



2021 Legislative Proposals

ICA Legislative Vision

Establish consumer-focused legislative proposals for consideration during the 2021 Legislative Session to enhance consumer protections, improve the overall consumer insurance claims experience and address factors that are negatively impacting the affordability and availability of homeowners insurance.

Contractor Solicitations

❖ Assignment Agreements, s. 627.7152, F.S.

- Require Direction to Pay Agreements and similar repair agreements that are hybrids of an AOB to comply with current AOB statutory requirements. Currently, these hybrid agreements are being used to circumvent the AOB law and they include a lot of the terms that are prohibited under the new AOB law.
- Require AOBs, Direction to Pay Agreements and other similar agreements to include an option that directs the insurer to send insurance payments directly to the policyholder based upon the policyholder's written preference. Currently, these agreements direct the insurer to send insurance payments directly to the assignee/contractor. Policyholders may not be aware that payments have been issued, the amount of those payments and the assignee/contractor can take the money and never complete the work. The proposed requirement protects the policyholder by putting the policyholder back in control and providing the policyholder with the option to decide if they want to receive the insurance payments directly or if they want those payments to be sent to the assignee/contractor.
- Require insurers to issue insurance payments pursuant to an AOB or similar agreement based upon verified work completed, either through multiple payments as the work is completed or through one payment after the work is completed in full. Currently, insurers typically issue payment in full directly to the assignee/contractor upfront prior to the completion of the work which allows the assignee/contractor to take the money and never complete the work. The proposed requirement aligns with the typical non-insurance related homeowner/contractor relationship which typically involves the homeowner hiring the contractor, paying an initial deposit prior to the commencement of work and then paying the contractor in full after the work is completed to the satisfaction of the homeowner. The proposed requirement protects the policyholder by ensuring the work is completed to the policyholder's satisfaction prior to the issuance of full payment.
- Clarify that an insurer reserves its right to communicate directly with the policyholder. Currently, not specifically addressed in statute. Assignees/contractors use these agreements to limit the insurer from communicating directly with the policyholder which is another attempt to further remove the policyholder from the claims process and increase the assignee/contractor's control over the claim.

- Clarify that an assignee/contractor must comply with the policyholder's contractual obligations; including, allowing the inspection of the insured property, conducting examinations under oath and participating in alternative dispute resolution methods. Currently, an assignee/contractor is only required to comply with the policyholder's contractual obligations as a condition precedent to filing litigation under the policy. Absent to filing litigation, no requirement exists.
- Require the Assignee to provide an executed copy of the agreement to the policyholder. Currently, not required.

Litigation Reform

❖ Notice of Windstorm Claim, s. 627.70132, F.S.

- Amend the timeframe to file a first notice of loss claim for damage caused by a windstorm or hurricane from 3 years to 2 years after the hurricane first made landfall or the windstorm caused the covered damage.

❖ Civil Remedy Notices, s. 624.155, F.S.

- If the violation that is the subject of the Civil Remedy Notice (CRN) involves a disputed indemnity amount, require the disputed amount to be documented in the CRN, delineated by coverage and amount. Currently, no requirement exists. This will ensure that the specific disputed indemnity amount is memorialized and communicated to the insurer and provide the insurer an opportunity to potentially cure the CRN prior to litigation. The inclusion of the specific disputed indemnity amount creates a higher probability of the settlement of the claim and potentially reduces litigation.
- Require supporting documents to be uploaded as part of the CRN. Currently, no requirement exists. The proposed requirement will ensure the insurer has all documentation and information relevant to the violation that is the subject of the CRN and create a higher probability of the settlement of the claim which may potentially reduce litigation.

❖ Mediation of Residential Property Claims, s. 627.7015, F.S.

- As a condition precedent to commencing litigation, require all disputed residential property claims to go through mandatory DFS mediation. Currently, mediation is only mandatory upon request and all mediation costs are paid by the insurer. During the prior 6 years, approximately 50% of disputed claims that participated in the DFS mediation program were settled prior to the mediation conference or during the mediation conference. Based upon historical data, it is likely that this requirement will result in a higher probability of claim settlements and reduce litigation.
- If the disputed residential property claim involves a disputed indemnity amount, require the disputed amount to be included in the Request for Mediation, delineated by coverage and amount. Currently, the inclusion of this information is optional. This will ensure that the specific disputed indemnity amount is memorialized and communicated to the parties and the mediator at the time mediation is requested. The inclusion of the specific disputed indemnity amount creates a higher probability of the settlement of the claim and potentially reduces litigation.

- Require supporting documents to be submitted with the Request for Mediation. Currently, the submission of documents is optional. This requirement will ensure that all parties and the mediator have all documentation and information at the time mediation is requested and create a higher probability of the settlement of the claim which may potentially reduce litigation.

❖ **Offer of Judgment and Demand for Judgment, s. 768.79, F.S.**

- Allow an offer of judgment that only includes the indemnity amount to be considered a valid offer. Currently, a valid offer must include the total amount to settle the claim, including reasonable costs and attorney fees. This allowance protects the consumer and provides flexibility when the indemnity amount is agreed upon and the only remaining dispute is regarding reasonable costs and attorney fees. If the indemnity offer is considered a valid offer and subsequently agreed upon through the issuance of a final judgment, the settlement payment can be issued to the policyholder to initiate repair of the home while the dispute regarding reasonable costs and attorney fees continue. This puts money in the hands of the policyholder without the delay that may occur while the dispute regarding reasonable costs and attorney fees is resolved.

❖ **Jurisdiction of County Court, s. 34.01, F.S.**

- Require all open, litigated residential property claims with the same date of loss, occurring at the same property and involving coverage provided under the same policy contract, to be consolidated under one jurisdiction. Currently, the county court has jurisdiction over matters that are \$30,000 or less and the circuit court has jurisdiction over matters that exceed \$30,000. These amounts are exclusive of interest, costs and attorney fees. Based upon the current jurisdiction requirements, lawsuits related to multiple claims arising from the same covered peril, can be heard in both county and circuit court simultaneously based upon the amount of the matter in dispute. For example, as a result of a hurricane, a windstorm claim and a mold claim may be filed. The disputed amount involving the wind claim is \$50,000 and the disputed amount involving the mold claim is \$25,000, requiring the wind claim to be filed in circuit court and the mold claim to be filed in county court. The requirement to litigate the claims in two jurisdictions unnecessarily clogs up the court system, requires multiple discoveries, witness depositions, court proceedings, multiple defense fees and allows the potential award of attorney fees from both the county and circuit courts. If the two cases were consolidated, equaling \$75,000, the circuit court would have jurisdiction over both matters which allows one court to view the claim in its totality.

❖ **FL Bar Rules**

- Require the Closing Statement to be provided to DFS. Currently, when a recovery judgment has been awarded and at the conclusion of the attorney representation, the FL Bar Rules require the attorney to prepare a Closing Statement that reflects an itemization of all costs and expenses, including the amount of fees received by each participating attorney or law firm. The FL Bar also requires the attorney to sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs and provide a copy of the signed closing statement to the client and all participating attorneys. Additionally, the attorney must retain a copy of the written fee contract and Closing Statement for 6 years after execution of the Closing Statement. Attorneys are required to prepare the Closing Statement and provide a copy to the insured; therefore, it should not create an undue hardship to require an electronic copy of the Closing Statement to be provided to DFS. Based upon a recent ICA

survey of policyholders who were represented by an attorney, 26% of the respondents indicated they did not receive a Closing Statement; 43% of the respondents indicated that their attorney received 25%-50% of the claim settlement and 23% did not know what percentage of the claim settlement their attorney received. The proposed requirement will allow DFS to ensure that the Closing Statements are being prepared and provided to the insured as required and additionally, it will provide DFS with significant data related to the true costs of residential property insurance litigation.

Insurance Claims Process/Consumer Education

❖ Homeowners Claims Bill of Rights, s. 627.7142, F.S.

- Require the insurer to send the Homeowners Claims Bill of Rights within 14 days after the initial filing of a catastrophe-related claim. Currently, insurers are required to send the Homeowners Claim Bill of Rights within 14 days after the initial filing of a claim; however, the requirement excludes claims arising from an event that is the subject of an emergency declaration. A policyholder should receive the Homeowners Claim Bill of Rights any time a claim is filed, even more importantly, after a hurricane.
- Require the insurer to provide written confirmation if claim is fully or partially covered or denied within 30 days of receiving a complete Proof of Loss Statement. Currently, insurers are required to provide written confirmation within 30 days, only if requested. A Proof of Loss Statement is a form or document, typically provided by the insurer, that requires the policyholder to detail and itemize information regarding damages and repair costs. Upon completion and submission of a Proof of Loss Statement, in accordance with standard business practice, an insurer should proactively communicate with the policyholder as it relates to the status of their claim. Based upon a recent ICA survey of policyholders, 78% of respondents indicated they hired an attorney due to a poor claim experience with their insurance company, including lack of communication, claim handling delays and unsatisfactory settlement offers. The proposed requirement will ensure that insurers are effectively communicating with the policyholder and keeping the policyholder informed throughout the claim process.
- Require insurer to notify the policyholder within 7 business days when an adjuster is assigned to the claim. Notification must include one or more means of direct communication methods for the adjuster. Currently, not required. The proposed requirement will ensure that insurers are effectively communicating with the policyholder and keeping the policyholder informed throughout the claim process.
- Add information that details a policyholder's right to accrued interest if the insurer fails to fully or partially pay or deny the claim within 90 days. Currently, insurers are required to pay or deny the claim or a portion of the claim within 90 days after the filing of the claim. If the insurer fails to pay within 90 days, the insurer is required to pay interest which accrues from the date the claim was filed until payment is made. Currently, information related to this requirement is not included in the Homeowners Claims Bill of Rights. The intent of this requirement was to incentivize insurers to pay claims timely; however, most policyholders are not aware of this requirement and due to their lack of knowledge, they are not able to advocate for themselves and hold their insurance company accountable for timely payment or payment of interest. The purpose of the Homeowners Claims Bill of Rights is to summarize existing law and inform policyholders of their rights and responsibilities

after filing a claim. It is imperative that this information be added to ensure policyholders are aware and informed.

- Add video as an additional option to document damage and repairs. Currently, only photographs are listed.
- Add information that advises policyholders to file all claims directly with their insurance company and to be aware of contractors or repair vendors that offer incentives for free inspections or promise to coordinate with your insurance company to repair your home with no out of pocket expenses from you. Adding this information will potentially create a more heightened and aware policyholder who will better protect themselves from fraudulent insurance claims and scams.