

Technical Bulletin 09-008

Insurance Sinkhole Claims

From: Florida Statute

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.--

- (1) Every insurer authorized to transact property insurance in this state shall provide coverage for a catastrophic ground cover collapse and shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including contents of personal property contained therein, to the extent provided in the form to which the coverage attaches. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.
- (2) As used in ss. [627.706](#)-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses:
- (a) "Catastrophic ground cover collapse" means geological activity that results in all the following:
 1. The abrupt collapse of the ground cover;
 2. A depression in the ground cover clearly visible to the naked eye;
 3. Structural damage to the building, including the foundation; and
 4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

Contents coverage applies if there is a loss resulting from a catastrophic ground cover collapse. Structural damage consisting merely of the settling or cracking of a foundation, structure, or building does not constitute a loss resulting from a catastrophic ground cover collapse.
 - (b) "Sinkhole" means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole may form by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.
 - (c) "Sinkhole loss" means structural damage to the building, including the foundation, caused by sinkhole activity. Contents coverage shall apply only if there is structural damage to the building caused by sinkhole activity.
 - (d) "Sinkhole activity" means settlement or systematic weakening of the earth supporting such property only when such settlement or systematic weakening results from movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.
 - (e) "Professional engineer" means a person, as defined in s. [471.005](#), who has a bachelor's degree or higher in engineering with a specialty in the geotechnical engineering field. A professional engineer must have geotechnical experience and expertise in the identification of sinkhole activity as well as other potential causes of damage to the structure.

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.

SEI

- (f) "Professional geologist" means a person, as defined by s. [492.102](#), who has a bachelor's degree or higher in geology or related earth science with expertise in the geology of Florida. A professional geologist must have geological experience and expertise in the identification of sinkhole activity as well as other potential geologic causes of damage to the structure.
- (3) On or before June 1, 2007, every insurer authorized to transact property insurance in this state shall make a proper filing with the office for the purpose of extending the appropriate forms of property insurance to include coverage for catastrophic ground cover collapse or for sinkhole losses. Coverage for catastrophic ground cover collapse may not go into effect until the effective date provided for in the filing approved by the office.
- (4) Insurers offering policies that exclude coverage for sinkhole losses shall inform policyholders in bold type of not less than 14 points as follows: "YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM."
- (5) An insurer offering sinkhole coverage to policyholders before or after the adoption of s. 30, chapter 2007-1, Laws of Florida, may nonrenew the policies of policyholders maintaining sinkhole coverage in Pasco County or Hernando County, at the option of the insurer, and provide an offer of coverage to such policyholders which includes catastrophic ground cover collapse and excludes sinkhole coverage. Insurers acting in accordance with this subsection are subject to the following requirements:
- (a) Policyholders must be notified that a nonrenewal is for purposes of removing sinkhole coverage, and that the policyholder is still being offered a policy that provides coverage for catastrophic ground cover collapse.
- (b) Policyholders must be provided an actuarially reasonable premium credit or discount for the removal of sinkhole coverage and provision of only catastrophic ground cover collapse.
- (c) Subject to the provisions of this subsection and the insurer's approved underwriting or insurability guidelines, the insurer shall provide each policyholder with the opportunity to purchase an endorsement to his or her policy providing sinkhole coverage and may require an inspection of the property before issuance of a sinkhole coverage endorsement.
- (d) Section [624.4305](#) does not apply to nonrenewal notices issued pursuant to this subsection.

627.7063 Building code effectiveness grading schedule.--

- (1) As used in this section, the term "sinkhole loss prevention ordinance" means a county ordinance that amends the Florida Building Code and that is intended to reduce the number of sinkhole claims and the severity of sinkhole losses.
- (2) The commission shall adopt a building code effectiveness grading schedule by rule. The grading schedule shall evaluate the effectiveness of each sinkhole loss prevention ordinance in reducing the number of sinkhole claims and severity of sinkhole losses. Each ordinance shall be evaluated 4 years after the ordinance takes effect. The grading schedule shall be based on the effectiveness of code enforcement in each county and scientific, modeling, and engineering methodologies. The rules shall further mandate insurance premium discounts or surcharges on personal residential property insurance

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.

SEI

based on a property's compliance with an ordinance and the grade assigned to the applicable sinkhole loss prevention ordinance.

627.707 Standards for investigation of sinkhole claims by insurers; nonrenewals.—

Upon receipt of a claim for a sinkhole loss, an insurer must meet the following standards in investigating a claim:

- (1) The insurer must make an inspection of the insured's premises to determine if there has been physical damage to the structure which may be the result of sinkhole activity.
- (2) Following the insurer's initial inspection, the insurer shall engage a professional engineer or a professional geologist to conduct testing as provided in s. [627.7072](#) to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. [627.7073](#), if:
 - (a) The insurer is unable to identify a valid cause of the damage or discovers damage to the structure which is consistent with sinkhole loss; or
 - (b) The policyholder demands testing in accordance with this section or s. [627.7072](#).
- (3) Following the initial inspection of the insured premises, the insurer shall provide written notice to the policyholder disclosing the following information:
 - (a) What the insurer has determined to be the cause of damage, if the insurer has made such a determination.
 - (b) A statement of the circumstances under which the insurer is required to engage a professional engineer or a professional geologist to verify or eliminate sinkhole loss and to engage a professional engineer to make recommendations regarding land and building stabilization and foundation repair.
 - (c) A statement regarding the right of the policyholder to request testing by a professional engineer or a professional geologist and the circumstances under which the policyholder may demand certain testing.
- (4) If the insurer determines that there is no sinkhole loss, the insurer may deny the claim. If the insurer denies the claim, without performing testing under s. [627.7072](#), the policyholder may demand testing by the insurer under s. [627.7072](#). The policyholder's demand for testing must be communicated to the insurer in writing after the policyholder's receipt of the insurer's denial of the claim.
- (5)
 - (a) Subject to paragraph (b), if a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer as provided under s. [627.7073](#), and in consultation with the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy.
 - (b) The insurer may limit its payment to the actual cash value of the sinkhole loss, not including underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs. After the policyholder enters into the contract, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.

SEI

insurer must either complete the professional engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

(c) Upon the insurer's obtaining the written approval of the policyholder and any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed.

- (6) Except as provided in subsection (7), the fees and costs of the professional engineer or the professional geologist shall be paid by the insurer.
- (7) If the insurer obtains, pursuant to s. [627.7073](#), written certification that there is no sinkhole loss or that the cause of the damage was not sinkhole activity, and if the policyholder has submitted the sinkhole claim without good faith grounds for submitting such claim, the policyholder shall reimburse the insurer for 50 percent of the actual costs of the analyses and services provided under ss. [627.7072](#) and [627.7073](#); however, a policyholder is not required to reimburse an insurer more than \$2,500 with respect to any claim. A policyholder is required to pay reimbursement under this subsection only if the insurer, prior to ordering the analysis under s. [627.7072](#), informs the policyholder in writing of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.
- (8) No insurer shall nonrenew any policy of property insurance on the basis of filing of claims for partial loss caused by sinkhole damage or clay shrinkage as long as the total of such payments does not exceed the current policy limits of coverage for property damage, and provided the insured has repaired the structure in accordance with the engineering recommendations upon which any payment or policy proceeds were based.
- (9) The insurer may engage a professional structural engineer to make recommendations as to the repair of the structure.

627.7072 Testing standards for sinkholes.—

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

627.7073 Sinkhole reports.—

- (1) Upon completion of testing as provided in s. [627.7072](#), the professional engineer or professional geologist shall issue a report and certification to the insurer and the policyholder as provided in this section.
 - (a) Sinkhole loss is verified if, based upon tests performed in accordance with s. [627.7072](#), a professional engineer or a professional geologist issues a written report and certification stating:
 1. That the cause of the actual physical and structural damage is sinkhole activity within a reasonable professional probability.
 2. That the analyses conducted were of sufficient scope to identify sinkhole activity as the cause of damage within a reasonable professional probability.
 3. A description of the tests performed.

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.
S E I

4. A recommendation by the professional engineer of methods for stabilizing the land and building and for making repairs to the foundation.
- (b) If sinkhole activity is eliminated as the cause of damage to the structure, the professional engineer or professional geologist shall issue a written report and certification to the policyholder and the insurer stating:
1. That the cause of the damage is not sinkhole activity within a reasonable professional probability.
 2. That the analyses and tests conducted were of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability.
 3. A statement of the cause of the damage within a reasonable professional probability.
 4. A description of the tests performed.
- (c) The respective findings, opinions, and recommendations of the professional engineer or professional geologist as to the cause of distress to the property and the findings, opinions, and recommendations of the professional engineer as to land and building stabilization and foundation repair shall be presumed correct.
- (2) (a) Any insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, with the county clerk of court, who shall record the report and certification. The insurer shall bear the cost of filing and recording the report and certification. There shall be no cause of action or liability against an insurer for compliance with this section. The recording of the report and certification does not:
1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;
 2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or
 3. Create any cause of action or liability against any title insurer that insures the title to the real property.
- (b) The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer shall disclose to the buyer of such property that a claim has been paid and whether or not the full amount of the proceeds were used to repair the sinkhole damage.

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

- (1) As used in this section, the term:
- (a) "Neutral evaluation" means the alternative dispute resolution provided for in this section.
 - (b) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, who is determined to be fair and impartial.
- (2) (a) The department shall certify and maintain a list of persons who are neutral evaluators.

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.
S E I

- (b) The department shall prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information and forms necessary for the policyholder to request a neutral evaluation.
- (3) Following the receipt of the report provided under s. [627.7073](#) or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. [627.7015](#). The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to paragraph (2)(b).
- (4) Neutral evaluation is nonbinding, but mandatory if requested by either party. A request for neutral evaluation may be filed with the department by the policyholder or the insurer on a form approved by the department. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request. Filing a request for neutral evaluation tolls the applicable time requirements for filing suit for a period of 60 days following the conclusion of the neutral evaluation process or the time prescribed in s. [95.11](#), whichever is later.
- (5) Neutral evaluation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. A party to neutral evaluation is not required to attend neutral evaluation if a representative of the party attends and has the authority to make a binding decision on behalf of the party. All parties shall participate in the evaluation in good faith.
- (6) The insurer shall pay the costs associated with the neutral evaluation.
- (7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The parties shall mutually select a neutral evaluator from the list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 10 business days, the department shall appoint a neutral evaluator from the department list. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator. Within 5 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluation conference shall be held within 45 days after the receipt of the request by the department.
- (8) The department shall adopt rules of procedure for the neutral evaluation process.
- (9) For policyholders not represented by an attorney, a consumer affairs specialist of the department or an employee designated as the primary contact for consumers on issues relating to sinkholes under s. [20.121](#) shall be available for consultation to the extent that he or she may lawfully do so.
- (10) Evidence of an offer to settle a claim during the neutral evaluation process, as well as any relevant conduct or statements made in negotiations concerning the offer to settle a claim, is inadmissible to prove liability or absence of liability for the claim or its value, except as provided in subsection (13).
- (11) Any court proceeding related to the subject matter of the neutral evaluation shall be stayed pending completion of the neutral evaluation.
- (12) For matters that are not resolved by the parties at the conclusion of the neutral evaluation, the neutral evaluator shall prepare a report stating that in his or her opinion the sinkhole loss has been verified or eliminated and, if verified, the need for and estimated costs of stabilizing the land and any covered

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.

SEI

structures or buildings and other appropriate remediation or structural repairs. The evaluator's report shall be sent to all parties in attendance at the neutral evaluation and to the department.

- (13) The recommendation of the neutral evaluator is not binding on any party, and the parties retain access to court. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim.
- (14) If the neutral evaluator first verifies the existence of a sinkhole and, second, recommends the need for and estimates costs of stabilizing the land and any covered structures or buildings and other appropriate remediation or structural repairs, which costs exceed the amount that the insurer has offered to pay the policyholder, the insurer is liable to the policyholder for up to \$2,500 in attorney's fees for the attorney's participation in the neutral evaluation process. For purposes of this subsection, the term "offer to pay" means a written offer signed by the insurer or its legal representative and delivered to the policyholder within 10 days after the insurer receives notice that a request for neutral evaluation has been made under this section.
- (15) If the insurer timely agrees in writing to comply and timely complies with the recommendation of the neutral evaluator, but the policyholder declines to resolve the matter in accordance with the recommendation of the neutral evaluator pursuant to this section:
 - (a) The insurer is not liable for extracontractual damages related to a claim for a sinkhole loss but only as related to the issues determined by the neutral evaluation process. This section does not affect or impair claims for extracontractual damages unrelated to the issues determined by the neutral evaluation process contained in this section; and
 - (b) The insurer is not liable for attorney's fees under s. [627.428](#) or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

627.7077 Florida Sinkhole Insurance Facility and other matters related to affordability and availability of sinkhole insurance; feasibility study.--

- (1) The Florida State University College of Business Department of Risk Management and Insurance shall, under the direction of the office, conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to affordability and availability of sinkhole insurance. The study shall be conducted in consultation with the State Board of Administration and the Florida Geological Survey. The university shall provide a preliminary report of its analysis, findings, and recommendations to the Financial Services Commission and the presiding officers of the Legislature no later than February 1, 2005, and shall provide a final report no later than April 1, 2005.
- (2) The potential functions of the facility to be analyzed include:
 - (a) Serving as the direct insurer or the reinsurer for all or some sinkhole losses.
 - (b) Providing training, communication, and other educational services to the public, engineers, the construction industry, insurance professionals, or others.
 - (c) Providing uniform standards for use by insurers in evaluating sinkhole loss claims.
 - (d) Providing consulting services for insurers.

STRUCTURAL ENGINEERING AND INSPECTIONS, INC.
SEI

- (e) Maintaining a public database of all confirmed sinkholes and paid sinkhole loss claims, for use by consumers and by the insurance, building construction, banking, and real estate industries.
- (3) The feasibility study shall, at a minimum, address the following issues:
 - (a) Where the facility should be housed, including, but not limited to, the options of creating a separate facility or using the Citizens Property Insurance Corporation or the Florida Hurricane Catastrophe Fund.
 - (b) Federal income taxation implications.
 - (c) Funding options and costs associated with operating the facility, including means of funding sinkhole insurance through premiums that are adequate to fund covered losses.
 - (d) Applicability of the experience of similar facilities of other states.
 - (e) Other economic impact considerations pertinent to a facility.
 - (f) Alternative dispute resolution mechanisms.
 - (g) The impact of all present requirements in the Florida Insurance Code on affordability and availability of sinkhole insurance and recommendations to address such impacts.
- (4) The study shall be funded from a budget of no more than \$300,000, which will be funded by assessments on insurers issuing property insurance in this state. Such assessments shall be collected by the office and shall be prorated among such insurers according to a formula whereby each insurer shall pay a fraction of such budget, the numerator of which shall be such insurer's direct earned premiums for property insurance in this state and the denominator of which shall be the total direct earned premiums for property insurance in this state for calendar year 2003.

U:\Technical Bulletins\Tech Bulletin 09-008 Standards for Investigation of Sinkhole Claims by an Insurer.doc

seiflorida.com