

## **House Bill 1774: A closer look at the new homeowner's insurance law**

TAR seeks to clarify misinformation circulating about a new law effective September 1, 2017, related to homeowner's insurance.

### **What does HB 1774 actually do?**

HB 1774 applies to property insurance claims made on or after September 1, 2017.

If a property owner disputes the amount an insurer has agreed to pay on a property claim, the property owner can take the insurer to court. Under the new law, a claimant (property owner) must give written notice (a "presuit" notice) to the defendant (insurance company or agent) of intent to file an action (lawsuit) at least 61 days before that filing.

The notice must include:

- A summary of acts or omissions that resulted in the claim (what the insurance company or agent did);
- The specific amount alleged to be owed to the claimant by the insurer; and
- The amount of reasonable and necessary attorneys' fees incurred by the claimant (estimated on a formula).

A notice is not required if the claimant has a reason to believe there is insufficient time to submit one before the limitations period will expire, or the action (lawsuit) is part of a counterclaim.

Thirty days after receipt of the presuit notice, the insurance company (or agent) can request in writing to inspect, photograph or evaluate the damaged property. The request must be to conduct the evaluation at a reasonable time and in a reasonable manner. The inspection must be completed no later than 60 days after the insurer receives the presuit notice.

If the presuit notice isn't properly given by the claimant, and/or the request for evaluation is denied, a court may put a hold on the lawsuit. That hold will continue until:

- The presuit notice is filed and 60 days have passed from its receipt, or
- 15 days after a requested inspection is completed – whichever is later.

If a claimant names an insurance agent in the lawsuit, the insurer (company) that is a party to the lawsuit may elect to assume that agent's liability – meaning the suit will proceed against the company instead of the individual agent.

If that happens, evidence of the agent's acts or omissions is still admissible at trial, and a judgment against the insurer must include any liability that would have been assessed against the agent individually.



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## **Attorneys' Fees**

HB 1774 changes the way a court can award attorneys' fees to a claimant in these types of lawsuits.

Attorneys' fees can be awarded, and will be the lesser amount of:

- The amount of reasonable and necessary attorneys' fees incurred by the claimant as determined by the court;
- The amount of attorneys' fees that may be awarded under other applicable law as determined by the court; or
- A calculation:
  - The amount to be awarded to the claimant, divided by the amount requested in the presuit notice. That figure is then multiplied by the total amount of attorneys' fees as determined by the court.

### **EXAMPLE**

Amount Awarded by the Court: \$50,000

Amount Alleged in the Presuit Notice: \$75,000

Attorneys' Fees Determined by the Court: \$5,000

$(50,000 \div 75,000) \times 5,000 = \$3,333$

**NOTE:** If the figure that results from that calculation is less than 20 percent of the amount initially requested in the presuit notice (\$15,000 in our example above), the court may not award any attorney's fees.

If the defendant (insurer) proves the presuit notice was not timely filed, he may file a plea with the court and the court may not award attorneys' fees incurred after the date the plea was filed. The defendant must file such a plea no later than 30 days after he originally answers the claimant's lawsuit.

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