Guest Blog: Florida Joins the Reinsurance Business

Clint Moore

As Florida residents, we learn to expect rain on our parade. But Florida policyholders are enduring rising insurance premiums and a drought in available insurance while lawmakers deliver mixed results. Why is this happening?

REINSURANCE

An insurance rating company, Demotech Inc., recently reviewed Florida's legislative special session. The chronic concern was clear: the reinsurance market.

Reinsurance is insurance for insurance company losses. A reinsurer agrees to indemnify the reinsured (an insurance company) against all or part of the loss in exchange for a portion of the insurance premium.[i] When the reinsurance market is tight, it is harder to operate an insurance company in a financially sound position. If unable to do so, carriers leave the state, the line of business, or potentially go insolvent. How bad is the reinsurance market in Florida?

One speaker at the Demotech meeting described it as "a reinsurance cycle for the generations" and "the worst of his career." In response, Florida's Office of Insurance Regulation ("OIR") is using "an extraordinary remedy" to avoid federal mortgage compliance issues after Demotech threatened to downgrade 27 carriers' financial ratings. OIR permitted Citizens Property Insurance Corporation to act as a reinsurer for losses over the $300,000 limit that that Florida Insurance Guaranty Association covers, circumventing the potential of forced-placed insurance for thousands of policyholders.[ii] Ultimately, Demotech affirmed all but a few carrier ratings.[iii] Florida is bleeding insurance companies so bad—five this year alone—that it's become the insurer *and* reinsurer of last resort. But experts say the market should be able to hold, so long as no more than two very large storms impact the state this year.[iv] Thankfully, the Atlantic has been unusually quiet this season.

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LEGISLATION

In response to changes in the insurance market over the last few years, Florida significantly altered its property insurance laws. SB 76 and SB 2-D are the most recent overhauls, following the assignment of benefits legislation passed a few years ago. SB 76, enacted July 1, 2021, sets a three-year period to report losses, requires pre-suit notice and specific responses, and restricts recovery of claimant attorneys' fees. Some argue that the pre-suit notice may create unintended avenues for carriers to delay claims. For example, carriers could force a claimant to alternative dispute resolution as a delay tactic while not meaningfully participating.

SB 2-D, enacted after this summer's special session called by Governor DeSantis, gave us (1) written contractor fraud warnings, (2) $2 billion in reinsurance funded by general revenue, (3) separate roof deductibles, (4) underwriting restrictions on older roofs, (5) elimination of attorney's fees for assignment of benefit contracts, (6) defense attorney fees for plaintiff failure to comply with pre-suit notice, (7) claim data collection, and (8) requiring establishment of a breach of contract to recover extra-contractual damages.[v] This is a mixed bag for policyholders and all property and casualty industry professionals. Unfortunately, it appears the reinsurance market did not like Florida's mandatory underwriting laws regarding a roof's useful life in SB 2-D. This means it will continue to be difficult for policyholders to find or keep their insurance, and to do so at affordable rates.

CITIZENS PROPERTY INS. CO.

Scarce insurance availability and expensive premiums push homeowners towards Citizen's Property Insurance Corporation—the government backed insurer. Due to Citizens' artificially low pricing, what was intended to be the insurer "last resort" has become many people's first choice in the Sunshine State. This is causing Citizens' policy count to grow to a size that previously required strict depopulation efforts to control. It is now the largest insurance company in Florida.[vi]

For policies renewing August 2022, Citizens' requested the maximum rate increase available under Florida law—11 and 12 percent for 2022 and 2023, respectively. But OIR only approved an increase of 6.4 percent.[vii] This means Citizens could have been priced more competitively, which would have ultimately depopulated more policies. However, major changes to Citizens are on the horizon.

SESSION 2023 & GOVERNORS RACE

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In less than 200 days, the 2023 Florida legislative session will begin. It is nearly certain the political climate in state will make the property insurance market a priority. Lawmakers are acutely aware that insurance premiums abruptly rose for most policyholders in the last renewal cycle.[viii] But attention should be paid to more than just the House and Senate.

The candidates have records on the issue. Democrat nominee Charlie Crist won the 2006 Florida governor's race largely by campaigning on property insurance reform. Incumbent Ron DeSantis called a special session specifically for property insurance this year and presided over other significant changes to insurance law in the 2022 and 2021 sessions. For what it's worth, Democrat Nikki Fried was the only candidate whose website listed the "homeowner's insurance" issue and proposals, but she lost to Mr. Crist in the democratic primary.[ix] Even though legislative proposals will be the focus, the state's governor's race may draw attention to property insurance as candidates continue blaming each other for the current market conditions.[x] That would put public pressure on lawmakers to respond.

For the 2023 legislative session, policyholders should pay close attention to access to courts issues, like eliminating F.S. 627.428, the fee shifting statute awarding their attorney's fees against insurance companies when successful. Those who wish to eliminate that policyholder protection will demonize plaintiffs' lawyers specifically. But in this situation, what hurts lawyers hurts policyholders by making it harder for the latter to afford legal representation to contest the carriers' economies of scale. Another category of proposals will likely be those making Citizen's more competitive (read: expensive) with more disqualifiers. Many of those disqualifiers are welcomed, like elimination of writing non-homestead property. Elimination of the policyholder's ability to assign any part of a property insurance claim to their contractor, not just attorney's fees, is another priority to anticipate.

Buckle up; that's not a light at the end of the tunnel—it's a freight train.

This guest blog was written by volunteer Clint Moore and do not express the views of United Policyholders

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subcommittee of the Real Property, Probate, and Trust section of The Florida Bar.

[i] Hall, Reinsurance Claims, Insurance, Excess and Reinsurance Coverage Disputes 1988, 441, 406–449 (Practicing Law Institute 1988).

[ii] David Altmaier. Immediate Final Order. *Office of Insurance Regulation*. Case No. 298695-22. https://lisamillerassociates.com/wp-content/uploads/2022/08/Citizens-Reinsurance-Program-IFO-298695-22.08022022-response-to-Demotech-rating-downgrades.pdf. Accessed 22 Aug 2022.

[iii] Ron Hurtibise. "If more than two storms hit Florida this year, insurers could be in trouble." *South Florida Sun Sentinel*. https://www.sun-sentinel.com/business/fl-bz-florida-insurance-peak-hurricane-season-20220814-kieujc4nezejjdcgo7gaug5juy-story.html. Accessed 21 Aug 2022.

[iv] *Id.*

[v] The Florida Senate Bill Analysis and Fiscal Impact Statement. https://www.flsenate.gov/Session/Bill/2022D/2D/Analyses/2022s00002D.ap.PDF. Accessed August 21, 2022.

[vi] Lisa Miller. "Relative Calm Returns to the Florida Market." *Lisa Miller & Associates.* https://lisamillerassociates.com/newsletter-story/relative-calm-returns-to-the-florida-market/. Accessed 21 Aug 2022.

[vii] Jessica Bruno. Price of Paradise. *ABC Action News*. https://www.abcactionnews.com/news/price-of-paradise/citizens-property-insurance-denied-expected-rate-increases-as-more-companies-halt-new-. Accessed 21 Aug 2022.

[viii] Taylor Simpson. "Florida homeowners insurance payments continue to rise." *ABC 20 WCJB.* https://www.wcjb.com/2022/07/28/florida-homeowners-insurance-payments-continue-rise/. Accessed 21 Aug 2022.

[ix] "On the Issues." *Nikki for Governor.* https://nikkifried.com/issues/. .Accessed August 20, 2022.

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[x] Justin Papp. “Will fight over property insurance roil Florida governor’s race?” *Roll Call*. https://rollcall.com/2022/08/04/will-fight-over-property-insurance-roil-florida-governors-race/. Accessed August 20, 2022.

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