

## **Chapter 8 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 adjusters' duties to ensure that the insurers on whose behalf they transact insurance are licensed, as well as new and important terminology 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 cases involving licensed and unlicensed individuals who violate Florida's insurance rules and regulations and the action taken against them. The Department also publishes on its Web site 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 Web site 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.

The Department supports licensees who serve their clients' best interests by disciplining those licensees whose actions reflect badly on the industry. Examples of recent cases and enforcement actions directed and property and casualty licensees are discussed next.

### **Acting Without Appointment**

The Department received an Affidavit of Insurance Activity While Not Properly Appointed form from an adjuster. The adjuster admitted he had been transacting business without an appointment and requested that the Department backdate his appointment. The Department agreed to back date the adjuster's appointment but issued an administrative complaint when the adjuster did not pay the agreed upon \$395 fine in exchange for backdating the appointment. When the adjuster failed to pay the fine, his license was suspended for 90 days.

### **Transacting Business Without a License, Failure to Supervise, Premium Diversion, Fraud**

An investigation was opened on the agent-in-charge of a general lines agency based on a referral from the Department's Division of Consumer Services alleging that unlicensed individuals had issued fraudulent workers compensation certificates of insurance to several auto dealerships.

Investigators conducted agency inspections and obtained affidavits from affected consumers and one subject involved in the transactions. Investigators determined the agent-in-charge failed to supervise an unlicensed employee who collected premiums for commercial liability policies and diverted the funds for his personal use. Additional evidence determined the employee routinely provided fraudulent certificates of insurance to unsuspecting consumers using fake policy numbers and coverage information while under the agent-in-charge's supervision.

The license of the agent-in-charge was suspended for 12 months.

### **Failure to Supervise, Fraud**

An investigation was opened after the Department received a complaint from an insurer alleging the subject, a general lines agent and agent-in-charge of an agency, failed to

properly supervise customer representatives working in the agency. The customer representatives were accused of falsifying or altering insurance company documents to obtain premium discounts for consumers who did not qualify for the discounts to enable the agency to quote lower premiums than others.

The insurer provided eight underwriting files to investigators that included fraudulent documents. Documents revealed fraudulent "proof" of continuity of auto coverage for at least three consumers stating the consumers held auto insurance for 6 to 11 years to qualify for reduced premiums.

Customer representatives also altered documents to indicate three insureds were home owners in order to take advantage of another discount. None of the applicants owned homes and, in one case, the property appraiser's documents submitted with the application were from a different county than the applicant's address on the application.

The agent was fined \$3,500, including investigative costs.

### **Fraud, Misappropriation of Premium**

A children's day care center gave a \$4,600 down payment to its agent for renewal of its general liability, workers compensation, and property policies. When the center received a non-renewal notice for one policy and a cancellation notice for another, it filed a complaint with the Department. The center provided copies of the negotiated premium check and certificates of insurance provided by the agent. An investigator contacted the three companies involved and determined the agent was not appointed with one of the companies, and the policy number on the certificate of insurance belonged to another insured. The second policy was cancelled for non-payment, and the third was non-renewed the previous year. The investigator established the agent issued fraudulent certificates of insurance and misappropriated the center's insurance premium.

The agent's license was revoked.

### **Forgery, Grand Theft, Diversion of Insurance Funds**

An investigation was opened to look into the fiduciary activities of an agent after receiving a complaint from a premium finance company. The owner of the agency, a general lines agent and the agent-in-charge, refused to provide copies of policy declaration pages to document 42 premium finance agreements that he and his agency submitted. In addition, the premium finance company never received the unearned premium from the issuing insurance companies, managing general agent, or the agency.

Investigators obtained copies of the premium finance contracts, payment drafts, the payment history for each account, ten-day intent to cancel notices, and cancellation notices for transactions in question from the premium finance company. The outstanding amount due to the premium finance company was in excess of \$300,000.

Investigators attempted to conduct an agency inspection but the owner/agent-in-charge refused to cooperate with the Department's investigators by providing the records as required by Florida Statutes.

Analysis of the agency's bank records was conducted. It revealed all 42 premium drafts were deposited into the agency's bank account. The premium finance company sued the agency and obtained an order of default final judgment for \$300,000.

All 42 premium finance agreements indicated the policies were issued through Lloyd's of London, but the company advised investigators none of the 42 policies had been issued. Lloyd's confirmed neither the agent nor his agency had the authority to act for their company.

Both the agent and the agency licenses were revoked. The agent was later arrested by the Department's Bureau of Insurance Fraud and charged with 38 felony counts of forgery, uttering a forged instrument, grand theft, and diversion of insurance funds.

### **Transacting Insurance Business Without a License**

An investigation was opened on an insurance agency for failure to designate a licensed and appointed agent-in-charge of the agency. Investigators conducted an inspection and determined an individual who was not properly licensed and appointed was signing and issuing policies for the agency.

During the inspection, the unlicensed individual told investigators she signed policies as the agent-in-charge. Records showed the individual lost her appointment in 2009 for failing to comply with continuing education requirements and was never reinstated. She was sent a notice in 2011 warning that her license would be terminated in six months if she failed to hold an appointment for 48 consecutive months. In 2012, the license expired.

Investigators obtained numerous documents proving the individual was transacting insurance without the proper license and appointment for years. As a result of the investigation, the unlicensed person withdrew her request for reinstatement.

The person transacting business without a license was fined \$7,500.

During the past several years, 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 by the Department of Financial Services 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.

### **The Problem of Unauthorized Insurers**

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 for which they adjust losses.

## **Prohibition on Representing Unauthorized Insurers**

Florida law 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

## **Penalties for Representing Unauthorized Insurers**

If an unauthorized insurer fails to pay any claim or loss, the consequence for the agent 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.

## **Exclusion from Definition of Unauthorized Insurer**

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

## **Reporting Unlicensed Insurance Activity**

As we just learned, transaction of insurance by entities not authorized to conduct insurance business in the state is a problem that Florida regulatory authorities have devoted considerable effort to address. To help in that effort, the Florida Insurance Code enlists the help of licensees and others involved in the legitimate conduct of insurance business in Florida.

The law requires any adjuster, agent, third-party administrator, or insurer that knows about an unlicensed insurer doing business in the state to report that entity's activities to the Department.

## **Additional Penalties**

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. 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.

## **Web Site of Unauthorized Insurers**

The state of Florida has taken a very strong position on the issue of unauthorized entities. Adjusters are responsible for conducting reasonable research to ensure they are not adjusting losses and claims on behalf of 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 Web site 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 other third party.

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, adjusters should consult this online list to ensure the entities and individuals with whom they transact insurance are licensed. If an adjuster discovers an insurance company is not listed on the Web site or is not authorized to transact the type of insurance it claims to sell, the adjuster should not accept loss adjustment assignments from that insurer.

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.