

Florida governor has signed into law new restrictions and limitations on soliciting and advertisement for contractors and public adjusters under SB 76. These changes are significant and restrict direct and indirect soliciting. The changes were enacted with an aim to curb false and misleading advertisement by contractors and assist public adjusters in adjusting claims. However, the new law's practical effect is set up as a deterrence to advertising not just by contractors but also by public adjusters. The following is a summary of the newly enacted changes.

I. NEW LAW ON SOLICITING BY CONTRACTORS

The Florida legislature created Florida Statute § 489.147 to restrict and prohibit certain types of solicitations by a contractor. It defines "prohibited advertisement" as "any written or electronic communication by a contractor that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. See Florida Statute § 489.147(1). The prohibited advertisement includes items such as door hangers, business cards, magnets, flyers, pamphlets, and emails. The statute defines soliciting in many different forms as prohibited practices. Soliciting includes in person contact, or contact by electronic means that include e-mail, telephone, and any other real-time communication directed to a specific person or by delivery to a specific person. **The new statute outlines prohibited soliciting practices directly or indirectly to consumers.**

The statute specifically prohibits a contractor directly or indirectly to:

- 1) Solicit a residential owner by means of a prohibited advertisement,
- 2) Offering a residential owner a rebate, gift, gift card, cash, coupon, waiver of insurance deductible or **any** other thing of value in exchange for:
 - a) allowing contractor to conduct inspection of the roof or
 - b) making an insurance claim for damage to the roof,
- 3) Offering, delivering, receiving or accepting any compensation, inducement, or reward, for the referral of any services for which property insurance proceeds are payable.

The new statute in essence prohibits referral fees or rewards for the referral of any services payable by property insurance proceeds. This section does not apply payments by the property owner or insurance company for roofing services rendered.

II. PROHIBITED ACTS BY CONTRACTOR

A contractor cannot interpret policy provisions or advising an insured on coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured unless the contractor holds a license as a public adjuster pursuant to Florida Statute Chapter 626. A contractor cannot provide an insured an agreement authorizing repairs without providing a good faith estimate of the itemized and detailed cost of services and materials for

repairs undertaken pursuant to a property insurance claim. However, a contractor does not violate a prohibited practice if as a result of the process of insurance adjusting the actual costs of repairs differs from the initial estimate.

A contractor must include a notice that the contractor may not engage in the prohibited practices in its contract. If the contractor fails to include such language, the residential property owner has 10 days to void the contract with the contractor after executing it. Florida Statute § 489.147(5).

Florida Statute § 489.147 also prohibits certain types of financial incentives in relation to roof claims. A contractor cannot provide anything of value, such as a rebate, gift card, coupon, or deductible waiver, to a residential property owner in exchange for permitting a contractor to inspect the roof or for making an insurance claim for damage to the owner's roof.

III. CONTRACTOR PENALTIES FOR VIOLATION OF NEW LAW

A contractor who violates the prohibited acts is subject to a disciplinary action pursuant to Florida Statute § 489.129 and may receive up to a \$10,000 for each violation of a prohibited act. The Statute is clear that the acts of any person on behalf of a contractor includes the actions of a compensated employee or non-employee who is compensated for soliciting as considered action of the contractor. An unlicensed person who also violates the prohibited acts shall be guilty of unlicensed contracting subject to Florida Statute § 489.13 penalties and may be fined up to \$10,000 for each violation.

IV. NEW LAW ON SOLICITING BY PUBLIC ADJUSTERS

The new law **creates Florida Statute § 626.854(20) to apply to public insurance adjusters the limitations enacted to contractors.** This new section prohibits a public adjuster, a public adjuster apprentice, or person acting on behalf of a public adjuster or public adjuster apprentice from offering anything of value, such as a rebate, gift card, coupon, or deductible waiver, to a residential property owner in exchange for permitting a public adjuster, a public adjuster apprentice or a person acting on behalf of the public adjuster or public adjuster apprentice to inspect the roof or for making an insurance claim for damage to the owner's roof.

This section also prohibits a public adjuster or public adjuster apprentice from offering, delivering, receiving or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement. This section similarly prohibits the public adjuster from receiving referral fees or rewards for the referral of any roof repair/replacement services payable by property insurance proceeds.

V. PUBLIC ADJUSTER PENALTIES FOR VIOLATION OF NEW LAW

Violations of the new provisions applicable to public adjusters and public adjuster apprentices also makes them subject to fines under Florida Statute § 626.8698 and a fine not to exceed \$10,000 per act. A non-public adjuster or public adjuster apprentice who engages in the

prohibited acts would be guilty of the unlicensed practice of public adjusting subject to penalties set forth in chapter 626 and also a fine not to exceed \$10,000.00 for each act.

VI. CONCLUSION

The new statutes make clear that the insurance industry through the legislature is targeting contractors and public adjusters from soliciting an insured from making claims. The new provisions are broad and encompass several acts that may be challenged in Court. The law does have severe implications as to what will be considered “anything of value” and how contractors and public adjusters may be fined egregiously for anyone that may refer insureds to them. The new law seems to let insurance companies warn insureds that the acts of their contractors and public adjusters are prohibited by law. This law may allow defense counsel additional avenues to inquire how an insured came about asserting their rights in retaining a contractor or public adjuster. In the end, the Courts will decide if these new statutory provisions protect Florida Consumers or are a punitive restrictions on access to their rights.