

# FILED

DEC 08 2014

Docketed by AM



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

IN THE MATTER OF:

CASE NO.: 160358-14-AG

CARLOS FUNES, JR.

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## ORDER OF SUSPENSION

THIS PROCEEDING CAME on for final agency action and the Chief Financial Officer, having considered the record, including the Administrative Complaint filed on October 1, 2014, and being fully advised in the premises, finds that:

1. Carlos Funes, Jr. is currently licensed by the Department of Financial Services (the "Department"), pursuant to the Florida Insurance Code, as a public adjuster.
2. On October 1, 2014, the Department issued an Administrative Complaint, attached hereto as "Exhibit A", against Carlos Funes, Jr. alleging that he failed to maintain a surety bond.
3. The Department notified Carlos Funes, Jr. in the Administrative Complaint of the right to request a proceeding in accordance with sections 120.569 and 120.57, Florida Statutes, and that failure to answer the Administrative Complaint or request a proceeding within twenty-one (21) days would result in the imposition of a penalty.

4. In accordance with section 120.60(5), Florida Statutes, the Administrative Complaint was served upon Carlos Funes, Jr. by certified mail, received and signed by Carlos Funes, Jr. on October 9, 2014.

5. On, October 23, 2014, the Department received the Election of Proceeding form from Carlos Funes, Jr., which indicated that he did not dispute the Department's factual allegations or request a hearing in a accordance with sections 120.569 and 120.57, Florida Statutes.

#### FINDINGS OF FACT

6. The factual allegations contained in the Administrative Complaint filed on October 1, 2014, which is attached hereto as "Exhibit A," and fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

#### CONCLUSION OF LAW

7. Based upon the Findings of Fact adopted herein, the Department concludes that Carlos Funes, Jr. violated the specific statutes and rules charged in each count of the Administrative Complaint and hereby adopts the violations charged in each count of the Administrative Complaint as the Conclusions of Law in this case.

#### PENALTY IMPOSED

8. Because Carlos Funes, Jr. did not dispute the Department's factual allegations or request a hearing taken together with the Findings of Fact and Conclusions of Law adopted herein, sufficient grounds exist for the Chief Financial Officer to suspend the license of Carlos Funes, Jr.

(a) All licenses, appointments and eligibility for licensure heretofore issued to Carlos Funes, Jr., within the purview of the Department, are hereby suspended for a period of ninety (90) days.

(b) During the period of suspension, Carlos Funes, Jr. shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Florida Insurance Code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm until the license is reinstated or, if revoked, a new license is issued.

(b) Carlos Funes, Jr. shall not have the right to apply for and the Department shall not grant another license or appointment under the Florida Insurance Code during the ninety (90) day suspension period. The Department shall not grant Carlos Funes, Jr. a new license or appointment or reinstate eligibility to hold such license or appointment if it finds that a replacement surety bond has not been obtained.


(d) Following the ninety (90) day suspension, Carlos Funes, Jr. shall be entitled to file for an application for reinstatement of licensure. However, the license of Carlos Funes, Jr. shall not be reinstated if the circumstance or circumstances for which the license was suspended still exist or are likely to recur, or if he is not otherwise eligible for licensure.

(e) Within ten (10) calendar days of the issuance of this Order of Suspension, Carlos Funes, Jr. shall return to the Department of Financial Services, Attention: Bureau of Licensing, 200 East Gaines Street, Tallahassee, Florida 32399-0319, all licenses issued to Carlos Funes, Jr. pursuant to the Florida Insurance Code.

(f) Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license, or while the license(s) is suspended or revoked, commits a felony of the third degree.

DONE and ORDERED this 8<sup>th</sup> day of December, 2014.



  
Gregory Thomas  
Director, Agent & Agency Services

Copies Furnished To:

needhelppa@gmail.com

Carlos Funes, Jr.  
6528 Southwest 134 Place  
Miami, Florida 33183

Carlos Funes, Jr.  
1475 South Candlenut Avenue  
Homosassa, Florida 34448

Greg Thomas, Director  
Division of Agent & Agency Services  
200 East Gaines Street  
Tallahassee, Florida 32399

Complaint & Settlement  
Division of Legal Service  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

### NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Order is entitled to seek review within thirty (30) days of the rendition of this Order, pursuant to section 120.68, Florida Statutes, and Rule 9.190, *Florida Rules of Appellate Procedure*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, the DFS Agency Clerk. Filing with the Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0390. The fax number is (850) 488-0697. The email address is [Julie.Jones@myfloridacfo.com](mailto:Julie.Jones@myfloridacfo.com).

A copy of the petition or notice of appeal must also be filed with the appropriate district court of appeal within thirty (30) days of the rendition of this Order.

FILED

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CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

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IN THE MATTER OF:

CASE NO.: 160358-14-AG

CARLOS FUNES, JR.  
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ADMINISTRATIVE COMPLAINT

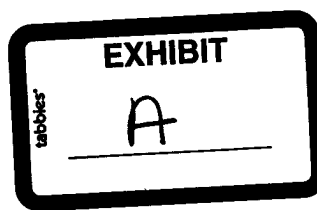
Carlos Funes, Jr.  
1475 South Candlenut Avenue  
Homosassa, Florida 34448

Carlos Funes, Jr.  
6528 Kendale Lakes Drive TH-1204  
Miami, Florida 33183

The Chief Financial Officer of the State of Florida has caused to be made an investigation of Carlos Funes, Jr.'s activities while licensed as a public adjuster in this state, as a result of which it is alleged:

GENERAL ALLEGATIONS

1. Pursuant to chapter 626, Florida Statutes, Carlos Funes, Jr. is currently licensed in this state as a public adjuster.
2. At all times pertinent to the dates and occurrences referred to herein, Carlos Funes, Jr. was licensed in this state as a public adjuster.
3. Pursuant to chapter 626, Florida Statutes, the Florida Department of Financial Services (the "Department") has jurisdiction over Carlos Funes, Jr.'s license and appointment.



## COUNT I

4. The above general allegations are hereby realleged and fully incorporated herein by reference.

5. Section 626.865(2), Florida Statutes, provides, in part, that at the time of application for licensure as a public adjuster, the applicant shall file with the Department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of \$50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license. Such bond must be maintained unimpaired through the existence of the license and for at least one (1) year after termination of the license.

6. In connection with his application for licensure as a public adjuster, on April 4, 2006, Carlos Funes, Jr. filed the required bond with the Department. Great American Insurance Company issued bond number 3980623-1551. On May 17, 2010, this bond was cancelled.

7. On June 30, 2010, Carlos Funes, Jr. filed the required bond with the Department. Great American Insurance Company issued bond number 3134387.

8. On July 1, 2014, Great American Insurance Company issued a written notice to Carlos Funes, Jr. stating that it would cancel the bond effective August 1, 2014.

9. On July 7, 2014, the Department received notice from Great American Insurance Company that it would cancel the surety bond effective August 1, 2014.

10. On July 10, 2014, the Department issued a written notice to Carlos Funes, Jr. requesting that he provide an original replacement bond.

11. Carlos Funes, Jr. failed to respond to the Department's notice.

12. On August 1, 2014, Great American Insurance Company cancelled the bond.

13. As of the date of the filing of this Administrative Complaint, Carlos Funes, Jr. has failed to provide the Department with proof of a replacement bond.

IT IS THEREFORE CHARGED that, Carlos Funes, Jr. has violated one or more of the following provisions of the Florida Statutes and/or the *Florida Administrative Code*, which constitutes sufficient grounds for the suspension or revocation of his license or appointment as a public adjuster in this state:

(a) Section 626.865(2), Florida Statutes, which provides that a public adjuster shall maintain an unimpaired surety bond at all times licensed in the amount of \$50,000.

(b) Section 626.611(1)(a), Florida Statutes, which provides that the Department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any public adjuster if it finds that the applicant, licensee, or any principal thereof lacks one or more of the qualifications for the license or appointment as specified.


(c) Section 626.611(1)(m), Florida Statutes, which provides that it is a violation for any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent to willfully fail to comply with, or willfully violate, any proper order or rule of the department or any provision of this code.



WHEREFORE, Carlos Funes, Jr. is hereby notified that the Chief Financial Officer, through his designee, intends to enter an order suspending or revoking any license and appointment issued to him pursuant to the Florida Insurance Code or to impose such penalties as may be provided under the provisions of sections 626.611, 626.621, 626.681, 626.691, and 626.8698, Florida Statutes, and under the other referenced sections of the Florida Statutes as set out in this Administrative Complaint.

DATED and SIGNED this 1<sup>st</sup> day of October, 2014.



  
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Gregory Thomas  
Director, Agent & Agency Services

### NOTICE OF RIGHTS

Carlos Funes, Jr. has the right to request a proceeding to contest this action by the Department pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, *Florida Administrative Code*. The proceeding request must be in writing, signed by Carlos Funes, Jr., and must be filed with the Department within twenty-one (21) days of his receipt of this notice. Completion of the attached Election of Proceeding form and/or a petition for an administrative hearing will suffice as a written request. The request must be filed with Julie Jones, DFS Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333. Carlos Funes, Jr.'s written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after his receipt of this notice. Mailing the response on the twenty-first day will not preserve his right to a hearing.

**FAILURE TO ENSURE THAT CARLOS FUNES, JR.'S WRITTEN RESPONSE IS RECEIVED BY THE DEPARTMENT WITHIN TWENTY-ONE (21) DAYS OF HIS RECEIPT OF THIS NOTICE WILL CONSTITUTE A WAIVER OF HIS RIGHT TO REQUEST A PROCEEDING ON THE MATTERS ALLEGED HEREIN AND A FINAL ORDER OF SUSPENSION OR REVOCATION WILL BE ENTERED AGAINST CARLOS FUNES, JR.**

If Carlos Funes, Jr. requests a proceeding, he must provide information that complies with the requirements of Rule 28-106.2015, *Florida Administrative Code*. As noted above, completion of the attached Election of Proceeding form conforms to these requirements. Specifically, Carlos Funes, Jr.'s response must contain:

(a) The name, address, and telephone number, and facsimile number (if any) of the Respondent (for the purpose of requesting a hearing in this matter, Carlos Funes, Jr. is the "Respondent").

(b) The name, address, telephone number, facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the Respondent received notice of the administrative complaint.

(e) A statement including the file number of the administrative complaint.

If a hearing of any type is requested, Carlos Funes, Jr. has the right to be represented by counsel or other qualified representative at his expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

If a proceeding is requested and there is no dispute of material fact, the provisions of section 120.57(2), Florida Statutes, apply. In this regard, Carlos Funes, Jr. may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if Carlos Funes, Jr. feels that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon his request.

However, if Carlos Funes, Jr. disputes material facts which are the basis for the Department's action, he must request an adversarial proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State administrative law judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

Failure to follow the procedure outlined with regard to Carlos Funes, Jr.'s response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered free form agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation of this matter pursuant to section 120.573, Florida Statutes, is not available. No Department attorney will discuss this matter with Carlos Funes, Jr. until the response has been received by the Department.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Administrative Complaint and Election of Proceeding has been furnished to: Carlos Funes, Jr., 1475 South Candlenut Avenue, Homossasa, Florida 34448; Carlos Funes, Jr., 6528 Kendale Lakes Drive TH-1204, Miami, Florida 33183; by Certified Mail this 1<sup>st</sup> day of October, 2014.



Laura Anstead  
Managing Attorney  
Department of Financial Services  
Division of Legal Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333  
(850) 413-4227

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

CASE NO.: 160358-14-AG

CARLOS FUNES, JR.

\_\_\_\_\_ /

ELECTION OF PROCEEDING

I have received and have read the Administrative Complaint filed by the Florida Department of Financial Services ("Department") against me, including the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1. ☐ I do not dispute any of the Department's factual allegations and I do not desire a hearing. I understand that by waiving my right to a hearing, the Department may enter a final order that adopts the Administrative Complaint and imposes the sanctions sought, including suspending or revoking my licenses and appointments as may be appropriate.
2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with section 120.57(2), Florida Statutes. In this regard, I desire to **(CHOOSE ONE)**:
  - ☐ Submit a written statement and documentary evidence in lieu of a hearing; or
  - ☐ Personally attend a hearing conducted by a department hearing officer in Tallahassee; or
  - ☐ Attend that same hearing by way of a telephone conference call.
3. ☐ I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by Rule 28-106.2015, *Florida Administrative Code*, as specified in subparagraph (c) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT.

The address for filing is: Julie Jones, DFS Agency Clerk, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333.

\_\_\_\_\_  
Signature Print Name

Date: \_\_\_\_\_

Date Administrative  
Complaint Received: \_\_\_\_\_

**If you are represented by an attorney or qualified  
representative, please attach to this election form his  
or her name, address, telephone and fax numbers**

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_