

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

June 22, 2011

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.

Authored By



Jeffrey Michael Cohen

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.