

The bill that can save the housing market

Rising property insurance rates are on the verge of popping Florida's housing bubble and the economy — all because of lawsuits. SB 76 can save the state.

By Matt Walsh, Editor & CEO | March 18, 2021

Of all the bills filed this spring in the Legislature, Senate Bill 76 is far and away the session's most important legislation.

Filed by Bradenton Sen. Jim Boyd, SB 76 deals with the mundane subject of property insurance. Here's the nub of it:

If Boyd's bill passes, it will save Florida's housing market from collapse — and save Florida's economy.

If it fails, Florida's housing bubble will pop. The real estate sales markets for residential and commercial properties will come to a halt. And the ripple will spread harsh economic effects throughout all of Florida:

- Property insurance rates — already rising 20%-50% in the past year — will double within three years.
- Florida-based private property insurers will go bankrupt.
- The national carriers won't write insurance in the state.
- Taxpayer-owned Citizens Property Insurance Co. will be the only source of property insurance, making every Florida taxpayer liable to cover billions of dollars of losses in the event of a major hurricane.
- There will be no such thing as affordable housing.
- Millions of Florida's senior citizens will be unable to afford to stay in their homes.

"100% correct," said Boyd, who has spent his professional life owning an insurance agency in Bradenton. "There will be tsunami effects."

The tsunami has already started, according to Guy Fraker, a corporate strategist who spent six months in 2020 researching the condition of Florida's property and casualty insurance market. "Florida's P&C market is in a free-fall collapse," he told us. "This market is going to fail."

"It's going to be a nightmare," said Gregory Holder, a recently retired circuit judge in Hillsborough County who presided over thousands of insurance cases in his 26 years on the bench. "It is a financial crisis for the citizens of this great state. Everyone is affected by this."

Barry Gilway, the CEO of state-owned Citizens Property Insurance Co., is not as dire, but he agrees current conditions are unsustainable. "Absolutely," he said.

Collapse? Free fall? Unsustainable? Nightmare?

What are they talking about?

If you're a property owner, you're seeing it. Your property insurance rates for 2021 have risen anywhere from 20% to 50% over 2020. "My rate on my house went up 40%," Boyd said.

Michael Mailliard, the owner of Longboat Key-based MIC Insurance, told us that 25% of his clients have been unable to buy homeowner's insurance from either Florida-based or national and international carriers. Either they can't take on the risk financially, or they want to stay clear of Florida.

Citizens, the state's insurer or last resort, has been taking on 4,000 new policies a week since June 2020, and Gilway doesn't see that stopping. After shrinking its policyholders down to 420,000 in 2018, it now expects that number to reach 700,000 by the end of 2021.

All of this is not because of the risk of hurricanes. It's because of insurance-claim lawsuits.

In particular, this insurance crisis is a result of the tsunami of lawsuits against insurers (primarily roof related) that has washed over the entire state in the wake of Hurricane Irma, the 2017 Category 5 storm that destroyed much of the Keys.

Take in these statistics:

- Total damage-claim insurance lawsuits filed in Florida:
2013: 27,416 2014: 31,647
2015: 37,820 2016: 41,851
2017: 49,148 2018: 82,663
2019: 84,087 2020: 85,007
- Amounts paid out by insurance companies in Florida since 2013 to cover damages and legal fees related to these lawsuits: \$15 billion.

Now here's the kicker:

- Of that \$15 billion insurers paid out, 71% covered attorneys' fees; 21% covered insurers' defense fees; and only 8% went to property owners.

Put another way: Trial lawyers took in \$10.65 billion while Florida citizens whose properties were damaged were paid only \$1.2 billion. Or, to bring that differential into a more digestible comparison, Fraker's report shows a lawsuit in which Security First Insurance Co. was ordered to pay a damage award of \$142 to a homeowner and \$31,140 in legal fees to the consumer's lawyer — 21,041% more than the awarded damages.

Disparities like the one above are common. Fraker's report shows another suit in which the insured received \$41,000 in damages while the attorney representing him received \$1.2 million. The list goes on and on.

Boyd told us of one attorney who filed 1,234 lawsuits against insurers in three months. "That's 13.4 a day," he said.

Holder told the Senate Judiciary Committee earlier this month that the 13th Judicial Circuit "has several thousand of these cases with well over 500 cases filed by one law firm.

"Upon discovering this clearly unethical and arguably illegal conduct," Holder wrote in a letter to Sen. Jeff Brandes, chair of the Senate Judiciary Committee, "I conducted my own research compiling a list of more than 1,000 cases filed by just four attorneys in two separate firms."

This onslaught of lawsuits has brought on the financial crisis that is about to blow up Florida's property and casualty insurance industry and the companies that underwrite the insurance behind Florida's 6.5 million properties.

After three profitable years, 2013-2015, Florida-based insurance companies have reported five consecutive years of underwriting and operating losses.

Last year, underwriting losses for all property insurers in Florida — what they paid out in claims after premiums — increased 120% to \$1.58 billion compared to \$725 million in 2019. Net losses — premium and investment income minus all expenses — mushroomed from \$372 million to \$747 million.

These losses have occurred even in the face of the state Office of Insurance Regulation approving rate increases of 10%, 14%, 20%, 25% and 52% over the past five years.

Fraker said he had his “a-ha moment” about the state of Florida's insurance market after interviewing two C-suite executives of global reinsurance companies. One referred to Florida as “the highest risk zone in the world.” Another told him: “Hurricanes are not the biggest systemic threat. The lawsuits represent such a high degree of uncertainty, we don't know how to model Florida.”

Gilway of Citizens, who has spent nearly 50 years in the industry, including CEO Zurich of Canada, said there is no other insurance market in the U.S. close to Florida, and that is for two reasons: “the overall judiciary environment and the strength of the trial bar.”

Fraker said: “People think this is the insurance companies versus the lawyers. It's actually the lawyers versus the consumers.

“Think of the litigation costs to insurers as ultimately a tax upon Florida's property owners they don't know exists.”

In 2019 alone, Fraker wrote, the costs allocated to insurance lawsuits totaled between \$2 billion and \$2.5 billion. He figured that every Florida family in 2020 paid a \$651 annual hidden tax that no other state has — money that went “into a fund owned by fewer than 2,000 stakeholders [lawyers].”

How did this happen?

Gilway pegged it. The Florida trial bar has manhandled the Legislature for decades, crafting and shepherding legislation into law that tilts the legal system and incentives in its favor.

This is where insurance litigation becomes complicated. There are formulae for attorney fees and contingencies that allow multipliers to be applied to attorney fees that drive up costs.

Key Parts of SB 76

The guts of the bill would:

- Award attorneys' fees in line with the value of settlements, still allowing for higher amounts in rare and exceptional cases;
- Require policyholders to provide a pre-lawsuit notice to the insurer that clearly sets forth the amount demanded and the basis of the dispute and give the insurer a specified time to inspect the property prior to a lawsuit being filed;

- Reduce from three years and five years to two years the deadline to file property insurance claims; and
- Allow property insurers to offer policies of actual cash value roof coverage for roofs older than 10 years rather than total roof replacement, except in the case of a total loss.

In addition, one of the drivers of the current crisis are the thousands of lawsuits related to roof replacements. Contractors go door to door through neighborhoods offering consumers vouchers for reporting even the tiniest leak, hoping to parlay the leak into a total roof replacement.

To address the crisis, Brandes convinced Senate President Wilton Simpson of the urgency for reforms — even if it means taking on the trial bar. Brandes, Boyd and Senate Insurance Committee staffers collaborated to craft SB 76 (see box).

Fraker, who is neither an insurer nor an attorney, said Boyd’s bill would be a major fix to the litigation issue and bring stability to the market. Gilway said it would be a good start. The two of them, along with Boyd and Brandes, say if it doesn’t pass, there will be nothing to stop the runaway litigation.

“Something has to give,” Gilway said.

Their fear: the trial bar’s grip on the House.

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