

## **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 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.