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MANDATORY MEDIATION AND YOUR PROPERTY INSURANCE CLAIM

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The mounting number of property insurance claims following Hurricane Irma has provided new challenges for Florida's insurance companies. With close to one million hurricane claims filed across the state, insurance companies are looking towards alternative methods to resolve claims.

As an alternative to litigation, insurance companies are increasingly seeking to resolve claims through the insurance policy's mediation provision. While mandatory mediation provisions are not new; some policies are including language that would require mediation to occur as a precondition to litigation.

Florida's Department of Financial Services ("DFS") first established a voluntary mediation program that allowed insureds an opportunity to resolve disputes with their insurance companies without litigation. DFS mediation is a process where a neutral mediator helps encourage the resolution of a disputed claim without dictating the outcome. The new mediation language included in some policies turns this voluntary program, serving as a form of consumer protection, into a potential pitfall for insureds.

Every insured should review their policy to see whether it contains a mandatory mediation provision. If your policy contains such a provision, and you file suit against your insurance company without first mediating, you could be in breach of the policy and be precluded from recovery. While your insurance company may actively seek mediation to resolve your claim, it may also choose to stay silent and raise the failure to mediate as a defense after a lawsuit is filed.

Should you have any questions or concerns about how mediation impacts your insurance coverage, please do not hesitate to contact Michael J. Higer, Gina Clausen Lozier, Gavin Gaukroger, or Christopher Choquette on our Insurance Team.

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