that they do not expect the law to “provide immediate relief to homeowners” in the near future with respect to any reduction to the cost of insurance. However, lawmakers remain hopeful that policyholders may see rates begin to decrease in a year or two.

2. Under the new Legislation, policyholders who are forced to bring a lawsuit against their property insurer who wrongly refuses to pay a claim are no longer able to recover the attorney fees they are forced to spend to obtain their insurance. Insurers lobbied for the passage of the Legislation based on the false position that Florida’s mandate requiring insurers to pay the attorney fees of policyholders forced to bring suit to obtain their insurance has led to an increase in litigation and costs. However, the Legislation will only further encourage insurers to deny valid claims in order to make it even more costly for policyholders to seek and obtain the insurance they were promised. The result is not likely to lessen Litigation; rather, it is more likely to encourage it by providing insurers with incentive to create insurance disputes over claims they should pay. Unfortunately, the Legislation shifts the cost of this Litigation squarely onto policyholders even when they successfully litigate their claims against an insurer who should have paid the claim in the first instance.

3. Policyholders can no longer “assign their insurance benefits” from their claims to contractors or other third parties. Prior to this Legislation, policyholders enjoyed the right to assign their insurance claims (i.e. to use their claims as compensation) to contractors and third parties who could then stand in the shoes of the policyholder to pursue and obtain insurance coverage directly from the insurer. Now, with the passage of this new Legislation, policyholders in Florida have been stripped of this right. Not only has this Legislation encouraged insurers to deny more claims and made litigation more costly for policyholders, but policyholders can no longer assign these claims to third parties as a means of providing compensation to that party for work they perform to assist a policyholder with recovering from an insurable loss. Although insurers (once again) falsely claimed that this practice of assigning claims increased litigation and costs, in reality an assignment provided policyholders with immediate financial support from third parties in exchange for the right to pursue the insurance claim in place of the policyholder. As insurers know, when a

policyholder suffers a significant loss, such as from a hurricane, most policyholders do not have the resources to pursue a contested insurance claim, particularly in litigation and particularly where the policyholder cannot recover their litigation costs. In the end, the only party who benefits from taking away a policyholder's right to assign its claim is the insurer.

4. This new Legislation will shrink the insurance market for policyholders, reduce the time period for policyholders to pursue claims and create a policyholder funded pool of money to bail out financially insolvent insurance companies. Under the new Legislation, Florida property insurers will be financially supported by the state of Florida to provide funding for failing insurers while making it more difficult for policyholders to obtain insurance or collect on their claims. Surprisingly, this Legislation puts into effect several additional onerous measures likely to harm policyholders while financially supporting insurers, such as:

- (a) Homeowners/policyholders can only obtain insurance from private carriers and will eliminate state-backed insurance (e.g., Citizens Property Insurance Corp.);
- (b) The window of time for policyholders to pursue their insurance prior to bringing a lawsuit will be reduced from two years to one year; and
- (c) The state of Florida will create a reinsurance program funded by the state, entitled the Florida Optional Reinsurance Assistance Program, to provide insurers with additional reinsurance (insurance for any claims they pay to policyholders) at a reduced cost.

Although the Legislation includes some measures that may be beneficial to some policyholders—such as shortening the time period for an insurer to deny or cover claims from 90 days to 60 days—the Legislation completely alters the rights of policyholders in Florida and provides insurers with significant leverage to drive up the cost for policyholders to obtain insurance coverage and recovery for their valid claims.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Kevin Dreher at kevin.dreher@btlaw.com, Caroline Upton at cupton@btlaw.com and Haley Hinton at Haley.Hinton@btlaw.com.

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