

# Florida Legislature Passes Sweeping Assignment of Benefits Legislation

PROPERTY & CASUALTY INSURANCE | APRIL 26, 2019



**Andrew Daechsel**



**Beth A. Vecchioli**

Significant changes appear to be in the pipeline for Florida property insurers after the Florida legislature passed sweeping assignment of benefits (AOB) reform legislation last week. Beth Vecchioli, Senior Director Government Consulting at Carlton Fields, participated in the lobbying efforts on this bill. If the legislation is signed into law (Governor DeSantis has indicated it will be), it will amend Florida Statutes Section 627.422 and create Sections 627.7152 and 627.7153, effective July 1, 2019. As noted by Vecchioli in a recent interview with *P&C Specialist*, "Governor DeSantis has spoken publicly about the issue, and he agrees that AOB reform is good for the state of Florida and good for consumers."

This alert provides a high-level overview of some of the notable aspects of the legislation for Florida property insurers.

## Applicable to Residential and Commercial Property Insurance Policies

Sections 627.7152 and 627.7153 generally apply to assignments of post-loss benefits under residential and commercial property insurance policies "to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property." The legislation refers to instruments effectuating such assignments as "assignment agreements." The person receiving the assignment is the "assignee."

## Presuit Notice and Negotiation Requirements

Under Subsection 627.7152(9), at least 10 business days before filing suit under the policy, the assignee must provide the insurer with: (1) a detailed invoice or estimate; and (2) a notice of intent to initiate litigation that specifies the damages in dispute, the amount claimed, and the assignee's presuit settlement demand.

The insurer is required to respond to the notice within 10 business days by either: (1) making a presuit settlement offer; or (2) requiring the assignee to participate in appraisal or another method of alternative dispute resolution under the policy. Additionally, the statute states, "An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code."

## Changes to Fee-Shifting Framework

Subsection 627.7152(10) significantly changes the fee-shifting framework in AOB suits, providing the opportunity for insurers to recover their attorneys' fees under certain circumstances. As noted by Beth Vecchioli in commentary provided to *Law360*, these changes seek to "level the playing field so everyone has skin in the game."

The new fee-shifting framework is as follows:

- If the damages judgment (excluding interest) obtained by the assignee is less than 25 percent of the "disputed amount" (i.e., the difference between the insurer's presuit settlement offer and the assignee's presuit settlement demand), the insurer recovers its reasonable attorneys' fees.
- If the damages judgment is between 25 percent and 50 percent of the disputed amount, no party recovers attorneys' fees.
- If the damages judgment is 50 percent or more of the disputed amount, the assignee recovers its reasonable attorneys' fees.

However, if the insurer does not inspect the property or authorize repairs within 7 days after the first notice of loss, the insurer waives its right to recover attorneys' fees (subject to certain exceptions).

## Requirements for Assignment Agreements to Be Valid and Enforceable

Subsection 627.7152(2) sets forth a number of requirements that assignment agreements executed on or after July 1, 2019, must meet to be valid and enforceable. Among other things, assignment agreements must now include:

- An itemized, per-unit cost estimate of the services to be performed.
- A provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer within the earlier of (a) 3 business days after the agreement is executed or (b) when the work begins.

## Limitations on Assignment Agreements in Urgent or Emergency Circumstances

Under Subsection 627.7152(2)(c), "[i]f an assignor acts under an urgent or emergency circumstance to protect property from damage and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage to the property, an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or 1 percent of the Coverage A limit under such policy." As used in this provision, "urgent or emergency circumstance" means "a situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage."

## Requiring Assignees to Submit to Examinations Under Oath, Appraisal, and Other ADR

Subsections 627.7152(4) and (5) state that, as a condition precedent to filing suit under the policy, an assignee must do the following if required by the insurer:

- Submit to examinations under oath or provide recorded statements that "are reasonably necessary" regarding the services provided, the cost of the services, and the assignment agreement.
- Participate in appraisal or other alternative dispute resolution methods in accordance with the terms of the policy.

## New Reporting Requirements

Subsection 627.7152(12) directs the Office of Insurance Regulation to require insurers to report by January 30, 2022, and each year after, certain data about residential and commercial property insurance claims paid in the prior year under assignment agreements.

## Permitting Policies That Restrict AOBs

On and after July 1, 2019, insurers will be able to issue policies that restrict, in whole or in part, the ability of insureds to enter into assignment agreements. However, the insurer must also offer a policy that provides the same coverage without such restrictions, and the insurer must charge a lower premium for policies that contain restrictions than policies with no restrictions. The insurer must also meet other requirements, such as notifying the insured annually of the different options it offers for policies with and without restrictions. As noted by Beth Vecchioli in her commentary to *Law360*, "This concept was originally developed by the [Florida] House under the theory that it is better for consumers to have more options than less. They recognized that they couldn't completely restrict all assignments. This is a smart, consumer choice-driven option, allowing insurers to offer both options."