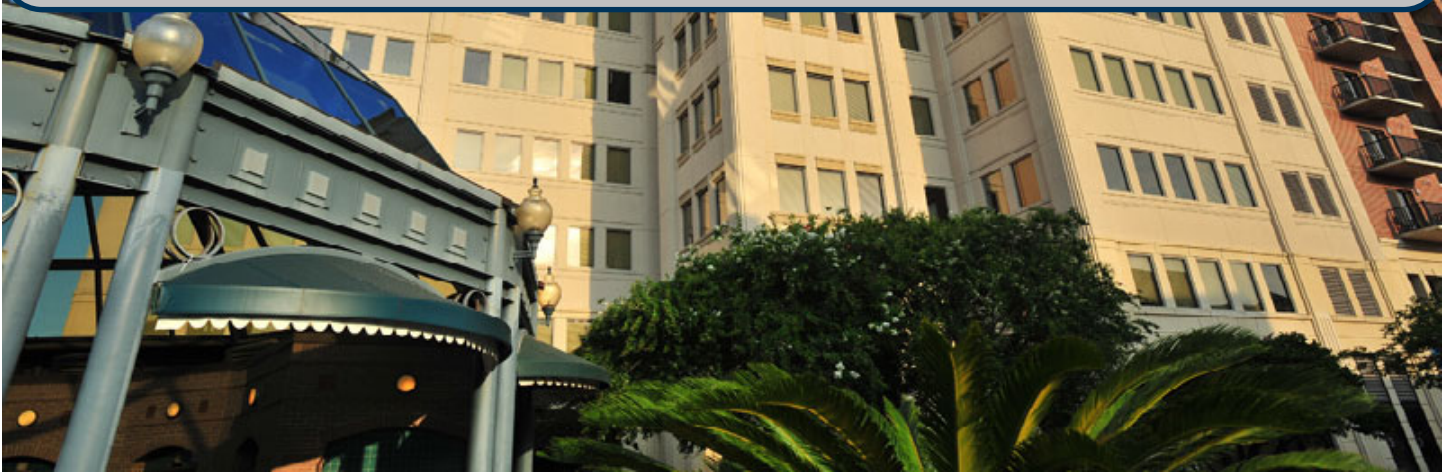


# FLORIDA INSURANCE REPORT

*Keeping you Informed About Florida*



## RADEY TURNS 20

The new year marks a significant milestone for the Radey Law Firm—the firm will celebrate its 20<sup>th</sup> anniversary in March.

In early 2003, a group of professionals set out to create a firm dedicated to providing the highest quality legal service and dedication to our clients. Two decades later and still going strong, we take the opportunity to reflect on the journey. Foremost, we are grateful for the many clients and friends of the firm who have supported us over the last 20 years. Many clients have been with us for all 20 years and have been key parts of our success. Others have come on board as recently as this year. Either way, we appreciate the companies and individuals who have placed their trust in us.

We also are thankful for the members of our team, past and present, who contributed to creating and developing a firm that would last 20 years and beyond. We've been fortunate to have many skilled lawyers and key team members. More importantly, though, we've been fortunate to have people who valued working together and creating a lasting firm environment.

As we look to the future, we thank everyone who has contributed to the last 20 years of success at Radey!

Volume XX - January, 2023

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## Assignment Limitations Begin with New Year

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The Florida legislature passed significant property insurance reforms in its December 2022 special session. Governor Ron DeSantis promptly signed these reforms into law, with many taking effect immediately upon the law's effective date. However, a key change related to assignments of benefits (AOB) begins to have its real impact in the new year.

For many years, Florida law allowed policyholders to assign their rights to post-loss benefits to third parties. Starting about a decade ago, this longstanding right began to foster abuses as contractors would take assignments from policyholders, perform questionable or overpriced work, and directly bill insurers. The vendors benefitted from Florida's one-way attorneys' fee statute leading to increased litigation, losses and loss adjustment expenses.

The legislature began taking incremental steps in 2019 to address abuses in this area. Unfortunately, modest efforts at reining in costs associated with AOB's did not work. The Florida legislature therefore took a more definitive step in the December 2022 special session. The new law specifies that with respect to any residential or commercial property insurance policy issued on or after January 1, 2023, assignment agreements are invalid and unenforceable. This will better enable insurers to communicate and adjust claims directly with policyholders (under new standards for timeliness of communications and claims payments, also set forth in the new law). Perhaps most importantly, it will curb situations when multiple vendors are claiming rights under insurance policies and initiating lawsuits arising from a single claim.

Key legislators have commented that it will take some time for the benefits of the new law to appear, and that is certainly the case with the elimination of post-loss assignments. Nonetheless, the recent law change will benefit the Florida market in the long run by restoring the role of the policyholder in communications and in the loss adjusting process.

– Travis Miller



### Annual Legislative Session Approaches Quickly

It's hard to believe, but committee meetings are already taking place in anticipation of the 2023 regular legislative session. The Florida legislature holds a 60-day regular session once each year. This year's session begins March 7, 2023, and ends May 5, 2023. Of course, committee meetings begin taking place prior to the official start of the session so the action is already underway.

The time between the legislature's last appearance in Tallahassee and the 2023 regular session is particularly short. The 2022 regular session ran for 60 days between January and March. The legislature then convened again in May 2022 for a special session on property insurance. Then, following the elections in November, the legislature came back to Tallahassee in December for another special session on property insurance.

– Travis Miller

## New Year Brings Key Personnel Changes



The new year will bring personnel changes at key insurance-related organizations in Florida. Perhaps most notably, Insurance Commissioner David Altmaier stepped down effective December 28, 2022. Commissioner Altmaier first joined the Florida Office of Insurance Regulation in 2008. He held several roles within the property and casualty financial oversight area, including Chief Analyst. He then served as Deputy Commissioner of Property and Casualty Insurance before eventually succeeding Kevin McCarty as Insurance Commissioner. Commissioner Altmaier was President of the National Association of Insurance Commissioners (NAIC) in 2021.

In his resignation letter to Governor Ron DeSantis and members of the Cabinet, Altmaier wrote, “Under your leadership we have worked with the Florida Legislature to meet historic challenges with historic reforms, we have come together to respond to catastrophes, and we’ve implemented rules and regulations that have safe guarded Florida’s insurance consumers while keeping our insurance markets viable. I am so proud of the work the Office has been able to accomplish during my tenure. I remain committed throughout the remainder of my tenure – and after – to continue the momentum we have established to make Florida the best place in the union to live, work, and prosper.”

As is typically the case, Florida’s next insurance commissioner will have the opportunity to select his or her deputy commissioners for property and casualty insurance and for life and health insurance. Susanne Murphy, formerly the deputy for property and casualty insurance, and John Reilly, formerly the head of life and health, have chosen to pursue opportunities in the private sector.

Citizens Property Insurance Corporation also will be under new leadership in 2023. Barry Gilway announced in December that he will be retiring as president and chief executive officer. Gilway’s resignation caps a 10-year run as Citizens’ president and chief executive officer. Gilway often has offered plain-spoken assessments of the state of Florida’s insurance market as Citizens’ policy count has grown in recent years. After the recent special legislative session, Gilway expressed optimism that new laws will curb the abuses he has discussed so frequently. “This is historic legislation that addresses so many critical issues that have plagued the Florida market for many years,” Gilway said.

The Citizens Board of Governors named Tim Cerio, Citizens’ general counsel, to serve as interim president and CEO.

– Travis Miller

### Financial Services Commission to Appoint New Insurance Commissioner

David Altmaier’s resignation as Insurance Commissioner means Florida’s Financial Services Commission (FSC) will name a new commissioner for just the second time since the position moved from an elected office to an appointment. The FSC consists of four elected officials sitting as a collegial body—the Governor, Chief Financial Officer, Attorney General and Commissioner of Agriculture. A commissioner is named, or removed, by majority vote of the FSC, with the added requirement that the Governor and Chief Financial Officer must be on the prevailing side. Stated differently, in order to appoint (or remove) a commissioner, the Governor and Chief Financial Officer must agree and must have concurrence of one or both of the Attorney General and Commissioner of Agriculture.

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## Closed Claim Data for Residential Claims Due March 1st

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Senate Bill 76 was signed into law on June 11, 2021, and became effective July 1, 2021. The bill amends section 624.424, Florida Statutes, by creating a new subsection (11). The new subsection requires authorized insurers or insurer groups writing residential property insurance to report closed claims by March 1 of each year when those insurers file their annual financial statement. The Florida Office of Insurance Regulation (OIR) finalized the data template for reporting after numerous rule hearings, and that template is now available at the Insurance Regulation Filing System (IRFS) on OIR's website. The deadline for reporting closed claim data is March 1, 2023. However,

OIR has encouraged insurers to begin submitting data as soon as possible.

The data template requests closed claim information on more than 20 data fields that are specified in section 624.424(11). The template also requests additional data, if available. OIR has also included in its data template a "survey" that is used to provide an "explanation" whenever an insurer is not able to report data. More specifically, the OIR survey asks insurers to "provide a general explanation for why the data is not reported and how the company will remedy that moving forward."

— Bert Combs



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## Additional Data Fields Added to QUASR Reporting

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Pursuant to Section 624.424(10), Florida Statutes, all authorized insurers that write personal or commercial residential lines of insurance are required to submit quarterly supplemental reports (QUASR) to the Florida Office of Insurance Regulation (OIR). These reports are due March 1, May 15, August 15, and November 15 for the prior quarter and require insurers to report data such as number of policies cancelled or nonrenewed, new policies written, dollar value of exposure, and number of policies that exclude wind. Senate Bill 2-A was signed into law on December 16, 2022, and became effective on that date, except as otherwise provided in the bill. Among other changes, SB 2-A adds four additional data fields to the QUASR reports.

Insurers must now report the number of (1) claims open each month; (2) claims closed each month; (3) claims pending each month; and (4) claims involving any form of alternative dispute resolution and the form of dispute resolution used. OIR's rules require insurers to report data using the template that OIR provides to insurers via the Insurance Regulation Filing System (IRFS) on OIR's website. OIR will notify insurers of the new requirements when the new template is available.

— Bert Combs

## Legislature Revises Prompt Pay Laws for Property Insurance

SB 2-A, the Florida Legislature’s comprehensive property insurance bill was intended to address many issues in the Florida property insurance market. Among them, in section 15 of the bill, the Legislature amended section 627.70131, F.S., “Insurer’s duty to acknowledge communications regarding claims; investigation,” more commonly referred to as the prompt pay laws. The following are some of the substantive changes.

- For the first time, the statute now defines the phrase: “factors beyond the control of the insurer,” and gives specific factors which may reasonably prevent an insurer from initiating the claims investigation within the new timeframes provided. Such factors include a state of emergency declared by the Governor; a breach of security that must be statutorily reported; or an information technology issue. However, the Florida Office of Insurance Regulation (OIR) may not extend “the period for payment or denial of a claim for more than 30 additional days.” Section 627.70131(5).
- Previously, this statute did not contain any circumstances that could toll the requirements of the statute. Subsection (8) now provides that the requirements of the statute are tolled during the pendency of any mediation proceeding or alternative dispute resolution proceeding pursuant to the insurance contract. In that case, the tolling period will end at the conclusion of either proceeding. Also, the requirements are tolled if the policyholder or its representative fails to provide material claim information within 10 days of the insurer’s request for such information. In that case, the tolling period will end upon the insurer’s receipt of the information requested.
- Cut in half the time for insurers to review and acknowledge a claim communication, from 14 days to 7 days. Section 627.70131(1)(a).
- Also cut in half the time for the insurer to begin an investigation, from 14 days to 7 days.
- Reduces the time for insurers to pay or deny the claim

from 90 to 60 days. The OIR may extend the time up to 30 additional days, as provided above. Section 627.70131(3)(a).

- Reduces the time for an insurer to conduct a physical inspection from 45 days to 30 days, and applies this requirement to hurricane claims. Section 627.70131(3)(b).
- A new paragraph was added to permit insurers to use electronic methods to investigate a loss and provides that insurers can allow policyholders to also use such methods, when assisting in the investigation of a loss. Section 627.70131(3)(d).
- Requires insurers to send any adjuster’s report estimating the loss to the policyholder within 7 days after it is created. Section 627.70131(3)(e).
- Requires that the claim records to be maintained by the insurer must include various parts of the claim investigation and their dates, such as claim-related communications with the policyholder or representative, claim-related requests for information, inspections of the property, the receipt of the proof of loss statement, and estimates by the insurer’s adjuster. Section 627.70131(4)(b).

The bill also amended the Homeowner Claims Bill of Rights, section 627.7142 (section 20 of the bill) to conform to the changes made to the prompt pay laws, and amended the Unfair Insurance Trade Practices Act, section 626.9541(1)(i) (section 7 of the bill) to conform to the revised prompt pay laws by reducing the requirement to pay undisputed amounts of benefits from 90 days to 60 days and revising the factors that excuse an insurer’s failure to perform. These changes take effect March 1, 2023.

– Karen Asher-Cohen

## Meet the Financial Services Commission

The Financial Services Commission (FSC) in Florida consists of the Governor and Cabinet (with the Cabinet comprised of the Chief Financial Officer, Attorney General and Commissioner of Agriculture). As a four-member collegial body, the FSC is responsible, among other things, for appointing the commissioners of the Office of Insurance Regulation and Office of Financial Regulation. The FSC meets regularly as part of the scheduled meetings of the Governor and Cabinet.

Following the 2022 election cycle, Florida has three continuing members of the FSC and one new member. The current FSC consists of:

### **Governor Ron DeSantis**

Governor Ron DeSantis, a 44 year-old Republican, easily won a second term in the November 2022 general election. He defeated former Governor and Republican-turned independent-turned-Democrat Charlie Crist.

Governor DeSantis grew up in Dunedin, Florida. He attended Yale University and Harvard Law School. DeSantis served in the United States Navy and later, in 2012, was elected to the U.S. House of Representatives. In the 2018 general election, DeSantis won his first term as Governor.

Although the Governor has been the subject of widespread speculation that he will enter the 2024 race for the White House, he thus far has deflected any such talk and instead has focused on current issues in Florida, including the Hurricane Ian response and the reforms passed in the most recent special session on property insurance.

### **Chief Financial Officer Jimmy Patronis**

Like Governor DeSantis, CFO Patronis won re-election in the November 2022 general election. CFO Patronis is a native of Panama City, Florida. He served Panama City and surrounding areas as a state representative from 2006

until 2014. In 2015, then-Governor Rick Scott appointed Patronis to the Public Service Commission, which oversees public utilities. When then-CFO Jeff Atwater resigned in 2017, Governor Scott appointed Patronis to the position. In June 2017, Patronis was sworn-in to complete Atwater's term. CFO Patronis ran for and won his first full term in 2018.

### **Attorney General Ashley Moody**

Attorney General Ashley Moody returns as Attorney General after winning her 2022 primary and general election races by comfortable margins. She is a native of Plant City, Florida. Attorney General Moody graduated from the University of Florida with a bachelor's degree and master's degree in accounting. She earned a Master of Laws in international law from Stetson University College of Law, and received her Juris Doctor from the University of Florida School of Law.

Moody served as an assistant U.S. attorney for the Middle District of Florida. In 2006, she was elected to the Thirteenth Judicial Circuit Court of Florida. She resigned from this position in 2017 to enter the 2018 race for Attorney General. She won her first term as Attorney General in 2018 and earned re-election in 2022.

### **Commissioner of Agriculture Wilton Simpson**

Wilton Simpson is the only new member of the Financial Services Commission. Even so, he brings a wealth of knowledge of Florida politics to the position.

Commissioner Simpson was born in Lakeland, Florida. He first ran for the state Senate in 2012. Although he expected significant competition for the seat, he ended up winning unopposed. His district was redrawn and renumbered prior to the 2016 election, when he won another term. Simpson served as Senate president from 2000-2002.

## Citizens Property Insurance Corporation Projects Record Growth

Citizens Property Insurance Corporation projects it will reach approximately 1.7 million policies in 2023, up from about 1,150,000 at the end of 2022. The 2023 projection is nearly four times Citizens' policy count just four years ago.

Citizens attributes its substantial and ongoing growth to "continued instability" in Florida's property insurance market. Concerns in Florida's property insurance market range from increased losses and loss adjustment expenses largely attributed to Florida's one-way attorneys' fee statute, run-away abuses of assignments of benefits (AOB's), and a rating methodology for Citizens that results in its rates significantly lagging behind those of admitted market insurers.

The Florida legislature passed additional reforms in a December special session, and Governor Ron DeSantis

signed those reforms into law on December 16, 2022. The new law takes several meaningful steps to curb abuses in the residential market. These include eliminating Florida's statutory one-way right to attorneys' fees, prohibiting assignments of post-loss benefits, and allowing joint offers of judgment.

Lawmakers were careful to point out that the law changes would take time to impact the property insurance market. Although some lawmakers pegged the deferred impact as being about 12-18 months, many in the industry believe the true impacts of the legislation won't be known for at least 24-36 months because some of the reforms take effect only for new and renewal policies issued after the law changes.

– Travis Miller

### Reinsurance Remains at Forefront as Session Approaches

The Florida legislature adopted significant reforms in its December 2022 special session. Among the changes, the legislature adopted an optional reinsurance program known as Florida Optional Reinsurance Assistance (FORA). The FORA program allows interested residential property insurers to purchase layers of protection attaching below the Florida Hurricane Catastrophe Fund (FHCF). FORA coverage carries a premium charge starting at 50 percent rate on line and increasing as the attachment point drops. The FORA program integrates with the RAP program, which the legislature adopted earlier in 2022 to provide a one-year, premium-free benefit to insurers. Some insurers participated in RAP in 2022, but many deferred their one-time participation until 2023.

As the 2023 session approaches, many in the Florida market remain concerned that the RAP/FORA coverage does not go far enough in alleviating the reduced availability and increased costs residential insurers are likely to see in 2023, particularly in their lowest-attaching layers. This is likely to lead to discussions about whether the FORA program can be expanded and/or adjusted to provide additional capacity and a lower attachment. The upcoming year is critical for Florida's residential property insurance market because it hopefully marks the beginning of a transitional period toward improvement as other reforms begin to take effect. Further support during this pivotal time, especially low in insurer's program, is an important consideration for the 2023 legislature.

– Travis Miller



Experience. Service. Success.

The Radey Law Firm believes that service to clients must be efficient and dedicated. Our location in Tallahassee, Florida, provides us the opportunity to be at the heart of the regulatory, legislative, and judicial arenas. The Florida Insurance Report is provided to our clients and friends in a condensed summary format and should not be relied upon as a complete report nor be considered legal advice or opinion.

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For many years, we've offered the Florida Insurance Report electronically by email. If you've received a hard copy of this edition and would prefer to receive it by email in the future, please let us know by

emailing Kendria Ellis at [kellis@radeylaw.com](mailto:kellis@radeylaw.com). If there are others in your organization who would like to receive it, please let us know that as well as we'll be sure to add them.



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