

New Insurance Law Takes Effect September 1, Just In Time for Harvey Aftermath

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In the days since Hurricane Harvey hit, social media posts regarding insurance claims and the recently passed House Bill 1774 have spread like wildfire. Plaintiff’s lawyers paint it as an attempt to protect the powerful insurance companies, while insurance companies portray it as a deterrent to rampant insurance fraud. Either way, many are left wondering if and how they will be affected.

This is a summary of the law as it applies to most people in relation to Hurricane Harvey. It is not exhaustive, and it may apply differently to your particular situation. This is not legal advice and is not intended to be a substitute for the advice of your attorney.

The Bad News

Before we get to the bill itself, let me break the bad news. Most homeowners insurance policies do not cover floods. Damage from winds typically is covered, and

some homeowners will also have separate windstorm coverage, but floods are not covered. If the roof is torn off or a window is broken, and water gets in that way, it’s probably covered. If rising or rushing flood waters caused the damage, it’s probably not, unless you have flood insurance.

Flood insurance typically is provided through the National Flood Insurance Program and then only for property in Special Flood Hazard Zones. Elsewhere, flood insurance is not required, and many people who are not required to have it don’t have it.

If owners do not have flood insurance, relief likely will come from federal disaster relief benefits, many of which must be repaid.

With that said, lots of people want to know what this new law is, so here’s a brief rundown. It is worth noting that the timing of the law’s effective date was not inten-

tional. Most Texas laws go into effect on the September 1 immediately following their passage.

What Changes and What Does Not

The claims process generally does not change. Under the law as it exists prior to September 1, 2017, there are certain requirements for policyholders giving notice of claims and certain requirements for how insurance companies respond to those claims. Insurance companies have a limited time to investigate and pay valid claims that are covered by the policy. If the insurance company does not comply with those requirements, they must pay, in addition to the amount of the claim, interest on the claim at 18 percent per year, plus reasonable attorney fees. Note that a notice of an insurance claim and pre-suit notice are two different things.

Policyholders may sue insurers for breaching an insurance contract, and they may also sue for certain unfair or deceptive practices, such as unfair claim settlement procedures and bad faith conduct. They also may retain a lawyer. This does not change.

Additionally under current law, the insurance company may be awarded its reasonable and necessary attorney fees if the policyholder brings a lawsuit that is groundless and brought in bad faith or for the purpose of harassment. This does not change.

Under the current law, a person who files a suit seeking damages from an insurance company for an unfair or deceptive practice must give 61 days pre-suit notice advising of the specific complaint, and the amount of actual damages and expenses, including attorney fees. The insurance company may make a settlement offer within 60 days, within 20 days after mediation, or within 90 days of the date when the insurance company files its written answer to the lawsuit. This does not change.

The next part is a little difficult to explain, but basically here's what it says: If the insurance company's offer was reasonable (in line with what is determined at trial) and the claimant refused it, the claimant cannot recover more damages, and attorney fees are capped at the amount incurred as of the date of the offer.

What has changed is the amount of interest that may be recovered. Instead of 18 percent per year, the interest on certain claims is now calculated at 5 percent more than the normal postjudgment interest rate. This rate fluctuates with interest rates, but the current postjudgment interest rate is 5 percent, so a claimant may still collect 10 percent interest. Attorney fees may still be collected if they are reasonable and necessary.

Additionally, once the insurance company receives the notice, they have 30 days to submit a written request to inspect, photograph, or evaluate the property. The inspection must be completed within 60 days of the pre-suit notice, if reasonably possible.

Under the new law, the claimant may recover attorney fees up to the lesser of: (a) the amount supported by the evidence at trial, (b) the amount that may be awarded under other applicable law, or (c) in the same fraction as the amount of damages alleged in the pre-suit notice bears to the amount awarded at trial. If the award at trial is at least 80 percent of the amount demanded in the pre-suit notice, the claimant may recover all of his attorney fees as supported by the evidence at trial. If the award at trial is less than 20 percent of the amount demanded in the pre-suit notice, the claimant may not recover attorney fees. This provision is designed to prevent excessive demands being made in the pre-suit notice.

These new provisions apply to lawsuits against insurance companies and insurance agents for the unfair or deceptive practices previously mentioned, *as well as* breach of contract, negligence, misrepresentation, fraud, or breach of another common law duty, but only on claims arising from damage to real property caused by forces of nature. It does not apply to actions against the Texas Windstorm Insurance Association, and it does not create flood coverage where none exists.

To collect under the old law, notice of claim must have been given to the insurance company by August 31, 2017. If notice of claim is given on or after September 1, 2017, the claim will be governed by the new law. 📌

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