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Citizens files request for 72-hour deadline to report loss



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If you are a customer of state-run Citizens Property Insurance Corp. and have to file a claim, you might find yourself facing a question typically associated with a politician embroiled in scandal:

What did you know, and when did you know it?

That's because a proposed insurance policy revision submitted by Citizens this month for review by the state Office of Insurance Regulation would require policyholders to notify their insurance agents or Citizens within 72 hours after they discover loss or damage, or "within 72 hours after you knew or should have known of the loss or damage."

If approved, the deadline would replace the previous requirement that a policyholder provide "prompt notice" of a loss. The revision is intended to reduce Citizens' costs by stopping contractors from completing repairs before the insurer learns of the loss.

But attorneys who frequently sue insurance companies predict the revision will spark an increase in claim denials and lawsuits against Citizens.

The 72-hour notification requirement is one of several changes approved by Citizens' Board of Governors on Dec. 9 to stem what the company calls an alarming increase in non-weather-related water damage claims and costs associated with those claims. Citizens blamed those costs for rate increases this year in Miami-Dade, Broward and Palm Beach counties while most customers everywhere else in Florida saw decreases.

Those costs are increasing because water damage repair companies require policyholders to sign over post-loss benefits of their policies before they begin repair work, Citizens says. The companies often complete the repairs and submit inflated invoices before Citizens is ever told about the damage.

Citizens' policy revisions are part of a larger strategy to address the issue. In the state legislature, lawmakers are debating proposals supported by the insurance industry to restrict policyholders' ability to assign benefits to contractors.

The 72-hour rule is intended to give Citizens an opportunity to send its own adjusters to inspect damages and approve the cost and scope of repairs.

Citizens spokesman Michael Peltier called the proposal "a reasonable step to get our arms around a growing problem of rising water claims." Without the changes, "the sad fact is our policyholders are going to see rate increases for years to come, even without a hurricane."

Other proposed revisions submitted to insurance regulators include a \$3,000 cap on temporary emergency repairs unless authorized by Citizens, a statement that plumbing failures won't be covered if damage results from age, deterioration or lack of maintenance, and language limiting tear-out and repair to only the section of a home needed to access the plumbing or appliance that caused the covered loss.

South Florida-based attorneys who specialize in representing policyholders and contractors in lawsuits against Citizens and other insurers called the 72-hour notification rule unfair to policyholders and said it would lead to Citizens denying legitimate claims.

"Many insureds do not know within 72 hours of a covered insured loss if they have a claim unless they are informed by a friend, attorney or public adjuster," said Joseph W. Ligman, a Miami-based attorney.

Attorney Kenneth R. Duboff, based in North Miami, said what constitutes "prompt notice" has been established by the courts in previous lawsuits over insurance claims. Ely R. Levy, a Hollywood-based trial attorney, concurred. "There is a legal framework that addresses when a policyholder reports a claim belatedly, and the courts have dealt with those issues for years in a satisfactory manner," Levy said.

Duboff said the rule could result in an increase in litigation, rather than a decrease as Citizens intends. "If the 72-hour limit is enacted ... I can imagine a flood of lawsuits if Citizens denies a claim when the insured reports a claim within a reasonable period of time even if it exceeds the 72-hour period," he said.

Levy said: "It's obviously in the best interests of a policyholder to report property damage as soon as possible and to address and mitigate whatever damage arises. But at the same time, a claim should be investigated thoroughly before reporting it because not every instance of property damage results in a covered claim."

He added, "Citizens will undoubtedly try to use this as a way to deny valid claims."

Miami-based attorney Anthony M. Lopez said the issue of when policyholders knew they had damage to their homes was debated in courts after Hurricane Wilma struck South Florida in 2005.

"Many Florida policyholders sustained damages to their roof systems and did not even know it until months or even years later when their roof system prematurely failed after a normal rainstorm," Lopez said.

Florida courts "struggled with this answer" and ultimately decided the issue of timely reporting of claims "creates a presumption of prejudice in favor of the insurance company that can be overcome with evidence that the damages were still readily available to be inspected when the claim was finally reported."

"Even if the claim is reported months or even years later, the insured can still recover from the [insurance company]," Lopez said.

The Office of Insurance Regulation has 45 days to review Citizens' proposed changes and approve, reject or ask Citizens to revise them. According to documents filed by Citizens, regulators advised the insurer to allow an exception to the 72-hour rule for emergency circumstances if policyholders provide supporting documentation explaining why they were unable to meet the deadline.

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