

# The Bell Tolls for AOB LITIGATION

NEW LAW ENACTS GAME-CHANGING REFORMS

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**O**n May 23, 2019, Florida Governor Ron DeSantis signed into law HB 7065, finally enacting

meaningful reforms to combat abusive litigation by contractors against insurance companies. Here's how it works.

The bill enacts two new statutes: Sections 627.7152 and 627.7153. The new statutes define an assignment agreement as follows:

“Assignment agreement” means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in S. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property.

Section 627.7152(2) contains important new requirements for assignment agreements. Specifically, it states that assignment agreements must be in writing and executed by, and between, the assignor and the assignee; they must contain a written, itemized, per-unit cost estimate; and must relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling

or structure or to mitigate against further damage to such property.

In addition, assignment agreements must contain provisions that allow the assignor to rescind the assignment agreement without a penalty or fee. The assignor may do this by submitting a written notice of rescission within 14 days after the execution, at least 30 days after the date that work on the property is scheduled to commence, or at least 30 days after execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun work.

Additionally, the provisions require the assignee to provide a copy of the executed assignment agreement to the insurer. The assignee must do this within three business days after the date on which the assignment agreement is executed or on the date work begins, whichever is earlier.

An assignment agreement must also contain the following notice in 18-point uppercase and boldfaced type:

You are agreeing to give up certain rights you have under your insurance policy to a third party, which may result in litigation against your insurer. Please read and understand this document before signing it. You have the right to cancel this agreement without penalty within 14 days after the date this agreement is executed, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after



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the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property. However, you are obligated for payment of any contracted work performed before the agreement is rescinded. This agreement does not change your obligation to perform the duties required under your property insurance policy.

Under Subsection (2)(b), an assignment agreement may not contain a penalty or fee for rescission; a check or mortgage processing fee; a penalty or fee for cancellation of the agreement; or an administrative fee.

Subsection (2)(c) provides that if an assignor acts under an urgent or emergency circumstance to protect the property from damage—and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage—an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or one percent of the Coverage A limit under such policy.

An assignment agreement that does not comply with the above requirements is invalid and unenforceable.

### ATTORNEY'S FEES

Perhaps the most significant change in the new law is the elimination of an assignee's right to attorney's fees under Section 627.428 of the Florida Statutes. Section 627.7152(10) provides that, in a suit related to an assignment agreement, attorney's fees and costs may be recovered by an assignee only as follows.

If the difference between the judgment obtained by the assignee and the pre-suit settlement offer is:

1. Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney's fees.
2. At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney's fees.

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3. At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney's fees.

Interestingly, one day after signing the new assignment agreements law, Governor DeSantis signed another bill that made Section 627.7152(10)—the section of the new law eliminating one-way attorney's fees in assignment litigation—effective immediately upon his signature.

### CONSUMER AND INSURER PROTECTIONS

The remainder of Section 627.7152 deals with protections for both consumers and insurers. Regarding consumers, Subsection (4) requires assignees to provide the assignor with accurate and up-to-date estimates of the scope of work to be performed as supplemental or additional repairs are required, and holds that the work must be performed in accordance with accepted industry standards. An assignee may not seek payment from the assignor exceeding the applicable deductible under the policy unless the assignor has chosen to have additional work performed at the assignor's expense.

According to Subsection (7), acceptance by an assignee of an assignment agreement is a waiver by the assignee and its subcontractors of claims against a named insured for payments arising from the assignment agreement. Subsection (8) provides that the assignee shall indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including attorney's fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

With respect to insurer protections, Subsection (4) states that assignees must, as condition precedents to filing suit and if required by the insurer, submit to examinations under oath and/or provide recorded statements, and must participate in appraisal or other alternative dispute resolution methods in accordance with the terms of the policy.

Additionally, the Subsection 4 states that an assignment agreement

does not modify any managed repair provisions in a policy.

Lastly, Subsection (4) states that an assignee must provide the named insured, insurer, and the assignor (if the assignor is not also the named insured) with a written notice of intent to initiate litigation before filing suit. The notice must specify the damages in dispute the amount claimed; make a pre-suit settlement demand; and the assignee must also provide a detailed written invoice or estimate. The insurer must respond in writing within 10 business days by making a pre-suit settlement offer, or requiring the assignee to participate in appraisal or another method of alternative dispute resolution.

### POLICIES RESTRICTING AOBs

The second new statute, Section 627.1753, allows insurers to provide policies that restrict, in whole or in part, an insured's right to execute an assignment agreement, subject to certain conditions. The statute applies to policies issued or renewed on or after July 1, 2019. All carriers should have their underwriting departments working on implementing such policies.

The insurance industry has done a fantastic job of getting important legislation passed to protect both itself and consumers from unscrupulous assignment of benefits contractors. The statutes require assignment agreements to notify the policyholder of the rights they are giving up by signing an assignment of benefits, and of the potential for litigation against the insurance company. The statute eliminates the applicability of the one-way attorney fee statute (Section 627.428, Florida Statutes) to assignment cases. These changes, together with lower-priced policies restricting assignment agreements, should effectively end the rampant abuse of the legal system by assignees and the attorneys who represent them. ■

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