

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF CONSUMER SERVICES

RULE TITLE:

RULE NO.:

Alternative Procedures For Resolution of Disputed

69BER04-18

Personal Lines Insurance Claims Arising From

Hurricane and Tropical Storm Damage

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY OR WELFARE: The Department of Financial Services hereby states that the following circumstances constitute an immediate danger to the public health, safety, or welfare: The 2004 hurricane season has been particularly destructive for Florida. Substantial damage in southwest and central Florida was caused by Hurricane Charley, which hit the Punta Gorda and Port Charlotte area on August 13, 2004 as a category 4 hurricane with sustained winds up to 145 miles per hour. Hurricane Charley crossed northeast through the center of the state exiting near Daytona Beach. In a 10-mile wide path extending from the southwest coast there was widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

Additional damage was caused by Hurricane Frances, which hit the east coast of Florida coast on September 4, 2004 as a category 2 hurricane, and slowly crossed the peninsula. Hurricane Frances, though less intense than Charley, caused damage over a much wider area of the state.

On September 16, category 4 Hurricane Ivan caused massive damage in the Florida Panhandle. Hurricane Ivan impacted the Gulf Coast as a category 4 hurricane with sustained winds up to 130 miles per hour. The eye made land fall just west of the western Florida line, bringing hurricane force winds to much of the Florida Panhandle. The hurricane also produced tornados that destroyed and damaged structures in the Florida Panhandle. There was extensive damage in the Pensacola area, which was hit by the strong northeast quadrant of the storm as it made landfall.

This emergency rule is also necessitated by the damage resulting in Florida from Hurricane Jeanne, which made landfall near Stuart, Florida the night of September 25 as a category 3 hurricane with sustained winds up to 120 miles per hour. On September 26, the storm made a path northwest across the state. The Governor of Florida has declared a state of emergency (Executive Order # 04-217). The President of the United States has declared 19 Florida counties a federal disaster area.

The Governor of Florida declared states of emergency as a result of each of the hurricanes.

Insured losses have been estimated at \$6.8 billion for Charley and at \$3 to \$10 billion for Frances. Preliminary damage estimates for Hurricane Ivan are \$2 to \$10 billion. Initial damage estimates for Hurricane Jeanne are \$ 4 billion in insured losses. This emergency rule implements section 627.7015, Florida Statutes, by setting forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to property caused by hurricanes and tropical storms during the 2004 hurricane season.

SUMMARY OF THE RULE: This emergency rule establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Charley, Frances, Ivan and Jeanne. The rule creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, and conduct of mediation. This rule supercedes Emergency Rule 69BER04-8. The compliance timeframes imposed under that rule are replaced with those imposed by this rule.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Tom Terfinko, Assistant Director, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0320; 850-413-5802.

THE FULL TEXT OF THE EMERGENCY RULE IS:

69BER04-08 Alternative Procedures For Resolution of Disputed Personal Lines Insurance Claims Arising From Hurricane and Tropical Storm Damage.

(1) Purpose and Scope. This emergency rule implements section 627.7015, Florida Statutes, by setting forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by hurricanes and tropical storms during the 2004 hurricane season (June 1, 2004 through November 30, 2004). Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible. The procedure established by this emergency rule is available to all first party claimants prior to engaging counsel, or commencing either litigation or the appraisal process, who have personal lines claims resulting from damage to residential property

occurring 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. This rule supercedes Emergency Rule 69BER04-8. The compliance timeframes imposed under that rule are replaced with those imposed by this rule.

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

(a) "Administrator" means the Department or its designee, and the term is used interchangeably with regard to the Department's duties under this rule.

(b) "Claim" means any matter on which there is a dispute or for which the insurer has denied payment. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, in either case, notwithstanding any applicable deductible. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the Department's Division of Insurance Fraud.

(c) "Department" means the Department of Financial Services or its designee. Reporting to the Department shall be directed to: Department of Financial Services, Mediation Section, Bureau of Insurance Consumer Assistance, Tallahassee, Florida, 32399-0322; or by facsimile to (850) 488-2349.

(d) "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 mediators approved by the Florida Supreme Court pursuant to the Florida Rules of

Certified and Court Appointed Mediators or from the list of approved mediators pursuant to Rule 69B-166.031, Florida Administrative Code.

(e) "Party" or "Parties" means the insured and his or her insurer, including Citizens Property Insurance Corporation, the National Flood Insurance Program and insurers who write flood insurance in conjunction with the National Flood Insurance Program, when applicable.

(3) Notification of Right to Mediate. Within 5 days of the time an insured files a first-party claim, the insurer shall mail to the insured a notice of the right to mediate disputed claims. No other materials, forms or documents may be included in the mailing that contains this notice. For claims not yet settled that were filed prior to the effective date of this rule, the insurer shall mail the notice to the insured within 14 days of the effective date of this rule. Notification 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 statement: "Tom Gallagher, Chief Financial Officer for the State of Florida, has adopted an emergency rule to facilitate fair and timely handling of residential property insurance claims arising out of the hurricanes that have recently devastated so many homes in Florida. The emergency rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process 21 days after the date of this notice by calling the Department of Financial Services at 1-800-227-8676 (1-800-22-Storm). An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference." The notice shall also:

(a) Include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the Department;

(b) State that the parties have 21 days from the date of the notice within which to settle the claim before the insured may request mediation;

(c) Include the insurer's address and phone number for requesting additional information; and

(d) State that the Department or the Administrator will select the mediator.

(4) Request for Mediation. After 21 days from the date of the notice, an insured may request mediation by contacting the insurer or by writing to the Department of Financial Services, Mediation Section, Bureau of Insurance Consumer Assistance, Tallahassee, Florida, 32399-0322; by calling the Department at 1-800-22-Storm (1-800-227-8676); or by faxing a request to the Department at (850) 488-2349. If an insurer receives a request for mediation, the insurer shall fax the request to the Mediation Section within 48 hours of receipt of the request. The Department will forward requests to the Administrator within 24 hours of receipt of the requests. The Administrator shall notify the insurer within 48 hours of receipt of requests filed with the Department. The insured should provide the following information if known:

(a) Name, address, and daytime telephone number of the insured and location of the property if different from the address given;

(b) The claim and policy number for the insured;

(c) A brief description of the nature of the dispute; and

(d) The name of the insurer and the name, address and phone number of the contact person for scheduling mediation.

(e) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

(5) Scheduling of Mediation. The Administrator will select a mediator and schedule the mediation conference. The Administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The Administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The conference shall be scheduled to be held within 20 days from the date the Administrator received the request unless the parties agree to a later date for the conference. The Administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the Department. The insurer shall notify the Administrator as soon as possible after settlement of any claim that is scheduled for mediation pursuant to this rule.

Mediation Conference.

(a) The representative of the insurer attending the 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 or lacks the ability to disburse the settlement amount at the conclusion of the conference.

(b) 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.

(c) The insurer shall pay all costs of the mediation, except as otherwise provided in this rule. Costs shall be paid directly to the Administrator. Within 5 days of receipt of the request, the insurer shall pay a non-refundable administrative fee, not to exceed \$100, as determined by the Department, to the Administrator to defer the expenses of the Administrator and the Department. The insurer shall pay \$250 to the Administrator for the mediator's fee not later than 5 days prior to the date scheduled for the mediation conference. However, if the mediation is cancelled for any reason more than 120 hours prior to the scheduled mediation time and date, the insurer shall pay \$50 to the Administrator for the mediator's fee instead of \$250. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 120 hours of the scheduled time.

(d) 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), Florida Statutes.

(e) Upon request of the insured or the mediator, a representative of the Department will be available to help insureds prepare for the mediation conferences. 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. The Department will attempt to have a representative at the conference if the request is received less than 5 days prior to the scheduled mediation. Representatives of the Department that participate in the conference shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

(f) 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, Florida Statutes. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation.

(g) Section 627.7015, Florida Statutes, provides that mediation is a non-adversarial process held in an informal, non-threatening forum intended to bring the parties together for a settlement conference without the trappings or drawbacks of an adversarial process. As such, it is not necessary for either party to involve a private attorney to intercede on their behalf. Therefore, an attorney representing an insurer will not be permitted to attend or participate in a mediation conference held pursuant to this rule. An attorney representing an insured is permitted to attend or participate in a mediation conference held pursuant to this rule. However, the insured's attorney must conduct him or herself in the cooperative spirit of the intent of the law and this rule and refrain from turning the conference into an adversarial process. The insured's attorney shall refrain from attempting to take advantage of the fact that the insurer is not represented by counsel. Both parties must negotiate in good faith. A party will be determined to have not 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.

(6) Post Mediation. Within 5 days of the conclusion of the conference the mediator shall file with the Department and the Administrator a mediator's status report, on Form DFS-HO-1159 which is entitled Disposition of Property Insurance Mediation Conference and is available from the Department, indicating whether or not the parties reached a settlement. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report. Mediation is non-binding. However, if a settlement is reached, the insured shall have 3 business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, 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.

(7) 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.

(8) 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.

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

(10) The applicable provisions of Rule 69B-166.031, Florida Administrative Code, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this emergency rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031, Florida Administrative Code.

*Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1)(2)(4)(5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(i), 626.9561, 626.9641(1)(g), 627.7015 FS. History –New*

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE.