

*Fla. Stat. § 627.701 (2011)*

## § 627.701. Liability of insureds; coinsurance; deductibles

(1) A property insurer may issue an insurance policy or contract covering either real or personal property in this state which contains provisions requiring the insured to be liable as a coinsurer with the insurer issuing the policy for any part of the loss or damage by covered peril to the property described in the policy only if:

(a) The following words are printed or stamped on the face of the policy, or a form containing the following words is attached to the policy: "Coinsurance contract: The rate charged in this policy is based upon the use of the coinsurance clause attached to this policy, with the consent of the insured.";

(b) The coinsurance clause in the policy is clearly identifiable; and

(c) The rate for the insurance with or without the coinsurance clause is furnished the insured upon his or her request.

(2) Unless the office determines that the deductible provision is clear and unambiguous, a property insurer may not issue an insurance policy or contract covering real property in this state which contains a deductible provision that:

(a) Applies solely to hurricane losses.

(b) States the deductible as a percentage rather than as a specific amount of money.

(3) (a) Except as otherwise provided in this subsection, prior to issuing a personal lines residential property insurance policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to \$ 500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits, unless the specific percentage deductible is less than \$ 500. The written notice of the offer shall specify the hurricane deductible to be applied in the event that the applicant or policyholder fails to affirmatively choose a hurricane deductible. The insurer must provide such policyholder with notice of the availability of the deductible amounts specified in this subsection in a form approved by the office in conjunction with each renewal of the policy. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy.

(b) This subsection does not apply with respect to a deductible program lawfully in effect on June 14, 1995, or to any similar deductible program, if the deductible program requires a minimum deductible amount of no less than 2 percent of the policy limits.

(c) With respect to a policy covering a risk with dwelling limits of at least \$ 100,000, but less than \$ 250,000, the insurer may, in lieu of offering a policy with a \$ 500 hurricane deductible as required by paragraph (a), offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a 2 percent hurricane deductible as required by paragraph (a).

(d) With respect to a policy covering a risk with dwelling limits of \$ 250,000 or more, the insurer need not offer the \$ 500 hurricane deductible as required by paragraph (a), but must, except as otherwise provided in this subsection, offer the other hurricane deductibles as required by paragraph (a).

(4) (a) Any policy that contains a separate hurricane deductible must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." A policy containing a coinsurance provision applicable to hurricane losses must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

(b) For any personal lines residential property insurance policy containing a separate hurricane deductible, the insurer shall compute and prominently display the actual dollar value of the hurricane deductible on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice.

(c) For any personal lines residential property insurance policy containing an inflation guard rider, the insurer shall compute and prominently display the actual dollar value of the hurricane deductible on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice. In addition, for any personal lines residential property insurance policy containing an inflation guard rider, the insurer shall notify the policyholder of the possibility that the hurricane deductible may be higher than indicated when loss occurs due to application of the inflation guard rider. Such notification shall be made on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice.

(d) 1. A personal lines residential property insurance policy covering a risk valued at less than \$ 500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write and provide to the insurer the following statement in his or her own handwriting and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "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."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

(5) (a) The hurricane deductible of any personal lines residential property insurance policy issued or renewed on or after May 1, 2005, shall be applied as follows:

1. The hurricane deductible shall apply on an annual basis to all covered hurricane losses that occur during the calendar year for losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group.

2. If a hurricane deductible applies separately to each of one or more structures insured under a single policy, the requirements of this paragraph apply with respect to the deductible for each structure.

3. If there was a hurricane loss for a prior hurricane or hurricanes during the calendar year, the insurer may apply a deductible to a subsequent hurricane which is the greater of the remaining amount of the hurricane deductible or the amount of the deductible that applies to perils other than a hurricane. Insurers may require policyholders to report hurricane losses that are below the hurricane deductible or to maintain receipts or other records of such hurricane losses in order to apply such losses to subsequent hurricane claims.

4. If there are hurricane losses in a calendar year on more than one policy issued by the same insurer or an insurer in the same insurer group, the hurricane deductible shall be the highest amount stated in any one of the policies. If a policyholder who had a hurricane loss under the prior policy is provided or offered a lower hurricane deductible under the new or renewal policy, the insurer must notify the policyholder, in writing, at the time the lower hurricane deductible is provided or offered, that the lower hurricane deductible will not apply until January 1 of the following calendar year.

(b) For commercial residential property insurance policies issued or renewed on or after January 1, 2006, the insurer must offer the policyholder the following alternative hurricane deductibles:

1. A hurricane deductible that applies on an annual basis as provided in paragraph (a); and
2. A hurricane deductible that applies to each hurricane.

(6) (a) It is the intent of the Legislature to encourage the use of higher hurricane deductibles as a means of increasing the effective capacity of the hurricane insurance market in this state and as a means of limiting the impact of rapidly changing hurricane insurance premiums. The Legislature finds that the hurricane deductibles specified in this subsection are reasonable when a property owner has made adequate provision for restoration of the property to its full value after a catastrophic loss.

(b) A personal lines residential insurance policy providing hurricane coverage may, at the mutual option of the insured and insurer, include a secured hurricane deductible as described in paragraph (c) if the applicant presents the insurer a certificate of security as described in paragraph (d). An insurer may not directly or indirectly require a secured deductible under this subsection as a condition of issuing or renewing a policy. A certificate of security is not required with respect to an applicant who owns a 100 percent equity interest in the property.

(c) A secured hurricane deductible must include the substance of the following:

1. The first \$ 500 of any claim, regardless of the peril causing the loss, is fully deductible.
2. With respect to hurricane losses only, the next \$ 5,000 in losses are fully insured, subject only to a copayment requirement of 10 percent.
3. With respect to hurricane losses only, the remainder of the claim is subject to a deductible equal to a specified percentage of the policy dwelling limits in excess of the deductible allowed under former paragraph (3)(a) but no higher than 10 percent of the policy dwelling limits.
4. The insurer agrees to renew the coverage on a guaranteed basis for a period of years after initial issuance of the secured deductible equal to at least 1 year for each 2 percentage points of deductible specified in subparagraph 3. unless the policy is canceled for nonpayment of premium or the insured fails to maintain the certificate of security. Such renewal shall be at the same premium as the initial policy except for premium changes attributable to changes in the value of the property.

(d) The office shall draft and formally propose as a rule the form for the certificate of security. The certificate of security may be issued in any of the following circumstances:

1. A mortgage lender or other financial institution may issue a certificate of security after granting the applicant a line of credit, secured by equity in real property or other reasonable security, which line of credit may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss. In the sole discretion of the mortgage lender or other financial institution, the line of credit may be issued to an applicant on an unsecured basis.
2. A licensed insurance agent may issue a certificate of security after obtaining for an applicant a line of credit, secured by equity in real property or other reasonable security, which line of credit may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss. The Florida Hurricane Catastrophe Fund shall negotiate agreements creating a financing consortium to serve as an additional source of lines of credit to secure deductibles. Any licensed insurance agent may act as the agent of such consortium.
3. Any person qualified to act as a trustee for any purpose may issue a certificate of security secured by a pledge of assets, with the restriction that the assets may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss.
4. Any insurer, including any admitted insurer or any surplus lines insurer, may issue a certificate of security after issuing the applicant a policy of supplemental insurance that will pay for 100 percent of the deductible portion of insured construction or reconstruction after a hurricane loss.
5. Any other method approved by the office upon finding that such other method provides a similar level of security as the methods specified in this paragraph and that such other method has no negative impact on residential property insurance catastrophic capacity. The legislative intent of this subparagraph is to provide the flexibility needed to achieve the public policy of expanding property insurance capacity while improving the affordability of property insurance.

(e) An issuer of a certificate of security may terminate the certificate for failure to honor any of the terms of the underlying financial arrangement. The issuer must provide notice of termination to the insurer within 10 working days after termination. Unless the policyholder obtains a replacement certificate of security within an additional 20 working

days after such notice, the deductible provision in the policy must revert to a lower deductible otherwise offered by the insurer and the policyholder is responsible for any additional premium required for a policy with such deductible.

(7) Prior to issuing a personal lines residential property insurance policy on or after April 1, 1997, or prior to the first renewal of a residential property insurance policy on or after April 1, 1997, the insurer must offer a deductible equal to \$ 500 applicable to losses from perils other than hurricane. The insurer must provide the policyholder with notice of the availability of the deductible specified in this subsection in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy. An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.

(8) Notwithstanding the other provisions of this section or of other law, but only as to hurricane coverage as defined in *s. 627.4025* for commercial lines residential coverages, an insurer may offer a deductible in an amount not exceeding 10 percent of the insured value if, at the time of such offer and at each renewal, the insurer also offers to the policyholder a deductible in the amount of 3 percent of the insured value. Nothing in this subsection prohibits any deductible otherwise authorized by this section. All forms by which the offers authorized in this subsection are made or required to be made shall be on forms that are adopted or approved by the commission or office.

(9) With respect to hurricane coverage provided in a policy of residential coverage, when the policyholder has taken appropriate hurricane mitigation measures regarding the residence covered under the policy, the insurer shall provide the insured the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential as provided in *s. 627.0629*. The insurer must provide the policyholder with notice of the options available under this subsection on a form approved by the office.

**HISTORY:** S. 605, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 538, 541, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 114, ch. 92-318; s. 16, ch. 93-410; s. 13, ch. 95-276; s. 12, ch. 96-194; s. 11, ch. 97-55; s. 26, ch. 97-93; s. 1736, ch. 97-102; s. 1183, ch. 2003-261; s. 4, ch. 2004-480; ss. 12, 13, ch. 2005-111; s. 45, ch. 2006-12, eff. January 1, 2007; s. 28, ch. 2007-1, eff. Jan. 25, 2007; s. 17, ch. 2007-90, eff. June 11, 2007; s. 151, ch. 2008-4, eff. July 1, 2008.

#### NOTES:

#### AMENDMENTS

The 2003 amendment by s. 1183, ch. 2003-261, effective June 26, 2003, substituted "office" for "department" throughout the section unless otherwise noted; in (3)(b)1. and (6) substituted "approved" for "specified"; in (5)(d) deleted "no later than July 1, 1996" at the end of the first sentence; and in (8) substituted "commission or office" for "department."

The 2004 amendment by s. 4, ch. 2004-480, effective December 21, 2004, inserted present (5), and renumbered former (5), (6), (7), and (8) as present (6), (7), (8) and (9), respectively.

The 2005 amendment by s. 12, ch. 2005-111, effective October 1, 2005, deleted "or wind" following "hurricane" throughout the section; in (3)(a), substituted "10 percent" for "5 percent" in the second sentence; in (3)(b)1., substituted "January 1, 2006" for "April 1, 1996" twice; inserted "5 percent, and 10 percent" following "\$500, 2 percent," substituted "specific percentage" for "2 percent" preceding "deductible is less than \$500"; in (3)(b)4. substituted "other hurricane deductibles" for "2 percent hurricane or wind deductible"; deleted (3)(c) relating to the transition from wind deductible to hurricane deductible; added (4)(b); added (4)(c); deleted (8) relating to Legislative findings with regard to property insurance coverage for mobile home owners, and certain provisions regarding mobile home policies; redesignated former (9) as (8), and in present (8), deleted "5 percent of the insured value with respect to a condominium association or cooperative association policy or in an amount not exceeding" preceding "10 percent of the insured value" and "with respect to any other commercial lines residential policy" following "10 percent of the insured value."

The 2005 amendment by s. 13, ch. 2005-111, effective June 1, 2005, redesignated former (5) as (5)(a), and former (5)(a) through (5)(d) as present (5)(a)1. through (5)(a)4.; added (5)(b); and in (5)(a), inserted "personal lines" preceding "residential property insurance," and "issued or renewed on or after May 1, 2005" following "policy."

The 2006 amendment by s. 45, ch. 2006-12, effective January 1, 2007, added (9).

The 2007 amendment by s. 28, ch. 2007-1, effective January 25, 2007, deleted (3)(a) relating to deductible amounts applicable to hurricane losses; redesignated former (3)(b)1.-4. as present (3)(a)-(d) and corrected internal references; in

present (3)(a) deleted "on or after January 1, 2006, or prior to the first renewal of a residential property insurance policy on or after January 1, 2006" following "insurance policy" in the first sentence; in (4)(a), (b), and (c), deleted "beginning October 1, 2005" three times; added (4)(d); and in (9), substituted "insurer shall" for "insurer may" and "or" for "in lieu of" in the first sentence, and deleted "If made available by the insurer" at the beginning of the second sentence.

The 2007 amendment by s. 17, ch. 2007-90, effective June 11, 2007, in (3)(a) and (c), deleted "or wind" preceding "deductible"; in (4)(d)2., substituted "thereafter" for "unless the policy-holder elects otherwise" and added the last sentence; and in (4)(d)3., inserted "electronically or otherwise."

The 2008 amendment by s. 151, ch. 2008-4, effective July 1, 2008, substituted "this subsection" for "this paragraph" in (3)(a); and in (6)(c)3. inserted "former" preceding "paragraph (3)(a)."

#### FLORIDA STATUTES REFERENCES

Chapter 627. Insurance Rates and Contracts, *F.S. § 627.702*. Valued policy law.

#### FLORIDA ADMINISTRATIVE CODE REFERENCES

Chapter 690-142 Insurer Conduct, *F.A.C. 690-142.011* Insurer Conduct Penalty Guidelines.

Chapter 690-167 Property and Casualty Insurance Contracts, *F.A.C. 690-167.012* Certificates of Security for Hurricane Deductibles.

Chapter 690-167 Property and Casualty Insurance Contracts, *F.A.C. 690-167.013* Residential Property Insurance Checklists and Disclosures.

LexisNexis (R) Notes:

#### CASE NOTES

1. Condominium association's claim against an insurer, asserting a violation of *Fla. Stat. § 627.701* for failure to designate properly the coinsurance provision in the association's insurance policy, would not be dismissed on the asserted ground that any coinsurance provision failing to comply with statutory requirements was void; although courts had found that coinsurance provisions failing to comply with statutory requirements were void, the insurer cited no case law stating that such was necessarily the only remedy. *Townhouses of Highland Beach Condo. Ass'n v. Qbe Ins. Corp.*, 504 *F. Supp. 2d* 1307, 2007 *U.S. Dist. LEXIS* 45458 (*S.D. Fla.* 2007).

2. Penalty provision found in an insurer's coinsurance clause, which dealt with undervaluation, was void because the policy at issue failed to include a statement in the form required under *Fla. Stat. § 627.701(1)*. *United States Fire Ins. Co. v. Roberts*, 541 *So. 2d* 1297, 1989 *Fla. App. LEXIS* 1900 (*Fla. 1st DCA* 1989).

3. Insured's motion for partial summary judgment was denied because by application of Florida law, only the 2004 version of *Fla. Stat. § 627.701* was applicable and a deductible of five percent should be applied to each building, per occurrence, with no payment to be made to the insured unless the adjusted assessed damage to an individual building exceeded the deductible for that building. *Royale Green Condo. Ass'n v. Aspen Specialty Ins. Co.*, 2008 *U.S. Dist. LEXIS* 118003 (*S.D. Fla.* July 28, 2008).

4. Because Florida courts were willing to void hurricane deductible provisions for failures to comply with *Fla. Stat. § 627.701(1)(a)-(b)*, (4)(a), defendant insured's counterclaim for such declaratory relief against plaintiff insurer could survive dismissal. *QBE Ins. Corp. v. Dome Condo. Ass'n*, 577 *F. Supp. 2d* 1256, 2008 *U.S. Dist. LEXIS* 90769 (*S.D. Fla.* 2008).

5. Because Florida courts were willing to void hurricane deductible provisions for failures to comply with *Fla. Stat. § 627.701(1)(a)-(b)*, (4)(a), defendant insured's counterclaim for such declaratory relief against plaintiff insurer could survive dismissal, but since the insurer stipulated that the insurance contract was enforceable and that it would not seek enforcement of the co-insurance provisions, those declaratory judgment issues failed. *QBE Ins. Corp. v. Dome Condo. Ass'n*, 577 F. Supp. 2d 1256, 2008 U.S. Dist. LEXIS 90769 (S.D. Fla. 2008).

6. In the absence of an express penalty attached to *Fla. Stat. § 627.701(4)(a)* which prescribes the manner in which property insurers are to alert their insureds that the policy contains a separate hurricane deductible, a court is not at liberty to supply one. *RTG Furniture Corp. v. Indus. Risk Insurers*, 2008 U.S. Dist. LEXIS 85237 (S.D. Fla. 2008).

7. Although an insurer admitted that its all risk policy did not meet the requirement of *Fla. Stat. § 627.701(4)(a)*, which prescribed the manner in which the insurer was to alert its insured that the policy contained a separate hurricane deductible, the court was not at liberty to provide the insured with a remedy in the form of voiding the policy's named storm occurrence deductible because the statute did not provide for a penalty. *RTG Furniture Corp. v. Indus. Risk Insurers*, 2008 U.S. Dist. LEXIS 85237 (S.D. Fla. 2008).

8. *Fla. Stat. § 627.701(4)(a)* was mandatory and required strict compliance, so an insurer violated it by not putting the required language in the proper font size and by using the term "windstorm" instead of "hurricane losses." However, absent an express penalty for the violation, the court declined to provide one and the hurricane deductible was not void. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 526 F. Supp. 2d 1251, 2007 U.S. Dist. LEXIS 91768 (S.D. Fla. 2007).

9. While *Fla. Stat. § 627.418(1)* may have been intended to benefit policyholders and not insurance companies, its language was general and appeared to apply to *Fla. Stat. § 627.701(4)(a)*. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 526 F. Supp. 2d 1251, 2007 U.S. Dist. LEXIS 91768 (S.D. Fla. 2007).

10. *Fla. Stat. § 627.701*, which placed certain restrictions upon deductible provisions specific to hurricane damage subject to enforcement by the Department of Insurance, did not apply to the contract of insurance in the case before the court because the insurer was an excess lines carrier based in Connecticut and was not subject to regulation by the Florida Department of Insurance. *General Star Indem. v. W. Fla. Vill. Inn, Inc.*, 874 So. 2d 26, 2004 Fla. App. LEXIS 6090 (Fla. 2nd DCA 2004).

11. While *Fla. Stat. § 627.701(4)(a)* required that a hurricane deductible provision be printed in a certain size and contain certain language, it did not provide for a private right of action for plaintiff insured based on defendant insured's policy not conforming to those requirements. *Trianon Condo. Ass'n v. QBE Ins. Corp.*, 741 F. Supp. 2d 1327, 2010 U.S. Dist. LEXIS 108181 (S.D. Fla. Oct. 1, 2010).

12. Pursuant to *Fla. Const. art. V, § 3*, because questions of Florida law were determinative of the outcome of a coverage dispute, the court certified a question to the Florida Supreme Court as to whether an insured could bring a claim against an insurer for failure to comply with the requirements of *Fla. Stat. § 627.701(4)(a)* and, if so, whether the insurer's failure to comply rendered a deductible provision in a policy void and unenforceable. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 2009 U.S. App. LEXIS 4941 (11th Cir. 2009).

13. While *Fla. Stat. § 627.701(4)(a)* required that a hurricane deductible provision be printed in a certain size and contain certain language, it did not provide for a private right of action for plaintiff insured based on defendant insured's policy not conforming to those requirements. *Trianon Condo. Ass'n v. QBE Ins. Corp.*, 741 F. Supp. 2d 1327, 2010 U.S. Dist. LEXIS 108181 (S.D. Fla. Oct. 1, 2010).

14. Exclusion of *Fla. Stat. § 627.021(2)(e)* did not apply to the entire chapter of 627 and thus surplus lines insurers were not excused from the deductible provision in *Fla. Stat. § 627.701(8)* at the time the policy was enacted. Therefore, as one of the insureds offered the five percent, it was obligated to also offer the three percent deductible. *Vision I Homeowners Ass'n v. Aspen Specialty Ins. Co.*, 643 F. Supp. 2d 1356, 2009 U.S. Dist. LEXIS 75319 (S.D. Fla. 2009).

15. Insured's motion for partial summary judgment was denied because by application of Florida law, only the 2004 version of *Fla. Stat. § 627.701* was applicable and a deductible of five percent should be applied to each building, per occurrence, with no payment to be made to the insured unless the adjusted assessed damage to an individual building exceeded the deductible for that building. *Royale Green Condo. Ass'n v. Aspen Specialty Ins. Co.*, 2008 U.S. Dist. LEXIS 118003 (S.D. Fla. July 28, 2008).

16. Because Florida courts were willing to void hurricane deductible provisions for failures to comply with *Fla. Stat. § 627.701(1)(a)-(b)*, (4)(a), defendant insured's counterclaim for such declaratory relief against plaintiff insurer could survive dismissal, but since the insurer stipulated that the insurance contract was enforceable and that it would not seek enforcement of the co-insurance provisions, those declaratory judgment issues failed. *QBE Ins. Corp. v. Dome Condo. Ass'n*, 577 F. Supp. 2d 1256, 2008 U.S. Dist. LEXIS 90769 (S.D. Fla. 2008).

17. *Fla. Stat. § 627.701(4)(a)* was mandatory and required strict compliance, so an insurer violated it by not putting the required language in the proper font size and by using the term "windstorm" instead of "hurricane losses." However, absent an express penalty for the violation, the court declined to provide one and the hurricane deductible was not void. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 526 F. Supp. 2d 1251, 2007 U.S. Dist. LEXIS 91768 (S.D. Fla. 2007).

18. While *Fla. Stat. § 627.418(1)* may have been intended to benefit policyholders and not insurance companies, its language was general and appeared to apply to *Fla. Stat. § 627.701(4)(a)*. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 526 F. Supp. 2d 1251, 2007 U.S. Dist. LEXIS 91768 (S.D. Fla. 2007).

19. Pursuant to *Fla. Const. art. V, § 3*, because questions of Florida law were determinative of the outcome of a coverage dispute, the court certified a question to the Florida Supreme Court as to whether an insured could bring a claim against an insurer for failure to comply with the requirements of *Fla. Stat. § 627.701(4)(a)* and, if so, whether the insurer's failure to comply rendered a deductible provision in a policy void and unenforceable. *Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 2009 U.S. App. LEXIS 4941 (11th Cir. 2009).

20. In the absence of an express penalty attached to *Fla. Stat. § 627.701(4)(a)* which prescribes the manner in which property insurers are to alert their insureds that the policy contains a separate hurricane deductible, a court is not at liberty to supply one. *RTG Furniture Corp. v. Indus. Risk Insurers*, 2008 U.S. Dist. LEXIS 85237 (S.D. Fla. 2008).

21. Although an insurer admitted that its all risk policy did not meet the requirement of *Fla. Stat. § 627.701(4)(a)*, which prescribed the manner in which the insurer was to alert its insured that the policy contained a separate hurricane deductible, the court was not at liberty to provide the insured with a remedy in the form of voiding the policy's named storm occurrence deductible because the statute did not provide for a penalty. *RTG Furniture Corp. v. Indus. Risk Insurers*, 2008 U.S. Dist. LEXIS 85237 (S.D. Fla. 2008).

#### TREATISES AND ANALYTICAL MATERIALS

1. Florida Commercial Landlord Tenant Law, Chapter 8 Drafting a Commercial Lease, § 8.02 Subjects to Consider.
2. *Florida Torts, IX. Insurance, Chapter 155. Property Insurance*, § 155.10 Coinsurance and Deductibles.
3. *Florida Torts, IX. Insurance, Chapter 155. Property Insurance*, § 155.111 Statutory Compliance by Insurer.

#### LAW REVIEWS

1. The Wind and the Waves: The Evolution of Florida Property Insurance Law in Response to Multiple-Causation Hurricane Damage, Scott Edwards, Winter 2007, *34 Fla. St. U.L. Rev.* 541.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Property & Fire Insurance



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