

# Recent Florida Decision Requires Insurers to Provide “Mediation Notice” to Policyholders in Disputed Property Claims

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Section 627.7015, Florida Statutes, provides that a first party residential or commercial residential property insurer must notify its policyholders of their right to participate in a statutorily prescribed mediation program "at the time a first-party claim within the scope of this section is filed." If the insurer fails to do so, the insured cannot be compelled to participate in a contractual loss appraisal process as a precondition to suing the insurer for property damage. Recently, Florida's Third District Court of Appeal strictly construed the statute. In *Universal Property and Casualty Insurance Company v. Colosimo*, No. 3D11-180 (Fla. 3d DCA May 25, 2011), the court affirmed denial of an insurer's motion to stay the policyholder's lawsuit and appoint a neutral appraiser, even though the insured had invoked the appraisal process before filing suit. The insurer's failure to provide the statutory mediation notice waived the right to compel appraisal. The statutory mediation notice requirements are provided in Rule 69J-166.031 of the Florida Administrative Code (the "Code"), which provides that the notice must be provided within five days of the policyholder's "filing a first-party claim." To qualify as a "claim" there must be a dispute "between the insurer and the policyholder relating to a material issue of fact regarding the insurer's adjustment of the claim." The notice must be in at least 12-point type and must contain certain prescribed language. The starting date for the five-day period is not clearly defined. The Code requires a "dispute" pertaining to the amount of the loss at issue or coverage for the claim. Certain claims are exempted, e.g., a dispute where the insurer has reported allegations of fraud to the Department of Insurance, a claim where the insurer has not made any payment because the insurer concludes that the amount of loss is less than the policyholder's deductible, and a claim for which the "agreed facts" establish that there is no coverage. Strict adherence to the statutory and Code requirements is mandatory for an insurer to retain the right to compel the policyholder to submit its property damage claim to the appraisal process. Given the lack of clarity and the short time frame it is suggested that insurers prepare a

form notice of mediation, vetted for compliance with the statute and the Code, and provide the notice to all policyholders before conclusion of the adjustment process if the insurer has any reason to suspect that there may be a disagreement regarding the amount of the claim.

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