

## **Chapter 1 Florida's Rules and Regulations**

States depend on certain individuals to help the state run efficiently. Each individual plays an important role.

### **Chief Financial Officer**

Pursuant to Secs. 17.001 et seq. (Chapter 17) F.S., the **Chief Financial Officer** (CFO) serves as head of the Department and oversees all 14 divisions within the DFS. The CFO is an elected official and a member of the Governor's cabinet. The CFO's responsibilities include:

- investigating fraud, including identity theft and insurance fraud
- overseeing the licensing of insurance adjusters, agents, and agencies
- ensuring that businesses maintain workers' compensation insurance
- overseeing the state's Bureau of Unclaimed Property
- monitoring the state's deferred compensation program for state employees
- administering the state's accounting and auditing functions
- regulating cemeteries and funeral homes

### **Department of Financial Services**

In 1998, the Florida legislature amended the state constitution to merge the Departments of Insurance, Treasury, State Fire Marshall, and Banking and Finance into the **Department of Financial Services** (Department or DFS). The merger became effective January 2003.

The Department regulates the state's banking, securities, insurance, mortgage lending, and funeral and cemetery businesses and is comprised of 14 divisions, plus the Office of Insurance Consumer Advocate. Several of these divisions are responsible for regulating certain aspects of the insurance industry, including the Division of Agent and Agency Services, the Division of Insurance Fraud, and the Division of Consumer Services.

### **Office of Insurance Regulation**

The **Office of Insurance Regulation** serves Floridians through its responsibilities for regulation, compliance and enforcement of statutes related to the business of insurance. The Office is also entrusted with the duty of carefully monitoring statewide industry markets.

Under 20.121(3)(a)1 the major structural unit of the commission is the office. Each office is headed by a director. The Office of Insurance Regulation is responsible for activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or chapter 636. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation, who may also be known as the Commissioner of Insurance Regulation.

### **Office of Financial Regulation**

The key function of the **Office of Financial Regulation** is to provide regulatory oversight for Florida's financial services providers. Its mission is to protect the citizens of Florida, promote a safe and sound financial marketplace, and contribute to the growth of Florida's economy with smart, efficient and effective regulation of the financial services industry.

In 2016, Florida experienced department reorganization, with some departments experiencing name changes. The Office of the General Counsel has confirmed, either by statutory review or by contacting the Divisions and Offices, the following titles of the Department's divisions, bureaus, offices, and one section. In all formal written communications, these should be referred to exactly as stated. The list reflects, in part, the Department's official organizational structure established pursuant to section 20.121, Florida Statutes (2016). The list also identifies other divisions, bureaus, offices, and one section, which is included since it is often incorrectly identified.

## **Division of Accounting and Auditing**

The **Division of Accounting and Auditing** includes:

1. The Bureau of State Payrolls;
2. The Bureau of Financial Reporting;
3. The Bureau of Auditing; and
4. The Bureau of Vendor Relations.

This Division prepares and provides financial reports and makes sure Florida taxpayers' dollars are appropriately spent. They review the agreements that provide goods and services to Florida and approve payment requests. State agencies and vendors can use website links to find information to improve their business processes.

## **Division of Administration**

The **Division of Administration** is responsible for providing administrative support to the Department of Financial Services, Office of Financial Regulation and Office of Insurance Regulation. The division includes the Bureau of General Services, the Bureau of Human Resource Management, and the Office of Publications.

## **Bureau of General Services**

The **Bureau of General Services** serves all employees in the Department encompassing four core management sections:

1. Emergency Management and Safety;
2. Mail Services;
3. Printing Services; and
4. Property and Facility Management.

## **Bureau of Human Resource Management**

The **Bureau of Human Resource Management** administers a comprehensive human resource program for the Department, including:

1. Attendance and Leave;
2. Benefits;
3. Classification and Pay;
4. Employee Relations;
5. Learning and Development;
6. Payroll;
7. Performance Management; and

## 8. Recruitment and Selection.

### **Office of Purchasing and Contractual Services**

The **Office of Purchasing and Contractual Services** serves as the team responsible for the Department's procurements; the duties include Purchasing Services and Contract Administration.

### **Office of Cabinet Affairs**

The **Office of Cabinet Affairs** (OCA) serves as DEP's clearinghouse for all cabinet agenda items for presentation to the Governor and Cabinet, which includes the Attorney General, Chief Financial Officer and Commissioner of Agriculture and Consumer Services, sitting as the Board of Trustees of the Internal Improvement Trust Fund and the Power Plant Siting Board. The OCA coordinates the preparation of cabinet agenda items pertaining to the acquisition, administration, disposition and use of state lands with the DEP divisions, district offices and water management districts. The OCA provides technical and logistical support to the DEP executive staff, cabinet-level reviews of agenda items and transmittal of these items to the Governor and Cabinet. Serving as a liaison with the Cabinet Offices, the OCA coordinates overall programmatic assignments with the Deputy Secretary of Land and Recreation or other DEP staff as needed.

### **Office of Communications**

The **Office of Communications** serves as the Chief Financial Officer's liaison with the news media. As the primary contact for journalists, the office provides information regarding the CFO's initiatives and Department of Financial Services' responsibilities.

This Office is also the State Fire Marshal's liaison with the news media. All media inquiries regarding investigations, regulations, and activities of the State Fire Marshal are handled by the CFO's Office of Communications.

### **Division of Consumer Services**

The **Division of Consumer Services** consists of the Bureau of Education Advocacy and Research and the Bureau of Consumer Assistance.

The Division of Consumer Services offers a variety of information and resources to educate consumers regarding numerous insurance and financial topics. Their goal is to proactively educate and assist Florida's insurance and financial consumers through responsive, professional and innovative service.

The Division offers a toll-free Insurance Consumer Helpline to assist insurance consumers with insurance questions and inquiries or to file a complaint against an insurance company. The staff will advocate on an individual's behalf and assist him or her with resolving their insurance concerns.

### **Office of Finance and Budget**

The **Office of Finance and Budget** includes its Bureau of Financial Services. It supports all divisions in the Department of Financial Services by identifying, managing, projecting, analyzing, processing, and reporting the financial resources of the department. This is done by informing, supporting, advising, and providing timely accurate relevant and accessible data.

## **Division of Funeral, Cemetery, and Consumer Services**

The **Division of Funeral, Cemetery, and Consumer Services** (includes its Board of Funeral, Cemetery, and Consumer Services) protects death care industry consumers buying preneed burial rights. It also protects those purchasing funeral and burial merchandise or services. It oversees licensed establishments, facilities, and cemetery grounds by conducting annual inspections.

The Division has established qualifications for professions and occupations in the death care industry. These professions and occupations include but are not limited to funeral directing, embalming, preneed sales and monument sales. Furthermore, the Division ensures death care professionals maintain their qualifications through continuing education courses and licensure renewal. Lastly, The Division ensures effective discipline for those licensees who have violated the law.

Formerly called the Division of Legal Services, the Office of General Counsel provides legal counsel and represents the Florida Department of Environmental Protection. The office focuses on Florida's environmental priorities, such as restoring America's Everglades; improving air quality; restoring and protecting the water quality in Florida's springs, lakes, rivers and coastal waters; conserving environmentally sensitive lands; and providing citizens and visitors with varied recreational opportunities.

The Division of Information Systems (DIS) supports the mission and vision of Florida's Chief Financial Officer (CFO). The use of emerging technology, a highly trained technical workforce, and strategic partnerships with Floridians is what drives the organization to achieve success.

## **Division of Insurance Agent and Agency Services**

The **Division of Insurance Agent and Agency Services** includes the Bureau of Investigation and the Bureau of Licensing. It is the website provided to provide accurate information regarding insurance agents, adjusters, limited surety (bail bond) agents, navigators, insurance-related entities, including education providers and instructors. Here Floridians can find everything required to know about qualifying, applying for licensure, education requirements, and compliance information.

## **Division of Investigative and Forensic Services**

Formerly the Division of Insurance Fraud, the **Division of Investigative and Forensic Services** functions as a criminal justice agency. The division now includes the following bureaus and offices:

1. The Bureau of Forensic Services, formerly called the Division of the State Fire Marshal;
2. The Bureau of Fire and Arson Investigations, formerly known as the Division of the State Fire Marshal;
3. The Office of Fiscal Integrity, formerly known as the Division of Accounting & Auditing;
4. The Bureau of Workers' Compensation Fraud;
5. The Bureau of Insurance Fraud; and
6. Operational Support Services.

The Division of Investigative and Forensic Services encompasses all law enforcement and forensic components residing within the Department of Financial Services. With this broad responsibility, the division investigates a wide range of fraudulent and criminal acts including:

1. Insurance Fraud Investigations;
2. Workers' Compensation Fraud Investigations;
3. Fire, Arson and Explosives Investigations;
4. Theft/Misuse of State Funds; and
5. Fire and Explosives Sample Analysis.

Law enforcement officers are required to use skills developed through observation, training and experience to identify suspicious circumstances, unusual occurrences and violations of law. They contact people who, according to their training, experience and knowledge, are in a place or are acting in a way to make them believe a crime was or is about to be committed. Using a proactive approach helps in the detection and apprehension of criminals, protecting citizens from crime.

One of their goals is to avoid discriminatory practices, affording all citizens equal protection under the law. There is a difference between the accepted practices of criminal profiling and bias-based profiling. One is an investigative tool, while the other is a discriminatory practice. Under criminal profiling, such things as gender, race, and other factors that narrow the search are used, whereas bias-based profiling occurs when an officer applies his or her own personal and societal biases to actions.

## **Office of Inspector General**

The mission of the **Office of Inspector General** is to advance positive change in performance, accountability, efficiency, integrity, and transparency of programs and operations within the Department of Financial Services. Their authority comes from Section 20.055(2) of the Florida Statutes. It provides that the Office of Inspector General (OIG) is established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity and efficiency. Their major responsibilities include investigations, audits, reviews, consulting and technical assistance activities.

The offices of Insurance Regulation (OIR) and Financial Regulation (OFR) each have their own separate inspectors general. Sometimes the DFS Inspector General may work with the OIR or OFR Inspectors General of projects of mutual interest.

## **Office of Insurance Consumer Advocate**

The **Office of Insurance Consumer Advocate** is intended to be a strong, independent voice for Floridians. As citizens become increasingly dependent on quality insurance products, an advocate is needed to represent the people when insurance decisions are made, something people often felt they did not have in the past.

The office of Insurance Consumer Advocate maintains a balance between a viable, competitive insurance market with the fiscal capacity to fulfill obligations to policyholders and consumer's needs for accessible, affordable insurance products to protect their lives, health, and property. Tapping into market reports, along with around 500,000 inquiries annually, they are able to identify market trends affecting Floridians. This data empowers the Insurance Consumer Advocate to seek early and proactive resolution of practices that may adversely affect people, and assist in expansion of benefits that are good for consumers.

## **Office of Internal Affairs and Appointments**

The **Office of Internal Affairs and Appointments** coordinates the CFO's appointments to state sponsored Commissions and Boards. Additionally, the office manages the CFO's day-to-day scheduling.

The CFO has appointing authority for many Boards and Commissions throughout Florida. It is the CFO's responsibility to appoint qualified, representative, and appropriate people to these roles.

# **Chapter 2 Licensing Requirements**

## **Definitions**

As used here, “**adjuster**” means a public adjuster as defined in s. 626.854, a public adjuster apprentice as defined in s. 626.8541, or an all-lines adjuster as defined in s. 626.8548. In 2018, the public adjuster apprentice license was eliminated. However, the definition remains as follows:

626.8541 states: (1) A Public adjuster apprentice is any person who is not a licensed public adjuster, who is employed by or has a contract with a licensed and appointed public adjuster in good standing with the department or a public adjusting firm that employs at least one licensed and appointed public adjuster in good standing with the department to assist a public adjuster in conducting business under the license and who satisfies the requirements of s. 626.8651.

Having eliminated the apprentice position under adjusters, effective January 1, 2018, the public adjuster apprentice license (T31-20) no longer exists. Individuals seeking to become apprentices under a licensed public adjuster are now licensed as an all lines adjuster (6-20) and appointed as a public adjuster apprentice. Public adjuster apprentices are now required to be licensed and appointed for a minimum of six months before they are eligible to apply for a public adjuster license as a 3-20, which is a change from the previous requirement of a one-year apprenticeship.

As of 2018, anyone wishing to become a public adjuster apprentice must apply for an all lines adjuster license, and file an original \$50,000 bond with the Department and then obtain a public adjuster apprentice appointment (31-20). A public adjuster apprentice appointment may not be effectuated for the all lines adjuster license unless there is an active bond associated with the license. The appointment will be cancelled if the licensee fails to maintain an active bond for more than 30 days.

Public adjuster apprentice licenses were automatically converted to all lines adjuster licenses in January of 2018. At the same time, appointments were converted to the new public adjuster apprentice appointment type, 31-20. These appointments were valid from the date of appointment, plus two years forward to the last day of the licensee’s birth month. Subsequent renewals are due every two years.

Florida posted the following:

#### **RESIDENT PUBLIC ADJUSTER APPRENTICE APPOINTMENT**

This license is no longer available. The Public Adjuster Apprentice is now offered as an appointment under a 6-20 All Lines Adjuster license.

#### **TYPE AND CLASS:**

**31-20 Public Adjuster Apprentice**

#### **“Public Adjuster Apprentice” defined:**

A person who is licensed as an all-lines adjuster, who is appointed and employed by, or has a contract with, a licensed and appointed public adjuster in good standing with the department or a public adjusting firm that employs at least one licensed and appointed public adjuster in good standing with the department to assist in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage.

#### **STEPS TO OBTAIN A 31-20 PUBLIC ADJUSTER APPRENTICE APPOINTMENT:**

##### **Step 1 – Hold a Resident 6-20 All-Lines Adjuster license.**

Please view the license qualifications and steps to obtain a 6-20 All Lines Adjuster license for more information on obtaining this license.

##### **Step 2 – Must have the following prerequisite:**

File an original fifty thousand-dollar (\$50,000) surety bond, using the bond form provided by the Department.

Mail the original bond to:  
Department of Financial Services  
Bureau of Licensing, Room 419  
200 East Gaines Street

### **Step 3 – Obtain Appointment:**

Have the Supervising Public Adjuster or Public Adjusting Firm submit a 31-20 Public Adjuster Apprentice appointment in eAppoint.

Public Adjusting Firms will log in directly to eAppoint to submit the appointment.

Supervising Public Adjusters can access eAppoint by logging into their MyProfile account.

### **Special Note:**

A person cannot hold more than one adjuster appointment at a time.

A supervising public adjuster may not be responsible for more than one public adjuster apprentice simultaneously and shall be accountable for the acts of the public adjuster apprentice which are related to transacting business as a public adjuster apprentice. Also, a public adjusting firm may not maintain more than four public adjuster apprentices simultaneously.

A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice, except an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm.

Related Florida Statutes: 626.8541, 626.8651, 626.876(2)

These changes are not the first to take place in the adjuster field. In 2012, new Florida law brought about changes to public adjuster licensing requirements and laws. Some provisions became effective in 2012 but others did not become effective until 2014.

Major changes included the consolidation of laws relating to examination and continuing education of all licensees of DFS and merging various types of licenses for agents and adjusters. This reduced the types of licenses that were available. This new law consolidated licenses into one license, the all-lines public adjuster license. Resident and non-resident public adjusters holding one of the limited lines licenses, remained licensed as such and the license could be renewed but Florida did not issue any new limited lines licenses after October of 2012. In 2018, no more public adjuster apprentice licenses will be issued, so that is one more license type that has been eliminated.

Florida removed the requirement that public adjusters and public adjuster apprentices must be Florida residents. Although non-resident people may apply for public adjuster licenses, that is no longer available for apprentices, since public adjuster apprentice positions are no longer available in the state of Florida.

Florida's statutes have not necessarily changed to reflect the removal of public adjuster apprentice designations. For example, the definition of public adjuster apprentices remains unchanged at this time. People in the middle of their apprenticeship when the new law took effect were able to apply for their public adjuster license once they had been actively licensed and continuously appointed for at least the previous six months.

The revised 2018 law also changed the number of apprentices who could be supervised by an individual adjuster or firm. As of 2018, the appointing public adjusting firm could not employ more than four public adjuster apprentices and a supervising public adjuster could not be responsible for more than one public adjuster apprentice. Each supervising public adjuster is accountable for the acts of their public adjuster apprentice. This relates to transacting business as a public adjuster apprentice.

Previously, two qualifications for resident public adjusters included:

1. Applicants had to first be licensed as a public adjuster apprentice and be compliant with the apprentice licensing requirements during this apprenticeship.
2. Secondly, resident company adjusters or independent adjusters that had been licensed and employed in Florida for a year qualified for a public adjuster license. Today, public adjuster apprentices are required to be licensed and appointed for a minimum of six months before

they become eligible for a public adjuster 3-20 license.

A public adjuster not living in Florida and licensed in his or her resident state (meaning other than Florida) for one continuous year may qualify for a Florida nonresident public adjuster license. This previously required three years of continuous licensing to qualify in Florida. The continuous year requirement must be the year prior to the public adjuster's application for licensing in Florida. Insurance agents, brokers, or other insurance representatives licensed in another state do not qualify for public adjuster licensure.

If the nonresident state does not license public adjusters, as Florida does, then the company adjuster or independent adjuster may still qualify as long as he or she was licensed continually for one year immediately before applying.

Previously, public adjusting firms adjusting claims primarily for certain commercial entities could have more than 12 apprentices working for the firm under a public adjuster and a public adjuster working for these firms could supervise more than three apprentices simultaneously. This was a change from the previous requirement that said no more than 12 public adjuster apprentices could work under a public adjuster at one time and a public adjuster could not previously supervise more than three apprentices simultaneously.

Under the revised 2018 requirements, the number of apprentices who can be supervised by an individual adjuster or firm is limited to four apprentices. No longer may a dozen or more apprentices be under one individual adjuster or firm. A supervising public adjuster may not be personally responsible for more than one public adjuster apprentice.

There were probably some firms that became out of compliance as soon as 2018 arrived, but Florida recognized this possibility. Florida's Insurance Insights publication (volume 6, No. 10-October 2017) recommended supervising public adjusters or adjusting firms contact the Department at [adjusters@myfloridacfo.com](mailto:adjusters@myfloridacfo.com) so the state could help public adjusters and firms determine the best course of action for them to once again become compliant.

## **Elimination of Policyholder Signature**

Under an earlier law, public adjusting firms adjusting claims primarily for certain commercial entities could submit an affidavit containing specified information about the public adjuster, the policyholder, the claim and the public adjuster's compensation to the insurer instead of the public adjuster's contract, as previously required. The affidavit must be signed by the public adjuster or their apprentice, but the policyholder is no longer required to sign the affidavit.

All public adjusters must be appointed after they are licensed. Public adjusters are either appointed by a public adjusting firm or the individuals appoint themselves as an "independent" public adjuster. Either way, there must be an appointment. An appointment gives the licensed public adjuster the authority to adjust claims on behalf of the appointing firm or an independent adjuster.

Under Florida law, adjusters are licensed as an all-lines adjuster and appointed as public adjusting firms or independent public adjusters. Prior to 2012, public adjusters were both licensed and appointed as either company or independent adjusters.

DFS may refuse, deny, suspend, or revoke the license of a public adjusting firm if anyone involved in the operation of the firm violates an order or rule of the Office of Insurance Regulations, the Financial Services Commission, or the Department of Financial Services. Public adjusters licensed and in good standing in another state may transfer their public adjuster license to a Florida all-lines public adjuster license. Prior to 2012, only resident agents could transfer their license to a Florida all-lines adjuster. This change allowed license transfers for both agents and adjusters.

Completing a license examination is restricted to no more than five times within a 12-month time



period.

## **Licensure of Emergency Adjusters**

There are Department policies and procedures for licensure of emergency adjusters during emergency situations. Each emergency is unique and the terms, conditions, and other provisions of emergency licensure for particular emergencies must often be tailored by emergency rule to the scope and nature of the particular situation. This rule essentially defines default licensure provisions that are effective for emergency adjuster licensure unless and to the extent the Department issues emergency rules modifying, supplementing, or replacing this rule. Where not expressly modified or replaced by emergency rule regarding a particular emergency, the provisions of this rule apply.

### **Definitions**

Definitions always play an important role since they assist in determining the meaning of laws. For our purposes under this rule, the following definitions apply:

“Department” means the Department of Financial Services.

“Licensed adjuster” means individuals currently licensed in good standing by the Department as a company employee adjuster or independent adjuster, whether the licensure is permanent resident licensure, permanent nonresident licensure or emergency licensure pursuant to this rule, and whether limited licensure or unlimited licensure. The term does not include persons licensed as public adjusters or public adjuster apprentices by the Department or persons licensed as any type of adjuster or public adjuster by states other than the State of Florida.

“Emergency” and “Catastrophe” are synonymous terms, and no separate treatment is afforded catastrophe over emergency adjusters.

“Emergency adjuster” means a person who is not a licensed adjuster with the Department but who has been designated and certified to the Department by an insurer, an independent resident adjuster, or a licensed general lines agent as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer in the event of a catastrophe or emergency.

## **General Provisions Applicable to All Emergency Adjusters Determination that an Emergency Exists**

An emergency or catastrophe exists when, due to a specific, infrequent and sudden natural or man-made disaster or phenomenon, that has already occurred or is imminent, there are losses or anticipated losses to insured Florida property and the losses are, or likely will be, so numerous and severe that resolution of claims related to it may not occur expeditiously without the licensing of emergency adjusters.

When the Department determines that an emergency or catastrophe exists or is likely to occur, it will make available on its website the online emergency adjuster license application. Online applications for emergency adjuster licensure must be accompanied by a statement from an insurer, an independent adjusting firm, a licensed independent resident adjuster, or a licensed general lines agent certifying that the emergency adjuster applicant is qualified to act as an adjuster.

## **Procedures for Licensing and Appointment of Emergency Adjusters; Responsibilities of Appointing Entity**

All Florida-licensed insurers, independent adjusting firms, independent adjusters, and general

lines agents must use the following procedures when utilizing emergency adjusters. These individuals or entities (without advance paperwork to this Department) may immediately begin catastrophe adjusting work for themselves using any persons, whether on their staff or hired by them as independent contractors or as employees of a contractor. If an individual is not currently licensed as an adjuster in Florida, they may still be employed by a Florida-licensed insurer, independent adjusting firm, independent adjuster or general lines agent as emergency adjusters as long as they are qualified to do adjusting work and are provided with proof of authority to represent the insurer. These persons must present their proof of authority and a photo ID upon demand by the insured or the insured's representative. A person is not qualified to adjust claims for any entity or person who utilizes computer software programs in the adjusting process, unless the person has received training in and is capable of correctly utilizing the programs. Within 7 calendar days after adjusting work has begun, the appropriate official must electronically complete and submit to the Department the Emergency Adjuster Application, Form DFS-H2-495. All applications must be submitted through the Department's website at: [69BGwww.myfloridacfo.com/Agents](http://69BGwww.myfloridacfo.com/Agents).

Applicable fees must be submitted by electronic payment at the time of submission of an online application.

The insurance company, independent adjusting firm, independent adjuster or general lines agent who submits the online application certifies that the emergency adjuster applicant is qualified, thereby appointing the emergency adjuster applicant to represent them. The appointing person or entity is bound by the acts of the emergency adjuster applicant as in the case of any regular (non-temporary or non-catastrophic) adjuster. This responsibility continues until the appointing entity, appointing person or emergency adjuster licensee notifies the Department through the online appointment system, or the emergency adjuster licensee notifies the Department through the online application process, that he or she desires to terminate the appointment.

The insurance company, independent adjusting firm, independent adjuster or general lines agent who certifies to the Department that the emergency adjuster applicant is qualified, is responsible for assuring, by due diligence inquiry, that the emergency adjuster applicant is in fact qualified to adjust claims, has received training in and is capable of correctly utilizing any computer software programs utilized by the appointing entity or person to adjust claims, and is of good and honest character. The company or general lines agent certifying that the emergency adjuster applicant is qualified has a duty to provide continuing and significant supervision of the emergency adjuster.

Emergency adjuster licenses are valid for 180 days from the date of issuance unless a shorter period of time is specified in the license when issued. Because emergency licensure is an extraordinary deviation from regular licensing procedures, it is Department policy to specify the shortest possible licensing period in each emergency.

## **Procedures for Extension of an Emergency Adjuster License**

The Department will grant an extension of an emergency adjuster license if it determines emergency conditions warrant it. Each extension will last for a period of up to an additional 180 days. To apply for an extension of licensure the entity requesting it must electronically complete and submit the Emergency Adjuster Extension Application, Form DFS-H2-2022 to the Department. All extension applications must be submitted through the Florida Department's website at [www.myfloridacfo.com/Agents](http://www.myfloridacfo.com/Agents). Any applicable fees will apply. Only the license type and class held at the time of extension application will be extended.

The provisions of Section 626.872 regarding temporary licenses are not applicable when issuing a license temporarily for catastrophe or emergency situations. Licensure as an emergency adjuster may be used only for loss adjustment directly resulting from the emergency for which the license was issued. The Department issues emergency adjuster licenses only to natural persons.

By obtaining a license as an emergency adjuster, the licensee agrees that he or she is subject to all disciplinary provisions and penalties of the Florida Insurance Code and the administrative

procedures set forth in the Florida Statutes for the routine processing of such charges. The licensee is subject to the jurisdiction of the courts of Florida concerning civil liability for all acts in any way related to the licensee's activities under licensure in Florida. Jurisdiction for acts committed prior to or during licensing continues after the emergency licensure expires or is terminated. If after the license expires or terminates, the Department has reason to believe there was a violation of any provision of the Florida Insurance Code or Chapter 69B, F.A.C. by the former licensee while licensed, the Department has the right to file administrative action against the individual.

By the act of obtaining licensure as an emergency adjuster, the nonresident licensee irrevocably designates the Chief Financial Officer, and his or her successors in office, as the licensee's attorney to receive service of all process in any way related to the licensee's activities as an emergency adjuster.

### **Communications Concerning Public Adjuster Services**

The solicitation of public adjusting business for compensation is deemed to be a material part of the business and, therefore, requires licensure as a public adjuster. Unlicensed persons may not engage in such activity even under the supervision of a licensed public adjuster. The phrase "solicitation of public adjusting business" and similar phrases means initiating contact with the intent of compensation with any person, whether in person, by mail, telephone, or otherwise, and therein seeking, causing, urging, advising, or attempting to have any person enter into an agreement engaging the services of a public adjuster in any capacity or to have any person subsequently speak or meet with a licensed public adjuster for the purpose of engaging their services in any capacity or for the purpose of being advised by a public adjuster in any regard.

Answering incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, does not violate this rule as long as unlicensed persons engage in purely administrative matters and not in judgments or interpretations with regard to any insurance contract, claim, or potential claim.

### **Required Contract Terms**

Public adjusters must ensure that all contracts for their adjusting services contain the terms required and the following information:

1. The insured's telephone number if available;
2. The address of loss if it is different from the insured's current street address;
3. A brief description of the loss;
4. The insured's insurance company name and policy number if available;
5. All methods of compensation and all fees or other amounts required to be paid by the insured to the public adjuster must be stated in the contract; and
6. Any costs to be reimbursed to the public adjuster out of the proceeds must be specified in either the contract or an addendum to the contract, which must be signed and dated by the parties.

The contract must be signed by the public adjuster that solicited it. A copy of the contract and any addendums, signed by all parties, must be provided to the insured or claimant at the time he or she signs it. A public adjuster may not accept a settlement of a claim unless the terms and conditions of the settlement are approved by the insured or claimant.

### **Application for Licensure**

When applying for a license, certain information is required. The applicant must provide his or her full name, age, social security number, residence address, business address, mailing address,

contact telephone numbers, business telephone number if applicable, and e-mail address. A statement should be included indicating the method the applicant used or is currently using to meet any required pre-licensing education, knowledge, experience, or instructional requirements for the type of license being applied for. Additionally, the applicant must state whether he or she has been refused or has voluntarily surrendered or had a license suspended or revoked to solicit insurance by the Florida Department or by the supervising officials of any state.

Any additional information that the Florida department may deem necessary to enable it to determine the character, experience, ability, or other qualifications of the applicant must be provided. The application must contain a statement that it is not required to disclose his or her race, ethnicity, gender, or native language. The lack of this information will not cause the applicant to be penalized; when provided the department will use the information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

## **Non-resident Public Adjuster's Qualifications and Bond**

The department will issue a license to an applicant for a nonresident public adjuster's license upon determining that he or she has paid the applicable license fees and is a natural person at least 18 years of age. The applicant must have passed a written Florida public adjuster's examination applicable to the application that was filed.

The individual must be self-employed as a public adjuster or associated with or employed by a public adjusting firm or other public adjuster. Applicants licensed as nonresident public adjusters must be correctly appointed and all appointment fees paid to the department in advance. The appointment of a nonresident public adjuster continues in force until suspended, revoked, or otherwise terminated, but it is subject to biennial renewal or continuation by the licensee.

The individual must be trustworthy and have a business reputation that would reasonably assure that he or she will conduct his or her business as a nonresident public adjuster fairly and in good faith, without detriment to the public. Individuals would have been licensed and employed as a public adjuster in their home state of residence on a continual basis for the past year, or, if the applicant's state of residence does not issue licenses to individuals who act as public adjusters, the applicant has been licensed and employed by a resident insurance company or independent adjuster in their home state of residence (or any other state) on a continual basis for the past year.

The applicant must furnish the following with their application:

1. A complete set of fingerprints must be submitted. The applicant's fingerprints must be certified by an authorized law enforcement officer. The department may not authorize an applicant to take the required examination or issue a nonresident public adjuster's license to the applicant until the department has received a report from the Florida Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.
2. If currently licensed as a resident public adjuster in the applicant's state of residence, a certificate or letter of authorization from the licensing authority of the applicant's state of residence, stating that the applicant holds a current or comparable license to act as a public adjuster and has held the license continuously for the past year. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.
3. If the applicant's state of residence does not require licensure as a public adjuster and the applicant has been licensed as a resident insurance adjuster in his or her state of residence or any other state, a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as such an insurance adjuster

and has held the license continuously for the past year. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether or not the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

At the time of license application as a nonresident public adjuster, a \$50,000 bond must be filed with the department that was issued by a surety insurer authorized to transact surety business in Florida, conditioned on the faithful performance of duties as a nonresident public adjuster under the license applied for. The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained if the licensee commits fraud or unfair practices in connection with his or her business as nonresident public adjuster. The aggregate liability of the surety for all the damages may not exceed the amount of the bond. The bond may not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

The usual and customary records pertaining to transactions under the license of a nonresident public adjuster must be retained for at least three years after completion of the adjustment and must be made available in Florida to the department upon request. The failure of a nonresident public adjuster to properly maintain records and make them available to the department constitutes grounds for the immediate suspension of the license.

After licensure as a nonresident public adjuster, as a condition of doing business in Florida, the licensee must annually file an affidavit by January 1, certifying that the licensee is familiar with and understands Florida's insurance code and rules and the provisions of the contracts negotiated. Compliance with this filing requirement is a condition precedent to the issuance, continuation, reinstatement, or renewal of a nonresident public adjuster's appointment.

If available, the department will verify the nonresident applicant's licensing status through the producer database maintained by the National Association of Insurance Commissioners (NAIC) or its affiliates or subsidiaries.

## **Public Adjuster's Qualifications and Bond**

The department will issue a license to an applicant for a public adjuster's license when it is determined that he or she has paid all applicable fees and has the following qualifications:

1. The individual is a natural person who is at least 18 years old.
2. The individual is a United States citizen or a legal alien possessing a work authorization from the US Bureau of Citizenship and Immigration Services.
3. The person must be trustworthy and have a business reputation that would reasonably assure the applicant will conduct his or her business as an insurance adjuster fairly and in good faith without detriment to the public.
4. The person has had sufficient experience, training, or instruction concerning the adjusting of damages and losses under insurance contracts (other than life and annuity contracts) and is sufficiently informed regarding the terms and effects of the provisions of the types of insurance contracts his or her services relate to. He or she may also qualify on the basis of having been licensed and employed as a resident insurance company adjuster or independent adjuster in Florida on a continual basis for at least one year.
5. The individual is licensed as a public adjuster apprentice and has complied with the requirements of that license throughout the licensure period.

At the time of application for license as a public adjuster the individual must file for a bond that is

executed and issued by a surety insurer authorized to transact this type of business in Florida for \$50,000, conditioned for the faithful performance of his or her duties under the license. The bond must be maintained unimpaired throughout the existence of the license and for an additional year following license termination. The bond will be in favor of the department and specifically authorize recovery by the department for damages sustained in case the licensee is found guilty of fraud or unfair practices in connection with his or her business as a public adjuster. The aggregate liability of the surety insurer for all damages will not exceed the amount of the bond. The bond cannot be terminated unless there is at least 30 days' written notice given to the licensee and filed with the department.

Florida will not issue a public adjuster license unless the applicant has passed the required examination. Following a suspension, the individual applying for a license reinstatement and anyone applying for a new license after termination, cancellation, revocation, or expiration of a prior license as a public adjuster must pass the required examination after approval of their application for reinstatement or for a new license regardless of whether the individual previously passed the examination prior to loss or lapse of their previous license.

## **Public Adjuster Apprentice Appointment**

Even though apprentices were eliminated, there is still law on the books regarding them. 626.8651 reads: The insurance department will issue an appointment as a public adjuster apprentice to a licensee who:

1. Is licensed as an all-lines adjuster under s. 626.866;
2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of \$50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and
3. Maintains this bond unimpaired throughout the existence of the appointment and for at least one year after termination of the appointment.

The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

An appointing public adjusting firm may not maintain more than four public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one public adjuster apprentice simultaneously and shall be accountable for the acts of the public adjuster apprentice which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners.

A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a licensed public adjuster.

## **Employee Adjuster or Independent Adjuster**

Individuals holding a license as a company *employee adjuster* or *independent adjuster* for 24 consecutive months or longer, beginning with his or her birth month and every two years thereafter, must complete 24 hours of certified continuing education courses, five of them in law and ethics. The course subjects must be designed to inform the licensee regarding current insurance laws of this state, to enable him or her to engage in business as an insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and within the laws of Florida.

## **Public Adjuster**

An individual holding a license as a *public adjuster* for 24 consecutive months or longer, beginning with his or her birth month and every two years thereafter, must complete 24 hours of certified continuing education courses; 5 law-and-ethics (this course in other words) plus 19 elective hours. The course subjects must be designed to inform the licensee regarding Florida's current laws pertaining to all lines of insurance other than life and annuities, the current laws of this state pertaining to the duties and responsibilities of public adjusters, and the current rules of the department applicable to public adjusters and standard or representative policy forms used by insurers, other than forms for life insurance and annuities, so as to enable him or her to engage in business as an adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and laws of this state.

In order to receive credit for completed continuing education courses, public adjusters must take courses that are specifically designed for public adjusters and approved as such by the department (CE-320). However, no continuing education courses are required of public adjusters working with workers' compensation coverage or health insurance.

The Department will adopt rules necessary to implement and administer the continuing education requirements of this subsection. If good cause can be shown for not completing required continuing education by the licensee's due date, the Department may grant an extension of time during which the continuing education requirements may be completed, but when an extension of time is granted, it would not exceed one year.

## **Nonresident Public Adjuster**

*Nonresident public adjusters* must complete continuing education requirements. A nonresident public adjuster may be deemed to have met the education requirements if the continuing education requirements of his or her public adjuster's home state are determined to be substantially comparable to those of this state's continuing education requirements as long as the resident's state recognizes reciprocity with Florida's CE requirements. A nonresident public adjuster whose home state does not have comparable continuing education requirements for adjusters, and if he or she is not licensed as a nonresident adjuster in Florida, then the individual must meet the continuing education requirements of this section.

## **Chapter 3 Contact Information**

Each license issued by the Department must be in a form that contains the licensee's name, lines of authority he or she is authorized to transact, the licensee's personal identification number, the date of issuance, and any other information deemed necessary by the Department to fully identify the individual and the authority being granted. The Department may require photographs of applicants as part of the licensing process.

## **All-Lines Adjuster**

An all-lines adjuster is a person who is self-employed or employed by an entity, such as an insurer, to ascertain and determine the amount of a claim, loss or damage payable under an insurance contract. He or she will work to settle a claim, loss, or damage that does not pertain to life insurance or annuity contracts.

## **Independent Adjuster**

An independent adjuster is a person licensed as an all-lines adjuster who is self-appointed or appointed and employed by an independent adjusting firm to ascertain and effect settlement of claims, losses, or damage.

## **Company Employee Adjuster**

A company employee adjuster is a person licensed as an all-lines adjuster that is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer. He or she ascertains and determines the amount of a claim, loss, or damage payable under an insurance contract, or undertakes to effect settlement.

## **Nonresident Public Adjuster**

A nonresident public adjuster is a person who is not a Florida resident, but is currently licensed as a public adjuster in his or her resident state. If their state of residency does not license public adjusters, then the individual must have passed the department's adjuster examination and be self-employed as a public adjuster or associated with or employed by a public adjusting firm or other public adjuster.

## **Nonresident All-Lines Adjuster**

A nonresident all-lines adjuster is a person who is not a Florida resident but is currently licensed as an adjuster in his or her resident state for all lines of insurance except life and annuities. If the individual is a resident of a state that does not license all-line adjusters, then he or she must meet the qualifications and be licensed as an all-lines adjuster and self-appointed or employed by an adjusting firm or adjuster that is allowed to do business in Florida.

## **Catastrophe or Emergency Adjuster**

A catastrophe or emergency adjuster is a person who is not licensed as an adjuster but who has been designated and certified by insurers as being qualified to do the job. The department may issue a license to this person when a catastrophe or emergency occurs to adjust claims. The department will stipulate an allowable time-period for adjusting claims, losses, or damages under the policies of insurance issued by the insurers.

There are two adjuster license types: a public adjuster and an all-lines adjuster. *The same person may not be concurrently licensed as a public adjuster and also as an all-lines adjuster.*

No matter how compelling the situation may be, public adjusters and their apprentices may not offer or give any monetary loan or advance to a client or prospective client. In fact, nothing may be offered or given in connection with an advertisement or inducement to enter into a contract that has a value of more than \$25.

Under **626.854(11)**, public adjusters must earn their income from the work they do. Therefore, a public adjuster that enters into a contract with an insured relating to a claim that has already received payment in part or whole may not be paid from those funds or future funds not directly related to the services he or she performs. The charge or other payments must be based on the claim payments or settlement obtained through the public adjuster's work, not the work of others. In other words, if Joe Insured previously received \$10,000 from his insurer on a settled claim, he



cannot pay the public adjuster any of the money he received (or will receive) from the original claim settlement. The only pay the public adjuster may be given must come from additional settlement funds that resulted from the adjuster's additional work. Compensation from the additional work may not exceed 20 percent of the reopened or supplemental claim payment.

Public Adjusters may not receive more than 10 percent of the amount the insured receives from an insurer for a claim *resulting from a state of emergency* signed by the Governor. This pay limitation includes all forms of compensation, not just cash payment. This applies to claims made during the year after the emergency as well as at the time of the emergency. After that year has passed, 20 percent of the amount of insurance claim payments made by the insurer that are not based on events subject to the state of emergency may be charged.

Public adjusters must provide their clients with a written estimate of the loss to assist in the submission of a proof of loss or other claim for payment of insurance proceeds. He or she must retain their written estimates for at least five years and make these available to the claimant, the insurer, and the Florida insurance department upon request.

Business referrals may not be based on compensation. This means that the public adjuster and their apprentices may not accept referrals if there is any type of agreement to give compensation to the person making the referral. Only another public adjuster may be compensated directly or indirectly for the principal purpose of referring business.

When a company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insured needs access to the claimant or the insured property they must give at least 48 hours' notice to the claimant, his or her public adjuster, or other legal representative. No inspection of property may occur without this notice, but the claimant or their representative may waive the requirement if they wish to.

The insurer must receive notice when a public adjuster has been contracted. The contract must also be provided to the insurer, noting the property is available for inspection of the loss or damage. The insurer must have the opportunity to interview the insured directly about the loss and their claim. The insurer has the right to obtain any necessary information, to investigate, and respond to the claim.

Insurance companies are not allowed to exclude a contracted public adjuster from in-person meetings with the insured. Insurers must meet or communicate with the public adjuster in an effort to reach an agreement regarding the covered loss. The public adjuster is also required to cooperate with the insurer in an effort to reach an agreement regarding the payment for a loss. This statute does not change the terms of the insurance policy or require an insurer to pay more than is legally owed to the policyholder. Public adjusters may not delay settlement by restricting or preventing an insurer, their company adjuster, or an independent adjuster hired by the insurer, attorney, or investigator acting on behalf of the insurer from having reasonable access at reasonable times to any insured individual or their property that is the object of the claim.

A licensed contractor or subcontractor may not adjust a claim on behalf of an insured unless he or she is also licensed and compliant as a public adjuster. However, the contractor may discuss or explain a bid for construction or repair of the covered property. The contractor's fees cannot be increased due to this assistance; fees must remain at the usual and customary levels applicable to the work being performed and as stated in the contract between the contractor and insured.

Public adjusters have no rights to any salvaged property resulting from the property loss, except with the written consent and permission of the insurer through a signed affidavit. In other words, the public adjuster would have to have the insurance company's permission (not the homeowner) to take any materials discarded during the repair to property. This makes sense because otherwise adjusters could adjust claims specifically to gain personally.

## **Public adjuster apprentice**

A **public adjuster apprentice** is any person who is not a licensed public adjuster, but who is

employed by or has a contract with a licensed and appointed public adjuster in good standing or a public adjusting firm employing at least one licensed and appointed public adjuster. The apprentice assists the public adjuster in conducting business under the license. The apprentice must also satisfy specific requirements, which are stated in 626.8651. Public adjuster apprentices must work with a licensed and appointed public adjuster for at least twelve (12) months and must otherwise be in full compliance with all requirements prior to being eligible for appointment as a licensed public adjuster.

## Primary adjuster

Each person operating an adjusting firm and each location of a multiple location adjusting firm must designate a **primary adjuster** for each firm or location and must file that information with the Department, listing the primary adjuster's name and the address where he or she is the primary adjuster, on a form approved by the department. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be sent to the department within 30 days of the change.

For purposes of this section, a "**primary adjuster**" is the licensed adjuster who is responsible for the hiring and supervision of all individuals within an adjusting firm location who deal with the public and who act in the capacity of a public adjuster or as an independent adjuster. An adjuster may be designated as a primary adjuster for only one adjusting firm location. For our purposes here, an "**adjusting firm**" is a location where an independent or public adjuster is engaged in the business of insurance.

The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed to perform clerical or administrative functions for which licensure is not required.

The **primary adjuster** in an unincorporated adjusting firm, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster, is responsible and accountable for the acts of salaried employees under his or her direct supervision and control while acting on behalf of the adjusting firm. Nothing in this section renders any person criminally liable or subject to any disciplinary proceedings for any act unless the person personally committed or knew or should have known of the act and of the facts constituting a violation of this code.

The department may suspend or revoke the license of any adjuster who is employed by a person whose license is currently suspended or revoked.

An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated. Failure of the person operating the adjusting firm to designate a primary adjuster for the firm, or for each location, as may be applicable, on the required form within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license.

Any adjusting firm may request, on the applicable form, verification from the department of any person's current licensure status. If a request is mailed to the office within five working days after the date an adjuster is hired, and the department subsequently notifies the adjusting firm that an employee's license is currently suspended, revoked, or has been denied, the license of the primary adjuster would not be revoked or suspended as long as the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

## Contact Information

Any licensed agent or adjuster doing business under a firm or corporate name (or under any business name) other than his or her own individual name must, within 30 days after the initial transaction of insurance, file a written statement with the Department of the firm, corporate, or business name being used on appropriate Florida forms. The address of any office or place of business using the name and the names and Social Security numbers of all officers and director of the corporation and each individual associated with that regarding insurance transactions must also be supplied.

In the event of any change of business name or change of any officers or directors, or of any address or personnel associated with it, provide written notice filed with the Department within 30 days by or on behalf of those licensees whether terminating the firm, corporate, or business name or continuing to operate thereunder. Any licensed insurance agency must, within 30 days, notify the Department of any change in the information contained in the original application.

Under General Procedures, **69B-211.002(22)** a person licensed as an insurance representative must inform the Department of an address change by completing and submitting Form DFS-H2-518, called *"Address Correction Request."* **Under 69B-211.002(24)**, agents or adjusters filing information regarding name changes must complete and submit Form DFS-H2-6364 called *"Filing of Firm, Corporation or Business Name."*

Licensees must notify the Department in writing within 30 days following a change in name, residence address, principal business street address, mailing address, contact telephone numbers, including a business telephone number, or e-mail address. A licensee who has moved his or her principal place of residence and principal place of business from Florida must have his or her license and all appointments immediately terminated by the department. Failure to notify the department within the required time will result in a fine of up to \$250 for the first offense and a fine of \$500 or more or suspension or revocation of the license for a subsequent offense. The department may adopt rules to administer and enforce this section.

*To recap*, licensed individuals are required to provide contact information that is kept current and accurate with the Department of Insurance. Licensees must notify the department in writing within 30 days after a name has changed or a new address becomes effective. The address must include the residence address, principal business street address, or mailing address (such as a post office box). Telephone numbers and email addresses must also be kept current, with notification of any changes made within 30 days of the effective dates.

All contracts for public adjuster services must be in writing and prominently display the following statement on the contract:

*"Pursuant to s. 817.234 of Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 of the Florida Statutes."*

Public adjuster contracts relating to property and casualty claims must contain the full name, permanent business address, and license number of the public adjuster; the full name of the public adjusting firm and the insured's full name and street address, together with a brief

description of the loss. The contract must state the percentage of compensation for the public adjuster's services; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the signatures of the public adjuster and all named insureds; and the signature date. If all the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution.

## **Proof of loss statements**

All **proof of loss statements** must prominently display the following statement:

*"Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."*

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;
2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or
3. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or who knowingly conceals information concerning any fact material to such application.

(b) All claim and application forms shall contain a statement that is approved by the Office of Insurance Regulation of the Financial Services Commission which clearly states in substance the following: *"Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."* This paragraph does not apply to reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

(2)(a) Any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopathic physician,

chiropractic physician, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud, punishable as provided in subsection (11). In the event that a physician, osteopathic physician, chiropractic physician, or practitioner is adjudicated guilty of a violation of this section, the Board of Medicine as set forth in chapter 458, the Board of Osteopathic Medicine as set forth in chapter 459, the Board of Chiropractic Medicine as set forth in chapter 460, or other appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopathic physician, chiropractic physician, or practitioner.

(b) In addition to any other provision of law, systematic upcoding by a provider, as defined in s. 641.19(14), with the intent to obtain reimbursement otherwise not due from an insurer is punishable as provided in s. 641.52(5).

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud, punishable as provided in subsection (11).

(4) Any person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and any administrator or employee of any such hospital, who knowingly and willfully allows the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this section or part XI of chapter 627 commits insurance fraud, punishable as provided in subsection (11). Any adjudication of guilt for a violation of this subsection, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this section or part XI of chapter 627 is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to \$5,000 by the licensing agency, as set forth in chapter 395.

(5) Any insurer damaged resulting from a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(6) For the purposes of this section, "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result, or other evidence of loss, injury, or expense.

(7)(a) It shall constitute a material omission and insurance fraud, punishable as provided in subsection (11), for any service provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the insured or intends to waive deductibles or copayments, or does not for any other reason intend to collect the total amount of such charge. With respect to a determination as to whether a service provider has engaged in such general business practice, consideration shall be given to evidence of whether the physician or other provider made a good faith attempt to collect such deductible or copayment. This paragraph does not apply to physicians or other providers who waive deductibles or copayments or reduce their bills as part of a bodily injury settlement or verdict.

(b) The provisions of this section shall also apply as to any insurer or adjusting firm or its agents or representatives who, with intent, injure, defraud, or deceive any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(8) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8)(a) It is unlawful for any person intending to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates the provisions of this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of two years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736, within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in Florida's statutes.

(d) Charges for any services rendered by any person who violates this subsection in regard to the person for whom such services were rendered are non-compensable and unenforceable as a matter of law.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits as required by s. 627.736. Any person who violates this subsection commits a felony of the second degree, punishable as provided by Florida's statutes. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of two years.

(10) As used in this section, the term "**insurer**" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or other similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation under the Florida Insurance Code.

(11) If the value of any property involved in a violation of this section:

- a. Is less than \$20,000, the offender commits a felony of the third degree, punishable as provided by Florida's statutes.
- b. Is \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree, punishable as provided by Florida's statutes.
- c. Is \$100,000 or more, the offender commits a felony of the first degree, punishable as provided by Florida's statutes.

(12) In addition to any criminal liability, a person convicted of violating any provision of this section for the purpose of receiving insurance proceeds from a motor vehicle insurance contract is subject to a civil penalty.

Except for a violation of subsection (9), the civil penalty will be:

1. A fine up to \$5,000 for a first offense.
2. A fine greater than \$5,000, but not to exceed \$10,000, for a second offense.
3. A fine greater than \$10,000, but not to exceed \$15,000, for a third or subsequent offense.

The civil penalty for a violation of subsection (9) must be at least \$15,000 but may not exceed \$50,000.

The civil penalty shall be paid to the Insurance Regulatory Trust Fund within the Department of

Financial Services and used by the department for the investigation and prosecution of insurance fraud.

This subsection does not prohibit a state attorney from entering into a written agreement in which the person charged with the violation does not admit to or deny the charges but consents to payment of the civil penalty.

(13) As used in this section:

“**Property**” means property as defined in s. 812.012.

“**Value**” means value as defined in s. 812.012.

## **Application for an adjusting firm**

The **application for an adjusting firm** license must include:

- 1.The name of each majority owner, partner, officer, and director of the adjusting firm;
- 2.The resident address of each person required to be listed in the application;
- 3.The name of the adjusting firm and its principal business address;
- 4.The location of each adjusting firm office and the name under which each office conducts or will conduct business; and
- 5.Any additional information that the department requires.

An application for an adjusting firm license must be signed by each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation. Of course, each application must also be accompanied by payment of any applicable fees. License fees are not refundable. An adjusting firm that is required to be licensed must remain licensed for a period of three years from the date of licensure, unless the license is suspended or revoked. The department may suspend or revoke the adjusting firm’s authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.

## **Transfer, Surrender and Termination of Licensing**

An individual licensed in good standing in another state may apply to the department to have the license transferred to this state to obtain a resident agent or all-lines adjuster license for the same lines of authority covered by the license in the other state. To qualify for a license transfer, an individual applicant must meet the following requirements:

- 1.He or she must become a resident of Florida;
- 2.He or she must have been licensed in another state for at least one year immediately preceding the date the individual became a resident of Florida; and
- 3.He or she must submit a completed application for Florida within 90 days after the date the individual became a resident along with payment of all applicable fees and submission of:
  - a.A certification from their home state identifying the type of license and lines of authority, stating that at the time the license was canceled, he or she was in good standing or the state’s Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the agent or all-lines adjuster is or was licensed in good standing for the line of authority requested, and
  - b.A set of the applicant’s fingerprints.

The individual must satisfy Florida’s prelicensing education requirements unless the completion of

prelicensing education requirements was a prerequisite for licensure in the other state and the prelicensing education requirements in the other state are substantially equivalent to the prelicensing requirements of Florida. This paragraph does not apply to all-lines adjusters.

The individual must satisfy the examination requirement, unless exempted. An applicant satisfying the requirements for a license transfer will be approved for licensure in Florida unless the department finds that grounds exist for refusal, suspension, or revocation of a license.

## **Chapter 4 Length of Suspension or Revocation**

The department will, in its order suspending an adjuster's license or appointment or in its order suspending the eligibility of a person to hold or apply for the license or appointment, specify the period during which the suspension is to be in effect, not to exceed two years. The license, appointment, or eligibility remains suspended during the period specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that has been suspended shall not be reinstated except upon the filing and approval of an application for reinstatement and, in the case of a second suspension, completion of continuing education courses prescribed and approved by the department; but the department shall not approve an application for reinstatement if it finds that the circumstance or circumstances for which the license, appointment, or eligibility was suspended still exist or are likely to recur. In addition, an application for reinstatement is subject to denial and subject to a waiting period prior to approval on the same grounds that apply to applications for licensure.

No person or appointee under any license or appointment revoked by the department, nor any person whose eligibility has been revoked by the department, has the right to apply for another license or appointment under this code within two years from the effective date of such revocation or, if judicial review of such revocation is sought, within two years from the date of final court order or decree affirming the revocation. An applicant for another license or appointment must apply and qualify for licensure in the same manner as a first-time applicant, and the application may be denied on the same grounds that apply to first-time applicants for licensure. In addition, the department will not grant a new license or appointment or reinstate eligibility if it finds that the circumstance or circumstances for which eligibility was initially revoked or for which the previous license or appointment was revoked still exists or are likely to recur; if an individual's license as agent or customer representative or eligibility to hold same has been revoked upon the ground specified in s. 626.611(12), which follows this paragraph, the department will refuse to grant or issue any new license or appointment applied for.

The department will deny an application for licensure, suspend, revoke, or refuse to renew or continue the license or appointment if one is already active, for an agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

- a. Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.
- b. Failure to pass to the satisfaction of the department any examination required under this code.
- c. If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.
- d. Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of



dissemination of information or advertising.

e.If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

f.Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

g.Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

h.Fraudulent or dishonest practices in the conduct of business under the license or appointment.

i.Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

j.Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.

k.Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer representative for the purpose of soliciting or handling "controlled business" with respect to general lines agents, with respect to life agents, and with respect to health agents.

l.Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

m.Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of one year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

n.Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440 containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

o.Sale of an unregistered security that was required to be registered.

p.In transactions related to viatical settlement contracts:

- 1.Commission of a fraudulent or dishonest act.
- 2.No longer meeting the requirements for initial licensure.
- 3.Having received a fee, commission, or other valuable consideration for his or her services with respect to viatical settlements that involved unlicensed viatical settlement providers or persons who offered or attempted to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911 and who were not licensed life agents.

## **Dealing in Bad Faith with Violators**

The department will, upon receipt of information or an indictment, immediately suspend a license temporarily or appointment issued under this chapter when the licensee is charged with a felony. The suspension will continue if the licensee is found guilty of, or pleads guilty or nolo contendere to the crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of his or her license or appointment.

During the period of suspension or revocation of a license or appointment, and until the license is reinstated or, if revoked, a new license issued, the former licensee or appointee may not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by an agent, agency, adjuster, or adjusting firm.

## **Grounds for Compulsory/Discretionary Refusal, Suspension, or Revocation of Insurance License/Agency License/Appointment**

### **626.8697 Refusal, Suspension, or Revocation of Adjusting Firm License**

The department will deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds the adjusting firm or its majority owner, partner, manager, director, officer, or other person who manages or controls the firm lacks one or more of the qualifications required for the license or if material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the license occurred.

The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds that any of the following applicable grounds exist with respect to the firm or any owner, partner, manager, director, officer, or other person who is otherwise involved in the operation of the firm:

Any cause for which issuance of the license could have been refused had it then existed and been known to the department.

1. Violation of any provision of this code or of any other law applicable to the business of insurance.
2. Violation of any order or rule of the office or commission.
3. An owner, partner, manager, director, officer, or other person who manages or controls the firm having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of one year or more under the laws of the United States or of any state or under the laws of any other country, without regard to whether adjudication was made or withheld by the court.
4. Failure to inform the department in writing within 30 days after a pleading by an owner, partner, manager, director, officer, or other person managing or controlling the firm of guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of one year or more under the laws of the United States or of any state, or under the laws of any other country, without regard to whether adjudication was made or withheld by the court.
5. Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of or to violate a provision of the insurance code or any order or rule of the department, office, or commission.
6. Knowingly employing any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department.
7. Committing any of the following acts with such a frequency as to have made the operation of the adjusting firm hazardous to the insurance-buying public or other persons:
  - a. Misappropriation, conversion, or unlawful or unreasonable withholding of moneys belonging to insurers or insureds or beneficiaries or claimants or to others and received in the conduct of business under the license.
  - b. Misrepresentation or deception regarding the business of insurance, dissemination of information, or advertising.

c.Demonstrated lack of fitness or trustworthiness to engage in the business of insurance adjusting arising out of activities related to insurance adjusting or the adjusting firm.

9.Failure to appoint a primary adjuster.

In lieu of discretionary refusal, suspension, or revocation of an adjusting firm's license, the department may impose an administrative penalty of up to \$1,000 for each violation or grounds, not to exceed an aggregate amount of \$10,000 for all violations or grounds.

If any adjusting firm, having been licensed, thereafter has its license revoked or suspended, the firm must terminate all adjusting activities while the license is revoked or suspended.

## **626.8698 Disciplinary Guidelines for Public Adjusters and Public Adjuster Apprentices**

The department may deny, suspend, or revoke the license of a public adjuster or public adjuster apprentice and administer a fine not to exceed \$5,000 per act for any of the following:

- 1.Violating any provision, rule or order of the department;
- 2.Receiving payment or anything of value as a result of an unfair or deceptive practice;
- 3.Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise; entering into a split-fee arrangement with another person who is not a public adjuster; or being otherwise paid or accepting payment for services that have not been performed.
- 4.Violating s. 316.066 or s. 817.234; s. 316.066 is shown on page 43.
- 5.Soliciting or otherwise taking advantage of a person who is vulnerable, emotional, or otherwise upset as the result of trauma, accident, or another similar occurrence; or
- 6.Violating any ethical rule of the department.

## **Duties of Licensed vs. Unlicensed Personnel**

While adjuster companies employ unlicensed personnel, only public adjusters may actually perform adjusting duties. Unlicensed personnel are intended to perform clerical duties that are associated with the profession.

Unfortunately, when a catastrophe occurs anywhere in the United States it attracts people who know there is money to be made adjusting claims, whether they are legally qualified to do so or not. Florida has seen explosions in the number of public adjusters following severe weather events. However, after the passage of time, the number of in-state licensed public adjusters typically decline as work becomes less available.

## **Furnishing Supplies to Unlicensed Agent Prohibited; Civil Liability**

Pursuant to Sec. 626.342, Blank forms, applications, stationary, and other supplies may not be given to another agent unless they relate to a class of business the individual is licensed and appointed for.

When supplies are furnished to an un-appointed person and applications are then accepted by the insurer or agency, they become liable for the writing agent's actions to the extent they would have been if the individual had actually received an appointment. An insurer, general agent, insurance agency, or agent that furnishes any of the supplies specified and accepts from or writes any business for that agent or agency is subject to civil liability to the insured to the same extent and manner as if the agent or prospective agent had been appointed or authorized to act on its behalf.

This would not apply to insurance risk apportionment plans. It does not apply to the placing of surplus lines business either.

## **626.0428 Agency Personnel Powers, Duties, and Limitations**

A salaried individual employed by an agent or agency devoting full time to clerical work, with incidental taking of insurance applications or quoting and receiving premiums on incoming inquiries in the office is not deemed to be an agent or customer representative if his or her compensation does not include commissions in part or whole on the business. The individual's duties may not be related to the production of applications, insurance or premiums.

Employees may not bind insurance coverage unless he or she is licensed and appointed as an agent or customer representative. Employees may not initiate contact with any person for the purpose of soliciting insurance unless he or she is licensed and appointed.

## **69B-222 Unlicensed Insurance Personnel**

In many agencies, there are both licensed personnel and unlicensed personnel. Under 69B-222, individuals who are not licensed are employed in many cases to perform acceptable support duties, such as clerical work that is incidental to completing insurance applications or other services necessary to the smooth operation of the company or business. Non-licensed personnel receiving a salary are employed by the agent or agency to perform necessary office functions, such as taking applications (where allowable), quoting or receiving premium payments or answering questions on the telephone. They are not deemed to be an agent or customer representative if their compensation does not include in whole or part any commissions resulting from their work. The individual's work may not be related to the production of applications, insurance or premiums, meaning he or she did nothing to generate the business but merely assisted in processing it.

## **Other Requirements**

### **626.2815 Continuing Education Requirements**

The 24-hour continuing education requirement remains the same for most licensees, but not for all. As of October 2014, all public adjusters (as well as other lines of authority) must complete a five-hour law-and-ethics update course specific to the public adjuster's license (which will be designated as 5-320 Law-and-Ethics on our website). It must cover insurance law, ethics, disciplinary trends, and industry trends. This replaced the previous mandatory ethics and law requirements.

The remaining 19 credit hours of continuing education are now considered "elective" and may consist of any public adjuster specific material that has been approved by Florida. Even those that do not need to complete 24 credits each renewal period must still complete the 5-hour law-and-ethics course as part of their total CE requirements. The 5-hour course is part of the total CE hour requirements, not in addition to it.

Public adjusters holding more than one license must complete the 5-hour course requirement in the subject area of at least one of their licenses.

An individual licensed and appointed as a public adjuster may not be employed during the same time by more than one public adjuster or public adjuster firm or corporation. A person licensed as an all-lines adjuster and appointed as an independent adjuster may not be employed at the same time by more than one independent adjuster or independent adjuster firm or corporation.

## **626.869 License, Adjusters; Continuing Education**

An applicant for an adjuster's license may qualify and when issued his or her license may cover adjusting in any one of the following classes of insurance:

- 1.All lines of insurance except life and annuities;
- 2.Motor vehicle physical damage insurance;
- 3.Property and casualty insurance;
- 4.Workers' compensation insurance; or
- 5.Health insurance.

No examination on workers' compensation insurance or health insurance is required for public adjusters. Applications for new licenses must specify which classes of business the applicant is applying for.

## **Advertising**

Pursuant to Secs. 626.854, 626.9541 F.S., the Legislature found it necessary to regulate public insurance adjusters for the protection of the public and to prevent the unauthorized practice of law.

A public adjuster is any person (except a duly licensed attorney-at-law) who completes or files an insurance claim form for an insured or third-party claimant or who acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of claims for loss or damage covered by an insurance contract. A public adjuster is also someone who advertises for employment as an adjuster of these claims. The term also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of a public adjuster. Of course, any duties performed must be paid for in some way, whether by a direct charge or through commissions.

The previous definition does not apply to:

- 1.A licensed health care provider or employee thereof who prepares or files a health insurance claim form on behalf of a patient.
- 2.A person who files a health claim on behalf of another and does so without compensation.

Public adjusters may not give legal advice or act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages. The term "insured" includes only the policyholder and any beneficiaries named or similarly identified in the policy.

Public adjusters may not directly or indirectly solicit an insured or claimant through any other person or entity by any means except on Monday through Saturday each week and only between the hours of 8 a.m. and 8 p.m. on those days.

Public adjusters may not directly or indirectly contact consumers in any way or enter into a contract with a claimant for at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.

An insured or claimant may cancel a public adjuster's contract to adjust their claim without penalty or obligation within three business days after the date the contract was executed or within three business days after the date the insured or claimant notified the insurer of the claim. The public adjuster's contract must disclose the claimant's right to cancel the contract and advise him or her that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof of the cancellation. The insured or claimant has five business days after the date on which the contract is executed to cancel a public adjuster's contract.

It is an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any

assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading. The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

- 1.A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.
- 2.A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.
- 3.A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.
- 4.A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

For our purposes here, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

**"THIS IS A SOLICITATION FOR BUSINESS.  
IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND  
YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER,  
YOU MAY DISREGARD THIS ADVERTISEMENT."**

Public adjusters, public adjuster apprentices, and any other person or entity acting on behalf of public adjusters or public adjuster apprentices may not give or offer to give a monetary loan or advance to a client or prospective client. Public adjusters, public adjuster apprentices, and all other individuals or entities acting on behalf of public adjusters or public adjuster apprentices may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of \$25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event may the contracts exceed the limitations listed below.

Public adjusters may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

- 1.Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in the next paragraph (2) below applies.
- 2.Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

If any maneuver, shift, or device is used to avoid the mandated limits on compensation to allow the individual to exceed those limitations is a violation of this chapter and punishable, as provided under s. 626.8698.

## **Disciplinary Guidelines for Public Adjusters and Public Adjuster Apprentices**

According to 626.8698, the department may deny, suspend, or revoke the license of a public adjuster or public adjuster apprentice, and administer a fine not to exceed \$5,000 per act, for any of the following:

1. Violating any provision of this chapter or a rule or order of the department;
2. Receiving payment or anything of value resulting from an unfair or deceptive practice;
3. Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise; entering into a split-fee arrangement with another person who is not a public adjuster; or being otherwise paid or accepting payment for services that have not been performed;
4. Violating s. 316.066 (as shown below) or s. 817.234 (as shown on page 32);
5. Soliciting or otherwise taking advantage of a person who is vulnerable, emotional, or otherwise upset as the result of a trauma, accident, or other similar occurrence; or
6. Violating any ethical rule of the department.

## **Referrals of Business**

Public adjusters, public adjuster apprentices, and other persons acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

## **48 Hours' Notice**

A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

## **Prompt Notice to Insurers**

Public adjusters must ensure that prompt claim notice is given to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

## **In-Person Meetings**

Insurers may not exclude public adjusters from having in-person meetings with insureds. Insurers must meet or communicate with public adjusters in an effort to reach agreement as to the scope of the covered loss under their insurance policies. Public adjusters must also meet or communicate with insurers in an effort to reach agreement as to the scope of covered losses.

under insurance policies. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

### **Reasonable Access**

Public adjusters may not restrict or prevent insurers, company employee adjusters, independent adjusters, attorneys, investigators, or any other persons from acting on behalf of insurers from having reasonable access at reasonable times to any insured or claimant or to insured properties that are the subject of claims.

### **Obstruction**

Public adjusters may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insureds may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insureds must allow the insurer to have access to the property without the participation or presence of the public adjuster or insureds in order to facilitate the insurer's prompt inspection of the loss or damage.

### **Licensed Contractors and Subcontractors May Not Adjust Claims**

Licensed contractors and subcontractors may not adjust claims on behalf of an insured unless licensed and compliant as a public adjuster. However, contractors may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of the property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

### **Adjusters and Apprentices May Not:**

Public adjusters may not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

Public adjusters, public adjuster apprentices, and any persons acting on behalf of adjusters or apprentices may not enter into contracts or accept power of attorneys that vest in the public adjuster, public adjuster apprentice, or other person acting on their behalf effective authority to choose the persons or entities that will perform repair work in a property insurance claim.

The previous requirements apply only to residential property insurance policies and condominium unit owner policies.

## **Chapter 5 Reporting of Administrative Actions**

### **Record keeping**

Each appointed independent adjuster and licensed public adjuster must maintain a place of business in Florida that is accessible to the public. The usual and customary records must be kept there pertaining to transactions made under the license. The business office does not have to be in an office building or business district; it may be located in the individual's home.



The adjuster's records relating to claims and losses must be retained for a period of not less than three years after completion of the adjustment. This does not prohibit returning documents belonging to the insurer or prepared by the adjuster and required by the insurer to be returned.

## **Department Communication**

Agents should add **MyFloridaCFO.com** to their email software's Trusted or Safe Senders List so that all important notifications are received. Licensees having a valid email address on file with the Department will receive important email notifications regarding applications, licenses, continuing education, or appointments. Warnings regarding new schemes and scams being marketed to licensees and their customers will also be emailed to those who have a MyProfile registration. Agents may update contact information through their MyProfile account (agents are required to keep such information current with the department). Agents are always required to abide by the Florida Insurance Code regardless of whether information was provided, or attempted to be provided, by Florida through MyFloridaCFO.com.

## **Nonresident Independent or Public Adjusters and Service of Process**

Each licensed nonresident public adjuster or all-lines adjuster appointed as an independent adjuster must appoint Florida's Chief Financial Officer and his or her successors as their attorney to receive service of legal process issued against him or her in Florida resulting from transactions completed under the public adjuster license.

The appointment of the Chief Financial Officer (CFO) is irrevocable as long as there could be any cause of action brought against the adjuster due to his or her insurance transactions in Florida. In other words, the adjuster may not have the process delivered anywhere other than to the CFO. However, the CFO will have a copy delivered to the adjuster. The CFO will keep a record of the day and hour of service upon him or her of all legal processes received.

## **Defined Practices; Hearings, Witnesses, Appearances, Production of Books and Service of Process**

According to 626.9571, Whenever the department or office has reason to believe that any person has engaged, or is engaging, in Florida in any unfair method of competition or any unfair or deceptive act or practice or is engaging in the business of insurance without being properly licensed as required by this code and that a proceeding by it in respect thereto would be to the interest of the public, it will conduct a hearing. The penalties for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed \$1,000 per violation.

Statements of charges, notices, and orders under this act may be served by anyone duly authorized by the department or office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or her or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as aforesaid, shall be proof of service of the same.

## **Chapter 6 Guaranty Association**

Florida created a nonprofit legal entity known as the Florida Life and Health Insurance Guaranty Association (FIGA). Insurers must become and remain members of the association as a condition

of their authority to transact insurance in Florida. Additionally, insurers must agree to reimburse the association for all claim payments made on the insurer's behalf during financially difficult times if the insurer is subsequently rehabilitated. The association will perform its functions under the plan of operation established and approved and will exercise its powers through a board of directors.

For purposes of administration and assessment, the association maintains three accounts:

1. A health insurance account;
2. A life insurance account; and
3. An annuity account.

Borrowing between accounts for payment of policyholder and contract holder claims and other obligations of the association is authorized at the discretion of the board of directors, provided that the amounts so borrowed are restored to the appropriate accounts not less than annually. The association comes under the immediate supervision of the department and is subject to the applicable provisions of the insurance laws of Florida.

## **Board of Directors**

The board of directors of the association is comprised of not fewer than five nor more than nine-member insurers, serving terms as established in the plan of operation. At all times, at least one member of the board must be a domestic insurer. The members of the board are elected by member insurers subject to the approval of the department. A vacancy on the board will be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department. Prior to the selection of the initial board of directors and the organization of the association, the department shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer is entitled to one vote, in person or by proxy. If the board of directors is not elected within 60 days after notice of the organizational meeting, the department may appoint the initial members.

In approving the election of members to the board, or in appointing members to the board, the department shall consider, among other things, whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

## **Powers and Duties of the Association**

If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

1. Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;
2. Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and
3. Loan money to the impaired insurer.

If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of persons referred to in s. 631.713(2); and

2. Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents of this state; and
2. Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

This does not apply when the department has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this part for residents of Florida.

The association may:

1. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part.
2. Sue or be sued, including the taking of any legal actions necessary or proper for the recovery of any unpaid assessments, provided that service of process must be made upon the person registered with the department as agent for receipt of service of process.
3. Borrow money to affect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.
4. Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part.
5. Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.
6. Take such legal action as may be necessary to avoid payment of improper claims.
7. Exercise, for the purposes of this part and to the extent approved by the department, the powers of a domestic life or health insurer, but in no case, may the association issue insurance policies or annuity contracts other than those issued to satisfy the contractual obligations of the impaired or insolvent insurer.

The association is not liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer prior to its liquidation. This does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or liquidation.

The association may reinsure any alternative or reissued policy. Alternative or reissued policies adopted by the association are subject to the approval of the department upon terms and conditions the department considers appropriate, given the function and special purpose of the association. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

Alternative or reissued policies must contain at least the minimum statutory provisions required under this code and provide benefits that are reasonable with respect to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium must reflect the amount of insurance to be provided and the age and

class of risk of each insured, but may not reflect any changes in the health of the insured occurring since the original policy was last underwritten.

Alternative policies issued by the association must provide coverage of a type generally similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date that the coverage is replaced by another similar policy by the association. Any reissued, reinsured, or alternative policy must, however, be subject to association coverage if the replacement insurer becomes impaired or insolvent.

In carrying out its duties regarding guaranteeing, assuming, or reinsuring policies or contracts, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.
2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

## **Powers and Duties of Department and Office**

The office will, upon request of the board of directors, provide the association with a statement of the premiums in each of the appropriate states for each member insurer. When impairment is declared, and the amount of the impairment is determined, it will serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties.

The department will, in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the department will be appointed conservator.

The office may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the approved plan of operation of the association. As an alternative, the office may levy a forfeiture on any member insurer that fails to pay an assessment when due. Forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than \$100 per month.

Any action of the board of directors or of the association may be appealed to the office by any member insurer if it is taken within 30 days of the action. If a member company is appealing an assessment, the amount assessed must be paid to the association and available to meet association obligations during the pendency of the appeal. If the appeal is upheld, the amount paid in error or excess will be returned to the member company. Any final action or order of the office shall be subject to judicial review in a court of competent jurisdiction.

The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

## **Definitions**

As used for the Guaranty Association:

“Account” means any of the three accounts created in s. 631.715.

“Association” means the Florida Life and Health Insurance Guaranty Association created in s. 631.715.

“Contractual obligation” means any obligation under covered policies.

“Covered policy” means any policy or contract set out in s. 631.713 and reduced to written, printed, or other tangible form.

“Impaired insurer” means a member insurer deemed by the department to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

“Insolvent insurer” means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction.

“Member insurer” means any person licensed to transact in this state any kind of insurance as set out in s. 631.713.

“Premium” means any direct gross insurance premium and any annuity consideration written on covered policies, less return premium and consideration thereon and dividends paid or credited to policyholders on such direct business. “Premium” does not include premium and consideration on contracts between insurers and reinsurers.

“Person” means any individual, corporation, partnership, association, or voluntary organization.

“Resident” means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer. A person may be a resident of only one state, which in the case of a person other than an individual shall be the person’s principal place of business. Citizens of the United States who are residents of foreign countries or United States possessions, territories, or protectorates that do not have an association similar to the guaranty association created by this part shall be deemed residents of the state of domicile of the insurer issuing the policies or contracts.

## **Chapter 7 Florida Insurance Law Updates**

### **House Bill 301:**

Applications for Insurance - provides that workers compensation insurance applicants and their agents are not required to have their sworn statements notarized.

Surplus Lines Export Eligibility - Lowers the home value threshold (dwelling replacement cost) to \$700,000 or more for exporting a residential property insurance policy to a surplus lines insurer with only one declination. Three declinations are still required for exporting residential property insurance policies for dwellings with a replacement cost under \$700,000). Amends the definition of “Diligent Effort”, s. 626.914(4), F.S.

Lowers the threshold for the dwelling replacement cost of a residential structure from \$1 million to

\$700,000 when requiring only one declination. Any dwelling with a replacement cost of less than \$700,000 will require three declinations as part of the diligent effort done by the retail (general lines) agent. If the home is valued at \$700,000 or more, then only one declination will be required, although agents are free to obtain more.

Unfair Insurance Trade Practices/Loss Control and Mitigation - Permits an insurer or agent to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.

Secondary Notice to Life Insurance Policy Lapse - Requires a life insurer to notify the servicing agent at least 21 days before a life insurance policy lapses in addition to the insured and a second person designated by the insurer, except when the insurer provides an online method for the agent to identify lapsing policies or a process for the agent to determine that the pre-lapse notice was sent to the insured; the insurer has no record of the agent servicing the policy or the agent is employed by the insurer.

Prepayment of Motor Vehicle Insurance Premium - Reduces the minimum amount of premium which must be collected for motor vehicle insurance at the initial issue of a policy from two months' premium to one month.

Agent Fees - removes the \$35 cap on the per-policy fee surplus lines agents may charge for each policy exported to the surplus lines market. The filing surplus lines agent may charge a reasonable policy fee that must be itemized separately for the customer before purchase and enumerated in the policy

Allows retail agents to receive a reasonable per-policy fee on exported policies; the per-policy fee must be itemized separately for the consumer before purchase. This fee must be itemized separately to the customer before purchase. This fee is not required to be shown in the policy.

Applications for Insurance - Provides that workers' compensation insurance applicants and their agents are not required to have their sworn statements notarized.

## **Residential Flood Protection s. 627.715(4), F.S.**

Currently, the law allows a surplus agent to export a personal lines residential flood policy without requiring a diligent effort. This exemption will expire on July 1, 2019. No extension was passed; thus all residential flood risks will be subject to Diligent Effort requirements on July 1, 2019.

## **House Bill 1393**

Allowing licensees who currently hold a limited license as an industrial fire or burglary agent to renew their license but prohibiting new licenses from being issued; Authorizing DFS discretion to deny an application for an insurance agency license, suspend, revoke or refuse to continue the license of any insurance agency on the grounds that another jurisdiction has taken an adverse action against a professional license held by the agency or a person who manages or controls such agency and to suspend or revoke; and allowing formerly disqualified agents who have served half of the disqualifying period to apply for a probationary license. Requiring suspended bail bond agent to file a new application to be considered for reinstatement of their license. Reducing qualification criteria for non-resident public adjusters applicants.

## **House Bill 7065**

Insurance Assignment Agreements; Providing requirements and limitations for property insurance assignment agreements; providing a burden of proof; providing that an assignment agreement does not affect managed repair arrangements under a property insurance policy; providing that an acceptance by an assignee of an assignment agreement is a waiver by the assignee and its

subcontractors of certain claims against an insured; specifying an insured's payment obligations under an assignment agreement; requiring notice of intent to initiate litigation, etc.

## **HB 337**

Also signed by the Governor and it included Section 23, which made subsection (10) of HB 7065 effective as soon as the Governor signed HB 7065. Subsection (10) in HB 7065 provides new limits on attorney fees and costs. These new limits are now effective.

## **House Bill 7071**

Financial literacy is vital to making informed financial decisions and building a foundation for life-long financial wellness. Specifying that school districts must offer at least a half-credit financial literacy course as an elective.

**Note:** The legislation noted is not exhaustive of all newly-created laws or pending legislation which may be of interest to Department licensees. Information about the laws passed or pending can be searched at the House or Senate websites. We may cover additional legislation in future issues.

## **House Bill 1011**

HB 1011 was initiated in the 2018 legislative session, requiring homeowners' insurance policies to make it clear that they do not have coverage for flood insurance. Too often policyholders assume that their hurricane coverage will also cover flooding. This is especially a problem in areas of Florida where higher sea levels are seen and stronger storms are occurring from climate change.

HB 1011 amended subsection (4) of section 627.7011, of the Florida Statutes to read:

Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage

(4) An insurer that issues a homeowner's insurance policy must include with the policy documents at initial issuance and every renewal in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE; LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS THIS WITH YOUR INSURANCE AGENT."

It goes on to say: "Flood Insurance: You may also need to consider the purchase of flood insurance. Your homeowner's insurance policy does not include coverage for damage resulting from flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent."

The intent of this change in law is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowner policies, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agents.

This change took effect January 1, 2019.

## **House Bill 483**

This is an act relating to unfair insurance trade practices, amending s. 626.9541, F.S.; revising the types, values, and frequency of advertising and promotional gifts that licensed insurers or their

agents may give to insureds, prospective insureds, or others; authorizing insurers and agents to make specific charitable contributions on behalf of insureds or prospective insureds; prohibiting title insurance agents, title insurance agencies, or title insurers from giving insureds, prospective insureds, or others any article of merchandise in excess of a specified value; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (m) of subsection (1) of section 17 626.9541, Florida Statutes, is amended to read:

## **UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.**

The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(m) Advertising and promotional gifts and charitable 24 contributions permitted.

1.The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a licensed insurer or its agents from:

a.Giving to insureds, prospective insureds, or others any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of \$100 or less per insured or prospective insured in any calendar year.

b.Making charitable contributions, as defined in s. 36 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds, of up to \$100 per insured or prospective insured in any calendar year.

2.The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than \$25.

A person or entity governed by this subparagraph is not subject to subparagraph 1.

Section 2. House Bill number 483 became effective July 1, 2018.

## **House Bill 409**

Authorizes remote notarization and the use of an electronic will. The bill provides definitions for online notarization and the technology required; procedures, standards, and requirements for online notarization; registration requirements for online notaries; a certificate to be used by online notaries; standards for supervising the witnessing of electronic records; authorizes the use of an electronic will; and provides a means for self-proving, storing, and filing an electronic will.

## **House Bill 633**

This bill relates to the Florida Smart City Challenge Grant Program, creating s. 316.0899, F.S. The program is created within the Department of Transportation, providing program goals, grant eligibility requirements and requiring the department to issue a request for proposals. It will provide proposal requirements, as well as award of grants and use of grant funds, provide reporting requirements, provide administrative support by the department and give an effective date.



Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.0899, Florida Statutes, is created to read:

## **Rule Chapter 69B-220**

Rule Chapter 69B-220 experienced changes that pertain to Public Adjusters. For example, some of the definitions contained in this section experienced changes, as reviewed in this text.

The Florida Bar recently made it clear that if a public adjuster files a claim of lien against a customer on their behalf or on behalf of their adjusting firm, which is a fictitious entity requiring representation by a lawyer, it would be considered engaging in the unlicensed practice of law. There is no statutory authority to authorize the conduct as section 713.03 of Florida's statutes creates lien rights in favor of numerous occupations and professions, but fails to include public insurance adjusters.

Any public adjuster that engages in this type of activity is subject to disciplinary action by the Florida Bar and the Florida Department of Financial Services if a violation of the Florida insurance Code is committed.

A licensed contractor or a subcontractor, may not adjust a claim on behalf of an insured unless he or she is licensed and compliant as a public adjuster. However, Florida Statute 626.854(16), F.S., clarifies that a licensed contractor may discuss or explain their bid for construction or repair of covered property with the owner of the residential property or the insurance company that is covering the property if they are doing so for the usual and customary fee that applies to the work they will be performing as stated in the contract between the contractor and the insured.

Statute 626.854(16) states: "A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured."

Contractors that assist their customers with their insurance claims may illegally be engaging in the practice of public adjusting without being properly licensed by the Department of Financial Services.

The definition of a public adjuster is any person, except an attorney, who, for money or any other thing of value (which would include securing a contract for repairs):

- 1.Prepare, completes or files an insurance claim form for an insured.
- 2.Aids in any manner on behalf of an insured in negotiating for or effecting the settlement of a claim.
- 3.Advertises or solicits for employment as an adjuster of such claims.

Individuals acting as public adjusters in any manner by negotiating or effecting the settlement of an insurance claim on behalf of an insured and who is performing any of these services for money, commission or anything of value without being licensed as a public adjuster, could be subject to arrest and may be charged with a third-degree felony.

An individual licensed as a public adjuster cannot enter into a contract to do both the public adjusting and construction work on the same property. As stated in 626.8795:

"A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with

any claim that the public adjuster has a contract or an agreement to adjust."

The Department of Financial Services has acted in the past against licensed contractors for illegally acting as a public adjuster or advertising the services performed by a public adjuster without being licensed. The Department will continue to monitor this.

### **Federal Law that is Pertinent to Florida**

The federal False Claims Act, the federal Program Fraud Civil Remedies Act and some state laws can subject individuals and organizations to penalties and fines if fraud is committed against either the federal or state governments.

Under the False Claims Act (31 U.S.C. §§ 3729-3733), false claims include knowingly submitting false or fraudulent claims to the government with the intention of receiving payment, making or using false records or statements in connection with claims, or obtaining money from the government that one is not actually entitled to, and then using false statements or records to keep the money.

While this might typically bring to mind medical claims, it can also apply to other types in the property/casualty field requiring the attention by adjusters.

The federal Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3802) imposes penalties on individuals and organizations that deliberately submit false statements or claims to certain federal agencies. Unlike the False Claims Act, however, under this program the violation occurs when a false claim is submitted, not when it is paid.

## **Chapter 8 Ethical Requirements**

### **626.878 Rules; Code of Ethics**

An adjuster must subscribe to the code of ethics specified in the rules of the department. The rules implement the provisions of this part and specify the terms and conditions of contracts, including the right to cancel a contract, and require practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of the claimant to participate in the adjustment of claims.

### **69B-220.201 Ethical Requirements for Adjusters & Apprentices**

#### **69B-220.201(1) Definitions**

"Adjuster," when used without further specification, includes all types and classes of insurance adjusters, (company employee, independent, and public), subject to Chapter 626, F.S., regardless of whether permanent, temporary, apprentice, or emergency licensees.

"Department" means the Florida Department of Financial Services.

"Person" includes natural persons and legal entities.

### **Florida Association of Public Insurance Adjusters Code of Ethics**

The Florida Association of Public Insurance Adjusters (FAPIA) also requires its members to follow both the Adjuster Code of Ethics and the FAPIA Code of Ethics. Notably, the FAPIA Code of Ethics states that all members of FAPIA must:

- conduct themselves in a spirit of fairness and justice to their clients, insurance companies, and the public
- refrain from improper solicitation
- not make misrepresentations of any kind to insureds or insurance companies
- charge commission rates that are fair and equitable, and in accordance with prevailing laws and regulations of the Florida Insurance Department
- conduct themselves so as to command respect and confidence, and work in harmony with one another, with their clients, and with insurance companies' representatives, to foster a cordial and harmonious relationship with all branches of the insurance business and with the general public
- have knowledge and experience for the work they undertake (they may not endanger the interests of the public adjusting profession, or risk injustice to insureds or to insurance companies by attempting to handle losses or claims for which they are not qualified, and for which they cannot find competent technical assistance)
- not engage in the unauthorized practice of law
- not acquire any interest in salvaged property or participate in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property, except with the knowledge, consent, and permission of the insured
- be cooperative and assist one another in every possible way
- not disseminate or use any form of agreement, advertising, or printed matter that is harmful to the public adjusting profession, or which does not comply with the rules and regulations of the state insurance department where the adjuster works professionally, or which might subject public adjusting and public adjusters to criticism or disrespect

## **Penalties**

According to Rule 69B-220.201 F.A.C., when carrying out the daily tasks with which they are charged, public adjusters must adhere to strict ethical duties when working with clients, potential clients, and any person or organization that hires the adjuster to provide adjusting services. If an adjuster violates the Florida Code of Ethics, the Department may take administrative action against the adjuster. Similarly, a breach of any provision of the Code of Ethics will be considered an unfair claims settlement practice.

## **General Ethical Duties and Guidelines**

As we just learned, public adjusters in Florida are bound by the Code of Ethics, which defines certain activities as unlawful in the process of adjusting insurance claims. Public adjusters who are members of FAPIA are also required to follow the FAPIA Code of Ethics, which imposes general ethical duties when working with consumers and others in the profession. These ethical codes recognize that public adjusters occupy positions of confidence and public trust, and must maintain high ethical standards at all times when interacting with claimants, insurers, and other adjusters.

In addition to the specific practices prohibited by these codes, public adjusters must keep in mind other general ethical practices:

- conducting business with claimants, insurers, and other industry professionals according to

high standards of honesty and fairness

- efficiently handling business, including complaints and disputes
- providing informed and client-focused service
- engaging in fair competition and trade practices

## **Responsibilities to Claimants**

Whether by law or as an ethical matter, adjusters have certain fiduciary responsibilities to act in the best interests of the claimants they represent. The term fiduciary refers to a relationship of confidence or trust between two or more parties. A fiduciary is one who acts on behalf of another, giving rise to a special relationship of trust and confidence.

The duties owed by a fiduciary are broad. They include honesty and integrity, full disclosure, loyalty, good faith, and fairness. As a practical matter, they also require that an adjuster:

- act in the best interest of the claimant
- make recommendations that best meet the claimant's needs while complying with all terms and conditions of any applicable policies and state laws
- honestly and accurately represent the features and benefits of applicable insurance policies
- provide prompt and conscientious service

In recent years, many allegations of bad faith have been made against adjusters and insurance companies, including a great deal of litigation. Essentially, bad faith involves unfair dealing and deception—an adjuster's or insurer's method of precluding a claimant from receiving all or some of the benefits to which he or she is entitled under an insurance policy. Failure to act responsibly toward claimants, and to honor the adjuster's fiduciary duty, is often an essential component of a bad faith allegation and should be avoided at all costs.

## **Professional Competence**

The doctrine of reasonable expectations is a legal concept in insurance law that provides insurance coverage to a claimant, even when the policy does not provide coverage. In this case, the claimant must prove he or she had a reasonable and objective belief the policy would provide coverage despite the language contained in the policy.

To a claimant, a public adjuster is typically viewed as an expert in a field the claimant knows very little about. This status undeniably gives an adjuster credibility and what has been termed “justified believability” among consumers and business organizations. Public adjusters have an ethical obligation to live up to these standards and expectations by maintaining an appropriate level of knowledge regarding the products that insure the losses and claims they are adjusting and the needs these products address.

A public adjuster's failure to understand the insurance policies that apply to the losses and claims he or she adjusts, and any misrepresentations by the adjuster of the terms and conditions of those policies, even if inadvertent, have the potential to negatively impact both claimants and insurers.

## **Standard of Care**

When acting as a professional, a public adjuster is required to apply the level of care and service that is obtained through specialized knowledge, training, skills, and experience. A claimant has a right to depend on an adjuster to apply that knowledge and skill to the very best of his or her ability and to assume the adjuster is acting in the claimant's best interests.

Due care is often defined by the prudent person rule: “the care, skill, and diligence that would be

exercised under similar circumstances by a reasonably prudent person who is familiar with such matters.” The measure of the duty of care is the degree of care and diligence that a person of ordinary care and prudence would exercise in the management of his or her own business. When working with claimants, a good rule of thumb is for public adjusters to ask themselves whether they would follow the same course of action if they were in the claimant’s identical situation.

## **Utmost Good Faith**

The doctrine of utmost good faith calls for each party to an insurance contract to be entirely and completely honest. Although public adjusters are not direct parties to an insurance contract, they are representatives of the insureds that hire them. As such, adjusters are bound by the doctrine of utmost good faith in the same fashion insurers are bound.

Utmost good faith requires adjusters to disclose fully all information pertaining to a claimant's insurance coverage and rights, to be honest in all communications and transactions, to comply with all laws and ethical requirements during the adjustment process, and to treat all parties involved in the claim with fairness and in good faith.

## **Understanding Industry Products and Suitability**

The issue of suitability is more often viewed as being important in the marketing and sales of insurance than it is in the adjustment of losses and claims. However, the adjustment process requires that all advice given, and coverage explanations made, are suitable for the claimant based on the policy purchased to provide coverage for the loss or claim. Accordingly, an adjuster must strive to answer all of the following questions:

- How do the coverages, terms, and conditions of the policy apply to the particular loss?
- Does the claimant understand completely the policy and its provisions?
- Does the claimant understand and accept the policy's limitations?
- What disclosures, notices, and advice is the public adjuster required to provide to the claimant?
- Within what time frame must the public adjuster respond to, and settle, the loss?

Adjusters play an important role in educating insureds and claimants about their specific insurance policies and the insurance industry in general. For this reason, it is essential for public adjusters to explain coverages accurately and to spell out for claimants what is expected of them when a loss or claim occurs. Because of the way the claims process works, public adjusters do not become involved in the insurance transaction until after a loss has occurred. Therefore, the focus of the public adjuster should be on providing fair, honest, and timely claims service in compliance with ethical obligations and requirements of insurance codes and laws.

In general, professional claim adjusters promote positive public relations. They must possess, or strive to possess, certain attributes that will not only effectuate fair claims settlements but will also advance the reputation of the industry. First among these attributes is a commitment to providing outstanding claim service while demonstrating professional courtesy whether the claim is settled, adjusted, compromised, or denied.

Another important attribute is a commitment to comply with laws that prohibit unfair claims settlement practices. Unfair claims settlement practices (discussed later in the chapter) address many aspects of claims handling, including prompt communication with insureds and claimants, prompt and adequate investigation, and clear explanations of settlements, coverage, or claim denials. Ordinarily, if a company or adjuster has committed unfair claims settlement practices with such frequency as to indicate a general business practice, penalties may be assessed against them by the Department.

Public adjusters must demonstrate a genuine desire to minimize legitimate complaints (i.e., a

complaint whereby the person initiating the complaint has justifiable grounds for doing so). In addition, public adjusters must strive to develop a reputation for helping insureds get claims resolved quickly and negotiating fair settlements for their clients

It is important for public adjusters to understand the emotional stress insureds and claimants face when they suffer a loss. In most instances, the process of loss settlement is confusing to policyholders and claimants alike. In some circumstances, it is also traumatic—such as when severe bodily injury is sustained in a car crash or workplace accident.

Public adjusters must be sensitive and empathetic when transacting business with individuals who have suffered a loss and look to their insurance companies to fulfill the promises made via an insurance contract. By acting empathetically and providing excellent service, adjusters will earn the respect and trust of the insurance-buying public.

## **Chapter 9 Unfair Methods of Competition / Unfair or Deceptive Acts**

Public adjusters must follow all laws of course. Beyond that, public adjusters must treat consumers and others fairly without using any type or method of competition that is unfair or deceptive.

### **626.9521 Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Prohibited; Penalties**

Individuals may not engage in Florida in any trade practice that is defined as an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. Those who violate any provision of this part are subject to a fine in an amount not greater than \$5,000 for each nonwillful violation and not greater than \$40,000 for each willful violation. Fines under this subsection imposed against an insurer may not exceed an aggregate amount of \$20,000 for all nonwillful violations arising out of the same action or an aggregate amount of \$200,000 for all willful violations arising out of the same action. The fines may be imposed in addition to any other applicable penalty.

### **626.9641 Policyholders Bill of Rights**

The Policyholder's bill of rights was intended for insurers and the Department, but they really apply to all areas of insurance, including adjusting activities.

The principles expressed in the following standards are intended to be followed by the department, commission, and office when exercising their powers and duties.

1. Policyholders have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.
2. Policyholders have the right to obtain comprehensive coverage.
3. Policyholders have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.
4. Policyholders have the right to an insurance company that is financially stable.
5. Policyholders have the right to be serviced by competent, honest agents and brokers.
6. Policyholders have the right to a readable policy.
7. Policyholders have the right to insurance companies that provide an economic delivery of

coverage that that tries to prevent losses.

8. Policyholders have the right to balanced and positive regulation by the department, commission and office.

## **Misrepresentation**

Misrepresentation occurs when a public adjuster knowingly provides a claimant with information that is untrue, deceptive, or misleading. Among other things, misrepresentation can include the following acts, when committed intentionally in order to obtain an advantage:

- making false statements about the benefits, terms, or conditions of an insurance policy
- describing the type of policy, by name, to misrepresent its true nature

Misrepresentation also includes the publication or circulation of a false, deceptive, or misleading statement about the insurance business or about anyone involved in the insurance business. More specifically, this means that advertisements may not:

- conceal the true identity of the insurer
- mislead the public as to the true role of the licensee
- misrepresent the product as something other than insurance
- provide incorrect information regarding a product's features or benefits

In some cases, a public adjuster may unintentionally make a misrepresentation and believe he or she is being truthful. However, a public adjuster's ignorance of facts or the law is not a defense against liability for misrepresentation. Essentially, adjusters are responsible for the statements they make because they have an ethical duty to understand the coverage provided by the policy for the losses and claims they adjust, and to present those coverages truthfully and accurately.

## **Defamation**

Defamation is both an unethical practice and a prohibited trade practice. It occurs when a public adjuster knowingly makes any type of statement—in writing or verbally—that is false or maliciously critical to any person and does so with the intent to harm that person. Derogatory comments about insurers, agents, or other adjusters during the process of adjusting claims, if they have a negative outcome to the insurer, agent, or adjuster, would be considered defamatory.

## **Boycott, Coercion, and Intimidation**

To ensure that there is competition within the marketplace, Florida prohibits practices that inhibit or eliminate competition. Public adjusters are prohibited from entering into an agreement to boycott, coerce, or intimidate anyone that results in the unreasonable restraint of, or monopoly in, the insurance business. Boycott, coercion, and intimidation are also regulated by the federal government under antitrust statutes.

## **False Statements and Entries**

Because insurers rely upon the accuracy of the information included on claim documents and reports submitted by adjusters when making claim payments, it is essential for public adjusters to be scrupulously honest in the documentation of their work. Knowingly making and filing any document that contains a materially false statement is prohibited. This includes filings with supervisory and public officials and the delivery of such statements to any person or before the public.

## **Complaint Handling Procedures**

Insurers are also required to establish and maintain complaint handling procedures so consumer complaints can be handled promptly when they arise. It is considered an unfair trade practice for insurers to fail to maintain complete records of all written complaints they receive since the date of their most recent examination by the Office of Insurance Regulation. Adjusters should therefore forward any complaints to their appointing entities as soon as they are received, along with all known facts and documentation concerning the complaint.

## **False Claims**

The submission of false claims is not only unethical, it is also considered unlawful. Under some circumstances, submitting a false claim may be considered fraud and/or a federal crime. Any person who knowingly presents a false claim for payment to an insurer commits a prohibited trade practice and is guilty of a second-degree misdemeanor. Pursuant to Sec. 775.082 F.S., in addition to penalties imposed by the Department, filing a false claim may also be subject to imprisonment of up to 60 days.

## **Fraudulent Signatures**

As mentioned previously, insurers rely upon the accuracy of the information included on claim documents and reports submitted by adjusters. One of the most important aspects of insurance policy-related documents is the insured's signature. A signature indicates an individual's knowledge, approval, and acceptance of the statements made in the document(s) to which they are affixed.

The signatures contained on insurance applications affirm the conditions under which coverage is issued. The signatures contained on claim documents affirm the circumstances of the loss and the insured's demand for payment under the policy.

If a public adjuster willfully submits to an insurer a document that contains a false or fraudulent signature, he or she has committed an unfair trade practice. At all costs, adjusters should avoid signing the insured's name on claim documents. In addition, they should not allow other individuals, including a spouse or family member of the named insured, to affix a signature that is not their own.

## **Unfair Claims Settlement Practices**

One of the most important concerns of policyholders is the processing of claims. When a claim is presented, the policyholder is asking the insurer to fulfill the promise the policy represents. Although claims are generally administered by adjusters through a claims department of an insurance company's home or regional office, policyholders frequently look for assistance from the agent who sold them the policy. Indeed, some insurance companies promote the involvement of their agents at claims time in their advertisements.

With these facts in mind, adjusters should familiarize themselves with the guidelines of insurers and their appointing entities with respect to handling claims as well as with Florida's laws concerning unfair claims settlement practices. Florida law addresses unfair claims settlement practices in four categories:

1. attempting to settle claims on the basis of a policy document or binder that was altered without the consent or knowledge of the insured
2. making a material misrepresentation to an insured or other party having an interest in an



insurance policy for the purpose of securing a claim settlement on a less favorable basis than is provided by the policy

3. committing or performing any of the following acts or practices with such frequency they constitute a general business practice:

- failing to use standards to promptly investigate and settle claims
- misrepresenting pertinent facts or policy provisions relating to coverages at issue
- failing to promptly acknowledge communications about claims
- denying claims without conducting reasonable investigations
- failing to affirm or deny coverage of claims within 30 days after proof of loss statements have been completed
- failing to provide a reasonable explanation of the basis in the policy for denying a claim or offering a compromise settlement
- failing to promptly notify the insured that additional information is needed to process a claim
- failing to clearly explain why additional information is needed to process a claim and the nature of the information requested

4. failing to pay personal injury protection insurance claims within certain prescribed times or failing to pay, within 90 days of receiving a notice of claim and affirming coverage, claim amounts that are undisputed unless such payment is prevented by an Act of God, the impossibility of performance, or behavior on the part of the insured or claimant that constitutes fraud, failure to cooperate, or intentional misrepresentation with respect to the subject claim.

## **Insurance Fraud**

One of the most serious problems facing the insurance industry today is insurance fraud. In Florida, the Division of Insurance Fraud enforces the state's criminal laws with respect to insurance transactions. Investigators are certified law enforcement officers with the authority to bear arms and make arrests. The division serves and safeguards the public and businesses in Florida against acts of insurance fraud and the resulting impact of those crimes on taxpayers. According to its most recent report, the division made a record-setting number of arrests for insurance fraud over the past year and obtained convictions resulting in court-ordered restitution of more than \$112 million.

According to Sec. 817.234 F.S., in the state of Florida, a person commits insurance fraud if he or she:

makes a statement when submitting a claim that contains false, incomplete, or misleading information

helps another person make a statement in connection with a claim that contains false, incomplete, or misleading information

knowingly submits an insurance application containing false, incomplete, or misleading information or conceals information that is material to the application

To discourage fraud, all claim and application forms must contain the following statement:

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

If a person is found guilty of insurance fraud, the insurer may recover compensatory damages as

well as its investigation and litigation expenses, including attorney fees, from such person.

In addition, all proof of loss statements must prominently display the following statement:

Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084, Florida Statutes.

## **Chapter 10 Continuing Education Changes**

Changes were made to Chapter 69B-228, F.A.C. in April 2017 affecting all licensees required to comply with Continuing Education requirements. Because the requirements affect the majority of our licensees, we'd like to bring some of the changes to your attention:

69B-228.030, F.A.C.

(1) "Advertising" means the making of a representation in any form in connection with a provider of education or other business in order to promote continuing education credits. Forms of communication include, but are not limited to: television, radio, internet including social media, newspaper, text messaging or other means of instant messaging, email, or other forms of electronic communication.

(3) "Audit" means:

(a) Department activity to monitor or evaluate classroom, seminar, webcast, interactive online, and correspondence courses, examination sites, administrative offices, and provider and licensee records.(4) "Blended course" means a course that consists of a combination of the classroom, self-study correspondence or self-study online study methods.

(5) "Classroom course" means a course that is designed to be presented to a group of students by a live instructor using lecture, video, webcast, virtual or other audio-video presentation.

(6) "Completion," when used in the context of:

(a) Correspondence course, Self-study, means a passing grade of 70 percent or better on the final examination.(7) "Compliance date" means the last day of the licensee's birth month, after holding any license for which continuing education is required for 24 consecutive months a license for which continuing education is required.

(8) "Correspondence course" means a self-study course designed to be presented to students through physical documents or other media.

(12) "Credit hour" means a minimum of 50 minutes of classroom instruction or, for self-study courses, 50 minutes of time that is determined by the Department to be necessary to study text material in order to successfully complete the final examination

(14) "Education Database" means the Department's online system for activity relating to approval of providers, school officials, courses, course offerings, instructors, and the filing of rosters and other information relating to continuing education courses required by rule or statute to be filed with the Department. The Education Database is accessed at <http://www.myfloridacfo.com/division/agents>.

(15) "Guest lecturer" or "speaker" means a natural person, not employed by the provider, who speaks at an approved seminar and whose resume is furnished by the course provider with the course application.

(16) "In-house" means courses or services available only to employees of an entity or for

members of an association.

(30) "Virtual classroom course" means a type of classroom course in which instruction is provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.

(31) "Webcast classroom course" means a type of classroom course delivered through interaction with a live instructor via the internet.

#### 69B-228.060, F.A.C.

(8)(a) Instructors and supervising instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive.

(b) Based on the course providers' policies, refunds may be given.

(b)(c) It shall be considered a violation of this rule if an instructor knowingly allows the following activities of students during approved class time, if knowingly allowed by an instructor, supervising instructor, or school official, shall be considered to be a violation of this rule chapter:

1. Sleeping;
2. Reading of non-course books, newspapers, or other non-course material;
3. Using a cellular phone or other electronic device except to take class notes or to complete mathematical or other course-related exercises;
4. Leaving the class other than during an authorized breaks or emergency.

#### 69B-228-220, F.A.C.

(1)(b) Continuing education credit may not be earned for attending or instructing at any subsequent offering of the same continuing education course within a 24 month period. (Note: previously, courses could not be repeated within a 36 month period)

#### 69B-228.230, F.A.C. Extensions

We occasionally receive inquiries whether the Department grants extensions for CE compliance. The following law provides guidance on this topic.

(1) A request for an extension of time to complete continuing education requirements must be submitted to the Department on Form DFS-H2-460, Request for Extension of Time, which is incorporated by reference in Rule 69B-228.180, F.A.C., a minimum of 15 days prior to the compliance date.

(2) The Department shall grant an extension of time of 90 days to complete the minimum continuing education requirement to an individual upon a showing of good cause.

(3) "Good cause" means an incident or occurrence which is beyond the control of the applicant and which prevents compliance. Examples of good cause include: Disabling accident, illness, or declared national emergency.

(4) A granted request for extension of time shall only apply to a single compliance cycle.

(5) Receiving an extension to complete continuing education does not eliminate the requirement to maintain an active appointment within a 48 month period to retain licensure.

(6) Failure to complete continuing education requirements before the expiration of a granted extension shall result in the termination of appointments as prescribed in subsection 626.2815(10), F.S.

(7) A maximum of four (4) 90-day extensions may be granted for each compliance period if acceptable documentation is received by the Department.

(8) Licensees who are unable to comply with the continuing education requirements due to active duty in the military shall submit a written request for a waiver to the Department pursuant to

subsection 626.2815(2), F.S.

(a) The waiver request must include a copy of the military orders.

(b) The timeframe for active duty, as listed within the military orders, must fall within the compliance

## **Are You Compliant with Your CE or Not?**

To be CE compliant requires more than just taking CE courses. Below are a few suggestions for remaining CE compliant:

CE requirements change. You should regularly review your CE status through your MyProfile account. Your total hours have specific allocation requirements that must be met. Be sure to take all the right categories of CE courses.

Check for late hours. Hours taken after your due date will still post on your compliance evaluation screen, but they will be noted as "Late". Though your hours requirement may have been met, late completion of your continuing education requirement will result in penalties.

Check prior evaluation periods. Always check previous compliance periods to make sure you are not delinquent for a prior period. Be sure to click on VIEW ENFORCEMENT NOTICE just below the Not Compliant text to check for any outstanding fines.

Check your transcript. The same course cannot be taken with the same provider within a two-year period and receive credit. This is noted on your transcript as a duplicate course. You will need to take a different course to meet your CE requirement.

**Remember, your CE compliance date is your DUE date, not your DO date.**

Because many factors may affect your continuing education requirement (e.g. licenses held, number of years licensed, etc.), we encourage you to periodically check your MyProfile account to determine your individual continuing education compliance requirements and status. You will also be able to find more approved CE courses after logging in to your MyProfile account versus the public search option, which limits the results to the first 100 course offerings.

## **Fingerprinting Requirement of Licensed Firms/Entities Reminder**

If there is a change in ownership or control of any entity licensed under Chapter 626, F.S., or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the Department within 30 days after the change. This includes insurance agencies, title insurance agencies, travel agencies holding a travel insurance license, managing general agents, firm reinsurance intermediary brokers, as well as others. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. Please note that for insurance agencies, fingerprints need not be filed for any individual who is currently licensed and appointed.

If you are required to be fingerprinted, you must do so through Florida's vendor, MorphoTrust USA, formerly L-1 Enrollment. You can register, request fingerprint cards to be mailed to you, and pay for fingerprinting by visiting [www.L1enrollment.com/FLInsurance](http://www.L1enrollment.com/FLInsurance) or by calling 1-800-528-1358. The fingerprinting fee is \$45.80 plus local taxes.

[See s.626.202, Florida Statutes]

## **Make Sure You Don't Miss Important Information From the Department**

Licensees should routinely check their MyProfile accounts for messages from the Department. They send an email notification when a message has been sent to remind you to check your MyProfile account, but on rare occasions you may not receive that email. For this reason, we suggest you add our domains [dfs.state.fl.us](mailto:dfs.state.fl.us) and [MyFloridaCFO.com](http://MyFloridaCFO.com) to your email software's

Trusted or Safe Senders List to ensure you are able to receive email notifications from us. Licensees who have a valid email address on file with the Department, as required by law, are sent important email notifications when something affecting their application, license, continuing education, or appointment(s) occurs. Additionally, we will keep you informed with warnings regarding new schemes and scams being marketed to licensees. You can update your contact information through your MyProfile account. We want to keep you informed in a timely manner of pertinent information. You are still required to abide by the Florida Insurance Code regardless of whether you read the information we provide or attempt to provide.

## **Public Adjusters - Are You Ready For Hurricane Season?**

The time to be sure your license is in compliance is now - not when a storm is heading our way! This is a short checklist to ensure your license is in good standing:

- Is your license active?
- Are you self-appointed or appointed by an adjusting firm?
- Do you have the required \$50,000 surety bond?
- Are you compliant with your continuing education requirements?
- Has a primary adjuster been designated for your firm?
- Is all contact information up-to-date? You can update it at MyProfile.
- Are any apprentices licensed and appointed?
- Do you have your Department issued license with you?

## **Public Adjusters - Conflict of Interest**

Public adjusters are reminded to avoid conflicts of interest while performing the duties under their license. A public adjuster may not participate, directly or indirectly in:

- the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee
- may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract or an agreement to adjust. [Sec. 626.8795, F.S.]

## **Chapter 11 Unauthorized Entities and Products**

A substantial problem has arisen with insurance being sold and serviced by unauthorized insurers, also referred to as unauthorized insurance entities. An unauthorized insurer is an organization not licensed to transact insurance in Florida. By contrast, an authorized insurer has been duly authorized to transact insurance in Florida and has received a certificate of authority as evidence of that right.

In many cases, adjusters and agents who acted on behalf of unauthorized insurers did not realize they were representing companies not authorized to conduct business in Florida. In other cases, adjusters and agents were fully aware of the status of the

companies they represented. Regardless of whether licensees act knowingly or unknowingly on behalf of entities that are not licensed, the problems and results are the same: the loss of hundreds of millions of dollars due to unpaid claims and theft of premiums.

Because unauthorized insurers do not participate in the state's guaranty funds, which cover unpaid insurance claims in the event of insurer bankruptcy, contract owners of insurance policies sold by unauthorized insurers are usually left with unpaid claims when the illegal entities fold. In many cases, the operators of unauthorized insurance entities would not have been able to reach potential buyers without the assistance of licensed agents.

Quite often, unauthorized insurance entities offer insurance coverages at very low premium rates or with other terms that sound too good to be true, which tend to entice consumers and agents. However, these rates may not be actuarially sound, and the entity may not have set aside money for reserves to cover its claims or liabilities.

Other times, unauthorized insurance entities may use fabricated letters from regulators to give the appearance of legitimacy or they may state that consumers must join certain trade associations, unions, or other association groups to be eligible for coverage. Licensees should be aware that all of these are red flags indicating potential problems.

Although many unauthorized insurance entities never intend to pay claims and, therefore, never hire adjusters, others pay early claims to give themselves the appearance of legitimacy. Adjusters should make every effort to confirm the status of the insurers with whom claimants maintain their policies.

Florida law, Secs. 626.901, 626.902 F.S., specifically prohibits licensees from representing unauthorized entities. This means that no person may, directly or indirectly, act for or in any way represent an unauthorized entity with respect to residents or property or subjects to be insured in the state. In this context, the terms "act for" and "represent" refer to the following:

Soliciting, negotiating, procuring, or effectuating insurance or annuity contracts, or renewals

Disseminating information as to coverage or rates

Forwarding applications

Delivering policies or contracts

Inspecting risks

Fixing rates

Investigating or adjusting claims or losses

Collecting or forwarding premiums

Representing or assisting such an insurer in any other manner or means in transacting insurance

If an unauthorized insurer fails to pay any claim or loss, the consequence for the licensee who placed the business can be severe. Florida law provides that any person who knew (or reasonably should have known) that the contract was issued by an unauthorized insurer and who solicited, negotiated, took application for, or effectuated the contract is liable to the insured for the full amount of the claim or loss not paid. The fact that the policy was issued by an unauthorized insurer does not invalidate the contract.

Certain types of insurers and insurance are specifically excluded from the definition of unauthorized insurer and this section of the Insurance Code:

## Surplus lines insurance

Transactions of an insurer that is legally not required to have a certificate of authority to transact insurance in Florida (such as for surplus lines insurers and reinsurers)

Independently procured surplus lines insurance, if it is not solicited, marketed, negotiated, or sold in Florida

Matters authorized under the Unauthorized Insurers Process Law, which exists to provide actions in the state of Florida against unauthorized insurers and for service of process upon them

If any person violates the law with respect to representing or abetting an unauthorized insurer, the Office or the Department may issue a cease and desist order. The Florida legislature considers representing or aiding and abetting an unauthorized insurer to be an immediate threat to the well-being of Florida residents.

In addition to other requirements of the Florida Insurance Code, representing or aiding an unauthorized insurer in violation of the Insurance Code constitutes certain criminal acts. Any Florida-licensed insurance agent who knowingly represents or aids an unauthorized insurer—and any person who is not a Florida-licensed insurance agent (including adjusters)—commits a third-degree felony, which is punishable by up to five years' imprisonment and/or a fine up to \$5,000.

Subsequent violations are considered second-degree felonies and are punishable by up to 15 years' imprisonment and/or a fine up to \$10,000. If anyone who commits a violation by representing or aiding an unauthorized insurer is a habitual felony offender, additional punishment may be imposed.

Individuals who represent or aid an unauthorized insurer are personally, jointly, and severally liable for payment of premium taxes on any insurance sold. According to Sec. 626.902; Secs. 775.082, 775.083 F.S., Civil penalties of up to \$1,000 for each non-willful violation and up to \$10,000 for each willful violation may also be imposed.

## Website of Unauthorized Insurers

The state of Florida has taken a very strong position on the issue of unauthorized entities. Public adjusters are responsible for conducting reasonable research to ensure they are not adjusting losses and claims for claimants whose policies were issued by unauthorized insurance entities. It is the duty and responsibility of all adjusters to perform the due diligence necessary so the only insurance products for which claims in Florida are adjusted are those issued by authorized companies.

Any questions about the authorized status of a company can be checked by calling the Florida Department of Financial Services. The Department also maintains a website where licensees and consumers can verify whether a company or individual is authorized to sell insurance products in Florida. Licensees should perform their own due diligence on the companies and individuals they do business with and not rely on documents or assurances provided by an insurer or agent.

The Office of Insurance Regulation also maintains a list of unlicensed entities and their affiliates that have been ordered to cease and desist from transacting insurance in Florida or with Florida consumers. Again, public adjusters should consult this online list to ensure the entities and individuals with whom they negotiate claims are licensed.

Public adjusters should keep in mind that simply because an insurer is currently authorized does not necessarily mean it will continue to be authorized in the future. To minimize the chance of any problems occurring, adjusters are advised to always check an insurer's status before adjusting any loss or claim.

## **New and Other Important Terminology Applicable to Florida Licensed Insurance Professionals**

Throughout this course, we've examined a number of new state and federal laws and regulations that affect the insurance industry as well as the ethical duties adjusters must follow. We've also examined the possible enforcement actions that may be imposed when adjusters violate these rules.

We've conducted a review of some of the initiatives the Department and Office have taken recently to enhance communications with licensees and insurers and to provide consumers with additional product information. We will now review some of the important terms that adjusters must understand in their day-to-day practices.

### **Authorized Insurer**

An authorized insurer (also known as an admitted insurer) is a company that is licensed and authorized to transact insurance business in the state of Florida. The Office issues a certificate of authority to authorized companies.

### **Department of Financial Services**

The Department of Financial Services is responsible for regulating Florida's banking, securities, insurance, mortgage lending, and funeral and cemetery businesses. The Department is comprised of 14 divisions, several of which have a role in regulating insurance, including the Division of Agent and Agency Services, the Division of Insurance Fraud, and the Division of Consumer Services. The Chief Financial Officer heads the Department.

### **Division of Agent and Agency Services**

The name of the former Division of Agents and Agency Services has been changed to the Division of Agent and Agency Services. This agency regulates the licensing of individuals and entities that transact insurance.

### **Eappoint**

eAppoint is the Department's electronic appointment system where insurers can submit appointment applications, renewals, and terminations. They can also check the status of appointment-related submissions and pay any appointment fees that are due.

### **Ethical Conduct**

Ethics are the moral and professional duties a public adjuster or producer owes to his or her clients, the company represented, competitors, and the public. Ethics are the embodiment of the standards of professionalism expected of the adjuster in the conduct of his or her business. Ethical conduct is the manner in which these standards are demonstrated and followed in the course of one's business practice.

### **Federal Insurance Office**

The Dodd-Frank Wall Street Reform and Consumer Protection Act established the Federal Insurance Office (FIO) within the Department of the Treasury. The FIO provides advice to Congress about insurance matters and identifies activities that could pose



systemic risk to the industry. The FIO represents the United States in international insurance matters and consults with states about national and international insurance issues. The FIO also helps the Treasury Secretary administer the Terrorism Risk Insurance Program.

## **Florida Insurance Guaranty Association**

The Florida Insurance Guaranty Association (FIGA) is a nonprofit entity created by statute to pay certain claims of insolvent property and casualty insurance companies. The Association will pay the valid claims of eligible policyholders, subject to coverage limits. All insurers licensed to sell property and casualty insurance in Florida must be members of the Association.

## **MyProfile**

MyProfile is the online website, maintained by the Department of Financial Services' Division of Agent and Agency Services, where adjusters, adjusting firms, agents, and insurance agencies can apply for licenses, change their addresses, verify their continuing education status, obtain duplicate licenses, and view their appointments.

## **Office of Insurance Regulation**

The Office of Insurance Regulation is responsible for regulating and enforcing state laws governing insurance and monitoring company solvency, policy forms, rates, and market conduct performance. The Office issues certificates of authority to companies intending to transact insurance in Florida.

## **Unaffiliated Insurance Agent**

An unaffiliated insurance agent is a licensed, self-appointed agent who is not affiliated with an insurance company and does not sell insurance. Unaffiliated agents provide insurance counseling services to clients in return for a fee.

## **Unauthorized Insurer**

An unauthorized insurer is a company that is operating without a certificate of authority. It is unlawful for adjusters and agents to transact insurance business with an unauthorized insurer. In Florida, an adjuster who represents or aids an unauthorized insurer can be charged with a third-degree felony and may held liable for any unpaid premium taxes.

# **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.