

NOTICE

FINANCIAL SERVICES COMMISSION

OFFICE OF INSURANCE REGULATION

RULE TITLE:

RULE NO.:

Personal Residential and Commercial Residential Property

69OER04-10

Insurance Policies; Extension of Coverage for Damaged Property

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY OR WELFARE: The Financial Services Commission and the Office of Insurance Regulation (“Office”) hereby state that the following circumstances constitute an immediate danger to the public health, safety, or welfare:

The 2004 hurricane season has been particularly destructive for Florida. Insured losses due to the multiple storms have been estimated to be collectively \$20 billion. Tropical Storm Bonnie caused damage in north Florida. Substantial damage in southwest and central Florida was caused by Hurricane Charley, which hit the Punta Gorda and Port Charlotte area on August 13, 2004, as a Category 4 Hurricane with sustained winds up to 145 miles per hour. Hurricane Charley crossed northeast through the center of the state exiting near Daytona Beach. In a 10-mile wide path extending from the southwest coast there was widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

Hurricane Frances hit the east coast of Florida on September 4, 2004 as a Category 2 Hurricane, and slowly crossed the peninsula. Hurricane Frances, though less intense than Charley, caused damage over a much wider area of the state.

On September 16, 2004, Hurricane Ivan caused massive damage in the Florida Panhandle. Hurricane Ivan impacted the Gulf Coast as a Category 4 Hurricane with sustained winds up to 130 miles per hour. The eye made land fall just west of the western Florida state line, bringing hurricane force winds to much of the Florida Panhandle. The hurricane also produced tornados that destroyed and damaged structures in the Florida Panhandle. There was extensive damage in the Pensacola area, which was hit by the strong northeast quadrant of the storm as it made landfall.

And finally, Hurricane Jeanne made landfall near Stuart, Florida, the night of September 25, 2004 as a Category 3 Hurricane with sustained winds up to 120 miles per hour. On September 26, 2004, the storm made a path northwest across the state.

The Governor of Florida has issued four orders declaring a state of emergency due to the storms (Executive Orders 04-182, 04-192, 04-206, and 04-217). The President of the United States has declared most of Florida a federal disaster area.

Additionally, on November 23, 2004, the Governor of Florida issued Executive Order 04-248, which incorporated by reference all previous orders and supplemental orders issued by the State Coordinating Officer. Also, on December 20, 2004, the State Coordinating Officer, pursuant to Executive Order 04-248, issued a Supplemental Order granting the Office extended authority to issue rules or orders needed to place a moratorium on the cancellation or nonrenewal of homeowners and other types of policies governed by the Insurance Code.

Insurers have reported in excess of 1.4 million property insurance claims as a result of the four hurricanes. In many areas, building contractors are unable to serve all of the needs of homeowners whose homes are damaged from the storms.

Homeowners have complained to the Department of Financial Services, Division of Consumer Services that they are unable to find a contractor. Homes will be in various stages of disrepair for several months, some to the point at which they cannot meet the underwriting guidelines for voluntary insurers or even for Citizens Property Insurance Corporation because they are still under construction. Leaving these homeowners without the ability to insure their property poses an immediate threat to public safety and welfare.

There are not a sufficient number of contractors available to expeditiously complete repairs in reasonable time frames. Governor Jeb Bush has recognized this emergency state of affairs and issued Executive Order Number 04-241, on November 10, 2004, extending the time period which suspends the requirement that out of state roofing contractors must be certified or registered in the State of Florida, but allows them to operate with local licenses provided they are properly licensed in their home state.

Unfortunately, there have been reports that some insurers are attempting to cancel or nonrenew insurance policies for homes that have not been completely repaired. Due to underwriting guidelines of other insurers these insureds would not be able to obtain replacement coverage with another insurer. The resulting inability to secure insurance coverage would also adversely affect the sale and exchange of damaged structures and adversely impact the economic health and welfare in this state. Accordingly, this rule is necessary to maintain the status quo, to allow the State of Florida to recover from the storms and allow time for the construction industry to complete repairs to in excess of 1.7 million structures in this state.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Financial Services Commission believes that adopting an emergency rule is the fairest method to protect the public because of the nature and extent of the destruction caused by the 2004 Hurricane Season. An Office bulletin addressed to all regulated persons and insurers would reach them, but would not be legally binding. A permanent rule would not have the flexibility and immediacy to protect the public welfare.

In consideration of the emergency conditions currently existing, and given the Office's responsibility to protect the public interest and implement the Insurance Code, an emergency rule is necessary.

SUMMARY OF THE RULE: Emergency Rule 69OER04-10 establishes limits on the cancellation and nonrenewal of certain personal residential and commercial residential property insurance policies for victims of the 2004 Hurricane Season and provides alternative procedures for the cancellation and nonrenewal of these policies under certain limited circumstances.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:

Stephen C. Fredrickson, Assistant General Counsel, Legal Services, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, FL 32399-4206, (850) 413-4144.

THE FULL TEXT OF THE EMERGENCY RULE IS:

69OER04-10 Personal Residential and Commercial Residential Property Insurance Policies; Extension of Coverage for Damaged Property

(1) This rule applies to all personal residential and commercial residential property insurance policies covering structures damaged as the result of Tropical Storm Bonnie or Hurricanes Charley, Frances, Ivan or Jeanne, for which a damage claim has been filed and

a loss is payable or has been paid, if repairs attributable to such damage have not been completed. A nonrenewal prohibited by operation of this rule shall not require renewal for an additional term. The rule shall only require an extension of coverage until 60 days from the date the repairs have been completed as defined in subsection (2).

(2) Special Provision for Damaged, Un-repaired Property.

(a) No insurer or agent shall cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of the aforementioned storms, for a period of 60 days after the dwelling or residential property has been repaired. A structure is deemed to be "repaired" when substantially completed and the structure has been restored to the extent the structure is insurable by another authorized insurer which is writing policies in this state.

(b) However, an insurer or agent may cancel or nonrenew, prior to the repair of the dwelling or residential property:

1. Upon 10 days notice for non-payment of premium;
2. Upon 45 days notice for a material misstatement or fraud related to the claim;
3. Upon 45 days notice if the insurer can demonstrate that the insured has unreasonably caused a delay in the repair of the dwelling; or
4. Upon 45 days notice if the insurer has paid policy limits, provided the insurer has offered the insured a builders risk or other similar policy which would cover the property until completion of repairs.
5. Upon the request of the insured.

(c) Except for any cancellation or nonrenewal for non-payment of premium, any cancellation or nonrenewal made pursuant to this subsection shall be reported by the insurer in writing to the Office of Insurance Regulation with the insurance company name, policyholder name, policyholder number, the date of cancellation or nonrenewal and reason(s) for the cancellation or nonrenewal action. All reports filed by insurers in compliance of this rule shall be provided to this Office as part of an ongoing market conduct examination and shall be submitted by electronic attachment to email address: 69OER04-10@fldfs.com.

(3) Nothing in this rule shall be construed to create or support a private cause of action or relate to damages recoverable in a civil action; and proof of good faith compliance with this rule shall constitute a defense in any civil action arising due to such compliance.

Specific Authority: 120.54(4), 624.308, 626.9611 FS. Law Implemented: 626.9541(1)(i), 626.9561, 626.9641, 627.351(6), 627.4133, FS. History – New _____.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.