

CHAPTER 69J-166
PROPERTY INSURANCE CLAIMS

- 69J-166.002 Mediation of Commercial Residential Property Insurance Claims
69J-166.031 Mediation of Residential Property Insurance Claims

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

(1) Purpose and Scope. This rule implements section 627.7015, 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, 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.

(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 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) "Complainant" refers to the party requesting mediation.

(e) "Department" means the Department of Financial Services.

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

(g) "Party" or "Parties" means the policyholder and their insurer, including Citizens Property Insurance Corporation, when applicable.

(h) "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. 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 a first-party claim which falls within the scope of this rule is filed by the policyholder, the insurer shall notify the policyholder of the right to participate in 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 shall be in writing and 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 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 days from the date the request is received by the Department to otherwise resolve the dispute before a mediation conference can be scheduled."

3. The notice shall also:

a. Include detailed instructions on how the policyholder is to request mediation, including the address, phone number, and 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;

c. Include the insurer's address and phone number for requesting additional information;

d. State that the Administrator will select the mediator;

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,

f. Indicate that the policyholder is to notify the mediator 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. A policyholder may request mediation by submitting a completed Form DFS-II-1669, Request for Commercial Residential Insurance Mediation (Rev. 2/16), <http://www.flrules.org/Gateway/reference.asp?No=Ref-06650>) which is hereby incorporated by reference, 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-II-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 Mediation Section within 3 business days of receipt of the request by email to Mediation@myfloridacfo.com. The Administrator shall notify the insurer within 3 business days of receipt of requests filed with the Department. The policyholder should 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. The claim and policy number for the policyholder,

c. A brief description of the nature of the dispute,

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 by submitting a completed Form DFS-II-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-II-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 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.

(c) Upon receiving a request for mediation, and after the expiration of the 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 file number, the date of the request for mediation, and that the mediation is to occur within 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 section 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). 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 shall determine whether the claim 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, the insurer shall follow the process set forth in subsection (4), above.

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

(a) The total cost for commercial residential mediation shall not exceed \$5,000, with \$300 per hour not to exceed \$4,800 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 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 paid to the Administrator by the insurer. All administrative fees received by the Department shall be placed in the Insurance Regulatory Trust Fund.

(d) Should a commercial residential mediation conference be cancelled for any reason by the policyholder or the insurer after it has been scheduled, the mediator shall be paid for all hours worked on the issue as specified in paragraph (6)(a), above, and 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 10/1/14), which are hereby incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06740> or <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 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 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 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 mediator is unable to handle the conference competently, or other reasons that would reasonably be expected to impair the conference. Complaints concerning a mediator shall be written and submitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Education, 200 East Gaines Street,

Tallahassee, Florida 32399-4212.

(8) Mediation Conference.

(a) Location.

1. 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. 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. 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. 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. 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.

(b) Timing and Continuances. The mediation conference 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 include 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 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 their position at the conference, result in significant financial hardship, or other reasonably justified grounds.

(c) Attendance.

1. The 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 mediation conference also may be attended by persons who may assist a party in presenting his claim or defense in the conference, such as contractors, adjusters, engineers, and interpreters. The parties may not have separate counsel in the mediation conference unless requested by the policyholder or if the parties agree otherwise. If the policyholder elects to have an attorney participate in the conference, the policyholder shall notify the mediator of such participation 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.

(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 and policy number for the policyholder. The statement shall 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.

(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. 2/16) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-06651>), which is hereby incorporated by reference. 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 mediator prior to 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 this form is submitted.

(9) Disbursement of Costs.

(a) The insurer shall pay the mediator's fee and the Administrator's fee. All funds due the Department shall be remitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212, together with a reference to the Department's file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. These funds 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 disposition Form 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 Form 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 shall be considered an absence. Payment shall be as follows:

a. If the policyholder fails to appear at the conference, the conference 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 shall be applied towards the second mediation with the insurer paying the balance of the cost of that second mediation. The mediator's fee shall be payable directly to the mediator and the administrative fee 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 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 to the Florida Office of Insurance Regulation for administrative action pursuant to section 624.15, F.S.

(b) Any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, 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)(g), with the Department, indicating whether or not the parties reached a settlement. In the event a settlement is reached, the policyholder shall have 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 shall act as a release of specific issues that were presented at the conference.

(b) Any additional claims under the policy shall be presented as separate claims. However, the release 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, 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, 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.

(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) "Complainant" refers to the party requesting mediation.

(e) "Department" means the Department of Financial Services.

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

(g) "Party" or "Parties" means the policyholder and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

(h) "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. 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 a first-party claim which falls within the scope of this rule is filed by the policyholder, the insurer shall notify the policyholder of the right to participate in 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 shall be in writing and 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 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 days from the date the request is received by the Department to otherwise resolve the dispute before a mediation conference can be scheduled."

3. The notice shall also:

a. Include detailed instructions on how the policyholder is to request mediation, including the address, phone number, and 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;

c. Include the insurer's address and phone number for requesting additional information;

d. State that the Administrator will select the mediator;

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,

f. Indicate that the policyholder is to notify the mediator 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. A policyholder 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. 02/16) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-06665>), which is hereby incorporated by reference, to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy, and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212. The form may be obtained 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 Mediation Section within 2 business days of receipt of the request by email at Mediation@myfloridacfo.com. The Administrator shall notify the insurer within 3 business days of receipt of requests filed with the Department. The policyholder 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. The claim and policy number for the policyholder;
- c. A brief description of the nature of the dispute;
- 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. 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 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.

(c) Upon receiving a request for mediation, and after the expiration of the 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 file number, the date of the request for mediation, and that the mediation is to occur within 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 section 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. 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 shall determine whether the claim 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, the insurer shall follow the process set forth in subsection (4), above.

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

(a) The total cost for residential mediation shall be \$350, with \$300 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 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 paid to the Administrator by the insurer. All administrative fees received by the Department shall be placed in the

Insurance Regulatory Trust Fund.

(d) Should a residential mediation conference be cancelled for any reason by the policyholder or the insurer after it has been scheduled, the mediator shall be paid 50% of the mediator's fee and 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 10/1/14) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-0740>), which 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 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 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 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 conflict of interest between a party and the mediator, that 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 shall be written and submitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212.

(8) Mediation Conference.

(a) Location.

1. 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. 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. 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. 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. 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.

(b) Timing and Continuances. The mediation conference 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 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 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 their position at the conference, result in significant financial hardship, or other reasonably justified grounds.

(c) Attendance.

1. The 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 mediation conference also may be attended by persons who may assist a party in presenting his claim or defense in the conference, such as contractors, adjusters, engineers, and interpreters. The parties may not have separate counsel in the mediation conference unless requested by the policyholder or the parties agree otherwise. If the policyholder elects to have representation in the conference, the policyholder shall notify the mediator of such participation 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.

(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.

(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. 2/16), which is hereby incorporated by reference. A copy of the form can be obtained at <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 mediator prior to 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 this form is submitted.

(9) Disbursement of Costs.

(a) The insurer shall pay the mediator's fee and the Administrator's fee. All funds due the Department shall be remitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212, together with a reference to the Department's file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. These funds 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 disposition Form 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 Form 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 shall be considered an absence. Payment shall be as follows:

a. If the policyholder fails to appear at the conference, the conference shall be considered to have been held and the insurer must make payment in accordance with subsection (6) 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 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 subsection (6) of this rule. 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 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 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, 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, 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> and the following website: www.myfloridacfo.com/Division/Consumers/Mediation/CommercialResidentialMediation.htm. In the event a settlement is reached, the policyholder shall have 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 shall act as a release of specific issues that were presented at the conference.

(b) Any additional claims under the policy shall be presented as separate claims. However, the release 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.

CHAPTER 69J-176
MEDIATION OF BODILY INJURY AND PROPERTY DAMAGE CLAIMS

69J-176.022 Mediation of Bodily Injury and Property Damage Claims

69J-176.022 Mediation of Bodily Injury and Property Damage Claims.

(1) Scope of rule. This rule implements section 627.745, F.S., and applies to any claim filed with an insurer for bodily injury in an amount of \$10,000 or less or any claim for property damage in any amount, arising out of the ownership, operation, use, or maintenance of a motor vehicle when a party demands mediation before a lawsuit has been filed.

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

(a) “Complainant” refers to the party requesting mediation of a claim.

(b) “Complete request for mediation” means that the complainant has requested mediation by filing Form DFS-I0-510, “Automobile Mediation Request Form,” rev. 8/15, with the Department and the respondent and complainant have paid their share of the costs of mediation pursuant to paragraph (3)(b), below.

(c) “Department” means the Department of Financial Services or its designee.

(d) “Respondent” means the party not initiating the request for mediation.

(e) “Service office” means a designated office of the Department of Financial Services.

(3) Request for Mediation.

(a) A complainant requesting mediation shall file with the Department a request for mediation on Form DFS-I0-510, “Automobile Mediation Request Form,” rev. 8/15, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06891>, which is hereby adopted herein and incorporated by reference. This Form may be obtained online at the following website: http://www.myfloridacfo.com/Division/Consumers/Mediation/documents/am_DFS-I0-510.pdf and filed with the Department by emailing it to Mediation@MyFloridaCFO.com, faxing it to (850)488-6372, submitting it online at the following website: <https://apps.fldfs.com/ESERVICE/MediationInfo.aspx> or mailing it to the Alternative Dispute Resolution Section, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0300. A request for mediation shall be considered complete only when all costs of mediation are received by the Department. The Department shall notify the complainant in writing within 5 business days of receipt of payment by the respondent.

(b) The costs of mediation shall be \$200, and the insured and the insurer shall each pay \$100 to the Department as its share of the costs of mediation.

(c) Upon receipt of a request for mediation, the Department shall issue an invoice to the respondent, specifying the respondent’s share in the costs of mediation. The respondent shall make payment on or before the due date which shall be indicated on the invoice, unless the provisions of paragraph (4)(e) are met. The due date shall be 21 days after the date of the invoice.

(d) All payments by the parties shall be made by certified check, money order, or insurance company check or draft made payable to the Department of Financial Services.

(e) If a respondent objects to the mediation conference and refuses to participate, the respondent must, on or before the due date of the invoice, notify the Department in writing of its objection and refusal and specifically state the reasons therefor. These reasons shall be deemed confidential and exempt from the provisions of subsection 119.07(1), F.S., and shall not be publicly disclosed without the written consent of all parties to the dispute. Any research or evaluation effort directed at assessing program activities or performance shall protect the confidentiality of such information.

(4) Mediators.

(a) Mediator Selection. Upon receiving a complete request for mediation, the Department shall randomly select from the Department’s list a mediator to conduct the mediation conference. The Department shall notify the parties of the selected mediator via e-mail. Each party may once reject the selected mediator by notifying the Department. Any rejection of a mediator must be in writing and mailed to the Alternative Dispute Resolution Section, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4212 or emailed to Mediation@MyFloridaCFO.com and received by the Department within three (3) business days of the date of the written notice of the mediator selection. If a mediator has not been rejected within three (3) business days of the date of the written notice of the mediator selection, the Department shall notify the mediator of his or her selection via e-mail. The mediator shall log into the Department’s Alternative Dispute Resolution Management System at <https://apps.fldfs.com/mediationmanager/Login.aspx> to view the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department’s file number, the date of the request for mediation,

and information that the mediation is to occur within twenty-one (21) days of the date of assignment to the mediator. The mediator will have three (3) business days from the date of notification by the Department to accept or reject the selection. The acceptance or rejection of the selection by a mediator must be completed through the Department's Alternative Dispute Resolution Management System at <https://apps.fldfs.com/mediationmanager/Login.aspx> within three (3) business days of the date of the written notice of the mediator selection. If the mediator rejects the selection or fails to accept the selection within three (3) business days, then the Department shall randomly select another mediator. A mediator may refuse to conduct a particular mediation.

(b) Grouping of Assignments. Multiple requests for mediation involving the same claim 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.

(c) 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 10/1/14), <http://www.flrules.org/Gateway/reference.asp?No=Ref-06901>, which are hereby incorporated by reference and available at <http://www.flcourts.org/core/fileparse.php/422/urlt/RulesBookletOctober2014.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 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 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.

(d) Complaints; Discipline. Complaints concerning a mediator shall be written and e-mailed to Mediation@MyFloridaCFO.com or mailed to the Alternative Dispute Resolution Section, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The Alternative Dispute Resolution Section shall review all alleged instances of dishonest, incompetent, fraudulent, or unethical behavior on the part of a mediator and all instances in which the mediator allegedly failed to promptly and completely respond to proper requests from the Department and all instances in which the actions or failure to act on the part of the mediator violate this rule or standards set forth in this rule or are counter to the intent and purpose of this mediation program or this rule or section 627.745, F.S. In such instances, the Department shall institute proceedings in accordance with chapter 120, F.S., to revoke the appointment of any mediator whom the Department finds has acted in a manner which shows that individual to be unsuited to be a mediator in this program.

(5) Mediation Conference.

(a) Location. The mediation conference shall be held at a reasonable location specified by the mediator within the insured's county of residence, unless all parties agree otherwise. In times of declared disaster, the Department shall assign the mediation location and notify the mediator of same, if the Department determines such action is necessary to facilitate and expedite the mediation process. The Department shall make available various conference locations throughout the state for possible use, if the Department determines such action is necessary to facilitate and expedite the mediation process. Before scheduling a mediation conference, the mediator may contact the Alternative Dispute Resolution Section to determine the availability of office facilities to accommodate the mediation conference. 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 Department has assigned a location, the Department must also agree to the alternate location. The mediator will notify the parties and the Department of the exact time, date, and location of the conference.

(b) Telephonic Mediation. Upon written consent of all parties, the mediation conference may be held by telephone if an in-person meeting of the parties and the mediator is inconvenient. The mediator shall notify the Department in writing of the telephone mediation.

(c) Timing and Continuances. The mediation conference shall be held within 45 days after receipt by the Department of a complete request for mediation. 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 of the date and place of the rescheduled conference. If the applicant demonstrates to the mediator, on Form DFS-I0-510, "Automobile Mediation Request Form," rev. 8/15, the need for an expedited mediation conference due to an undue hardship, the conference shall be conducted at the earliest date convenient to all of the parties and the mediator.

(d) Attendance. The insured 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 make an agreement to completely resolve the claim.

(e) Good Faith Negotiation. All parties shall negotiate in good faith. By participating in the mediation process under these rules, the participants agree to negotiate in good faith to attempt to resolve the claim and agree to remain in the mediation conference until the claim is resolved or until the mediator declares an impasse. There is no requirement that the claim must be resolved in mediation.

(6) Disbursement of Funds. The funds paid by the parties shall be disbursed as follows:

(a) Completed Mediation Conference. If the mediation conference is held, 90% of the costs of mediation shall be disbursed to the mediator. The remaining 10% of the costs of mediation shall be deposited in the Insurance Regulatory Trust Fund.

(b) Cancellation. If a mediation conference is cancelled by a party for reason of settlement or for any other reason, the parties shall notify the mediator and the Department upon cancellation. If the mediation conference is not held due to cancellation, 70% of the individual party's paid costs of mediation shall be returned to the paid parties. Ten percent of the costs of mediation shall be deposited in the Insurance Regulatory Trust Fund. The mediator shall receive 20% of the costs of mediation.

(c) Cancellation Due To Absence. If a mediation conference is cancelled due to failure of a party to attend a conference, then the attending party shall be returned his paid share of the costs of mediation. The absent party will be refunded nothing. The mediator shall receive 80% of the remaining costs of mediation, and the remaining 20% of the costs of mediation shall be deposited in the Insurance Regulatory Trust Fund. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered an absence.

(d) Rescheduling a Cancelled Mediation Conference. If a party wishes to mediate a claim after cancellation, the party must complete and file an original application with the Department as set forth above.

(e) Any disputes regarding the amount of disbursement of funds shall be resolved by the Department.

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

(g) The Department reserves the right to reduce fees based on consumer surveys and cost analysis.

(7) Post-Mediation.

(a) Disposition. Mediators shall report to the Department on the status of property insurance mediation conferences by submitting Form DFS-I4-2169, "Mediation Disposition Form," rev. 2/16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06892>, which is hereby incorporated by reference. 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 mediator prior to the scheduled hearing and the mediator will submit the Mediation Disposition Form confirming the settlement. A mediation conference will not be considered complete and the Administrator will not bill the insurer until this form is submitted.

(b) Any demand for refund by a party to a mediation conference shall be filed in writing with the Department within 10 days of the last mediation conference at issue.

Rulemaking Authority 624.308(1), 627.745(4), (5) FS. Law Implemented 624.307(1), 627.745 FS. History—New 3-14-93, Amended 8-6-98, 9-17-01, Formerly 4-176.022, 69B-176.022, Amended 6-7-16.