



Robin Smith Westcott, Esq.
Insurance Consumer Advocate

MEMORANDUM

To: Homeowners' Policy & Claims Bill of Rights Working Group Participants

From: Robin Smith Westcott, Insurance Consumer Advocate

Date: October 14, 2013

Subject: Homeowners' Policy & Claims Bill of Rights Working Group Report

Thank you all so very much for volunteering your time, professional expertise, and myriad other resources, while serving on the Homeowners' Policy & Claims Bill of Rights Working Group. I have attached the final draft of the Report for your review. The proposed legislation is also attached.

For each subject matter topic staff assembled their notes from our panel discussions, phone conferences, and your emailed comments. The proposed recommendations were carefully discussed and some were redrafted to address concerns of the represented industries and consumers. I commend each and every one of you for your professionalism and especially for the courtesy extended to those with whom you differed, at times passionately.

As you know, I am leaving the Office of the Insurance Consumer Advocate at the end of this month. CFO Jeff Atwater will be taking these recommendations and putting legislation forward to codify the body of work this group has worked so diligently to prepare. I would like to be able to tell CFO Atwater that this is a consensus from the members of our group that these issues and framework for the Claims Bill of Rights are legitimate issues to be addressed by Florida policymakers. While you may not wish to heartily endorse every recommendation, it would be helpful, as a courtesy to the CFO, if you reply to this email with the recommendation(s) you cannot support or outright oppose. Please provide your comments by COB Friday, October 18 2013.

Thank you all again for your support, and for your friendship; I will miss you all.

APPOINTED BY JEFF ATWATER, CHIEF FINANCIAL OFFICER, STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
200 EAST GAINES STREET, TALLAHASSEE, FLORIDA 32399-0308
(850)413-5923 FAX (850)-487-0453
ROBIN.WESTCOTT@MYFLORIDACFO.COM

Issues and Recommendations

Education, Transparency and Monitoring the Marketplace Recommendations:

- A robust consumer information website providing a single repository of insurer coverage, rate, complaint and financial strength information. Additionally, this site should provide consumers with the ability to rate insurer service and claim performance.
- Increased funding for the Department of Financial Services’ Division of Consumer Services to conduct more public outreach and workshops for consumers.

The Claims Process Recommendations:

- Qualify the notice requirement to exclude the 48 hour window immediately following the notice of the claim for company adjusters.
- If the vendor seeks to have the repair work submitted as part of the damage claim sent to the insurance company by the homeowner, there must be a written contract. The contract must include a detailed written estimate of the scope of work to be performed and a quote for all materials and services to be rendered.
- The insured must be notified of any variance from the scope of work in the original contract, and such variance must be documented and agreed to in writing.
- The contract must contain a right to rescind within a reasonable time period after it is executed.
- Referral fees and kickbacks must be prohibited for all insurance inspections, repairs or work to be performed on a private residence.

Assignment of Benefits Recommendations:

- A vendor should be limited to a qualified assignment of benefits for **work performed** for repairs to a home for which recovery of insurance proceeds is anticipated. The qualified assignment of benefits should be restricted to claims brought only under Coverage A: Dwelling and Coverage B: Other Structures.
- Any contract containing the qualified assignment of benefits must contain the following to be a valid assignment:
 - A detailed written estimate of the scope of work to be performed and a quote for all materials and services to be rendered;
 - Notice to the homeowner that the homeowner retains all other rights and responsibilities under the contract;
 - No contract with an assignment of benefits shall contain any language that would be considered “adjusting” the claim;
 - The homeowner shall be given notice of all information regarding the claim submitted by the vendor to the insurance company and any action taken by the vendor to secure payment from the insurance company for work performed; and,
 - Any changes or modification to the scope of work under a contract with a qualified assignment must be presented to the homeowner for written approval for the assignment to remain valid.

- In order to be a valid assignment, the assignee must notify the insurance company in writing within 72 hours of the execution of the assignment.
-

Emergency Remediation Companies / Water Loss Recommendations:

- Define Emergency Mitigation Contractor: Any individual or company who provides services regarding damages to any residential structure (or personal property contained within), which requires mitigation or remediation, including removal of property, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities, where the lack of immediate mitigation will cause further damage to the property.
- All Emergency Mitigation Contractors must have a certification (or qualification) from a Department of Business and Professional Regulation (DBPR) recognized organization related to their scope of work, in order to solicit or provide mitigation or remediation services within 48 hours of a loss **and** in order to hold themselves out to the public as a “restoration”, “mitigation”, or “disaster” contractor.
- Any company may be qualified (even if the certifying body does not certify companies) if an individual who supervises Emergency Mitigation on site is certified in the scope of work. Any company with a Division 1 license or Division 2 license under Chapter 489, Florida Statutes, is exempt from the above requirements (including Section 2) to the extent that they are providing services within the scope of their license.
- All work of an Emergency Mitigation Contractor, other than removal of non-load bearing building materials and finishes, which requires a license under Chapter 489, Florida Statutes, must be performed by a person or company who is licensed under that chapter for the work being performed.
- The scope of work to be included in the contract for services by Emergency Mitigation Contractors must be reviewed and approved by the supervisor holding certification and must be consistent with the provisions set forth in ANSI/IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration (or in any updated version thereof.)
- If the contract for services by the Emergency Mitigation Contractor contains a qualified assignment of benefits, all documents submitted to the insurance company for reimbursement must be consistent with the scope of work and reflect the provision set forth in ANSI/IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration (or in any updated version thereof) and it must be consistent with other statutes and laws pertaining to assignments of benefits.

Examinations Under Oath Recommendations:

- An insurer must provide a standardized written statement to the policyholder that fully explains the EUO process and sets forth the policyholder’s rights.
- An insurer may only conduct an EUO to obtain information that is relevant and reasonably necessary to process or investigate a claim.
- An insurer must inform the policyholder of his/her right to retain counsel for an EUO.
- The insurance company shall notify the policyholder, that upon request and free of charge, it will provide the policyholder with a copy of the transcript of the proceedings.

A homeowner may make sworn corrections to the transcript so it accurately reflects the testimony under oath.

- Any vendor receiving an assignment of benefits shall be subject to the provision of a policy regarding the EUO but shall receive the same protections listed above.

Alternative Dispute Resolution Recommendations:

- Extend authority to the Department of Financial Services (DFS) to regulate mediators, neutral evaluators and the mediation and neutral evaluation processes through legislation or administrative rule.
- Amend the Department of Financial Services administrative rules to establish fair standards for mediation locations.
- Allow insurers the right to request policyholders to provide photo identification to attend mediation or neutral evaluation conferences.
- Amend mediator qualification standards to comply with the Supreme Court of Florida decisions and incorporate regulatory and disciplinary procedures.
- Require insurer’s mediation representatives to be certified under the mediation training standards and procedures adopted by the Supreme Court of Florida.
- Revise form DFS-I5-1971, Disposition of Property Insurance Mediation Conference Form (Appendix I), to include the following additional information:
 - Date the Mediation Conference was held;
 - Date DFS-I5-1971 was submitted to DFS;
 - List of all insurer representatives attending the mediation conference;
 - List of all policyholder representatives attending the mediation conference; and,
 - A satisfaction rating of the mediator obtained independently by DFS from the policyholder.
- Require entry of all data on the following forms into separate databases for the purpose of facilitating research into the fairness and effectiveness of the mediation and neutral evaluation processes:
 - DFS-I5-1971 Disposition of Property Insurance Mediation Conference Form; and,
 - DFS-I4-1785 (Rev.07/2011) Disposition of Neutral Evaluation – Sinkhole Insurance Form (Appendix II).

Post-Claim Underwriting Recommendation:

- Limit the use of a credit deficiency for the purpose of cancelling an insurance policy to the initial 90 day underwriting period as currently defined in Florida law. An insurance company has an obligation to verify the accuracy of information on an application from readily available sources and has an obligation to not engage in a “gotcha” technique years after the insurance was purchased.

Repair vs. Indemnity Recommendations:

- When an insurance company wants to elect the right to repair or rely upon a managed care endorsement limiting the selection of the contractor or repair company designated by the company, the company (NOT THE CONSUMER) must sign the contract with the contractor. The consumer must allow the contractor access to the property, but the work of the contractor is now managed by the insurance company and payments must be made

directly to the contractor by the insurance company and the insured has no contractual relationship with the contractor.

- The Office of Insurance Regulation should develop rules that clearly define the limits and requirements for companies that operate managed repair or right to repair programs as standard business practice including rules concerning deductible payment requirements as a prerequisite to beginning repairs.
- The rules should include but are not limited to the following:
 - The company must have established protocols and appropriate auditable safeguards for consumers including a complaint resolution protocol;
 - Companies that have managed repair programs should offer or ensure the vendor selected by the company offers a three year warranty for the work performed;
 - All vendors must maintain appropriate licensure and permits must be obtained as required for all work performed; and,
 - Companies must maintain a database of all claims under such programs.
- The Office of Insurance Regulation should establish a limited scope market review every three years for companies implementing such programs as standard business practice.

Mortgage Companies Withholding Funds Recommendation:

- Federally chartered banks should develop rules consistent with the requirements for FannieMae and FreddieMac with respect to mortgages in arrears.
- Standards should be implemented to ensure uniform inspection plans and reasonable compensation.