

## Building Codes At Root Of Fla. Insurance Market Problems

By **Shawn Rice**

Law360 (May 20, 2022, 1:20 PM EDT) -- Florida's special session this month is expected to address major issues hitting the state's insurance market hard, with one area of focus on how changes to building codes for properties in the state could positively affect homeowners' premiums and insurer concerns.

Republican Gov. Ron DeSantis convened the special session, asking lawmakers to address litigation reform and reinsurance, but he also included another growing problem that influences both: building codes.



In the wake of the deadly Surfside condominium collapse in June 2021, which resulted in a \$997 million settlement for the victims, insurance experts are calling on Florida lawmakers to reform the state's building codes to help curb insurers' risk from covering older buildings. (AP Photo/Gerald Herbert, File)

The Surfside condominium collapse in June 2021, which left 98 people dead, and so-called roofing schemes — that some in the industry say crowd the courts with insurance-related litigation — have lawmakers feeling a sense of urgency to make changes to building codes in Florida.

Law360 has already taken a look at several topics that insurers and policyholders say need attention by Florida lawmakers: **litigation reform** and **reinsurance**. Now, we're examining other key challenges the Legislature is likely to address in its special session, which will be held from May 23 to May 27.

**Surfside Tragedy Wake-Up**

Building codes for commercial and residential properties became an area of urgency in Florida in the wake of the Surfside condominium collapse, which sparked renewed interest by the insurance industry over safety concerns and preventive measures for older buildings in the state.

Victims of the Champlain Towers South condominium collapse filed litigation, and on May 11, attorneys for the victims **said they'd reached a \$997 million settlement.**

The National Association of Mutual Insurance Cos. and the American Property Casualty Insurance Association spoke with Law360 in October about how **the Surfside tragedy was a reminder** that not all property damage is caused by weather-related events, and advocated for tougher building codes as a way to prevent losses.

Caitlin Murray, NAMIC's Southeast regional vice president, told Law360 in a statement this week that changes to building codes — while good public policy — aren't enough to curb the rising property insurance costs in Florida's market. The root problem extends to Florida's litigation environment, she said.

"We expect that legislators will consider a number of proposals aimed at lowering insurance costs and bolstering availability of coverage. In order to truly make an impact, however, Florida's Legislature must find the political will to stand up to the trial bar and reform the litigation environment," Murray said.

A representative of APCIA declined to comment further.

Insurance experts encouraged preventive measures that would strengthen buildings, particularly those in catastrophe-prone areas. Policyholder advocates suggested insurance companies could encourage homeowners with premium discounts to take certain steps to improve their homes.

After the Surfside collapse, attorneys told Law360 it **was a wake-up call for an overhaul** of regulatory authority over statewide inspection standards and mandatory reserves for condominium associations.

The Surfside tragedy also put a lot of attention on the engineering reports for older buildings, which has caused lenders and insurance companies to scrutinize the reserves set aside by condominiums.

David Haber of Haber Law in Miami, who practices in construction law, said lenders and insurers are looking more closely at the rating of buildings' financial and engineering conditions. A lot of insurance carriers have declined to insure buildings that are problematic with engineering reports showing balcony or garage problems, he said.

"This is the natural swing of the pendulum after Surfside. There are tremendous amounts of scrutiny on the safety and financial conditions," he said. "Premiums for insurance have gone through the roof."

The problems for condominiums extend to directors and officers liability insurance. Experts said that insurers have pulled back in the Florida market on the policy limits in their underwriting for D&O policies with \$1 million in liability coverage and umbrella policies with no more than \$10 million to \$15 million.

And commercial general liability insurance umbrella policies with more than \$100 million, even for luxury high-rises, are hard to find.

"Insurance carriers are now seeing the Achilles' heel that came out of Surfside and saying we aren't insuring that risk anymore for the peanuts we were charging before," Haber said.

There hasn't been any successful regulation to address building safety issues, and experts don't believe the topic will necessarily be approached at the special session given the urgency of homeowner concerns.

Chris Draghi, associate director at AM Best, said homeowners insurance will likely be the focus of the legislative session, but noted that safety regulation following the Surfside collapse "was close to the finish line" at the last Florida legislative session. He said lawmakers could reintroduce that legislation to bring it "past the finish line."

### **Roofing Scheme Solutions**

One likely focus of the special session will be building code changes to combat so-called roofing schemes — though insurance carriers and policyholders disagree on whether there is even truly a problem with

roofing litigation. Every three years, Florida construction groups and lawmakers propose changes to building codes in the state. May's special session is slightly ahead of that next renewal cycle.

Kyle Ulrich, president of Florida Association of Insurance Agents, said the state's weather problems create incentives built into the market for roofers, water remediators or attorneys. Each of these groups "tends to find nuances" in Florida law to help file lawsuits against insurers, and insurers "have little of a defense."

In the classic roofing scheme, bad actors ask to inspect a home's roof for damage and then offer to replace the entire roof, assuring the unsuspecting homeowner that the cost will be covered by the homeowners' insurer.

The Florida Roofing and Sheet Metal Contractors Association wants lawmakers to create an exception to an existing replacement rule requiring a roof to be completely repaired when there is more than 25% damage. The proposed exception specifies that the age of the material used in the roof should be considered as a factor for total replacement.

Mike Silvers, director of technical services at the FRSA, said the exception attempts to put a stop to a loophole taken advantage of by bad actors who knock on doors and offer free roofs paid for by insurers. The people behind the free roof scheme put all roofing contractors in "a bad light," Silvers said.

Under the proposed exception, roofs less than 9 years old won't have to be completely replaced in some cases. Ideally, some experts said, homeowners should invest in modern systems that can last between 30 and 40 years.

Silvers explained the 25% rule creates an opportunity for roof replacements to occur more frequently — following a newer version of building codes — at the cost to insurers. Insurance companies backed the proposed exception because it will save a lot of unnecessary total roof replacements, according to experts, who hoped lawmakers will take up the proposal at the special session.

Consumer groups have pushed back on the exception to the 25% rule, arguing that it chips away at insurance coverage for homeowners at a time when property owners have already been asked by insurance carriers to buy more resilient — and more expensive — roofs.

Silvers said he understands homeowners' frustration, explaining excessive roof replacements create additional environmental waste. Roofers want a better working relationship with insurance carriers and hope insurers recognize that roofs — with an average life cycle of 20 years — shouldn't be replaced every 10 years.

"Getting rid of these older roofs as a way to eliminate the free roof abuse is absurd. That's low-hanging fruit. If all the roofs were 10 years or newer and everybody replaced their roofs, do you really think this fraud would disappear?" he said. "The rest of the fruit will still be in the tree."

The insurance industry also wants to add roof deductibles into policies to stem off unwarranted roofing litigation.

In late March, Florida Insurance Commissioner David Altmaier publicly backed the idea of allowing insurance companies to add roof deductibles into their policies with endorsements. But insurance experts said the problem will be persuading consumers to buy into this endorsement in the first place. The insurance commissioner's office couldn't be reached for additional comment.

Roofing deductibles have also been a focal point of previously stalled legislation.

In March, lawmakers in the House and Senate couldn't agree on Florida Senate Bill 1728, which would have required warnings in roof contracting bids to indicate homeowners had to cover insurance deductibles and said it was a felony for a contractor to pay them. That bill aimed to reduce the number of assignments of benefits, in which contractors accept a homeowner's rights to sue an insurance carrier.

Insurance experts hope for more creative solutions by Florida lawmakers in May's special session, though the immediate impact of any laws affecting building codes and policy language won't be felt until the next time policies are renewed. And that uncertainty is a concern for homeowners ahead of the hurricane season, which begins June 1.

Florida's insurance consumer advocate, Tasha Carter, said the special session is an opportunity for the

state's lawmakers to draft and to propose legislative policies that benefit consumers, but she doesn't expect any legislative changes that are passed to have an immediate impact on the market.

Oftentimes, there is a rush to solve certain factors impacting the insurance market by placing a larger burden on consumers, Carter said, so she called on lawmakers to consider the consumer's viewpoint.

--Additional reporting by Eli Flesch and Carolina Bolado. Editing by Tim Ruel.