

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HB 1774 addresses lawsuits over payment of property insurance claims, and **part of the new law applies to claims originally made on or after September 1, 2017.**

If a homeowner successfully sues their insurance company for violating prompt payment requirements, the interest owed by the company on the claim would vary depending on when the claim was filed. A claim filed before September 1, 2017 will be subject to an 18 percent interest rate in this situation. A claim filed on or after September 1, 2017 will be subject to a "simple" interest rate—one tied to a market formula (as of writing, this calculation would result in a 10 percent rate).

The remainder of HB 1774 applies to **actions (lawsuits)** made on or after September 1, 2017—**regardless of when the original claim was made.**

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 presuit 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.

Attorneys' Fees

HB 1774 changes the way a court can award attorneys' fees to a claimant who wins a lawsuit against an insurer over payment of a claim.

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. (Examples below)

NOTE: If the figure that results from this calculation is more than 80 percent of the amount initially requested in the presuit notice, full attorneys' fees will be awarded. If it is less than 20 percent of the amount initially requested in the presuit notice, no attorneys' fees may be awarded.

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.

EXAMPLES

The following are examples of how a court may calculate the attorneys' fees that are awarded to a claimant (property owner) under HB 1774. The examples each assume the court awards the claimant \$30,000 for property damages, and the claimant shows \$35,000 in attorneys' fees. The variable is the amount requested in the original presuit notice.

HB 1774 says that attorneys' fees in these cases will be awarded based on the amount originally estimated in the presuit notice. The more "accurate" (i.e.: how close the amount requested in the presuit notice is to the amount the court ultimately gives) the presuit notice, the more attorneys' fees will be awarded.

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| <p>Example A</p> <p>Amount Awarded by the Court: \$30,000 Amount Requested in the Notice: \$35,000 Attorneys' Fees Determined by Court: \$35,000</p> <p>$(30,000 \div 35,000) \times 35,000 = \\$30,000$</p> | <p>Example B</p> <p>Amount Awarded by the Court: \$30,000 Amount Requested in the Notice: \$160,000 Attorneys' Fees Determined by Court: \$35,000</p> <p>$(30,000 \div 160,000) \times 35,000 = \\$6,563$</p> |
| <p>\$30,000 = 85.7% of the amount originally requested. Full attorneys' fees will be awarded, in the amount of \$35,000.</p> | <p>\$6,563 = 18.8% of the amount originally requested. No attorneys' fees will be awarded.</p> |
| <p>Example C</p> <p>Amount Awarded by the Court: \$30,000 Amount Requested in the Notice: \$65,000 Attorneys' Fees Determined by Court: \$35,000</p> <p>$(30,000 \div 65,000) \times 35,000 = \\$16,153$</p> <p>\$16,153 = 46.2% of the amount originally requested. \$16,153 in attorneys' fees will be awarded, leaving the claimant (property owner) liable for the remaining \$18,847 in attorneys' fees.</p> | |