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# Long-awaited Florida Assignment of Benefits Reform Law Enacted



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**L**ong-overdue reforms aimed at addressing Florida's assignment of benefits (AOB) crisis became law July 1. Florida Governor Ron DeSantis signed House Bill 7065 on May 23. The enactment of the new law culminates a seven-year effort by the industry and reform advocates to combat fraudulent claims and litigation practices by unscrupulous contractors and plaintiffs' lawyers that have abused a system intended to protect policyholders.

AOB — the practice of assigning a policyholder's right to receive benefits or make claims under an insurance policy after a loss has occurred — has become commonplace in the Florida's homeowners' insurance space. In a typical homeowners AOB claim, a policyholder assigns his or her

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right to file a claim under a homeowners' insurance policy to a third-party restoration contractor who is hired by the homeowner to perform restoration or other repair services to the insured residence. The contractor then files a claim directly with the insurer that issued the policy. Often, the contractor performs the repairs and then files the claim without giving the insurer a meaningful opportunity to assess the loss. These claims lead to unnecessary repairs, inflated repair costs, and increased litigation costs, which, in turn, results in higher insurance premiums for insureds. Restoration contractors claim that AOBs facilitate speedy repairs and alleviate any need for the insured to be involved in the claims process.

Florida has become a hotbed for AOB abuse due to its unique legal landscape, which makes it easier for dishonest contractors to game the system and artificially inflate claims costs. There are two key factors that have caused Florida to become ground zero for AOB abuse:

- Florida's one-way attorneys' fee statute; and
- Florida courts have consistently held that the Florida Insurance Code permits insureds to assign their post-loss rights to make claims under insurance policies to third-parties without insurer consent.

Most states permit insureds to assign their rights under a homeowners' insurance policy after a loss has occurred without first securing the insurers' consent, which makes it difficult for insurers to assess the true extent of loss that has occurred and keep costs under control. However, Florida stands apart because of its one-way attorneys' fee statute, which is unique to the State.

In Florida, if an insured or beneficiary prevails against an insurer in a first-party lawsuit, the court may order the insurer to pay the plaintiff's reasonable attorneys' fees. The law, however, does not afford those same rights to insurers. Thus, if the insurer succeeds in defending the lawsuit, the contractor owes the insurer nothing. This one-sided fee shifting scheme, which was intended to even the playing field between insurers and insureds, incentivizes contractors and their attorneys to aggressively file lawsuits against insurers without having to risk the possibility of paying the insurers' legal costs if they fail.

As unnecessary and artificially inflated claims and lawsuits have increased costs for insurers, premium rates have also risen despite loss numbers trending in the opposite direction. The continued rise of premium rates, irrespective of loss trends, has resulted in a united call to action by both Florida's state officials and insurance regulators.



## Call For Legislative Reform

During the 2019 Florida Legislative Session, which ended May 3, Governor Ron DeSantis called on the Legislature to enact AOB reforms. Representative Bob Rommel introduced HB 7065, with the goal of reducing AOB abuse. The legislation establishes rights and obligations of both the assignees and assignors and, perhaps most important, incorporates an attorney fee structure in determining the fee amount awarded in suits by an assignee against an insurer.

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. On May 24, 2019, Governor DeSantis signed HB 337 into law.

In 2017, the Florida Financial Services Commission heard testimony from Commissioner David Altmaier 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

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a 28 percent increase in the average severity of property insurance claims, a 46 percent increase in frequency of water loss claims on residential policies, and a three-fold increase in the use of AOBs. Citizens Property Insurance Corporation 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, together with the catastrophic hurricane seasons of 2017 and 2018, pressured 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.



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## New AOB Requirements

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 business 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.

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Fee awards will now be determined as follows:

If the difference between the judgment obtained and the settlement offer is less than 25 percent 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 percent but less than 50 percent 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 percent 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 2022, 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.

There is hope that the 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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