

Is the Broken Florida Homeowners Insurance Market Finally Fixed?

December 21, 2022

Between 2017 and 2022, [11 property and casualty insurers writing mainly homeowners insurance](#) in Florida, where they were domiciled, were [declared insolvent and placed in liquidation](#). This does not include any potential financial fallout from September's Hurricane Ian.

While much of the blame for these insolvencies falls squarely on the insurers themselves, rather than assign blame, we will discuss the very important reforms coming out of the just completed Special Session of the legislature. This was the second such Special Session in 2022 and brings with it hope on the part of Florida's residents, the insurance industry, Citizens Property Insurance Corporation (Citizens) and the business community generally that these reforms will finally alleviate the current crisis in the Florida insurance and reinsurance market.

As a starting point, it must be acknowledged that the insurers that failed were not the most financially solid insurers to begin with. Homeowners insurance in Florida is underwritten mainly by Florida domestic insurers, and many of those companies operate solely in Florida and with insufficient policyholder surplus for the risks being assumed. Thus, it is certainly possible that a significant part of the problem boils down to these companies simply trying to make a quick buck, ignoring the issue of storms that tend to hit mainly between the start of summer and the end of fall (June 1 – Nov. 30).

The changes made in the May 2022 Special Session were a start in fixing what has been ailing the insurance market, but such reforms will not help immediately—and immediate help is what is required. We, like most people involved with this insurance market, believe additional changes are necessary straightaway to help restore a more robust homeowners insurance market for consumers. Unless and until changes are made to this line of insurance in Florida, losses suffered by the

underwriters will continue to cause needless insolvencies, thereby socializing the losses through hits on Florida's Insurance Guaranty Fund.

In a nutshell, more highly capitalized insurers need to come into the market.

In the early 1980s, when a number of insurers became insolvent as a result of underwriting various types of debt instruments that defaulted on required interest and principal payments, the NAIC developed a Model Law requiring insurance carriers that wanted to insure the non-payment of monetary debts to establish a highly capitalized carrier devoted to insuring financial instruments (a monoline insurer). This model law has since been adopted by a number of large states, including Florida. The monoline insurance, known as financial guaranty insurance, requires the insurer to have significantly more policyholder surplus than is typically required for other lines in order to obtain a license.

The financial guaranty laws in various states' insurance laws also require a number of other safeguards to protect the solvency of the underwriting companies, none of which we are suggesting homeowners insurers be required to follow. Nor are we proposing carriers writing homeowners coverage do so as a monoline insurer. However, we do believe strongly that more capital needs to be required of insurers writing in the Florida homeowners market.

Shareholders and other investors, however, will not commit additional capital unless they can be assured that a reasonable return on their investment is possible. That will require the Florida Office of Insurance Regulation (OIR), their regulator, to allow carriers more freedom in the rate setting process. To do this, the OIR should focus more on insurer solvency and less on whether premiums appear high to the public.

The OIR should look at expected returns for insurers and work backward to the rates insurers want to charge. Rates and rate restrictions can always be adjusted up or down depending on an insurer's experience from year to year. Allowing for higher rates should also encourage reinsurers to assume part of insurers' risk, and we believe the pricing of such reinsurance should not come under scrutiny by the OIR.

The Latest Reforms

The changes suggested here should be helpful in re-establishing a functioning homeowners insurance market but only when accompanied by the changes agreed to in the recent Special Session. Those reforms include finally doing away with the assignment of benefits and the payment of one-way attorney fees.

Some changes to the assignment of benefits and payment of one-way attorney fees were made during the first Special Session last May. However, if the goal was to attract more capital into the market such that it can grow again, the insurance industry made it clear that those reforms didn't go far enough. Assignment of benefits and one-way attorney fees needed to be flat out prohibited because they encourage litigation, even as restricted by the May 2022 legislation.

The bill [signed into law by Governor DeSantis last week](#) accomplishes both of those objectives.

Another reform [in the legislation](#) providing some reason for optimism is the establishment of the Florida Optional Reinsurance Assistance program (the FORA program), which would sell a layer of \$1 billion of reinsurance at rates on line (premium to limit ratios) in [the 50-65 percent range, according to reports](#). However, some question whether this layer of state reinsurance will get any takers, as the price it would be sold at could be higher than the private reinsurance market's 2023 price.

One way to possibly resolve this issue would be to make participation in the FORA program mandatory in the same manner that is required of insurers participating in the Florida Hurricane Catastrophe Fund. Additional thought needs to be given as to the pricing so that it is neither competing with the private market nor is it prohibitively expensive to the direct insurers.

The legislation that has been enacted appears to be a good faith effort to make sure Citizens, the state's insurer of last resort, is not competing with the private market. The legislation addresses this issue by requiring policyholders of Citizens to switch to the private market if an insurance policy can be obtained from a private insurer and the premium is no more than 20 percent higher than that charged by Citizens. Hopefully the legislature will, if necessary, be willing to raise the 20 percent limit a bit in the future.

Although the just completed Special Session generally took a balanced approach in dealing with the issues affecting the homeowners insurance market by, for example, requiring insurers to take faster action on claims, it failed to address the time insureds have for filing claims after a storm. The legislation passed during the May Special Session changed the time from five years to two years. However, the time limit should be further reduced to one year from when the storm concludes. Property is a short-tail line of insurance, and homeowners should certainly know within one year whether they suffered any damage to their home.

Insurers need correct information to demonstrate how and why rates were developed, and timely reporting of losses is particularly important to making certain insurers' information is accurate. It is also important for the homeowner, who may be hit with a rate increase even though no damage was suffered.

The Florida legislature created the Reinsurance to Assist Policyholders Fund (the RAP Fund) along with a mandate that insurers participate in the Fund during the May Special Session. The RAP Fund provides an additional state-backed \$2 billion layer of reinsurance coverage for hurricane losses, and it will be around for at least another year. Perhaps if the FORA program works as hoped, the RAP Fund will become unnecessary.

Provided the FORA program is priced so that it does not end up being used as a market-altering tool that ends up setting a floor on reinsurance pricing in the private market, this could be very helpful to the insurance market by attracting best-in-class insurers and reinsurers into the Florida market. Moreover, additional insurers and reinsurers entering the market would decrease pressure on the state-run insurer, Citizens.

Another change not in the just enacted legislation but which could be imposed by the OIR through rulemaking is a limitation on how much insurance a homeowners insurer in Florida would be able to write in neighboring states that might be expected to be hit by the same storms impacting Florida. The limitations could be based on each insurer's capitalization and acceptable reinsurance. Although we assume rational, for-profit insurers already self-impose such an underwriting limitation, based on the number of insolvencies, it might be a good idea for the OIR to make sure this is being done.

We believe the now enacted legislation is a very good start. However, the OIR will need to step up and compel insurers to be capitalized sufficiently for the risks they underwrite. If it does, more reinsurers will be willing to enter the Florida market. After all, as part of their due diligence and underwriting, reinsurers will not be attracted to risks underwritten by thinly capitalized companies.

It would be well to remember President Ronald Reagan's observation regarding solutions to vexing problems: "There are no easy answers, but there are simple answers." The simple answer to re-establishing a vibrant home insurance market in Florida is to bring in more and higher quality insurance and reinsurance. That will require more capital on the part of underwriting companies, which in turn will require a more welcoming business environment through such things as permitting insurers to raise rates in an actuarially sound manner, in addition to the steps taken by the Florida legislature in this most recent Special Session to correct the explosion of litigation the state has experienced in recent years.

With the just enacted legislation, we believe Florida has taken a big step toward correcting most of the largest issues negatively impacting the Florida homeowners insurance market. Now it will be up to the OIR and the insurance industry to make certain these changes result in the market stabilization and, eventually, premium relief sought by all.

Reprinted with permission from *Carrier Management*.

Authored By



Robert B. Shapiro



Benjamin E. Stearns

Related Industries

[Property & Casualty Insurance](#)

©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.