



New Florida Assignment of Benefits Law – What Should Insurers Know?

by Sue Stein, Gen Re Claims, with Heidi Raschke, Carlton Fields

Gen Re held a U.S. property claims seminar for our clients last May. Among the most relevant and timely topics on the agenda was Assignment of Benefits (AOB). That same week, the AOB reform law Fla. Statute 627.7152 was passed.¹ AOB is an agreement that transfers the insurance claims rights or benefits of the policy to a third party. An AOB gives the third-party authority to do things such as file a claim, make repair decisions, and collect insurance payments without the involvement of the policyholder.

While the world’s attention right now is on COVID-19, and justifiably so, insurers know that everyday claims still happen and need to be adjusted and paid. Tornadoes and hurricanes do not stop for a virus. In this article we focus on AOB for handling “normal” claims. A related upcoming blog will revisit the topic and consider any impact that coronavirus is having on AOB in the claims process.

At the 2019 seminar, Heidi Raschke of Carlton Fields, our expert panelist on AOB, provided information about the new law and what it might mean to insurers. While the implications were generally positive, relief was not immediate. For example, the law was not taking effect

until July 2019, which gave time for firms and individuals to obtain more assignments before the new restrictions were in place.

Almost a year later, I caught up with Heidi and asked what impact the law has had on AOB practices. We share Heidi’s updates, observations and concerns, and a few of our own, in this article.

As to timing, when does the new Florida law take effect with respect to AOBs?

The law took effect on July 1, 2019. The law has two parts – one affects permissible assignments; the other allows policies to be issued with assignment

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restrictions. Most notably for insurers, Fla. Stat. 627.7152 applies to assignments executed on or after July 1, 2019.

What changes does the AOB law require? How are insurers affected?

The key section of the law has many new, detailed requirements for a valid AOB. Assignees (typically a contractor) and insurers face a new set of additional steps, including:

- > An assignee must provide an itemized, per-unit cost estimate of services to be performed, as well as a copy of the executed agreement to the insurer within the earlier of (a) 3 business days after it is executed or (b) when the work begins. (627.7152(2))
- > If an assignor (the insured) acts under an “urgent or emergency circumstance to protect property from damage and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage to the property, 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 1% of the Coverage A limit under such policy.” As used in this provision, “urgent or emergency circumstance” means “a situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage.” (627.7152(2)(c))
- > An assignee must submit to an examination under oath as a condition precedent to filing suit under the policy. (627.7152(4)(d))
- > An assignee must participate in appraisal or other ADR in accordance with the terms of the policy as a condition precedent to filing suit under the policy. (627.7152(4)(e))

The new law also enacts several pre-suit notice and dispute resolution requirements, namely:

- > At least 10 business days before filing suit under the policy, the assignee must provide the insurer with: (1) a detailed invoice or estimate; and (2) a notice of intent to initiate litigation that specifies the damages in dispute, the amount claimed,

and the assignee’s pre-suit settlement demand (627.7152(9)). This step will have additional relevance for determining responsibility for attorney fee awards.

- > The insurer must respond to the notice within 10 business days by either: (1) making a pre-suit settlement offer; or (2) requiring the assignee to participate in appraisal or another method of alternative dispute resolution under the policy. Additionally, the statute states, “An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.”

What about Attorney Fee awards? Any change in that regard?

The new law, in Subsection 627.7152(10), significantly changes the fee-shifting framework in AOB suits. It provides insurers with the opportunity to recover their attorney fees under certain circumstances. The new fee-shifting framework is as follows:

- > If the damages judgment (excluding interest) obtained by the assignee is less than 25% of the “disputed amount” (i.e., the difference between the insurer’s pre-suit settlement offer and the assignee’s pre-suit settlement demand), the insurer recovers its reasonable attorney fees.
- > If the damages judgment is between 25% and 50% of the disputed amount, no party recovers attorney fees.
- > If the damages judgment is 50% or more of the disputed amount, the assignee recovers its reasonable attorney fees.

However, if the insurer does not inspect the property or authorize repairs within 7 days after the first notice of loss, the insurer waives its right to recover attorney fees (subject to certain exceptions).

Can insurers restrict AOBs in policy language? If so, what does the law require?

One of the most positive changes in the law was the ability of insurers to address AOBs in new policy language. For policies issued or renewed on or after



July 1, 2019, an insurer can make available a policy that restricts, in whole or in part, an insured's right to execute an AOB, provided these conditions are met:

- > Insurer makes available a policy that does not restrict the right to execute an AOB.
- > Restricted policies are available at a lower cost than unrestricted.
- > A policy prohibiting assignment in whole is less expensive than one prohibiting assignment in part.
- > Each restricted policy has an 18-point notice regarding the restriction.

In your opinion, will the new law impact AOB practices in the way insurers hoped?

It may be too soon to really tell, but certainly the law put a lot of parameters in place to curb abuses. I think it is significant that Section 627.7152 does not apply to “an assignment, transfer or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss.” There is a legitimate history of assignments being used in the context of subsequent conveyances. The law specifically excludes such assignments.

The new law is clearly targeting the type of assignments that we see with contractors in post-loss situations, most often water remediation and roofing contractors. Hopefully, the law will force the assignees to involve the insurers early in the loss remediation so that disputes can be identified and addressed right away.

Requiring the assignees to comply with policy conditions, such as examination under oath (EUO) and appraisal, should also help. Note that another change coming out of last year's legislation is the addition of Fla. Stat. 624.155(3)(f) which prevents a civil remedy notice from being filed “within 60 days after appraisal is invoked by any party in a residential property insurance claim.” This will help allow time for appraisal to determine the amount of disputed damage without an insurer risking a bad faith suit for failing to cure a civil remedy notice within the 60-day statutory time period while appraisal may still be pending. The pre-suit negotiation requirements should also help resolve disputes before litigation ensues.

How will the Florida legislature know if the new law is working as intended?

The legislature seems to want to know if the new requirements are successful in reducing claim costs (and likely litigation) associated with AOBs. Subsection 627.7152(12) directs the Office of Insurance Regulation to require insurers to report by January 30, 2022, and each year after, certain data about residential and commercial property insurance claims paid in the prior year under assignment agreements. Presumably, the legislature is hoping to see the costs of claims associated with AOBs go down as a result of the new rules and the option to issue policies that restrict assignments.

As a Florida attorney representing many property insurers in complex coverage disputes, I certainly look forward to any comprehensive and objective analysis of the law's impact on AOBs and costs. For now, I can look to my clients' claim experience and local, legal news for valuable insights. ■

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We are too early in the process to know if the new Florida law will curb abuses as intended. Pandemic or not, insurers are now dealing with the aftermath of the rush to execute AOBs before the requirements took effect. Going forward, I expect there will be a mix of progress and frustration. Having been in the claims business for more than 40 years, I can't help but think that some individuals will find another way to game the system.

That said, I am encouraged that regulators and legislatures in Florida are listening and responding to insurance abuses a bit faster than they have in the past – and that other states are paying attention too. Utah, for example, just passed its own legislation on the matter. And, there are other states coming under fire with AOB claims: Nebraska and Idaho.

Insurers should stay tuned – this is clearly an issue that warrants our attention. I fully expect that AOBs will be on the agenda of our future U.S. Property Claims seminars.

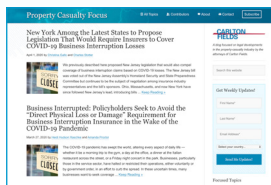
To discuss the topic or hear more about our claim conferences and seminars, contact me or your Gen Re claims representative.



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Heidi is an editor of the Carlton Fields blog, *PropertyCasualtyFocus*, covering legal developments in the insurance industry. A wide variety of insurance claim and coverage issues are discussed by attorneys in the firm – including AOBs. Visit <https://propertycasualtyfocus.com> and sign up if you want their updates.

Endnote

- 1 You can read the new law at <https://m.flsenate.gov/laws/statutes/2019/627.7152>.



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