



INFORMATIONAL MEMORANDUM

OIR-06-004M

ISSUED

March 13, 2006

Office of Insurance Regulation

Kevin M. McCarty

Commissioner

All Property and Casualty Insurers

Hurricane Mediation Program

The purpose of this Memorandum is to notify Florida property and casualty insurers that pursuant to Section 627.7015(4), Florida Statutes, the Department of Financial Services (DFS) has adopted by rule a property insurance mediation program for personal residential property, Rule 69JER06-01, "Mediation Procedures for Resolution of Disputed Personal Lines Insurance Claims Arising from the 2004 and 2005 Hurricanes and Tropical Storms".

All property and casualty insurers with claims arising out of the 2004 and 2005 hurricanes and tropical storms should become familiar with this rule and comply with it, as required by Section 627.7015, Florida Statutes.

Additional questions regarding this Informational Memorandum may be directed to: Bob Prentiss, Assistant General Counsel, at bob.prentiss@fldfs.com or 850-413-4183.

DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

RULE TITLE:

RULE NO.:

Mediation Procedures for Resolution of Disputed

Personal Lines Insurance Claims Arising from

the 2004 and 2005 Hurricanes and Tropical

Storms.

69JER06-01

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE

PUBLIC HEALTH, SAFETY OR WELFARE: Section 626.7015(4), F.S.,

authorizes the Department to adopt special rules implementing a mediation

program that would be applicable in cases of an emergency within the State. This

emergency rule is necessitated by the extensive property destruction throughout

the State of Florida caused by Hurricanes Dennis, Katrina, Rita, and Wilma. The

insured loss estimates from Hurricane Wilma alone are \$8 billion to \$12 billion.

The State of Florida sustained \$468 million in insured losses from Hurricane

Katrina when it struck the Miami area and one billion dollars in insured losses

from Hurricane Dennis when it struck the Panhandle. Hurricane Rita grazed the

Florida Keys causing \$23 million in insured losses. The hurricane damage has

resulted in the displacement of thousands of people from their homes which were

rendered unsuitable for use and habitation, the destruction or loss of personal

property, the closing of businesses, and the loss of employment. The people of

the State of Florida are still recovering from the impact of the four hurricanes and

tropical storms that struck in 2004 and caused billions in dollars of damages. The

Governor has found that destruction caused by the 2004 and 2005 hurricanes threaten the State with a major disaster and declared that a state of emergency exists in the State of Florida by Executive Order No. 05-219.

Insurers have currently reported over 500,000 property insurance claims as a result of the 2005 hurricanes. A significant number of these claims remain unresolved throughout the State and as a result, thousands of homes remain in a state of disrepair or are uninhabitable. The failure by insurers to timely process, settle and pay these claims delays the insured's ability to repair damaged structures or replace lost property.

Due to the substantial number of new insurance claims that have been or will be filed as a result of the extensive destruction caused by the recent hurricanes, an emergency rule is needed to immediately establish a mediation program allowing these insurance claims to be settled in a fair and timely manner and in an informal setting. A prompt settlement of these claims will allow insureds to receive insurance money and begin repairs to their homes and other personal property or to replace property that was damaged or lost as a result of the hurricanes. Insureds may also be eligible to recover money for temporary living expenses or emergency repairs.

The Department previously adopted a rule establishing a property mediation program that only applied to claims resulting from the 2004 hurricanes. Four mediation centers were set up in hurricane hit areas and more than 11,000 mediation conferences took place. The mediation program had a success rate of

92%. This new emergency rule will allow insureds' with property damage claims as a result of the 2005 hurricanes to participate in the mediation program.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR

UNDER THE CIRCUMSTANCES: The Department concludes that an emergency rule is the most fair and expeditious process to notify the public and the insurance industry of the mediation program. An emergency rule will allow the Department to immediately implement a mediation program allowing for a prompt resolution of disputed claims as a result of the extensive damage caused by the recent hurricanes. The Department will initiate regular rulemaking on this same subject matter shortly. The filing of notice of proposed rule development and notice of proposed rulemaking in the near future will adequately protect the rights of substantially affected persons.

SUMMARY OF THE RULE: The rule requires insurers to notify residential policyholders of their right to request mediation of their disputed claims. The rule creates procedures for a notice of the right to mediation, requesting mediation, assignment of mediators, payment for mediation, scheduling mediation conferences, and the conduct of the mediation conference.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Tom Terfinko, Assistant Director, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0320 (850) 413-5802.

THE FULL TEXT OF THE EMERGENCY RULE IS:

69JER06-01 Mediation Procedures for Resolution of Disputed Personal Lines Insurance Claims Arising from the 2004 and 2005 Hurricanes and Tropical Storms.

(1) Purpose and Scope. This rule implements Section 627.7015, F.S., by setting forth a mediation procedure prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by the hurricanes and tropical storms during the 2004 and 2005 hurricane seasons (June 1 to November 30 of each year). The procedure established by this rule is available to those first party claimants who have personal lines claims resulting from damage to residential property occurring in the State of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance, or to liability coverage contained in property insurance policies.

(2) Definitions. The following definitions apply to the terms of this rule as used herein.

(a) "Administrator" means the Department or its designee.

(b) "Claim" means any matter on which there is a dispute or for which the insurer has denied payment. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, in either case, notwithstanding any applicable deductible. "Claim" does not include a dispute with respect to which the insurer has reported allegations of

fraud, based on an investigation by the insurer's special investigative unit, to the Department's Division of Insurance Fraud.

(c) "Department" means the Department of Financial Services or its designee. Reporting to the Department shall be directed to: Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, Tallahassee, Florida 32399-4212; or by facsimile to (850) 488-6372.

(d) "Mediator" means an individual selected by the Department to mediate disputes pursuant to this rule. The mediators will be selected from a panel of circuit court – civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules of Certified and Court-Appointed Mediators or from the list of approved mediators pursuant to Rule 69B-166.031, F.A.C.

(e) "Party" or "Parties" means the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

(3) Notification of Right to Mediate.

(a) The insurer shall mail a notice of the right to mediate disputed claims to the insured within 5 days of the time the insured or the Department notifies an insurer of a dispute regarding the insured's claim. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial. An insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because the amount of the claim is less than the insured's deductible.

(b) The mailing that contains the notice of the right to mediate may include the Department's consumer brochure on mediation but no other materials, forms, or documents may be included. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type. The first paragraph of the notice shall contain the following statement: "Tom Gallagher, Chief Financial Officer for the State of Florida, has adopted an emergency rule to facilitate the fair and timely handling of residential property insurance claims arising out of the hurricanes that have recently devastated so many homes in Florida. The emergency rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process 21 days after the date of this notice by calling the Department of Financial Services at 1-800-227-8676 (1-800-22-STORM)."

(c) The notice shall also:

1. Include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the Department;
2. State that the parties have 21 days from the date of the notice within which to settle the claim before the insured may request mediation;
3. Include the insurer's address and phone number for requesting additional information; and
4. State that the Department or the Administrator will select the mediator.

(4) Request for Mediation.

(a) By the Insured. After 21 days from the date of the notice of the right to mediation, an insured may request mediation by contacting the insurer or by calling the Department at 1-800-22-STORM (1-800-227-8676); by faxing a request to the Department at (850) 488-6372; or by writing to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, Tallahassee, Florida, 32399-4212. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the Department of the existence of the dispute 21 days prior to the Administrator processing the insured's request for mediation. If an insurer receives a request for mediation, the insurer shall fax the request to the Mediation Section within 48 hours of receipt of the request. The Department will forward requests to the Administrator within 24 hours of receipt of the requests. The Administrator shall notify the insurer within 48 hours of receipt of requests filed with the Department. The insured should provide the following information if known:

1. Name, address, e-mail address, and daytime telephone number of the insured and location of the property if different from the address given;
2. The claim and policy number for the insured;
3. A brief description of the nature of the dispute;
4. The name of the insurer and the name, address, e-mail address, and phone number of the contact person for scheduling mediation; and

5. Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

(b) By an Insurer. An insurer may request mediation by faxing a written request to the Department at (850) 488-6372. The insurer shall provide a copy of its written mediation request to the insured at the same time it submits the request to the Department. The written request should contain the information set forth in subsection (4)(a). Mediation requests by insurers will be processed by the Department and Administrator in the same manner as mediation requests by insureds.

(5) Mediation Costs. Pursuant to Section 627.7015(3), F.S., the insurer shall bear all of the cost of conducting mediation conferences. Mediation costs shall include the administrative fee and the mediator's fee. Within 5 days of receipt of the request for mediation or receipt of notice of the request from the Department or immediately after receipt of notice from the Administrator pursuant to subsection (4) that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee of \$350 to the Administrator to defer the expenses of the Department. This amount includes the mediator's fee.

(6) Requirements for Insurers.

(a) The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference. The representative of the insurer attending the conference must know the facts and

circumstances of the claim and be familiar with of the provisions of the policy. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

(b) If inspection and adjustment of the property at issue may be required before the dispute between the parties can be resolved, such inspection and adjustment shall occur before the scheduled mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference shall constitute a failure to appear at the mediation conference under subsection (8) below. A refusal by the insured to allow the insurer's representative onto the property at issue to conduct such an inspection or adjustment shall not be considered a failure to appear at the mediation conference.

(7) Scheduling of Mediation Conference. The Administrator will select a mediator and schedule the mediation conference. The Administrator will attempt to facilitate reduced travel and expenses to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The Administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The Administrator shall notify each party in writing of the date, time, and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the Department. The insurer shall notify the Administrator as soon as possible after the settlement of any claim that is scheduled for mediation pursuant to this rule.

(8) Conduct of the Mediation Conference.

(a) It is not necessary to engage a private attorney to participate in the mediation conference. If the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the Administrator at least six days before the date of the conference. Parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule. Parties and their representatives must refrain from turning the conference into an adversarial process. Both parties must negotiate in good faith. A party will be determined to have not negotiated in good faith if the party, or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith or if the mediator determines that the conference should be terminated under the provisions of Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators. The party responsible for causing termination shall be responsible for paying the administrative fee imposed in subsection (5) for any rescheduled mediation conference.

(b) The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Mediators shall conduct the conference in accordance with the standards of professional conduct for mediation under the Florida Rules of Certified and Court-Appointed Mediators. Each party will be given an opportunity to present their side of the controversy. In so doing, parties

may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjustors, appraisers, or contractors, to address the mediator. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this mediation program, mediators shall be deemed agents of the Department and shall have the immunity from suit provided to mediators in Section 44.107, F.S. All statements made and documents produced at a mediation conference shall be deemed settlement negotiations in anticipation of litigation.

(c) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Department if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, the inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

(d) If the insured fails to appear, without good cause as determined by the Department, the insured may have the conference rescheduled only upon the insured's payment of the administrative fee imposed in subsection (5) for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the Department, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the administrative fee imposed in subsection (5) whether or not good cause exists. Failure of a party to arrive at the mediation conference within 30 minutes of the

conference's starting time shall be considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating Section 626.9541(1)(i), F.S.

(9) Post Mediation. If the parties reached a settlement, the mediator shall provide a copy of the executed settlement agreement to the Department and the Administrator within 5 days of the conclusion of the conference. Mediation is non-binding. However, if a settlement is reached, the insured shall have 3 business days starting after the date of the mediation conference within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs that would have been covered under the policy but for the release.

(10) If the insured decides not to participate in this mediation program or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Florida law.

(11) If as a result of mediation it is determined that the only coverage applicable is provided under the National Flood Insurance Program, the administrative fee imposed in subsection (5) paid by the insurer for the mediation shall be refunded to the insurer or credited to the insurer's account with the Administrator.

(12) The Department is authorized to designate an entity or person as its Administrator to carry out any of the Department's duties under this rule.

(13) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

(14) The applicable provisions of Rule 69B-166.031, F.A.C., shall govern issues relating to mediation that are not addressed in this rule. The provisions of this rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031 or 69J-2.001, F.A.C.

Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(a), (e), (i), (u), 626.9561, 626.9641(1)(g), 627.7015 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.

EFFECTIVE DATE: