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Lawmakers blame flood of Florida homeowner insurance fraud on lax state enforcement

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Jeffrey Schweers-Capital Bureau

In the last five years, a group of lawyers, unlicensed claims adjusters, restoration companies and others posing as "loss consultants and "insurance specialists" have targeted homeowners who suffered damage from hurricanes and other disasters.

The scammers have ripped off thousands of Florida homeowners, offering rebates, deposit waivers and gift cards to get homeowners to sign over their insurance benefits, say lawmakers and other advocates.

And it's given legitimate public claims adjusters a black eye, prompting the Florida Association of Public Insurance Adjusters (FAPIA) is seeking legislative support.

“These business people hold themselves out as 'licensed' and 'complaint public adjusters' when they are neither," said Paul Handerhan, president of the Federal Association for Insurance Reform.

All this unlicensed activity is going unchecked because the state agencies set up to investigate and prosecute these companies are not doing enough to investigate and prosecute the complaints pouring into their office, the FAPIA officials told a USA TODAY NETWORK – Florida reporter during a Zoom call.

“I am shocked at how many complaints were filed over the years with no action,” said Karen Schiffmiller, president of the association.

The number of unlicensed adjusters has only grown in recent years, due to the volume of damage caused by several hurricanes, including 2017’s Irma and 2018’s Michael, causing billions in property damage throughout the state from the Panhandle to the Florida Keys.

This unlicensed activity has had costly ramifications for homeowners and insurers, driving up costs for all parties through fraud and litigation, often delaying or even preventing needed repairs, the group said.

“Something has got to be done,” Handerhan said. “Carriers are restricting their business and not issuing new policies because it has become unprofitable."

A fiduciary responsibility

The Legislature created a new section of state statute to protect policyholders from a surge of unlicensed individuals soliciting and offering to prepare, complete or file insurance claims for policyholders, making it a third degree felony punishable by up to $5,000 and five years in prison.

Florida’s public insurance adjusters are the only licensed claim adjusters in the state who have a fiduciary responsibility to policyholders. Florida statutes say only a licensed adjuster or attorney can file a claim. There are 2,100 licensed adjusters who play a central role in state recovery efforts after a catastrophe, Handerhan said.

A 2010 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the research arm of the Legislature, said Florida "has more public adjusters than other states we examined that have experienced declared disasters in recent years. Complaints and regulatory actions against Florida’s public adjusters are generally low.”

The same report said that policyholders that file catastrophe claims generally received 20% larger insurance settlements than those that didn’t hire public adjusters.

“I am concerned that our anti-fraud efforts are increasingly unable to keep up with massive increases in insurance fraud and abusive practices,” state Sen. Jeff Brandes said in a July letter to then-Senate President Bill Galvano, R-Bradenton, requesting that OPPAGA conduct an updated analysis.

Brandes described a system where alliances are formed between law firms, contractors, adjusters and vendors who work in concert to defraud homeowners: “These schemes have become so blatant that the judiciary is starting to take action,” he said.

The Florida Supreme Court suspended two lawyers from the same Coral Gables firm responsible for filing thousands of fraudulent, first-party property claims against insurance companies and engaging in a pattern of delay, misrepresentation and bad faith.

Citizens Property Insurance Corporation has filed suit against the same firm, using the racketeering and anti-crime laws that prosecutors use to go after organized crime in trying to put an end to fraudulent insurance activity.

Those much-needed court actions are coming after thousands of claims and millions of dollars have been paid out, causing higher premiums for policyholders and financially crippling the insurance companies, Brandes said.

Unfortunately, he said, the state agency set up to investigate and prosecute these companies — the Department of Financial Services — has not been aggressive enough.

“Our fraud-fighting mechanisms are not meeting the problem of increased homeowner’s insurance fraud,” Brandes added.

From fiscal year 2014-15 to 2018-19, referrals for property insurance fraud have increased by a cumulative 109%, Brandes said, but there hasn’t been a corresponding increase in the annual number of arrests and prosecutions.

Galvano granted his request and OPPAGA offered its preliminary findings last Monday at a hearing of the Senate Judiciary Committee, which Brandes chairs.

Fraud on the rise?

Fraud referrals more than doubled across the review period of 2014-15 to 2019-20, for a total of 8,392, said Emily Leventhal, OPPAGA’s staff director for government operations. They are handled by the Division of Investigations and Forensics at the Department of Financial Services.

Most of those referrals were out of Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach and Pinellas counties. The most common fraud referrals involved non-storm related water damage, roofing and windstorm damage, and third party representations.

Out of those nearly 8,400 cases, only 979 fraud cases were actually initiated. And out of nearly 500 cases initiated in the first three years of the study, only 129 cases were presented and 97 were successfully prosecuted, Leventhal said.

Reported barriers from prosecutors include poor documentation and recordkeeping by the insurance company and insufficient evidence, she said. Attributing fraud to a specific person can also be difficult.

And homeowner fraud cases are lengthy and difficult to prosecute, the state attorneys interviewed told OPPAGA.

The division dismissed most referrals due to lack of evidence, or an ability to address all the factors needed to solve a case, including lack of information provided by the insurance companies, the availability of a witness or the ability to identify the fraud that occurred.

And there are jurisdictional and staffing issues, Leventhal said.

Moreover, the referral process often exceeds timeline policies. The state allows referrals to remain open for up to 180 days without becoming a case, but nearly half of referrals went beyond the 180-day period without investigators deciding whether to proceed, Leventhal said.

“Investigators often extend the timeline to allow for staff availability to investigate,” she said.

Staffing is another issue. There are not enough licensed investigators to handle the number of referrals coming through, she said, reporting a 19% vacancy statewide. And recruiting and hiring is difficult because state salaries are not competitive, she said.

Options dwindle

The general consensus among the lawmakers FAPIA reached out to is that this is an enforcement issue, not a statutory one, Handerhan said.

“The feeling is that statutes already on the books would provide adequate protection if they were enforced,” he said.

Some solutions Leventhal recommended to the Senate committee include amending the required elements that insurance companies must provide in fraud referrals, give the state the ability to audit insurance company investigative units, modifying fees for attorneys, and reducing the statute of limitations for hurricane/windstorm claims.

Sen. Jim Boyd, R-Bradenton, has filed a bill (SB 76) to address fraud by reducing coverage significantly by mandating that policies adjust roof claims to actual cash value for homes over 10 years old, meaning a lower payout based on the depreciated value that wouldn’t necessarily cover the replacement cost.

That’s unacceptable to FAPIA because it would mean homeowners would have to pay more out of their own pocket for restoration costs.

“When they come up with a solution to deal with unlicensed activity one solution they’ve come up with is to reduce coverage ... legislation will be filed to make roof repairs repayable at cash value, not cost, thinking maybe this will make it less attractive,” FAPIA manager Nancy Dominguez said.

FAPIA would rather see language added to the existing statute to expand the definition of solicitation of services to include advertising and marketing. The organization also suggested administrative penalties of up to $10,000 for people who aren’t licensed to give DFS administrative enforcement powers.

Other language suggested includes prohibiting practices related to the repair, mitigation and restoration service such as referral fees, commissions, bonuses, kickbacks or rebates, or split-fee arrangements.

“Let’s just deal with the bad actors and stop putting solutions on the backs of people paying the premiums," Dominguez said. "It's not rocket science."

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