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## DCA Overturns 48-Hour Public Adjuster Ban

A Florida appeals court struck down a ban on public insurance adjusters soliciting business in the first 48 hours after a catastrophe saying the law “unconstitutionally burdens” commercial free speech rights.

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THE CAPITAL, TALLAHASSEE, Dec. 29, 2010 --

A Florida appeals court on Wednesday struck down a ban on public insurance adjusters soliciting business in the first 48 hours after a catastrophe saying the law “unconstitutionally burdens” commercial free speech rights.

The law arose out of a 2007 task force report suggesting some public adjusters unduly pressured homeowners to make decisions regarding their insurance policies while still recovering from the emotional blow of lost or damaged property from a catastrophic event such as a major hurricane. Lawmakers, in turn, banned public adjusters from face-to-face or telephone solicitation of any consumer in the first 48 hours after a major event.

But public adjusters cried foul when the proposal went into law citing free speech and equal protection violations.

Last spring, public insurance adjuster Frederick Kortum, backed by the Florida Association of Public Insurance Adjusters, filed suit in Leon County, arguing the state law was unconstitutionally suppressing his right to do speech in furtherance of business.

He said the statute singled his profession out when adjusters employed by insurance companies could talk to homeowners. And tradespeople, such as roofers or contractors, also aren't subject to the same waiting period before soliciting hurricane-hit homeowners for new business, Kortum noted.

A Leon County circuit judge upheld the law, but on Wednesday a three judge panel of the 1st District Court of Appeal reversed the judge and ruled in Kortum's favor.

“The court found that the primary purpose of the statute is to control conduct, but recognized that the statute does affect the public adjuster's ability to speak,” wrote Appeals Judge William A. Van Nortwick in a 3-0 opinion.

In the appeal, lawyers for the public adjusters argued that uninformed consumers may not take the right steps following a major storm or other catastrophic event that damages their homes and ultimately lose out on money.

In addition to public adjusters, the appeals court's decision represents “a big win for consumers as well,” David Beasley, president of FAPIA, said Wednesday. “There's a lot of information that a public adjuster can provide to homeowners in the first 48 hours that can drastically affect the outcome of the claim.”

The Department of Financial Services, which defended the law, could not immediately provide comment.

Sam Miller, executive vice president of the Florida Insurance Council, which represents insurers, said in an E-mail to the News Service that he was hopeful that the department would appeal the 1st DCA ruling and noted that similar bans had been put in place temporarily following the 2004 and 2005 hurricanes to protect consumers.

"Citizens Property Insurance Corporation and private insurers work diligently to settle claims following a hurricane quickly and fairly," Miller said. "It is unnecessary and inappropriate for an outside party who must be paid by the hurricane victim and not the insurance company to intervene before the insurer's adjuster has even seen the damage."

FAPIA does have an ethics code it requires its members to abide by and the association supports reporting adjusters who abuse their role to the state for proper action.

Van Nortwick, in his opinion, wrote that the department failed to demonstrate that the association's ethics code was "insufficient to regulate unduly coercive or misleading solicitation by public adjusters" or that the law was necessary at all.

"The Department has not demonstrated that prohibiting property owners from receiving any information from public adjusters for a period of 48 hours is justified by the possibility that some public adjuster may unduly pressure traumatized victims or otherwise engage in unethical or unprofessional behavior," he wrote.