JOINT ALERT: OUR RESPONSE TO THE 2022 INSURANCE REFORMS

December 21, 2022

here is no sugar coating it: the Florida legislature's recent changes to the Insurance Code will adversely impact the rights of Florida property owners. The legislature and the insurance industry have, once again, pointed to the high rate of litigation as justifying their "solution" to a so-called insurance crisis in Florida. [Click here] They have done so while largely ignoring the root cause of increased litigation: the high rate of delayed payment, the high rate of underpayment, and the outright (and too-often wrongful) denials of covered claims. And nothing was done to deal directly with increased premiums and reduced coverage—the stated reason for calling the special session in the first place.

Still, there is no need to fear; consider these points:

First, the Legislature did not expressly make the statutory changes retroactive. Without such an express statement, well-established Florida law dictates the substantive change in the law should not apply retroactively. So, if an insurance policy was issued before December 16, 2022—the date the legislation was enacted—then the new law does not apply to that insurance policy. That, in turn, means the new law does not apply to any loss that occurred before December 16, 2022. [Click here to request]

Second, although it is troubling the Legislature deleted the provision in the Insurance Code mandating attorneys' fees in favor of prevailing residential and commercial-property insureds, an insured can still create attorney's fee exposure for an insurance company by making a settlement demand under Florida's offer of judgment statute. [Click here to request] So while the Insurance Code no longer directly provides insureds this measure of balance against the overwhelming resources of an insurance company—a balance especially needed for residential insureds and those with relatively small claims—not all is lost.

Third, the bill makes several changes that could—in time—prove helpful to insureds: it generally requires a faster insurer response to residential and commercial property claims, and it better specifies the factors for assessing insurers' delayed response to claims. It also addressed solvency issues—detailing a revised financial support structure for insurers and altering some of the laws related to hurricane and windstorm coverage, as well as Citizens Property Insurance Corporation, the insurer of last resort. And, as we continue to examine the new law in this blog, we will continue to identify additional points helpful to insureds.

Berger Singerman's Insurance Practice Group includes the representation of real estate developers, property managers as well as business and property owners in their disputes involving insurance coverage. For more information on what you need to know to protect your right to insurance benefits, please contact Michael J. Higer or a member of our Insurance Team.

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