

THE FULL TEXT OF THE PROPOSED RULE IS:

69J-8, F.A.C. Alternative Procedure for Resolution of Disputed Sinkhole Insurance Claims

69J-8.001 Purpose.

~~Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07.~~

~~Repealed~~_____.

69J-8.002 Definitions.

When used in this chapter, and ~~section~~Section 627.7074, F.S., the following terms are defined as follows:

(1) through (7) No Change.

(8) Program: The alternative procedure for resolution of disputed sinkhole insurance claims authorized by
~~section~~Section 627.7074, F.S.

~~Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07.~~

~~Amended~~_____.

69J-8.003 Neutral Evaluator Course Approval.

~~Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07.~~

~~Repealed~~_____.

69J-8.004 Qualification and Certification of Neutral Evaluators.

(1) Neutral Evaluators must complete a course in alternative dispute resolution approved by the department pursuant to Chapter 69B-211, F.A.C.

~~(2)(1)~~ Persons seeking certification as a neutral evaluator shall apply to the department using the Neutral Evaluator Application, Form Number DFS-H2-1783, (~~Revised:~~_____ ~~Effective: 11-4-07~~) which is hereby incorporated by reference. The form shall be obtained from the Florida Department of Financial Services, Bureau of Agent and Agency Licensing, 200 East Gaines Street, Tallahassee FL 32399-0319 or via the following website: <http://www.myfloridacfo.com/division/Agents/Licensure/Forms/docs/DFS-H2-1783.pdf>. The form shall be submitted to Florida Department of Financial Services, Bureau of Agent and Agency Licensing, 200 East Gaines Street, Tallahassee FL 32399-0319.

~~(3)(2)~~ Application for certification shall be granted if the applicant:

(a) Is a professional engineer as defined in subsection Section 471.005(5), F.S., who has a bachelor's degree or higher in engineering and experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage, or a professional geologist as defined in subsection Section 492.102(6), F.S., who has a bachelor's degree or higher in geology or related earth science and experience and expertise in the identification of sinkhole activity as well as other potential geologic causes of structural damage;

(b) Has completed a course of study in alternative dispute resolution approved under subsection (1) Rule 69J-8.003 F.A.C., above; and

(c) Is determined to be fair and impartial based on the criteria in subsection (4)(3) below:

(4)(3) An applicant or neutral evaluator shall be found to not be fair and impartial if unless:

(a) The applicant or neutral evaluator or a business entity affiliated with the applicant or neutral evaluator obtained more than 90% of its gross income or revenue in the prior calendar year from contracts with property insurers or persons acting on behalf of property insurers, exclusive of fees generated through the program;

(b) The applicant or neutral evaluator or a business entity affiliated with the applicant or neutral evaluator obtained more than 90% of its gross income or revenue in the prior calendar year from contracts with property insurance claimants or persons acting on behalf of property insurance policyholders;

(a)(e) The applicant or neutral evaluator is currently an employee of a property insurer, or property insurance adjuster, or adjusting firm;

(b)(d) The applicant or neutral evaluator; has through writings, public statements, or otherwise, expressed a bias for or against property insurance insurers or property insurance policyholders; or

(c)(e) The applicant or neutral evaluator refuses to agree to be removed from a case in which a party is a family member, personal friend, or person in which the applicant has a financial interest.

(d) The applicant or neutral evaluator acts in such a way as to compromise the fairness and impartiality of the neutral evaluation program or the program's efficient effective operation.

(5)(4) The department shall decertify any evaluator who ceases to meet the criteria in subsection (2) above. After certification the neutral evaluator has a continuing duty to disclose to the department any failure to meet the standards in subsection (4) above.

Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07, ~~Amended~~

69J-8.005 Maintenance of a List of Neutral Evaluators.

(1) No Change.

(2) The list shall be a public record and shall be provided to parties as required by ~~subsection~~Section 627.7074(7), F.S.

(3) The list shall contain the following information:

(a) and (b) No Change.

(c) Phone Number, and

(d) Email address ~~Counties Served~~.

(4) Once certified, neutral evaluators may request that the department place their certification on inactive status and not assign additional neutral evaluations to them if other obligations might prevent them from timely conducting an evaluation. It is the responsibility of the inactive neutral evaluator to notify the department upon desire to be reactivated.

Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07, ~~Amended~~

69J-8.006 Notice of Program.

Insurers shall provide the notice of the right to participate in the program, required by ~~subsection~~Section 627.7074(3), F.S., in writing ~~and such notice shall be accompanied by the pamphlet, Resolving Disputed Sinkhole Insurance Claims, Form Number DFS-I4-1788, (Effective: 11-4-07), which is hereby incorporated by reference. The insurer shall also provide the pamphlet, Settling Your Sinkhole Claim: Where to Find Help, Form Number DFS-I4-1788, (Revised: _____, which is hereby incorporated by reference. The pamphlet may be provided electronically or by United States mail. The pamphlet may be obtained online at the following website:~~

<http://www.myfloridacfo.com/Division/Consumers/Mediation/documents/SettlingSinkholeClaim.pdf>.

Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07, ~~Amended~~

69J-8.007 Request for Evaluation.

(1) A person wishing to request neutral evaluation pursuant to subsection 627.7074(4), F.S., shall make a request to the department by:

(a) Submitting their request online at the following website: <https://apps.fldfs.com/eservice/MediationInfo.aspx>;
or by

(b) Mailing their request to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, 200 East Gaines Street, Tallahassee, FL 32399-4212, using the form, Sinkhole Insurance Claims Request For Neutral Evaluation, Form Number DFS-I4-1784, (Revised:) which is hereby incorporated by reference; or by faxing the form to the department at 1(850) 488-6372. The form may be obtained online at the following website: <http://www.myfloridacfo.com/consumers/mediation/docs/SinkholeInsuranceClaimRequest.doc>, or by calling the department at 1(850) 413-5818.

(2) Neutral evaluation may be requested for any sinkhole loss claim ~~that was denied or~~ for which a report was prepared pursuant to section 627.7073, F.S.

(3) Neutral evaluation is mandatory once requested by either party. However, a request may be cancelled or withdrawn in writing by the requesting party.

~~A person wishing to request neutral evaluation pursuant to Section 627.7074(4), F.S., shall make a request to the department by writing to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, Tallahassee, FL 32399-4212, or by calling the department at 1(800)342-2762, or by faxing a request to the department at 1(850)488-6372. Such requests may be made using the form, Sinkhole Insurance Claims Request For Neutral Evaluation, Form Number DFS I4-1784, (Effective: 11-4-07). This form may be obtained from Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, Tallahassee FL 32399-4212, or by calling the department at 1(800)342-2762, or by faxing a request to the department at 1(850)488-6372.~~

~~Rulemaking~~Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07,

Amended _____.

69J-8.008 Selection of Neutral Evaluator.

(1) Upon receipt of a request for neutral evaluation, the department shall provide the parties with a list of active certified neutral evaluators who do not currently have a neutral evaluation report outstanding for more than 14 days after holding a neutral evaluation conference. ~~The insurer shall contact the policyholder and the parties shall attempt to reach an agreement on selection of a neutral evaluator.~~

(2) The insurer shall contact the policyholder and the parties shall attempt to reach an agreement on selection of a neutral evaluator. If the parties come to mutual agreement on the selection of a neutral evaluator, both parties shall so inform the department, in writing, by emailing such information to the following email address:

NeutralEvaluation@MyFloridaCFO.com. ~~If after 10 days the parties have failed to agree upon the neutral evaluator, the parties shall so inform the department by calling the department at 1(850)488-6372.~~

(3) If after 14 business days the parties have failed to agree upon a neutral evaluator, the parties shall so inform the department by emailing such information to the following email address:

NeutralEvaluation@MyFloridaCFO.com, or by calling the department at 1(850)413-5818. ~~When informed that the selection of a neutral evaluator could not be agreed upon by the parties, the department shall select a neutral evaluator by rotating sequentially through the list of willing neutral evaluators.~~

(4) When informed that the selection of a neutral evaluator could not be agreed upon by the parties, or if the parties fail to contact department within the 14 business day time period, the department shall select a neutral evaluator by rotating sequentially through the list of willing neutral evaluators who do not currently have a neutral evaluation report outstanding for more than 14 days after holding a neutral evaluation conference. ~~The department will inform the parties of the selection.~~

(5) The department shall allow the parties to submit requests to disqualify evaluators on the list for cause. Parties who wish to disqualify evaluators for cause shall submit their request immediately, or as soon as the cause is known. The department will confirm the reason for disqualification for cause with the neutral evaluator. Either ~~party may reject the selection by calling the department at 1(850)413-5818 within 5 days of the notice being sent.~~

(6) The department will inform the parties of the selection. ~~Each party may reject up to 3 selections for a proceeding.~~

(7) Either party may disqualify the selection without cause by emailing the department at NeutralEvaluation@MyFloridaCFO.com within 3 business days of the notice of selection being sent.

(8) Each party may disqualify up to 2 neutral evaluators without cause.

Rulemaking Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07,

Amended _____.

69J-8.009 Evaluation Process.

(1) The neutral evaluator shall, within 14 business~~5~~ days of referral, contact the parties to schedule the evaluation proceeding pursuant to paragraph~~Section~~ 627.7074(7)(c), F.S. If the parties cannot agree to a time and place for the conference, the neutral evaluator may assign a time and place of his or her choosing. If the Department receives a complaint that the contact was not made within the required timeframe, and the neutral evaluator cannot document the contact, the Department will select a new evaluator from the list.

(2) The evaluation proceeding shall take the form of an informal conference, and shall not be subject to rules of procedure or evidence applicable in a court or administrative proceeding. The neutral evaluator must be allowed reasonable access to the interior and exterior of insured structures to be evaluated or for which a claim has been made.

(3) All parties shall submit to the neutral evaluator copies of all reports related to the claim, including those prepared pursuant to sections 627.7072 and 627.7073, Florida Statutes, at least 7 days prior to the neutral evaluation conference of the property. The neutral evaluator shall give each party the opportunity to submit evidence, testimony, or other information which is reasonably expected to assist the neutral evaluator in determining the existence, nature, and scope of a sinkhole loss, and the nature, extent, and cost of repair and remediation. Any report initiated by policyholder, or an agent of the policyholder, confirming a sinkhole loss or disputing another sinkhole report must be provided to the neutral evaluator prior to his or her physical inspection of the insured property. The neutral evaluator shall not be required to accept or consider any submission of information under this section after the completion of the neutral evaluation conference.

(4) No Change.

(5) The parties may settle the claim at any time. If a settlement is reached prior to the conclusion of the neutral evaluation, the parties will notify the neutral evaluator and the department in writing, and the evaluation will be cancelled. If the settlement is cancelled and either party decides to re-submit their request for neutral evaluation, the previously confirmed evaluator shall continue as the assigned evaluator and complete the neutral evaluation. The

~~neutral evaluator shall inform the parties in writing as to the neutral evaluator's opinion as to the existence of a sinkhole loss and the scope and value of necessary repair and remediation if any.~~

~~(6) The parties may settle the claim at any time.~~

~~(6)(7)~~ The neutral evaluator shall conclude the proceeding upon settlement of the claim or at any point that the neutral evaluator reasonably determines that settlement is not likely to be facilitated by the continuation of the proceeding.

~~(7)(8)~~ If the proceeding is concluded without reaching a settlement, the neutral evaluator shall prepare and file the report required under subsection~~Section~~ 627.7074(42), F.S., on the form adopted in Rule 69J-8.011, F.A.C., below.

~~(8)(9) As neutral evaluators are deemed by statute to be agents of the department, they shall not use any company letterhead on any reports, invoices, or other documents submitted or circulated to the department or the parties in connection with any neutral evaluation. If the proceeding results in a settlement, the neutral evaluator shall inform the department that a settlement was reached.~~

~~Rulemaking~~*Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History--New 11-4-07,*

Amended _____.

69J-8.010 Appointment of Department Employee for Consultation for Policyholder Not Represented by an Attorney.

~~When requested by the policyholder, pursuant~~*Pursuant* to subsection 627.7074 (8)(9), F.S., the department shall appoint an employee to consult with a policyholder participating in the program, but not represented by an attorney. The department employee shall not be an advocate on behalf of the policyholder and shall not render legal advice. The role of the department employee will be to provide the policyholder with information about the procedures of the program and assist the policyholder in understanding technical information relating to the policyholder's claim.

~~Rulemaking~~*Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History--New 11-4-07,*

Amended _____.

69J-8.011 Neutral Evaluator's Report.

Within 14 days after the conclusion of the conference, the neutral evaluator shall submit a report which shall contain the information required by subsection 627.7074 (2), F.S. The neutral evaluator shall complete the Neutral

Evaluator's Report, Form Number DFS-I4-1785, (Revised: _____), online at the following website:

<http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/NeutralEvaluatorReportDFS-I4-1785.pdf>, which is hereby incorporated by reference. Once the neutral evaluator has completed the

report, the neutral evaluator shall print the report and provide it to the parties within the required 14 days.~~The neutral evaluator's report on matters that are not resolved by the parties, as required by Section 627.7074 (12), F.S., shall be on the Neutral Evaluator's Report, Form Number DFS-I4-1785, (Effective: 11-4-07) which is hereby incorporated by reference. The form shall be obtained from and submitted to Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, Tallahassee FL 32399-4212.~~

~~Rulemaking~~Specific Authority 627.7074(18) FS. Law Implemented 627.7074 FS. History—New 11-4-07.

Amended _____.