

MEMORANDUM FOR CLIENTS OF BUTLER

RE: Florida Property Insurance Issues in Light of Tropical Storm Debby

Tropical Storm Debby has left Florida after several days of destructive wind, rain and flooding. The storm reminds us that there are several statutes that will likely impact the adjustment of claims resulting from the storm. Some of these laws are more recent than others. While the language of the insurance policy will control specific situations, below are a few of the more significant laws that may impact claim adjustment due to Tropical Storm Debby.

- Fla. Stat. §626.854(14) requires the insurance carrier's representative provide at least 48 hours' notice to the policyholder before scheduling a meeting or onsite inspection with the claimant. The claimant may deny access if this notice has not been provided. The claimant may also waive the 48-hour notice requirement.
- Fla. Stat. §626.854(15) requires the public adjuster ensure (1) prompt notice of the property loss is submitted to the insurance carrier; (2) the public adjuster's contract is provided to the carrier; (3) the property is available for inspection; and (4) the carrier is given an opportunity to interview the insured directly about the loss and the claim. The carrier may not exclude the public adjuster from in-person meetings with the insured and the carrier must communicate with the public adjuster to attempt to reach an agreement on the scope of the covered loss. The public adjuster may not restrict or prevent a carrier's representative from having reasonable access at reasonable times to the insured, claimant or insured property that is the subject of the claim. The public adjuster may not act or fail to act in any manner that obstructs or prevents a carrier's representative from conducting an inspection. The public adjuster may be present for inspections; however, if the public adjuster is not available or otherwise delays the timely inspection by the carrier, the public adjuster or insured must allow the inspection without the presence of the public adjuster.
- Fla. Stat. §626.854(16) provides that a licensed contractor is prohibited from adjusting a claim unless the contractor is also a licensed public adjuster.
- The limitations set forth in §626.854(5)-(16), some of which are discussed above, apply to residential property insurance policies and condominium unit owner policies.

- Fla. Stat. §626.8796(2) details the information that must be contained in a public adjuster's contract:
 1. the full name, permanent business address, and license number of the public adjuster;
 2. the full name of the public adjusting firm;
 3. the insured's full name and street address, together with a brief description of the loss;
 4. the percentage of compensation for the public adjuster's services;
 5. the type of claim, including an emergency claim, nonemergency claim, or supplemental claim;
 6. the signatures of the public adjuster and all named insureds; and
 7. the signature date. If all of the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds.

An unaltered copy of the contract must be provided to the insurance carrier within 30 days after execution.

- Fla. Stat. §627.701 allows insurance carriers to implement a hurricane deductible. This section does not reference a windstorm deductible.
- Fla. Stat. §627.70131 requires an insurer to pay or deny a claim within 90 days after receiving notice of an initial, reopened, or supplemental property insurance claim, unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest from the date the insurer receives notice of the claim.¹

¹ The term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);
2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or
3. A claim for contents coverage under a commercial tenants policy if the insured premises is 10,000 square feet or less.

- Fla. Stat. §627.7011 provides that the insurer of a dwelling must initially pay the actual cash value of the insured loss. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses incurred. If there is a total loss, the entire replacement cost shall be paid pursuant to Fla. Stat. § 627.702 (the valued policy law).

We note that the requirements of those statutory sections falling within Chapter 627 do not apply to carriers who provide coverage under Florida's Surplus Lines Law. Fla.Stat. § 626.913(4) specifically provides that "[E]xcept as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines insurance authorized under ss. 626.913-626.937, the Surplus Lines Law."

Our firm's first-party property coverage department will be pleased to speak with you now or in the future should you face questions regarding Florida law, how it may impact individual claims or any recent decisions interpreting insurance policies. Please feel free to call upon Doug Berry, Jerry Albrecht, Bill Lewis, Bill Daskam, Scott Frank, Alan Nisberg, Bill Wallis (Tallahassee), Pablo Cáceres, Gina Smith (Tallahassee), Lauren Levy (Miami), Christina Fears, Tom Keller, John Garaffa, Lori Vella, David Maldoff or Rick Parker (Tallahassee) at any time as questions arise.