69J-166.002 Mediation of Commercial Residential Property Insurance Claims.

(1) Purpose and Scope. This rule implements section 627.7015, Florida Statutes (F.S.). The program established under this rule is prompted by the critical need for effective, fair, and timely handling of commercial residential property claims. This program is available to all first-party claimants and insurers prior to commencing the appraisal process set forth in their policies or commencing litigation. The program is also available to litigants referred to the Department from circuit or county court. For claims which have not previously been mediated under any Department mediation program, the mediation procedures described in this rule are available to all commercial residential property claims for property located in the state of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance, or to liability coverage contained in property insurance policies. This program does not apply to policies issued under the National Flood Insurance Program established under the National Flood Insurance Act of 1968. Personal lines residential insurance claims can be mediated pursuant to Rule 69J-166.031, Florida Administrative Code (F.A.C.). Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible.

(2) Definitions. The following definitions ~~shall~~ apply for purposes of this rule:

(a) “Administrator” means the Department or its designee.

(b) “Authorized representative” means that individual who has been authorized by the appropriate governing body of a condominium association, cooperative association, or homeowners’ association, to represent the association at mediation, make decisions on the association’s behalf at mediation, and enter into a binding settlement agreement on behalf of the association.

~~(b) “Mediator” means an individual selected by the Department pursuant to chapter 69B-250, F.A.C.~~

~~(c) “Claim.”~~

~~1. “Claim” refers to any dispute between the insurer and policyholder relating to a material issue of fact other than:~~

~~a. A dispute as to which the insurer has reported allegations of fraud, based on an investigation by the insurer’s special investigative unit, to the Department’s Division of Investigative and Forensic Services, or~~

~~b. A dispute where, based upon agreed facts as to the cause of loss, there is no coverage under the policy.~~

~~2. Unless the parties agree to mediate a claim involving a lesser amount, a claim involves the policyholder requesting $500 or more to settle the dispute, or the difference between the positions of the parties is $500 or more, either of which is notwithstanding of any applicable deductible.~~

~~3. A policy must have been in effect at the time of the loss to qualify as a claim.~~

~~(d)~~(c) “Complainant” refers to the party requesting mediation.

~~(e)~~(d) “Department” means the Department of Financial Services and, unless otherwise specified, more spefically refers to its Division of Consumer Services .

~~(f) “Department office” means a designated office of the Division of Consumer Services, Department of Financial Services.~~

~~(f)~~ (e) “Governing documents” are those documents creating the forms of property ownership governed by chapters 718, 719, and 720, F.S., and those documents creating the entities governed by chapters 718, 719, and 720, F.S.

~~(g)~~ (f)“Mediation conference participation” means a mediation party or parties who attend a mediation conference in person, or by telephone, by videoconference, or by other electronic means.

~~(h)~~(g) “Mediation program” means an informal and non-adversarial alternative dispute resolution procedure designed to facilitate insurance claim settlement conferences facilitated by a mediator.

~~(i)~~ (h) “Mediator” means an individual selected by the Department pursuant to Rule Chapter 69B-250, F.A.C. The mediator’s role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

~~(j)~~ (i) “Party” or “parties” means the policyholder or an assignee of the policy benefits and the ~~their~~ insurer, including Citizens Property Insurance Corporation, when applicable.

~~(kl)~~ (j) “Representative” means an individual or entity that has been authorized, by the ~~party or parties~~ policyholder or insurer, to represent, make decisions, and enter into a binding settlement agreement on behalf of the ~~party or parties~~ policyholder or insurer. Documentation supporting the representative’s authorization is required.

~~(m)~~ ~~(h)~~ (k)“Respondent” refers to the party not first requesting mediation.

~~(i) “Authorized representative” means that individual who has been authorized, by the appropriate governing body of a condominium association, cooperative association, or homeowners’ association, to represent the association at mediation, make decisions on the association’s behalf at mediation, and enter into a binding settlement agreement on behalf of the association.~~

~~(j) “Governing documents” are those documents creating the forms of property ownership governed by chapters 718, 719 and 720, F.S., and those documents creating the entities governed by chapters 718, 719 and 720, F.S.~~

(3) Computation of Time. In computing any period of time described by this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday set forth in section 110.117, F.S. All time periods specified in this rule refer to the number of calendar days, not business days, unless otherwise specified in this rule.

(4) Claim Settlement.

(a) Notification of the right to mediate.

1. At the time of issuance and renewal of a policy or at the time a first-party ~~first-party~~ claim ~~which falls~~ within the scope of ~~this rule~~ section 627.7015 (9) is filed by the policyholder ~~or assignee~~, the insurer shall notify the policyholder of its ~~the~~ right to participate in the mediation ~~this~~ program. ~~An insurer is required to make the claim determination pursuant to section 627.70131, F.S., before sending a notice of the right to mediate claims. An insurer is not required to send a notice of the right to mediate disputed claims when no payment has been made on a claim because the insurer concludes the amount of covered damages is less than the policyholder’s deductible.~~

2. Notification must ~~shall~~ be in writing and must ~~shall~~ be legible, conspicuous, printed in at least 12-point type, and printed in typeface no smaller than any other text contained in the notice. The first paragraph of the notice must ~~shall~~ contain the following statement: “The Chief Financial Officer for the State of Florida has adopted a rule to facilitate the fair and timely handling of commercial residential property insurance claims. The rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process after receipt of this notice by calling the Department of Financial Services at (877)693-5236. The parties will have 21~~14~~ ~~21~~ days from the date ~~the request is received by~~ the Department acknowledges a party’s mediation request to otherwise resolve the dispute before the Department will assign a mediator ~~a mediation conference can be scheduled~~.”

3. The notice must ~~shall~~ also:

a. Include detailed instructions on how the policyholder is to request mediation, including the address, phone number, and email address ~~fax number~~ for requesting mediation through the Department;

~~b. State that the parties have 21 days from the date the request is received by the Department within which to settle the claim before the Department will assign a mediator;~~

b. ~~c.~~ Include the insurer’s address and phone number for requesting additional information;

c. ~~d.~~ State that the Administrator will select the mediator;

d. e. Refer to the parties’ right to disqualify a mediator for good cause and paraphrase the definition of good cause as set forth in paragraph (7)(c) of this rule; and,

e. ~~f.~~ Indicate that the policyholder is to notify the mediator 14 ~~seven~~ ~~7~~ days before the mediation conference if the policyholder will bring counsel to the conference, unless the insurer waives the right to the notice of counsel.

4. Failure of an insurer to abide by this procedure and to notify the policyholder as required above will result in the insurer being referred to the Florida Office of Insurance Regulation for administrative action pursuant to section 624.15, F.S.

(b) Request for Mediation.

1. By the Policyholder or Assignee. A policyholder or assignee may request mediation by submitting a completed Form DFS-I1-1669, Request for Commercial Residential Insurance Mediation (Rev. 12/19 ~~2/16~~), [~~http://www.flrules.org/Gateway/reference.asp?No=Ref-06650~~](http://www.flrules.org/Gateway/reference.asp?No=Ref-06650)~~)~~ which is hereby incorporated by reference, to the Department of Financial Services, Alternative Dispute Resolution Section, Bureau of Consumer Assistance ~~Mediation Section, Bureau of Education, Advocacy, and Research~~, 200 East Gaines Street, Tallahassee, Florida 32399-4212, or by sending an email to Mediation@myfloridacfo.com. A copy of the request form can be obtained on the following link: <insert new DOS website address>; or online at the following website: http://www.myfloridacfo.com/Division/Consumers/Mediation~~/documents/DFS-I1-1669CommResMedRequest.pdf or by calling (877)693-5236. If a policyholder requests mediation prior to receipt of the notice of the right to mediation, the insurer shall be notified by the Department of the existence of the dispute 21 days prior to the Administrator processing the policyholder’s request for mediation.~~ If an insurer receives a request for mediation, the insurer shall notify the Alternative Dispute Resolution ~~Mediation~~ Section within three ~~two~~ ~~3~~ business days of receipt of the request by email to Mediation@myfloridacfo.com. The Administrator shall notify the insurer upon receipt of eligible requests ~~within 3 business days of receipt of requests~~ filed with the Department. The policyholder or assignee must provide the following information, if known:

a. Name, address, email address, and daytime telephone number of the policyholder and location of the property if different from the address given;

b. Name, address, email address, and daytime telephone number of the assignee, if applicable;

c. ~~b.~~ The claim and policy number for the policyholder;

d. The date and type of loss;

e. ~~c.~~ A brief description of the nature of the dispute; and

f. ~~d.~~ The full name of the insurer. ~~and the name, address, email address, and phone number of the contact person for scheduling mediation; and,~~

~~e. Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.~~

2. By an Insurer. An insurer may request mediation in the same manner as a policyholder or assignee as set forth in subparagraph (4)(b)1. ~~by submitting a completed Form DFS-I1-1669, Request for Commercial Residential Insurance Mediation, as incorporated in subparagraph 1. of this subsection, to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212. A copy of the request form can be obtained online at the following website: http://www.myfloridacfo.com/Division/Consumers/Mediation/documents/DFS-I1-1669CommResMedRequest.pdf or by calling (877)693-5236.~~ The insurer shall provide a copy of its written mediation request to the policyholder at the same time it submits the request to the Department. The written request must ~~should~~ contain the information set forth in subparagraph (4)(b)1., if known. Mediation requests by insurers will be processed by the Administrator in the same manner as mediation requests by policyholders or assignees.

(c) Upon receiving a request for mediation, and after the expiration of the 21 ~~14~~ ~~21~~ day resolution period, the Administrator shall randomly select from the Department’s list a mediator to conduct the mediation conference. The Administrator shall notify the mediator of his or her selection and indicate the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department’s service request file number, the date of the request for mediation, and that the mediation is to occur within 21 ~~14~~ ~~21~~ days of assignment to the mediator. The mediator will have three business days from the date of notification by the Administrator to accept or reject the selection. If the mediator rejects the selection or fails to accept the selection within three business days, or if the mediator is disqualified pursuant to paragraph (7)(c), then the Administrator shall randomly select another mediator. For all mediation requests under this rule, the time limits in this subsection will ~~shall~~ not be applicable for two years following the declaration of a disaster.

(5) Rejection of Mediation. An insurer may elect to reject mediation in situations where the dispute does not meet the definition of a claim as defined in ~~paragraph (2)(c)~~ section 627.7015 (9). If the insurer desires to reject mediation, the insurer shall reference this mediation process and specify in writing to the policyholder and the Administrator the reason(s) for the rejection. The Department will ~~shall~~ determine whether the claim must ~~shall~~ be mediated. The parties may elect to voluntarily mediate any dispute regardless of whether the cause of loss or policy status may be in question. In the event that the Department determines that a claim falls within the scope ~~of this rule~~section 627.7015 (9), the insurer shall follow the process set forth in subsection (4), above.

(6) Mediation Costs. Pursuant to ~~sub~~section 627.7015(3), F.S., the insurer must ~~shall~~ bear all of the cost of conducting mediation conferences.

(a) The total cost for commercial residential mediation may ~~shall~~ not exceed ~~$5,000~~$5,800, with ~~$300~~ $350 per hour not to exceed ~~$4,800~~$5600 paid as the mediator’s fee and $200 paid as the fee of the Administrator.

(b) For two years following the declaration of a disaster, the amounts allocated to the mediator and the Administrator will ~~shall~~ be modified by the Department if and to the extent necessary to cover the cost of facilities to conduct the mediation, but in no event will the total cost for mediation exceed those listed in paragraph (6)(a), above.

(c) Fees are payable within 21 days of billing by the Administrator. The Administrator will bill insurers separately for mediator fees and Administrator fees for all mediations. The mediator’s fee will be payable directly to the mediator by the insurer and the administrative fee must be paid to the Administrator by the insurer. All administrative fees received by the Department must ~~shall~~ be deposited ~~placed~~ in the Insurance Regulatory Trust Fund.

(d) If the parties cancel ~~Should~~ a commercial residential mediation conference ~~be~~ ~~cancelled~~ for any reason ~~by the policyholder or the insurer~~ after it has been scheduled, the insurer shall pay the mediator ~~shall be paid~~ for all hours worked on the issue as specified in paragraph (6)(a), ~~above,~~ and pay the Administrator ~~shall be paid~~ the entire administrative fee.

(7) Mediators.

(a) Grouping of Assignments. Requests for mediation will, if feasible, be grouped together and assigned to a single mediator. A mediator will be assigned a maximum of four mediation conferences under a single assignment.

(b) Procedure and Conduct. All mediation conferences shall be conducted in accordance with this rule and Rules 10.200 through 10.690, Part II, Standards of Professional Conduct, of the Florida Rules for Certified and Court-Appointed Mediators (Effective March 2018 ~~10/1/14~~), which are hereby incorporated by reference and available at the following link: <insert new DOS website>; [~~http://www.flrules.org/Gateway/reference.asp?No=Ref-06740~~](http://www.flrules.org/Gateway/reference.asp?No=Ref-06740) or on the court’s website at: <https://flcourts.ccplatform.net/content/download/216759/1966500/rules-certified-court-appointed-mediators.pdf> ~~http://www.flcourts.org/core/fileparse.php/550/urlt/RuleBookletJanuary2015.pdf~~. Mediators shall have the same responsibilities to the Department as they have to the courts under the Florida Rules for Certified and Court-Appointed Mediators. The Florida Rules for Certified and Court-Appointed Mediators must ~~shall~~ be read in a manner consistent with this rule and any conflict between this rule and the Florida Rules for Certified and Court-Appointed Mediators must ~~shall~~ be resolved in favor of this rule. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this mediation program, mediators shall have the immunity from suit provided to mediators in section 44.107, F.S. All communications with the mediator are ~~shall be~~ confidential. All statements made and documents produced at a settlement conference constitute settlement negotiations in anticipation of litigation. The mediation proceedings are confidential and inadmissible in any subsequent adversarial proceeding.

(c) Complaints. At any time a party may move to disqualify a mediator for good cause. Good cause consists of a conflict of interest between a party and the mediator, ~~that~~ the inability of the mediator ~~is unable~~ to handle the conference competently, or other reasons that would reasonably be expected to impair the conference. Complaints concerning a mediator must ~~shall~~ be written and submitted to the Department of Financial Services, Alternative Dispute Resolution Section, Bureau of Consumer Assistance ~~Mediation Section, Bureau of Education, Advocacy and Education~~, 200 East Gaines Street, Tallahassee, Florida 32399-4212 or emailed to Mediation@myfloridacfo.com.

(8) Mediation Conference.

(a) Method of Holding a Conference ~~Location~~.

1. ~~The location of~~ A conference may be held in person, or by telephone, by videoconference, or by other electronic means, if feasible. All parties and the mediator must have the ability to participate using reliable technology. ~~The mediation conference shall be held at a reasonable location specified by the mediator within 15 driving miles of the insured property, unless all parties agree otherwise, unless the Administrator assigns the location pursuant to this paragraph or unless the mediation location is made available by the Administrator pursuant to subparagraph (8)(a)2., below. The mediation location shall provide a space with a door for private conversation as well as a separate space for caucusing. In times of declared disaster, the Administrator shall assign the mediation location and notify the mediator of same, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

2. A telephone, videoconference, or other electronic mediation conference must allow for private conversation and caucusing. ~~The Administrator shall make available various conference locations throughout the state for possible use, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

3. An in-person mediation conference must be held at a reasonable location specified by the mediator within 15 driving miles of the insured property. The location must provide an enclosed space for private conversation as well as a separate space for caucusing. ~~Before scheduling a mediation conference, the mediator may contact the Division of Consumer Services to determine the availability of office facilities to accommodate the mediation conference.~~

4. In times of declared disaster, the Administrator shall assign the mediation location and notify the mediator of same if the Administrator determines such action is necessary to facilitate and expedite the mediation process. ~~If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Administrator has assigned a location, the Administrator must also agree to the alternate location.~~

5. If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Administrator has assigned a location, the Administrator must also agree to the alternate location. ~~The mediator will notify the policyholder, insurer, and the Administrator in writing of the exact time, date, and location of the conference. In times of declared disaster, the Administrator shall require additional methods of communication such as telephone or email with the policyholder, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

6. The mediator will notify the parties and the Administrator in writing of the exact time, date, and location of the conference. In times of declared disaster, the Administrator shall require additional methods of communication such as telephone or email with the parties if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

(b) Timing and Continuances. The mediation conference must ~~shall~~ be held as scheduled by the mediator. Upon application by any party to the mediator for a continuance, the mediator shall, for good cause shown or if neither party objects, grant a continuance and shall notify all parties and the Administrator of the date and place of the rescheduled conference. Good cause includes severe illness, injury, or other emergency which could not be controlled by the party and could not reasonably be remedied by the party prior to the conference by providing a replacement representative or otherwise. Good cause ~~shall~~ also includes the necessity of obtaining additional information, securing the attendance of a necessary professional, or the avoidance of significant financial hardship. If the policyholder demonstrates to the mediator the need for an expedited mediation conference due to an undue hardship, the mediator shall conduct the conference ~~shall be conducted~~ at the earliest date convenient to all of the parties and the mediator. Undue hardship will be demonstrated when holding the conference on a non-expedited basis would interfere with or contradict the treatment of a severe illness or injury, substantially impair a party’s ability to assert his or her ~~their~~ position at the conference, result in significant financial hardship, or when a party demonstrates other reasonably justified grounds.

(c) Attendance.

1. The parties ~~policyholder and the insurer~~ shall attend the mediation conference, have full knowledge of the facts of the dispute, and be fully authorized to make an agreement to completely resolve the claim. ~~All~~ Corporate ~~parties who are~~ complainants or respondents shall be represented at the conference by a corporate representative who has full knowledge of the facts of the dispute and is fully authorized to make an agreement to completely resolve the dispute. An insurer will be deemed to have failed to appear if the insurer’s representative lacks authority to settle the full value of the claim. The authority to settle the claim includes the ability to disburse the full settlement amount within 10 days of the conclusion of the conference.

2. The representative of the insurer must bring a physical or electronic copy of the policy and a physical or electronic copy of the entire claims file to the conference. ~~If inspection and adjustment of the property at issue may be required before the dispute between the parties can be resolved, such inspection and adjustment must occur before the mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference will constitute a failure to appear at the mediation conference under sub-subparagraph (9)(a)2.b., below.~~

3. If the policyholder is a condominium, cooperative, or homeowners’ association, the governing board of those properties and entities created by the provisions of chapters 718, 719, and 720, F.S., shall prepare the following documentation for review at the mediation conference:

a. A document by which the governing board for the property or entity designates an authorized representative. The document must provide the name of the condominium or cooperative, the name of the association, the date of the meeting at which the designation was made, the name of the designated individual(s), and the authority granted to said individual(s).

b. A copy of those provisions in the governing documents for the property and entity which relate to (i) the insurance responsibilities of the entity and (ii) the responsibilities of the entity and the unit owners of the property for maintaining and repairing the property.

c. For claims where there is damage to the structure of the building or foundation, a written, expert analysis of the damage to the property consistent with the standards required in sections 607.0830(2) and 617.0830(2), F.S.

d. A written analysis of the damage to the property that allocates the estimated damages between the individually owned parcels or units, the common elements or common areas, and the entity’s property in a manner consistent with the governing documents.

4. ~~2.~~ The mediation conference may also ~~may~~ be attended by persons who may assist a party in presenting a ~~his~~ claim or defense in the conference, such as contractors, adjusters, engineers, and interpreters. The ~~parties~~ policyholder or insurer may not have separate counsel in the mediation conference unless requested by the policyholder ~~or assignee~~, or if the parties agree otherwise. If the policyholder ~~or assignee~~ elects to have an attorney participate in the conference, the policyholder ~~or assignee shall~~must notify the mediator and insurer of such participation 14~~seven 7~~ days before the conference, unless the parties agree otherwise. ~~Upon receipt of such notice from the policyholder, the mediator shall provide notice to the insurer that the policyholder will be represented at the mediation conference.~~

5. If the ~~requesting party~~ complainant is non-responsive for more than 14 days, without good cause, the ~~file~~request will be closed.

(d) Good Faith Negotiation.

1. The participants are to negotiate in good faith to attempt to resolve the dispute, however, there is no requirement that the dispute must be resolved in mediation.

2. Parties and their representatives must refrain from turning the conference into an adversarial process. A party will be determined not to have negotiated in good faith if the party, or a person participating on the party’s behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith or if the mediator determines that the conference should be terminated under the provisions of Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators, which is incorporated by reference in paragraph (7)(b). The party responsible for causing termination shall be responsible for paying the mediator’s fee and the administrative fee for any rescheduled mediation.

(e) Pre-Conference Statement. Each party shall prepare a “mediation conference statement” which shall summarize the claim and the costs or damages sustained, identify prior demands and offers, and provide the party’s assessment of a fair resolution of the claim. The statement shall identify the location of the damaged property, ~~and~~ the claim number, and the policy number for the policyholder. The statement shall also identify ~~and provide~~ an address and telephone number for any professional advisor who will accompany a party to the mediation conference. ~~A copy of each party’s statement shall be provided to the mediator.~~ Such statements shall be exchanged by the parties and provided to the mediator no later than 10 days before the mediation conference.

~~(f) Documentation Required.~~

~~1. The representative of the insurer attending the mediation conference must bring a copy of the policy and the entire claims file to the conference. If inspection and adjustment of the property at issue may be required before the dispute between the parties can be resolved, such inspection and adjustment shall occur before the mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference shall constitute a failure to appear at the mediation conference under sub-subparagraph (9)(a)2.b., below.~~

~~2. If the policyholder is a condominium, cooperative, or homeowners’ association, the governing board of those properties and entities created by the provisions of chapters 718, 719 and 720, F.S., shall cause to be prepared the following documentation for review at the mediation conference:~~

~~a. A document by which the governing board for the property or entity designates an authorized representative. The document shall provide the name of the condominium or cooperative, the name of the association, the date of the meeting at which the designation was made, the name of the designated individual(s), and the authority granted to said individual(s).~~

~~b. A copy of those provisions in the governing documents for the property and entity which relate to (i) the insurance responsibilities of the entity and (ii) the responsibilities of the entity and the unit owners of the property for maintaining and repairing the property.~~

~~c. For claims where there is damage to the structure of the building or foundation, a written, expert analysis of the damage to the property consistent with the standards required in subsections 607.0830(2) and 617.0830(2), F.S.~~

~~d. A written analysis of the damage to the property that allocates the estimated damages between the individually owned parcels or units, the common elements or common areas, and the entity’s property in a manner consistent with the governing documents.~~

(f) ~~(g)~~ Disposition. Mediators shall report to the Department on the status of property insurance mediation conferences by submitting Form DFS-I4-2169, Insurance Mediation Disposition Form (Rev. 05/2020 ~~2/16~~) ~~(~~[~~https://www.flrules.org/Gateway/reference.asp?No=Ref-06651~~](https://www.flrules.org/Gateway/reference.asp?No=Ref-06651)~~)~~, which is hereby incorporated by reference and is available on the following link: <insert new DOS website address>. ~~A copy of the form can be obtained at the following website: www.myfloridacfo.com/Division/Consumers/Mediation/CommercialResidentialMediation.htm.~~ If the claim is settled prior to the mediation conference being held, the insurer shall report the outcome of the issue to the Administrator and the mediator prior to the day of the scheduled hearing and the mediator will submit the Insurance Mediation Disposition Form confirming the settlement. A mediation conference will not be considered complete and the Administrator will not bill the insurer until the Insurance Mediation Disposition Form ~~this form~~ is submitted to the Department.

(9) Disbursement of Costs.

(a) The insurer must ~~shall~~ pay the mediator’s fee and the Administrator's fee. All funds to the mediator must be remitted with a reference to the Department’s service request file number, claim number, indentfication of the parties, date of mediation and name of the mediator. All funds due the Department must ~~shall~~ be remitted to the Department of Financial Services, Revenue Processing Section, ~~Mediation Section, Bureau of Education, Advocacy and Research,~~ P.O. Box 6100 ~~200 East Gaines Street~~, Tallahassee, Florida 32314-6100 ~~32399-4212~~, together with a reference to the Department’s service request file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. To overnight funds, remit to the Department of Financial Services, Revenue Processing Section, 200 E. Gaines Street, Tallahassee, Florida 32399. These funds must ~~will~~ be deposited in the Insurance Regulatory Trust Fund to defer Department costs.

1. Completed Mediation Conference. A mediation conference is considered complete once the date of the scheduled mediation has passed and the Insurance Mediation Disposition Form, as incorporated in paragraph (8)(f), ~~DFS-I5-1971~~ has been received by the Administrator. A mediation conference will not be considered complete and will not be billed if it is rescheduled with the agreement of all parties as specified in paragraph (8)(b) of this rule, or if the Insurance Mediation Disposition Form, as incorporated in paragraph (8)(f), ~~DFS-I5-1971~~ is not received by the Administrator.

2. Cancellation Due To Absence. Failure of a party to arrive at the mediation conference within 30 minutes of the conference’s starting time is deemed ~~shall be considered~~ an absence. Payment requirements are ~~shall be~~ as follows:

a. If the policyholder fails to appear at the conference, the conference will ~~shall~~ be considered to have been held and the insurer must make payment in accordance with paragraph (6)(d) of this rule. If the policyholder wishes to schedule a new conference after failing to appear, the policyholder shall pay a sum equal to the fees paid by the insurer for the first scheduled mediation. This sum will ~~shall~~ be applied towards the second mediation with the insurer paying the balance of the cost of that second mediation. The mediator’s fee must ~~shall~~ be payable directly to the mediator and the administrative fee must ~~shall~~ be paid to the Administrator.

b. If the insurer fails to appear at the conference, the insurer shall make payment for the conference in accordance with paragraph (6)(d) of this rule. If the insurer fails to appear at the conference without good cause, the insurer must pay the policyholder’s actual cash expenses incurred in attending the conference. An insurer will be deemed to have failed to appear if the insurer’s representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer’s failure to appear at a scheduled conference. ~~If the insurer fails to appear at the conference without good cause, the insurer shall pay the policyholder’s actual cash expenses incurred in attending the conference and shall pay a second total cost of mediation for the rescheduled conference.~~ Good cause includes severe illness, injury, or other emergency which could not be controlled by the insurer and could not reasonably be remedied by the insurer prior to the conference by providing a replacement representative. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the Department will report the failure to appear as a potential violation of section 626.9541(1)(i)3.c., F.S., to the Florida Office of Insurance Regulation for administrative action pursuant to section 624.15, F.S.

c. If the mediator fails to appear at the conference, the mediator shall hold a second conference at no fee to the policyholder or the insurer. If it is determined that the parties settled the claim at the conference in which the mediator did not appear, the mediator is not due payment from the insurer.

(b) Any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, must ~~shall~~ be borne by the party, mediator, or other person incurring the expense.

~~(c) If the mediator fails to appear at the conference, the mediator shall hold a second conference at no fee to the policyholder or the insurer. If it is determined that the parties settled the claim at the conference in which the mediator did not appear, the mediator would not be due payment from the insurer.~~

(10) Post-Mediation.

(a) At the conclusion of the mediation conference, the mediator will file Form DFS-I4-2169, Insurance Mediation Disposition Form, as incorporated in paragraph (8)(f) ~~(g)~~, with the Department, indicating whether or not the parties reached a settlement. If ~~In the event~~ a settlement is reached, the policyholder shall have three ~~3~~ business days from the date of the written settlement within which he or she may rescind the settlement provided that the policyholder has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and not rescinded, it serves ~~shall act~~ as a release of specific issues that were presented at the conference.

(b) Any additional claims under the policy must ~~shall~~ be presented as separate claims. However, the release will ~~shall~~ not constitute a final waiver of rights of the policyholder with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs which would have been covered under the policy but for the release.

(11) The Department is authorized to designate an entity or person as its Administrator to carry out any of the Department's duties under this rule.

(12) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

Rulemaking Authority 624.308(1), 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 626.9541(1)(a), (e), (i), (u), 626.9561, 626.9581(1), 626.9641(1)(g), 627.7015 FS. History–New 8-30-09, Amended 1-6-14, 4-20-16, \_\_\_\_\_\_\_\_\_\_ .

69J-166.031 Mediation of Residential Property Insurance Claims.

(1) Purpose and Scope. This rule implements section 627.7015, Florida Statutes (F.S.). The program established under this rule is prompted by the critical need for effective, fair, and timely handling of residential property claims. This program is available to all first-party claimants and insurers prior to commencing the appraisal process set forth in their policies or commencing litigation. The program is also available to litigants referred to the Department from circuit or county court. For claims which have not previously been mediated under any Department mediation program, the mediation procedures described in this rule are available to all residential property claims for property located in the state of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance, or to liability coverage contained in property insurance policies. This program does not apply to policies issued under the National Flood Insurance Program established under the National Flood Insurance Act of 1968. Commercial residential insurance claims can be mediated pursuant to Rule 69J-166.002, Florida Administrative Code (F.A.C.). Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible.

(2) Definitions. The following definitions ~~shall~~ apply for purposes of this rule:

(a) “Administrator” means the Department or its designee.

~~(b) “Mediator” means an individual selected by the Department pursuant to chapter 69B-250, F.A.C.~~

~~(b) (c) “Claim.”~~

~~1. “Claim” refers to any dispute between the insurer and policyholder relating to a material issue of fact other than:~~

~~a. A dispute as to which the insurer has reported allegations of fraud, based on an investigation by the insurer’s special investigative unit, to the Department’s Division of Investigative and Forensic Services; or~~

~~b. A dispute where, based upon agreed facts as to the cause of loss, there is no coverage under the policy.~~

~~2. Unless the parties agree to mediate a claim involving a lesser amount, a claim involves the policyholder requesting $500 or more to settle the dispute, or the difference between the positions of the parties is $500 or more, either of which is notwithstanding of any applicable deductible.~~

3. A policy must have been in effect at the time of the loss to qualify as a claim.

~~(c)~~ ~~(d)~~ (b) “Complainant” refers to the party requesting mediation.

~~(d)~~ ~~(e)~~ (c)“Department” means the Department of Financial Services and, unless otherwise specified, more specifically refers to its Division of Consumer Services .

~~(f) “Department office” means a designated office of the Division of Consumer Services, Department of Financial Services.~~

~~(f)~~ (d) “Mediation conference participation” means a mediation party or parties who attend a mediation conference in person, or by telephone, by videoconference, or by other electronic means.

~~(g)~~ (e) “Mediation program” means an informal and non-adversarial alternative dispute resolution procedure designed to facilitate insurance claim settlement conferences facilitated by a mediator.

~~(h)~~ (f) “Mediator” means an individual selected by the Department pursuant to Rule Chapter 69B-250, F.A.C. The mediator’s role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

~~(i)~~ ~~(g)~~ (g) “Party” or “parties” means the policyholder or an assignee of the policy benefits and the ~~his or her~~ insurer, including Citizens Property Insurance Corporation, when applicable.

~~(j)~~ (h)“Representative” means an individual or entity that has been authorized, by the ~~party or parties~~policyholder or insurer, to represent, make decisions, and enter into a binding settlement agreement on behalf of the ~~party or parties~~policyholder or insurer. Documentation supporting the representative’s authorization is required.

~~(k)~~ ~~(h)~~ (i) “Respondent” refers to the party not first requesting mediation.

(3) Computation of Time. In computing any period of time described by this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as set forth in section 110.117, F.S. All time periods specified in this rule refer to the number of calendar days, not business days, unless otherwise specified in this rule.

(4) Claim Settlement.

(a) Notification of the right to mediate.

1. At the time of issuance and renewal of a policy or at the time a first-party~~first-party~~ claim ~~which falls~~ within the scope of ~~this rule~~section 627.7015 (9) is filed by the policyholder ~~or assignee~~, the insurer shall notify the policyholder of the right to participate in the mediation ~~this~~ program. ~~An insurer is required to make the claim determination or elect to repair pursuant to section 627.70131, F.S., before sending a notice of the right to mediate claims. An insurer is not required to send a notice of the right to mediate claims when no payment has been made or no election to repair has been made for a covered loss because the insurer concludes the amount of covered loss is less than the policyholder’s deductible.~~

2. Notification must ~~shall~~ be in writing and must ~~shall~~ be legible, conspicuous, printed in at least 12-point type, and printed in typeface no smaller than any other text contained in the notice. The first paragraph of the notice must ~~shall~~ contain the following statement: “The Chief Financial Officer for the state of Florida has adopted a rule to facilitate the fair and timely handling of residential property insurance claims. The rule gives you the right to attend a mediation conference with your insurer in order to settle any claim you have with your insurer. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process after receipt of this notice by calling the Department of Financial Services at 1(877)693-5236. The parties will have 21~~14~~ ~~21~~ days from the date ~~the request is received by~~ the Department acknowledges receipt of a party’s mediation request to otherwise resolve the dispute before the Department will assign a mediator ~~a mediation conference can be scheduled~~.”

3. The notice must ~~shall~~ also:

a. Include detailed instructions on how the policyholder is to request mediation, including the address, phone number, and email address ~~fax number~~ for requesting mediation through the Department;

~~b. State that the parties have 21 days from the date the request is received by the Department within which to settle the claim before the Department will assign a mediator;~~

b. ~~c.~~ Include the insurer’s address and phone number for requesting additional information;

c. ~~d.~~ State that the Administrator will select the mediator;

d. ~~e.~~ Refer to the parties’ right to disqualify a mediator for good cause and paraphrase the definition of good cause as set forth in paragraph (7)(c) of this rule; and,

e. ~~f.~~ Indicate that the policyholder is to notify the mediator 14~~seven~~ ~~14~~ days before the mediation conference if the policyholder will bring representation to the conference, unless the insurer waives the right to the notice of representation. Upon receipt of such notice from the policyholder, the mediator shall provide notice to the insurer that the policyholder will be represented at the mediation conference.

4. Failure of an insurer to abide by this procedure and to notify the policyholder as required above will result in the insurer being referred to the Office of Insurance Regulation for administrative action pursuant to section 624.15, F.S.

(b) Request for Mediation.

1. By the Policyholder or Assignee. A policyholder or assignee may request mediation by contacting the Department at 1(877)693-5236~~; by faxing a request to the Department at (850)488-6372;~~ or by submitting a completed Form DFS-I0-2082, Request for Personal Residential Insurance Mediation (Rev. 12/19 ~~02/16~~) ~~(~~[~~https://www.flrules.org/Gateway/reference.asp?No=Ref-06665~~](https://www.flrules.org/Gateway/reference.asp?No=Ref-06665)~~)~~, which is hereby incorporated by reference, to the Department of Financial Services, Alternative Dispute Resolution Section, Bureau of Consumer Assistance ~~Mediation Section, Bureau of Education, Advocacy, and Research~~, 200 East Gaines Street, Tallahassee, Florida 32399-4212 or by sending an email to Mediation@myfloridacfo.com. The form may be obtained on the following link: <insert new DOS website address>; or online at the following website: http://www.myfloridacfo.com/Division/Consumers/Mediation~~/documents/DFS-I0-2082.pdf.~~ ~~If a policyholder requests mediation prior to receipt of the notice of the right to mediation, the insurer shall be notified by the Department of the existence of the dispute 21 days prior to the Administrator processing the policyholder’s request for mediation.~~ If an insurer receives a request for mediation, the insurer shall notify the Alternative Dispute Resolution ~~Mediation~~ Section within three~~two~~ ~~2~~ business days of receipt of the request by email at [Mediation@myfloridacfo.com](mailto:Mediation@myfloridacfo.com). The Administrator shall notify the insurer upon receipt of eligible requests filed with the Department. ~~The Administrator shall notify the insurer within 3 business days of receipt of requests filed with the Department.~~ The policyholder or assignee shall provide the following information, if known:

a. Name, address, email address, and daytime telephone number of the policyholder and location of the property if different from the address given;

b. Name, address, email address, and daytime telephone number of the assignee, if applicable;

c. ~~b.~~ The claim and policy number for the policyholder;

d. The date and type of loss;

e. ~~c.~~ A brief description of the nature of the dispute; and

f. ~~d.~~ The full name of the insurer. ~~and the name, address, email address, and phone number of the contact person for scheduling mediation; and,~~

~~e. Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.~~

2. By an Insurer. An insurer may request mediation in the same manner as a policyholder or assignee as set forth in subparagraph (4)(b)1. The insurer shall provide a copy of its written mediation request to the policyholder at the same time it submits the request to the Department. The written request must ~~shall~~ contain the information set forth in subparagraph (4)(b)1., if known. Mediation requests by insurers will be processed by the Administrator in the same manner as mediation requests by policyholders or assignees.

(c) Upon receiving a request for mediation, and after the expiration of the 21~~14~~ ~~21~~ day resolution period, the Administrator shall randomly select from the Department’s list a mediator to conduct the mediation conference. The Administrator shall notify the mediator of his or her selection and indicate the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department’s service request file number, the date of the request for mediation, and that the mediation is to occur within 21~~14~~ ~~21~~ days of the date of assignment to the mediator. The mediator will have three business days from the date of notification by the Administrator to accept or reject the selection. If the mediator rejects the selection or fails to accept the selection within three business days, or if the mediator is disqualified pursuant to paragraph (7)(c), then the Administrator shall randomly select another mediator. For all mediation requests under this rule, the time limits in this subsection shall not be applicable for two years following the declaration of a disaster.

(5) Rejection of Mediation. An insurer may elect to reject mediation in situations where the dispute does not meet the definition of a claim as defined in section 627.7015 (9). If the insurer desires to reject mediation, the insurer shall reference this mediation process and specify in writing to the policyholder and the Administrator the reason(s) for the rejection. The Department will ~~shall~~ determine whether the claim must ~~shall~~ be mediated. The parties may elect to voluntarily mediate any dispute regardless of whether the cause of loss or policy status may be in question. In the event that a claim falls within the scope ~~of this rule~~section 627.7015 (9), the insurer shall follow the process set forth in subsection (4), above.

(6) Mediation Costs. Pursuant to ~~sub~~section 627.7015(3), F.S., the insurer must ~~shall~~ bear all of the cost of conducting mediation conferences.

(a) The total cost for residential mediation is ~~shall be~~ ~~$350~~$400, with ~~$300~~$350 paid as the mediator’s fee and $50 paid as a fee of the Administrator.

(b) For two years following the declaration of a disaster, the amounts allocated to the mediator and the Administrator will ~~shall~~ be modified by the Department if and to the extent necessary to cover the cost of facilities to conduct the mediation, but in no event will the total cost for mediation exceed those listed in paragraph (6)(a), above.

(c) Fees are payable within 21 days of billing by the Administrator. The Administrator will bill insurers separately for mediator fees and Administrator fees for all mediations. The mediator’s fee will be payable directly to the mediator by the insurer and the administrative fee must be paid to the Administrator by the insurer. All administrative fees received by the Department must ~~shall~~ be deposited ~~placed~~ in the Insurance Regulatory Trust Fund.

(d) If the parties cancel ~~Should~~ a residential mediation conference ~~be cancelled~~ for any reason ~~by the policyholder or the insurer~~ after it has been scheduled, the insurer shall pay the mediator ~~shall be paid~~ 50% of the mediator’s fee and shall pay the Administrator ~~shall be paid~~ the entire administrative fee.

(7) Mediators.

(a) Grouping of Assignments. Requests for mediation will, if feasible, be grouped together and assigned to a single mediator. A mediator will be assigned a maximum of four mediation conferences under a single assignment.

(b) Procedure and Conduct. All mediation conferences must ~~shall~~ be conducted in accordance with this rule and Rules 10.200 through 10.690, Part II, Standards of Professional Conduct, of the Florida Rules for Certified and Court-Appointed Mediators (Effective March 2018 ~~10/1/14~~) ~~(~~[~~https://www.flrules.org/Gateway/reference.asp?No=Ref-0740~~](https://www.flrules.org/Gateway/reference.asp?No=Ref-0740)~~)~~, which is incorporated by reference in Rule 69J-166.002 ~~are hereby incorporated by reference and available at http://www.flcourts.org/core/fileparse.php/550/urlt/RuleBookletJanuary2015.pdf~~. Mediators shall have the same responsibilities to the Department as they have to the courts under the Florida Rules for Certified and Court-Appointed Mediators. The Florida Rules for Certified and Court-Appointed Mediators must ~~shall~~ be read in a manner consistent with this rule and any conflict between this rule and the Florida Rules for Certified and Court-Appointed Mediators must ~~shall~~ be resolved in favor of this rule. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this mediation program, mediators shall have the immunity from suit provided to mediators in section 44.107, F.S. All communications with the mediator are ~~shall be~~ confidential. All statements made and documents produced at a settlement conference constitute settlement negotiations in anticipation of litigation. The mediation proceedings are confidential and inadmissible in any subsequent adversarial proceeding.

(c) Complaints. At any time a party may move to disqualify a mediator for good cause. Good cause consists of a conflict of interest between a party and the mediator, ~~that~~ the inability of the mediator ~~is unable~~ to handle the conference competently, or other reasons which would reasonably be expected to impair the conference. Complaints concerning a mediator must ~~shall~~ be written and submitted to the Department of Financial Services, Alternative Dispute Resolution Section, Bureau of Consumer Assistance ~~Mediation Section, Bureau of Education, Advocacy and Research~~, 200 East Gaines Street, Tallahassee, Florida 32399-4212 or emailed to Mediation@myfloridacfo.com.

(8) Mediation Conference.

(a) Method of Holding a Conference ~~Location~~.

1. A conference may be held in person, or by telephone, by videoconference or by other electronic means, if feasible. All parties and the mediator must have the ability to participate using reliable technology. ~~The mediation conference shall be held at a reasonable location specified by the mediator within 15 driving miles of the insured property, unless all parties agree otherwise, unless the Administrator assigns the location pursuant to this paragraph or unless the mediation location is made available by the Administrator pursuant to subparagraph (8)(a)2., below. The mediation location shall provide a space with a door for private conversation as well as a separate space for caucusing. In times of declared disaster, the Administrator shall assign the mediation location and notify the mediator of same, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

2. A telephone, videoconference or other electronic mediation conference must allow for private conversation and caucusing. ~~The Administrator shall make available various conference locations throughout the state for possible use, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

3. An in-person mediation conference must be held at a reasonable location specified by the mediator within 15 driving miles of the insured property. The location must provide an enclosed space for private conversation as well as a separate space for caucusing. ~~Before scheduling a mediation conference the mediator may contact the Division of Consumer Services to determine the availability of office facilities to accommodate the mediation conference.~~

4. In times of declared disaster, the Administrator shall assign the mediation location and notify the mediator of same if the Administrator determines such action is necessary to facilitate and expedite the mediation process. ~~If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Administrator has assigned a location, the Administrator must also agree to the alternate location.~~

5. If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Administrator has assigned a location, the Administrator must also agree to the alternate location. ~~The mediator will notify the policyholder, insurer, and the Administrator in writing of the exact time, date, and location of the conference. In times of declared disaster, the Administrator shall require additional methods of communication such as telephone or email with the policyholder, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.~~

6. The mediator will notify the parties and the Administrator in writing of the exact time, date, and location of the conference. In times of declared disaster, the Administrator shall require additional methods of communication such as telephone or email with the parties if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

(b) Timing and Continuances. The mediation conference must ~~shall~~ be held as scheduled by the mediator. Upon application by any party to the mediator for a continuance, the mediator shall, for good cause shown or if neither party objects, grant a continuance and shall notify all parties and the Administrator of the date and place of the rescheduled conference. Good cause includes severe illness, injury, or other emergency which could not be controlled by the party and could not reasonably be remedied by the party prior to the conference by providing a replacement representative or otherwise. Good cause also includes the necessity of obtaining additional information, securing the attendance of a necessary professional, or the avoidance of significant financial hardship. If the policyholder demonstrates to the mediator the need for an expedited mediation conference due to an undue hardship, the mediator shall conduct the conference ~~shall be conducted~~ at the earliest date convenient to all of the parties and the mediator. Undue hardship will be demonstrated when holding the conference on a non-expedited basis would interfere with or contradict the treatment of a severe illness or injury, substantially impair a party’s ability to assert his or her ~~their~~ position at the conference, result in significant financial hardship, or when a party demonstrates other reasonably justified grounds.

(c) Attendance.

1. The parties ~~policyholder and the insurer~~ shall attend the mediation conference, have full knowledge of the facts of the dispute, and be fully authorized to make an agreement to completely resolve the claim. An insurer will be deemed to have failed to appear if the insurer’s representative lacks authority to settle the full value of the claim. The authority to settle the claim includes the ability to disburse the full settlement amount within 10 days of the conclusion of the conference. ~~The insurer will produce at the conference a copy of the policy. The insurer will bring the entire claims file to the conference.~~

2. The insurer must bring a physical or electronic copy of the policy and a physical or electronic copy of the entire claims file to the conference. ~~If inspection and adjustment of the property may be required before the dispute between the parties can be resolved, such inspection and adjustment must occur before the mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference will constitute a failure to appear at the mediation conference under sub-subparagraph (9)(a)2.b.~~

3. ~~2.~~ The mediation conference may also ~~may~~ be attended by persons who may assist a party in presenting his or her claim or defense in the conference, such as contractors, adjusters, engineers, and interpreters. The ~~parties~~policholder or insurer may not have separate counsel in the mediation conference unless requested by the policyholder ~~or assignee~~, or the parties agree otherwise. If the policyholder ~~or assignee~~ elects to have representation in the conference, the policyholder ~~or assignee~~ shall notify the mediator and insurer of such participation 14 ~~seven~~ ~~14~~ days before the conference, unless the parties agree otherwise. ~~Upon receipt of such notice from the policyholder, the mediator shall provide notice to the insurer that the policyholder will be represented at the mediation conference. A party will be determined to have not negotiated in good faith if they or a person participating on their behalf continuously disrupts or otherwise inhibits the negotiations as determined by the mediator.~~

4. If the ~~requesting party~~ complaintant is non-responsive for more than 14 days, without good cause, the ~~file~~request will be closed.

(d) Good Faith Negotiation. ~~The participants are to negotiate in good faith to attempt to resolve the dispute, however there is no requirement that the dispute must be resolved in mediation.~~

1. The participants are to negotiate in good faith to attempt to resolve the dispute, however, resolution is not required.

2. Parties and their representatives must refrain from turning the conference into an adversarial process. A party will be determined not to have negotiated in good faith if the party, or a person participating on the party’s behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator must terminate the conference if the mediator determines that either party is not negotiating in good faith or if the mediator determines that the conference should be terminated under the provisions of Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators, which is incorporated by reference in Rule 69J-166.002, F.A.C. The party responsible for causing termination must be responsible for paying the mediator’s fee and the administrative fee for any rescheduled mediation.

(e) Disposition. Mediators shall report to the Department on the status of property insurance mediation conferences by submitting Form DFS-I4-2169, Insurance Mediation Disposition Form (Rev. 05/2020 ~~2/16~~), which is ~~hereby~~ incorporated by reference in Rule 69J-166.002, F.A.C. ~~A copy of the form can be obtained at~~ [~~https://www.flrules.org/Gateway/reference.asp?No=Ref-06651~~](https://www.flrules.org/Gateway/reference.asp?No=Ref-06651) ~~and the following website: www.myfloridacfo.com/Division/Consumers/Mediation/CommercialResidentialMediation.htm.~~ If the claim is settled prior to the mediation conference being held, the insurer shall report the outcome of the issue to the Administrator and the mediator prior to the day of the scheduled hearing and the mediator will submit the Insurance Mediation Disposition Form confirming the settlement. A mediation conference will not be considered complete and the Administrator will not bill the insurer until the Insurance Mediation Disposition Form ~~this form~~ is submitted to the Department.

(9) Disbursement of Costs.

(a) The insurer must ~~shall~~ pay the mediator’s fee and the Administrator’s fee. All funds to the mediator must be remitted with a reference to the Department’s service request file number, claim number, indentfication of the parties, date of mediation and name of the mediator. All funds due the Department must ~~shall~~ be remitted to the Department of Financial Services, Revenue Processing Section, ~~Mediation Section, Bureau of Education, Advocacy and Research,~~ P. O. Box 6100 ~~200 East Gaines Street~~, Tallahassee, Florida 32314-6100 ~~32399-4212~~, together with a reference to the Department’s service request file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. To overnight funds, remit to the Department of Financial Services, Revenue Processing Section, 200 E. Gaines, Street, Tallahassee, Florida 32399. These funds must ~~will~~ be deposited in the Insurance Regulatory Trust Fund to defer Department costs.

1. Completed Mediation Conference. A mediation conference is considered complete once the date of the scheduled mediation has passed and the Insurance Mediation Disposition Form, which is incorporated by reference in Rule 69J-166.002, F.A.C., ~~DFS-I5-1971~~ has been received by the Administrator. A mediation conference will not be considered complete and will not be billed if it is rescheduled with the agreement of all parties as specified in paragraph (8)(b) of this rule, or if the Insurance Mediation Disposition Form, which is incorporated by reference in Rule 69J-166.002, F.A.C., ~~DFS-I5-1971~~ is not received by the Administrator.

2. Cancellation Due To Absence. Failure of a party to arrive at the mediation conference within 30 minutes of the conference’s starting time is deemed ~~shall be considered~~ an absence. Payment requirements are ~~shall be~~ as follows:

a. If the policyholder fails to appear at the conference, the conference will ~~shall~~ be considered to have been held and the insurer must make payment in accordance with paragraph ~~subsection~~ (6)(a) of this rule. If the policyholder wishes to schedule a new conference after failing to appear, the total cost of mediation for the new conference will be borne by the policyholder. The new conference will ~~shall~~ be rescheduled only upon the policyholder’s payment of the total cost of the mediation at the rate specified in subsection (6) of this rule.

b. If the insurer fails to appear at the conference, the insurer shall make payment for the conference in accordance with paragraph ~~subsection~~ (6)(d) of this rule. If the insurer fails to appear at the conference without good cause, the insurer must pay the policyholder’s actual cash expenses incurred in attending the conference. An insurer will be deemed to have failed to appear if the insurer’s representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer’s failure to appear at a scheduled conference. ~~If the insurer fails to appear at the conference without good cause, the insurer shall pay the policyholder’s actual cash expenses incurred in attending the conference and shall pay a second total cost of mediation for the rescheduled conference.~~ Good cause includes severe illness, injury, or other emergency which could not be controlled by the insurer and could not reasonably be remedied by the insurer prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the Department will report the failure to appear to the Florida Office of Insurance Regulation as a potential violation of section ~~sub-subparagraph~~ 626.9541(1)(i)3.c., F.S. The Florida Office of Insurance Regulation will take such administrative action pursuant to section 624.15, F.S.

c. If the mediator fails to appear at the conference, the mediator shall hold a second conference at no fee to the policyholder or the insurer. If it is determined that the parties settled the claim at the conference in which the mediator did not appear, the mediator is ~~would~~ not ~~be~~ due payment from the insurer.

(b) Any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, must ~~shall~~ be borne by the party, mediator, or other person incurring the expense.

(10) Post-Mediation.

(a) At the conclusion of the mediation conference, the mediator will file Form DFS-I4-2169, Insurance Mediation Disposition Form, which is incorporated by reference in Rule 69J-166.002, F.A.C., ~~as incorporated in paragraph (8)(e),~~ with the Department, indicating whether or not the parties reached a settlement. ~~A copy of the form can be obtained at~~ [~~https://www.flrules.org/Gateway/reference.asp?No=Ref-06651~~](https://www.flrules.org/Gateway/reference.asp?No=Ref-06651) ~~and the following website: www.myfloridacfo.com/Division/Consumers/Mediation/CommercialResidentialMediation.htm.~~ If ~~In the event~~ a settlement is reached, the policyholder shall have three ~~3~~ business days from the date of the written settlement within which he or she may rescind the settlement provided that the policyholder has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and not rescinded, it serves ~~shall act~~ as a release of specific issues that were presented at the conference.

(b) Any additional claims under the policy must ~~shall~~ be presented as separate claims. However, the release will ~~shall~~ not constitute a final waiver of rights of the policyholder with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs which would have been covered under the policy but for the release.

(11) The Department is authorized to designate an entity or person as its Administrator to carry out any of the Department’s duties under this rule.

(12) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

Rulemaking Authority 624.308(1), 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 626.9541(1)(a), (e), (i), (u), 626.9561, 626.9581(1), 626.9641(1)(g), 627.7015 FS. History–New 8-18-94, Amended 5-1-96, 4-6-00, Formerly 4-166.031, 69B-166.031, Amended 9-24-09, 1-6-14, 4-20-16, \_\_\_\_\_\_\_\_\_\_.