

Advisory | Insurance



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Update: On May 22, Florida Gov. Ron DeSantis received *House Bill 7065*, and he now has until June 6 to act upon it. Further, the governor received *HB 337*, which contains language making the attorney's fee provisions contained in *HB 7065* take effect upon becoming law. The other provisions in *HB 7065* and *HB 337* take effect July 1, 2019.

During the 2019 session that ended May 3, Gov. DeSantis called on the Legislature to enact AOB reforms. As such, the governor is expected to sign into law both of these important bills.

Florida Property Insurance Reform Law Aims to Stem AOB Abuse

During the 2019 legislative session, the Florida legislature passed *HB 7065* by Rep. Bob Rommel, with the goal of reducing assignment of benefits (AOB) abuse. The legislation establishes rights and obligations of both the assignees and assignors, and perhaps most important, eliminates the one-way attorney's fee provision for assignees. If the bill becomes law, the effective date is July 1, 2019.

Background

In 2017, the Florida Financial Services Commission heard testimony from the commissioner of Florida's Office of Insurance Regulation (OIR) regarding the negative impact AOB abuse was having on Florida's property insurance market. Data from 2010-2016 demonstrated a 28% increase in the average severity of property insurance claims, a 46% increase in frequency of water loss claims on residential policies, and a

three-fold increase in the use of AOBs. Citizens Property Insurance Corporation (Citizens) data also showed disturbing trends due to AOB abuse. Citizens saw a drastic increase in the number of litigated water claims, along with a dramatic increase in the cost of those claims.

This data, along with the catastrophic hurricane seasons of 2017 and 2018, led Florida's policymakers to address AOB abuse in a meaningful manner. These fraudulent acts often ensnare unsuspecting policyholders during one of the worst moments of their lives. After hurricanes, bad actors prey on Floridians for financial gain, and AOBs have become a preferred tool of fraud.

HB 7065

The bill requires assignment agreements to be in writing and signed by both the assignee and assignor. Agreements must allow assignors to rescind without penalty within seven days of the execution of the agreement, and the agreement may not impose administrative fees. Assignees must provide a copy of an assignment agreement to an insurer within three days of the execution of the agreement. Assignees must now provide written estimates of services to be rendered, and indemnify the assignor, to include the waiver of the right to claim a lien against the property by the assignee and any subcontractors of the assignee.

Assignees will now be required to maintain records and provide those records when requested by an insurer. Assignees will also now be required to submit to examinations under oath and alternative dispute resolution (ADR) mechanisms contained in the insurance contract.

Insurers will be entitled to written notice specifying the damages in dispute, the amount claimed, and a pre-suit settlement demand from an assignee at least 10 days prior to the assignee filing suit. An insurer must respond to the pre-suit notice within 10 days of receipt by either making a settlement offer or proposing ADR. The bill discourages forum shopping by allowing a court to award attorney's fees to an insurer if they voluntarily dismiss an action when an assignee brings an identical claim against the insurer in another court. If the dispute continues to trial, Florida's one-way attorney's fee provision for policyholders suing their insurance company no longer applies to an assignee. Attorney's fees in a suit over a property insurance claim involving an AOB will now be determined by the difference in the amount recovered and the amount offered pre-suit. Fee awards will now be determined as follows:

- If the difference between the judgment obtained and the settlement offer is less than 25% of the disputed amount, then the insurer is entitled to attorney's fees.
- If the difference between the judgment obtained and the settlement offer is at least 25% but less than 50% of the disputed amount, neither party is entitled to fees.
- If the difference between the judgment obtained and the settlement offer is at least 50% of the disputed amount, the assignee is entitled to attorney's fees.

Insurers will now be able to make available non-assignable property insurance policies in Florida. This provision has been likened to providing consumers with a choice similar to an HMO and PPO. Non-assignable policies must contain an 18-point font notice that the assignment of the policy is restricted.

Beginning in 2020, insurers will be required to submit claims data to OIR, including but not limited to specific data about claims adjustment, settlement timeframes, and trends, grouped by whether a claim was litigated or not litigated and by loss adjustment expenses. The Financial Services Commission will adopt a rule listing all final required data elements.

After passage of HB 7065 on April 24, 2019, a zealous faction of Florida's trial bar began to heavily advertise the need for claims related to AOBs to be filed prior to July 1. To stem the efforts to churn claims, the effective date of the attorney's fee provision was changed to "upon becoming law" by an eleventh-hour amendment to **HB 337**, a bill related to the jurisdiction of courts. The other provisions of HB 7065 and HB 337 take effect on July 1, 2019.

On May 22nd, Florida Governor Ron DeSantis received **HB 7065** and HB 337. He has until June 6th to act upon these bills. Throughout the 2019 session that ended on May 3rd, Governor Ron Desantis called on the Legislature to enact AOB reforms. As such, the Governor is expected to sign both of these important bills into law.

There is great hope that this new law will help Florida's homeowners protect themselves against fraudulent contractors. Language addressing auto glass AOBs was regrettably removed from the final version late in the session. Legislative leadership expressed that a more tempered attorney's fee reform was needed for these specific disputes. Perhaps following this great victory reforming property AOBs, 2020 will be the year for auto glass.

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