

69J-2.002 Alternative Procedures for Resolution of Disputed Commercial Lines Residential Insurance Claims Arising from Hurricane and Tropical Storm Damage,

(1) Purpose and Scope. This rule implements section 627.7015, F.S., by setting forth a mediation procedure prompted by the critical need for effective, fair, and timely handling of commercial lines residential insurance claims arising out of damages, caused by hurricanes and tropical storms during the 2004 and 2005 hurricane seasons (June 1 to November 30 of each year), to property insured by a commercial residential insurance policy. The procedure established by this rule is available to those first party claimants who have commercial residential claims resulting from damage to property located in the state of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies. Personal lines residential insurance claims can be mediated pursuant to a separate rule.

(2) Definitions. The following definitions apply to the terms of this rule as used herein.

(a) "Administrator" means the Department or its designee.

(b) "Authorized representative" means that individual who has been authorized, by the appropriate governing body of a condominium association, cooperative association, or homeowners' association, to represent the association at mediation, make decisions on the association's behalf at

mediation, and enter into a binding settlement agreement on behalf of the association.

(c) "Claim" means any matter on which there is a dispute or for which the insurer has denied payment. A "claim" is not subject to mediation unless the amount of difference between the positions of the parties is \$500 or more notwithstanding any applicable deductible. A "claim" is not subject to mediation when the insurer has reported allegations of fraud involving that claim to the Department's Division of Insurance Fraud.

(d) "Department" means the Department of Financial Services or its designee.

(e) "Mediator" means an individual selected by the Department to mediate disputes pursuant to this rule. The mediators will be selected from a panel of circuit court - civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules of Certified and Court Appointed Mediators.

(f) "Governing documents" are those documents creating the forms of property ownership governed by Chapters 718, 719, and 720, F.S., and those documents creating the entities governed by Chapters 718, 719, and 720, F.S.

(g) "Party" or "parties" includes the insured and the insurer, and their respective representatives.

(3) Notice of Right to Mediate Disputed Claims. The insurer shall mail a notice of the right to mediate disputed claims to the insured within 5 days of the time the insured or the Department notifies an insurer of a dispute regarding the insured's claim. An insurer shall mail to the insured a notice of the right to

mediate disputed claims in the same mailing as the insurer's notice that the claim is to be denied. An insurer is not required to mail to the insured a notice of right to mediate disputed claims if the claim is denied because the amount of the claim is less than the applicable deductible. Notice shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type. The first paragraph of the notice shall contain the following statements: "Tom Gallagher, Chief Financial Officer for the State of Florida, has adopted a rule to facilitate the fair and timely handling of commercial residential property insurance claims arising out of the hurricanes that have devastated so many residences in Florida. The rule gives you the right to attend a mediation conference with the insurer in order to settle any dispute about your claim. An independent mediator, who has no connection with the insurer, will be in charge of the mediation conference. You may begin the mediation process by completing a Commercial Residential Mediation Request Form and returning it to the Department of Financial Services. Forms are available by calling the Department at 1(800) 227-8676 (1-800-22-STORM), by faxing the Department at (850) 488-6372, or by logging onto the Department's website at <http://www.fldfs.com>. and clicking on the "Commercial Residential Mediation Request" icon. Once the Department receives your completed Commercial Residential Mediation Request Form, your insurance company will be notified, and will have 21 days to settle your claim before your request for mediation is further processed."

(4) Request for mediation. The Department shall notify the insurer upon receipt of a completed Commercial Residential Mediation Request Form. The

Commercial Residential Mediation Request Form (Form No. DFS-I1-1669, Revised 3/06) is hereby incorporated by reference. Twenty-one (21) days from the date the Department receives the completed form, the Department will forward the form to the administrator for processing. If an insurer receives a request for mediation, the insurer shall promptly instruct the insured to call the Department at 1(800) 227-8676 (1-800-22-STORM) to obtain a Commercial Residential Mediation Request Form.

(5) Mediation Costs. Pursuant to section 627.7015(3), F.S., the insurer shall bear all costs associated with the mediation program. At the time the Department forwards the request form to the administrator for processing, the insurer shall pay a non-refundable administrative fee of \$1,250 to the administrator to offset the expenses of the program. The insurer shall pay a \$300 hourly fee for the mediator's time during the mediation conference. The mediator's fee will be billed by the administrator to the insurer upon completion of the mediation, and payment shall be made to the administrator. If the parties settle the dispute within 5 days of the scheduled mediation conference, the insurer shall pay \$300 to the administrator for the mediator's fee.

(6) Selection of a Mediator. The administrator will select a mediator from a list of mediators previously approved by the Department. In selecting a mediator, the administrator will consider the costs associated with travel to the mediation conference for the mediator and the parties. A biographical sketch of the mediator shall be made available to the parties by the administrator.

(7) Scheduling of Mediation. Upon receiving a request for mediation, the administrator shall contact the parties, and schedule the mediation conference. The mediation conference shall be scheduled no more than 30 days from the date the Department forwards to the administrator a Commercial Residential Mediation Request Form. The administrator will notify the Department of the scheduled date for each mediation conference. The insurer shall notify the administrator as soon as possible after settlement of any claim that is scheduled for mediation conference pursuant to this rule.

(8) Mediation Conference Statement. Each party shall prepare a "mediation conference statement" which shall summarize the claim and the costs or damages sustained, identify prior demands and offers and provide the party's assessment of a fair resolution of the claim. The statement shall identify the location of the damaged property, and the claim and policy number for the insured. The statement shall identify and provide an address and telephone number for any professional advisor who will accompany a party to the mediation conference. A copy of each party's statement shall be provided to the mediator. Such statements shall be exchanged by the parties and provided to the mediator no later than 10 days before the mediation conference.

(9) Additional requirements for Insurers. The representative of the insurer attending the mediation conference must bring a copy of the policy and the entire claims file to the conference. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy. An insurer will be deemed

to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim at the conclusion of the conference. If inspection and adjustment of the property at issue may be required before the dispute between the parties can be resolved, such inspection and adjustment shall occur before the mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference shall constitute a failure to appear at the mediation conference under subsection (11)(e), below.

(10) Condominiums, Cooperatives, and Homeowners' Associations. The governing board of those properties and entities created by the provisions of Chapters 718, 719 and 720, F.S., shall cause to be prepared the following documentation for review at the mediation conference:

(a) A document by which the governing board for the property or entity designates an authorized representative. It shall state the name of the condominium or cooperative, the name of the association, the date of the meeting at which the designation was made, the name of the designated individual(s), and the authority granted to said individual(s).

(b) A copy of those provisions in the governing documents for the property and entity which relate to (i) the insurance responsibilities of the entity and (ii) the responsibilities of the entity and the unit owners of the property for maintaining and repairing the property.

(c) For claims where there is damage to the structure of the building or foundation, a written, expert analysis of the damage to the property consistent with the standards required in Sections 607.0830(2) and 617.0830(2), F.S.

(d) A written analysis of the damage to the property that allocates the estimated damages between the individually owned parcels or units, the common elements or common areas, and the entity's property in a manner consistent with the governing documents.

(11) Mediation Conference.

(a) It is not necessary to engage a private attorney to participate in the mediation conference. Parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule. Parties and their representatives must refrain from turning the conference into an adversarial process. Both parties must negotiate in good faith. A party will be determined not to have negotiated in good faith if the party, or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith or if the mediator determines that the conference should be terminated under the provisions of Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators. The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

(b) A representative of the Department will be present at and participate in the conference if requested at least 5 days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties.

Representatives of the Department who participate in the conference shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

(c) The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Mediators shall conduct the conference in accordance with the standards of professional conduct for mediation under the Florida Rules of Certified and Court-Appointed Mediators. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjustors, appraisers, or contractors, to address the mediator. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this claims settlement process, mediators shall be deemed agents of the Department and shall have the immunity from suit provided to mediators in Section 44.107, F.S. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation.

(d) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Department if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

(e) If the insured fails to appear, without good cause as determined by the Department, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the Department, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating Section 626.9541(1)(i), F.S.

(12) Post Mediation. If the parties reach a settlement, the mediator shall provide a copy of the settlement agreement to the Department and the administrator within 5 days of the conclusion of the conference. Mediation is non-binding. However, if a settlement is reached, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise

resulting in additional costs that would have been covered under the policy but for the release.

(13) If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Florida law.

(14) If as a result of mediation it is determined that the only coverage applicable is provided under the National Flood Insurance Program, the administrative fee and mediator's fee paid by the insurer for the mediation shall be refunded to the insurer or credited to the insurer's account with the administrator.

(15) The Department is authorized to designate an entity or person as its administrator to carry out any of the Department's duties under this rule.

(16) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

(17) The applicable provisions of Rule 69B-166.031, F.A.C., shall govern issues relating to mediation that are not addressed in this rule. The provisions of this rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031, F.A.C.

Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 624.317, 624.318, 624.324, 626.859, 626.874, 626.877,

626.9541(1)(a), (e), (i), (u), 626.9561, 626.9641(1)(g), 627.7015 FS. History–
New 6-26-06.