

## **Alert** | Insurance Regulatory & Transactions



May 2022

### **Special Session of Florida Legislature Concludes with Passage of Legislation Impacting Property Insurance and Building Safety**

On April 26, 2022, Governor Ron DeSantis signed a **proclamation** calling on the Florida Legislature to convene for a special session in response to Florida's current property insurance market. The formal call was to consider legislation related to property insurance, reinsurance, changes to the Florida building code to improve affordability of property insurance, the Florida Office of Insurance Regulation, civil remedies, and appropriations. The proclamation called for the special session to convene from May 23 through May 27, but the Legislature was able to complete their work in only three days and adjourned Sine Die on May 25.

On May 20, the House and Senate released their respective identical proposals, which included measures related to reinsurance, roof solicitation, roof underwriting, bad faith, attorneys' fees, insurer regulation and transparency, and building codes.

Representative Jay Trumbull (R-Panama City), House Appropriations chair, sponsored the House measures. In a memo to legislators, he stated that the policies they developed would help curb abuses in the market without creating unintended consequences.

Senator Jim Boyd (R-Bradenton), Senate Banking and Insurance Committee chair, sponsored the Senate bills. He explained to members in a memo that the Senate proposals looked to balance fair costs and

protections for consumers while creating reasonable guardrails for insurance companies against frivolous litigation and fraudulent claims that drive up rates for everyone.

On the second day of the special session, Speaker of the House Chris Sprowls (R-Clearwater) announced the House and Senate had agreed to expand the call of Special Session D to include legislation relating to building safety. The legislation was aimed at reforming laws governing condominiums and cooperative associations in the wake of the June 2021 collapse of the Champlain Towers condominium in Surfside, Florida.

At the conclusion of the third day, legislators passed CS/SB 2D, relating to Property Insurance, and SB 4D, relating to Building Safety, both by Senator Boyd. Governor DeSantis signed SB 2D and SB 4D into law May 26. Except as otherwise expressly provided in the bills, they became effective upon the signature of the Governor. This GT Alert provides a breakdown of both pieces of legislation.

## **CS/SB 2D: Property Insurance**

### **Reinsurance to Assist Policyholders (RAP) Program**

- Authorizes a \$2 billion reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF). All eligible insurers must participate in the program.
  - The FHCF mandatory retention is \$8.5 billion for the 2022-2023 contract year.
- Requires the RAP program to reimburse 90% of each insurer's covered losses and 10% of their loss adjustment expenses up to each individual insurer's limit of coverage for the two hurricanes causing the largest losses for that insurer during the contract year.
- Specifies that each insurer's limit of the \$2 billion in RAP coverage is their pro-rata market share among all insurers that participate in the RAP program. Thus, an insurer with five percent of the risk reinsured by RAP coverage would have a limit of coverage of \$100 million.
- Requires all eligible insurers to participate in the RAP program for one year. Insurers that do not have private reinsurance within the RAP layer of coverage for the 2022-2023 contract year must participate during the 2022-2023 contract year. Insurers that have private reinsurance at the RAP layer for the 2022-2023 contract year must defer using RAP program coverage until the 2023-2024 contract year. A RAP insurer that has any private reinsurance that duplicates RAP coverage for the 2022-2023 contract year must notify the State Board of Administration (SBA) (the program administrator) of the private reinsurance and must defer participation in the RAP program until the 2023-2024 contract year.
- Prohibits an insurer from obtaining RAP coverage if the Insurance Commissioner certifies it is in "unsound financial condition."
- Specifies that insurers do not pay premiums for RAP program coverage but must reduce rates to reflect savings. Insurers that participate in the RAP program for 2022-2023 must reduce their rates by June 30, 2022, to reflect the savings from RAP coverage. Insurers that defer using the RAP program until 2023-2024 must reduce rates to reflect savings by May 1, 2023.
- Provides funding for the RAP coverage through a \$2 billion appropriation from the General Revenue Fund. Monies are only transferred to the SBA if the RAP program coverage must be paid because of a hurricane.

- Specifies that, if funds are transferred to the SBA because of a hurricane, the SBA may request funds for the administration of the program from the General Revenue Fund, not to exceed \$5 million.
- Provides the RAP program expires July 1, 2025, if no General Revenue funds have been transferred to fund the RAP program. If such funds were transferred, the statute expires July 1, 2029, and all unencumbered RAP Program funds must be transferred back to the General Revenue Fund.

### **My Safe Florida Home Program**

- Appropriates \$150 million from the General Revenue Fund to the Department of Financial Services' My Safe Florida Home Program to provide hurricane mitigation inspections and matching grants for the performance of hurricane retrofitting on homestead single family homes with a value of \$500,000 or less located in the wind-borne debris region set forth in the Florida Building Code. The My Safe Florida Home Program, which is administered by the Department of Financial Services, will provide financial incentives for Florida residential property owners to obtain free home inspections that would identify mitigation measures and provide grants to retrofit such properties, thereby reducing their vulnerability to hurricane damage and helping decrease the cost of residential property insurance.
- Establishes additional eligibility criteria:
  - Requires that a homeowner who participates in the program agree to make his or her home available for inspection after the mitigation project is completed.
  - Requires that a building permit for initial construction of the home was made before Jan. 1, 2008.
  - Requires the home to have undergone an acceptable hurricane mitigation inspection after July 1, 2008.
- Requires that grants awarded under the program provide \$2 in grant funds for every \$1 provided by the homeowner. Exceptions are provided for low-income homeowners. Applicants may receive up to \$10,000 in program money.
- Requires the Department of Financial Services to include in the annual report of program activities the average annual amount of insurance premium discounts and the total of such discounts received from insurers.
- Allocates appropriated funds as follows:
  - \$25 million for hurricane mitigation inspections.
  - \$115 million for hurricane mitigation grants.
  - \$4 million for education and consumer awareness.
  - \$1 million for public outreach to contractors, real estate brokers, and sales associates.
  - \$5 million for administrative costs.
- Provides that any unexpended balance of appropriated funds remaining on June 30, 2023, reverts and is appropriated to the Department of Financial Services for the 2023-2024 fiscal year for the My Safe Florida Home program.

### **Contractor Solicitation of Roof Claims**

- Prohibits contractors from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides notice that:
  - The consumer is responsible for the payment of any deductible.
  - It is insurance fraud punishable as a third-degree felony for a contractor to pay or waive an insurance deductible.
  - It is insurance fraud punishable as a third-degree felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.

### **Separate Roof Deductible**

- Allows property insurers to include in the policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50% of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by the Office of Insurance Regulation (OIR). If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.
- Requires that policyholders that select a roof deductible receive an actuarially sound premium credit or discount.
- Provides that the roof deductible does not apply to:
  - A total loss to the primary structure in accordance with the valued policy law under s. 627.702, F.S., which is caused by a covered peril.
  - A loss caused by a hurricane.
  - A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
  - A roof loss requiring the repair of less than 50% of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- Specifies that a roof deductible only applies to a claim adjusted on a replacement cost basis.
- Authorizes an insurer to limit the claim payment for a roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.
- Requires a roof deductible provision to be clear and unambiguous.
- Requires inclusion of the following disclosures:
  - On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
  - On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal. Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

### Roofs | Insurer Underwriting

- Prohibits an insurer from refusing to issue or refusing to renew a homeowner's insurance policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.
- Requires that, if the roof is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or refuse to renew a homeowner's insurance policy solely because of roof age if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has five years or more of useful life.

### Insurer Claims Handling

- Requires property insurers to conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements. Does not apply to hurricane claims.
- Requires insurers to notify policyholders of their right to receive any detailed report generated by an insurer's adjuster that estimates the amount of the loss. The report must be provided to the requesting policyholder within the later of seven days after the policyholder requests the report or the completion of the report.
- Specifies insurers must provide a reasonable explanation of the claim decision in relation to the insurance policy, facts, and law. If the insurer makes a claim payment that is less than contained in the insurer's adjuster estimate of the loss, the insurer must explain the discrepancy.

### Civil Remedy

- Requires a claimant to establish a property insurer breached the insurance contract in order for the claimant to prevail in a bad faith claim for extracontractual damages under s. 624.155(1)(b), F.S. Will apply to civil remedy actions based upon a property insurer:
  - Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for his or her interests;
  - Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
  - Except as to liability coverages, failing to settle claims promptly, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy

### Assignment of Benefits (AOB)

- Revises the definition of "assignment agreement" to include assignments executed by a party that inspects the property, clarifies that public adjuster fees are not an assignment agreement, and clarifies the requirement to provide a Notice of Intent to Initiate Litigation before filing suit.
- Requires that a valid AOB specify that the assignee will hold harmless the assignor from all liabilities, including attorney fees.



### **Attorney Fees | AOB**

- Prohibits assignment of the right to obtain attorney fees in suits arising out of a property insurance policy to persons other than a named or omnibus insured or a named beneficiary under the policy. Result is that assignment agreements may occur, but the assignee vendor will no longer be able to recover attorney fees in suits against an insurer. Applies to property insurance lawsuits brought by vendor assignees against authorized insurers and surplus lines insurers.
- Eliminates statutory language detailing the methodology for awarding attorney fees to plaintiffs or defendants in litigation brought by an assignee of benefits under a property insurance policy. The language is no longer necessary because the bill prohibits assignment of the right to recover attorney fees in suits arising out of a property insurance policy.

### **Attorney Fees | Fee Multipliers**

- Creates a new standard for the award of an attorney fee multiplier in property insurance litigation. The bill creates a presumption that in property insurance cases, attorney fee awards based on the Lodestar methodology are sufficient and reasonable. Attorney fee multipliers may only be awarded under rare and exceptional circumstances with evidence that competent counsel could not be hired in a reasonable manner.
- Allows a court to award attorney fees when a first-party claimant's property insurance suit is dismissed without prejudice for failure to provide a Notice of Intent to Initiate Litigation.

### **Attorney Fees | Dismissal for Failure to Provide Notice**

- Provides that a defendant insurer may obtain attorney fees and costs associated with securing a dismissal without prejudice for failure to provide the required Notice of Intent to Initiate Litigation at least 10 days before filing a suit against a property insurer.

### **Regulation of Insurers and Insurer Transparency**

- Requires the OIR to publish all orders, specified insurance industry data, and reports issued by the newly created Property Insurance Stability Unit. The scope of the Property Insurance Stability Unit is limited to matters related to homeowner and condominium unit owner insurance.
- Requires the OIR within the annual statistical report to include an analysis of the availability of reinsurance to domestic insurers selling homeowner and condominium unit owner insurance in Florida.
- Requires that the OIR include within its annual report additional data regarding property insurers against which delinquency or similar proceedings were instituted, a concise statement of the circumstances that led to each insurer's delinquency, a summary of actions taken by the insurer and the OIR to avoid delinquency, and that shows results or status of each delinquency proceeding.
- Requires the OIR to maintain and make available upon request reports relating to the health of the homeowner and condominium unit owner insurance market that include specified information regarding market trends and the percentage of policies written by voluntary carriers and Citizens Property Insurance Corporation.

- Directs the OIR to make data publicly available detailing the statewide number of policies, amount of premium, number of cancellations, and other data for each property insurer. Specifies such information is not a trade secret.
- Creates a Property Insurer Stability Unit within the OIR to aid in the detection and prevention of insurer insolvencies in the homeowner and condominium unit owner insurance market. Insurers must be referred to the unit for enhanced monitoring upon the occurrence of specified events. The unit must:
  - Provide enhanced monitoring when the OIR identifies significant concerns about various aspects of the insurer.
  - Conduct a target market conduct exam when there is reason to believe the insurer may be in an unsound financial condition.
  - Closely monitor insurer financial data.
  - Conduct annual catastrophe stress tests of domestic insurers.
  - Update wind mitigation credits.
  - Review the causes of insolvency and business practices of insurers referred to the Division of Rehabilitation and Liquidation within the Department of Financial Services.
  - Twice annually, provide a report on the status of the homeowner and condominium unit owner insurance market.
- Requires the OIR to execute an affidavit identifying the grounds for initiating delinquency proceedings against an insurer.
- For an insolvency involving a domestic property insurer, the Department of Financial Services must:
  - Begin an analysis of the history and causes of the insolvency no later than the initiation of delinquency proceedings against the insurer;
  - Review the OIR’s regulatory oversight of the insurer.
  - Submit an initial report analyzing the history and causes of the insolvency no later than two months after the initiation of the delinquency proceeding;
  - Provide a special report within 10 days of identifying any condition or practice that may lead to insolvency in the property insurance marketplace; and
  - Submit a final report analyzing the history and causes of the insolvency and the OIR’s regulatory oversight within 30 days of the conclusion of the insolvency proceeding.

### **SB 4D: Building Safety**

The current Florida Building Code requires that not more than 25% of the total roof area or roof section of any existing building or structure be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of the code.

The bill requires that the Florida Building Code stipulate that when 25% or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work must be constructed in accordance with the current Florida Building Code in effect at that time.

The bill creates an exception to this provision for roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or subsequent editions.

The bill also includes provisions relating to the regulation of condominiums and cooperative associations. Many of these provisions were the substance of legislation filed during the 2022 Regular Session in response to collapse of the condominium in Surfside, Florida.

The bill:

- Creates a statewide building milestone inspection requirement for condominiums and cooperative buildings that are three stories or higher in height 30 years after initial occupancy and 25 years after initial occupancy for buildings located within three miles of the coast.
- Requires inspections every 10 years after a building's initial "phase 1" inspection.
- Requires an additional, more intensive inspection, or a "phase 2 inspection," if a building's phase 1 inspection reveals substantial structural deterioration.
- Requires building officials to provide written notice to associations when buildings must be inspected.
- Requires phase 1 and phase 2 inspection reports be submitted to building officials and unit owners.
- Provides local building officials with ability to assess penalties for failing to comply with the requirements for phase 1 and phase 2 inspections.
- Requires condominiums and cooperatives to conduct structural integrity reserve studies every 10 years for buildings three stories or higher and prohibits waiver of funding for certain structural reserves.
- Requires developers to complete structural integrity reserve studies for every building three stories or higher, prior to turning over an association to the unit owners.
- Repeals the ability of developers to waive the collection of all types of reserve funds.
- Requires structural integrity reserve study inspections, and phase 1 and phase 2 inspections to be performed by licensed engineers or architects.
- Provides that structural integrity reserve studies, and phase 1 and phase 2 inspection reports are a part of an association's official records and must be provided to a potential purchaser of a unit.
- Provides that failing to perform a required structural integrity reserves study, or phase 1 or phase 2 inspection is breach of a board member or officer's fiduciary duty.
- Requires a community association manager to provide a milestone inspection report to a local building official, if the manager receives the report.

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