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Sinkhole vs. Catastrophic Ground Cover Collapse

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Recent legislation (the first 2007 special legislative session) changed the landscape of insurance relating to sinkhole coverage for property policies of admitted carriers. Before looking at the changes though, it's important to take a quick look back in history to see "how it used to be."

Prior to the legislative change, Florida Statutes required all admitted insurers to issue property policies (commercial and personal lines) with the peril of sinkhole included. Since most industry standard property policies normally exclude coverage for damage caused by sinkhole, the coverage was typically added back via a Florida-specific endorsement. The carrier could charge a premium for the coverage, but the policy could not be issued without sinkhole coverage. Then, about 2006, the Office of Insurance Regulation approved rate filings whereby carriers issued policies without sinkhole coverage, but offered it back by endorsement. Few such filings were approved, though, and a majority of carriers continued to issue property policies which automatically included sinkhole coverage.

The 2007 legislation added a new definition, catastrophic ground cover collapse, and changed the options that carriers have in issuing property policies. Before analyzing the changes, it's important to see the statutes that pertain to this issue:

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.

(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."

As a result of this statute, carriers must now issue property policies that include coverage for catastrophic ground cover collapse at a minimum. There is no longer a requirement that property policies be issued with sinkhole coverage. If a policy is issued without sinkhole coverage, two things must happen:

- The carrier must offer sinkhole coverage, and may charge an additional premium, and
- The 14-point, bold-font, notice specified in the statute must appear on the policy.

Suffice it to say, catastrophic ground cover collapse coverage is more limited than sinkhole coverage. A claim that would be covered under the sinkhole coverage may not be covered under catastrophic ground cover collapse coverage. For example, mere cracks in walls or foundation of a structure could be covered by sinkhole coverage, but not covered by catastrophic ground cover collapse. Policyholders should be made aware of the two coverage options and their decision should be documented.

Citizens Property Insurance Corporation will use the following procedures:

Under Citizens homeowners and dwelling policies the peril of sinkhole will no longer be included in the policy form, it will be an endorsement, Sinkhole Loss Coverage Endorsement.

Renewal policies in Hernando & Pasco Counties on and after 10/2/07 will not have the sinkhole endorsement attached, but policyholders may request it. Renewal policies for all other counties on and after 10/1/07 will automatically include the sinkhole endorsement, but policyholders may request it be removed.

For new business on and after 9/1/07 in all counties, applicants will choose

whether or not to purchase the Sinkhole Loss Coverage Endorsement at the time of application.

Senate Bill 2498, passed during the regular 2007 legislative session, added a section to Florida Statute 627.351 which states Citizens (and only Citizens) is not required to send non-renewal notices dealing with the removal of sinkhole coverage in Pasco and Hernando Counties, but instead may use a notice of coverage change to notify policyholders of the removal of sinkhole coverage.

Summary

- The sinkhole and catastrophic ground cover collapse coverage issue deals with property policies of admitted carriers only.
- Carriers may issue a property policy without the peril of sinkhole coverage.
- Policies without the peril of sinkhole included must have the statutorily-prescribed 14-point notice.
- Carriers must issue policies with the peril of catastrophic ground collapse included and must offer sinkhole coverage if requested by the policyholder.
- Catastrophic ground cover collapse coverage is more limited than sinkhole coverage.

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