

Insurance Consumer Advisement

Assignment of Benefits: Homeowners Know Your Legal Rights

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INSURANCE CONSUMER ADVISEMENT

Assignment of Benefits: Homeowners Know Your Legal Rights

I. What is an Assignment of Benefits?

An “Assignment of Benefits” is a transfer of an insured’s (you the policy holder) interest in policy benefits to another party. Such an assignment often results in payments by the insurance company directly to a contractor or service provider that did work on your home after a covered loss. Many Homeowners’ policies allow the policyholder to make an “assignment of benefits” after a covered loss, however, they prohibit allowing an assignment of the entire policy or claim unless they, the Insurance Company, give written consent. This is because the policy requires you, the policyholder, adjust the loss with the Insurance Company and perform other obligations or “duties” before a payment is due.

Sometimes, homeowners enter into assignments following a loss without realizing the potential legal effect of the agreement. For example, a contractor may explain that the assignment is only to ensure that they will be paid by the insurance company and that you, the homeowner, will bear no cost. However, there can be an unintended legal effect of an assignment that transfers “all rights” under a policy of insurance. Such an assignment may prevent the policyholder from the right to any proceeds or the right to legal satisfaction for disputes.

Another unintended effect that policyholders risk with a full assignment is, it may be a violation of your mortgage agreement, which requires the homeowner to maintain coverage and creates a priority assignment to the mortgage company.

Contractors who are truly interested in being compensated for services once coverage is determined and the loss has been adjusted, can accomplish this goal with a “direction to pay.” Importantly, a “direction to pay” will not jeopardize your rights and will ensure payment to the contractor subject to the direction and priority rights of your mortgage company.

II. What Every Floridian Should Know:

Three-Day Cancellation: If you purchase goods or services, i.e. enter into a contract for services with a contractor, during the course of a “home solicitation sale”, you maintain a three-day right to cancel.

- A sale is considered a home solicitation sale if it takes place in your home, or at a location which is not the main or permanent place of business of the seller, so long as the purchase is more than \$25.00.
- You may cancel the sale until midnight of the third business day after the day on which you sign the agreement.
- Cancellation is evidenced by you giving written notice of cancellation in person, by telegram, or by mail to the seller at the address stated in the agreement or

offer to purchase. The written notice of cancellation given by mail shall be effective upon postmarking.

Cancellation of an Assignment of Benefits: An assignment of benefits is a unilateral contract which means a binding contract is not formed until the work is performed. That means an assignment can always be cancelled as to the work that is not completed. If the assignment of benefits is in writing, the cancellation should be in writing and sent to the contractor and your insurance company.

If you should have any questions about your right of cancellation, please see Florida Statutes at <http://www.leg.state.fl.us>.

Right to Mediation: Mediation is an informal way to resolve claim disputes between the policyholder and the insurance company. It is a process where a neutral third-party acts to encourage and assist in the resolution of a dispute without dictating the outcome. If you have a disputed residential property damage claim arising from damage to your property that is in excess of \$500, not including the deductible, you have the right to participate in mediation with the Florida Department of Financial Services. Below is some key information to keep in mind when considering Mediation.

- Mediation may be requested only by you, the policyholder, as a first-party claimant, or the insurance company.
- The contractor that you hire to perform services at your property may only support you during mediation. The contractor is not eligible to participate in the Florida Department of Financial Services Mediation Program as a claimant.

Mediation is non-binding. Neither you nor the insurance company is legally obligated to accept the outcome of the mediation conference. Settlements reached at the conference can be rescinded within three days of the agreement as long as the check has not been cashed. To request mediation call Florida Department of Financial Services toll free at 1-877-MY-FL-CFO (1-877-693-5236).

Right to An Attorney: You have the right to bring an attorney to the mediation conference. The only requirement is that you must notify your insurance company of the attorney's attendance prior to the conference.

III. Know Your Insurance Policy Obligations (Duties)

Damage to your property is often unforeseen and unpredictable. If your property is damaged or destroyed, you may make a claim for damages to your insurance company or have a claim made on your behalf. This section provides an overview of what your obligations may be under your policy after you make a claim. Keep in mind that insurance policies vary so it is important that you review your specific policy language for your post-loss obligations.

- Notify the Police, if necessary

- Promptly report the damage to your insurance company
- Mitigate the damage to your property as if there was no coverage
- Protect your property from further damage by making reasonable and necessary repairs
- Keep an accurate record of repairs and repair expenses
- Prepare an inventory of your damaged property, including any personal belongings
- Cooperate with your insurance company in the investigation of your claim
- Show the damaged property to your insurance company
- Provide your insurance company with requested records and documents
- Submit to an Examination Under Oath as often as is reasonable
- Provide a Sworn Statement in Proof of Loss to your insurance company

It is important to be aware that as the policyholder, you remain obligated to perform your obligations under the policy, even if you make an assignment of benefits to a contractor.

It is also important to be aware that under Florida Statutes, the contractor has the right to enforce their claim for payment against your property. This means that a contractor can place a lien on your property if they are not fully compensated for the work that was contracted. That is why it is so important for you to know what work is being done and the cost of that work before repairs begin. The contractor is obligated under Florida law to include the statutory warning of its right to lien in the contract.

If you have any questions about a contractor's right to place a lien on your property, please see Florida Statutes at <http://www.leg.state.fl.us>.

IV. Things to Consider When Hiring a Contractor

Recently, a number of homeowners have unknowingly signed contracts with various contractors that have included "Assignment of Benefits" agreements. By signing a contract with an "Assignment of Benefits" clause, you may be transferring your right to collect any claim benefits that you would be eligible to receive from your insurance company, to your contractor. In addition, you may lose control over your claim which could result in your having to pay amounts beyond what is covered by your policy. Below, are some items to keep in mind when you are working with a contractor.

Before you hire a Contractor:

- Shop around for estimates
- Select the right contractor for the right job
- Determine whether a license needed for the work
- Obtain and check references of the contractor
- Obtain a contract that details the scope and cost of the work
- Get all contracts and agreements in writing
- Confirm whether subcontractors will be involved

While the Contractor is Performing Work at your House:

- Keep records of all work being done
- Keep records releases/liens/invoices/payments
- Determine whether any inspections are necessary to close permits

When the Contractor Completes the Work at your House:

- Confirm the contractor has the site cleaned/cleared
- Confirm all work meets contract language and any warranties
- Address any problems/complaints
- Any permits are closed

V. Department of Financial Services Warning About Contractors and Unlicensed Public Adjusting:

In an effort to help you with your loss, some contractors may offer to assist you with your insurance claim. Be aware that if the contractor helps you with your claim, they may be illegally engaging in the practice of unlicensed public adjusting.

A public adjuster, as outlined in Section 626.854, Florida Statutes, is any person, except an attorney, who, for money or any other thing of value (which would include securing a contract for repairs):

- Prepares, completes or files an insurance claim form for an insured;
- Aids in any manner on behalf of an insured in *negotiating for or effecting the settlement of a claim*, or
- Advertises or solicits for employment as an adjuster of such claims;

If you suspect a contractor is engaging in unlicensed public adjusting or should you have any questions about what activities constitute acting as a public adjuster, please contact the Department of Financial Services Bureau of Investigation at 850-413-3136 or through its website, www.MyFloridaCFO.com/Agents.