

Florida Legislature has enacted significant changes that impact insureds and their ability to file a claim, reopen a claim or make a supplemental claim. The newly enacted laws are certain to be open for challenge at the trial and appellate level and will create more costly litigation in the long run for the insurance companies despite being veiled as a law enacted to help insureds in the State of Florida. The following is an outline of these significant changes that a claimant and their representative should know as they file property claims and continue to litigate property claims. These changes take effect starting July 1, 2021.

I. PRE-SUIT NOTICE REQUIREMENTS – FLORIDA STATUTE § 627.70152

a. Insured Requirements

Under the new Florida Statute § 627.70152(3), as a precondition to filing a lawsuit, a claimant **must** now provide a notice of intent to litigate at least ten (10) business days prior to filing a lawsuit, but not before the ninety (90) days coverage determination under Florida Statute § 627.70131. The notice **must** be on a form provided by the Department of Financial Services, and the notice **must** be furnished to the insurer through the email address on file with the Department of Financial Services. Florida Statute § 627.70152 applies to lawsuits arising under property insurance policies, except for lawsuits from an assignee of benefits. This new statute applies to residential or commercial insurers and surplus lines insurers.

The pre-suit notice **must** state (a) it is being given pursuant to the statute, (b) allege specific acts or omissions of the insurer giving rise to the lawsuit, which may include a denial of coverage, (c) if the notice is provided by attorney or representative of claimant, notice must state a copy of the notice was provided to claimant, (d) if the notice is provided after denial, an estimate of damages, if known, and (e) if the notice is provided following acts or omissions by insurer other than denial, the notice must give the pre-suit demand with **an itemization of damages, attorney’s fees and costs, as well as the disputed amount**. Supporting documentation may be provided with the notice to the insurer. Florida Statute § 627.70152(3)(a)(1)-(5).

The claimant must serve the notice of intent to initiate litigation within the time limits provided in Florida Statute § 95.11. However, the notice is not required if the suit is a counterclaim. Service of the notice tolls the time limits provided in Florida Statute § 95.11 for 10 business days if such time limits will expire before the end of the 10-day notice period. § 627.70152(3)(b). If the claim is not resolved during the pre-suit notice process and if the time limits under Florida Statute § 95.11 expire in the 30 days following the conclusion of the pre-suit process, such time limits are tolled for 30 days. § 627.70152(7).

Florida Statute § 627.70132(2) provides that notice of a claim or a “reopened claim” has to be given within two (2) years of the date of loss or be barred. A “supplemental claim” is barred unless notice of the supplemental claim is provided within three (3) years of the date of loss. § 627.70132(2). A “reopened claim” is defined as a claim that was previously closed but reopened for additional costs for loss or damage previously disclosed. A “supplemental claim” is defined as a claim for additional loss or damage from the same peril previously adjusted or for

costs incurred while completing repairs. § 627.70132(a)-(b). The date of loss is described as the date that the hurricane made landfall, or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration (NOAH). § 627.70132(3). Florida Statute § 627.70132 expands the statute from only hurricane claims to apply to **all** property insurance claims including surplus lines insurers.

If the claimant does not comply with the pre-suit notice requirement, the court **must** dismiss the lawsuit without prejudice. § 627.70152(5). If the case is dismissed for failure to provide notice as required by § 627.70152(5), the Court may not award any attorney's fees incurred under Florida Statutes §§ 626.9373 (applying to surplus lines insurers) and 627.428 (applying to admitted insurers). § 627.70152(8)(b).

b. Insurer Requirements

The insurer **must** have a procedure for prompt investigation, review and evaluation of the dispute raised in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code. Florida Statute § 627.70152(4). An insurer **must** respond in writing within 10 business days of the notice by accepting coverage, continuing to deny coverage; or asserting the right to reinspect the damaged property. § 627.70152(4)(a).

The reinspection has to occur 14 business days after the response asserting the right to reinspect the property or accept coverage or continue to deny coverage. § 627.70152(4)(3). The statute of limitations under Florida Statute § 95.11 are tolled during the period of reinspection if the statute of limitations expires before the end of the reinspection period. § 627.70152(4)(3). If the insurer continues to deny coverage, the claimant may file suit without providing additional notice to the insurer. § 627.70152(4)(3).

If the insurer is responding to the notice outlining act or omission by the insurer other than denial of coverage, the insurer **must** respond by making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution. § 627.70152(4)(b). The statute of limitations under Florida Statute § 95.11 are tolled during the period of appraisal or method of alternative dispute resolution expires during that time. § 627.70152(4)(b). If the appraisal process or alternative dispute resolution has not concluded within 90 days after the expiration of the 10-day notice of intent to initiate litigation § 627.70152(3), the claimant or claimant's attorney may immediately file suit without providing the insurer additional notice. § 627.70152(4)(b).

II. CONSOLIDATION OF MULTIPLE LAWSUITS

Under Florida Statute § 627.70153, upon notification of any party, the court may order that the actions be consolidated and transferred to the court having jurisdiction based on the total amount in controversy of all consolidated. If multiple cases are pending in circuit courts, the cases may be consolidated based on the date on which the first case was filed. Florida Statute § 627.70153. Florida Statute § 627.70153 requires parties that are aware of ongoing multiple actions involving the same property insurance policy for the same property with the same owners to provide notice to the court. Under this new statute, notice is required for multiple lawsuits by

claimant(s) for lawsuits brought by the same claimant for multiple claims under the same property insurance policy, as well as for any lawsuits brought by assignees of insurance benefits. Florida Statute § 627.70153 allows a lawsuit filed in county court to be consolidated into a lawsuit in circuit court, if the circuit court jurisdiction is triggered by the total amount in controversy of all consolidated lawsuits.

III. ATTORNEYS' FEES AND COSTS IN LAWSUITS

Florida Statutes §§ 626.9373 (applying to surplus lines insurers) and 627.428 (applying to admitted insurers) to indicate that, for lawsuits arising from residential or commercial property insurance policies (not brought by an assignee of insurance benefits), the amount of fees and costs can only be awarded only as provided in Florida Statutes §§ 57.105 or 627.70152.

Under Florida Statute § 627.70152(8), the legislature has outlined three methods to determine any entitlement to attorney's fees and costs in a lawsuit arising from a residential or commercial property policy. The analysis uses the "amount obtained" by the claimant, which is defined in the statute as "the damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest", and the "disputed amount" which is defined by the statute 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." Florida Statute § 627.70152(2) and Florida Statute § 627.70152(c). The three methods are as follows:

- a. **No Recovery for Attorney's Fees and Costs** - There is no award for attorneys' fees and costs if the difference between the amount obtained by the claimant and the pre-suit settlement offer (excluding attorney fees and costs) is less than twenty percent (20%) of the disputed amount.
- b. **Partial Recovery for Attorney's Fees and Costs** – There is a partial recovery of attorney's fees and costs if the difference between the amount obtained by the claimant and the pre-suit settlement offer (excluding attorney's fees and costs) is greater than twenty percent (20%) but less than fifty percent (50%) of the disputed amount. In that circumstance, the insurer pays the claimant's fees and costs equal to the percentage of the disputed amount obtained times the total attorney's fees and costs.
- c. **Full Recovery of Attorney's Fees and Costs** – the claimant can recover the full amount of attorney's fees and costs if the difference between the amount obtained by the claimant and the pre-suit settlement offer (excluding attorney fees and costs) is greater than fifty percent (50%) of the disputed amount.

IV. CONCLUSION

These are significant changes to the ability of any insured to file a claim, reopen a claim or make a supplemental claim and their entitlement to attorney's fees and costs. The Florida Courts will be deciding what the new changes mean to Florida Insureds and their rights. There are bound to be significant challenges to the new statutory changes which may further impact insureds' rights

as the challenges make their way through the trial courts and the different appellate courts in Florida in the years to come. The enactment of this law is coinciding with the start of the hurricane season but its effects are beyond storm claims but all property claims. If you want to read the actual bill, please follow this link

(www.flsenate.gov/Session/Bill/2021/76/BillText/er/HTML).