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Florida Policyholders Face New Hurdles In Dealing With The Appraisal Process

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Highlights

The Florida Supreme Court reviewed whether an appraiser who entered into a contingency agreement with an insured homeowner can be considered “disinterested” under the terms of the policy

Policyholders may wind up inadvertently punished for using industry standard contracts and risk finding out the appraiser is conflicted out of assisting with their claim

Policyholders in Florida now must incur the cost of paying appraisers to get the presumed benefits for which they paid an insurance premium

The first few months of 2023 have not been kind to Florida policyholders. In January, Gov. Ron DeSantis approved a bill (SB 2A) that completely reformed and overhauled how Florida insureds are able to obtain property insurance coverage in the aftermath of losses such as those sustained from Hurricane Ian.

In another recent blow to insureds with property located in the state, the Florida Supreme Court significantly limited the scope of a policyholder’s ability to recover for its first-party property claims via the appraisal process. As savvy policyholders know, when coverage issues are being disputed, insurers often demand an appraisal to avoid a court or jury ruling on the actual damages at issue, while also attempting to limit or exclude coverage. While the appraisal process is supposed to be a way of expediting resolution of a claim, it can be expensive and frustrating and can even prolong resolution of a claim.

In the decision in *Parrish v. State Farm Florida Insurance Co,* the Florida Supreme Court reviewed

whether an appraiser who entered into a contingency agreement with an insured homeowner can be considered “disinterested” under the terms of the policy – ultimately finding the answer to be no. Contingent fee agreements and assignment agreements (which were restricted by the recent legislation) have been means by which policyholders can reduce the cost and risk of appraisals.

Parrish retained his own adjuster to examine and provide support for his property loss. Although the adjusters for both the policyholder and the insurer conducted an inspection of the damage, the insurer disagreed with the assessment provided by the policyholder’s adjuster. Both parties eventually demanded an appraisal, at which point the insurer argued that the policyholder could not use its adjuster as part of this process, claiming that the policyholder’s adjuster was not “disinterested” as required by the policy.

The Florida Supreme Court examined the policy’s appraisal clause and specifically, the term “disinterested.” The policy provided in relevant part that:

If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal. A demand for appraisal must be in writing. You must comply with Your Duties After Loss before making a demand.

Each party will select a qualified, ***disinterested*** appraiser and notify the other of the appraiser’s identity within 20 days of receipt of the written demand.

Because the term disinterested was not defined by the policy, the court eventually reviewed two dictionary definitions in order to define the term. First, relying on Black’s Law Dictionary, the court found that the term disinterested meant “[f]ree from bias, prejudice, or partiality and therefore able to judge the situation fairly; not having a pecuniary interest in the matter at hand.” Second, reviewing Webster’s dictionary, the court found that the term meant “1: lacking or revealing lack of interest . . . apathetic . . . 2: not influenced by regard to personal advantage: free from selfish motive: not biased or prejudiced.”

Comparing these two definitions, the court held that “a ‘disinterested’ person cannot, consistently with the generally understood meaning of that word, have a pecuniary interest in the matter at hand.”

Although the insured notified his insurer of the appraiser’s involvement in the claims handling process and the insurer was well aware of the appraiser’s role, the court nevertheless found that the appraiser’s agreement created a financial interest in the ultimate insurance recovery, thereby creating a purported conflict of interest.

Many policyholders realize that retaining a public adjuster and/or appraiser is a wise move, and contingency agreements are often used in the insurance industry in order to level the playing field and provide a second, objective assessment of any property loss. Nevertheless, under this recent ruling by Florida’s highest court, responsible policyholders may wind up inadvertently punished for using these industry standard contracts and risk later finding that the appraiser is conflicted out of assisting with their claim.

Further, policyholders now must incur the cost of paying appraisers to get the benefits for which they paid an insurance premium, given that most policies require each party to pay its own appraiser and split the cost of the umpire.

Given these significant changes to Florida law over the last few months, Florida policyholders should

consider reaching out to coverage counsel early in the claims handling process to receive advice on how to best position their claim for a potentially successful recovery.

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