

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No person or appointee under any license or appointment revoked by the department, nor any person whose eligibility has been revoked by the department, has the right to apply for another license or appointment under this code within two years from the effective date of such revocation or, if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or circumstances for which eligibility was initially revoked or for which the previous license or appointment was revoked still exists or are likely to recur; if an individual's license as agent or customer representative or eligibility to hold same has been revoked upon the ground specified in s. 626.611(12), which follows this paragraph, the department will refuse to grant or issue any new license or appointment applied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 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.