



## **Not Again?! An Update on AOBs in Florida Construction.**

DECEMBER 12, 2022

**BEGIN** >





Today's  
**Presenter**



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**Text Questions to 727-743-1037**



## AOBs in Florida Since 2019

- July 1, 2019 – 627.7152 is Enacted
- Approximately 20 published court orders and 2 appellate decisions
- May 26, 2022 – 627.7152 is Amended
- Approximately 3 published court orders and 10 appellate decisions
- Special session to revisit this issue again starting today



## 627.7152, *Florida Statutes*

- Governs assignment agreements
- Specifically defines an assignment agreement
- Contains 7 requirements for AOBs
- Non-compliant AOBs are unenforceable
- Puts the burden of maintaining documents and other items on the assignee





## 2020 Published Rulings

Date	Case Style	Citation	Court	Order
2/10/2020	Island Roofing and Restoration LLC v. ASI Preferred Insurance Corp	27 Fla. L. Weekly Supp. 1026a	20th Judicial Circuit in and for Collier County	Order Granting Defendant's Motion to Strike Attorney Fee Claim in Amended Complaint
3/27/2020	Father & Son Carpet Cleaning & Restoration LLC v. Western World Insurance Company	28 Fla. L. Weekly Supp. 340a	Miami-Dade County Court	Order Granting Defendant's Motion to Strike Plaintiff's Claim for Attorney's Fees
9/17/2020	Kidwell Group LLC v. American Integrity Insurance Company of Florida	29 Fla. L. Weekly Supp. 366a	Seminole County Court	Order Denying Defendant's Motion to Dismiss
10/15/2020	Kidwell Group LLC v. State Farm Florida Insurance Company	29 Fla. L. Weekly Supp. 335b	St. John's County Court	Order Denying Defendant's Motion to Dismiss
10/15/2020	Restoration Doctor LLC v. Citizens Property Insurance Corporation	28 Fla. L. Weekly Supp. 634b	Broward County Court	Order Granting in Part Defendant's Motion to Dismiss
10/24/2020	Mold Inspection & Testing of South Florida v. State Farm Florida Insurance Company	28 Fla. L. Weekly Supp. 854b	Miami-Dade County Court	Order on Plaintiff's Motion to Tax Attorney's Fees and Costs Based on Defendant's Confession of Judgment
11/10/2020	Kidwell Group LLC v. State Farm Florida Insurance Company	29 Fla. L. Weekly Supp. 356a	Bay County Court	Order Denying Motion to Dismiss
11/16/2020	Kidwell Group LLC v. United Property & Casualty Insurance Company	29 Fla. L. Weekly Supp. 361b	Palm Beach County Court	Order Denying Defendant's Motion to Dismiss



## 2021 Published Rulings

Date	Case Style	Citation	Court	Order
3/16/2021	Father & Son Restoration & Mitigation v. Peoples Trust Ins Co.	29 Fla. L. Weekly Supp. 138b	Miami-Dade County Court	Order Denying Defendant's Motion to Dismiss Complaint
4/5/2021	Kidwell Group LLC v. United Property & Casualty Insurance Company	29 Fla. L. Weekly Supp. 335a	Volusia County Court	Order Denying the Defendant's Motion to Dismiss
5/3/2021	Mold Eliminators LLC v. Citizens Property Insurance Corporation	29 Fla. L. Weekly Supp. 210a	Miami-Dade County Court	Order on Defendant's Motion for Reconsideration of the Court's Denying Defendant's Motion to Dismiss the Complaint
5/3/2021	Mold Eliminators LLC v. Citizens Property Insurance Corporation	29 Fla. L. Weekly Supp. 210a	Miami-Dade County Court	Order on Defendant's Motion for Reconsideration of the Court's Denying Defendant's Motion to Dismiss the Complaint
5/10/2021	Kidwell Group LLC v. United Property & Casualty Insurance Company	29 Fla. L. Weekly Supp. 361a	Palm Beach County Court	Order Denying Defendant's Motion to Dismiss Plaintiff's Statement of Claim with Prejudice for Lack of Standing and Alternative Motion to Dismiss for Failure to State a Cause of Action
5/15/2021	Industry Standard Experts LLC v Citizens Property Insurance Corp	29 Fla. L. Weekly Supp. 369a	Broward County Court	Order Denying Defendant's Motion to Dismiss With Notice of Impending Default
5/19/2021	Kidwell Group LLC v/ First Protective Insurance Copmany	29 Fla. L. Weekly Supp. 359a	Bay County Court	Order Denying Motion to Dismiss



## 2021 Published Rulings

Date	Case Style	Citation	Court	Order
6/11/2021	Kidwell Group LLC v. Heritage Property & Casualty Insurance Company	29 Fla. L. Weekly Supp. 368a	Lee County Court	Order Denying Defendant's Motion to Dismiss and Motion to Stay Discovery
6/24/2021	Water Dryout LLC v. First Protective Insurance Company	29 Fla. L. Weekly Supp. 321a	St. Lucie County Court	Order of Dismissal Without Prejudice
7/4/2021	Industry Standard Experts LLC v Citizens Property Insurance Corp	29 Fla. L. Weekly Supp. 342a	Miami-Dade County Court	Order Denying Defendant's Motion to Dismiss on Rehearing
12/6/2021	Dryzone Solutions LLC v State Farm Florida Insurance Company	29 Fla. L. Weekly Supp. 765c	Osceola County Court	Order Granting Defendant's Motion to Dismiss Plaintiff's Statement of Claim
12/13/2021	Air Quality Assessors of Florida v. First Protective Insurance Company	29 Fla. L. Weekly Supp. 777a	Broward County Court	Order Denying Defendant's Motion for Summary Judgment
3/3/2022	Kidwell Group LLC v. Progressive Property Insurance Corp	30 Fla. L. Weekly Supp. 92a	Volusia County Court	Order Granting Defendant's Motion for Summary Judgment and Memorandum of Law



## Pre-Amendment Appellate Decisions

- Water Damage Express LLC v. First Protective Insurance Company
- Total Care Restoration LLC v. Citizens Property Insurance Corporation
- 627.7152 Applies based on the date of the assignment agreement, not the date of the lawsuit or the date of the policy, and is not retroactive.



## 2022 Changes to 627.7152

- Definition of assignment agreement is changed:
- “Assignment agreement” means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the to protect, repair, restore, or replace property or mitigating to ~~mitigate~~ against further damage to the property. The term does not include fees collected by a public adjuster as defined in s. 626.854(1).



## 2022 Changes to 627.7152

- Definitions of disputed amount and judgment obtained are deleted.
- Changes to notice requirements.
- Broadened indemnification requirements between assignee and assignor.
- Restricted attorneys' fees to only those that would be available under 57.105, Fla. Stat.



## Post-Amendment Decisions

Date	Case Style	Citation	Court	Order
5/27/2022	Kidwell Group LLC v. American Integrity Insurance Company of Florida	339 So. 3d 1068	5th DCA	Reversal of Order Dismissing Complaint With Prejudice
6/3/2022	JPJ Services LLC v. New Hampshire Insurance Co	2022 WL 1908970	S.D. Fla	Order Granting Defendant's Motion to Dismiss
6/15/2022	Kidwell Group LLC v. United Property & Casualty Insurance Company	343 So. 3d 97	4th DCA	Affirmance of Order Dismissing Complaint with Prejudice
7/22/2022	Kidwell Group LLC v. Olympus Insurance Company	47 Fla. L. Weekly D1571a	5th DCA	Affirmance of Order Dismissing Complaint with Prejudice
8/10/2022	Mold Buster Detection Services LLC v. Citizens Property Insurance Corp	47 Fla. L. Weekly D1674a	4th DCA	Affirmance of Order Dismissing Complaint with Prejudice
8/19/2022	Sigma Funding Group LLC v. Security First Insurance Company	345 So.3d 960	5th DCA	Reversal of Order Dismissing Complaint With Prejudice
8/31/2022	National Claims Funding Company v. Security First Insurance Company	345 So.3d 915	4th DCA	Reversal of Order Granting Motion to Dismiss



## Post-Amendment Decisions

Date	Case Style	Citation	Court	Order
9/1/2022	Aqua Docs Restoration, Inc. v. People's Trust Insurance Co.	30 Fla. L. Weekly Supp. 447b	Broward County Court	Final Order of Dismissal Upon Court's Granting Defendant's Motion to Dismiss Plaintiff's Complaint with Prejudice
9/12/2022	Walker v. State Farm Florida Insurance Company	30 Fla. L. Weekly Supp. 339a	2nd Judicial Circuit in and for Gadsden County	Order Denying Defendant's Motion to Dismiss Pursuant to Section 627.70152 and Granting Contingent Motion to Stay Case Until Completion of Appraisal
9/16/2022	Kidwell Group LLC v. American Integrity Insurance Company of Florida	47 Fla. L. Weekly D1910a	2d DCA	Affirmance of Order Dismissing Complaint with Prejudice
10/19/2022	Adjei v. First Community Insurance Company	47 Fla. L. Weekly D2116a	3d DCA	Affirmance of Order Dismissing Complaint with Prejudice
11/22/2022	Kidwell Group LLC v. ASI Preferred Insurance Corp	47 Fla. L. Weekly D2428a	5th DCA	Affirmance of Order Dismissing Complaint with Prejudice
12/7/2022	Air Quality Experts Corp v. Family Security Insurance Company	47 Fla. L. Weekly D2592c	4th DCA	Affirmance of Order Dismissing Complaint with Prejudice



## Kidwell Group, LLC v. American Integrity Insurance Co (5/27/2022)

- Dismissal reversed where trial court considered materials outside the four corners of the complaint, though not clear what those materials were.
- Concurrence suggests that application of 627.7152 requires the insurance policy
- Under the prior version of the statute, that would really only apply to indemnification provisions of 627.7152.



## **Sigma Funding Group, LLC v. Security First Insurance Co**

- Dismissal reversed where it was not evident from pleadings whether funding provided was for items that were covered by AOB statute



## Kidwell Group LLC v. American Integrity Insurance Co (9/16/22)

- AOB said it was for “non-emergency indoor environmental assessment in no way is meant to protect, repair, restore, or replace damaged property or to mitigate against further damage to the property”
- But, purpose of assessment was also to “to determine repairability, scope and/or categorization of water damage, testing for contamination including bacteria and/or mold in order to prepare a forensic engineering report and/or remediation protocol report that may be used to prescribe or confirm proper remediation procedures for the damaged property”
- If it looks like a duck and quacks like a duck, it’s a duck.



## Kidwell Group LLC v. ASI Preferred Insurance Corp. (11/22/22)

- An invalid AOB under the statute is void, not voidable
- Insurance carrier has standing to challenge validity of the AOB, based on notice provisions of the statute
- Invoice delivered to insured the day after the execution of the AOB seeking payment for work already performed was not a written, itemized, per unit estimate



## Air Quality Experts Corp v. Family Security Insurance Company

- Affirmed dismissal with prejudice because AOB did not contain a written, itemized, per unit cost estimate
- Attached, standard price list was not sufficient
- Insurer has standing to challenge correctness of AOB because statute expressly states a non-compliance AOB is unenforceable



## What's Next?

- Special Session Starting Today
- HB1A & SB2A – would completely prohibit assignments for policies issued after 1/1/2023
- HB9A – Would require assignee to get assignor's permission before taking legal action or making presuit demands



**Questions?**



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