



SARASOTA

# LITIGATOR

## Journal

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### Storm Warnings

#### *Keep One Eye on the Gulf and the Other on Your Insurance Policy*

Boy Scouts live by a simple code: *Be prepared.*

If the 2004 hurricane season didn't drive that message home to Floridians, the past year's record 28 named storms, including the catastrophic Katrina, brought it to their doorsteps. A vital part of storm preparation for Florida homeowners, as important as armoring dwellings before storms, is verifying insurance coverage.

After two years of multibillion dollar claims, several insurers failed, some insurers pulled out of the homeowner's market in Florida, while those that stayed dropped hundreds of thousands of clients and have announced huge premium increases.

"Now, not after a disaster, is the time to verify exactly the breadth and depth of insurance coverage," says Steven Wittmer.

#### **In Plain English**

First, homeowners should read their policy. This can be as exciting as watching paint dry, and will no doubt raise questions about what is covered and to what extent. In recent years, insurers have instituted changes that reduce or eliminate coverage. For example, many insurers have increased deductibles from a dollar amount (i.e., \$5,000) to a percentage of the value of the loss (i.e., 5 percent of \$1,000,000 or \$50,000).

In addition to describing what is covered and what the insurer will pay for, every policy contains limitations and exclusions to coverage. Although Florida requires that insurance policies be written in "plain English," some language may leave you scratching your head. Florida law requires that insurers eliminate the "fine print" of policies and include additional announcements to highlight changes. Most policies arrive in the

mail with a lot of pieces of paper. Save them all and review carefully.

Most policies have a "hurricane deductible." This is the amount the policyholders will pay out of their own pocket if their house is damaged or destroyed by a hurricane before insurance coverage kicks in. Many policyholders choose a two percent of hurricane deductible. So, for example, if a destroyed home is insured for \$350,000, the homeowner will be responsible for the first \$7,000 of damage.

Hurricane deductibles can vary from a set dollar amount, say \$500, to escalating percentages, depending on the risk profile of the insured. The more risk they are willing to accommodate, the higher the deductible they can assume. By increasing the deductible, the policyholder can lower the policy premium.

Remember: Flood insurance is a separate policy. Flood insurance is not included in a homeowner policy.

A recent federal court case underscores the importance of flood insurance for property owners whose homes and business properties are located in flood plains and other vulnerable areas. In early August, a federal judge ruled that a home insurance company did not have to pay for the flooding that destroyed a Mississippi home in Hurricane Katrina.

Several hundred thousand homes were damaged or destroyed by the monster storm in 2005. Insurers have paid \$17.6 billion for damage to homes from Katrina that was attributed to wind only. The judge's ruling was not a total victory for Nationwide Mutual

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Insurance, however. Judge L.T. Senter Jr. of Federal District Court in Gulfport, Mississippi, rejected attempts by the insurers to cancel coverage for wind damage when it occurred in combination with the flooding. Now homeowners whose claims have been denied may have the opportunity to present proof in court that at least some of the damage resulted from wind – which is the main protection provided by home insurance policies in hurricanes.

Flood damage is typically insured through the federal government.

The ruling reinforces the need for homeowners to carefully read and verify the coverage provided in their policies.

The Nationwide policy that insured homeowner Paul Leonard was clear in its refusal to cover flood damage. But, the judge said the section that asserted that the insurer had no liability for either wind or water damage when they occurred in combination or within a few hours of each other was ambiguous.

In earlier, less definitive rulings Judge Senter found that similar language in Allstate and State Farm policies also was ambiguous.

Leonard's lawyer argued that Nationwide's sales agent had misled Leonard. Leonard testified that the agent had told him that he did not need to buy flood insurance from the federal government. Judge Senter agreed that the agent had advised against buying flood insurance, but did not agree that the agent had "verbally expanded" the policy to include flood damage.

"Naturally, the price depends on where the home is located," Wittmer says. Building a home in a flood plain will significantly increase the cost."

"The best overall insurance strategy is to buy homeowners and flood insurance policies from the same agent," Wittmer says. "If disaster strikes, you don't want two different insurers arguing which is responsible for what when you file a claim."

Homeowners should write all their questions about their homeowners and flood policies in plain English. With questions and policy before them, the homeowner should call or visit their agent to verify the coverage and satisfy any questions.

"Don't stop asking questions until you thoroughly understand the risks and benefits," Wittmer says. "There are no stupid questions."

## Being Proactive Will Pay Off

Initiating several proactive strategies while the winds and waters are calm can improve a policyholder's chances of validating their claim should a storm or other calamity strike.

First, safeguard policies and other vital information. Homeowners should make two copies of their policies. They should mail one to friend or relative who lives far away. They should seal the other copy, along with copies of other vital information - such as bank accounts, personal identification, birth certificates, deeds, mortgage papers, stock certificates, etc - in a waterproof container and secure it in their disaster kit. The original policies should be placed in a safe deposit box.

The safe deposit box also is the best place for photos or videos of a policyholder's home and its contents. Information stored on home and business computers should be copied onto CDs or other media and stored there as well.

Should disaster strike, have neighbors and friends visit and inspect the property. Have them put their observations in writing, date and sign the letters along with signatures of one or more witnesses on site. Make copies and present the originals to claims adjusters and government officials.