

Chapter 12 Disciplinary and Industry Trends

In Florida, the insurance industry is strictly regulated to protect consumers from fraudulent and deceptive practices. In this chapter, we will examine some recent disciplinary actions the Department has taken against individuals who have violated Florida insurance laws, along with the penalties that were imposed. We will also learn about licensees' duties to ensure that the insurers they work with are licensed, as well as new and important terminology public adjusters must understand in their day-to-day practices.

Recent Violations and Enforcement Actions

In every edition of Insurance Insights, the Department publishes a compendium of different cases involving licensed and unlicensed individuals who violate Florida's insurance rules and regulations. The Department also publishes on its website a monthly list of individuals and entities that have been subject to disciplinary proceedings, including fines and license suspension, revocation, and probation. The Coalition Against Insurance Fraud also publishes on its website the details of cases involving individuals who have violated the state's insurance laws.

The Department's list of licensees against whom action was taken includes names, license numbers, lines of authority, location by city, and how the case was disposed. Copies of enforcement action documents can be found on the Office of General Counsel's database under "Final Orders."

The Department is very active in enforcing the insurance laws. Final orders describing penalties for wrongdoing were filed for 986 cases in 2013. Another 305 Final Orders were filed in just the first several months of 2014.

Some of the most recent cases and enforcement actions are discussed next.

Case: Investigators received an allegation an unlicensed person was acting as a public adjuster. Investigators determined the subject placed several advertisements on social media platforms advertising the subject as an "insurance specialist." More ads were found quoting the subject as saying "we very much enjoy representing the home owner in the insurance claim process." Investigators found one instance in which the subject identified himself as an insurance adjuster when soliciting a consumer for repair work.

Disposition: An Order to Cease and Desist from acting as a public adjuster was issued by the Department. Violation of the Order could result in felony criminal charges against the subject.

Case: An investigation was opened based on review of an internet advertisement by a Public Adjuster. The ad did not include the full name and license number of the designated primary adjuster. Investigators discovered the adjuster was operating from a residence. The adjuster failed to maintain a place of business accessible to the public and failed to maintain records as required, and failed to notify the Department of an address change within 30 days as required by statute.

Disposition: Fined \$3,500.

Case: A complaint from an insurance company alleged a public adjuster's contract was not in compliance with Florida law. Investigators reviewed the contract in question and found it did not include the proper language regarding the consumer's right to cancel. The contract also failed to indicate if the claim was emergency or non-emergency and whether it was a supplemental or new claim. When contacted by an investigator, the public adjuster advised the right to cancel language was located on the back of the contract. The investigator was able to obtain a copy of the back of the contract; however, the public adjuster refused the investigator's request to provide a copy of

the back page to the insurance company to complete the contract. Failure to provide a full, unaltered copy of the contract to the insurance company is a violation of Florida Statutes. The investigator's examination of the back page of the contract revealed the consumers signed the right to cancel section on the same date the contract was executed. The public adjuster maintained that while the consumers did sign the section regarding cancellation, they did so by mistake and did not actually intend to cancel the contract. During the course of the investigation, an additional contract was found executed by the public adjuster which contained the same violations.

Disposition: Fined \$1,500.

Case: The Bureau of Investigation received a complaint a contractor was acting as a public adjuster without being licensed. During the course of the investigation, Investigators found several advertisements placed on various social media platforms in which the contractor claimed to be an "insurance specialist." Additional advertisements were found in which the contractor stated, "we very much enjoy representing the home owner in the insurance claim process." Investigators also found one instance in which the contractor identified himself as an insurance adjuster when soliciting a consumer for repair work.

Disposition: An Order to Cease and Desist was issued by the Department, demanding the contractor cease and desist from acting or operating as a public adjuster in Florida; advertising or holding himself out as a public adjuster in Florida; soliciting consumers to hire him as their public adjuster; engaging in or attempting or professing to engage in any transaction or business for which a license or appointment is required under the Florida Insurance Code; and violating any provisions of the Florida Insurance Code. Engaging in insurance activities without the required license is a third-degree felony. Failure to comply with the Order could also result in a fine of up to \$50,000.

Case: An investigation was originally opened on a public adjuster alleging a conflict of interest. The insurer that filed the complaint alleged the adjuster was working on the claim in conjunction with his wife, who owned a water remediation company. Two additional complaints were made to the Department while our investigation was active.

Evidence obtained by investigators proved the public adjuster was submitting paperwork for his adjusting services and for his wife's company. One of the claim activity logs reviewed had no evidence the agent's wife had any direct contact with consumers, only the public adjuster. In each instance the public adjuster recommended his wife's company to the homeowner for remediation of damages.

Disposition: Fined \$1,500.

Case: An investigation was originally opened on a public adjuster alleging a conflict of interest. The insurer that filed the complaint alleged the adjuster was working on the claim in conjunction with his wife, who owned a water remediation company. Two additional complaints were made to the Department while our investigation was active. Evidence obtained by investigators proved the public adjuster was submitting paperwork for his adjusting services and for his wife's company. One of the claim activity logs reviewed had no evidence the agent's wife had any direct contact with consumers, only the public adjuster. In each instance the public adjuster recommended his wife's company to the homeowner for remediation of damages.

Disposition: Fined \$1,500.

Case: An investigation was opened based on review of an internet advertisement by a Public Adjuster. The ad did not include the full name and license number of the designated primary adjuster. Investigators discovered the adjuster was operating from a residence. The adjuster failed to maintain a place of business accessible to the public and failed to maintain records as required, and failed to notify the Department of an address change within 30 days as required by statute.

Disposition: Fined \$3,500.

Case: An investigation was opened after policyholders who contracted with a public adjuster to assist with their claim alleged the adjuster cashed a settlement check from the insurance company and refused to release funds to the policyholders. The public adjuster advised the policyholders he would drop off the check for their endorsement but never did. During the course of the investigation, a copy of the negotiated check with the "policyholder's endorsement" was obtained from the insurance carrier by investigators and shown to the consumers. The consumers denied the signatures endorsing the check were their's. When the investigators questioned the public adjuster about the signatures, he said he'd used a "third-party" independent adjuster to deliver \$6,400 in cash to the consumers, but was unable to provide proof of delivery.

Disposition: License suspended for 12 months and ordered to pay \$6,400 in restitution to the consumers. The licensee is required to pay the restitution in full before applying for reinstatement of his license.

Case: Investigators opened a case after receiving a complaint that a public adjuster made misrepresentations to the Department on his license application. The complaint alleged the public adjuster's contractor's license was revoked by the Florida Department of Business and Professional Regulation (DBPR) due to fraudulent activity. Investigators determined the DBPR case found that as a contractor, the public adjuster stopped work on a job after receiving payment, resulting in subcontractor liens being placed on the consumer's property. The adjuster also failed to honor a promissory note he gave to the consumer. The customer was awarded a default judgment from a civil case against the adjuster. Had the public adjuster disclosed this information on the original application, the Department would not have issued the license.

Disposition: License revoked.

New and other Important Terminology Applicable to Florida Licensed Insurance Professionals

69B-220.051 Conduct of Public Adjusters

69B-220.051 was revised in January, 2015. The purpose and scope of this rule is to set down Department policies regarding certain matters generally affecting public adjusters and public adjuster apprentices. Emergency adjuster license procedures are contained in Rule 69B-220.001 F.A.C. Ethical requirements for all types of adjusters are contained in Rule 69B-220.201 F.A.C.

The following definitions apply:

“Compensation” or “remuneration” means anything of value, whether received directly or indirectly as payment for adjusting services that were performed.

“Department” means Florida Department of Financial Services.

“Financial Interest” means direct or indirect ownership.

“Public adjuster” means individuals currently licensed and appointed in good standing by the Department as public adjusters. The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.

“Public adjuster apprentice” means individuals currently licensed and appointed in good standing by the Department as a public adjuster apprentice.

“Unlicensed persons” means persons who are not currently licensed by the Department as a public adjuster or public adjuster apprentice.

“Person” includes natural persons and legal entities.

“Adjusting services” means the preparation, completion or filing of an insurance claim with the respective insurer for compensation or remuneration on behalf of an insured or third party claimant.

627.706(5) was created to limit the time period a policyholder can present an initial, supplemental or reopened claim under an insurance policy that provides sinkhole coverage. Under this subsection, these claims are barred unless notice was given to the insurer in accordance with the terms of the policy within two years after the policyholder knew or reasonably should have known about the sinkhole loss.

627.706-627.7074 is used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the following terms apply:

“Catastrophic ground-cover collapse” means geological activity that results in all the following:

1. The abrupt collapse of the ground cover;
2. A depression in the ground cover clearly visible to the naked eye;
3. Structural damage to the covered building, including the foundation; and
4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

Contents coverage applies if there is a loss resulting from a catastrophic ground cover collapse. Damage consisting merely of the settling or cracking of a foundation, structure, or building does not constitute a loss resulting from a catastrophic ground cover collapse.

“Neutral evaluation” means the alternative dispute resolution provided in s. 627.7074.

“Neutral evaluator” means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process and who is determined by the department to be fair and impartial.

“Primary structural member” means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure.

“Primary structural system” means an assemblage of primary structural members.

“Professional engineer” means a person, as defined in s. 471.005, who has a bachelor’s degree or higher in engineering. A professional engineer must also have experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage.

“Professional geologist” means a person, as defined in s. 492.102, who has a bachelor’s degree or higher in geology or related earth science and experience and expertise in the identification of sinkhole activity as well as other potential geologic causes of structural damage.

“Sinkhole” means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.

Dolostone or dolomite rock is a sedimentary carbonate rock containing a high percentage of dolomite. In the past, it was often called magnesian limestone. Dolostone has a stoichiometric ratio of nearly equal amounts of magnesium and calcium. It is resistant to erosion and can either contain bedded layers or be un-bedded. Dolostone can act as an oil and natural gas reservoir.

The term dolostone came into use in order to avoid confusion with the mineral dolomite. The term dolostone remains controversial because the name dolomite was first applied to the rock and has a technical precedence.

“Sinkhole activity” means settlement or systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.

“Sinkhole loss” means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses apply only if there is structural damage to the covered building caused by sinkhole activity.

“Structural damage” means a covered building, regardless of the date of its construction, has experienced the following:

1. Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement-related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the Florida Building Code;
2. Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement-related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceeds one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;
3. Damage that results in listing, leaning, or buckling of the exterior load-bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;
4. Damage that results in the building, or any portion of the building containing primary structural members or primary structural systems, being significantly likely to imminently collapse because of the movement or instability of the ground within the influence zone of the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or
5. Damage occurring on or after October 15, 2005, that qualifies as “substantial structural damage” as defined in the Florida Building Code.