

# Florida Property Insurance Reform Update

Anderson Kill & Olick, P.C.

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Interruption Losses – September 15, 2011

Presented by:

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*“When the State Legislature is in session no one is safe!”*

FAPIAs first registered lobbyist, Mr. Donald Gifford Esq.

*“During my term as president of this State Trade Association and from the Insurance Company’s side, Florida is the most challenging state in the United States. The laws change every year and it is a very contentious environment.”*

Ms. Lynn McChristian, Insurance Information Institute.

# Introduction

- Florida Senate Bill 408 (78 pages)
- Sweeping changes to property insurance laws reversing many previous initiatives
- Insurance lobby induced reforms
- Will create significant impact at all levels



# Goal vs. Reality

## Stated Legislative Goals

- Address cost drivers
- Stabilize and strengthen the market
- Attract new insurers
- Private vs. Govt. solution

## Reality

- Policyholder will be penalized
- Unintended consequences



# Filing Deadlines

- Statute of Limitations (SOL) runs from the “date of loss” rather than the date of breach (when carrier denies or makes offer)
- SOL shortened from 5 years to 2 years on sinkhole claims and 3 years on hurricane claims

## Result

- Fewer claims will be filed. The real goal of this legislation



# Insurance Rates

- Premiums can increase up to 15% a year without regulatory oversight to cover reinsurance costs... (plus a profit margin on the costs!). This is over and above regular rate increases!
- Allows insurers to raise consumers' rates without approval from regulators to cover advertising costs and agent commissions.
- Allows insurance companies to provide “additional or supplementary” information to the state in rate-setting cases without requiring the top officers at the insurance company to certify that the data backing up their claims for rate increases is truthful.

## Result

- Policyholders pay more for less coverage



# Citizens Rates

Every policyholder required to sign the following:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY **COULD BE SUBJECT TO SURCHARGES**, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE **SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM**, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.
2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

## Result

- Policyholder is left wide open to draconian rate increases



# RCV Holdback Reinstatement

- **Old Law:** Legislature required the insurance companies to pay the full replacement cost of your loss up front with no depreciation/holdback of your money.
- **New Law:** In the event of a loss for which a dwelling is insured for replacement costs: the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.



# RCV Holdback Process

- The insurer may also offer coverage under which the insurer may limit the initial payment to the actual cash value of the personal property to be replaced, require the insured to provide receipts for the purchase of the property financed by the initial payment, use such receipts to make the next payment requested by the insured for the replacement of insured property, and continue this process until the insured remits all receipts up to the policy limits for replacement costs. The insurer must provide clear notice of this process before the policy is bound. A policyholder must be provided an actuarially reasonable premium credit or discount for this coverage. The insurer may not require the policyholder to advance payment for the replaced property.

## Result

- Puts burden on cash strapped homeowners
- Recovering the depreciation/holdback portion of your loss later could be problematic – ACV a subjective term
- Mortgage holders of foreclosed homes will hesitate to repair a property that has depreciated



# RCV Holdback Personal Property

- In the event of a loss for which personal property is insured for replacement costs: the insurer must offer coverage under which the insurer is obligated to pay the replacement cost without reservation or holdback for any depreciation in value, whether or not the insured replaces the property.



# What Sinkhole Coverage?

Two types of sinkhole coverage in Florida:

1. Catastrophic Ground Cover Collapse
2. Sinkhole Loss

• “Catastrophic ground cover collapse” means geological activity that results in all the following:

1. The abrupt collapse of the ground cover;
2. A depression in the ground cover clearly visible to the naked eye;
3. Structural damage to the covered building, including the foundation; .....and
4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.



# Sinkhole Definition Changes

- Redefines a **sinkhole loss** to “structural collapse”
- Sinkhole activity means settlement or systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.



# What Sinkhole Coverage?

Sinkhole Loss = Structural damage means that a building has experienced the following:

1. Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the Florida Building Code;
2. Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceeds one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;
3. Damage that results in listing, leaning, or buckling of the exterior load bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;



# What Sinkhole Coverage?

Sinkhole Loss = Structural Damage continued:

4. Damage that results in the building, or any portion of the building containing primary structural members or primary structural systems, being significantly likely to imminently collapse because of the movement or instability of the ground within the influence zone of the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or
5. Damage occurring on or after October 15, 2005, that qualifies as —substantial structural damage as defined in the Florida Building Code.
  - (d) Primary structural member means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure.
  - (e) Primary structural system means an assemblage of primary structural members.



# Sinkhole Coverage Issues

- The insurer may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building. Citizens no longer covers sinkhole damage to driveways, patios, pool decks, sidewalks etc. that are directly or indirectly caused by sinkhole starting January 2012
- Any claim, including, but not limited to, initial, supplemental, and reopened claims under an insurance policy that provides sinkhole coverage 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 policyholder knew or reasonably should have known about the sinkhole loss.



# Sinkhole Coverage Issues

- Insurers can require inspection before coverage is issued and deny coverage with pre-existing damage
- Policyholders must pay up to half the cost of testing if insurer denies claim and their engineer determines there is no sinkhole
- Requires policyholders to repair damage according to the carrier's expert recommendations
- If insurer has paid for a loss, they must file a report with the County Clerk of Court. Any reports policyholder has commissioned must also be filed and recorded



# The Citizens Sinkhole

- Glide Path Exemption: Price of sinkhole insurance coverage no longer limited to 10% annual increase
- Specifically states the Legislature intends to reduce sinkhole disputes & litigation, a standard that could be applied to pending claims

## Result

- Unaffordable Sinkhole insurance with rate increases up to 2,000%
- Policyholders lose their option to properly repair home



# Who Can Assess a Sinkhole?

- Neutral evaluation is available to either party if a sinkhole report has been issued. Neutral Evaluation process is specifically defined.  
**Note: Courts have deemed this unconstitutional and it is currently under appeal**
- Neutral evaluator is defined as a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process and who is determined by the department to be fair and impartial.



# Sinkhole Loss Claims Process

When a sinkhole loss occurs:

1. Insured must pass the structural damage threshold or insurer identifies cause of damage
2. If structural damage exists but insurer is unable to determine cause of loss, the insurer hires engineer or geologist with costs paid for by insurer
3. Engineer/Geologist confirms or denies existence of sinkhole
4. Insurer provides notice to policyholder with recommendation for repairs if covered



# Policyholder Demand for Testing

If the insurer denies the claim without testing:

- The policyholder's demand for testing must be communicated to the insurer in writing within 60 days after the policyholder's receipt of the insurer's denial of the claim.
- The policyholder shall pay 50 percent of the actual costs of the analyses and services provided under ss. 627.7072 and 627.7073 or \$2,500, whichever is less.
- The insurer shall reimburse the policyholder for the costs if the insurer's engineer or geologist provides written certification pursuant to s. 627.7073 that there is sinkhole loss.
- **Result:** Coverage is an illusion



# Sinkhole Repair

- If a covered building suffers a sinkhole loss or a catastrophic ground cover collapse, the insured must repair such damage or loss in accordance with the insurer's professional engineer's recommended repairs. However, if the insurer's professional engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer's professional engineer or tender the policy limits to the policyholder.
- In order to prevent additional damage to the building or structure, the policyholder must enter into a contract for the performance of building stabilization and foundation repairs within 90 days after the insurance company confirms coverage for the sinkhole loss and notifies the policyholder of such confirmation. This time period is tolled if either party invokes the neutral evaluation process, and begins again 10 days after the conclusion of the neutral evaluation process.



# Sinkhole Repair

- The stabilization and all other repairs to the structure and contents must be completed within 12 months after entering into the contract for repairs described in paragraph (b) unless:
  1. There is a mutual agreement between the insurer and the policyholder
  2. The claim is involved with the neutral evaluation process
  3. The claim is in litigation; or
  4. The claim is under appraisal or mediation.



# Sinkhole Repair

- Upon the insurer's obtaining the written approval any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person making the repairs specified in this section who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084.



# Sinkhole Repair

- As a precondition to accepting payment for a sinkhole loss, the policyholder must file a copy of any sinkhole report regarding the insured property which was prepared on behalf or at the request of the policyholder. The policyholder shall bear the cost of filing and recording the sinkhole report. The recording of the report does not:
  1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;
  2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or
  3. Create any cause of action or liability against a title insurer that insures the title to the real property



# Contractors Acting as PA's

- A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.
- **\*\*Note:** The paragraphs above apply only to **residential** or **condominium unit owner** policies. The previous statutory language was changed to specify *unit owners* rather than *condominium associations*.



# Compensation

- FIGA – claims from an insolvent carrier will not include attorney or public adjuster fee's and cannot exceed the face amount of the policy for sinkholes
- PA Compensation for a reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment.
- Current law provides that a public adjuster may not charge more than 10% of the amount of insurance claim payments made for claims based on an event that is the subject of a declaration of emergency by the Governor. The 10% limitation applies to claims made up to 1 year after the declaration. This law is amended to provide that after the 1 year period, the public adjuster fee limitation is 20% of the amount of insurance claim payments.



# Compensation - Citizens

- For any claim filed under any policy of Citizens, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value greater than 10% of the additional amount actually paid over the amount that was *originally offered* by the corporation for any one claim.

## Result

- Policyholder will find it increasingly difficult to find representation
- Is this restraint of trade?



# Public Adjuster Specific

- The public adjuster must ensure that notice is given to the insurer, the public adjuster's contract is provided to the insurer within 30 days, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured "directly" about the loss and claim.
- Any party must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may also waive the 48-hour notice.



# Public Adjuster Specific

- A public adjuster must not impede “reasonable access” to the insured or the insured’s property. The public adjuster representing the insured may be present for the insurer’s inspection, but if the unavailability of the public adjuster otherwise delays the insurer’s timely inspection of the property, the public adjuster or the insured must allow the insurer to have access to the property without the participation or presence of the public adjuster or insured in order to facilitate the insurer’s prompt inspection of the loss or damage.
- The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy.



# Public Adjuster Specific

- New advertising rules on PA's such as requiring disclaimers & definitions of misleading and deceptive statements
- "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

Opinion: Why not require the same for insurance company advertising?



# Miscellaneous Topics

- New home insurance companies must have \$15 million in reserves vs. the previous \$12 million. Existing firms must comply by 2021
- Allows insurers that offer both home & vehicle policies to drop coverage if they warn policyholders 90 days in advance
- Governor Scotts remarks about taking Citizens Private



“The most anti-consumer legislation I have ever seen in my days as a legislator.”

Senator Mike Fasano, State Senator, New Port Richey, Fl.

# ANOTHER HAMMERING FOR PROPERTY OWNERS

Even without recent hurricanes, insurance rate hikes averaging 13% are approved. Why?

BY JEFF HARRINGTON  
Times Staff Writer

Florida hasn't faced a major hurricane in five years. Reinsurance, the added layer of coverage that property insurers buy to protect themselves from catastrophes, is both more widely available and cheaper, with brokers reporting price drops of 10 percent to 20 percent for Florida business as of June 1.

Both the Florida Hurricane Catastrophe Fund and state-run insurer of last resort, Citizens Property Insurance, are in the strongest financial position since their creation, Florida Insurance Commissioner Kevin McCarty wrote recently.

Still, property insurance rates are on the rise.

During the first eight months of 2010, Florida regulators have approved 45 property insurance rate increases with the average hike at nearly 13 percent, based on a *St. Petersburg Times* review of "all-peril" policies, the most common type of homeowners policy.

At first glance, rising rates appear counterintuitive. Bob Hunter, director of insurance for the Consumer Federation of America, prefers another description.

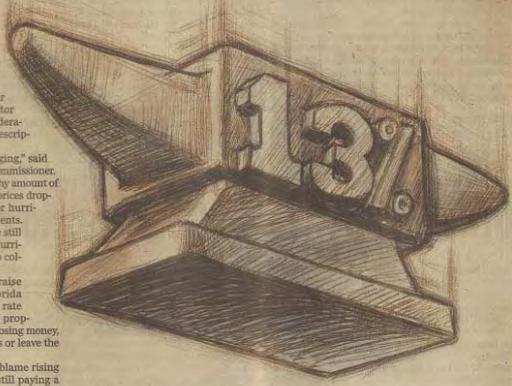
"It's plain and simple price gouging," said Hunter, a former Texas insurance commissioner. "The Cat Fund has got a pretty healthy amount of money now, and with reinsurance prices dropping, they can afford a fairly major hurricane without having to do assessments."

... Yet the insurance companies are still running around yelling about big hurricanes and that the state is going to collapse?

So why, despite a 70 percent raise in premiums since 2003, are Florida homeowners paying double-digit rate increases? Why are two-thirds of property insurers in Florida reportedly losing money, forcing several to go out of business or leave the state?

Florida insurers and regulators blame rising rates on two things: The state is still paying a price for being hurricane-prone and hurricanes are no longer its only problem.

Total nonhurricane losses have risen 65 percent for Florida insurers over the past three years, according to Kevin Stokes, head of the Florida unit for reinsurer Guy Carpenter & Co.



Is Senate Bill 408 a Panacea to  
fix the property insurance  
market in Florida?

# Thank You

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