

What “Insurance Crisis”?

*A First Look New Legislation Impacting
Property Insurance Passed During the
Florida Legislature’s May 2022 Special
Session,
How We Got Here, and
Where We May Be Headed.*

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**Florida Bar RPPTL
Construction Law Committee
&
Insurance and Surety Committee
July 21, 2022**





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Special Legislative Session

May 23-25, 2022

To address Florida's current property insurance market. To consider legislation related to property insurance, reinsurance, changes to the Florida building code to improve affordability of property insurance, the Florida Office of Insurance Regulation, civil remedies, and appropriations.



May 20, House & Senate released identical proposals

- Reinsurance
- roof solicitation
- roof underwriting
- bad faith
- attorneys' fees
- insurer regulation and transparency
- building codes



Purpose? Insurance Crisis?

“curb abuses in the market without creating unintended consequences”

Rep. Jay Trumbull (R-Panama City)
House Appropriations chair

“balance fair costs and protections for consumers while creating reasonable guardrails for insurance companies against frivolous litigation and fraudulent claims that drive up rates for everyone”

Sen. Jim Boyd (R-Bradenton)
Senate Banking and Insurance Committee chair

Session expanded to address building safety – legislation “aimed at reforming laws governing condominiums and cooperative associations in the wake of the June 2021 collapse of the Champlain Towers condominium in Surfside”

Speaker of the House Chris Sprowls (R-Clearwater)

Impact to be felt in about 18m

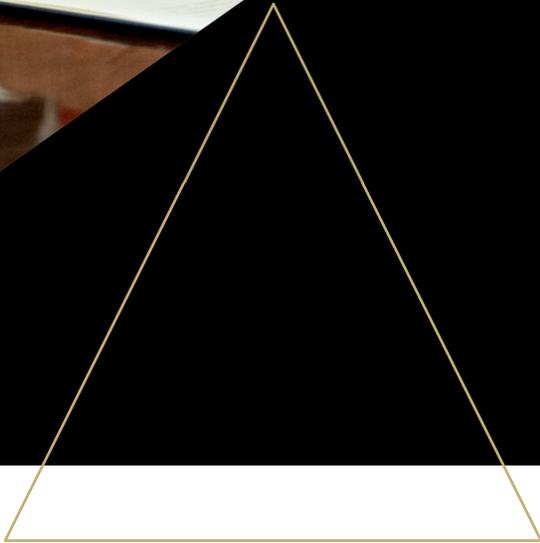
“Homeowners that have a carrier that participates in the reinsurance assistant program will be able to have a guarantee that their premiums will go down within a year. For those carriers that do not take part in the program, it would take longer.”
Rep. Daniel Perez (R-Miami-Dade)

“What we are ... doing here is going to help the insurance industry and it’s not going to give anything to regular people. ... I believe that what we are going to do here is going to be just a little band-aid.”
Rep. Susan Valdes (D-Tampa)

“I think we all enjoy the final bill that passed through. But there are still some concerns about the property insurance and where we are moving with that.”
Rep. Evan Jenne (D-Dania Beach)



May 26, 2022
Governor Signed
SB 2D (Property Insurance)





*§215.5551
Reinsurance to
Assist Policyholders
program

§215.5586
My Safe Florida
Home program

§489.147
Prohibited
property insurance
practices

*§624.1551
Civil remedy
actions against
property insurers

§624.307
General Powers;
duties (of the OIR)

§624.313
Publications
(by the OIR)

§624.3015
Department;
annual report
(by the OIR)

§624.424
Annual Stmt and
other information
(by Carriers)

§626.9373
Attorney fees

§627.428
Attorney fees

§627.701
Liability of
insureds
coinsurance;
deductibles

§627.7011
Homeowners' policies;
offer of replacement
cost coverage and law
and ordinance coverage

§627.70131
Insurer's duty to
acknowledge
communications
regarding claims;
investigation

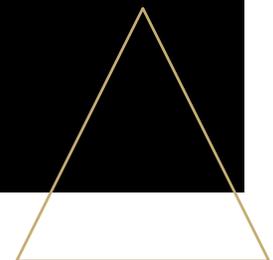
§627.7142
Homeowner
Claims Bill of
Rights

§627.7152
Assignment
Agreements

*§627.7154
Property
Insurance Stability
Unity; duties and
required reports

§631.031
Initiation and
commencement of
delinquency
proceeding

§631.398
Prevention of
insolvencies



Florida Hurricane Catastrophe Fund (FHCF) AKA the “Cat Fund”

- Tax-exempt state trust fund.
- Purpose: to protect the state’s economy and the public health, safety, and welfare by providing a stable and ongoing source of reimbursement to residential property insurers for a portion of their catastrophic hurricane losses.
- During the 2022 Legislative Session, the Florida Legislature enacted SB 1058 (Chapter 2022-132, Laws of Florida), which amended s. 215.555(2)(p), F.S., to add the definition of “unsound insurer” and amended s. 215.555(5)(e), F.S., to allow authorized insurers to provide coverage for policies of an unsound insurer through an assignment of the unsound insurer’s FHCF reimbursement contract or through an assumption of the unsound insurer’s policies.

*Florida Statute §215.5551 Reinsurance to Assist Policyholders (RAP) Program

- Authorizes a \$2 billion reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF) aka the Cat Fund.
- All eligible carriers must participate in the program – for 1 year
- Requires the RAP program to reimburse 90% of each carrier's covered losses and 10% of their loss adjustment expenses up to each individual carrier's limit of coverage for the 2 hurricanes causing the largest losses for that carrier during the contract year.
- Carrier's limit of the \$2B in RAP coverage is their pro-rata market share among all insurers that participate in the RAP program. Thus, a carrier with 5% of the risk reinsured by RAP would have a limit of coverage of \$100M
- Carriers do not pay premiums for RAP coverage but **must reduce rates to reflect savings**.
- Carriers that participate in RAP for 2022-2023 **must reduce their rates by June 30, 2022**, to reflect the savings from RAP coverage. Carriers that defer using the RAP until 2023-2024 must reduce rates to reflect savings by May 1, 2023
- Provides funding for the RAP coverage through a \$2B appropriation from the General Revenue Fund. Monies are only transferred to the SBA if the RAP program coverage must be paid because of a hurricane.
- Specifies that, if funds are transferred to the SBA because of a hurricane, the SBA may request funds for the administration of the program from the General Revenue Fund, not to exceed \$5M.
- RAP expires July 1, 2025, if no General Revenue funds have been transferred to fund the RAP program. If such funds were transferred, the statute expires July 1, 2029, and all unencumbered RAP funds must be transferred back to the General Revenue Fund.

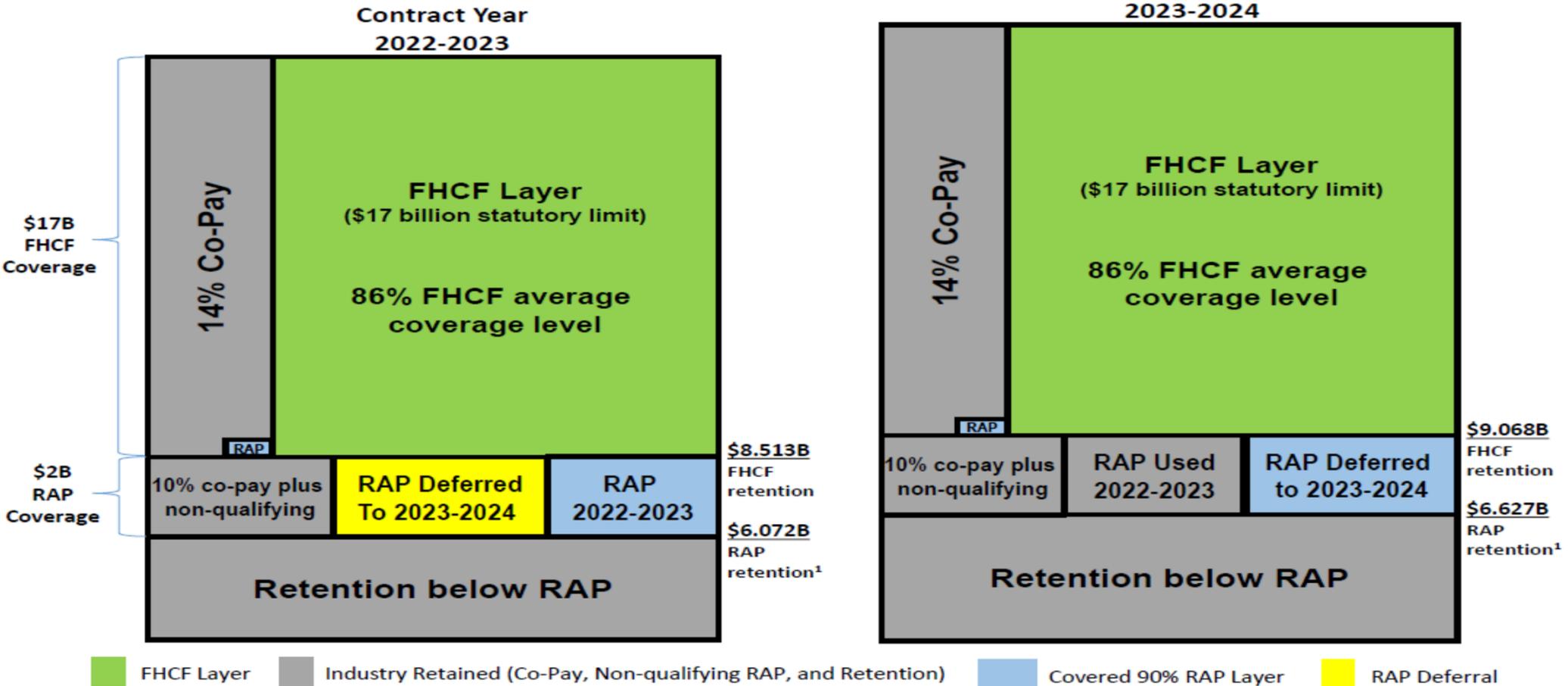
RAP Program

- RAP was created by the Florida Legislature under Florida Statute §215.5551, effective on May 26, 2022.
- Administered by the State Board of Administration (SBA) [www.sbafla.com]
- Unrelated to the Florida Hurricane Catastrophe Fund (FHCF) AKA the Cat Fund [\$17B]
- Provides a non-recurring total of \$2 billion in coverage for a portion of RAP insurers' hurricane losses
- Designed to be accessed prior to the FHCF layer of coverage.
- At no charge to the insurer, the RAP program provides a layer of coverage that is below the FHCF industry retention
- RAP insurers will be reimbursed 90% of their covered losses from each covered event in excess of their RAP retention, plus a 10% loss adjustment expense allowance, not to exceed the RAP limit.
- RAP insurers include insurers participating in the FHCF on June 1, 2022, and insurers that meet the qualifications outlined §215.5551
- Citizens Property Insurance Corporation and any company the Office of Insurance Regulation (OIR) certifies is in an unsound financial condition, will not qualify for RAP coverage.
- Qualifying companies will receive a calculated share of the \$2 billion; therefore, a qualifying company's percentage share of the RAP limit will be different than its percentage share of the FHCF's \$17 billion limit outlined in §215.555.

Reinsurance to Assist Policyholders (RAP) Program

These charts are intended to illustrate how the RAP program will work with coverage from the Florida Hurricane Catastrophe Fund (FHCF). They are not drawn to scale and amounts shown are based on preliminary estimates using Contract Year 2021-2022 FHCF premium for RAP insurers.

Updated July 8, 2022



¹ This layer is intended to show the estimated RAP retention, excluding Citizens Property Insurance Corporation and Southern Fidelity based on their 2021-2022 FHCF premium.

§215.5586. My Safe Florida Home Program

- Administered by the DFS
- FL residential property owners
- Homestead SFH (\$500K or less)
- Located wind-borne debris regions per the Florida Building Code
- **Free hurricane mitigation inspections**
- Property Owner must make home available for inspection after the mitigation project is completed
- Building permit for initial construction of the home was made before 1/1/08
- Home must have undergone an acceptable hurricane mitigation inspection after 7/1/08
- **Grants to retrofit homes up to \$10,000**
 - \$2 in grant funds for every \$1 provided by the homeowner
 - Exceptions low-income homeowners.
- DFS must report the average annual amount of premium discounts and total discounts received from carriers
- **\$150M** allocated:
 - \$25M for hurricane mitigation inspections
 - \$115M for hurricane mitigation grants
 - \$4M for education and consumer awareness
 - \$1M for public outreach to **contractors**, real estate brokers, and sales associates
 - \$5M for administrative costs
- Any unexpended balance of appropriated funds remaining on 6/30/2023, reverts and is appropriated to the DFS for the 2023-2024 fiscal year for the My Safe Florida Home program.

§627.701. Liability of insureds; coinsurance; deductibles

- ***Separate Roof Deductible***
- Carriers can include a separate roof deductible of up to 2% of Coverage A limit (“Dwelling”) or 50% of the cost to replace the roof.
- Policyholder must be offered option to decline roof deductible (sign OIR app’d form)
- If a roof deductible is added to the policy at renewal, carrier must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.
- If there is roof deductible, must receive an actuarially sound premium credit or discount
- Roof deductible does not apply to:
 - Total loss to the primary structure per the VPL (Florida Statute §627.702)
 - Loss caused by a hurricane.
 - Roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
 - Roof loss requiring the repair of less than 50% of the roof.
- When roof deductible is applied, no other deductibles under the policy may be applied.
- Roof deductible provision must be clear and unambiguous.
- Must include disclosure on the page immediately behind the dec page, that a roof deductible may result in high out-of-pocket expenses to the policyholder.
- On dec page, prominent display of the actual dollar value of the roof deductible at issuance and renewal

§627.7011.Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage

• **Roof Deductible & Age of Existing Roof**

- Applies to HO policies issued or renewed after 7/1/2022
- Roof deductible only applies to a claim adjusted on RCV basis.
- Carrier can limit the payment on the roof claim to ACV until policyholder pays the roof deductible
- Prohibits carrier from refusing to issue or renew a residential HO policy with a roof that is less than 15 years old *solely* because of the age of the roof.
- Requires that, if the roof is at least 15 years old, carrier must allow a HO to have a roof inspection performed by an authorized inspector at the HO's expense before requiring the replacement of the roof as a condition of issuing or renewing an HO policy.
- Carrier may not refuse to issue or refuse to renew HO policy *solely* because of roof age if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has 5 years or more of useful life

§627.70131. Insurer's duty to acknowledge communications regarding claims; investigation

• *Claims Handling*

- Property carrier must conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements.
 - Does not apply to hurricane claims.
- Carriers must notify policyholders of their right to receive any detailed report generated by a carrier's adjuster that estimates the amount of the loss.
 - Report must be provided to the requesting policyholder within the later of 7 days after the policyholder requests the report or the completion of the report.
- Carriers must provide a reasonable explanation of the claim decision in relation to the insurance policy, facts, and law.
- If Carrier makes a claim payment that is less than contained in the adjuster's estimate of the loss, the carrier must explain the discrepancy.

§489.147. Prohibited property insurance practices

Contractor Solicitation of Roof Claims

Prohibits **contractors** from making written or electronic communications (door hangers, business cards, magnets, flyers, pamphlets, and e-mails) that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides notice that:

- *The consumer is responsible for the payment of any deductible.*
- *It is insurance fraud punishable as a third-degree felony for a contractor to pay or waive an insurance deductible.*
- *It is insurance fraud punishable as a third-degree felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.*

§627.7152. Assignment agreements

- **Contractors/Roofer who accept AOBs**
- Revises the definition of “assignment agreement” to include assignments executed by a party that inspects the property
- Clarifies that public adjuster fees are not an assignment agreement
- Clarifies the requirement to provide a Notice of Intent to Initiate Litigation before filing suit.
- Requires that a valid AOB specify that the assignee will hold harmless the assignor from all liabilities, including attorney’s fees.

Civil Remedy // Bad Faith

[Link -- Civil Remedy \(myfloridacfo.com\)](http://myfloridacfo.com)

*§624.1551. Civil remedy actions against property insurers.

Notwithstanding any provision of §624.155, a claimant must establish that the property insurer breached the insurance contract to prevail in a claim for extracontractual damages under 624.155(1)(b).

§624.155(1)(b). Civil Remedy.

(1) Any person may bring a civil action against an insurer when such person is damaged:

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;
2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice

Some History...

- Prior version effective 7/1/2021
 - 627.70132. Notice of property insurance claim
 - 627.70152. Suits arising under a property insurance policy
- Prior versions effective 7/1/2019
 - 627.7152. Assignment agreements
 - 627.7153. Policies restricting assignment of post-loss benefits under a property insurance policy

§626.9373 & §627.428 Attorney Fees

- Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.
- Fla. Stat. § 627.428(1) (2020).
- “Section 627.428 was intended ‘to discourage the contesting of valid claims against insurance companies and to reimburse successful insureds for their attorney’s fees when they are compelled to defend or sue to enforce their insurance contracts.’”
- *Progressive Express Ins. Co. v. Schultz*, 948 So. 2d 1027, 1029-30 (Fla. 5th DCA 2007)

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- Fla. Stat. § 627.428(1) (2021).

§626.9373 & §627.428 Attorney Fees

- “In a suit arising under a residential or commercial property insurance policy, **the right to attorney fees under this section may not** be transferred to, assigned to, or acquired in any other manner by anyone other than a named or omnibus insured or a named beneficiary.”
- So while assignments may occur, the assignee [contractor/roofer] will no longer be able to recover attorneys’ fees in suits against a carrier.

§627.70152. Suits arising under a property insurance policy

(8) Attorney fees.--

(a) In a suit arising under a **residential or commercial property insurance policy** not brought by an assignee, the amount of reasonable attorney fees and costs under **626.9373(1)** or **627.428(1)** shall be calculated and awarded as follows:

1. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, **is less than 20% of the disputed amount**, each party pays its own attorney fees and costs and a claimant may not be awarded attorney fees under 626.9373(1) or 627.428(1).
2. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, **is at least 25% but less than 50% of the disputed amount**, the insurer pays the claimant's attorney fees and costs under 626.9373(1) or 627.428(1) equal to the percentage of the disputed amount obtained times the total attorney fees and costs.
3. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, **is at least 50% of the disputed amount**, the insurer pays the claimant's full attorney fees and costs under 626.9373(1) or 627.428(1).

§627.70152. Suits arising under a property insurance policy

(8) Attorney fees.--

(b) In a suit arising under a residential or commercial property insurance policy not brought by an assignee, if a court dismisses a claimant's suit pursuant to subsection (5), the court may **not** award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit. When a claimant's suit is dismissed pursuant to subsection (5), the court **may award to the insurer reasonable attorney fees and costs associated with securing the dismissal.**

(c) In awarding attorney fees under this subsection, **a strong presumption is created that a lodestar fee is sufficient and reasonable.** Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

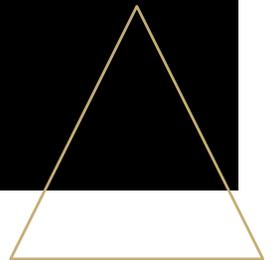
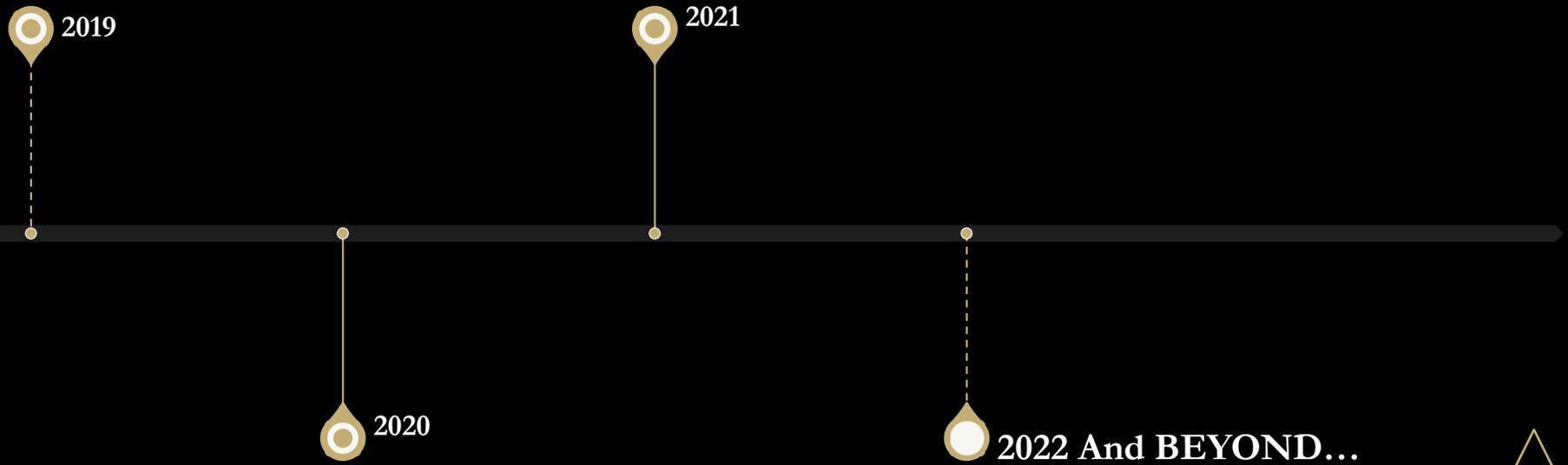
Regulation of Carriers & Transparency

- **§624.307 General Powers; duties**
- **§624.315. Department; annual report**
- **§624.424. Annual statement and other information**
- ***§627.7154. Property Insurance Stability Unit; duties and required reports**
- **§631.031. Initiation and commencement of delinquency proceeding**
- **§631.398. Prevention of insolvencies**

Regulation of Carriers & Transparency

- OIR must publish all orders, insurance industry data, and reports issued by the **newly created Property Insurance Stability Unit**.
- OIR must report on analysis of the availability of reinsurance to domestic carriers selling HO and Condo insurance, delinquent property carriers, the circumstances that led delinquency, actions taken to avoid delinquency, and status of each delinquency proceeding, the health of the HO and Condo insurance market, market trends, and percentage of policies written by voluntary carriers and Citizens.
- **OIR must make data publicly available detailing the statewide number of policies, amount of premium, number of cancellations, and other data for each property carrier. Specifies such information is not a trade secret.**
- **Property Insurer Stability Unit: to aid in the detection and prevention of carrier insolvencies in the HO and Condo insurance market. Carriers must be referred to the unit for enhanced monitoring upon the occurrence of specified events. The unit must:**
 - Provide enhanced monitoring when the OIR identifies significant concerns about various aspects of the carrier.
 - Conduct a target market conduct exam when there is reason to believe the carrier may be in an unsound financial condition.
 - Closely monitor insurer financial data.
 - Conduct annual catastrophe stress tests of domestic carrier.
 - Update wind mitigation credits.
 - Review the causes of insolvency and business practices of insurers referred to the Division of Rehabilitation and Liquidation within DFS.
 - Twice annually, provide a report on the status of the HO and Condo insurance market.
- OIR must execute an affidavit identifying the grounds for initiating delinquency proceedings against a carrier.
- For an insolvency involving a domestic property carrier, DFS must:
 - Begin an analysis of the history and causes of the insolvency no later than the initiation of delinquency proceedings against the carrier;
 - Review the OIR's regulatory oversight of the carrier.
 - Submit an initial report analyzing the history and causes of the insolvency no later than two months after the initiation of the delinquency proceeding;
 - Provide a special report within 10 days of identifying any condition or practice that may lead to insolvency in the property insurance marketplace; and
 - Submit a final report analyzing the history and causes of the insolvency and the OIR's regulatory oversight within 30 days of the conclusion of the insolvency proceeding

Where are we headed??





Aren't we all in this together?

CLE 6153

**1 General
1 Construction Law
Certification**



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