

FROM: Director, Worldwide Markets EXTN: 6677

DATE: 25 May 2005 REF: Y3566

SUBJECT: **Florida: Emergency Rule 69BER05-8 "Requirements relating to public adjusting"**

SUBJECT AREA(S): Claims arising from Hurricanes Charley, Frances, Ivan and Jeanne and Tropical Storm Bonnie

ATTACHMENTS: Full text of Emergency Rule

ACTION POINTS: **No action required by managing agents**

DEADLINE(S): **None**

Purpose of bulletin

To notify the market of a new Florida Emergency Rule, affecting public adjusters. It is not thought that this Rule will have any bearing on the activities of managing agents or syndicates, but we think that the market would wish to be aware of this Rule.

The Rule

The full text of the Rule is attached. It applies to "public adjusters", defined in section 626.854 of the Florida statutes in the following terms:

A "public adjuster" is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims, and also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

Public adjusters therefore work for insureds, not for insurers.

Key points of the Rule are that:

- It places limits on the commissions that a public adjuster can earn. Public adjusters cannot charge an insured or claimant more than 10% of an insurance settlement and they cannot demand fees prior to the settlement of the claim.
- It applies to losses occurring as a result of Hurricanes Charley, Frances, Ivan and Jeanne and Tropical Storm Bonnie only.
- It takes effect on being filed with the Department of State and applies for 90 days from that date. The Rule was filed on 13 May, 2005.

Further information

If you have any queries about this bulletin please contact Lloyd's Worldwide Markets Services:

Lloyd's Worldwide Market Services
Tel: 020 7327 6677
Email: market.services@lloyds.com
Box 190b, Gallery 1

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

Julian James
Director,
Worldwide Markets

CERTIFICATION OF DEPARTMENT OF FINANCIAL SERVICES EMERGENCY

RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety, or welfare requires emergency action that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with subsection 120.54(4), Florida Statutes. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

Rule No.

69BER05-8

Under the provision of paragraph 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from the filing is set out below.

Effective date:



TOM GALLAGHER
Chief Financial Officer

Number of pages certified: 6

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF DIVISION OF AGENT AND AGENCY SERVICES

RULE TITLE:

RULE NO.:

Requirements Relating to Public Adjusting

69BER05-8

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY OR WELFARE: The Department of Financial Services hereby states that the following circumstances constitute an immediate danger to the public health, safety, and welfare: The 2004 hurricane season was particularly destructive for Florida. On August 12, 2004 Tropical Storm Bonnie made land fall in the Florida panhandle. Shortly after Tropical Storm Bonnie, 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 swath extending from the southwest coast there was widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

Additional damage was caused by Hurricane Frances, which 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, category 4 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

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west of the western Florida 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.

More damage resulted in Florida from Hurricane Jeanne, which 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, the storm moved northwest across the state.

The Governor of Florida declared states of emergency as a result of each of the hurricanes, and much of Florida was declared a federal disaster area.

Cumulative insured losses have been estimated at \$20.4 billion for Hurricanes Charley, Frances, Ivan and Jeanne. Most of those losses are in Florida. Insurers have reported in excess of 1.3 million property insurance claims in Florida, thousands of which have yet to be adjusted.

Although it is now eight months since the last hurricane, insurance companies have still not been able to settle the immense volume of claims that resulted. At the present date, about 57,000 hurricane related insurance claims remain unresolved, and significant numbers of residences throughout the state have not as yet been repaired. Many claimants are still living in temporary housing consisting of trailers provided by the Federal Emergency Management Agency. With the 2005 hurricane season beginning in less than 3 weeks, insureds whose homes have not been repaired will be motivated to seek the services of public adjusters who will represent them for a percentage of their insurance claim proceeds. Although public adjusters may provide valuable assistance in

some cases, insurance company adjusters are expected to settle claims fairly and timely without the necessity of consumers' spending money to hire their own adjuster. In the absence of the prohibitions provided by this emergency rule, some public adjusters might exploit frustrated storm victims with high fees and other unethical practices. The Department has received telephone inquiries from public adjusters asking when they will be able to charge fees in excess of 10% of a claim settlement. Some of these adjusters may be holding up the claims process in hopes of raising their fees as soon as the current emergency rule expires. This rule will prevent this unethical practice from occurring.

Excessive adjusting fees are a source of injury to the public health, safety, and welfare by substantially impairing the financial ability of insureds to effectuate repairs to damaged property in a timely fashion, to commence or complete repairs, or to make proper and adequate repairs meeting building code requirements. In order for complete rebuilding to occur, it is necessary that insurance proceeds not be eroded by unreasonable public adjuster fees. As a result, there is a need to limit the fees imposed by public adjusters to a reasonable level. This rule limits fees charged by public adjusters to 10 per cent of the policy proceeds.

The Legislature recognized, in section 626.8698, F.S., that the interest of the public demands that public adjusters be prohibited from "soliciting or otherwise taking advantage of a person who is vulnerable, emotional or otherwise upset as a result of trauma, accident or similar occurrence..." The storms of the 2004 hurricane season have placed a great number of people in a state of vulnerability. The emotional stress of claimants may lead them to make imprudent decisions in the context of contracting

with public adjusters. The lengthening duration of time that some storm victims have been waiting to get their claims adjusted and the impending 2005 hurricane season have increased their frustration and therefore their vulnerability.

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

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Department of Financial Services believes that adopting an emergency rule is the fairest method to protect the public because the risk of abusive public adjuster fees continues, requiring an immediate response. The conditions resulting from the storms require the Department to exercise its authority to provide protection from the conduct of unscrupulous public adjusters now. The provisions of this rule provide needed guidance to public adjusters. A Department bulletin addressed to all licensed public insurance adjusters would reach them, but would not be legally binding. A permanent rule is not appropriate because the duration of emergency need is uncertain.

SUMMARY OF THE RULE: The rule limits public adjuster commissions to a maximum 10% of insurance proceeds regardless of whether the risk is residential or commercial.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jerry W. Whitmore, Chief, Bureau of Investigation, Division of Agent and Agency Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0333, phone 850-413-5601.

THE FULL TEXT OF THE EMERGENCY RULE IS:

69BER05-8 Requirements Relating to Public Adjusting.

(1) General provisions.

(a) This emergency rule sets forth specific limits on public adjuster commissions to protect insureds under stress due to loss.

(b) The provisions of this emergency rule are intended to supplement the requirements for conduct of public adjusting and ethical requirements placed on public adjusting as set forth in Rules 69B-220.051 and 69B-220.201, Florida Administrative Code, as promulgated pursuant to applicable law. These provisions are intended to provide needed guidance to public adjusters and assure ethical public adjusting claims practices under the specific circumstances caused by the impact of Hurricanes Charley, Frances, Ivan, and Jeanne, and Tropical Storm Bonnie.

(c) This rule applies only to losses occurring as a result of Hurricanes Charley, Frances, Ivan, and Jeanne, and Tropical Storm Bonnie.

(d) This rule applies for 90 days from the date filed with the Secretary of State, Bureau of Administrative Code.

(e) The provisions of this rule impose ethical requirements binding upon public adjusters, in addition to those requirements established in Rule Chapter 69B-220, Florida Administrative Code.

(2) Definitions.

(a) "Public Adjuster" is defined for purposes of this rule as defined in section 626.854, Florida Statutes.

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(b) "Public Adjusting" is the activity described in section 626.854, Florida Statutes.

(3) Limits on Commissions.

(a) As to any one insured or claimant, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of any insurance settlement or proceeds.

(b) No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of the claim.

Specific Authority 624.308, 626.878, 626.9611 FS. Law Implemented 624.307(1), 624.307, 626.611, 626.621, 626.865(2), 626.8698, 626.878, 626.9541(1)(e) and (i) 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.