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I. THE STATE OF FLORIDA

A. FREQUENTLY CITED FLORIDA STATUTES

1. General Considerations in Insurance Claim Management

§ 86.011, Fla. Stat.

Declaratory Judgments

This statute gives the circuit and county courts of Florida the authority to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.

§ 95.03, Fla. Stat.

Contract Provision Shortening Limitations Period

This statute prohibits contract provisions which mandate an action based on the contract be brought in a shorter time period than prescribed in Florida's statute of limitations.

§ 95.10, Fla. Stat.

Cause of Action Arising in Another State

This statute prohibits a cause of action being brought in Florida if the cause of action arose in another state and the applicable statute of limitations of that state has lapsed.

§ 626.854, Fla. Stat.

Public Adjuster Prohibitions

Statute enacted to regulate public insurance adjusters and to prevent the unauthorized practice of law. The statute allows an insured to cancel a contract with a public adjuster within three (3) days of its signing or three (3) days following notification of the claim to an insurer without penalty to the claimant. The statute also contains provisions restricting the activities and fees allowable by public adjusters.

§ 626.9521, Fla. Stat.

Unfair Claims Practices; Penalties

The statute pertains to penalties imposed for an unfair or deceptive practice in the insurance business. The statute includes punitive fines for persons and insurers who commit an unfair claim practice.

§ 626.9744, Fla. Stat.

Settlement Practices Relating to Property Insurance

When a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost, physical damage incurred in making a repair or replacement which is covered may be included in the loss. When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas, subject to consideration of relevant factors.

§ 627.405, Fla. Stat.

Insurable Interest Requirement for Property

No insurance contract of property shall be enforceable except for the benefit of persons having an insurable interest in the things insured at the time of the loss. The statute defines “insurable interest” as “any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.”

§ 627.4136, Fla. Stat.

Non-joinder of Insurers

The statute requires for a person who is not an insured to obtain a settlement or verdict against a person who is an insured before a cause of action against a liability insurer can be maintained. An insurer has the right to insert a contractual provision into a liability insurance policy which precludes persons not designated as an insured from joining a liability insurer as a defendant.

§ 627.4137, Fla. Stat.

Disclosure of Certain Information Required

The statute requires insurers who provide liability coverage to disclose particular information upon written request of a claimant within thirty (30) days. This disclosure must be signed by a corporate officer, the insurer’s claims manager, or superintendent, and must contain the following information: the insurer’s name, the insured’s name (or insureds’ names), the limits of the liability coverage, a statement of any policy or coverage defense which it reasonably believes applies to the situation, and a copy of the policy. An insurer has a continuing duty to update this information to the claimant immediately upon discovering new facts relevant to the statement.

§ 627.4143, Fla. Stat.

Outline of Coverage

No private passenger automobile or basic homeowner’s policy shall be delivered or issued for delivery unless an outline has been delivered prior to issuance or accompanies the policy. The statute lists what an effective outline of coverage for a private passenger motor vehicle insurance policy contains. The statute also requires a comprehensive checklist of coverage be delivered prior to issuance or delivery of a basic homeowner’s policy. The statute lists what the comprehensive checklist of coverage must include.

§ 627.701, Fla. Stat.

Liability of Insureds, Coinsurance, and Deductibles

If an insurance policy or contract contains provisions requiring the insured to be liable as a coinsurer with the insurer issuing the policy, the statute lists the requirements the policy must meet to do so. The statute also contains restrictions on insurers and disclosure requirements for insurers for hurricane damage deductibles.

§ 627.70121, Fla. Stat.

Payment of Claims for Dual Interest Property

Effective for policies issued or renewed on or after Oct. 1, 2006, a property insurer shall transmit claims payments directly to the primary policyholder, payable to the primary policyholder only, without requiring a dual endorsement from any mortgage holder or lienholder, for amounts payable for personal property and contents, additional living expenses, and other covered items that are not subject to a recorded security interest.

§ 627.70131, Fla. Stat.

Insurer's Duty to Acknowledge Communications Regarding Claims; Investigation

An insurer shall review and acknowledge receipt of a communication with respect to a claim within fourteen (14) calendar days, unless payment is made within that time period or the failure to respond is caused by factors beyond the insurer's control. The acknowledgement requirement shall not apply to claimants represented by counsel beyond communications necessary to provide forms and instructions.

Within ten (10) working days after an insurer receives proof of loss, the insurer shall begin an investigation as is reasonably necessary.

Within ninety (90) days after an insurer receives notice of a property insurance claim, the insurer shall pay or deny such claim or a portion of the claim unless failure to pay is caused by factors outside the insurer's control.

§ 627.7015, Fla. Stat.

Alternative Procedure for Resolution of Disputed Property Insurance Claims

This statute sets forth a non-adversarial procedure for a mediated claim resolution conference as an effective, fair, and timely alternative to the traditional adversarial appraisal process.

§ 627.7016, Fla. Stat.

Insurer Contracts With Building Contractors

An insurer who offers residential coverage may contract with a building contractor skilled in techniques that mitigate hurricane damage. The insurer must guarantee the building contractor's work if the insurer offers policyholders the option to select the services of such building contractors. The insurance company is not liable for the actions of the building contractor.

§ 627.702, Fla. Stat.

Valued Policy Law

In the event of total loss to the insured property, the insurer's liability is the amount specified in the policy for which premiums were charged and paid. This statute does not deprive an insurer of any proper defense, and the insurer is never liable for more than the amount necessary to repair, rebuild, or replace the structure. An insurer is not prohibited from repairing or replacing damaged property at its own expense, without contribution on the part of the insured, except when an insured has purchased stated value coverage for a mobile home. Any insurer may provide insurance indemnifying the insured for the difference between the value of the insured property at the time of loss and the amount expended to repair, rebuild, or replace it.

§ 627.712, Fla. Stat.

Residential Windstorm Coverage Required

This statute requires a residential property insurance policy to provide windstorm coverage. However, an exclusion of windstorm coverage and an exclusion of coverage of contents must be available at the option of the policyholder. Certain criteria must be met for such exclusions.

§ 744.387, Fla. Stat.

Settlement of Minor's Claims

A settlement agreement of a minor's claim reached after an action has been commenced must be approved by the court having jurisdiction over the action. If a settlement agreement is reached before an action is commenced, the court may authorize the settlement if it will be for the best interest of the minor. If the net settlement exceeds \$15,000.00, the court shall appoint a guardian on the minor's behalf.

2. Insurance Fraud

§ 627.409, Fla. Stat.

Representations in Applications and Warranties

A misrepresentation, omission, or concealment of fact in an application for an insurance policy may prevent recovery if it is material to acceptance of the risk, to the hazard assumed by the insurer, or if the insurer in good faith, would not have issued the policy, the same coverage, the same premium rate, or insured in as large an amount had the true facts been known.

§ 627.425, Fla. Stat.

Forms for Proof of Loss Furnished

On request of any person claiming to have a loss under an insurance contract, an insurer shall furnish forms of proof of loss. This statutory requirement does not include a responsibility on the insurer for completion of such proof.

§ 627.426, Fla. Stat.

Claims Administration

The following does not constitute a waiver of any provision of a policy or any defense: acknowledgement of the receipt of notice of loss or claim under a policy; furnishing forms for reporting a loss or claim; giving information relative to a loss or claim; making proof of loss; investigating any loss or claim under any policy; or engaging in settlement negotiations.

A liability insurer shall not be permitted to deny coverage based on a particular coverage defense unless: (a) written notice of reservation of rights to assert a coverage defense is given to the insured within thirty (30) days after the insurer knew of the coverage defense, and (b) at least thirty (30) days before trial, the insurer gives notice of its refusal to defend the insured, obtains from the insured a non-waiver agreement setting out the specific facts and policy provisions upon which the coverage defense is asserted, or retains independent counsel mutually agreeable to the parties.

Fla. Stat. § 633.112

Investigation of Fire; Reports

Upon request, the state fire marshal shall investigate the cause, origin, and circumstances of every fire occurring in Florida where property has been damaged or destroyed where there is probable cause to believe that the fire was the result of carelessness or design.

§ 633.534, Fla. Stat.

False Statements to Insurers

This statute deems false statements, representations or willful concealments by a firefighter employer, to an insurer of Workers' Compensation insurance, a second degree misdemeanor. A person that does so in any matter within the jurisdiction of the division is also guilty of a second degree misdemeanor.

3. Automobile Insurance

§ 324.021, Fla. Stat.

Minimum Insurance Required

This statute requires motor vehicle insurance in the amounts of:

1. \$10,000.00 in case of bodily injury to, or death of, one person in any one crash;
2. \$20,000.00 in case of bodily injury to, or death of, two or more persons in any one crash; or
3. \$10,000.00 in case of injury to, or destruction of, property of others in any one crash.

Commercial motor vehicles and nonpublic sectors have their own statutes setting out minimum required insurance.

§ 626.9743, Fla. Stat.

Settlement Practices Relating to Motor Vehicle Insurance

The statute specifies prohibited conduct in settling motor vehicle insurance claims and applies to both personal and commercial claims. When liability and damages owed are reasonably clear, an insurer may not recommend that a third-party claimant make a claim on his or her own policy solely to avoid paying the claim under the policy issued by that insurer. Methods for adjustment and settlement of a motor vehicle total loss are provided and include a cash settlement, a replacement motor vehicle, or another method agreed to by the claimant.

§ 627.4132, Fla. Stat.

Stacking of Coverages

The statute prohibits stacking of insurance policies when an insured is protected by any type of motor vehicle insurance policy. The insured is only covered to the extent provided on the vehicle involved in the accident. The stacking prohibition does not apply to uninsured motorist coverage.

§ 627.7263, Fla. Stat.

Rental and Leasing Driver's Insurance to be Primary

The valid insurance providing coverage for the lessor of a motor vehicle for rent or lease is primary unless otherwise stated. If the lessee's coverage is to be primary, the statute sets out the specific language which the lease agreement must contain in order for such coverage to be effective.

§ 627.727, Fla. Stat.

Uninsured and Underinsured Motor Vehicle Coverage

No motor vehicle liability insurance policy shall be issued unless uninsured motor vehicle (UMV) coverage is provided therein. An insured may make a written rejection of the coverage on behalf of all insureds under the policy. If the motor vehicle is leased, the lessee has the sole privilege to reject uninsured motorist coverage. The insurer shall notify the insured at least annually of the insured's options as to UMV coverage.

The term "uninsured motor vehicle" includes an insured motor vehicle when the liability insurer thereof: (a) is unable to make payment with respect to the liability of its insured due to its insolvency, (b) has provided limits of bodily injury liability for its insured which are less than the total damages sustained by the person entitled to recover damages, or (c) excludes liability to a nonfamily member whose operation of an insured vehicle results in injury to the named insured.

§ 627.7275, Fla. Stat.

Motor Vehicle Liability

A motor vehicle insurance policy providing personal injury protection must also provide coverage for property damage liability. Insurers shall make coverage available for bodily injury, death, and property damage arising out of ownership, use, or maintenance of a motor vehicle in an amount not less than \$10,000.00 for injury or death of one person in any one crash, \$20,000.00 for injury or death of two or more persons in any one crash, and coverage available for property damage in an amount not less than \$10,000.00 for the injury or destruction of another's property.

§ 627.730, Fla. Stat.

Florida Motor Vehicle No-Fault Law

Florida statutes within the range of section 627.730 to section 627.7405 may be cited and known as the "Florida Motor Vehicle No-Fault Law."

§ 627.736, Fla. Stat.

Required Personal Injury Protection Benefits, Exclusions, Priority, and Claims

This statute provides required insurance policy benefits, including, to a limit of \$10,000.00, eighty (80) percent of all reasonable expenses for necessary medical services, sixty (60) percent of any loss of gross income and loss of earning capacity per individual from inability to work, and death benefits equal to the lesser of \$5,000.00 or the remainder of unused personal injury protection benefits per individual.

This statute also authorizes exclusions of benefits for injuries sustained while occupying another motor vehicle owned by the insured and not insured under the policy, for injury sustained by any person operating the insured motor vehicle without consent, for injury caused to one's self intentionally or for injury sustained while committing a felony.

§ 627.737, Fla. Stat.

Tort Exemptions; Limitation on Right to Damages; Punitive Damages

This statute exempts owners and operators of motor vehicles from tort liability to the extent that the benefits required for personal injury protection under Fla. Stat. §627.736 are applicable. In any tort action brought against the owner or operator of a motor vehicle, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury or disease only in the event that the injury or disease consists in whole or in part of:

- (a) Significant and permanent loss of an important bodily function.
- (b) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- (c) Significant and permanent scarring or disfigurement.
- (d) Death.

§ 627.7407, Fla. Stat.

Application of the Florida Motor Vehicle No-Fault Law

This statute revives the Florida Motor Vehicle No-Fault Law, effective January 1, 2008, after the law was repealed on October 1, 2007. This statute requires personal injury protection coverage for motor vehicle owners. The statute recognizes that vehicle owners were not required to maintain personal injury protection coverage from October 1, 2007 to January 1, 2008.

4. Negligence, Other Torts and Contribution

§ 624.155, Fla. Stat.

Bad Faith

This statute provides a civil remedy in the event an insurer does not attempt, in good faith, to settle claims toward its insured.

5. Miscellaneous Statutes

§ 627.4145, Fla. Stat.

Readable Language in Insurance Policies

Effective for policies written on or after Oct. 1, 1983, this statute requires that every insurance policy written in Florida pass a readability test and lists the criteria a policy must meet to be deemed “readable.” The statute also lists types of policies to which the readability requirement does not apply.

§ 627.4265, Fla. Stat.

Payment of Settlement

In a case in which a settlement between a person and insurer has been reached, the insurer shall tender payment no later than twenty (20) days after such settlement is reached. If the payment is not tendered within twenty (20) days or another date agreed to by the parties, it shall bear interest at the rate of twelve (12) percent per year from the date of the settlement agreement.

§ 627.7142, Fla. Stat.

Homeowner Claims Bill of Rights

An insurer issuing a personal lines residential property insurance policy must provide a “Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency. The statute sets out the “Homeowner Claims Bill of Rights.”