

## Claim Denials via Florida Statute 627.409

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It's likely that not one in 1,000 insurance professionals would know what Florida Statute 627.409 is and how it can result in a claim denial or even possibly an E&O claim. While I posted a blog about this over a year ago, at least five situations have arisen in the last few months where this statute has reared its ugly head again. Here is the statute:

### ***627.409 Representations in applications; warranties.--***

*(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and is not a warranty. A misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:*

*(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer.*

*(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.*

The below situations are real and illustrate the possible impact of this statute.

Situation #1: The insured filed a claim for lightning damage under a homeowners policy. The carrier issued an initial payment and a few days later a supplemental payment. The company reviewed the application (submitted about two years earlier) and saw the answer to the "prior bankruptcy" question was "no." The company investigated and found out that the insured had declared bankruptcy a few years earlier. The underwriting guidelines issued by the insurer stated that risks with prior bankruptcy were not eligible for coverage. The carrier stopped payment on the checks, cancelled the policy back to original inception, and refunded the money.

Situation #2: The insured filed a claim for a sinkhole loss under a homeowners policy. The company reviewed the original application of five years earlier and (like above) the bankruptcy question was answered as "no." There had been a bankruptcy; the carrier denied the claim, cancelled the policy back to original inception, and refunded the money.

Situation #3: In New York (they have a similar statute), the insured had a CGL policy covering a small commercial building that was leased to others. The application indicated that there were two tenants. After a liability loss was submitted, the carrier determined that there were three tenants and had that fact been disclosed correctly, there would have been an additional premium charge. The claim was denied.

Situation #4: The insured had a Personal Auto Policy (PAP) and was involved in an at-fault accident where four people were injured. There was a PIP claim, a property damage liability claim, four bodily injury claims, and a collision claim. After the accident, the insurer discovered a youthful household resident who had not been disclosed on the application. Had that resident been disclosed, there would have been an additional premium charge. The carrier totally denied the claim, cancelled the policy back two years, and refunded the premium.

Situation #5: The insured had an HO-3 policy and submitted a small theft claim that would have netted a payment of \$1,500 after deductible. The carrier went back and looked at the application of two years earlier where a question was asked if there had been a DUI in the household in the past ten years. The question was answered, “no.” In fact, seven years earlier, one spouse had been convicted of DUI. The claim was denied and the policy was cancelled flat back to the original inception date.

Two items are key here. First, it’s critical that the customer understand that all insurance application questions must be answered completely, accurately, and truthfully. Second, insurance professionals must ask every question on every application every time and assume nothing. Imagine the scenario where an agent answered a bankruptcy question as “no” without asking the client, thinking, “I’ve known Fred for 40 years and know he’s never had a bankruptcy.”

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