

WHITE PAPER: FLORIDA HOMEOWNERS INSURANCE REFORM

ISSUED: March 26, 2024

Executive Summary

Homeowner's insurance in Florida is a broken system. Of the approximately \$43 billion paid by Florida homeowners last year \$26 billion was spent on litigation, \$10 billion on adjusters and profits. only \$7 billion was paid out in claims. The most destructive hurricane in recent history was Andrew in 1992 which destroyed more than 25,000 homes. The total of insurance premiums annually in Florida would pay for 132,000 homes. Floridians pay six times the amount they collectively receive in policy benefits/repairs.

In contrast, The Affordable Care Act requires medical insurance companies to spend at least 80% or 85% of premium dollars on medical care for the insured. In most insurance systems, the 80/20 Rule requires insurance companies to spend at least 80% of the money they take in from premiums on health care costs and quality improvement activities. The other 20% can go to administrative, overhead, and marketing costs.

The following White Paper and proposed Florida Insurance Bill is a solution. The homeowner's insurance issue is a regulatory, business, contractual, and practicality problem that can be solved. The solutions lie in regulatory reform, enforcing US contract law, and in giving homeowner's a voice.

Preamble:

The people of Florida assert that the exorbitant and unforeseen increases in homeowner's insurance are grounds to make the insurance requirements as they are drafted in the mortgage agreement to be null and void. Mortgage holders shall be required to amend the homeowner's insurance terms and conditions to fit the requirements of this bill.

In US contract law, the principle of foreseeability is often considered when determining the validity of contracts in situations where an unforeseen outcome affects the parties' obligations. The specific legal doctrine that may apply in such cases is called "impracticability" or "impossibility of performance."

Under the doctrine of impracticability, a party's performance of a contract may be excused if an unforeseen event occurs that makes performance excessively difficult or expensive, and the non-occurrence of such an event was a basic assumption upon which the contract was made. This concept is also known as the doctrine of "frustration of purpose."

To claim impracticability, Florida homeowners must generally meet certain requirements:

1. Unforeseen Event: The event in question must be truly unforeseeable at the time of contract formation. It should not be a risk that a reasonable person in the same situation would have anticipated.
2. Objective Impossibility: The event must render performance objectively impossible, not just more difficult or economically burdensome. It should go beyond the ordinary risks and difficulties inherent in contractual performance.

3. Basic Assumption: The non-occurrence of the unforeseen event must have been a fundamental assumption upon which the parties based their contract. If the contract explicitly addresses the risk or contains provisions for such events, it may affect the application of this doctrine.
4. No Fault: The event causing impracticability should not be due to the fault or intentional act of the party seeking to be excused from performance. For example, if a party causes the event through their own negligence, they may not be able to claim impracticability.

If these requirements are satisfied, the party seeking relief due to impracticability may be excused from performing their obligations under the contract, or the contract may be terminated altogether. However, the specific outcome will depend on the circumstances of each case and the applicable state law, as contract law is primarily governed by state law in the United States.

DRAFT:

THE AFFORDABLE HOMEOWNERS INSURANCE REFORM BILL

BILL NO. 0001A

AN ACT relating to windstorm insurance; providing for coverage requirements linked to the remaining mortgage balance; providing for definitions; providing for application and compliance; providing an effective date.

Section 1. Short Title

This Act may be cited as the "Affordable Homeowner's Insurance Bill "

Section 2. Legislative Findings

The Legislature finds that:

- (1) The economic hardship on homeowners resulting from high windstorm insurance premiums, covering the entire replacement cost of the home, has significantly increased in recent years due to escalating weather-related events, the proliferation of litigation, and increasing costs to insurers for re-insurance through global insurance companies.
- (2) The current law requiring windstorm insurance coverage based on the full structure value of the property, regardless of the remaining mortgage amount, places undue financial strain on homeowners.
- (3) The current unilateral ability to increase policy costs violates the contract law requirement for a "meeting of the minds" as homeowners could not have reasonably anticipated the level of rate increases levied.
- (4) Several of the participants in the industry have exercised usurious and greedy actions at the detriment of Florida homeowners. Profits on policies are exorbitantly high and unreasonable.

Section 3. Definitions

For the purposes of this Act:

(1) "Homeowner" means any person who holds a mortgage on a residential property in the state.

(2) "Mortgage" means a loan secured by residential real estate property.

(3) "Windstorm Insurance" means insurance coverage that pays for damages to a home and its contents resulting from windstorms.

Section 4. Change in Windstorm Insurance Coverage Requirements

(1) Effective from [Effective Date], all homeowners with mortgages shall only be required to hold windstorm insurance that covers up to the remaining balance of their mortgage at the time of policy issuance or renewal.

(2) All mortgage agreements and windstorm insurance policies executed after the effective date of this Act shall comply with these revised insurance coverage requirements.

(3) For existing windstorm insurance policies, homeowners shall be provided an option to adjust their coverage limits to align with the remaining balance of their mortgage at the time of policy renewal.

(4) Establishment and Regulation of Homeowner's Insurance Co-operatives

Subsection 1: Formation

(a) Homeowner's insurance co-operatives (hereinafter "insurance co-ops") are hereby authorized to be formed by groups of Florida homeowners with the purpose of providing mutual insurance coverage against losses to homes, property, and other risks typically covered under homeowner's insurance policies.

(b) Such insurance co-ops shall be registered with the State of Florida's Department of Financial Services and must comply with all regulatory requirements applicable to insurance entities within the state, including but not limited to solvency, reserve requirements, and consumer protection standards.

(c) Insurance co-ops shall operate on a not-for-profit basis, with any excess revenues to be either returned to members in the form of dividends or rebates, or reinvested into the co-op for the purpose of lowering future premiums, enhancing coverage, or improving services.

Subsection 2: Membership

(a) Membership in an insurance co-op shall be open to any homeowner residing within the state of Florida who agrees to abide by the terms and conditions set forth by the co-op, including the payment of premiums and adherence to risk mitigation standards prescribed by the co-op.

(b) Each member shall have one vote in co-op matters, including but not limited to the election of the board of directors, changes to premium rates, and other significant policy decisions.

Subsection 3: Use of Adjusters and Attorneys

(a) Insurance co-ops are encouraged to employ or contract with licensed adjusters and attorneys to facilitate the fair, efficient, and timely processing of claims. The use of such

professionals shall be aimed at reducing the costs associated with claim disputes and litigation, thereby enabling lower premiums for co-op members.

(b) To further reduce insurance costs and encourage amicable resolution of claims, insurance co-ops shall:

1. Implement a mandatory mediation process as a first step in the claims dispute resolution process, before any litigation can be initiated.
2. Offer education and resources to members on the claims process, risk mitigation, and the benefits of avoiding unnecessary litigation.
3. Establish clear, fair, and transparent criteria for claims adjustment and settlement, to be made readily available to all members.

Subsection 4: Regulatory Oversight and Support

(a) The Department of Financial Services shall provide oversight to ensure that insurance co-ops operate in a manner that is financially sound and provides adequate protection to their members.

(b) The Department may also offer support and resources to facilitate the formation and successful operation of insurance co-ops, including but not limited to guidance on best practices, compliance assistance, and mediation services.

(c) Insurance co-ops shall be subject to annual audits and reviews to ensure compliance with state insurance regulations and to assess their financial health and claims handling practices.

This section of the bill aims to provide a framework for the formation and operation of homeowner's insurance co-operatives in Florida, offering an alternative to traditional insurance that is community-focused, potentially more affordable, and designed to reduce litigation and dispute resolution costs. Through the collective power and mutual interests of homeowners, these co-ops can play a significant role in addressing the state's homeowner's insurance issues by fostering a proactive approach to risk management and claims processing.

(5) Optional Household Contents Insurance Coverage

Subsection 1: Freedom to Choose Coverage

(a) Recognizing the diverse needs and financial situations of Florida homeowners, this bill hereby amends existing homeowner's insurance regulations to allow homeowners the option to exclude household contents from their homeowner's insurance policies.

(b) Homeowners electing to insure their property under a homeowner's insurance policy shall be explicitly offered the option to include or exclude coverage for household contents, defined as personal property and belongings located within the insured dwelling.

Subsection 2: Policy Adjustments and Premiums

(a) Insurance providers must clearly outline, in all policy offerings and renewals, the options available to homeowners regarding the inclusion or exclusion of household contents coverage, including detailed descriptions of what constitutes household contents.

(b) Premiums for homeowner's insurance policies shall be appropriately adjusted to reflect the inclusion or exclusion of household contents coverage. Insurance providers shall transparently demonstrate how premiums are calculated in either scenario, ensuring that homeowners are only charged for the coverage they elect to receive.

Subsection 3: Consumer Information and Disclosure

(a) Prior to the finalization of any homeowner's insurance policy excluding household contents, the insurance provider must:

1. Provide a clear and concise explanation to the homeowner about the risks associated with not insuring household contents, including potential financial losses in the event of theft, damage, or destruction.
2. Ensure that the homeowner has acknowledged, in writing, their understanding of the implications of choosing not to insure household contents and their acceptance of the responsibility for any losses that may occur.

Subsection 4: Claims and Disputes

(a) In the event of a claim related to property damage or loss, insurance providers must process and settle claims solely based on the coverage explicitly included in the homeowner's policy. The exclusion of household contents from the policy precludes any claims related to the loss or damage of such contents.

(b) Disputes arising from claims where household contents coverage was excluded shall be resolved with reference to the signed acknowledgment by the homeowner, affirming their understanding and acceptance of the risks associated with such exclusion.

Subsection 5: Regulatory Compliance

(a) The Department of Financial Services shall oversee the implementation of this section, ensuring that insurance providers comply with all requirements related to offering, documenting, and processing policies that exclude household contents coverage.

(b) The Department is authorized to issue guidelines and regulations as necessary to enforce the provisions of this section, including measures to protect consumers and to ensure clear communication and fair practices by insurance providers.

This section of the bill is designed to empower Florida homeowners with greater flexibility and personal choice in the structuring of their homeowner's insurance policies. By allowing the exclusion of household contents from coverage, homeowners can tailor their policies to better match their individual needs and financial circumstances, while maintaining an informed understanding of the risks involved.

Section 5. Apply Standard Insurance Industry Limits on Premiums and Disbursements

The Bill shall impose the 80/20 Rule which will require homeowner's insurance companies to spend at least 80% of the money they take in from premiums on health care costs and quality improvement activities. The other 20% can go to administrative, overhead, and marketing costs.

Section 6. Compliance and Enforcement

(1) The Florida Department of Insurance is tasked with enforcing the provisions of this Act and ensuring compliance among insurance providers.

(2) Mortgage lenders must comply with this Act and adjust their lending agreements to reflect these changes.

Section 7. Effective Date

This Act shall take effect [Effective Date].

Section 8. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Please note that this is a simplified and generic version of a proposed bill. An actual bill would have more detailed provisions, including more specific enforcement mechanisms, a process for handling disputes, penalties for non-compliance, and more.