COHEN
LAW GROUP
ITSABOUTJUSTICE.LAW

350 North Lake Destiny Road
Maitland, Florida 32751

407.478.4878
407.478.0204

Florida Senate Bill 2-D and 4-D: What You Need to Know

On May 25, 2022, as part of a special legislative session, the Florida Legislature passed two bills, Senate Bill 2-D and Senate Bill 4-D. Together, these two bills will make widespread changes to the laws that govern Florida property insurance, affecting homeowners, contractors, insurers, public adjusters, and lawyers alike. Florida Governor Ron DeSantis approved both bills by signing SJ39 on May 26, 2022. If you are a homeowner, contractor, or public adjuster, here's what you need to know:

Changes that are Likely to be Positive for Policyholders:

- Creation of the $2 Billion Reinsurance to Assist Policyholders, or RAP fund

Senate Bill 2-D has created a $2 Billion fund, administered by the State Board of Administration. Any insurer participating in the Florida Hurricane Catastrophe Fund must now also obtain reinsurance coverage, at no cost to the insurer from the Reinsurance to Assist Policyholders fund. This program allows insurers to obtain reimbursement for hurricane losses earlier than they normally would under the Florida Hurricane Catastrophe Fund. **Notably, participating insurers must reduce their policyholders' rates by June 30, 2022 to reflect the cost savings realized by participating in the RAP program, and must do so again before May 1, 2023**.

- Insurers Cannot Refuse to Issue Policies Solely Because of the Age of a Roof (with caveats)

Insurers may not refuse to write or renew policies on homes with roofs that are less than 15 years old solely because of the roof's age. However, once the roof is 15 years old or older, the insurer can require the homeowner to have a roof inspection performed. If the inspection shows that the roof has 5 years or more of useful life remaining, then the insurer cannot refuse to renew the policy. However, if the inspection shows that the roof has less than 5 years of useful life remaining, then the insurer can require the homeowner to replace the roof as a condition of renewal.

- Additional Requirements for Insurers in their Claims-handling Practices

Senate Bill 2-D has altered Fla. Stat. § 627.70131, which governs an insurer's duties to its insureds. Once such change requires that for non-hurricane claims, an insurer must inspect the insured's property within 45 days of its receipt of a Sworn Proof of Loss. Another new requirement placed on insurers is that the insurer now must notify the policyholder within 7 days of an adjuster being assigned that the policyholder can request a "detailed estimate" of the amount of the loss, and must provide the policyholder a copy of said estimate within 7 days of the request, or 7 days after the estimate is completed. Lastly, an insurer must provide a "reasonable explanation in writing" of the "basis in the

COHEN
LAW GROUP
ITSABOUTJUSTICE.LAW

350 North Lake Destiny Road
Maitland, Florida 32751

407.478.4878
407.478.0204

insurance policy, in relation to the facts or applicable law, for the payment, denial, or partial denial of a claim". Likewise, if the claim payment is less than the amount specified in the insurer's estimate, the insurer "must provide a reasonable explanation in writing of the difference" to the policyholder.

- Grant Money Available for Hurricane-Resistance Home Upgrades

Senate Bill 2-D has revived a state grant program designed to encourage Florida homeowners to make repairs or improvements to their homes to make them less vulnerable to hurricane damage. Called the "My Safe Florida Home Program", this program provides grants to qualifying homeowners to make hurricane-protection upgrades, such as storm shutters, storm windows, etc. The grant provides $2.00 payment matching for every $1.00 spent by the homeowner on such upgrades, up to $10,000.00. In order to be eligible, six criteria must be met: (1) the property must have a homestead exemption granted; (2) the property must be worth $500,000.00 or less; (3) the home must have had a hurricane mitigation inspection performed after July 1, 2008; (4) the home must be located in a "wind-borne debris region"; (5) the home must be older than January 1, 2008;
(6) the homeowner must make the property available for inspection after the mitigation project is completed. $150 Million has been allocated to the program this year, with $115 Million allocated for grants themselves. Assuming each homeowner utilizes the full $10,000.00 in grant money, this means that ~11,500 spots will be available.

Changes that may be Negative to Policyholders, Contractors, and Public Adjusters:

- The End of the 25% Rule

Senate Bill 4-D has done away with the so-called 25% rule for roofs. Under the previous version of the Florida Building Code, if more than 25 percent of a roof or section of a roof is "repaired, replaced, or recovered" then the "entire roofing system" or "roof section" must be brought up to code. Senate Bill 4-D has explicitly gotten rid of this requirement. Under the new rule, if more than 25 percent of a roof or a section of a roof is "repaired, replaced, or recovered", then "*only the repaired, replaced, or recovered portion* is required to be constructed in accordance with the Florida Building Code [currently] in effect." This means that the entire roofing system or roof section does not have to be repaired, replaced, or recovered in accordance with the Florida Building Code, even if more than 25 percent of a roof is damaged.

- Policies with Separate Roof Deductibles are Coming

Insurance carriers can issue homeowners insurance policies with a separate roof deductible. The insurer

COHEN LAW GROUP
ITSABOUTJUSTICE.LAW
350 North Lake Destiny Road
Maitland, Florida 32751
407.478.4878
407.478.0204

must disclose that there is a separate roof deductible on the declarations page. The roof deductible cannot be more than 2% of the Coverage A limit or 50% of the cost to replace the roof. The roof

deductible only applies to claims adjusted on a replacement cost basis. Fortunately, the roof deductible cannot apply to total losses, hurricane claims, roofs with less than 50% of the total roof surface damaged, or roof damage caused by tree fall or other events that puncture the roof deck. Likewise, homeowners can opt-out of the separate roof deductible, but must do so in writing using a form created by the Office of Insurance Regulation.

- For Policies with a Separate Roof Deductible, Proof Must be given that the Deductible was Paid before Recoverable Depreciation will be Released

For policies with a separate roof deductible, insurers can withhold payment of recoverable depreciation after the repair work is completed until they receive proof that the deductible amount was paid to the roofer by the homeowner.

- Renewed Advertising Requirements for Contractors and Public Adjusters

Any written or electronic communication by a contractor or public adjuster that “encourages, instructs, or induces” a consumer to make an insurance claim for roof damage must include the following statements (in at least 12 point font and font that is at least half as large as the largest font size used):

(1) the consumer is responsible for payment of any insurance deductible;

(2) It is insurance fraud punishable as a felony of the third degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible application to payment to the contractor for repairs to a property covered by a property insurance policy; and

(3) It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information

Changes to the Law Governing AOBs:

- No Attorney’s Fees for AOBs

Senate Bill 2-D has altered Fla. Stat. § 626.9373, which governs attorney’s fees for surplus line carriers, and Fla. Stat. § 627.428, which governs attorney’s fees for in-state carriers. These alterations prevent attorneys from recovering attorney’s fees for claims brought by an assignee by way of an Assignment of Benefit.

COHEN
LAW GROUP
ITSABOUTJUSTICE.LAW

350 North Lake Destiny Road
Maitland, Florida 32751

407.478.4878
407.478.0204

- Additional Requirements for AOBs

Senate Bill 2-D has altered Fla. Stat. § 627.7152, which governs assignment agreements. Apart from minor changes to the language of the statute, the new version of Fla. Stat. § 627.7152 requires that a

Notice of Intent to Initiate Litigation must be sent at least 10 business days before filing suit, but "not before the insurer has made a determination of coverage".

Changes for Attorneys:

- Insurers can now recover Attorney's Fees and Costs from a Plaintiff if the Plaintiff Fails to Provide a Notice of Intent to Initiate Litigation

Senate Bill 2-D has altered Fla. Stat. § 627.70152, allowing an insurer to recover attorney's fees and costs after obtaining a dismissal of a lawsuit brought by a Plaintiff, if the Plaintiff failed to provide a pre-suit Notice of Intent to Initiate Litigation to the insurer.

- Additional Burden for Plaintiffs to Prove "Bad Faith" claims

Senate Bill 2-D has created Fla. Stat. § 624.1551, which alters Fla. Stat. § 624.155. Fla. Stat. § 624.155 governs "Bad Faith" claims. Under the new Fla. Stat. § 624.1551, the claimant must now "establish that the property insurer breached the insurance contract" to prevail in a claim for extracontractual damages under Fla. Stat. § 624.155.

- Strong Presumption Against Fee Multipliers

Senate Bill 2-D has altered Fla. Stat. § 627.70152, creating a "strong presumption" that a lodestar fee is "sufficient and reasonable". This strong presumption can only be rebutted in "rare and exceptional" circumstances with "evidence that competent counsel could not be retained in a reasonable manner".

New Requirements for Condos and CO-Ops:

- Milestone Inspections for Condos and CO-OPs:

Senate Bill 4-D requires that condominium and cooperative associations must conduct mandatory structural inspections. This means that at certain "milestones" (i.e. time intervals), condominium associations and cooperative buildings must have a structural inspection of its buildings by either a licensed architect or engineer. This structural inspection must include an inspection of load- bearing walls, primary structural members, and primary structural systems of the buildings.

If the building is three stories tall or greater, the milestone inspection must occur by the end of the year

350 North Lake Destiny Road
Maitland, Florida 32751

407.478.4878
407.478.0204

in which the building reaches 30 years of age, and every ten years thereafter. If the building within 3 miles of a coastline, the milestone inspection must occur by the end of the year in which the building reaches 25 years of age, and every ten years thereafter. Failure to conduct a milestone inspection constitutes a breach of the association's officer(s)' or director(s)' fiduciary duty.

- Structural Integrity Reserve Study:

At least every 10 years after the creation of a building that is three stories tall or greater, condominium and cooperative associations must conduct mandatory study of the reserve funds required for future major repairs of common areas based on a visual inspection of the common areas. The visual inspection must be conducted by a licensed engineer or architect. The study must include consideration of structural elements, including the roof, load-bearing walls or primary structural members, the floor, foundation, fireproofing and fire protection systems, plumbing, electrical systems, waterproof, windows, or any item whose maintenance expense or replacement cost exceeds $10,000.00 affecting any of the aforementioned areas of study. Records of the study must be kept for 15 years, and the association's annual budget must account for any items identified by the Study. Failure to conduct a Structural Integrity Reserve Study constitutes a breach of the association's officer(s)' or director(s)' fiduciary duty.

- Informational Notice to the Division of Florida Condominiums, Timeshares, and Mobile Homes

Before January 1, 2023, condominium and cooperative associations must provide an informational notice to the Division of Florida Condominiums, Timeshares, and Mobile Homes. This notice must include a number of items of information, including the number of buildings that are three stories high or greater, the number of units in each building, et cetera.