

Florida Consumers' Notice of Rights Residential Property Insurance

Introduction

Consumers who purchase property insurance have certain legal rights and knowing these rights will help consumers act in their best interest. The Florida Consumers' Notice of Rights is a summary of rights under Florida insurance laws and state agency rules that apply to homeowners, mobile home owners, condominium unit owners and renters of residential property who purchase property insurance. This notice is intended to provide helpful information for consumers when purchasing insurance or dealing with claims.

This notice identifies many rights by the state statute or administrative rule that created the right. However, some exceptions to these rights are not listed in this explanation of consumer rights. If you have any insurance questions or concerns, contact the Department of Financial Services, Division of Consumer Services, by calling the toll-free HelpLine at 1-877-MY-FL-CFO (1-877-693-5236) in Florida or (850) 413-3089 from out-of-state. You can also obtain information or contact the Department on-line at www.myfloridacfo.com.

Prior to purchasing property insurance coverage, consumers are encouraged to read the Consumer Guides published by the Division of Consumer Services. The guides are excellent tools to gain a better understanding of property insurance, coverage options and limitations. The Consumer Guides are located on the Department of Financial Services website at www.myfloridacfo.com/Consumers/Guides/Property/index.htm.

Many of the rights included in this summary are included in property insurance policies. Policies also contain obligations that have to be met by the insureds. Failure to meet these obligations may affect the status of the policy or the payment of claims. Consumers should read their policy and ask questions of their agent. Consumers should keep all policy updates or changes that are received from their insurance company or agent together and filed in a secure location.

Policyholders' Bill of Rights

A list of rights for all insurance consumers is contained in Florida law. This law is intended to guide state insurance regulators, such as the Department of Financial Services and the Office of Insurance Regulation, in adopting rules, interpreting laws and exercising discretion in the enforcement of laws. This statute states that consumers shall have the right to:

- Competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies;
- Obtain comprehensive coverage;
- Insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy;
- An insurance company that is financially stable;
- Serviced by a competent, honest insurance agent or broker;
- A readable policy;
- An insurance company that provides an economic delivery of coverage and that tries to prevent losses; and
- Balanced and positive regulation by the Department of Financial Services, Financial Services Commission, and the Office of Insurance Regulation.

Reference: Section 626.9641, Florida Statutes

Consumers' Rights When Purchasing Insurance

Obtaining Information from the Department of Financial Services

Consumers have the right to call the Department's Division of Consumer Services toll free HelpLine at 1-877-MY-FL-CFO (1-877-693-5236) within Florida, or (850) 413-3089 from out-of-state to learn more about insurance. This can be particularly helpful when you are planning to purchase property insurance (or any other type of insurance). Division employees can provide you with knowledge about insurance that may assist you in navigating the process of purchasing insurance. They can also assist you with information about:

- Consumer insurance rights;
- Licensure status of an insurance company, insurance agent or other insurance professionals;
- Complaint information pertaining to a specific insurance company as compared to the number of policies they write in the State of Florida;
- Insurance company information pertaining to filed rates and underwriting guidelines;
- The Florida Market Assistance Plan (FMAP), a free referral service designed to match consumers who cannot find property insurance with Florida licensed agents and insurers who are writing new business; and
- Other insurance questions or concerns.

Restrictions on Denial of Application for Insurance

An insurer cannot deny insurance coverage, refuse to renew coverage or make any other adverse decision solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to offer insurance coverage or make other adverse decisions. Other adverse decisions would include things like charging a higher premium or issuing a policy with exclusions or restrictions.

Also, an insurer may not make an adverse decision or use a credit score that could lead to an adverse decision if based, in whole or in part, on the absence of a credit history or an insufficient credit history or on debts owed due to medical services.

NOTE: INSURERS MUST INFORM THE CONSUMER THAT A CREDIT REPORT IS BEING REQUESTED FOR UNDERWRITING PURPOSES. IF AN ADVERSE DECISION IS MADE BASED ON A CREDIT REPORT THE INSURER MUST PROVIDE, AT NO CHARGE, A COPY OF THE CREDIT REPORT OR PROVIDE INFORMATION ON HOW THE CONSUMER MAY OBTAIN A COPY OF THE CREDIT REPORT.

Reference: Section 626.9741, Florida Statutes and the Federal Fair Credit Reporting Act, 15 U.S.C. ss.1681 et seq.

Insurers may not deny coverage solely on the basis of the age of the structure. The insurer must consider the wind resistance of the structure and measures undertaken by the owner to protect the structure against hurricane loss.

Reference: Section 627.7018, Florida Statutes

Typical underwriting criteria used by insurers to evaluate older homes includes:

- Insurers may require a pre-inspection (by a licensed contractor) before they will accept an application for coverage;
- Inspections may include the roof, plumbing, electrical wiring, heating and air conditioning and overall condition of the structure. The cost of the inspections is normally assumed by the applicant;
- Insurers will want to know when all maintenance, renovations or upgrades were completed along with documented proof; and
- Inspections may be waived if the consumer has documented proof which demonstrates that the property meets the insurer's underwriting guidelines.

Explanation of Denial

When an insurer refuses to provide residential property insurance to an applicant, the insurer has to provide the applicant with specific information regarding the reasons for the refusal to insure, including the specific underwriting reasons, if applicable.

Reference: Section 627.4091, Florida Statutes

If a consumer is denied coverage (or is cancelled or nonrenewed by their insurer) the consumer has the right to obtain property insurance from Citizens' Property Insurance Corporation. Citizens' is an insurance company formed pursuant to laws adopted by the Florida Legislature in 2002 which writes property insurance policies for consumers who cannot obtain insurance coverage from private insurance companies. Most insurance agents that sell residential property insurance are allowed to submit insurance applications to Citizens'.

Rights to Coverage

Windstorm/Hurricane Coverage

As a general rule, all residential property insurers are required to cover windstorms and hurricanes when they write insurance covering residential property. The exception is that insurers can exclude this coverage for property located in certain coastal areas (generally referred to as the "windpool area") that are eligible for coverage under a Citizens' policy that only covers wind and hurricane losses.

However, some consumers who live outside of the windpool area have the right to have windstorm and hurricane coverage excluded from their policy. The coverage may be excluded if the policyholder personally writes and provides to the insurer the following statement in his/her own handwriting and signs his/her name: *"I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."* All named insureds on the policy must also sign the statement. If there is a mortgage holder or lien holder, they must also give their written permission for the windstorm coverage to be excluded.

Reference: Section 627.712, Florida Statutes

Deductibles

A hurricane deductible is mandatory for residential property insurance. Every policy will have a minimum of two deductibles: a "hurricane" deductible and an "all-other-perils" deductible.

You have the right to a hurricane deductible provision that is clear and unambiguous.

Insurers must notify policyholders of their deductible options and must offer deductible amounts applicable to hurricane losses equal to \$500 (unless the insurer has required a minimum deductible of 2% since 1995), 2%, 5%, and 10% of the policy dwelling limits, except that:

a. For policies with dwelling limits of at least \$100,000, but less than \$250,000, the insurer does not have to offer a \$500 hurricane deductible if the insurer offers a policy with a 2% hurricane deductible and guarantees it will not nonrenew at the end of the policy period in order to reduce its exposure to hurricane losses.

b. For policies with dwelling limits of \$250,000 or more, the insurer does not have to offer the \$500 hurricane deductible

If your residence has a replacement cost of less than \$500,000, you have the right to a hurricane deductible that does not exceed 10 percent of the policy dwelling limits. However you also have the right to ask for a higher deductible if you:

a. Personally write and provide to the insurer a statement in your own handwriting and signed and dated by you and every other named insured on the policy, that states: "I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not;" and

b. Provide the insurer with a written statement from any mortgage holder or lien holder indicating that they approve the election of the specified deductible.

Reference: Section 627.701, Florida Statutes

Replacement Cost Value of Property

You have the right to purchase a property insurance policy that provides for the adjustment of losses based on replacement cost value rather than actual cash value. This will cost more but will pay more if there is a loss. Actual cash value pays damages equal to the replacement value of damaged property minus depreciation. In other words, under "ACV" coverage, an insurer will pay for your destroyed 10-year old television based on what you could have gotten if you had sold it before it was destroyed, not the amount it will cost you to buy a new television that is similar to the old one. On the other hand, if you have replacement cost coverage, you will be paid based on the cost of purchasing a new TV. This right does not apply to mobile homes.

Reference: Section 627.701, Florida Statutes

Law and Ordinance Coverage

You also have the right to purchase a property insurance policy that covers the costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property. This assures that you will receive enough money to upgrade an older home to meet current construction code requirements. The

coverage may be limited to either 25 percent or 50 percent of the dwelling limit, as selected by the policyholder. This right does not apply to mobile homes.

Reference: Section 626.7011, Florida Statutes

Outline of Coverage and Coverage Checklist

A policyholder has the right to receive an outline of coverage and a checklist of coverage from the insurer at the time the policy is issued. The outline of coverage must contain:

1. A brief description of the principal benefits and coverage provided in the policy, broken down by each type of coverage provided and the applicable premium for each type of coverage.
2. A summary statement of the principal exclusions and limitations or reductions including deductibles and coinsurance.
3. A summary statement of any renewal or cancellation provisions.
4. A description of the credit or surcharge plan that is being applied.
5. A summary of any additional coverage provided through any rider or endorsement that accompanies the policy.

The checklist must contain a list of the standard provisions and elements that may typically be included in residential property policies, whether or not they are included in the particular policy being issued. The insurer must then identify which provisions and elements are included in the policy so that the consumer can see both what is included and what is not included in the policy.

Reference: Section 627.4143, Florida Statutes

Premium Payment Rights

Premium Payment Options

Insurers issuing personal lines residential and commercial property policies must offer a premium payment option. The option must include a quarterly and a semiannual payment of premiums.

- Insurer's may also offer a monthly payment option, but are not required to do so.
- Consumers may pay in cash (coins, currency, checks, money orders), or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.

Reference: Section 627.4035, Florida Statutes

Payment of Additional Premium

Insurers can take up to 90 days after agreeing to sell a policy to complete the underwriting process. During this 90-day period, the insurer will check to see if the correct premium was charged for the policy. If it is determined that the property meets the insurer's underwriting guidelines but the original premium quote was in error, the insurer will bill the consumer for the additional premium and allow a minimum of 10 days for receipt of the additional premium payment. If not received, the insurer may cancel the policy at the end of the 10-day period.

Reference: Section 627.4133, Florida Statutes

Cancellation and Nonrenewal Rights

Policyholder's Right to Cancel

Consumers have the right to cancel property insurance at anytime and for any reason. However, if the insured/policyholder requests the insurer to cancel the policy prior to the expiration date, the insurer may cancel the policy pro-rata and retain 10 percent of the unearned premium. Unearned premium is the amount of the premium applicable to the time period from the cancellation date to the original expiration date. Insurance companies “earn” premium on a monthly basis. Therefore, if you have a 12-month policy and cancel it after 6 months, the insurer has earned half of the premium and keeps this amount. The other half is unearned premium of which the insurer is allowed to keep 10% and refund 90% to the policyholder.

Note: Before changing insurance policies or companies, consumer should make sure that their current insurance policy does not expire and leave a gap before the new insurance policy takes effect.

Reference: Florida Administrative Code, Rule 69O-170.010

Limitations on Insurance Company Cancellation and Nonrenewal

An insurance company cannot cancel a residential property insurance policy that has been in effect for 90 days, except for:

- Material misrepresentation on an application;
- Nonpayment of premium;
- Failure to comply with underwriting requirements of the insurer, such as failing to repair prior damage to or deterioration of the dwelling;
- A substantial change in the risk; or
- When the cancellation is for all policies in a given class of insureds.

Insurers may cancel policies that have been in effect for less than 90 days. This allows insurers time to complete the underwriting process. If it is determined that the residential property does not meet the insurer's underwriting guidelines and therefore the insurer does not want to insure the property, the insurer is required to send a 20 day advance written notice of cancellation. However, cancellation may be made immediately if a material misstatement or misrepresentation was made on the application or the applicant has failed to comply with the underwriting requirements established by the insurer.

Reference: Section 627.4133(2), Florida Statutes

Claims on property insurance policies that are the result of an “Act of God” may not be used as a cause for cancellation or nonrenewal, unless the insurer can demonstrate, by claims frequency or otherwise, that the insured has failed to take action reasonably necessary as requested by the insurer to prevent recurrence of damage to the insured property.

Reference: Section 627.4133(3), Florida Statutes

A single claim on a property insurance policy which is the result of water damage may not be used as the sole cause for cancellation or nonrenewal unless the insurer can demonstrate that

the insured has failed to take action reasonably requested by the insurer to prevent a future similar occurrence of damage to the insured property.

Reference: Section 627.4133(6), Florida Statutes

The company may not cancel a policy for claims frequency, except during the first 90 days of the policy. Cancellation of a policy means that the policy is terminated before the end of the time period for which the policy is supposed to remain in effect. For property insurance, this time period is typically one year.

However, they may non-renew a policy for any valid reason, including claims frequency, unless prohibited by Florida law. Non-renewal of a policy means that the insurer refuses to issue a new or renewal policy at the end of the time period covered by the policy.

Reference: Section 627.4133, Florida Statutes

With exceptions, Florida law prevents an insurance company from canceling, or non-renewing a homeowners' insurance policy solely on the basis of operating a daycare business at the residence.

Reference: Section 627.70161, Florida Statutes

Cancellation and nonrenewal may be restricted when the Governor declares a state of emergency due to a hurricane, tornadoes, wildfire or similar events that impact Florida. During the emergency, the Insurance Commissioner may enter an order that prohibits insurers from canceling or nonrenewing residential property insurance on a residence that has been damaged as a result of the hurricane or other event. The prohibition extends for a period of **90 days** after the dwelling or residential property has been repaired. However, an insurer may cancel or nonrenew prior to completion of repairs if the insurer determines that the policyholder has unreasonably caused a delay in the repair of the dwelling or the policy limits have been paid. In this case, the insurer has to give 45 days notice of cancellation or nonrenewal.

A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another insurer.

Reference: Section 627.4133(2), Florida Statutes

Notice of Cancellation, Nonrenewal or Termination

Insurers are required to give policyholders advance written notice of cancellation, nonrenewal or termination of a policy within specific timeframes before the effective date of the cancellation, nonrenewal or termination. All notices must state the specific reason or reasons for the cancellation, nonrenewal or termination.

- No advance notice of cancellation is required if a material misstatement or misrepresentation was made on the application or the applicant has failed to comply with the underwriting requirements established by the insurer
- 10 days advance notice for non-payment of premium;
- 20 days advance notice for cancellation or termination if it is within the first 90 days of the effective date of the policy;
- 45 days advance notice for nonrenewal of a policy;

- 100 days advance notice for cancellation, nonrenewal or termination if the effective date is during hurricane season (June 1st through November 30th), if insured with the company less than 5 years; or
- 100 days advance notice or by June 1st, whichever is earlier, for cancellation, nonrenewal or termination effective date during hurricane season, if insured with the company less than 5 years.
- 180 days advance notice for cancellation, nonrenewal or termination if the consumer has been insured by the company or an affiliate company for at least a 5-year period.

Reference: Section 627.4133, Florida Statutes

Consumer Rights Regarding Claims

Right to Good Faith and Ethical Claims Handling

Consumers have the right to be treated fairly and honestly when they make a claim. Florida's Unfair Insurance Trade Practices Act defines and prohibits Unfair Claim Settlement Practices. These practices are:

1. Attempting to settle claims on the basis of a document that was altered without notice to, or knowledge or consent of, the insured;
2. Making a material misrepresentation for the purpose of settling a claim on less favorable terms than those provided in the policy;
3. Failing to adopt and implement standards for the proper investigation of claims;
4. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
5. Failing to acknowledge and act promptly upon communications with respect to claims;
6. Denying claims without conducting reasonable investigations based upon available information;
7. Failing to affirm or deny coverage of claims, the dollar amount or extent of coverage, or to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;
8. Failing to promptly provide a reasonable explanation in writing to the insured of the basis for denial of a claim or for the offer of a compromise settlement;
9. Failing to promptly notify the insured of any additional information necessary for the processing of a claim;
10. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary; and
11. Failing to pay undisputed amounts owed to the insured within 90 days after an insurer receives notice of a residential property insurance claim and determines the amount

owed for a covered loss. [Note: there are some exceptions for situations in which it would be impossible for some reason for the company to pay on time].

Reference: Section 626.9541(1)(i), Florida Statutes [Note: the provisions set forth above may not track the statutory language word for word. Some changes have been made for ease of reading and understanding].

When insurers commit violations of these provisions, they may be subject to being sued by an insured consumer for acting in bad faith. The title of the law that creates this right is actually “Civil Remedy” because it gives consumers the right to sue insurers for violating certain insurance laws whereas, in most circumstances, only the Office of Insurance Regulation can take legal action against insurance companies. It is generally referred to as “bad faith” because it creates a cause of action against an insurer for not attempting to settle claims “in good faith.” In addition to suing for the unfair claim settlement practices set forth above, this law contains other actions by insurers that create a right to sue:

1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

2. Making claims payments to insureds not accompanied by a statement setting forth the coverage under which payments are being made; or

3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Reference: Section 624.155, Florida Statutes

Contractor Selection

Insurers may offer policyholders the option to select the services of building contractors that have contracts with the insurer to repair damage covered by the insurance policy. If a policyholder chooses to use one of these contractors, the insurer must guarantee the building contractor's work and may offer the policyholder any other terms, conditions or benefits. However, the insurance company is not liable for the actions of the building contractor.

Reference: Section 627.7016, Florida Statutes

Contractor Choice

Consumers have the right to have their home repaired by the contractor of their choice and are not obligated to use the contractor offered by the insurance company, unless the insurance policy specifically requires the policyholder to select a contractor from the insurer's preferred vendors list.

Explanation of Claim Denial

Insurance companies are required to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement.

Reference: Section 626.9541(1)(i)3.f., Florida Statutes

Claim Processing and Payment

Insurance companies are required to pay a new or supplemental property insurance claim or deny a claim or a portion of the claim within 90 days after receipt unless the failure to pay the claim or a portion of the claim is caused by factors beyond the control of the company.

Any payment paid more than 90 days after the company receives notice of the claim, or paid more than 15 days after there are no longer factors beyond the control of the company, whichever is later, will bear interest according to Florida Statute, Section 55.03.

Reference: Section 627.70131, Florida Statutes

Payment of Undisputed Claims

Insurers are required to pay undisputed amounts of partial or full benefits owed under first-party residential property insurance policies within 90 days after determining the amount and agreeing to coverage, unless:

- Payment of the undisputed amount is prevented by an act of God;
- Due to actions by the insured or claimant that constitute fraud;
- Lack of cooperation, or
- Intentional misrepresentation regarding the claim for which benefits are owed.

Reference: Section 626.9541(i), Florida Statutes

Settlement Offer / Mediation Program

All consumers with a disputed residential property damage claim may qualify for mediation, if the claim exceeds \$500, not including the deductible. Mediation is a nonadversarial alternative dispute resolution process. It is an informal and non-binding way to resolve claims through a neutral third party. The mediation program is administered by the Department of Financial Services, Division of Consumer Services, and the insurance company pays the entire cost.

Consumers have the right to reject any settlement amount offered by the insurance company.

Reference: Section 627.7015, Florida Statutes

Right to Request Assistance or File a Complaint

Filing a Complaint

Consumers have the right to request assistance with a claim, including mediation of a property insurance claim dispute, or file a complaint with the Department of Financial Services, Division of Consumer Services, about any insurance company, insurance professional or other insurance matter. Consumers have the right to receive a prompt investigation and response. Service is available in both English and Spanish.

Contact the Division of Consumer Services

- Toll-free Helpline at 1-877-MY-FL-CFO (1-877-693-5236) in Florida, or (850) 413-3089 from out of state;
- Hearing or speech difficulties may call the toll-free TDD line at 1-800-640-0886;
- Online at www.myfloridacfo.com;
- Fax Number (850) 413-1550; or
- Write to: Department of Financial Services
Division of Consumer Services
200 East Gaines Street
Tallahassee, Florida 32399-0321

The following information will be needed:

- Policy Information – Full Name of the Insurance Company, Policy Number or Claim Number;
- Consumer's Full Name and Contact Information – Address, Telephone Number (home, cell and/or work);
- A detailed explanation of how the Division of Consumer Services may assist you.

Note: Insurance companies, by statute, have 20 days to respond to the Department of Financial Services, Division of Consumer Services, once a complaint has been filed. Usually the response time is much quicker as the Division of Consumer Services strives to respond to all requests for assistance promptly.

Privacy Notice

The information provided to the Department of Financial Services becomes a public record and is subject to a public record request. Before the documents leave the Department, personal information (such as social security numbers, policy numbers, and health and financial information) is removed. The information that may be provided is limited to your name, address, telephone number, email address, and the name of your insurance company.

Insurance Company

All insurance companies issuing policies in Florida must provide a telephone number on all policies and certificates of coverage. The telephone number must be provided for the policyholders to make inquiries or obtain information about coverage, to file a claim and to provide assistance in resolving complaints.

The Office of the Insurance Consumer Advocate hopes that this information will help consumers understand their homeowners' insurance policies. Please utilize the web links provided for additional information.