

Chapter 5 Ethical Duties of Adjusters

The insurance business is based on trust: trust in the practitioners who work in the industry and trust in the value of the insurance products it offers. The benefits insurance policies provide are future promises consumers expect insurance companies to fulfill. For insurance products to be perceived as having value, the public, including individual consumers and business enterprises, must trust that the promises made by insurance companies, agencies, and adjusters will be kept. To earn and keep such trust, insurance adjusters—as representatives of the industry, its products, and its promises—must embrace the principles of ethical service and claims standards.

Policyholders' Bill of Rights

To protect the interests of consumers, the Florida legislature enacted the policyholders' bill of rights, which contains principles that licensees and insurers as well as the Department, Commission, and Office must follow. The bill of rights states:

The principles expressed in the following statements shall serve as standards to be followed by the Department, Commission, and Office in exercising their powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in adopting rules:

- Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.
- Policyholders shall have the right to obtain comprehensive coverage.
- Policyholders shall have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.
- Policyholders shall have a right to an insurance company that is financially stable.
- Policyholders shall have the right to be serviced by a competent, honest insurance agent or broker.
- Policyholders shall have the right to a readable policy.
- Policyholders shall have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses.
- Policyholders shall have the right to a balanced and positive regulation by the Department, Commission, and Office.

General Ethical Duties

Aside from the codes of ethics published by industry organizations (i.e., the National Association of Independent Insurance Adjusters), the state of Florida has enacted several laws concerning the ethical duties of insurance licensees. Company, independent, and public adjusters have specific ethical duties in addition to the general ethical requirements they must follow. These ethical requirements apply regardless of the type or class of adjuster license, whether the adjuster is a resident or nonresident, and whether the license is permanent or emergency.

Avoiding Conflicts of Interest

One of the most important foundations of ethical conduct is avoiding conflicts of interest and any appearance of a conflict of interest. If adjusters act in good faith, and put the best interests of their clients—and the insurers and any adjusters or adjusting firms for which

they work—before their own personal interests, they will find compliance with ethical requirements easier to achieve.

A conflict of interest describes a situation in which an individual exploits a fiduciary relationship for personal benefit. For example, assume a licensed adjuster owned and operated a roofing and remodeling company as a side business. If the adjuster contracted to repair the homes of individuals whose homeowners claims he or she adjusted, those transactions would represent a conflict of interest. Because a fiduciary is required to act solely in the interests of the party it represents, adjusters always owe a fiduciary duty to their claimants; they are not permitted to benefit personally (especially financially) from any transaction involving the adjustment of claims.

According to Florida law, "An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics that shall be binding on all adjusters." The Adjuster Code of Ethics leaves no ambiguity about what the state of Florida deems ethical and unethical conduct—or what it will consider a conflict of interest.

For this reason, adjusters should understand fully their ethical duties when adjusting losses and claims and transacting insurance. Of course, in practice, it is not always easy to apply black-and-white rules to the grey areas of human interaction. It can also be very difficult to determine, in advance, what might appear as a conflict of interest.

On occasion, consumers and insurance professionals suggest conduct and behavior that gives no appearance of being harmful to others while, at the same time, being advantageous to the adjuster. When temptation or questions arise, adjusters have at their fingertips an array of resources to help them determine the ultimate ethical position the insurance industry, and the state of Florida, will take.

Florida Adjuster Code of Ethics

The Florida Adjuster Code of Ethics sets forth specific rules regarding the types of behavior that are permissible—and not—when working in the state as an adjuster:

- Adjusters are not permitted to refer claimants who need repairs or other services related to a loss to an individual or organization with which the adjuster has an undisclosed financial interest or that might reasonably be expected to compensate the adjuster for the referral.
- The fair treatment of claimants requires adjusters to refrain from providing favored treatment to any claimant and to adjust all claims in strict adherence with the insurance policy.
- Adjusters are not permitted to handle investigations, or handle loss and claim adjustments and settlements, in any manner that might be harmful to the insured.
- Adjusters are required to report the facts after making a complete investigation in a truthful and unbiased manner.
- Adjusters must exhibit honesty and integrity in every facet of the adjusting process. Their loss and claim settlements must be the result of the fair and unbiased consideration of all pertinent parties. The only compensation adjusters are permitted to accept is that to which they are legally entitled (i.e., compensation by the insurer, adjusting firm, or adjuster that hired them).
- After accepting a claim assignment, adjusters must handle the claim with dispatch and due diligence to achieve a fair and proper outcome.
- Adjusters are required to report promptly to the Department the conduct of any licensee that violates any provision of the Florida Insurance Code or any rule or order of the Department.

-When dealing with elderly clients, adjusters must exhibit "extraordinary care" to ensure any impairments to memory or cognitive functioning do not negatively affect the elderly as they conduct their claims transactions.

-Adjusters are not permitted to negotiate or settle claims with third-party claimants who are represented by an attorney, assuming the adjuster knows the claimant is represented by an attorney, unless the attorney consents to such negotiation or settlement. The insured and the insured's resident relatives are not considered third-party claimants in this regard.

-Adjusters are permitted to interview witnesses and prospective witnesses without the consent of their counsel. However, when interviewing such witnesses, adjusters must "scrupulously avoid" any implication that the witness should make a statement that is not truthful. In addition, adjusters must scrupulously avoid any suggestion or implication that might affect the witness's appearance or testimony. If a witness requests a copy of any signed or recorded statement he or she makes, adjusters must provide a copy to the witness.

-Adjusters may not recommend that a claimant should avoid seeking legal advice or counsel.

-If a claimant or witness is, or should reasonably be expected to be, in shock or serious distress (physical, mental, or emotional) concerning a loss, adjusters are not permitted to attempt to obtain a statement from such claimant or witness, nor are they permitted to attempt a negotiation with such person. Adjusters are not permitted to conclude a loss settlement that would be detrimental to a claimant who is in a state of physical, mental, or emotional distress or shock.

-Although adjusters are not permitted to engage in the unlicensed practice of law in the state of Florida, they must advise claimants of their rights under the pertinent insurance policy, as well as rights granted under applicable Florida laws.

-Independent and company adjusters are only permitted to fill in the blanks on release forms approved by their insurers. An exception exists for the drafting of special releases that are required because of unusual circumstances; this exception applies only if the insurance company has provided advance written approval for an adjuster to do so.

-Adjusters are not permitted to attempt to adjust any claim if they do not have current and proficient knowledge of the terms and conditions of the applicable insurance policy or policies.

NAIIA Code of Ethics

Although the code of ethics published by the National Association of Independent Insurance Adjusters (NAIIA) is not as detailed as the Florida Adjuster Code of Ethics, it addresses the same ethical concerns and makes similar requirements. Notably, the NAIIA Code of Ethics states that adjusters must:

- Serve the business of insurance by the proper handling of claims and losses
- Conduct themselves at all times in a manner that commands respect and confidence
- Promote goodwill toward the business of insurance by an unvarying attitude of fairness, competence, integrity, and proper respect for all persons with whom they have dealings
- Approach investigations and adjustments with an unprejudiced and open mind
- Make truthful and unbiased reports of facts as they find them
- Resist influences tending to provide improper and extravagant settlements and serve their clients fearlessly

- Avoid improper alliances
- Work for economy in expense and render equitable bills
- Refrain from improper solicitation
- Render the highest quality of service
- Work in harmony with one another and clients to foster cordial relationships among themselves and the insurance fraternity

Penalties

When carrying out the daily tasks with which they are charged, 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.

Marketing Regulatory and Ethical Guidelines for Florida Insurance Licensees

As we just learned, adjusters in Florida are bound by the Code of Ethics, which defines certain activities as unlawful in the process of adjusting insurance claims. Adjusters are also encouraged to follow the NAIIA Code of Ethics, which imposes general ethical duties when working with consumers and others in the profession. Ethical codes recognize that 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, 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 claimants and the companies 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

Fiduciary Obligations When Handling Premiums or Other Funds

In the course of conducting business, licensees may come into possession of funds that actually belong to another party. For example, insurance adjusters may receive claim settlements that need to be forwarded to a client, or insurers may give adjusters the money for a premium refund that should be paid to a policyholder.

Florida law makes it clear that licensees receive such funds in a fiduciary capacity when transacting insurance. In other words, the licensee acts as a fiduciary and stands in a position of special trust with regard to the funds, which must be treated with special care. This principle applies to all types of licensees: adjusters, agents, insurance agencies, and customer representatives.

Licensees must, in the regular course of business, account for and pay those amounts that are due the insurer, insured, or other person entitled to them.

As part of their fiduciary duties, licensees are also subject to recordkeeping requirements.

Penalties

Any adjuster, agent, insurance agency, or customer representative who unlawfully misappropriates any portion of such funds, or diverts them even temporarily, or otherwise deprives the other person of any benefit from them has committed an offense punishable under the criminal code. Potential penalties depend on the amount of the funds improperly handled. If the amount is:

- \$300 or less, the offense is a misdemeanor of the first degree, punishable by a fine of up to \$1,000 and up to one year of imprisonment

- More than \$300, but less than \$20,000, the offense is a felony of the third degree, punishable by a fine of up to \$5,000 and up to five years' imprisonment

- \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable by a \$10,000 fine and up to 15 years' imprisonment

- \$100,000 or more, the offense is a felony of the first degree, punishable by a fine of \$10,000 and up to 30 years' imprisonment

For any felony, the penalties are even greater for habitual offenders.

Avoiding Bad Faith Claims

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. Whether insurers have acted in bad faith will depend on factors such as their efforts to promptly resolve coverage issues and their diligence in investigating, negotiating, and settling claims. 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.

Education requirements for licensing (and continuing education requirements for license renewal) are in place to ensure that the licensee has the knowledge, skill, and ability to competently assist clients with insurance purchases. It is not unethical for an adjuster to

complete only the minimum amount of continuing education required for license renewal. However, an adjuster that falls behind on developments in the marketplace, the nuances of new products, or important changes in laws or regulations, may face an increased risk of providing clients with incomplete, inaccurate, or misleading information. While doing so may be unintentional (and, certainly, people make mistakes), the end result is clearly not in anyone's best interest, especially not the client's.

While the primary motivation for formal continuing education is to satisfy licensing requirements, another motivation is the desire to improve skills and competency that enable the adjuster to grow his or her business. Continuing education is also the key to staying abreast of new products and changes in the marketplace, and to stay current on trends and new laws. There are also numerous other ways to commit to continuing education. Here are some examples:

- Subscribe to and read trade magazines and press.
- Attend company or industry sponsored seminars or webinars.
- Re-read or review company training manuals.
- Work with a mentor, such as a more experienced producer or a sales manager.
- Work with a district (i.e., regional, area, or state) training manager.
- Join a professional organization such as the National Association of Independent Insurance Adjusters to take advantage of educational opportunities and materials.
- If applicable, use educational resources available through national professional organizations.
- Commit to attaining a professional designation such as the Chartered Property Casualty Underwriter (CPCU) or the Professional Claims Adjusters (PCA).
- Organize regular meetings of peer groups to discuss current market issues or trends.

To a claimant, an adjuster is typically viewed as an expert in a field about which the claimant knows very little. This status undeniably gives an adjuster credibility among consumers and business organizations. 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.

Failure of an adjuster to understand the insurance policies that apply to the losses and claims they adjust, and any misrepresentations 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, an 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 adjusters to ask themselves whether they would follow the same course of action if they were in the claimant's identical situation.

The Right to Privacy

There are numerous privacy standards that are required by law and regulation, and most companies also have specific rules in place for safeguarding client information. Unauthorized release of personal information, including financial or health-related information, may result in significant harm to the client, civil action against the business, and legal sanctions.

Unfortunately, however, one of the most pervasive ways that client privacy is breached is by word of mouth. This happens when an adjuster (or another person in the business such as a sub-producer or customer service representative) discloses private information about a client to another person. Often this is done with no intent to harm, but it is clearly unethical.

Clients and prospective clients have a right to privacy with respect to the personal financial and health information they provide to adjusters as part of the insurance claims settlement process. During the claims process, a great deal of personal information that is particularly sensitive may be required. Adjusters collect personal information—including Social Security numbers, age, birth dates, and addresses—that, if released without authorization, could result in identity theft concerns. They also collect information that most people consider highly personal and sensitive, such as financial and investment information.

Clients therefore count on adjusters to keep personal information strictly between the client, adjuster, and (to the extent required during the claim process) the company. This includes making sure that paperwork or computer screens containing personal information are not left unattended in the adjuster's office where staff or other clients might read it.

Applications, needs analyses surveys, and other forms should be carefully stored or closed from view when not in use. When information must be passed on to other parties for business purposes (e.g., to schedule a required medical exam), clients also expect those parties to safeguard their confidential information.

Utmost Good Faith

The doctrine of utmost good faith calls for each party to an insurance contract to be entirely and completely honest. Although adjusters are not a direct party to an insurance contract, they are representatives of the insurers 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.

Homeowner Claims Bill of Rights

Insurers issuing personal lines residential property insurance policies in Florida must, within 14 days of receiving an initial claim communication, provide the policyholder with a Homeowner Claims Bill of Rights unless the claim follows a state of emergency declared by the governor. The Homeowner Claims Bill of Rights summarizes, in simple, nontechnical terms, the legal rights of a personal lines residential property insurance policyholder who files a claim.

The document is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action against an insurer. An insurer that fails to deliver a Homeowner Claims Bill of Rights is subject only to administrative action by the Office of Insurance Regulation. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene any other statutory requirements and does not prohibit an insurer from repairing damaged property as described in a policy and under the law.

Policyholders' Rights

The Homeowner Claims Bill of Rights informs policyholders that they have the right to receive:

- Acknowledgment of the reported claim within 14 days after the claim is communicated to the insurance company
- Upon written request, a confirmation that a claim is covered in full, partially covered, or denied, or receive a written statement that a claim is being investigated within 30 days after submitting proof of loss
- Full settlement payment for the claim or payment of the undisputed portion of the claim or the insurance company's denial of the claim within 90 days
- Free mediation of a disputed claim by the Department of Financial Services under most circumstances and subject to certain restrictions (or neutral evaluation for a disputed sinkhole claim)

Policyholders are also informed that they may contact the Department's Division of Consumer Services to get answers to claim questions or assistance with their claims. The Division's toll-free consumer helpline number and Web site address must be listed in the Homeowner Claims Bill of Rights.

In addition, the Homeowner Claims Bill of Rights advises policyholders to:

- Contact the insurance company before entering into any contract for repairs to learn of any managed repair provisions in their policy or any preferred repair vendors
- Make and document emergency repairs that are necessary to prevent further damage
- Carefully read any contract that requires payment of out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds
- Confirm that the contractor is licensed to do business in Florida by calling the Florida Department of Business and Professional Regulation
- Require contractors to provide proof of insurance before beginning repairs

Customer-Focused Service

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 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, adjusters do not become involved in the insurance transaction until after a loss has occurred. Therefore, the focus of the adjuster should be on providing fair, honest, and timely claims service in compliance with insurance company guidelines, ethical obligations, and requirements of insurance codes and laws.

Advancing the Industry's Reputation

In general, well-managed insurance companies and 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 insurer and 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.

Avoiding Unfair Claims Settlement Practices

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 claim 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 the company or adjuster by the Department.

Minimizing Complaints

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, adjusters and insurance companies should strive to develop a reputation for paying legitimate claims fairly and promptly while resisting frivolous, false, and fraudulent claims.

Demonstrating Empathy and Providing Excellent Service

It is important for 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.

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.