

# INSURANCE JOURNAL

## Florida Legislature Will Regret Failing to Tackle AOB Abuse

By [Ray Lehmann](#) | April 25, 2018

For the sixth time in six years, the Florida Legislature adjourned its annual session having tried, and failed, to address the assignment-of-benefits (AOB) crisis that is driving up homeowners insurance rates across the state. Without reform, premiums are projected to rise more than [60 percent over the next five years in Broward and Miami-Dade and more than 50 percent in Clay and Duval](#) counties. In fact, every Florida county should expect increases with the exception of Hernando, which already has some of the state's highest homeowners insurance premiums.

Hurricane Irma might be the most obvious reason for rates to go up, but thanks to widespread abuse of the AOB system, rates have been rising in some parts of the state even during the unprecedented decade-long hurricane drought.

An AOB [is an agreement](#) initiated after one's property is damaged, through which a policyholder can appoint the contractor hired to fix the damages to work with and be paid directly by the insurer. This relieves the property owner of the headache of essentially being the middleman. AOBs are common in every state, but a confluence of unique factors, many having to do with the state's "one-way attorneys fee" statute, has made abuse of the system particularly common in Florida.

The problem stems from ambiguous laws, unscrupulous contractors and overzealous litigators. Frequently without a policyholder's knowledge, a contractor obtains an attorney and formally sues the insurance company. Attorneys have incentive to represent these plaintiffs because, under Florida law, if the contractor is awarded even \$1 more than the insurer's original offer, the lawyers can charge their fees directly to the insurer. Meanwhile, the insurance company doesn't have the same privilege of recouping their legal fees even if they are victorious.

And there are signs the problem is reaching a critical stage. The ratings agency Demotech [announced in February](#) that it was holding off on affirming the "A" ratings for 16 Florida property insurers, awaiting review of the March 1 filing of their final year-end financial reports before determining whether they would be downgraded. Though Demotech ultimately mass-affirmed the financial strength of more than 50 Florida property insurers in late March, the uncertainty will no doubt rear its head again next year.

The agency's biggest concern is the companies' exposure to rising AOB claims. Given that the government-sponsored enterprises Fannie Mae and Freddie Mac require mortgage loans to be

insured by companies with a rating of “A” or better, downgrades could move hundreds or even thousands of properties into technical default.

According to analysis by [S&P Global](#), nonweather-related claims closed in 2016 and the first half of 2017 by the state-backed Citizens Property Insurance Corp. were 6.7 times higher when there was an assignment of benefits and attorney involvement than in claims without either characteristic. These increased costs are then passed on to consumers, who consequently pay much higher insurance premiums.

These claims, often related to water damage, were at first largely quarantined to Broward, Miami-Dade and Palm Beach counties, but they have since spread throughout Florida. In fact, such lawsuits have jumped 90,000 percent since 1999, and the average size of the claims have grown from \$9,000 to \$15,000, according to the Florida Office of Insurance Regulation.

Lawmakers had the opportunity to address the crisis in 2018, with broad consensus on such reforms as allowing policyholders to revoke AOB assignments within seven days and requiring contractors to operate with more transparency. The state House successfully passed legislation that would do both of those things, in addition to mandating that attorney’s fees be proportional to the difference between the contractor’s offer and insurer’s counter-offer.

But the Senate failed to pass legislation, as Senate Banking and Insurance Committee Chair Anitere Flores, R-Miami, refused to advance any bill to address the one-way attorneys’ fee issue that wasn’t paired with mandatory rate rollbacks. However, with Flores set to pass the committee’s gavel after this session, there is perhaps some hope that reform has a better shot in the Senate in 2019. In the meantime, things could get even worse.

*This post was co-authored by Marc Hyden, Southeast region director for the R Street Institute.*