

FROM: Director, Worldwide Markets EXTN: 6677
DATE: 26 November 2004 REF: Y3438
SUBJECT: **FLORIDA OFFICE OF INSURANCE REGULATION - EMERGENCY RULE
69OER04-06 – SPECIAL PROVISIONS—PERSONAL RESIDENTIAL AND
COMMERCIAL RESIDENTIAL PROPERTY INSURANCE POLICIES
("UNREPAIRED PROPERTY RULE").**
SUBJECT AREA(S): Enacted prohibitions on Florida policies following the Florida windstorms
ATTACHMENTS: None

ACTION POINTS: **All underwriters and managing agents to note the enacted prohibitions
and to provide appropriate notification to their coverholders and other
relevant representatives**

DEADLINE(S): **Immediate**

1. Purpose of bulletin

This bulletin describes Florida Office of Insurance Regulation Emergency Rule 69OER04-06, which was adopted and took effect November 23, 2004 (the "Unrepaired Property Rule"). The Unrepaired Property Rule restricts an insurer's ability to cancel or nonrenew a residential property policy covering a structure that was damaged as a result of Tropical Storm Bonnie, or Hurricanes Charley, Frances, Ivan, or Jeanne if the repairs to the damage have not been completed.

2. Emergency Rule 69OER04-06 ("the Unrepaired Property Rule") – Special Provisions— Personal Residential and Commercial Residential Property Insurance Policies

The Unrepaired Property Rule

The Unrepaired Property Rule prohibits the cancellation or nonrenewal of a personal residential or commercial residential property insurance policy covering a dwelling or other residential property that was damaged by a 2004 tropical event (i.e., Tropical Storm Bonnie, Hurricanes Charley, Frances, Ivan, or Jeanne) if repairs to the property have not been substantially completed. The Rule, in full, can be found at:

[Link to Emergency Rule 69OER04-06](#)

Applicability

The Unrepaired Property Rule applies to all personal residential and commercial residential insurance policies. Florida statutes define personal residential coverage as "coverage provided by homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies," and defines commercial residential coverage to be "the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association."

Cancellations and Nonrenewals Prohibited; General Rule

The Unrepaired Property Rule prohibits the cancellation or nonrenewal of a policy subject to the rule for a period of 60 days after the property has been repaired. A property is deemed to

have been repaired when the repairs are “substantially completed” and the property has been restored to the extent that it is insurable by an authorized insurer writing policies in Florida.

Exceptions

A policy covering unrepaired property may be cancelled or nonrenewed in specified circumstances with advance notice to the policyholder, as follows:

- for non-payment of premium after 10 days’ notice.
- for a material misstatement or fraud related to the claim after 45 days’ notice.
- after 45 days’ notice if the insurer is able to demonstrate that the insured has unreasonably caused a delay in the repair of the structure.
- after 45 days’ notice if the insurer has paid policy limits, but only if the insurer has offered the insured a builder’s risk policy or similar policy that would cover the property until repairs are completed.

Notice

If a policy is cancelled or nonrenewed on the basis of any of the exceptions listed above, other than for non-payment of premium, the insurer must report the cancellation or nonrenewal to the Florida Office of Insurance Regulation, providing the insurer name, policyholder name, policyholder number, date of cancellation or nonrenewal, and the reason(s) for the cancellation or nonrenewal. Reports must be submitted via email to 69OER04-06@fldfs.com.

Hold Harmless

The Unrepaired Property Rule includes a hold harmless clause that specifies that the Rule does not create or support a private cause of action or affect damages recoverable in a civil action. In addition, proof of good faith compliance with the rule is a defence in any civil action arising from the insurer’s compliance with the Rule.

Expiration

The Unrepaired Property Rule expires on 31 December, 2004.

3. Further information

Underwriters and managing agents doing business in Florida should advise their coverholders and other relevant representatives of the requirements of the Unrepaired Property Rule.

If you have any queries about this bulletin please contact Lloyd’s Worldwide Market Services.

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This bulletin has been sent to active underwriters and the compliance officers of managing agents and to Lloyd’s brokers.

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