

1 A bill to be entitled
 2 An act relating to property insurance assignment
 3 agreements; creating s. 627.7152, F.S.; providing a
 4 definition; providing for a court to award attorney
 5 fees in certain cases; providing requirements and
 6 limitations of assignment agreements; providing burden
 7 of proof; providing insureds' payment obligations
 8 under an assignment agreement; providing an assignment
 9 agreement does not affect managed repair arrangements
 10 under an insurance policy; providing applicability;
 11 amending s. 627.422, F.S.; specifying certain
 12 residential property insurance policies may not
 13 prohibit assignment of post-loss benefits; providing
 14 an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 627.7152, Florida Statutes, is created
 19 to read:

20 627.7152 Assignment agreements.-
 21 (1) As used in this section, the term "assignment
 22 agreement" means a written instrument by which post-loss
 23 benefits under a residential property insurance policy for
 24 covered losses are assigned or transferred to a person providing
 25 services to protect, repair, restore, or replace such property

26 | or to mitigate against further damage to such property.

27 | (2) An assignee or transferee must provide the insurer and
28 | the insured with a notice of intent to initiate litigation
29 | related to an assignment agreement at least 21 days before
30 | filing a complaint. The notice must specify the damages and
31 | amount claimed. An insurer must have a procedure for the prompt
32 | investigation, review, and evaluation of the claims stated in
33 | such notice and must investigate such claims in good faith. An
34 | assignee or transferee and insured must cooperate with the
35 | insurer during the investigation, review, and evaluation by the
36 | insurer. An insurer must respond to the notice within 21 days
37 | after receipt of the notice by rejecting the claims, making a
38 | settlement offer, or requiring further action as permitted by
39 | law or the policy.

40 | (a) Notwithstanding any other law to the contrary, in a
41 | proceeding related to an assignment agreement for post-loss
42 | claims arising under a residential property insurance policy,
43 | attorney fees and costs may only be recovered under s. 57.105
44 | and this subsection.

45 | (b) An assignee or transferee is entitled to reasonable
46 | attorney fees from the insurer if the assignee or transferee
47 | prevails in the action and the claims amount awarded is equal to
48 | or greater than the prejudgment settlement amount requested by
49 | the assignee or transferee for the damages claimed.

50 | (c) An insurer is entitled to reasonable attorney fees

51 from the assignee or transferee if the insurer prevails in the
52 action and the amount awarded to the assignee or transferee is
53 equal to or less than the prejudgment settlement amount offered
54 by the insurer for post-loss claims.

55 (d) Attorney fees may not be awarded to either party if an
56 assignee or transferee prevails in an action in which the amount
57 awarded is less than the prejudgment settlement amount requested
58 by the assignee or transferee for post-loss claims and is more
59 than the prejudgment settlement amount offered by the insurer.

60 (3) An assignment agreement that does not comply with this
61 subsection is invalid and unenforceable.

62 (a) An assignment agreement must:

63 1. Be in writing and executed by all named insureds.

64 2. Contain a provision that allows the named insureds to
65 rescind the assignment agreement by having all named insureds
66 sign a notice within 7 business days after the execution date of
67 the assignment agreement to notify the assignee or transferee of
68 the rescission without any penalty, rescission fee, or
69 cancellation fee. The insureds may rescind the assignment
70 agreement for any reason during the 7-day period. The insured
71 may be responsible for payment for work performed before the
72 agreement is rescinded.

73 3. Contain a provision requiring the assignee or
74 transferee to provide a copy of the executed assignment
75 agreement to the insurer within 3 business days after the date

76 | the assignment agreement is executed. Delivery may be made:
 77 | a. By certified mail, return receipt requested;
 78 | b. By personal service, overnight delivery, or electronic
 79 | transmission, with evidence of delivery in the form of a receipt
 80 | or other paper or electronic acknowledgement by the insurer or
 81 | the insurer's agent; or
 82 | c. Pursuant to the policy.
 83 | 4. Contain a written, itemized, per-unit cost estimate of
 84 | the services to be performed by the assignee or transferee. If
 85 | the statement of services includes a claim for water restoration
 86 | services, the statement must also include proof that the
 87 | assignee or transferee possesses a valid certification from an
 88 | entity that requires water remediation to be performed according
 89 | to a standard that is approved by the American National
 90 | Standards Institute.
 91 | 5. Relate only to work to be performed by the assignee or
 92 | transferee for services to protect, repair, restore, or replace
 93 | dwelling or structures covered by the insurance policy or to
 94 | mitigate against further damage to such property.
 95 | 6. Contain the following notice in uppercase 14-point
 96 | type:
 97 |
 98 | YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
 99 | INSURANCE POLICY TO A THIRD PARTY WHICH MAY RESULT IN LITIGATION
 100 | AGAINST YOUR INSURER AND REQUIRE YOUR PARTICIPATION IN A

101 LAWSUIT. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING
102 IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY
103 OR OBLIGATION WITHIN 7 BUSINESS DAYS AFTER THE DATE THIS
104 AGREEMENT IS EXECUTED. THIS AGREEMENT DOES NOT CHANGE YOUR
105 OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY
106 INSURANCE POLICY.

107

108 (b) An assignment agreement may not contain:

109 1. A penalty or fee for rescission of the assignment
110 agreement pursuant to subparagraph (a)2.;

111 2. A check or mortgage processing fee;

112 3. A penalty or fee for cancellation of the assignment
113 agreement; or

114 4. An administrative fee.

115 (4) An assignee or transferee has the burden to
116 demonstrate that the insurer, insured, or other party claiming a
117 right or benefit under an assignment agreement is not prejudiced
118 by the failure of the assignee or transferee to:

119 (a) Maintain records of all services provided under an
120 assignment agreement.

121 (b) Cooperate with the insurer in the investigation of a
122 claim.

123 (c) Provide the insurer with requested records and
124 documents related to the services provided and to permit the
125 insurer to make copies of such records and documents.

126 (d) Permit the insurer to conduct an examination by the
127 insurer or the insurer's representative relating to an
128 assignment agreement and services provided by the assignee or
129 transferee.

130 (e) Deliver a copy of the executed assignment agreement to
131 the insurer within 3 business days after the execution of the
132 assignment agreement.

133 (f) Provide the insurer with a written, itemized, per
134 unit-cost statement of services actually performed pursuant to
135 an assignment agreement with a request for payment of benefits
136 under a property insurance policy.

137 (g) Participate in appraisal or other alternative dispute
138 resolution method in accordance with the terms of the property
139 insurance policy.

140 (5) An assignee or transferee:

141 (a) Must provide the insured with accurate and up-to-date
142 revised statements of the scope of work to be performed as
143 supplemental or additional repairs are required;

144 (b) Must guarantee to the insured that the work performed
145 conforms to current and accepted industry standards;

146 (c) May not charge the insured more than the applicable
147 deductible under the policy unless the insured chose to have
148 additional work performed at the insured's own expense; and

149 (d) May not pay more than \$300 in referral fees in
150 connection with an assignment agreement.

151 (6) Notwithstanding any other provision of law, the
152 acceptance by an assignee or transferee of an assignment
153 agreement is a waiver by the assignee, transferee, and
154 subcontractor of the assignee or transferee, of claims against
155 named insureds for payments arising from the assignment
156 agreement. However, named insureds remain responsible for the
157 payment of any deductible amount under an insurance policy, for
158 any work performed before the rescission of an assignment
159 agreement, and for the cost of any betterment ordered and
160 approved by all named insureds. This waiver remains in effect
161 after rescission of the assignment agreement by all named
162 insureds or after a determination that the assignment agreement
163 is invalid.

164 (7) An assignment agreement and this section do not modify
165 or eliminate any term, condition, or defense relating to any
166 managed repair arrangement provided for in the property
167 insurance policy.

168 (8) This section does not apply to:

169 (a) An assignment, transfer, or conveyance granted to a
170 subsequent purchaser of the property with an insurable interest
171 in the property following a loss;

172 (b) A power of attorney under chapter 709 that grants to a
173 management company, family member, guardian, or similarly
174 situated person of an insured that includes the authority to act
175 on behalf of an insured as it relates to a property insurance

176 claim; or

177 (c) Liability coverage under a property insurance policy.

178 (9) This section applies to assignment agreements executed
 179 after July 1, 2017.

180 Section 2. Section 627.422, Florida Statutes, is amended
 181 to read:

182 627.422 Assignment of policies or post-loss benefits.—A
 183 policy may be assignable, or not assignable, as provided by its
 184 terms.

185 (1) Life or health insurance policies.—Subject to its
 186 terms relating to assignability, any life or health insurance
 187 policy under the terms of which the beneficiary may be changed
 188 upon the sole request of the policyowner may be assigned either
 189 by pledge or transfer of title, by an assignment executed by the
 190 policyowner alone and delivered to the insurer, whether or not
 191 the pledgee or assignee is the insurer. Any such assignment
 192 shall entitle the insurer to deal with the assignee as the owner
 193 or pledgee of the policy in accordance with the terms of the
 194 assignment, until the insurer has received at its home office
 195 written notice of termination of the assignment or pledge or
 196 written notice by or on behalf of some other person claiming
 197 some interest in the policy in conflict with the assignment.

198 (2) Post-loss benefits under certain property insurance
 199 policies.—A personal lines residential property insurance policy
 200 or a commercial residential property insurance policy may not

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201 | prohibit the assignment of post-loss benefits.

202 | Section 3. This act shall take effect July 1, 2017.