



FEMA

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October 14, 2016

MEMORANDUM FOR: Write Your Own (WYO) Company Principal Coordinators and the National Flood Insurance Program (NFIP) Direct Servicing Agent

FROM: 
David I. Maurstad
Assistant Administrator for Federal Insurance
Federal Insurance and Mitigation Administration

SUBJECT: Inclusion of Law Firms on Checks Arising Out of NFIP Claims

Periodically, FEMA, Write Your Own (WYO) companies, and vendors acting on behalf of NFIP insurers receive requests to assign interests in claim payments to third parties, including attorneys, law firms, public adjusters, and others asserting lien interests. This bulletin clarifies FEMA's position concerning the inclusion of attorneys, law firms, or public adjusters as co-payees or lienholders on NFIP checks. As explained below, the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727, sets forth a procedure for individuals requesting an assignment of a federal payment, and federal law preempts any state law with regard to attorney liens, or liens of any sort, on NFIP insurance claim payments.

The manner in which a flood insurance claim payment is issued, including the payees on a check, is governed exclusively by applicable federal laws and regulation, and the terms of the Standard Flood Insurance Policy (SFIP). *See* 44 C.F.R. Pt. 61, App. A(1) and A(2), Art. IX; 44 C.F.R. Pt. 61, App. A(3), Art. X (What Law Governs). Section II of each SFIP defines "you" and "your" as the:

[i]nsured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. Insured(s) includes: any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee ***determined to exist at the time of the loss*** in the order of precedence.

44 C.F.R. Pt. 61, App. A(1), A(2) and A(3), Section II (emphasis added). Third parties, such as attorneys, law firms and public adjusters, whose interest did not exist at the time of the loss are not loss payees under the SFIP.

In addition, the Assignment of Claims Act, 31 U.S.C. § 3727, sets out the conditions necessary to assign a claim against the United States to a third-party. Specifically, 31 U.S.C. § 3727(b) provides that:

An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued. The assignment shall specify the warrant, must be made freely, and must be attested to by 2 witnesses. The person making the assignment shall acknowledge it before an official who may acknowledge a deed, and the official shall certify the assignment. The certificate shall state that the official completely explained the assignment when it was acknowledged. An assignment under this subsection is valid for any purpose.

The Assignment of Claims Act applies to NFIP claim payments. *See, e.g., Diamond v. FEMA*, 689 F. Supp. 163 (E.D.N.Y. 1988).

WYO companies shall not include third-parties as payees on NFIP flood claim payments unless the third party has a valid claim to such payment under the SFIP or complies with the Assignment of Claims Act.

Litigation arising out of a WYO Company's exclusion of attorneys or law firms as co-payees or non-mortgagee lienholders on checks issued arising out of NFIP Claims, will be considered within the scope of the Arrangement. 44 C.F.R. Pt. 62, App. A Art. III (D)(2). Any judgment and all costs arising out of any such litigation will be addressed pursuant to the Arrangement.

cc: Vendors, IBHS, FIPNC, FEMA Regions, Government Technical Representative

Required Routing: Data Processing, Claims