

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.