Getting Claims Paid: Navigating the Ins and Outs of a Property Insurance Claim

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All Risk Policy – What is it?

- Property insurance that covers loss arising from any fortuitous cause except those that are specifically excluded.
- All risk policies contrast 'perils coverage', which only applies to losses from causes listed in the policy.
- Insurance carriers have started to change the term to 'open perils' or 'special perils', in order to limit coverages.

All Risk Policy

The "All Risk" policy states as follows:

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES

We insure against risk of direct loss to property described in Coverage **A** and **B** only if that loss is a physical loss to property.

All Risk Policy

COVERAGE A – DWELLING

1. **Dwelling.** ***We*** cover the ***dwelling*** and materials and supplies located on or adjacent to the ***residence premises*** for use in the construction, alteration, or re pair of the ***dwelling*** or other structures on the ***residence premises***.
2. **Other Structures.** ***We*** cover other structures on the ***residence premises***, separated from the ***dwelling*** by clear space. Structures connected to the ***dwelling*** by only a fence, utility line, or similar connection are considered to be other structures.

COVERAGE A – DWELLING

We will pay for accidental direct physical loss to the property described in Coverage A, unless the loss is excluded or limited in **SECTION I – LOSSES NOT INSURED** or otherwise excluded or limited in this policy. However, loss does not include and ***we*** will not pay for, any ***diminution in value***.

Case Law on Cause of Loss

An all-risks policy provides coverage for "all losses not resulting from misconduct or fraud unless the policy contains a specific provision expressly excluding the loss from coverage." Hudson v. Prudential Prop. & Cas. Ins. Co., 450 So.2d 565, 568 (Fla. 2d DCA 1984) (contrasting an all-risks policy from a specific peril policy which insures only against named risks). Consistent with the jury instruction requested by Mejia in this case, an insured claiming under an all-risks policy has the burden of proving that the insured property suffered a loss while the policy was in effect. The **burden then shifts to the insurer to prove that the cause of the loss was excluded** from coverage under the policy's terms

Mejia v. Citizens Property Insurance Corp., 161 So.3d 576, 579 (Fla. 2nd DCA 2014)

In short, if the policy does not expressly exclude the damages, the damages are covered.

Proving the Claim

- Policy in Full Force and Effect
- Direct Physical Loss Suffered During Policy Period
- No Exclusions Apply
- All Conditions Met/Waived
- Damages

Policy in Full Force and Effect and Loss During Policy Period

- Policy in Full Force and Effect
- Direct Physical Loss Suffered During Policy Period
- No Exclusions Apply
- All Conditions Met/Waived
- Damages

Policy Period: 12 Months
Effective Dates: JUL 19 2020 to JUL 19 2021
The policy period begins and ends at 12:01 am standard time at the residence premises.

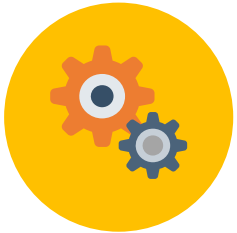
Burden of Proof

Burden of proof – " the insured is only required to prove that damage occurred during the policy period."

"The underlying case concerns water that entered the insured's home causing mold growth and damage to the interior. It is undisputed that the insured's insurance policy with Security First is an all-risk policy. With an all-risk policy, ***the insured is only required to prove that damage occurred during the policy period.*** *Jones v. Federated Nat Ins Co*, 235 So 3d 936, 941 (Fla 4th DCA 2018). ***Subsequently, the burden shifts to the insurer to prove that one of the policy exclusions bars coverage.*** Id. If the insurer does not meet its burden, the insurer must cover the loss"

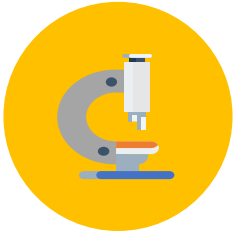
SecFirst Ins Co v. Czelusniak, 305 So 3d 717, 718 (Fla 3rd DCA 2020) (emphasis added)

Use of Experts



What is their purpose?

To have an educated, trained, and experienced professional render an opinion on a specific topic and its cause of origin.



What can home insurance experts specialize in?

- Mold/bacteria lab analysis
- Engineering
- Architecture, etc.

When are experts necessary?

When the issue is beyond common understanding for an average person.

Damage Assessment Methods and Utilitie

Owner Interview:
What did you see?
When did you see it?

Available Documents:
Home/Building Inspection Report
Property Maintenance Records
Photographs

Historical Aerial Photography

Roof System History:
Installation, Maintenance, Repairs

Building Permit History

Property Site Visit:
Building Exterior
Building Interior
Attic Space
Roof Surface

Conditions – Policyholder Duties After Loss

C. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

- Give prompt notice to us or our agent;
- To the degree reasonably possible, retain the damaged property; and Allow us to inspect, all damaged property prior to its removal from the "residence premises."
- Protect the covered property from further damage. If emergency measures are required, the following must be performed: Take reasonable emergency measures that are necessary to protect the covered property from further damage
- Keep an accurate record of repair expenses;
- Cooperate with us in the investigation of a claim;
- Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
- As often as we reasonably require:
    - Show us the damaged property and the cause of loss
    - Provide us with records and documents we request and permit us to make copies
    - Submit to recorded statements / Submit to Examination Under Oath
    - Permit us to take samples of damaged and undamaged property for inspection, testing and analysis;
- Send to us, within 60 days after our request, your signed, sworn proof of loss.

Contract Interpretation Principles

Under Florida law, an insurance policy is treated like a contract, and therefore ordinary contract principles govern the interpretation and construction of such a policy." *Graber v. Clarendon Nat'l Ins Co*, 819 So 2d 840, 842 (Fla 4th DCA 2002).

Policy terms are given their plain and ordinary meaning and read in light of the skill and experience of ordinary people." *Penzer v. Transp Ins Co*, 545 F.3d 1303, 1306 (11th Cir. 2008).

Ambiguous policy provisions are construed strictly against the insurer that drafted the policy and liberally in favor of the insured. *U.S. Fire Ins Co v. J.S.U.B., Inc*, 979 So 2d 871, 877 (Fla 2007).

Reasonable Expectations of the Insured

- The doctrine of reasonable expectation is a principle that relies on the "'reasonable expectations of the insured" as a guide for insurance contract interpretation

Notice Requirement for Suits Arising Under a Property Insurance Policy under 627.70152

Condition Precedent: Claimants must provide DFS with written notice of intent to initiate litigation on a form provided by DFS and DFS will provide notice to the insurers via e-mail.

Timing: The notice must be given at least 10 business days before filing suit, but may not be given before the insurer makes a coverage determination. The notice must also be served within the statute of limitation.

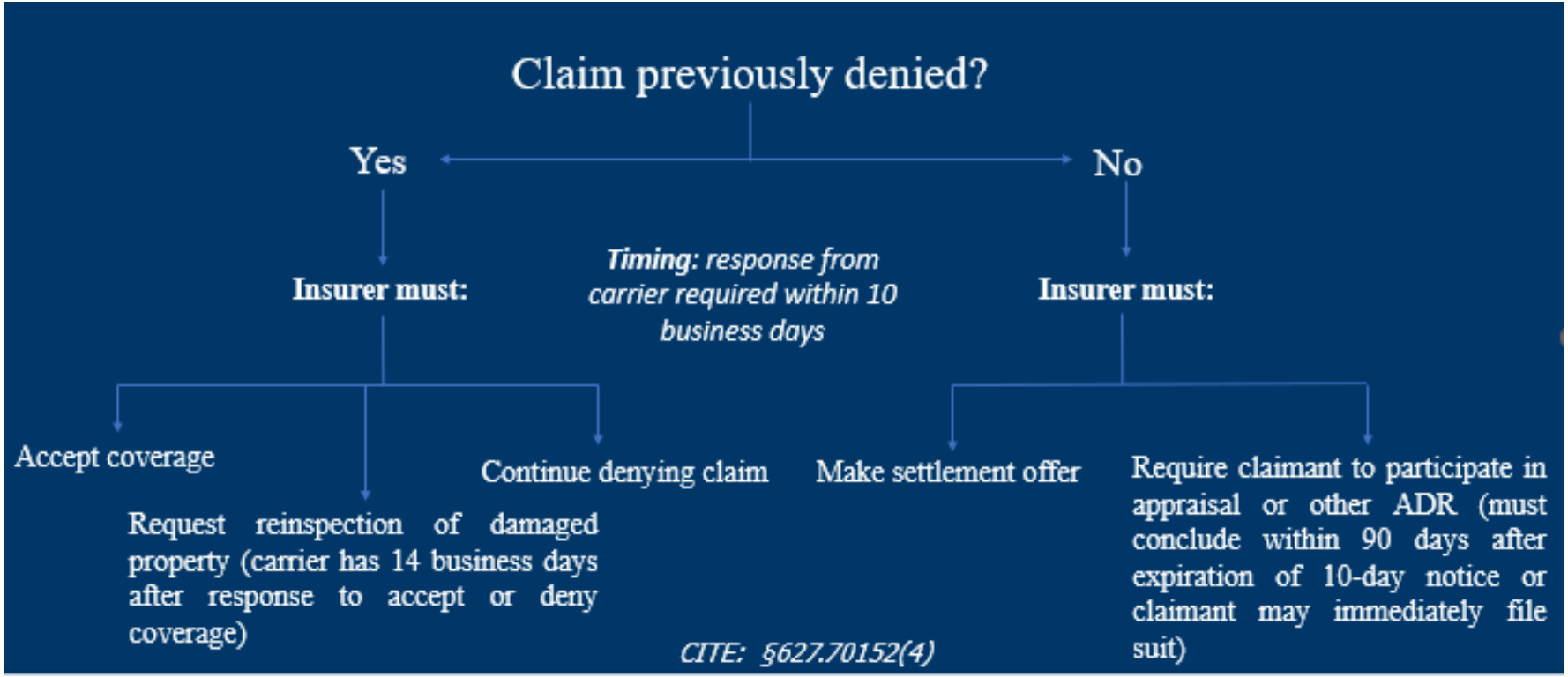
Substance The notice must state with specificity **all** of the following:

1. That the notice is provided pursuant to §627.70152(3);
2. The insurer's acts/omissions giving rise to the suit (which may include a denial of coverage);
3. That a copy of the notice was provided to the claimant;
4. If notice follows claim denial, an estimate of damages, if known;
5. If notice follows acts/omissions other than claim denial, then both are required:
   - The presuit settlement demand, which must itemized the damages, attorney fees & costs; and
   - The disputed amount.

- Supporting documentation *may* be provided with the notice.

CITE §627.70152(3)

Insurance Carrier's Response to Notice Requirement



ADR: Homeowners Insurance Appraisal

What is it?: A written, independent assessment of a property's replacement cost, not its selling price on the market, done by an appraiser or relevant expert.

When can someone get an insurance appraisal?: When property is purchased, after damage to get replacement cost, have rare/unique valuables in your home, & to ensure you are not over or underinsured.

Who can order an insurance appraisal?: The homeowner, a lender's agent, or your insurance company.

What about disagreements?: If homeowners disagree with the insurance company's appraisal or settlement amount for a claim, both parties can choose independent appraisers to do re-evaluations. Depending on their policy appraisal provisions, parties may submit demands to each other, arbitratrate, or litigate.

Recent Legislative Changes to Florida

Property Insurance Law

489.147 Prohibited Property Insurance Practice

Chapter 489 Contracting
effective May 26, 2022

(1) As used in this section, the term:

"Prohibited advertisement" means any written or electronic communication by a contractor which encourages, instructs, or induces, a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, *if such communication does not state* in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment for any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails

489.147 Prohibited Property Insurance Practices cont.

effective May 26, 2022

"**Soliciting**" means contacting:

1. In person;

2. By electronic means, including, but not limited to, e-mail, telephone, and any other real-time communication directed to a specific person; or

3. By delivery to a specific person

489.147 Prohibited Property Insurance Practice

effective May 26, 2022

(2) A **contractor** may not directly or indirectly engage in any of the following practices:

(a) *Soliciting a residential property owner by means of a prohibited advertisement*

(b) *Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:*

1. *Allowing the contractor to conduct an inspection of the residential property owner's roof or*

2. *Making an insurance claim for damage to the residential property owner's roof*

(c) Offering, delivering, receiving, or accepting any compensation, inducement, or reward, *for the referral* of any services for which property **insurance** proceeds are payable. Payment by the residential property owner or **insurance** company to a **contractor** for roofing services rendered does not constitute compensation for a referral.

(d) *Interpreting policy provisions* or advising an **insured** regarding coverages or duties under the **insured's** property **insurance** policy or adjusting a property **insurance** claim on behalf of the **insured**, unless the **contractor** holds a license as a public adjuster pursuant to part VI of chapter 626.

489.147 Prohibited Property Insurance Practices cont'd.

effective May 26, 2022

2(e) Providing an insured with an agreement authorizing repairs *without providing a good faith estimate of the itemized and detailed cost of services and materials* for repairs undertake pursuant to a property insurance claim. A contractor does not violate this paragraph if, as a result of the process of the insurer adjusting a claim, the actual cost of repairs differs from the initial estimate.

3. A contractor who violates this section is subject to disciplinary proceedings as set forth in s. 489.129. A contractor may receive up *to a $10,000 fine for each violation of this section*

4. For the purposes of this section:

(a) The acts of any person on behalf of a contractor, including, but not limited to, the acts of a compensated employee or a nonemployee who is compensated for soliciting, shall be considered the actions of the contractor.

(b) An unlicensed person who engages in an act prohibited by this section is guilty of unlicensed contracting and is subject to the penalties set forth in s. 489.13. Notwithstanding s. 489.13(3), an unlicensed person who violates this section may be fined up to $10,000 for each violation.

5. A contractor may not execute a contract with a *residential property* owner to repair or replace a roof without including a notice that the contractor may not engage in the practices set forth in paragraph (2)(b). If the contractor fails to include such notice, the residential property owner may void the contract within 10 days after executing it.

FLORIDA 2022 SESSION LAW SERVICE

Chapter 2022-2-D
C.S.S.B. No. 2-D
effective May 26, 2022

624.1551. Civil remedy actions against property insurers

Notwithstanding any provision of s. 624.155, a claimant must establish that the property insurer breached the insurance contract to prevail in a claim for extracontractual damages under s. 624.155(1)(b).

Interest Now Required to be Paid
When Undisputed Payment is Made

Florida Statute 627.7142
Effective May 26, 2022

In the "Homeowner Claims Bill of Rights":

"4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or the undisputed portion of your claim is paid."

627.70132. Notice Of Windstorm or Hurricane Claim

Effective: June 1, 2011 thru June 30, 2021

627.70132. Notice of windstorm or hurricane claim

A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, for loss or damage caused by the peril of **windstorm or hurricane** is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy ***within 3 years after the hurricane first made landfall or the windstorm caused the covered damage*** For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Fla.Stat. §627.70132 (effective 6/1/2011 to 6/30/21) (emphasis added).

Change to First Notice Claim Requirement on All Claims

627.70132. Notice of Property Insurance Claim

Effective: July 1, 2021 thru March 1, 2023

(1) As used in this section, the term:

(a) "**Reopened claim**" means a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage *previously disclosed to the insurer*.

(b) "**Supplemental claim**" means a claim for additional loss or damage from the same peril which the insurer has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

(2) A **claim or reopened claim**, but not a supplemental claim, under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer for loss or damage caused by **any peril** is barred **unless notice of the claim** was given to the insurer in accordance with the terms of the policy ***within 2 years after the date of loss***. A **supplemental claim** is barred unless notice of the supplemental claim was given to the insurer in accordance with the terms of the policy **within 3 years** after the date of loss.

(3) For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events, *the date of loss is the date that the hurricane made landfall or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration*

Change to First Notice Claim Requiremer
on All Claims: Summary

1. Changes first notice of loss requirement to two years on all perils including hurricanes.

This is now amended again via Senate Bill 2-A…

2. Defines “re-opened claim” to mean either a scope and unit cost dispute or “supplemental claims” to mean hidden damages that were previously unknown but associated with the peril. Supplemental claims would be subject to a three-year notice requirement. This section will also apply to surplus lines carriers.

More Changes to Florida Property Insurance Law

Senate Bill 2-A– Implementation of Items Relating to Prompt Payment of Claims, Electronic Methods of Claims Investigations, Claims Records, and Claim Filing Deadlines

On December 16, 2022, Governor Ron DeSantis signed Senate Bill 2-A(SB 2-A) into law. This comprehensive bill provides a number of regulatory changes, which includes amending important property insurance deadlines that affect the claims process.

Effective March 1, 2023, the bill also requires insurers to more promptly communicate with insureds, investigate, and pay valid claims.

More Changes to Florida Property Insurance Law: Senate Bill 2A

Revisions to Prompt Pay Laws for Property Insurance 627.70131

Effective: March 1, 2023

SB 2-A amends section 627.70131, Florida Statutes (F.S.), which sets forth requirements for insurers to timely communicate with consumers, investigate a claim, and pay or deny a claim.

Reduces the time for insurers to conduct a physical inspection from 45 days to 30 days and applies this provision to hurricane claims;

Reduces the time for insurers to acknowledge a claim or respond to communication from 14 days to 7 days;

Requires insurers to provide to policyholders a copy of any adjuster's report estimating the loss within 7 days after it is created; and

Reduces the time for insurers to begin an investigation, if reasonably necessary, from 14 days to 7 days after the proof-of-loss statement is received;

Reduces the time for insurers to pay or deny a claim, or a portion of the claim, from 90 days to 60 days, unless the delay is caused by factors beyond the control of the insurer.

More Changes to Florida Property Insurance Law: Senate Bill 2

Revisions to Prompt Pay Laws for Property Insurance 627.70131

Effective: March 1, 2023

The bill allows OIR to extend the deadlines that are required of insurers under the prompt pay laws for up to 30 additional days if the failure is caused by "factors beyond the control of the insurer," which is newly defined in section 627.70131(5)(a), F.S., as any of the following events:

A breach of security that must be reported under s. 501.171(3); or

A state of emergency declared by the Governor under s. 252.36;

An information technology issue.

More Changes to Florida Property Insurance Law: Senate Bill 2

Revisions to Prompt Pay Laws for Property Insurance 627.70131

Effective: March 1, 2023

Per section 627.70131(8), F.S., the requirements of the section may be tolled as follows:

During the pendency of any mediation or alternative dispute resolution proceeding provided for in the insurance contract. The tolling period ends upon completion of the proceeding; or

Upon the failure of a policyholder or a policyholder's representative to provide material claims information requested by the insurer within 10 days after the request was received until the insurer receives such information. This tolling period applies only to requests sent by the insurer to the policyholder or a policyholder's representative at least 15 days before the insurer is required to make a payment or deny the claim.

More Changes to Florida Property Insurance Law: Senate Bill 2

Claim Filing Deadlines

Effective: December 16, 2022

SB 2-A amends section 627.70132(2), F.S., which establishes claim filing deadlines for policyholders. Effective upon becoming law on December 16, 2022, the bill:

1. Reduces the deadline for policyholders to report a new or reopened claim from two years to one year after the date of loss; and

2. Reduces the deadline for policyholders to report a supplemental claim from three years to 18 months after the date of loss.

Change to First Notice Claim Requirement on All Claims

627.70132. Notice of Property Insurance Claim

Effective: December 16, 2022

(1) As used in this section, the term:

(a) "**Reopened claim**" means a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage *previously disclosed to the insurer*.

(b) "**Supplemental claim**" means a claim for additional loss or damage from the same peril which the insurer has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

(2) A **claim or reopened claim**, but not a supplemental claim, under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any peril is barred unless notice of the claim was given to the insurer in accordance with the terms of the policy *within 1 year after the date of loss*. A **supplemental claim** is barred unless notice of the supplemental claim was given to the insurer in accordance with the terms of the policy **within 18 months after the date of loss**.

(3) For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events, *the date of loss is the date that the hurricane made landfall or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration*

SPECIAL PROVISIONS – FLORIDA
FOR USE WITH HO 00 03

CONDITIONS

Duties After Loss

Give ***prompt notice*** to us or your insurance agent.

Claim, Supplemental Claim or Reopened Claim

A claim or reopened claim is barred unless notice of the claim is given to us in accordance with the terms of the policy within 2 years after the date of loss.

(See Form no. CITHO-3 02 22, pg. 26-29) (emphasis added).

Notably, the policy language tracks almost the exact language of Florida Statute 627.70132

Suit Against Us

No action can be brought against us; unless:
a. Notice of the loss has been given to us;
b. There has been full compliance with all of the terms of this Policy applicable to an "insured";
c. If there is failure to agree on a settlement regarding the loss, prior to filing suit, we must be notified in writing of your disagreement; and
d. is started within 5 years after the of the loss.
action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within five (5) years after the date of loss.

HOMEOWNERS 3 SPECIAL FORM

CITHO-3 02 22

A. Insurable Interest And Limit of Liability

Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

1. To the "insured" for more than the amount of the "insured's" interest at the time of loss; or
2. For more than the applicable limit of liability.

B. Duties After Loss

An "assignment agreement" does not change the obligations to perform the duties required under this Policy.

1. Duties Of An "Insured"

   In case of a loss to covered property, we have no duty to provide coverage under this Policy to you or any other "insured" seeking coverage, if there is failure to comply with any of the following duties. These duties must be performed either by you, any other "insured" seeking coverage, or by a representative of either.

a. Give prompt notice to us or the insurance agent shown in the Declarations.

Except for reasonable emergency measures taken under SECTION **I** – Property Coverages **F.** Reasonable Emergency Measures, there is no coverage for repairs that begin before the earlier of:

(1) 72 hours after we are notified of the loss;

(2) The time of loss inspection by us; or

(3) The time of other approval by us;

HOMEOWNERS 3 SPECIAL FORM

CITHO-3 02 22

U. Claim, Supplemental Claim, Or Reopened Claim

1. A claim or reopened claim is barred unless notice of the claim is given to us in accordance with the terms of the Policy within 2 years after the date of loss.

   A reopened claim means a claim that we have previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to us.

2. A supplemental claim is barred unless notice of the supplemental claim is given to us in accordance with the terms of the Policy within 3 years after the date of loss.

   A supplemental claim means a claim for additional loss or damage from the same peril which we have previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to us.

3. For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events, the date of loss is the date that the hurricane made landfall or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration.

Laquer v. Citizens Property Insurance Corp., 167 So.3d 470 (Fla. 1st DCA 2015)

Prompt Notice – Two-step Analysis

The Court held that a **two-step analysis** begins with a reading of the insurance policy at issue. The policy required "prompt" notice of a loss to covered property: "[i]n case of a loss to covered property, you must ... Give prompt notice to us, or your producer, who is to give immediate notice to us .... [and][s]end to us, within sixty (60) days after our request, your signed, sworn proof of loss." "Prompt" is undefined in the policy. It is well settled, however, that "prompt" and other comparable phrases, like "immediate" and "as soon as practicable," do not require instantaneous notice. *Cont'l Cas Co v. Shoffstall*, 198 So.2d 654, 656 (Fla. 2d DCA 1967).

Instead, Florida courts have interpreted these phrases to mean **that notice should be provided "with reasonable dispatch and within a reasonable time in view of all of the facts and circumstances of the particular case"** *Yacht Club on the Intracoastal Condo Ass'n Inc v. Lexington Ins Co*, 599 Fed.Appx. 875, 879 (11th Cir. 2015) (citation omitted). **"Notice is necessary when there has been an occurrence that should lead a reasonable and prudent [person] to believe that a claim for damages would arise."** *Ideal Mutual Ins Co, v. Waldrep*, 400 So.2d 782, 785 (Fla. 3rd DCA 1981). **Thus, the issue of whether an insured provided "prompt" notice generally presents an issue of fact.** *LoBello v. State Farm*, 152 So.3d 595, 600 (Fla. 2nd DCA 2014).

Hendry v. Grange Mutual Casualty Company, 383 F.2d 222 (6th Cir. 1967(applying Florida law)

What is a reasonable time for giving notice of a loss is ordinarily a question for the jury?

Gonzalez v. United States Fidelity & Guaranty Company, 441 So.2d 681 (Fla. 3rd DCA 1983).

Sims v. American Hardware Mutual, 423 So.2d 21 (Fla. 2nd DCA 1982).

Courts Found Late Notice

- *1500 Coral Towers Condo v. Citizens Property*, 112 So. 3d 541, 543–44 (Fla. 2d DCA 2014) (upholding summary judgment on the insured's failure to give "prompt" notice of roof damage caused by a hurricane where the insured was aware of roof damage one month after the hurricane, but waited more than four years to report the damages because it was unsure if the damages would exceed the policy deductible.)

- *Yacht Club v. Lexington Ins. Co.*, 599 Fed. Appx. 875, 879 (11th Cir. 2015) (explaining that "prompt" notice is generally a jury question, but "Florida courts have interpreted 'prompt' differently when damage is caused by a known event, such as a hurricane, or when the insured was on-site when readily apparent problems developed.")

Courts Found Late Notice

- *Latele Tele, C.A. v. Telemundo Commc'ns Grp., LLC*, No. 12-22539-CIV, 2014 WL 7272974, at *7 (S.D. Fla. Dec. 18, 2014) ("Rhetoric and attorney argument are no substitute for record evidence").

- *Kendall Lakes Towers Condo. Assoc., Inc. v. Pacific Ins. Co., Ltd.*, No. 10-24310-CIV, 2012 WL 2664388, at *2 (S.D. Fla. Jan. 30, 2012) ("[A]n insured's good faith belief that the damage is trivial or not covered by the policy is insufficient to justify non-compliance with the policy's notice provision.") ("the insured must give notice of a loss that implicates a *potential* claim without waiting for the full extent of the damage to become apparent") (emphasis original)

Lehrfield v. Liberty Mut. Fire Ins. Co., 396 F. Supp. 3d 1178 (SD. Fla. 2019

Prompt notice – "there is no 'bright-line' rule under Florida law setting forth a particular period of time beyond which notice cannot be considered 'prompt'"

Facts:

1. DOL: April 5, 2017, accidental water discharge discovered under sink
2. Repaired same day.
3. DON: December 8, 2017 (247 days post loss) claimed submitted through a Public Adjuster.
4. Insurer inspection 6 days later; found heavy rot, decay, mold, warping, and a large hole under sink.
5. Denial on December 14, 2017.

Lehrfield v. Liberty Mut. Fire Ins. Co., 396 F. Supp. 3d 1178 (Fla. SD 2019)

The Court held

-There was no evidence offered to explain the delay
-Under Florida Law, "prejudice is properly resolved on summary judgment where an insured fails to present evidence sufficient to rebut the presumption" To carry this burden, an ***insured may submit evidence creating a dispute of fact*** as to: "**(a)** whether better conclusions could have been drawn without the delay" in providing notice, "**(b)** whether those conclusions could have been drawn more easily," "**(c)** whether the repairs to the affected areas that took place in the interim would complicate an evaluation of the extent of the damage or [the insured's] efforts to mitigate its damages," or **(d)** whether "an investigation conducted immediately following the occurrence would not have disclosed anything materially different from that disclosed by the delayed investigation." *Id.* at 849-50; *Yacht Club v. Lexington Ins Co*, , 599 F. App'x 875, 881-82 (11th Cir. 2015).

Lehrfield v. Liberty Mut Fire Ins Co, 396 F. Supp. 3d 1178, 1184 (Fla. S.D. 2019).

Questions?

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