

1 877.02, F.S.; prohibiting certain solicitations
2 by contractors and other persons providing
3 sinkhole remediation services; providing
4 penalties; providing effective dates.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Subsection (1) and paragraph (d) of
9 subsection (2) of section 627.706, Florida Statutes, are
10 amended to read:

11 627.706 Sinkhole insurance; definitions.--

12 (1) Every insurer authorized to transact property
13 insurance in this state shall make available coverage for
14 insurable sinkhole losses on any structure, including contents
15 of personal property contained therein, to the extent provided
16 in the form to which the sinkhole coverage attaches. A policy
17 for residential property insurance may include a deductible
18 amount applicable to sinkhole losses equal to 1 percent, 2
19 percent, 5 percent, or 10 percent of the policy dwelling
20 limits, with appropriate premium discounts offered with each
21 deductible amount.

22 (2) As used in ss. 627.706-627.7074, and as used in
23 connection with any policy providing coverage for sinkhole
24 losses:

25 (d) "Professional engineer" means a person, as defined
26 in s. 471.005, who has a bachelor's degree or higher in
27 engineering with a specialty in the geotechnical engineering
28 field. A professional ~~An~~ engineer must have geotechnical
29 experience and expertise in the identification of sinkhole
30 activity as well as other potential causes of damage to the
31 structure.

1 Section 2. Subsections (2), (3), (5), (6), and (9) of
2 section 627.707, Florida Statutes, are amended to read:

3 627.707 Standards for investigation of sinkhole claims
4 by insurers; nonrenewals.--Upon receipt of a claim for a
5 sinkhole loss, an insurer must meet the following standards in
6 investigating a claim:

7 (2) Following the insurer's initial inspection, the
8 insurer shall engage a professional ~~an~~ engineer or a
9 professional geologist to conduct testing as provided in s.
10 627.7072 to determine the cause of the loss within a
11 reasonable professional probability and issue a report as
12 provided in s. 627.7073, if:

13 (a) The insurer is unable to identify a valid cause of
14 the damage or discovers damage to the structure which is
15 consistent with sinkhole loss; or

16 (b) The policyholder demands testing in accordance
17 with this section or s. 627.7072.

18 (3) Following the initial inspection of the insured
19 premises, the insurer shall provide written notice to the
20 policyholder disclosing the following information:

21 (a) What the insurer has determined to be the cause of
22 damage, if the insurer has made such a determination.

23 (b) A statement of the circumstances under which the
24 insurer is required to engage a professional ~~an~~ engineer or a
25 professional geologist to verify or eliminate sinkhole loss
26 and to engage a professional ~~an~~ engineer to make
27 recommendations regarding land and building stabilization and
28 foundation repair.

29 (c) A statement regarding the right of the
30 policyholder to request testing by a professional ~~an~~ engineer
31

1 or a professional geologist and the circumstances under which
2 the policyholder may demand certain testing.

3 (5)(a) Subject to paragraph (b), if a sinkhole loss is
4 verified, the insurer shall pay to stabilize the land and
5 building and repair the foundation in accordance with the
6 recommendations of the professional engineer as provided under
7 s. 627.7073, and in consultation with the policyholder,
8 subject to the coverage and terms of the policy. The insurer
9 shall pay for other repairs to the structure and contents in
10 accordance with the terms of the policy.

11 (b) The insurer may limit its payment to the actual
12 cash value of the sinkhole loss, not including underpinning or
13 grouting or any other repair technique performed below the
14 existing foundation of the building, until the policyholder
15 enters into a contract for the performance of building
16 stabilization or foundation repairs. After the policyholder
17 enters into the contract, the insurer shall pay the amounts
18 necessary to begin and perform such repairs as the work is
19 performed and the expenses are incurred. The insurer may not
20 require the policyholder to advance payment for such repairs.
21 If repair covered by a personal lines residential property
22 insurance policy has begun and the professional engineer
23 selected or approved by the insurer determines that the repair
24 cannot be completed within the policy limits, the insurer must
25 either complete the professional engineer's recommended repair
26 or tender the policy limits to the policyholder without a
27 reduction for the repair expenses incurred.

28 Upon the insurer's obtaining the written approval
29 of the policyholder and any lienholder, the insurer may make
30 payment directly to the persons selected by the policyholder
31 to perform the land and building stabilization and foundation

1 repairs. The decision by the insurer to make payment to such
2 persons does not hold the insurer liable for the work
3 performed.

4 (6) Except as provided in subsection (7), the fees and
5 costs of the professional engineer or the professional
6 geologist shall be paid by the insurer.

7 (9) The insurer may engage a professional structural
8 engineer to make recommendations as to the repair of the
9 structure.

10 Section 3. Subsection (1) of section 627.7072, Florida
11 Statutes, is amended to read:

12 627.7072 Testing standards for sinkholes.--

13 (1) The professional engineer and professional
14 geologist shall perform such tests as sufficient, in their
15 professional opinion, to determine the presence or absence of
16 sinkhole loss or other cause of damage within reasonable
17 professional probability and for the professional engineer to
18 make recommendations regarding necessary building
19 stabilization and foundation repair.

20 Section 4. Subsections (1) and (2) of section
21 627.7073, Florida Statutes, are amended to read:

22 627.7073 Sinkhole reports.--

23 (1) Upon completion of testing as provided in s.
24 627.7072, the professional engineer and professional geologist
25 shall issue a report and certification to the insurer and the
26 policyholder as provided in this section.

27 (a) Sinkhole loss is verified if, based upon tests
28 performed in accordance with s. 627.7072, a professional ~~an~~
29 engineer and a professional geologist issue a written report
30 and certification stating:
31

1 1. That the cause of the actual physical and
2 structural damage is sinkhole activity within a reasonable
3 professional probability.

4 2. That the analyses conducted were of sufficient
5 scope to identify sinkhole activity as the cause of damage
6 within a reasonable professional probability.

7 3. A description of the tests performed.

8 4. A recommendation by the professional engineer of
9 methods for stabilizing the land and building and for making
10 repairs to the foundation.

11 (b) If sinkhole activity is eliminated as the cause of
12 damage to the structure, the professional engineer and
13 professional geologist shall issue a written report and
14 certification to the policyholder and the insurer stating:

15 1. That the cause of the damage is not sinkhole
16 activity within a reasonable professional probability.

17 2. That the analyses and tests conducted were of
18 sufficient scope to eliminate sinkhole activity as the cause
19 of damage within a reasonable professional probability.

20 3. A statement of the cause of the damage within a
21 reasonable professional probability.

22 4. A description of the tests performed.

23 (c) The respective findings, opinions, and
24 recommendations of the professional engineer and professional
25 geologist as to the cause of distress to the property
26 ~~verification or elimination of a sinkhole loss~~ and the
27 findings, opinions, and recommendations of the professional
28 engineer as to land and building stabilization and foundation
29 repair shall be presumed correct.

30 (2) Any insurer that has paid a claim for a sinkhole
31 loss shall file a copy of the report and certification,

1 prepared pursuant to subsection (1), with the county clerk of
2 court ~~property appraiser~~, who shall record the report and
3 certification with the parcel number. The insurer shall bear
4 the cost of filing and recording the report and certification.
5 There shall be no cause of action or liability against an
6 insurer for compliance with this section. The seller of real
7 property upon which a sinkhole claim has been made shall
8 disclose to the buyer of such property that a claim has been
9 paid and whether or not the full amount of the proceeds were
10 used to repair the sinkhole damage.

11 Section 5. Effective October 1, 2006, section
12 627.7074, Florida Statutes, is created to read:

13 627.7074 Alternative procedure for resolution of
14 disputed sinkhole insurance claims.--

15 (1) As used in this section, the term:

16 (a) "Neutral evaluation" means the alternative dispute
17 resolution provided for in this section.

18 (b) "Neutral evaluator" means a professional engineer
19 or a professional geologist who has completed a course of
20 study in alternative dispute resolution designed or approved
21 by the department for use in the neutral evaluation process,
22 who is determined to be fair and impartial.

23 (2)(a) The department shall certify and maintain a
24 list of persons who are neutral evaluators.

25 (b) The department shall prepare a consumer
26 information pamphlet for distribution by insurers to
27 policyholders which clearly describes the neutral evaluation
28 process and includes information and forms necessary for the
29 policyholder to request a neutral evaluation.

30 (3) Following the receipt of the report provided under
31 s. 627.7073 or the denial of a claim for a sinkhole loss, the

1 insurer shall notify the policyholder of his or her right to
2 participate in the neutral evaluation program under this
3 section. Neutral evaluation supersedes the alternative dispute
4 resolution process under s. 627.7015. The insurer shall
5 provide to the policyholder the consumer information pamphlet
6 prepared by the department pursuant to paragraph (2)(b).

7 (4) Neutral evaluation is optional and nonbinding.
8 Either the policyholder or the insurer may decline to
9 participate. A request for neutral evaluation may be filed
10 with the department by the policyholder or the insurer on a
11 form approved by the department. The request for neutral
12 evaluation must state the reason for the request and must
13 include an explanation of all the issues in dispute at the
14 time of the request. Filing a request for neutral evaluation
15 tolls the applicable time requirements for filing suit for a
16 period of 60 days following the conclusion of the neutral
17 evaluation process or the time prescribed in s. 95.11,
18 whichever is later.

19 (5) Neutral evaluation shall be conducted as an
20 informal process in which formal rules of evidence and
21 procedure need not be observed. A party to neutral evaluation
22 is not required to attend neutral evaluation if a
23 representative of the party attends and has the authority to
24 make a binding decision on behalf of the party. All parties
25 shall participate in the evaluation in good faith.

26 (6) The insurer shall pay the costs associated with
27 the neutral evaluation.

28 (7) Upon receipt of a request for neutral evaluation,
29 the department shall refer the request to a neutral evaluator.
30 The neutral evaluator shall notify the policyholder and the
31 insurer of the date, time, and place of the neutral evaluation

1 conference. The conference may be held by telephone, if
2 feasible and desirable. The neutral evaluation conference
3 shall be held within 45 days after receipt of the request by
4 the department.

5 (8) The department shall adopt rules of procedure for
6 the neutral evaluation process.

7 (9) For policyholders not represented by an attorney,
8 a consumer affairs specialist of the department or an employee
9 designated as the primary contact for consumers on issues
10 relating to sinkholes under s. 20.121 shall be available for
11 consultation to the extent that he or she may lawfully do so.

12 (10) Evidence of an offer to settle a claim during the
13 neutral evaluation process, as well as any relevant conduct or
14 statements made in negotiations concerning the offer to settle
15 a claim, is inadmissible to prove liability or absence of
16 liability for the claim or its value, except as provided in
17 subsection (13).

18 (11) Any court proceeding related to the subject
19 matter of the neutral evaluation shall be stayed pending
20 completion of the neutral evaluation.

21 (12) For matters that are not resolved by the parties
22 at the conclusion of the neutral evaluation, the neutral
23 evaluator shall prepare a report stating that in his or her
24 opinion the sinkhole loss has been verified or eliminated and,
25 if verified, the need for and estimated costs of stabilizing
26 the land and any covered structures or buildings and other
27 appropriate remediation or structural repairs. The evaluator's
28 report shall be sent to all parties in attendance at the
29 neutral evaluation and to the department.

30 (13) The recommendation of the neutral evaluator is
31 not binding on any party, and the parties retain access to

1 courts. The neutral evaluator's written recommendation is
2 admissible in any subsequent action or proceeding relating to
3 the claim or to the cause of action giving rise to the claim
4 only for purposes of determining the award of attorney's fees.

5 (14) If the neutral evaluator first verifies the
6 existence of a sinkhole and, second, recommends the need for
7 and estimates costs of stabilizing the land and any covered
8 structures or buildings and other appropriate remediation or
9 structural repairs, which costs exceed the amount that the
10 insurer has offered to pay the policyholder, the insurer is
11 liable to the policyholder for up to \$2,500 in attorney's fees
12 for the attorney's participation in the neutral evaluation
13 process. For purposes of this subsection, the term "offer to
14 pay" means a written offer signed by the insurer or its legal
15 representative and delivered to the policyholder within 10
16 days after the insurer receives notice that a request for
17 neutral evaluation has been made under this section.

18 (15) If the policyholder declines to participate in
19 neutral evaluation requested by the insurer or declines to
20 resolve the matter in accordance with the recommendation of
21 the neutral evaluator pursuant to this section, the insurer is
22 not liable for attorney's fees under s. 627.428 or other
23 provisions of the insurance code or for extra-contractual
24 damages related to a claim for a sinkhole loss.

25 (16) A party may seek judicial review of the
26 recommendation of the neutral evaluator to determine whether
27 the recommendation is reasonable. A recommendation is
28 reasonable unless: it was procured by corruption, fraud, or
29 other undue means; there was evident partiality by the neutral
30 evaluator or misconduct prejudicing the rights of any party;
31 or the neutral evaluator exceeded the authority and power

1 granted by this section. If the court declares the
2 recommendation is not reasonable, the neutral evaluation
3 recommendation shall be vacated.

4 Section 6. Subsection (2) of section 877.02, Florida
5 Statutes, is amended to read:

6 877.02 Solicitation of legal services or retainers
7 therefor; penalty.--

8 (2) It shall be unlawful for any person in the employ
9 of or in any capacity attached to any hospital, sanitarium,
10 police department, wrecker service or garage, prison or court,
11 ~~or~~ for a person authorized to furnish bail bonds,
12 investigators, photographers, insurance or public adjusters,
13 or for a general or other contractor as defined in s. 489.105
14 or other business providing sinkhole remediation services, to
15 communicate directly or indirectly with any attorney or person
16 acting on said attorney's behalf for the purpose of aiding,
17 assisting or abetting such attorney in the solicitation of
18 legal business or the procurement through solicitation of a
19 retainer, written or oral, or any agreement authorizing the
20 attorney to perform or render legal services.

21 Section 7. Except as otherwise expressly provided in
22 this act, this act shall take effect July 1, 2006.

23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 286

- 4 1. Permits deductibles for sinkhole loss of 1, 2, 5, and 10
5 percent.
- 6 2. States that the insurer must obtain written approval of a
7 policyholder and any lienholder in order to make direct
8 payment to persons selected by the policyholder to
9 perform land and building stabilization and foundation
10 repairs.
- 11 3. Reverts to current law that requires that a sinkhole
12 claim be made in bad faith in order for the policyholder
13 to be held liable for reimbursing an insurer for 50
14 percent (up to \$2,500) of the costs of sinkhole testing.
- 15 4. Reverts to the current statutory standard of sinkhole
16 testing (FL Geological Survey No. 57 (2005)).
- 17 5. Strikes the bifurcated sinkhole testing procedure
18 contained in SB 286.
- 19 6. Requires the sinkhole report issued after testing to
20 provide a finding on the actual cause of distress to the
21 property, not to merely verify or eliminate whether the
22 damage was caused by a sinkhole.
- 23 7. Requires the sinkhole report prepared after testing to be
24 filed with the county clerk of court rather than the
25 property appraiser.
- 26 8. Specifies that neutral evaluation supersedes the
27 alternative dispute resolution process under s. 627.7015,
28 F.S. (the current ADR mediation procedures regarding
29 property insurance claims).
- 30 9. Specifies that evidence of an offer to settle a claim
31 during the neutral evaluation process, or other relevant
conduct or statements made concerning an offer to settle
are inadmissible to prove or disprove liability or a
claim's value. Such information may be used for a
determination regarding attorney's fees.
10. States that if the neutral evaluator recommends repairs
whose cost exceeds the insurer's offer to pay, the
insurer is liable to the policyholder for up to \$2,500 in
attorney's fees incurred during the neutral evaluation
process. An offer to pay is a settlement offer made by
the insurer in writing within 10 days of notification
that neutral evaluation has been requested.
11. Amends s. 877.02, F.S., regarding prohibiting the illegal
solicitation of legal services.
12. States that a general contractor, subcontractor, or any
other business providing sinkhole remediation services
cannot communicate with an attorney in any way for the
purpose of aiding the attorney in soliciting legal

1 | business, procuring a retainer, or any agreement
2 | authorizing the attorney to provide legal services. A
3 | person doing so is guilty of a 1st degree misdemeanor.
4 |
5 |
6 |
7 |
8 |
9 |
10 |
11 |
12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |
22 |
23 |
24 |
25 |
26 |
27 |
28 |
29 |
30 |
31 |