Introduction

This 5-hour course was created to assist public adjusters satisfy not only their CE requirements but also to educate, remind, and reinforce ethical standards essential to maintaining professionalism in the public adjuster community.

In Florida, the Department of Financial Services and Office of Insurance Regulation have created a number of websites to help public adjusters stay current about changing insurance products, licensing requirements, and compliance issues. The DFS and OIR also issue bulletins, memorandums, and newsletters to assist adjusters and insurers stay current about the latest industry alerts and updates.

Public adjusters who transact insurance in Florida must be familiar with Florida's insurance laws. The adjusters who fail to conduct insurance business according to these laws may inadvertently cause harm to consumers. Adjusters may also risk license suspension, revocation, and/or non-renewal if they fail to carry out their obligations and duties pursuant to state law as well as administrative fines and criminal penalties which may be imposed.

It is the responsibility of Florida agents to determine the courses they need to complete prior to renewing their insurance license. Agents may view their education requirements by going to their MyProfile account on the Florida website. Florida encourages agents to check this website frequently to keep abreast of any outstanding requirements that might exist.

When online education companies are used, it is necessary to continue using the same entry data (username and password) when advantageous benefits logging in to complete continuing education. Agents who register multiple times will not be able to access the information from their first registration in most cases. In some cases, software might have a method of verifying duplicate registrations (such as license numbers or email addresses) but professionals do not rely on this possibility.

Chapter 1 Florida's Rules and Regulations

States depend on certain individuals to help the state run efficiently. Each individual plays an important role.

Chief Financial Officer

Pursuant to Secs. 17.001 et seq. (Chapter 17) F.S., the Chief Financial Officer (CFO) serves as head of the Department and oversees all 14 divisions within the DFS. The CFO is an elected official and a member of the Governor's cabinet. The CFO's responsibilities include:

-Investigating fraud, including identity theft and insurance fraud
-Overseeing the licensing of insurance adjusters, agents, and agencies
-Ensuring that businesses maintain workers' compensation insurance
-Overseeing the state's Bureau of Unclaimed Property
-Monitoring the state's deferred compensation program for state employees
-Administering the state's accounting and auditing functions
-Regulating cemeteries and funeral homes

Department of Financial Services

In 1998, the Florida legislature amended the state constitution to merge the Departments of Insurance, Treasury, State Fire Marshall, and Banking and Finance into the Department of Financial Services (Department or DFS). The merger became effective January 2003.

The Department regulates the state's banking, securities, insurance, mortgage lending, and funeral and cemetery businesses and is comprised of 14 divisions, plus the Office of Insurance Consumer Advocate. Several of these divisions are responsible for regulating certain aspects of the insurance industry, including the Division of Agent and Agency Services, the Division of Insurance Fraud, and the Division of Consumer Services.

Office of Insurance Regulation

The Office of Insurance Regulation serves Floridians through its responsibilities for regulation, compliance and enforcement of statutes related to the business of insurance. The Office is also entrusted with the duty of carefully monitoring statewide industry markets.

Under 20.121(3)(a)1 the major structural unit of the commission is the office. Each office is headed by a director. The Office of Insurance Regulation is responsible for activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or chapter 636. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation, who may also be known as the Commissioner of Insurance Regulation.

Office of Financial Regulation

The key function of the Office of Financial Regulation is to provide regulatory oversight for Florida's financial services providers. Its mission is to protect the citizens of Florida, promote a safe and sound financial marketplace, and contribute to the growth of Florida's economy with smart, efficient and effective regulation of the financial services industry.

In 2016, Florida experienced department reorganization, with some departments experiencing name changes. The Office of the General Counsel has confirmed, either by statutory review or by contacting the Divisions and Offices, the following titles of the Department's divisions, bureaus, offices, and one section. In all formal written communications, these should be referred to exactly as stated. The list reflects, in part, the Department's official organizational structure established pursuant to section 20.121, Florida Statutes (2016). The list also identifies other divisions, bureaus, offices, and one section, which is included since it is often incorrectly identified.

Division of Accounting and Auditing

The Division of Accounting and Auditing includes:

1. The Bureau of State Payrolls;
2. The Bureau of Financial Reporting;
3. The Bureau of Auditing; and
4. The Bureau of Vendor Relations.

This Division prepares and provides financial reports and makes sure Florida taxpayers' dollars are appropriately spent. They review the agreements that provide goods and services to Florida and approve payment requests. State agencies and vendors can use website links to find information to improve their business processes.

Division of Administration

The Division of Administration is responsible for providing administrative support to the Department of Financial Services, Office of Financial Regulation and Office of Insurance Regulation. The division includes the Bureau of General Services, the Bureau of Human Resource Management, and the Office of Publications.

Bureau of General Services

The Bureau of General Services serves all employees in the Department encompassing four core

management sections:
1. Emergency Management and Safety;
2. Mail Services;
3. Printing Services; and
4. Property and Facility Management.

Bureau of Human Resource Management

The Bureau of Human Resource Management administers a comprehensive human resource program for the Department, including:
1. Attendance and Leave
2. Benefits
3. Classification and Pay
4. Employee Relations
5. Learning and Development
6. Payroll
7. Performance Management
8. Recruitment and Selection

Office of Purchasing and Contractual Services

The Office of Purchasing and Contractual Services serves as the team responsible for the Department's procurements; the duties include Purchasing Services and Contract Administration.

Office of Cabinet Affairs

The Office of Cabinet Affairs (OCA) serves as DEP's clearinghouse for all cabinet agenda items for presentation to the Governor and Cabinet, which includes the Attorney General, Chief Financial Officer and Commissioner of Agriculture and Consumer Services, sitting as the Board of Trustees of the Internal Improvement Trust Fund and the Power Plant Siting Board. The OCA coordinates the preparation of cabinet agenda items pertaining to the acquisition, administration, disposition and use of state lands with the DEP divisions, district offices and water management districts. The OCA provides technical and logistical support to the DEP executive staff, cabinet-level reviews of agenda items and transmittal of these items to the Governor and Cabinet. Serving as a liaison with the Cabinet Offices, the OCA coordinates overall programmatic assignments with the Deputy Secretary of Land and Recreation or other DEP staff as needed.

Office of Communications

The Office of Communications serves as the Chief Financial Officer's liaison with the news media. As the primary contact for journalists, the office provides information regarding the CFO's initiatives and Department of Financial Services' responsibilities.

This Office is also the State Fire Marshal's liaison with the news media. All media inquiries regarding investigations, regulations, and activities of the State Fire Marshal are handled by the CFO's Office of Communications.

Division of Consumer Services

The Division of Consumer Services consists of the Bureau of Education Advocacy and Research and the Bureau of Consumer Assistance.

The Division of Consumer Services offers a variety of information and resources to educate consumers regarding numerous insurance and financial topics. Their goal is to proactively educate and assist Florida's insurance and financial consumers through responsive, professional and innovative service.

The Division offers a toll-free Insurance Consumer Helpline to assist insurance consumers with insurance questions and inquiries or to file a complaint against an insurance company. The staff

will advocate on an individual's behalf and assist him or her with resolving their insurance concerns.

Office of Finance and Budget

The Office of Finance and Budget includes its Bureau of Financial Services. It supports all divisions in the Department of Financial Services by identifying, managing, projecting, analyzing, processing, and reporting the financial resources of the department. This is done by informing, supporting, advising, and providing timely accurate relevant and accessible data.

Division of Funeral, Cemetery, and Consumer Services

The Division of Funeral, Cemetery, and Consumer Services (includes its Board of Funeral, Cemetery, and Consumer Services) protects death care industry consumers buying preneed burial rights. It also protects those purchasing funeral and burial merchandise or services. It oversees licensed establishments, facilities, and cemetery grounds by conducting annual inspections.

The Division has established qualifications for professions and occupations in the death care industry. These professions and occupations include but are not limited to funeral directing, embalming, preneed sales and monument sales. Furthermore, the Division ensures death care professionals maintain their qualifications through continuing education courses and licensure renewal. Lastly, The Division ensures effective discipline for those licensees who have violated the law.

Formerly called the Division of Legal Services, the Office of General Counsel provides legal counsel and represents the Florida Department of Environmental Protection. The office focuses on Florida's environmental priorities, such as restoring America's Everglades; improving air quality; restoring and protecting the water quality in Florida's springs, lakes, rivers and coastal waters; conserving environmentally sensitive lands; and providing citizens and visitors with varied recreational opportunities.

The Division of Information Systems (DIS) supports the mission and vision of Florida's Chief Financial Officer (CFO). The use of emerging technology, a highly trained technical workforce, and strategic partnerships with Floridians is what drives the organization to achieve success.

Division of Insurance Agent and Agency Services

The Division of Insurance Agent and Agency Services includes the Bureau of Investigation and the Bureau of Licensing. It is the website provided to provide accurate information regarding insurance agents, adjusters, limited surety (bail bond) agents, navigators, insurance-related entities, including education providers and instructors. Here Floridians can find everything required to know about qualifying, applying for licensure, education requirements, and compliance information.

Division of Rehabilitation and Liquidation

The Department of Financial Services is responsible for serving as the receiver of any insurer placed into receivership in the state. This Division plans, coordinates, and directs the receivership process on behalf of the Department. If an insurance company cannot be successfully rehabilitated, the Department will petition a court to have the insurer placed into liquidation.

Division of Investigative and Forensic Services

Formerly the Division of Insurance Fraud, the Division of Investigative and Forensic Services functions as a criminal justice agency. The division now includes the following bureaus and offices:

1. The Bureau of Forensic Services, formerly called the Division of the State Fire Marshal;
2. The Bureau of Fire and Arson Investigations, formerly known as the Division of the State Fire

Marshal;
3. The Office of Fiscal Integrity, formerly known as the Division of Accounting & Auditing;
4. The Bureau of Workers' Compensation Fraud;
5. The Bureau of Insurance Fraud; and
6. Operational Support Services.

The Division of Investigative and Forensic Services encompasses all law enforcement and forensic components residing within the Department of Financial Services. With this broad responsibility, the division investigates a wide range of fraudulent and criminal acts including:

1. Insurance Fraud Investigations;
2. Workers' Compensation Fraud Investigations;
3. Fire, Arson and Explosives Investigations;
4. Theft/Misuse of State Funds; and
5. Fire and Explosives Sample Analysis.

Law enforcement officers are required to use skills developed through observation, training and experience to identify suspicious circumstances, unusual occurrences and violations of law. They contact people who, according to their training, experience and knowledge, are in a place or are acting in a way to make them believe a crime was or is about to be committed. Using a proactive approach helps in the detection and apprehension of criminals, protecting citizens from crime.

One of their goals is to avoid discriminatory practices, affording all citizens equal protection under the law. There is a difference between the accepted practices of criminal profiling and bias-based profiling. One is an investigative too, while the other is a discriminatory practice. Under criminal profiling, such things as gender, race, and other factors that narrow the search are used, whereas bias-based profiling occurs when an officer applies his or her own personal and societal biases to actions.

Office of Inspector General

The mission of the Office of Inspector General is to advance positive change in performance, accountability, efficiency, integrity, and transparency of programs and operations within the Department of Financial Services. Their authority comes from Section 20.055(2) of the Florida Statutes. It provides that the Office of Inspector General (OIG) is established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity and efficiency. Their major responsibilities include investigations, audits, reviews, consulting and technical assistance activities.

The offices of Insurance Regulation (OIR) and Financial Regulation (OFR) each have their own separate inspectors general. Sometimes the DFS Inspector General may work with the OIR or OFR Inspectors General of projects of mutual interest.

Office of Insurance Consumer Advocate

The Office of Insurance Consumer Advocate is intended to be a strong, independent voice for Floridians. As citizens become increasingly dependent on quality insurance products, an advocate is needed to represent the people when insurance decisions are made, something people often felt they did not have in the past.

The office of Insurance Consumer Advocate maintains a balance between a viable, competitive insurance market with the fiscal capacity to fulfill obligations to policyholders and consumer's needs for accessible, affordable insurance products to protect their lives, health, and property. Tapping into market reports, along with around 500,000 inquiries annually, they are able to identify market trends affecting Floridians. This data empowers the Insurance Consumer Advocate to seek early and proactive resolution of practices that may adversely affect people, and assist in expansion of benefits that are good for consumers.

Office of Internal Affairs and Appointments

The Office of Internal Affairs and Appointments coordinates the CFO's appointments to state sponsored Commissions and Boards. Additionally, the office manages the CFO's day-to-day scheduling.

The CFO has appointing authority for many Boards and Commissions throughout Florida. It is the CFO's responsibility to appoint qualified, representative, and appropriate people to these roles.

Chapter 2 Licensing Requirements

The Department oversees the licensing of agents, adjusters, and customer service representatives in Florida. All of these individuals must be licensed to transact insurance. In Florida, the term "transact" means all of the following:

-Solicitation or inducement

-Preliminary negotiations

-Effectuation of a contract of insurance

-Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it

Note that continued licensure is contingent on compliance with the law. If a licensee is convicted by a court of committing a felony or violating the insurance code, the Department will immediately revoke that person's licenses and appointments. The licensee may subsequently request a hearing on the matter, and the Department will expedite the requested hearing. However, the sole issue at that hearing will be whether the revocation should be rescinded because the licensee was not in fact convicted of violating the Insurance Code or a felony. The Department's papers, documents, reports, or evidence that are used at a hearing are subject to discovery, in order to protect a licensee's right to due process. However, these materials are otherwise confidential and are not subject to public disclosure until after they have been published at the hearing.

Adjusters are permitted by law only to adjust losses for classes of business for which they are licensed and appointed. Any person who knowingly transacts insurance in Florida without being duly licensed will be considered guilty of a third-degree felony.

Types of Adjusters

Individuals can find information about applying online for all-lines adjuster licenses at the Division of Insurance Agent and Agency Services' Web site. All-lines adjuster licenses are commonly used by two specific types of adjusters and apply to all lines of insurance except life insurance and annuities.

-An **independent adjuster** is a licensed individual who is self-employed or works for an independent adjusting firm or adjuster. An independent adjuster works on behalf of one or more insurers to "ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."

-A **company adjuster** performs the same functions as an independent adjuster; however, he or she is appointed and employed by an insurance company as an employee.

The types of adjuster licenses in Florida include a public adjuster or an all-lines adjuster; an individual may not hold both licenses concurrently. In addition, an all-lines adjuster may be appointed as either an independent adjuster or company adjuster, but not as both.

License Requirements

To obtain an all-lines adjuster's license in Florida, an applicant must fulfill certain basic requirements. Specifically, an applicant must be:

-a natural person who is at least 18 years old

-a resident of Florida

-a U.S. citizen or legal immigrant with a valid work authorization from the U.S. Immigration and Naturalization Services

In addition, an individual must satisfy one of five prerequisites before applying for an all-lines adjuster's license:

-A person must be licensed as a public adjuster.

-A person must be licensed as a general lines (property and casualty) agent.

-A person must present a Letter of Clearance indicating licensure in another state as an all-lines adjuster during the year before he or she applies for a Florida all-lines adjuster license. (The person must also apply for a Florida resident all-lines adjuster license within 90 days of becoming a Florida resident.)

-A person must present an original letter showing the applicant was awarded one of the following insurance designations:

-Associate in Claims (AIC) from the Insurance Institute of America

-Chartered Property and Casualty Underwriter (CPCU) from the American Institute for Chartered Property Casualty Underwriters

-Accredited Claims Adjuster (ACA) from an accredited Florida post-secondary institution

-Professional Claims Adjusters (PCA) from the Professional Career Institute

-Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy

-Certified Claims Adjuster (CCA) from the AE21 training company

-Certified Adjuster (CA) from All Lines Training

-Universal Claims Certification from the Claims and Litigation Management Alliance

-A person must take and pass a state examination. However, certain exemptions apply to the exam requirement. Applicants for a general lines agent's license or an all-lines adjuster's license are exempt from the examination requirement if they have at least one of the following:

-A Chartered Property Casualty Underwriter (CPCU) designation

-Universal Claims Certification (UCC)

-A college degree in insurance which includes at least 18 credit hours on insurance with specific instruction in property, casualty, health, and commercial insurance

Proof of meeting the required prerequisite must be mailed to the Department of Financial Services, Bureau of Licensing, Room 419, 200 East Gaines Street, Tallahassee, Florida 32399-0319. Proof of completing the prerequisites must be mailed before the individual applies for an all-lines adjuster license. Applicants for an all-lines adjuster license must also submit the appropriate license application fee with their application.

Licensing Exemptions

Attorneys who are licensed to practice in Florida, and whose licenses are in good standing with the Florida Bar, are exempt from licensure as an adjuster.

In addition, insurance company employees who are involved in claims handling are not required to be licensed to adjust residential property insurance claims when the sublimit on the coverage is $500 or less.

Temporary License No Longer Available

As of January 1, 2018, the temporary all-lines adjuster license is no longer available.

Licensing Fees

Fees associated with adjuster licensing are:

-License application—$50.00

-Fingerprinting—$47.05 plus applicable county sales tax (paid to the fingerprinting vendor)

-State exam—$44.00 (paid to the exam vendor)

-License ID—$5.00

Licensing Fee Exemption

Also, the requirement to pay license application fees does not apply to:

-Members of the U.S. Armed Forces

-Their spouses

-Veterans of the U.S. Armed Forces who have been separated from service within the previous 24 months of the date of application

To obtain the exemption, qualified individuals must provide a copy of one of the following, indicating that the U.S. Armed Forces member is currently in good standing or was honorably discharged:

-Military identification card

-Military dependent identification card

-Military service record

-Military personnel file

-Veteran record

-Discharge paper

-Separation document

Adjuster Appointment

An appointment is the authority granted by an insurer or licensee to a licensed person to transact insurance or adjust insurance claims on its behalf.30 The person to whom authority is granted is referred to as an appointee. For example, insurance companies appoint adjusters to adjust claims as well as producers to sell and service insurance. An adjusting firm may appoint individuals to act as adjusters on its behalf.

All applications must be submitted electronically through eAppoint, the state’s electronic appointment system that is used for original and renewal appointments as well as appointment terminations. Appointment fees must also be paid online by credit card or eCheck, an electronic checking system. The Department does not accept appointments submitted by mail (with the exception of bail bond appointments).

When an insurer or adjusting firm appoints an adjuster, the insurer is certifying to the Department that it has investigated the licensee and has determined that the person is of good moral character and fit to transact insurance. The appointing entity is also certifying that it is willing to be bound by the adjuster's acts that are within the scope of his or her employment.

The appointing entity must submit an appointment to the Department no later than 45 days after the date of appointment, which becomes effective on the date requested on the appointment form.

Once granted, an adjuster's appointment continues until it is suspended, revoked, or terminated, and the appointment must be renewed every 24 months (by the appointing entity) in the month of the adjuster's birthday.33 The appointing insurer or adjusting firm must pay the following appointment fees:

-Resident adjuster appointment—$60.00

-Non-resident adjuster appointment—$60.00

-Emergency adjuster appointment—$10.00

An appointing entity may condition issuance or renewal of an appointment on the adjuster's attendance at training and education programs so long as those programs are not approved, in whole or in part, for general continuing education credit. Adjusters may only be appointed if they have satisfied the state's continuing education requirements for the licenses held.

No Transferability of Appointments
Once an adjuster has been appointed, the appointment may not be transferred to another person. If an appointment expires and is not renewed, the adjuster no longer has authority to adjust claims on behalf of the appointing entity. When the appointment expires, the adjuster will receive notification from the Department that eligibility for a future appointment for the same lines of insurance will expire 48 months after the expiration of the license. If the adjuster wishes to apply for a similar appointment after 48 months, he or she must reapply for an appointment as a first-time applicant.

Adjuster Appointment Renewal

An adjuster's appointment must be renewed every 24 months during the adjuster's birth month, and a renewal appointment fee and taxes must be paid.35

The Department will send each appointing entity an email notification 90 days before the month that an adjuster's appointment must be renewed and will post the renewal invoice in the appointing entity's eAppoint account. (eAppoint is the online insurance industry portal of the Florida Department of Financial Services. Appointment-related submissions are sent to the Department via this Web portal.) Appointees whose names are listed in red on the renewal invoice have an invalid email or mailing address on file with the Department, and their appointments cannot be renewed until they have updated these addresses.

On the first day of an adjuster's renewal month, the Department will send another email notice that states that the appointing entity is able to access the appointments that need to be renewed, enabling it to pay for such renewals via eAppoint. The appointing entity may renew an appointment at any time during the renewal month. A late fee will be imposed if the fee is not paid within this time frame.

Late Appointment Renewals
Not every appointing entity remembers to renew its appointments on a timely basis. If an appointment is not renewed, the Department will send an email notice to the appointing entity with notice that the payment was not received and late fees will be assessed. The appointing entity then has 45 days during which to renew the appointment; failure to renew during this time will result in cancellation of the appointment.

For example, assume an adjuster's appointment expires on March 15. The adjusting firm is able to renew the appointment between March 1 and March 31 without the imposition of late fees. If the

adjusting firm fails to renew the appointment by March 31, late fees would be assessed on April 1 and it would have until May 15 to pay the invoice, including the late fees. On May 16, the appointment would be canceled if the Department did not receive payment.

Appointing entities must pay all late fees and cannot charge them to adjusters. It is important to keep in mind that if an adjuster's appointment expires, he or she is not permitted by law to engage in any type of insurance activity that requires an appointment.

Termination of Appointment

Adjuster appointments are subject to the provisions of any contracts effected between the adjuster and the appointing entity. However, both appointing entities and adjusters may terminate an adjuster's appointment at any time. An adjuster may terminate an appointment at any time by giving written or electronic notice to the appointing entity, Department, or person designated by the Department to administer the appointment process. The Department will immediately terminate the appointment and notify the appointing entity of such termination.

When terminating an appointment, the appointing entity must provide at least 60 days' advance written notice of its intent to the adjuster. In addition, the appointing entity must notify the Department of the appointment termination, including the reason, within 30 days. An adjuster must provide written or electronic notice to the appointing entity or the Department when terminating an appointment.

If an appointing entity learns that an appointed adjuster has been convicted of a felony or a violation of Florida Insurance Code, the adjuster's license and appointment will be revoked immediately by the Department.38 Adjusters are required to report administrative actions taken against them by a government or regulatory agency in Florida or another state relating to the business of insurance or to conduct that is fraudulent, dishonest, or untrustworthy or involving breach of fiduciary duty. An adjuster must submit a copy of the order, consent to order, or other pertinent legal documents to the Department within 30 days after the final disposition of the action.39

In its discretion, the Department may impose an administrative fine instead of, or in addition to, suspending, revoking, or refusing to issue an adjuster's license or appointment. This action may only be taken on a first offense and when suspension, revocation, or disapproval is not mandatory. The maximum fine is $500 unless the Department has determined the adjuster is guilty of willful misconduct or a willful violation, which may generate fines of up to $3,500. The Department may give the adjuster up to 30 days to pay the fine. If the fine is not paid by the end of that period, the adjuster’s license will be suspended, revoked, or denied as initially ordered.

Contact Information

The Department keeps records of names, addresses, and other contact information for all licensees, including adjusters. This contact information includes telephone numbers and email addresses. If an adjuster does not have a valid address on file with the Department, the appointing entity is not permitted to renew the adjuster's appointment. For this reason, adjusters should always maintain current contact information with the Department.

Mandatory Updating of Contact Information

Adjusters must update and/or verify contact information through their MyProfile accounts (this will be discussed in detail later in the course) and notify the Department within 30 days of any change in:

-Name

-Residential address

-Address of principal place of business (street address)

-Mailing address

-Telephone number

-Email address

Failure to notify the Department of changes in contact information within the required 30-day period may result in a fine of up to $250 for the first offense. Subsequent offenses may result in fines of at least $500 or suspension or revocation of the license.

Similar requirements apply to licensed agents or adjusters doing business under a business name other than their individual name. Within 30 days after first transacting insurance under that business name, the adjuster must file the business's name and address with the Department along with the name and social security number of all the business's officers and directors and all individuals transacting insurance for the firm or using its name. If the business's name or address is changed or if there are any changes in personnel or in the information provided in the license application, the Department must be notified within 30 days.

If an adjuster changes his or her principal place of residence or business out of the state of Florida, all licenses and appointments will be terminated by the Department.

Adjusting Firm Licensing

According to the Florida statutes, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance. Each person who operates an adjusting firm, and each location of an adjusting firm, may only transact business in Florida if it designates a "primary adjuster" to be responsible for supervising all individuals who:

-Work at that location

-Work with the public

-Act in the capacity of an independent adjuster or public adjuster

An adjuster may be designated as the primary adjuster for only one adjusting firm location. To designate a primary adjuster, an adjusting firm must file a form on the Department's Web site, providing the primary adjuster's name and license number and the physical address of the firm or location where the person will be the primary adjuster. The adjusting firm may change the primary adjuster at any time, provided it notifies the Department within 30 days of the change.

An adjusting firm location may not conduct any insurance business unless a primary adjuster is designated and provides services to the firm at all times. If the primary adjuster ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with the firm.

License Application

The application for an adjusting firm license must include:

-The name and residential address of each majority owner, partner, officer, and director

-The adjusting firm's legal name and principal business address

-The location of each adjusting firm office, along with the name under which each office transacts business

-Any additional information required by the Department

In addition to being signed by each owner of the adjusting firm, including the president and secretary if the firm is a corporation, the license application must include the licensing fee of $60.00. License fees are not refundable, and a license remains in effect for three years from the effective date of the license, unless the license is suspended or revoked.

Suspension or Revocation of License

A primary adjuster's license may be suspended or revoked if the adjusting firm employs or contracts with a person whose license has been denied or is currently suspended or revoked. However, an exception exists: a primary adjuster's license will not be suspended or revoked if a person is denied licensure because he or she failed to pass a required licensing examination. In this case, the person denied licensure may work at the firm in a clerical or administrative capacity that does not require licensing.

Primary adjusters are accountable for the conduct of the salaried employees under their direct supervision and control when the employees are acting within the scope of their duties on behalf of the adjusting firm. However, primary adjusters are not criminally liable, or subject to disciplinary action, for any conduct of their employees unless they personally violated the Insurance Code or should have known about such a violation.

If an adjuster is employed or contracted by an adjuster or adjusting firm with a suspended or revoked license, the adjuster's license may also be suspended or revoked by the Department. If an adjusting firm location does not designate a primary adjuster as required by law, the Department will require that location to obtain an adjusting firm license.

Verification of Licensing Status
Adjusting firms may request the Department to verify an adjuster's license status. If the request is mailed to the Department within five working days of hiring an adjuster, and the Department notifies the firm that the adjuster's license is suspended or revoked, the primary adjuster's license will not be suspended or revoked if the unlicensed person's employment is terminated immediately.

Nonresident Adjuster Licenses

The Department will issue a license to an applicant for a nonresident all-lines adjuster license if the applicant has paid the required licensing fee and:

-Is at least 18 years old

-Is licensed as an all-lines adjuster and is self-appointed, or appointed and employed by an independent adjusting firm or other independent adjuster, or is an employee of an insurer admitted to do business in Florida

-Is trustworthy and has a business reputation that would reasonably ensure that he or she will conduct business as a nonresident all-lines adjuster fairly and in good faith and without detriment to the public

-Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts; is sufficiently informed as to the terms and effects of those types of insurance contracts; and possesses adequate knowledge of the laws of Florida relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have business as an all-lines adjuster

Applicants must also pass a written examination, unless they hold certain designations or live in a state that has entered into a reciprocal agreement with the Department.

Applicants for a nonresident all-lines adjuster license must submit the following with the application:

-A complete set of fingerprints

-A certificate or letter of authorization from the adjuster's home state, stating that the applicant holds a current license to act as an all-lines adjuster (a certificate or letter is not required if the nonresident applicant's licensing status can be verified through the NAIC's Producer Database)

-A certificate or letter of authorization from the licensing authority in the applicant's home state, stating that the applicant holds or has held a license to act as an insurance adjuster, agent, or other insurance representative, if the applicant's home state does not require licensure as an all-lines adjuster and the applicant has been licensed as a resident insurance adjuster, agent, broker, or other insurance representative in his or her home state or another state during the past three years (A certificate or letter is not required if the nonresident applicant's licensing status can be verified through the NAIC's Producer Database.)

Applicants licensed as nonresident all-lines adjusters must also be appointed as an independent adjuster or company employee adjuster. The appointment of a nonresident independent adjuster continues in force until suspended, revoked, or otherwise terminated, but is subject to biennial renewal or continuation by the licensee for licensees in general.

Each licensed nonresident all-lines adjuster appointed as an independent adjuster in Florida must appoint the Chief Financial Officer as the attorney to receive service of legal process issued against the adjuster for causes of action arising in Florida out of transactions under the adjuster's license and appointment. Service upon the Chief Financial Officer as attorney constitutes effective legal service upon the nonresident independent adjuster. Upon receiving the service, the Chief Financial Officer must send a copy of the process, by registered mail with return receipt requested, to the nonresident adjuster at his or her last address of record with the Department.

Transfer, Surrender, and Termination of License

Adjusters who are licensed in another state may apply to the Department to have their licenses transferred to Florida in order to obtain a Florida resident license for the same line of authority. To qualify for a license, the applicant must:

-Become a Florida resident

-Have held a license in another state for at least one year immediately before becoming a Florida resident

-Submit a license application and the appropriate fees to the Department (which must be received within 90 days of the applicant becoming a Florida resident)

-Submit an original letter of clearance from the applicant's home state

-Submit a set of fingerprints

-Submit any prelicensing or examination requirements, if applicable

Once an adjuster license or appointment is issued, it is only valid for use by the adjuster to whom it is issued. Adjusters may not allow anyone else to use their licenses or appointments to transact insurance business.

Despite the fact that adjuster licenses are issued to individuals and adjusting firms, they belong to the state of Florida. If suspended, revoked, not renewed, or otherwise terminated, an adjuster's license is no longer valid. An adjuster must only return a terminated license if requested to do so by the Department.

License Surrender

If an individual ceases to work as an adjuster, or an adjusting firm goes out of business, the adjuster's license should be surrendered to the Department to avoid receiving communication concerning the completion of continuing education requirements. Licenses may be surrendered by mailing a letter to the Bureau of Licensing with a statement that the adjuster or adjusting firm wishes to surrender the license. The following information should also be included in the letter:

-The licensee's name, mailing address, and telephone number

-The license ID number

-The licensee's signature

Grounds for Refusal, Suspension, or Revocation of Adjuster Licenses

Because the purpose of insurance regulation is to protect consumers, disciplinary actions may be taken against all licensees for a number of reasons. The Florida statutes contain a variety of compulsory and discretionary grounds for refusing, suspending, or revoking the licenses of adjusters and adjusting firms.

Compulsory Grounds

Compulsory grounds for the Department to refuse, suspend, or revoke the license or appointment of an adjuster include:

-Failing to maintain the qualifications required for a license or appointment

-Failing to pass an examination required for licensure

-Using a license or appointment to willfully circumvent the Insurance Code

-Material misstatement, misrepresentation, or fraud during the process of obtaining a license or appointment

-Misrepresenting intentionally the terms of an insurance policy, either in person or through any form of advertising

-Misrepresenting the terms and coverage of an insurance policy in order to settle a claim on less favorable terms than those provided in the contract

-Demonstrating a lack of fitness or trustworthiness to transact insurance

-Lacking the knowledge and competence to transact insurance

-Fraudulent or dishonest practices in conducting insurance

-Misappropriation, conversion, or unlawful withholding of money belonging to insurers or others

-Rebating or unlawfully offering to share commissions with others

-Obtaining or using a license or appointment to engage in controlled business

-Intentionally violating Florida's insurance laws or a rule or order of the Department

-Being guilty of or pleading no contest to a felony or a crime which involves moral turpitude and is punishable by imprisonment of one year or more under any state, federal, or foreign law

If a licensee is indicted for a felony of the first degree; a capital felony; a felony involving money laundering, fraud, or embezzlement; or another felony directly related to the financial services business, the Department will immediately impose a temporary suspension of the license. If the individual is appealing a conviction or plea of no contest, the suspension will continue during the time of the appeal.

Discretionary Grounds

Discretionary grounds for the Department to refuse, suspend, or revoke the license or appointment of an adjuster include:

-Violating the Insurance Code or other law that applies to the business of insurance

-Violating an order or rule of the Department, Commission, or Office
engaging in twisting

-Engaging in unfair methods of competition or deceptive acts or practices

-Being found guilty of, or pleading guilty or no contest to, a felony or crime punishable by one or more years

-Cheating on a licensing exam

-Failing to notify the Department within 30 days after pleading guilty or no contest, or being convicted of a felony or crime punishable by imprisonment of one year or more

-Knowingly helping another violate the Insurance Code or a rule or order of the Department, Commission, or Office

-Having a license, appointment, or registration to conduct business suspended, revoked, or denied by a court, state or federal agency, or national securities exchange due to violation of a federal or state securities law

-Failing to comply with a civil, criminal, or administrative action to determine paternity or to establish or collect child support

Mandatory Grounds
The conviction, in court, of an adjuster for violating the Insurance Code or committing a felony is grounds for the mandatory and immediate refusal, suspension, or revocation of an adjuster's license.

Length of Suspension or Revocation
If an adjuster's license or appointment is suspended or revoked, the Department must issue an order that states how long the period of suspension or revocation will last. In any event, a suspension may not last more than two years, and an adjuster must wait at least two years before requesting that a revoked license be reinstated.

If an adjuster wishes to reinstate a suspended or revoked license, he or she must submit a reinstatement application to the Department. If the reinstatement request is being made after a second suspension, the adjuster must also submit proof that required and approved continuing education has been completed. The Department has the authority to decline a reinstatement request if it believes the adjuster is likely to reoffend.

Fines, Probation, and Restitution
The Department may levy an administrative fine when there are discretionary grounds for suspending, revoking, or refusing to renew an adjuster’s license. The Department may impose a fine of up to $500 in addition to or in lieu of suspending, revoking, or refusing a license. The fine may be up to $3,500 if willful misconduct is found. The Department also has the option of placing an adjuster on probation for up to two years instead of imposing a fine.

If an adjuster's actions are grounds for the suspension or revocation of his or her license, and the adjuster has deprived an insurer, insured, beneficiary, or other party of money due to misappropriation, conversion, or unlawful withholding of funds, the Department may order the adjuster to pay restitution. Such restitution may be ordered in addition to other penalties. The amount of restitution ordered by the Department may not exceed the amount misappropriated, converted, or withheld.

Action Against Associated Licenses
If the Department revokes, suspends, or refuses to continue a license, the same action will be taken against all other insurance licenses or appointments held by that individual. In the case of a general lines agent, any associated agents who were knowing participants in the violation may also have their licenses and appointments suspended or revoked.

Grounds for Refusal, Suspension, or Revocation of Adjusting Firm Licenses

In addition to refusing, suspending, or revoking an adjuster's license, the Department may also take action against adjusting firms. For example, the Department will deny, suspend, revoke, or refuse to continue an adjusting firm’s license if it finds, with respect to the adjusting firm or any majority owner, partner, manager, director, officer, or other person who manages or controls the firm, that any of the following grounds exist:

-The adjusting firm lacks one or more of the qualifications required for a license, as specified in the Insurance Code

-Material misstatement, misrepresentation, or fraud was used to obtain, or attempt to obtain, the adjusting firm's license

The Department also has the discretion to deny, suspend, revoke, or refuse to renew an adjusting firm's license if any of the following grounds exist with respect to the firm or any majority owner, partner, manager, director, officer, or other person who manages or controls the agency:

-Finding any cause exists that would have been grounds for the Department to refuse to issue the license, if it had existed and been known to the Department

-Using the license to circumvent any requirements or provisions of the Insurance Code

-Having been found guilty of (or pleaded guilty or no contest to) a felony in any jurisdiction, regardless of whether a court has entered a judgment

-Failing to inform the Department in writing within 30 days after pleading guilty or no contest to a felony in any jurisdiction, regardless of whether a court has entered a judgment

-Knowingly aiding, abetting, assisting, or advising any person to violate any provision of the Insurance Code or the Department, Office, or Commission

-Knowingly employing a person in a managerial capacity or one dealing with the public who is under a suspension or revocation order issued by the Department

-Committing any of the following acts frequently enough to render operation of the adjusting firm hazardous to the public:

-Misappropriating, converting, or unlawfully withholding moneys belonging to insurers, insureds, or beneficiaries that were received while transacting insurance

-Misrepresentation or deception with respect to the business of insurance, sharing of information, or advertising

-Demonstrating a lack of fitness or trustworthiness to engage in the insurance business of adjusting insurance by failing to appoint a primary adjuster67

At its discretion, the Department may choose to impose an administrative penalty of up to $1,000 per violation or grounds in lieu of refusing, suspending, or revoking an adjusting firm's license. The penalty may not exceed an aggregate of $10,000 for all violations or grounds. If an adjusting firm's license is suspended or revoked, it must terminate all adjusting activities during the term of the suspension or revocation.

Duties of Licensed and Unlicensed Individuals

As stated previously, no one may act as, advertise, or hold himself or herself out as an adjuster unless he or she holds an appointment and current license issued by the Department. In addition, no one may act as an adjuster for any line of insurance for which he or she is not licensed and appointed. Anyone who knowingly transacts insurance activities or engages in adjusting activities without the required license commits a third-degree felony.

It bears repeating that attorneys who are licensed to practice in Florida, and whose licenses are in good standing with the Florida Bar, are exempt from licensure as an adjuster.

Unlicensed Employees and Adjusters

Adjusters and adjusting firms often hire individuals to perform clerical and administrative duties for their businesses. For example, unlicensed persons may answer telephone calls at an adjuster's place of business without violating the licensing rules as long as they engage in purely administrative matters and do not interpret, analyze, or explain insurance, an insurance contract, or an adjuster contract, or advise or attempt to enter into a contract for adjusting services.

Although unlicensed employees are permitted to complete some tasks without being licensed, they may not ascertain or determine (or attempt to ascertain or determine) the amount of any claim, loss, or damage payable under an insurance policy. In addition, unlicensed employees may not attempt or undertake the settlement of claims, losses, or damages. These responsibilities require an adjuster's license.

Emergency Adjuster License

If a catastrophe or emergency occurs, however, the Department may issue an emergency adjuster's license, valid for a limited period, to an individual who is not otherwise licensed as an adjuster if the individual:

-Is at least 18 years old

-Is a U.S. citizens or legal immigrant with proper work authorization

-Although not licensed as an adjuster, has been designated and certified to act as an adjuster by an authorized insurer or an adjusting firm contracted with an authorized insurer

Such individual is referred to as a "catastrophe adjuster" or "emergency adjuster." The Florida statutes define a catastrophe or emergency adjuster as an unlicensed adjuster who is deemed qualified to adjust claims, losses, and damage in the event of a catastrophe or emergency. The Department will issue an emergency adjuster's license to the individual and will determine the purposes, conditions, and time period under which the individual has authority to act as an adjuster.

If a catastrophe or emergency adjuster engages in any misconduct or acts that are grounds for compulsory or discretionary refusal, suspension, or revocation of an adjuster's license, the Department is authorized to issue immediately an order rescinding privileges to adjust claims. At that point, it will be unlawful for the individual to act as an adjuster in any capacity.

Insurance Mediators

The Department of Financial Services administers alternative dispute programs for various types of insurance. It runs mediation programs for property insurance and automobile insurance claims, and oversees a neutral evaluation program, similar to mediation, for sinkhole insurance claims. The Department approves the mediators used in the two mediation programs and certifies the neutral evaluators used in the program for sinkhole claims.

Mediator Qualifications

To become a mediator, an applicant must submit an application to the Department and must meet one of the following requirements:

-Have an active certification as a Florida Supreme Court certified circuit court mediator

-Have been approved as a Department mediator as of July 1, 2014, and conducted at least one mediation on behalf of the Department during the period from June 30, 2010 through July 1, 2014

A mediator's ability to participate in the property insurance claim and motor vehicle insurance claim mediation programs will be suspended for six months if a mediator fails to maintain his or her certification as a Florida Supreme Court certified circuit court mediator. Mediators who qualify based on their status as a Florida Supreme Court certified circuit court mediator must notify the Department in writing within five business days if their certification is placed in a lapsed, suspended, sanctioned, or decertified status. Mediators whose certification is in a lapsed, suspended, sanctioned, or decertified status are not eligible to participate in either of the mediation programs until their certification is reinstated by the Florida Supreme Court.

List of Approved Mediators
The Department maintains a list of all approved mediators, which includes the following information about each mediator:

-Name

-Address

-Telephone number

-A listing of counties in which the mediator is willing to mediate

-The date the mediator's name was added to the list

Grounds for Denial of Mediator Application and Penalties
The Department will deny an application for approval as a mediator or suspend or revoke its approval of a mediator if one or more of the following grounds exist:

-Lack of one or more of the qualifications specified by law for approval as a mediator

-Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval as a mediator

-Demonstrated lack of fitness or trustworthiness to act as a mediator

-Fraudulent or dishonest practices in conducting mediations or business in the financial services industry

-Violation of any provision of the Florida code, a lawful order or rule of the Department, the Florida rules for certified and court-appointed mediators, or helping or encouraging another party to commit such violations

The Department may impose the following penalties if any of these grounds exist:

-Suspension of approval for six months if a mediator or applicant lacks one or more of the qualifications required for approval as a mediator

-Suspension of approval for 12 months if a mediator or applicant made a material misstatement or misrepresentation, or committed fraud in obtaining approval and the application would have been granted, if accurate, based on the statutes and Department rules applicable to the application at the time the Department issued the approval

-Revocation of approval if a mediator or applicant made a material misstatement or misrepresentation, or committed fraud in obtaining approval and the application would have been denied, if accurate, based on the statutes and Department rules applicable to the application at the time the Department issued the approval

-Suspension of approval for 12 months if a mediator or applicant demonstrated lack of fitness or trustworthiness to act as a mediator

-Revocation of approval if a mediator or applicant engaged in fraudulent or dishonest practices when conduction mediations or business in the financial services industry

-Revocation of approval if a mediator or applicant violated the Florida code, order or rule of the Department, or the Florida rules for certified and court-appointed mediators, or helped or encouraged another party to commit such violations

Other Requirements

Adjusters must be aware of other important rules and regulations that apply to their day-to-day insurance practices and transactions. The Florida Insurance Code spells out a number of guidelines that adjusters must follow when advertising and with regard to continuing education, reporting administrative actions, and keeping records.

Advertising

Although the Florida Insurance Code does not contain specific rules governing advertising by insurance adjusters, its general requirements with respect to the advertising of insurance policies apply to adjusters as well as to other licensees. The Florida Insurance Code prohibits (by anyone, including adjusters) the knowing publication dissemination, circulation, or placement before the public of any advertisement, announcement, or statement that contains any representation, statement, or allegation that is untrue, deceptive, or misleading.

Advertisements may be placed before the public:

-In a newspaper, magazine, or other publication

-In a notice, circular, pamphlet, brochure, poster, or letter

-On radio or television

-In any other way

In addition, the adjuster's full name and license number must appear in all advertisements.

Chapter 3 Continuing Education & Department Communication

Florida's continuing education (CE) requirements generally apply to all individuals licensed to sell insurance or adjust claims in Florida if they were required to pass an examination as part of their licensing process. The continuing education requirements do not apply to:

-Individuals who hold limited lines licenses for which no exam is required

-Limited lines crop, hail, or multi-peril crop insurance agents

-Public adjusters for workers compensation insurance or health insurance (However, other public adjusters are subject to the continuing education requirements.)

Licensees who cannot comply with the continuing education requirements because they are on active military duty may submit a written request for a waiver from the Department. The waiver request must include a copy of the licensee's military orders.

Five-Hour Update Course

One uniform aspect of the requirement is that all licensees, other than title insurance agents, must complete a Department-approved five-hour course every two years, which is designed to update them on current Florida insurance laws and other topics. The update course must be developed and offered by an approved continuing education provider and must cover the following topics:

-Insurance law updates

-Ethics for insurance professionals

-Disciplinary trends and case studies

-Industry trends

-Premium discounts

-Determining suitability of products and services

-Other similar insurance-related topics the Department determines are relevant to legally and ethically carrying out the responsibilities of the license granted

Different types of update courses are available, each of which contains subject matter that corresponds to one of the various lines of insurance for which examination and licensure are required. Licensees must complete a course that pertains to the specific type of license they hold.

A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held.

The five-hour update course is a mandatory element of the continuing education requirement. However, completion of the five-hour update course will not entirely fulfill an agent's CE requirement. Licensees will need more than five hours of continuing education credit per two-year compliance period in order to renew their licenses. Any required hours of continuing education that remain after completing the mandatory five-hour update course are elective and may consist of any continuing education course approved by the Department.

Elective CE Hours

The number of elective continuing education hours that a licensee must complete depends on certain factors, such as the type of license and the number of years the license has been held. Most licensees are required to complete an additional 19 hours of elective continuing education courses every two years (for a total of 24 hours of continuing education hours every two years). However, some individuals are subject to lower elective requirements:

-Individuals who have been licensed for six years or more must complete 15 hours of elective CE courses every two years.

-Individuals who have been licensed for 25 years or more must complete five hours of elective CE courses every two years if they satisfy either of the following:

-hold a CLU or a CPCU designation

-have a Bachelor of Science degree in risk management or insurance with 18 or more semester hours in insurance-related courses

-Individuals must complete five hours of elective CE courses every two years if they are not a licensed life or health agent but are licensed as:

-a customer representative or limited customer representative

-a motor vehicle physical damage and mechanical breakdown insurance agent

-an industrial fire insurance or burglary insurance agent

-Individuals who are licensed as bail bond agents must complete nine hours of elective CE courses every two years.

Licensees must complete all required CE hours by the end of the licensee's birth month after being licensed 24 months and then every two years thereafter.

In Florida, licensees may complete the following courses in order to meet the elective continuing education course requirements:

-Any part of the Life Underwriter Training Council Life Course Curriculum (24 hours) or Health Course (12 hours)

-Any part of the American College "CLU" diploma curriculum (24 hours)

-Any part of the Insurance Institute of America's program in general insurance (12 hours)

-Any part of the American Institute for Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program (24 hours)

-Any part of the Certified Insurance Counselor program (21 hours)

-Any part of the Accredited Advisor in Insurance (21 hours)

-In the case of title agents, completion of the Certified Land Closer (CLC) professional designation program and receipt of the designation (24 hours)

-In the case of title agents, completion of the Certified Land Searcher (CLS) professional designation program and receipt of the designation (24 hours)

-Any insurance-related course that is approved by the Department and taught by an accredited college or university per credit hour granted (12 hours)

-Any course, including courses relating to agency management or errors and omissions, developed or sponsored by an authorized insurer or recognized agents' association, insurance trade association, or an independent study program of instruction, subject to approval by the Department, qualifies for the equivalency of the number of classroom hours assigned by the Department

Additional CE Rules
Title insurance agents are not required to take the five-hour update course that is mandatory for most other agents. However, they must complete at least ten hours of continuing education every two years in Department-approved courses dealing with title insurance and escrow management specific to Florida. These courses must include at least three hours of continuing education on the subjects of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

Licensees who earn excess CE hours during any two-year compliance period may carry them forward to the next compliance period.

Individuals who teach approved continuing education courses earn the same number of classroom credit hours as students who successfully complete the course.

Licensees may submit a request to the Department for an extension of time to complete the continuing education requirements. The request must be submitted a minimum of 15 days prior to the licensee's compliance date.

The Department will grant a 90-day extension of time to complete the minimum CE requirements if an individual can show good cause. "Good cause" means an incident or occurrence that is beyond the individual's control and that prevents compliance. Examples of good cause include a disabling accident or illness, or a declared national emergency. A licensee's appointments will be terminated if he or she fails to complete the continuing education requirements before the expiration of an extension.

Licensees may receive a maximum of four 90-day extensions during each compliance period.

Recordkeeping Requirements
Licensees must maintain records of all CE course completions for two years from the completion dates. While licensees are not required to file certificates of completion with the Department, the Department may require licensees to submit such records for audit purposes or to correct discrepancies in Department records.

Penalties for Not Completing CE
If an adjuster does not timely complete his or her continuing education requirements, the Department may immediately terminate or refuse to renew the adjuster's appointment, unless the adjuster has been granted an extension or waiver. The Department may not issue a new appointment of the same or similar type to a licensee who was denied a renewal appointment for failing to complete continuing education until the licensee completes his or her continuing education requirement.

Reporting of Administrative Actions
It is possible that a licensee may be sanctioned by an agency other than the Department. If an administrative action is taken against a licensee by a governmental agency or other regulatory agency in Florida or any other state or jurisdiction, the Department must be informed.

Licensees must report an action if it relates to the insurance business, selling securities, or activity involving fraud, dishonesty, lack of trustworthiness, or breach of fiduciary duty. In such cases, the licensee has 30 days after the final disposition of the action to submit a copy of the relevant legal documents to the Department.

Recordkeeping
Adjusters, like all licensees, are required to keep and maintain certain records and to make them available to the Department upon request. Office books, accounts, and records that will enable the

Department to determine whether an adjuster is properly accounting for funds in accordance with the Insurance Code must be kept on paper or by electronic or photographic means.97

Licensed adjusters must also comply with specific laws concerning their offices and records. An adjuster's office must be accessible to the public and contain the usual and customary records that pertain to the adjustment of claims under the adjuster's license. Adjusters may maintain a business office in their homes.

Records pertaining to each specific loss or claim must be maintained at the adjuster's business office for a minimum of five years after the adjustment process has been completed.

Department Communication

In recent years, the Department has increasingly sought to make the licensing process quicker, easier, and more secure for adjusters. Online communication is now the predominant form of communication within the Department. As discussed below, license applications and appointments must now be submitted online, continuing education requirements are reported electronically, and contact information must be updated through an adjuster's MyProfile account. Adjusters must therefore understand the tools that the Department uses to communicate with adjusters and insurers as well as with the general public.

Department Web Site

The Department maintains a Web site—http://www.myfloridacfo.com—where licensees, insurers, consumers, and businesses are able to review and access information about Department updates and news. The Web site was redesigned recently and includes a new home page address that adjusters should use when looking for information about licensing, continuing education, and other industry matters. The Web site is located at www.MyFloridaCFO.com/Division/Agents.

The Web site also contains information about the specialized divisions within the Department, including the Agent and Agency Services and the Investigative and Forensic Services divisions. The Web site also contains a link to each division's Web page where adjusters may obtain more information about licensing requirements, industry alerts, and enforcement matters.

The Department's home page also includes links to:

-Financial guides for seniors

-Updates about the CFO's initiatives (e.g., Transparency Florida, insurance fraud, and consumer protection)

-Information about unclaimed property in the state

-Press releases issued by the Department

-The state's annual financial report

-Resources for Florida residents, such as consumer guides and how to report fraud

Similarly, the Office of Insurance Regulation maintains a Web site—http://www.floir.com—which contains important information about the Florida insurance industry, lists of insurers authorized to transact insurance in the state, types of insurance, and government affairs, including links to the Florida statutes and Florida Administrative Code. The Web site also contains a number of resources specifically for consumers, including:

-Explanations of various types of insurance that consumers may purchase, including flood, homeowners, automobile, and title insurance

-Information on federal health care reform

-Insurance rates for auto, homeowners, Medicare Supplement (Medigap), and small group health insurance

-Information about insurance company cybersecurity breaches

-Industry reports and other publications, such as annual reports, a list of new entrants to the marketplace, and rate changes for health and property insurance

MyProfile

MyProfile is the online Web portal for the Florida Department of Financial Services' Bureau of Licensing through which adjusters and other licensees maintain their licenses.99 Once adjusters create their MyProfile accounts, they can:

-Verify the accuracy of their names

-Verify or change their addresses

-Apply for an adjuster's license

-View information and deficiencies on a pending license application

-View messages sent from the Department

-View their adjuster licenses and appointments

-Check the status of their compliance with CE requirements

-Obtain a duplicate license

In addition, MyProfile allows adjusters to quickly locate continuing education courses approved for their specific appointments. It also allows adjusting firms to verify the continuing education status of their employees and licensed adjusters, and to apply for emergency adjuster licenses. As discussed previously, adjusters are required to update the Department about any changes to their phone numbers and home, business, or email addresses; this can be accomplished through their MyProfile accounts.

MyProfile contains a Frequently Asked Questions page that provides adjusters with a great deal of information pertaining to licensing and compliance matters.

Insurance Insights

The Department's Division of Insurance Agent and Agency Services issues an online newsletter, Insurance Insights, which provides information for adjusters and other licensees about the latest trends and news in the insurance industry. It includes information about the Department's current legislative agenda, new initiatives the Department is launching, changes in the Florida Insurance Code and rules, and continuing education updates.

Insurance Insights also includes a section entitled "Compliance Corner," which highlights various areas in which the Department has noted a pattern of noncompliance among licensees. It features rules about which adjusters should familiarize themselves to ensure they are transacting insurance in compliance with Florida law.

For example, recent editions have addressed the legal requirements for reporting criminal and administrative actions taken against adjusters and agents, working in the insurance industry after a license has been suspended, and transacting insurance after moving out of state. "Compliance Corner" also highlights the types of disciplinary action that may be taken for violating these laws.

Insurance Insights also includes a "Case Notes" section, which summarizes the facts of various cases where licensees and others have violated the Insurance Code. It highlights the administrative action the Department has taken against these persons, as well as whether the Department referred any matters to the Division of Investigative and Forensic Services for criminal investigation.

Finally, Insurance Insights provides a list of recent enforcement actions that includes the names of individuals and businesses against whom disciplinary action has been taken, including license suspension, revocation, probation, fines, and links to copies of the final orders issued by the Department.

Transparency Florida Web Site

The Department maintains a Web site, Transparency Florida, where Florida residents are able to track government spending and view finance reports, fund balances, state and local receipts and

disbursements, and government contracts. The purpose of the Web site is to provide transparency regarding how the state government is managed and funded and to hold state leaders accountable for how tax dollars are spent. The Web site also contains a link to "Get Lean," another site where consumers can anonymously provide ideas for eliminating government fraud, waste, and abuse and for improving how Florida government operates.

Financial Frontlines Web Site
The Florida CFO launched Financial Frontlines, a new Web site to help military members and their families learn how to protect themselves from financial fraud and to manage debt. The site contains information and videos about:

-Identity theft

-Servicemembers Civil Relief Act

-Credit scoring

-Budgeting and savings

-Predatory lending

-Financial planning for marriage, retirement, health care, college, homeownership, and other life events

On Guard for Seniors Web Site
The Department has created another Web site, On Guard for Seniors, to help seniors, their family members, and caregivers avoid becoming victims of insurance fraud and misleading sales tactics. The site provides information about annuities, reverse mortgages, long-term care insurance, identity theft, and fraudulent consumer schemes.

The Web site lists key questions to ask when purchasing insurance and provides videos about how various insurance and financial products work. The Web site also includes a consumer alert section that highlights various financial schemes used to defraud seniors as well as success stories from seniors who sought help from the Department on these topics. From this site, consumers can also link to "Your Money Matters," another Department Web site, dedicated to providing financial literacy and financial resources and information to all Floridians, regardless of age.

Chapter 4 Florida Insurance Guaranty Association

Florida created a nonprofit legal entity known as the Florida Life and Health Insurance Guaranty Association (FIGA). Insurers must become and remain members of the association as a condition of their authority to transact insurance in Florida. Additionally, insurers must agree to reimburse the association for all claim payments made on the insurer's behalf during financially difficult times if the insurer is subsequently rehabilitated. The association will perform its functions under the plan of operation established and approved and will exercise its powers through a board of directors.

For purposes of administration and assessment, the association maintains three accounts:

1. A health insurance account;
2. A life insurance account; and
3. An annuity account.

Borrowing between accounts for payment of policyholder and contract holder claims and other obligations of the association is authorized at the discretion of the board of directors, provided that the amounts so borrowed are restored to the appropriate accounts not less than annually. The association comes under the immediate supervision of the department and is subject to the applicable provisions of the insurance laws of Florida.

Board of Directors

The board of directors of the association is comprised of not fewer than five nor more than nine-member insurers, serving terms as established in the plan of operation. At all times, at least one member of the board must be a domestic insurer. The members of the board are elected by member insurers subject to the approval of the department. A vacancy on the board will be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department. Prior to the selection of the initial board of directors and the organization of the association, the department shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer is entitled to one vote, in person or by proxy. If the board of directors is not elected within 60 days after notice of the organizational meeting, the department may appoint the initial members.

In approving the election of members to the board, or in appointing members to the board, the department shall consider, among other things, whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

Powers and Duties of the Association

If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

1.Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;

2.Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and

3.Loan money to the impaired insurer.

If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1.Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of persons referred to in s. 631.713(2); and

2.Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1.Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents of this state; and

2.Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

This does not apply when the department has determined that the foreign or alien insurer’s domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this part for residents of Florida.

The association may:

1.Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part.

2.Sue or be sued, including the taking of any legal actions necessary or proper for the recovery of any unpaid assessments, provided that service of process must be made upon the person registered with the department as agent for receipt of service of process.

3.Borrow money to affect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

4.Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part.

5.Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

6.Take such legal action as may be necessary to avoid payment of improper claims.

7.Exercise, for the purposes of this part and to the extent approved by the department, the powers of a domestic life or health insurer, but in no case, may the association issue insurance policies or annuity contracts other than those issued to satisfy the contractual obligations of the impaired or insolvent insurer.

The association is not liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer prior to its liquidation. This does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or liquidation.

The association may reinsure any alternative or reissued policy. Alternative or reissued policies adopted by the association are subject to the approval of the department upon terms and conditions the department considers appropriate, given the function and special purpose of the association. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

Alternative or reissued policies must contain at least the minimum statutory provisions required under this code and provide benefits that are reasonable with respect to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured occurring since the original policy was last underwritten.

Alternative policies issued by the association must provide coverage of a type generally similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date that the coverage is replaced by another similar policy by the association. Any reissued, reinsured, or alternative policy must, however, be subject to association coverage if the replacement insurer becomes impaired or insolvent.

In carrying out its duties regarding guaranteeing, assuming, or reinsuring policies or contracts, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that

would not have applied under the replaced policy or contract.

2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

Powers and Duties of Department and Office

The office will, upon request of the board of directors, provide the association with a statement of the premiums in each of the appropriate states for each member insurer. When impairment is declared, and the amount of the impairment is determined, it will serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties.

The department will, in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the department will be appointed conservator.

The office may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the approved plan of operation of the association. As an alternative, the office may levy a forfeiture on any member insurer that fails to pay an assessment when due. Forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than $100 per month.

Any action of the board of directors or of the association may be appealed to the office by any member insurer if it is taken within 30 days of the action. If a member company is appealing an assessment, the amount assessed must be paid to the association and available to meet association obligations during the pendency of the appeal. If the appeal is upheld, the amount paid in error or excess will be returned to the member company. Any final action or order of the office shall be subject to judicial review in a court of competent jurisdiction.

The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

Membership and Assessments

All insurers licensed to sell property and casualty insurance in Florida must be members of the Association in order to transact insurance in Florida.105 However, the following lines of insurance are not covered by FIGA:

-Life, health, disability, or annuity insurance

-Mortgage or financial guaranty protection

-Fidelity and surety bonds

-Credit, vendors single interest, or collateral protection insurance

-Warranty, including motor vehicle service and home warranties

-Ocean and wet marine insurance

-Any kind of self-insurance

-Title and surplus lines insurance

-Workers compensation and employer's liability insurance

-The transfer of any type of investment or credit risk

The Association assesses member insurers fees to carry out its powers and duties. The Association maintains two accounts for the collection of these fees: the auto liability and auto physical damage account and the account for all other applicable insurance. Assessments are capped at 2

percent of an insurer's net direct written premiums in Florida for a particular calendar year. An additional 2 percent may be assessed for emergency assessments for insolvencies related to hurricanes.

Although the Association pays covered claims, the amount of its payments are limited. Notably, the Association provides for a maximum claim payment of $300,000 on behalf of an insolvent insurer, with the following exceptions:

-An additional $200,000 is provided for damages that are related only to building and contents under policies that provide homeowners insurance

-For policies insuring condominium or homeowners associations if the associations are responsible for insuring the residential units and their attached structures, the lesser of the policy limits or $100,000 multiplied by the number of units.

It is important to note that for the maximum limit of $300,000 to apply, the loss or claim must be worth that amount, and the insured must carry at least that limit of insurance on the insurance policy. For example, if an insured carried a $200,000 property limit on a dwelling and a $100,000 limit for liability insurance, the guaranty association would only be responsible up to those limits despite the fact that $300,000 is available.

All claims are subject to a $100 deductible.

Advertising

An advertisement or a solicitation that uses the existence of the Association in order to sell, solicit, or induce consumers to purchase insurance must explain the coverage limits of the Association, which apply to the type of insurance described in the advertisement or solicitation.

Examinations and Annual Reports

The Department is responsible for regulating and examining the Association. By March 30 each year, the Association's board of directors must submit a financial report to the Department, along with a report of its activities for the preceding year.

Definitions

As used for the Guaranty Association:

"Account" means any of the three accounts created in s. 631.715.

"Association" means the Florida Life and Health Insurance Guaranty Association created in s. 631.715.

"Contractual obligation" means any obligation under covered policies.

"Covered policy" means any policy or contract set out in s. 631.713 and reduced to written, printed, or other tangible form.

"Impaired insurer" means a member insurer deemed by the department to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

"Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction.

"Member insurer" means any person licensed to transact in this state any kind of insurance as set out in s. 631.713.

"Premium" means any direct gross insurance premium and any annuity consideration written on covered policies, less return premium and consideration thereon and dividends paid or credited to policyholders on such direct business. "Premium" does not include premium and consideration on contracts between insurers and reinsurers.

‘‘Person’’ means any individual, corporation, partnership, association, or voluntary organization.

"Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer. A person may be a resident of only one state, which in the case of a person other than an individual shall be the person's principal place of business. Citizens of the United States who are residents of foreign countries or United States possessions, territories, or protectorates that do not have an association similar to the guaranty association created by this part shall be deemed residents of the state of domicile of the issuing the policies or contracts.

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 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.

Chapter 6 Unfair Methods of Competition and Unfair or Deceptive Acts and Practices

Since the late 1800s, the U.S. government has been concerned with the manner in which businesses compete with each other and price their products and services. In 1914, Congress passed the Federal Trade Commission Act, which pertains in part to unfair or deceptive acts and practices. Specifically, federal law considers an act or practice to be unfair if it:

-Causes serious harm to consumers, or has the potential to do so

-Cannot be reasonably avoided by consumers

-Is not offset by more advantageous benefits to consumers or the competitive marketplace

In 1973, the state of Florida enacted the Florida Deceptive and Unfair Trade Practices Act, which mirrors the contents of its federal equivalent. It considers trade and commerce to mean the advertisement, solicitation, provision, offering, or distribution of any goods or service, including tangibles and intangibles.

Because the insurance industry is regulated even more strictly than many other types of business industries, the insurance industry is also governed by its own unfair trade practices rules—the Unfair Insurance Trade Practices Act. The act defines and prohibits more than 30 practices as unfair methods of competition and unfair or deceptive acts or practices. The following prohibited practices are of special concern to Florida adjusters.

Misrepresentation and False Advertising

Misrepresentation occurs when an 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, an adjuster may unintentionally make a misrepresentation and believe he or she is being truthful. However, an 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.

Free Insurance Prohibited

Adjusters, agents, and insurers are also prohibited from advertising, offering, or providing free insurance as an inducement to purchase or sell real or personal property or services connected with such real or personal property.

In Florida, “free insurance” means:

-Insurance for which no identifiable and additional charge is made to the purchaser of such real property, personal property, or services

-Insurance for which an identifiable or additional charge is made in an amount that is less than the cost of such insurance as to the seller or other person, other than the insurer, providing the same

Adjusters, agents, and insurers also cannot use the word “free” or other words that imply insurance will be provided at no cost in any advertisements.

Deceptive Use of Name

It is also unlawful to use the name or logo of a financial institution when marketing or soliciting customers if such advertising materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to the financial institution.

Use of Designations

The use of certifications and professional designations is regulated by the state of Florida not only when marketing, soliciting, and selling insurance but also when giving insurance advice. This regulation is designed to protect consumers from dishonest, deceptive, misleading, and fraudulent trade practices. However, the Department does not endorse any professional designation.

Licensees (including adjusters) are only permitted to use designations from an organization that maintains standards for assuring that its certificants are competent on specific subject matters. In addition, licensees cannot use:

-Designations if they have not actually earned them or are ineligible to use them

-Nonexistent or self-conferred designations

-Designations that indicate or imply a level of occupational qualifications obtained by education, training, or experience that the person does not actually have

A licensee may not use terms such as financial advisor or financial planner to falsely imply that he or she is licensed or qualified to sell or recommend financial products other than insurance products. Licensees are also prohibited from falsely implying that they are qualified to recommend or sell securities or other investment products in addition to insurance products.

However, it is not unlawful for a licensee to inform customers that he or she holds a designation as a certified financial planner (CFP), chartered life underwriter (CLU), chartered financial consultant (ChFC), or life underwriter training council fellow (LUTC), or holds a license to sell securities from the Financial Industry Regulatory Authority (FINRA).

Defamation

Defamation is both an unethical practice and a prohibited trade practice. It occurs when an 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 or agents during the process of adjusting claims, if they have a negative outcome to the insurer or agent, would be considered defamatory. Defamation can include both written (libel) and spoken (slander) statements about a third party in the insurance industry.

Boycott, Coercion, and Intimidation

To ensure that there is competition within the marketplace, Florida prohibits practices that inhibit or eliminate competition. 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 adjusters to be scrupulously honest in the documentation of their work. The intentional filing and making of 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.

Rebating

In some industries, it is customary to give gifts to individuals who refer customers and potential customers. In the insurance industry, however, giving gifts, inducements, or rebates can lead to ethical problems. As a result, Florida law states that it is unlawful to offer anything of value to induce someone to buy insurance, including a rebate of premium, dividends, or stocks and securities. In addition, it is unlawful to knowingly receive or accept such a rebate.

The giving and receiving of "finder's fees" often constitutes a violation of this prohibition. It is considered both illegal and unethical for an adjuster to receive compensation for referring claimants to specific businesses, such as auto body repair shops, glass vendors, and building contractors.

However, the law does allow giving insureds and prospective insureds the following promotional or advertising gifts, as long as the items have a total value of $100 or less per insured or prospective insured in any calendar year.

-any article of merchandise

-goods

-wares

-store gift cards

-gift certificates

-event tickets

-anti-fraud or loss mitigation services

Making charitable contributions, as defined by the Internal Revenue Code (IRC), on behalf of insureds or prospective insureds, is also permitted under the same terms.

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 carriers and/or appointing entities as soon as they are received, along with all known facts and documentation concerning the complaint.

Twisting

A person cannot make a false or misleading statement or comparison about an insurance policy in order to induce someone to lapse, surrender, terminate, retain, or convert an insurance policy or buy a policy with another insurer. In addition, such practices are also considered unethical if they are used to induce a consumer to purchase a new policy with a different insurer (i.e., such as the insurer represented by the adjuster).

False Claims

Submitting 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. In addition to penalties imposed by the Department, filing a false claim may also subject an individual to criminal penalties.

Sliding

Most insurance contracts come with offers of additional coverage, generally in the form of optional endorsements the insured may choose for an additional premium. Sliding occurs when an adjuster:

-Tells a claimant or insured that a specific policy feature or optional coverage is required by law when it is not

-Tells a claimant or insured that an additional product or policy feature is included at no additional cost when there is an additional charge

-Orders the insurer to add a product or provision to the policy, which results in a premium charge, without obtaining the policyholder's consent to do so

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 that signature is 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 an 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 Discrimination

In Florida, insurers underwriting automobile policies and covering other property and casualty risks may exclude intentional acts by the insured. At the same time, they are prohibited from taking any of the following actions because an insured or applicant has either sought (or should have sought) medical or psychological treatment in the past as a resulting of being abused by a household member, or because of the potential for future claims due to such abuse:

-Refusing to issue, reissue, or renew a policy

-Refusing to pay a claim

-Canceling or otherwise terminating a policy

-Increasing rates

Refusal to Insure

Unfair discrimination can also occur if an insurer refuses to insure (or continue to insure) a person or risk solely based one of the following reasons:

-Race, color, creed, marital status, sex, or national origin

-The person's residence, age, or lawful occupation or the location of the risk (unless there is a reasonable relationship between these factors and the coverage issued or -to be issued)

-The insured's or applicant's failure to agree to place collateral business with an insurer, unless the coverage applied for would provide liability coverage that is excess over that provided in policies maintained on property or motor vehicles

-The insured's or applicant's failure to purchase noninsurance services or commodities, including automobile services

-The fact that the insured or applicant is a public official

-The insured was previously denied coverage by the same insurer, if this second denial is done as a general business practice (determined by frequency of occurrence), and not because of factors specific to the case at hand

Personal lines property or personal lines automobile insurers are also prohibited from:

-Refusing to insure, reissue, or renew a policy, cancel or terminate a policy, or charge an unfairly discriminatory rate based on the lawful use, possession, or ownership of a firearm or ammunition by the insurance applicant, insured, or member of the applicant's or insured's household

-Disclosing that an insurance applicant, insured, or household member of the applicant or insured lawfully owns or possesses firearms to a third party or an affiliated entity of the insurer, unless the insurer informs the applicant of the specific need to disclose such information and the applicant or insured consents to the disclosure (An insurer may also disclose this information if the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.)

Excessive Charges

Florida also protects consumers by making it unlawful for insurers and licensees to knowingly collect any sum as a premium or charge for insurance that is not provided for in the policy or to collect more than the amount of premium stated in the policy.

A person who overcharges consumers may be fined:

-Up to $5,000 for each non-willful violation (up to $20,000 total for all violations arising out of the same action)

-Up to $40,000 for each willful violation (up to $200,000 total for all violations arising out of the same action)

Prohibited Extra Premium Charges for Motor Vehicle Insurance

It is also unlawful for insurers or agents to collect or impose an additional premium or refuse to renew a policy of motor vehicle liability, personal injury protection, medical payment, or collision insurance solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

If an insurer imposes a surcharge or refuses to renew a policy, the insurer must, in conjunction with sending the notice of premium due or notice of nonrenewal, notify the insured that he or she is entitled to be reimbursed for the surcharge or have the policy

renewed if the insured demonstrates that the operator of the vehicle involved in the accident was:

-Lawfully parked

-Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person

-Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident

-Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident

-Not convicted of a moving traffic violation in connection with the accident, but the operator of the other vehicle involved in the accident was convicted of a moving traffic violation

-Finally adjudicated not to be liable by a court

-In receipt of a traffic citation that was dismissed or not prosecuted

-Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault, which are not rebutted by information in the insurer's file -From which the insurer in good faith determines that the insured was substantially at fault

In addition, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current three-year period.

An insurer may not impose an additional premium or refuse to renew a motor vehicle insurance policy solely because the insured committed a noncriminal traffic infraction unless the infraction is:

-A second infraction committed within an 18-month period or a third or subsequent infraction committed within a 36-month period

-A violation for exceeding the lawful speed limit by more than 15 miles per hour

If requested by the insured, the insurer and agent must give the insured proof of fault or other criteria which justifies the additional charge or cancellation.

An insurer may not charge an additional premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or applicant is handicapped or physically disabled, as long as the handicap or physical disability does not substantially impair the person's mechanically assisted driving ability.

An insurer may not, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

An insurer may not impose an additional premium, cancel a policy, or not renew a policy because of a traffic infraction when adjudication has been withheld and no points have been assessed against the insured. However, this does not apply to traffic infractions involving accidents in which the insurer has incurred a loss due to the insured's fault.

It is also illegal for insurers to charge an extra premium for automobile insurance or refuse to renew a policy solely because the insured or applicant was convicted of one or more traffic violations which did not involve an accident or did not cause the insured's driving privileges to be revoked or suspended, without proof of a direct and objective relationship between the violation and the increased risk of highway accidents.

Insurers are also prohibited from canceling or otherwise terminating an automobile insurance policy after the insured has paid premiums on the policy for five years or more solely because the insured is involved in a single traffic accident.

Unfair Rate Increases for Military Personnel

Insurers are prohibited from charging an increased premium for reinstating a motor vehicle insurance policy that was canceled or suspended by an insured solely because the insured was transferred out of state while serving in the U.S. Armed Forces or on active duty in the National Guard or U.S. Armed Forces Reserve. It is also considered an unfair trade practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant was previously insured with a different insurer and he or she canceled that policy solely because he or she was transferred out of state while serving in the U.S. Armed Forces or on active duty in the National Guard or U.S. Armed Forces Reserve.

Use of Credit Reports and Credit Scores by Insurers

Florida regulates and limits insurers' use of credit reports and credit scores for underwriting and rating purposes in the case of personal lines motor vehicle insurance and personal lines residential insurance, which includes homeowners, mobile home owners' dwelling, tenants, condominium unit owners, cooperative unit owners, and similar types of insurance.

Insurers must inform applicants or insureds that a credit report or score is being requested for underwriting or rating purposes. If the insurer makes an adverse decision based in whole or in part on a credit report, the insurer must provide a copy of the credit report, at no charge, to the applicant or insured or give the applicant or insured the name, address, and telephone number of the consumer reporting agency from which the credit report may be obtained. The insurer must also notify the consumer, explaining the primary reasons for the adverse decision and cannot use generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score."

An insurer may not request a credit report or score based upon the race, color, religion, marital status, age, gender, income, national origin, or place of residence of the applicant or insured.

An insurer may not make an adverse decision solely because of information contained in a credit report or score without consideration of any other underwriting or rating factor.

An insurer may not make an adverse decision about an applicant or insured if based, in whole or in part, on:

-The absence of, or an insufficient, credit history

-Collection accounts with a medical industry code, if so identified on the consumer's credit report

-Place of residence

Any other circumstance that the Financial Services Commission determines, by rule, lacks sufficient statistical correlation and actuarial justification as a predictor of insurance risk

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 their insurers and 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:

-Attempting to settle claims on the basis of a policy document or binder that was altered without the consent or knowledge of the insured

-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

-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

-failing to pay personal injury protection insurance claims within certain prescribed times

-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

Few adjusters work strict nine-to-five schedules. They must juggle multiple claims and, on a daily basis, field numerous telephone calls from claimants, insureds, agents, attorneys, and repair vendors. Therefore, it is important for adjusters to adopt measures and procedures that will help them avoid the pitfalls of behavior that fall squarely in midst of prohibited claims settlement practices.

The maintenance of a claim log and a claims diary is one method used by ethical and diligent claims adjusters. Because all entries are dated, the adjuster is better able to avoid behavior that might indicate a lack of compliance with requirements for conducting business in a timely fashion. In addition, because all phone calls, conversations, and recommendations are also entered into the log and diary, it is less likely for the adjuster to overlook a required step or duty of the adjustment process.

Earlier in the course, we discussed bad faith. It is important for Florida adjusters to understand and be familiar with Florida's bad faith laws as they pertain to insurance. These laws allow an individual to recover damages for injuries from an insurance company that failed to settle an insurance claim in good faith when it was able to do so.

Florida statutes allow both insureds and third parties to file bad faith actions against insurers. A party alleging bad faith must provide the insurer with 60 days' written notice before filing an action, and the insurer has an additional 60 days to either pay damages or rectify the situation that prompted the allegation of bad faith. The majority of first-party bad faith claims (those filed by policyholders against their own insurers) assert the insurer

denied coverage improperly, delayed payment unfairly, or settled a loss for less than its fair value.

If an insurer (or adjuster) is found guilty of bad faith, it is responsible for damages, court costs, and reasonable attorney's fees incurred by the plaintiff. In addition, punitive damages may be awarded if the allegations made against the insurer were committed with such frequency they indicated a general business practice and they were:

-Willful, wanton, and malicious

-In reckless disregard for the rights of any insured

-In reckless disregard for the rights of a beneficiary under a life insurance contract

Unfair Claim Settlement Practices Relating to Motor Vehicle Insurance

Florida law also addresses unfair claim settlement practices relating specifically to motor vehicle insurance. Insurers must comply with the following requirements:

-When liability and damages owed under a policy are reasonably clear, an insurer may not recommend that a third-party claimant make a claim under his or her own policy solely to avoid paying the claim under the policy issued by that insurer. However, an insurer may identify options to a third-party claimant relating to the repair of his or her vehicle.

-An insurer that elects to repair a motor vehicle and specifically requires a particular repair shop for vehicle repairs must cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy.

-An insurer may not require the use of replacement parts in the repair of a motor vehicle which are not at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.

-When an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, the insurer must use one of the following methods:

-The insurer may elect a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including sales tax.

-The insurer may elect to offer a replacement motor vehicle that is a specified comparable motor vehicle available to the insured, including sales tax, paid for by the insurer at no cost other than any deductible provided in the policy and betterment. A comparable motor vehicle is one that is (1) made by the same manufacturer, of the same or newer model year, and of similar body type and that has similar options and mileage as the insured vehicle, and (2) in as good or better overall condition than the insured vehicle and available for inspection within a reasonable distance of the insured’s residence.

-When a motor vehicle total loss is adjusted or settled on a basis that varies from the prior two methods just noted, the determination of value must be supported by documentation, and any deductions from value must be itemized and specified in appropriate dollar amounts. The basis for such settlement must be explained to the claimant in writing, if requested, and a copy of the explanation must be retained in the insurer’s claim file.

-Any other method agreed to by the claimant.

-When the amount offered in settlement reflects a reduction by the insurer because of betterment or depreciation, information pertaining to the reduction must be maintained with the insurer's claim file. Deductions must be itemized and specific as to dollar amount and must accurately reflect the value assigned to the betterment or depreciation. The basis for any deduction must be explained to the claimant in writing, if requested, and a copy of the explanation must be kept with the insurer's claim file.

-If partial losses are settled on the basis of a written estimate prepared by or for the insurer, the insurer must supply the insured a copy of the estimate upon which the settlement is based.

-Every insurer must provide notice to an insured before termination of payment for previously authorized storage charges, and the notice must provide 72 hours for the insured to remove the vehicle from storage before terminating payment of the storage charges.

-If a claimant will incur sales tax upon replacement of a total loss or upon repair of a partial loss, the insurer may defer payment of the sales tax unless and until the obligation has actually been incurred.

Claim Settlement Practices Relating to Property Insurance

Unless the policy provides otherwise, if a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost, the following requirements apply:

-When a loss requires repair or replacement of an item or part, any physical damage incurred in making such repair or replacement that is covered and not otherwise excluded by the policy must be included in the loss to the extent of any applicable policy limits. The insured may not be required to pay for betterment required by ordinance or code except for the applicable deductible, unless specifically excluded or limited by the policy.

-When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer must make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.

Investigations and Hearings

The Department has the power to investigate and examine the affairs of every person involved in the insurance business in Florida in order to determine whether he or she has engaged in any unfair or deceptive acts or practices. If the Department has reason to believe that the insurance laws have been violated, it may conduct a hearing on the matter.

Persons may be compelled by subpoena to appear at a hearing, and they may be ordered to disclose information pertinent to the investigation. Statements of charges, notices, and orders issued in the course of the investigation may be served in the same manner as service of process in civil actions or by certified mail sent to the person's residential or business address. Anyone who fails to comply with a subpoena to appear or an order of discovery may be fined up to $1,000 per violation.

Penalties

Any person who commits an unfair trade practice or unfair method of competition is subject to the following penalties:

-A fine up to $5,000 for each unintentional violation (a total of $20,000 for all violations arising out of the same act)

-A fine up to $40,000 for each willful violation (a total of $200,000 for all violations arising out of the same act)

Certain prohibited practices are also considered crimes:

-Twisting and churning are first-degree misdemeanors and are punishable by imprisonment up to one year and an administrative fine up to $5,000 for each unintentional violation and up to $75,000 for each willful violation. (Churning occurs when a person's existing and replacement policy are both issued by the same insurer, and replacement is recommended solely to boost an agent's commissions.)

-Willfully submitting a fraudulent signature on any insurance policy-related document is a third-degree felony that is punishable by up to five years' imprisonment and an administrative fine up to $5,000 for each unintentional violation (up to $75,000 for each willful violation).

Anyone who intentionally submits insurance applications or policy-related documents with fraudulent signatures commits a felony of the third degree and may be fined up to $5,000 for each nonwillful violation ($75,000 for each willful violation).

Administrative fines imposed for violations may not exceed aggregate amounts of $50,000 for all unintentional violations arising out of the same action and $250,000 for all willful violations arising out of the same action.

Insurance Fraud

One of the most serious problems facing the insurance industry today is insurance fraud. In Florida, the Division of Investigative and Forensic Services 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.

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

Required Statements

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.

In addition, all proof of loss statements must prominently display the following statement:

-Pursuant to s. 817.234, Florida Statues, 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.

Immunity
In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or other torts for reporting information about insurance fraud that is required by law or by the Department or Division. Those who report insurance fraud or suspected insurance fraud are immune from civil actions if they provide information about the suspected fraud, in good faith, to:

-Law enforcement officials

-Other licensees

-The Department, the Division, the National Insurance Crime Bureau, the National Association of Insurance Commissioners, or any local, state, or federal enforcement officials or their agents or employees

Those who report suspected insurance fraud are also immune from civil liability for other actions taken in cooperation with any of these agencies or individuals in the lawful investigation of suspected fraudulent insurance acts.

Penalties
If a person is found guilty of insurance fraud, the insurer may recover compensatory damages as well as its investigation and litigation expenses, including attorneys' fees, from such person.

Chapter 7 Insurance Updates & Current Events

The insurance industry is continually changing to make improvements to its products and operations and to reflect legislative developments. Every year, insurance-related laws at both the state and federal levels are modified to improve the regulatory process. It is therefore critically important for licensees to understand new laws and regulations, industry trends, and state requirements to ensure that they continue to comply with these laws and are able to best serve their clients.

The state of Florida made several changes to its insurance laws during its recently concluded legislative session. However, none of these were aimed specifically at all-lines adjusters. Therefore, we will present the changes affecting Florida property and casualty in general.

Office of Financial Regulation Public Record Exemption Extended

Personal financial and health information held by the Office during an investigation or examination of any insurer or agent is confidential. This is because under the Florida Consumer Collection Practices Act, this information holds a public records exemption. The exemption was scheduled for repeal on October 2, 2019. However, H.B. 7049 removed the scheduled repeal.

The continuation of the public records exemption will prevent the release of sensitive personal medical information and financial information of individuals.

This change is effective October 1, 2019.

Right of Contribution Among Liability Insurers

H.B. 301 brought about new legislation covering liability insurers' defense costs. Liability insurers that defend their insureds against a claims and suits now have a right of contribution for defense costs against other liability insurers.

The court will allocate defense costs among the insurers involved in the claim and will use any equitable factors it determines are appropriate in making an allocation.

Contributions for defense costs may not be sought from an insurer for defense costs that are incurred before the insurer's receipt of notice of the claim or suit. The new law does not apply to motor vehicle liability insurance or medical professional liability insurance.

The new law is effective July 1, 2019, and applies to any claim, suit, or other action initiated on or after January 1, 2020.

Civil Remedy Limited

Florida law sets forth the procedures for bringing a civil action against an insurer for violating certain parts of the Insurance Code, primarily committing unfair or deceptive practices and failing to return unearned premiums. One of the conditions of bringing suit is that the Department and the insurer be given 60 days' written notice of the insurer's violation. New language to the statute provides that the notice may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

The new law was also brought about by H.B. 301 and is effective July 1, 2019.

Surplus Lines Changes

Diligent Effort Threshold

Florida's Surplus Lines Law requires that before coverage can be placed with a surplus lines insurer, the producer must make a diligent effort to place coverage through authorized insurers writing the same kind and class of business.

Under the previous law, "diligent effort" was defined to mean seeking coverage from, and having been rejected by, at least three authorized insurers and documenting the rejections. An exception was made for residential structures with a replacement cost of $1 million or more, in which case the producer was required to seek coverage from, and be rejected by, only one authorized insurer.

The replacement cost threshold for residential structures has been reduced from $1 million to $700,000 with the requirement to seek coverage from one authorized insurer remaining in place.

Per Policy Fee Eliminated

Under the previous law, a reasonable per policy fee, not to exceed $35, was permitted by the filing surplus lines agent for each policy certified for export. The $35 fee limit has been eliminated, and new language here requires that any per policy fee must be itemized separately to the customer before purchasing the policy and must be enumerated in the policy.

Both of these changed resulted from H.B. 301 and are effective July 1, 2019.

Unfair Insurance Trade Practices Act Amended

Florida's Unfair Insurance Trade Practices Act regulates insurance trade practices by defining unfair methods of competition and unfair or deceptive acts or practices and prohibiting them.

The law was recently changed to allow insurers and their agents to give certain items to insureds and prospective insureds, as long as the value does not exceed $100. The law is specific in naming the types of items allowed in any calendar year:

-Any article of merchandise

-Goods

-Wares

-Store gift cards

-Gift certificates

-Event tickets

-Anti-fraud or loss mitigation services

-Charitable contributions made on behalf of insureds or prospective insureds

H.B. 301 added new language to this statute making clear that insurers are not prohibited from offering or giving, for free or at a discounted price, services or other offerings that relate to loss control or loss mitigation with respect to the risks covered under a policy. For example, an insurer might offer free smoke detectors for every room with the purchase of a fire policy.

This change is effective July 1, 2019.

Multi-Line Discounts Expanded

When calculating premiums, insurers often take into consideration discounts based on the fact that an insured has purchased one or more other policies. H.B. 301 brought about legislation that now allows insurers to offer multi-line discounts when any of these conditions are present:

-Insurers are operating under a joint marketing agreement.

-A policy is removed from Citizens Property Insurance Corporation through the policyholder eligibility clearinghouse program.

-The same agent is servicing the policies from different insurers.

This change is effective July 1, 2019.

Disclosure of Mediation Procedures

Florida law requires that property insurers notify policyholders of their right to participate in a mediation procedure when a claim is under dispute. This procedure is a non-adversarial alternative dispute resolution process prompted by the need for effective, fair, and timely handling of property insurance claims.

Under previous law, the disclosure was required at the time a first-party claim was filed. As a result of H.B. 301, the disclosure can be made at the time a first-party claim is filed or at the time coverage is applied and payment is determined.

This change is effective July 1, 2019.

First Auto Policy Premium Requirement Reduced to One Month’s Premium

As a result of H.B. 301, auto policies and binders may be issued with the payment of one month’s premium. Under the previous law, at least two months’ premium was required.

This change is effective July 1, 2019.

False Workers Compensation Application Penalty Downgraded

In Florida, submitting an application that contains false, misleading, or incomplete information for the purpose of avoiding or reducing the amount of premiums for workers compensation coverage is a felony. As of July 1, 2019, H.B. 301 made this crime a third-degree felony, downgraded from a second-degree felony under the previous law.

Workers Compensation PTSD Benefits for First Responders

In 2017, Florida's Workers' Compensation Law was amended to provide that, under certain circumstances, post-traumatic stress disorder (PTSD) suffered by a first responder is an occupational disease covered by workers compensation benefits. With the amended language, benefits do not require a physical injury.

A law enforcement officer, firefighter, emergency medical technician, or paramedic is entitled to workers compensation benefits for a mental or nervous injury if both of these conditions are met:

1.The mental or nervous injury resulted while the first responder was acting within the course of his or her employment.

2.The first responder is examined and diagnosed with PTSD as a result of one of the following events:

-Seeing a deceased minor or witnessing the death of a minor

-Witnessing an injury to, participating in the treatment of, or manually transporting a minor who later died before or upon arriving at an emergency room

-Seeing a decedent or witnessing a death that involved grievous bodily harm of a nature that shocks the conscience

-Witnessing a homicide

The law became effective October 1, 2018. However, the administrative rule implementing the law was filed by the Department of Financial Services (DFS) in December 2018, and it was estimated that the regulatory costs of the proposed rule would increase in excess of $1 million within five years after implementation. Florida's Administrative Procedures Act requires that a rule that will likely increase regulatory costs in excess of $1 million within five years be ratified by the Legislature before it can go into effect. H.B. 983 was enacted solely to ratify Rule 64L-3.009 so that these expanded benefits for first responders became effective June 25, 2019.

Hurricane and Flood Loss Projection Models Remain Trade Secrets

Florida is known for its deadly hurricanes and flood waters. Hurricane and flood loss models are used to manage and predict these disasters. Models are complex methodologies used to estimate economic and social losses. They are developed by, and belong to, private companies. They help determine actuarially sound pricing of homeowners insurance and help determine premium discounts for mitigation features in structures.

H.B. 7091 extended the current exemption from public records disclosure for trade secrets used in designing and constructing hurricane and flood loss models provided by private companies. The methodology may be shared with the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, and the Office of the Consumer Advocate, but it is to remain confidential.

The previous statute was scheduled for automatic repeal on October 2, 2019, if the law had not been changed.

This change is effective October 1, 2019.

Insurance Assignment Agreements

Under the assignment of benefits provision of insurance policies, a policyholder can assign his or her insurance claim benefits directly to a home repair contractor. While this can be convenient and reduce stress for homeowners, it has led to unscrupulous contractors abusing the practice by inflating claims. H.B. 7065 brought about new legislation to help address this issue.

Duties of Assignee/Contractor

The bill establishes the duties of assignees (contractors). An assignee:

-Must provide the assignor (insured) with accurate and up-to-date revised estimates of the scope of work to be performed when supplemental or additional repairs are required

-Must perform the work in accordance with accepted industry standards

-May not seek payment from the insured exceeding the deductible under the policy unless the insured has chosen to have additional work performed at his or her own expense

The contractor and its subcontractors may not attempt to collect money from an insured, bring any action against an insured, file a lien on an insured's property, or report an insured to a credit agency for payments arising from the assignment agreement.

The contractor must provide the insurance company and the insured with a 10-day written notice of its intent to initiate litigation before filing a suit under the policy and make a pre-suit demand. The insurer must respond with a pre-suit settlement offer or require the contractor to participate in any dispute resolution process required by the policy.

The bill requires contractors to comply with some of the insured's duties under the policy, for example, cooperating with the claims investigation, submitting to examinations under oath, providing recorded statements that are reasonably necessary, and participating in alternative dispute resolution methods in accordance with the terms of the policy.

Attorney Fees

Attorney fees may be awarded if a suit goes to court. The court will compare the difference between the demand and the offer with the judgment obtained. If the difference between the judgment obtained by the insured and the pre-suit settlement offer is:

-Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees

-At least 25 percent but less than 50 percent of the disputed amount, no party is eantitled to an award of attorney fees

-At least 50 percent of the disputed amount, the insured is entitled to an award of reasonable attorney fees

Required Disclosure

An assignment of benefits agreement must contain the following notice:

"*You are agreeing to give up certain rights you have under your insurance policy to a third party, which may result in litigation against your insurer. Please read and understand this document before signing it. You have the right to cancel this agreement without penalty within 14 days after the date this agreement is executed, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the*

property. However, you are obligated for payment of any contracted work performed before the agreement is rescinded. This agreement does not change your obligation to perform the duties required under your property insurance policy."

Policies May Prohibit or Restrict Assignment
The bill allows insurers to offer property insurance policies that prohibit or restrict assignment of post-loss benefits. However, if an insurer offers a policy with a prohibition or restrictions, it must offer a policy with the same coverage that does not restrict or prohibit the right to assign benefits. When purchasing a policy that prohibits or restricts assignments of post-loss benefits, the insured must affirmatively reject the fully assignable policy. Policies prohibiting or restricting assignment of benefits must be offered at a lower cost.

The new law is effective July 1, 2019.

Fraud-Related Statistics Reporting Begins

On March 1, 2019, all insurers are required to report fraud-related data to the Department's Division of Investigative and Forensic Services (DIFS) for each line of insurance written in the prior calendar year. The data must be submitted annually thereafter and must include:

-The number of policies in effect

-The amount of premiums written for policies

-The number of claims received

-The number of claims referred to the anti-fraud investigative unit

-The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim-related

-The number of claims investigated or accepted by the anti-fraud investigative unit

-The number of other insurance matters investigated or accepted by the anti-fraud investigative unit that were not claim-related

-The number of cases referred to the DIFS

-The number of cases referred to other law enforcement agencies

-The number of cases referred to other entities

-The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies

An administrative fine of up to $2,000 per day may be imposed on insurers who fail to report the required data or to comply with the other anti-fraud requirements of the law.

Current Scams

The Division of Consumer Services warns that there are many scams being perpetrated against Florida's consumers. The Division continuously monitors the insurance and financial industry to inform and protect consumers from various financial scams designed to steal hard earned money. Some of the scams currently circulating the state are presented here. Producers can help fight scams and other types of fraud by practicing awareness and educating their clients.

Check Scam Involving DFS
Consumers have received fraudulent checks that are made to appear as if they have been issued by the Florida Department of Financial Services. In some cases, checks appear to be signed with the signature of the Chief Financial Officer. These fraudulent checks have been received and reported by consumers who were not expecting to receive funds from the Department.

Checks have been reported to the Department from consumers in Illinois, New York, Pennsylvania, and South Carolina. The checks, with values varying between $1,900 and $4,000, have all been deemed fraudulent by the Department's Office of Fiscal Integrity, which investigates the misuse of state funds.

The Department frequently issues checks for a host of reasons, including unclaimed property payments, but the Department will not distribute checks to consumers without first notifying them.

A consumer who receives an unexpected check from the Department of Financial Services that seems suspicious should not attempt to cash it but should report it to Department's Office of Fiscal Integrity by calling 850-413-5514.

Policy Cancellation Email Scam
The DFS and OIR have received calls from consumers who have received scam emails, appearing to come from the Insurance Commissioner, informing them that their insurance has been cancelled. The fraudulent email indicates that it is coming from the Office of U.S. Insurance Regulation and references the DFS mailing address. The unauthorized email includes a link for consumers to view their policy information. The OIR does not send notices of cancellation, and those who receive them should disregard the information. Anyone who receives this type of email should not open any links and should not provide any personal information. Instead, the email should be immediately deleted. Consumers who are concerned about their insurance coverage should contact their insurance companies directly using a number they know to be legitimate, such as the number found on insurance cards, bills, and policies.

Consumers should report this scam and all fraudulent activity to the Department of Financial Services' Insurance Consumer Helpline by calling 877-693-5236.

Office of Financial Regulation Scam
Florida consumers should be wary of fake emails that claim to be from the Office of Financial Regulation. These email messages indicate that the consumer is behind on a payday loan, and threats of legal action are often made.

Scammers often identify themselves as "Officer Joel Winston" or "John Smith." These individuals will use official logos without permission to create falsified emails that appear to be very authentic. They claim the consumers have outstanding payments. Consumers are instructed to call a number, which typically contains a 904 area code, in order to resolve the issue.

Consumers who respond and provide personal and financial information through email or phone risk having their identities stolen and fraudulent purchases made using their accounts.

The Division of Consumer Services instructs consumers to not respond to emails that claim to be from the Office of Financial Regulation. Recipients can inspect the author's email address to determine if the email is an official state government email address.

Division of Insurance Fraud Scam
This scam claims to come from the director or assistant director of the Department of Financial Services' Division of Insurance Fraud. It requests personal information to help with an investigation or to avoid criminal prosecution. The message will include the Division of Insurance Fraud's physical address and logo, but it is not legitimate.

The email may claim that an item of great value was being sent and had been confiscated or cannot be delivered because it lacks the proper insurance. The email directs the consumer to contact the Tucson International Airport and provide personal information to avoid prosecution or confiscation of the item. The Division of Insurance Fraud will not ask that confidential information be sent over email, nor does it direct consumers to contact a third party to provide this information.

Consumers who respond to this message risk compromising their confidential, personal information and becoming victims of identity theft. The Division recommends that people do not respond to any unsolicited emails asking for personal information and refrain from calling phone numbers provided. Those who receive email claiming to be from the Department of Financial Services' Division of Insurance Fraud and asking for personal information should call 850-413-3115 to report it.

Fraud Free Florida Initiative

In response to the state's ongoing fraud epidemic, Florida's Chief Financial Officer launched a new initiative, Fraud Free Florida, in March 2019. The new initiative is aimed at better coordinating collective investigative efforts to protect Florida's population, especially seniors, from scam artists.

The initiative will bring together statewide law enforcement officials, local state attorneys, private sector stakeholders, and members of the OIR fraud investigative teams. Its goal is to help Florida stay ahead of new scams and to take on rampant fraud already taking place. Targets will be fraud at unscrupulous opioid treatment centers, public assistance fraud, identity theft, and cybersecurity issues.

The new Fraud Free Florida initiative joins the ranks of the Office's already robust Division of Investigative and Forensic Services. The Division is one of the top law enforcement agencies in the state dedicated to rooting out fraud and investigating financial crimes. Fraud Free Florida will help agencies better collaborate on fraud cases and identify law changes needed to make Florida the toughest state in the nation on fraud.

FraudFreeFlorida.com serves as a one-stop-shop for reporting fraud and learning about ways to protect from scams. The Web site allows visitors to report:

-Insurance fraud

-Identity theft

-Workers compensation fraud

-Arson

-Public assistance fraud

-Scam telephone calls

The site is also a center for learning more about fraud and scams and offers a means for consumers to report businesses and offers that appear to be illegal schemes and fraud. Reports help the Office to investigate and warn others of potential fraud.

CFO Calls for Insurers to Step Up

The state's Chief Financial Officer and Insurance Commissioner spoke with insurance company executives recently and called on the industry to step up more to aid in Hurricane Michael recovery.

CFO Patronis was quoted as saying, "Before Hurricane Michael hit, I put Florida's insurance industry on notice that I expected they would move quickly to help residents recover. Unfortunately, this hasn't been the case all around. My office has noticed several alarming trends since the storm made landfall, including delays in processing claims. What is even more troubling is that 13 percent of complaints to my office were related to claim denials.

"To put this into perspective, Hurricane Irma touched almost every county in our state, impacting millions. Thirty days after Irma, we had approximately 200 consumer complaints. Hurricane Michael impacted 12 counties. Thirty days later, we have received more than 100 consumer complaints. There is no reason that we should have this many complaints for an impacted area that is a small fraction of Irma's. It's completely unacceptable.

"My expectations have not changed. In fact, they are even higher. I expect insurers will step it up so that families and businesses can get back to normal. If insurers don't step up, not only will recovery be delayed but consumers will be even more vulnerable to fraud."

The Commissioner agreed that all insurance-related needs of impacted consumers must be addressed swiftly and without delay. The two will continue to monitor the progress of post-storm responses to ensure residents impacted by hurricanes are protected throughout their path to recovery. The Commissioner said, "Insurance companies must fulfill the promises they've made to their policyholders."

Reminder to Check MyProfile for Messages

The Department highly recommends that licensees routinely check their MyProfile accounts for messages. The Department sends email notifications when messages have been sent to MyProfile accounts reminding licensees to check their accounts. Because email addresses change, the Department suggests that licensee add these domains to their software's trusted or safe senders list to ensure they receive important email notifications:

-www.dfs.state.fl.us

-www.MyFloridaCFO.com

Licensees who have valid email addresses on file with the Department, as required by law, are sent important email notifications when something affecting an application, license, continuing education, or appointments occurs. Additionally, licensees are kept informed with warnings regarding new schemes and scams circulating in the state.

One of the Department's goal is to keep licensees informed in a timely manner of pertinent information. Licensees are required to abide by the Florida Insurance Code, regardless of whether they have read the information provided.

Course Authority Clarified

The Division of Insurance Agent and Agency Services has clarified its course authorities. A course authority is an alpha numeric designation that broadly defines the subject of a course. Generally, the course authority will link to a specific license type. For example, a course authority of CE 2-20 would be courses designed for property and casualty agents and customer representatives licensed under type 220.

The following is a listing of some of the course authorities and the license types for which they are designed:

-CE 2-20—property and casualty agents and customer representatives

-CE 3-24a, b, and c—all lines adjusters

-CE 3-20a, b, and c—public adjusters

The importance of the course authority becomes critical as it relates to the five-hour law and ethics update course, which is license specific as follows:

-CE 5-220—property and casualty agents and customer service representatives

-CE 5-320—public adjusters

-CE 5-620—all lines adjusters

A common question received by the Division related to courses other than the five-hour law and ethics update course is, "Can I get credit if I take this course?" A course authority generally allows licensees to study subject matter that is of interest, and credit will be given for any approved continuing education course. For example, an adjuster would get credit for a course with a course authority of CE 2-20.

In addition to the changing state laws affecting Florida licensees, changes at the federal government level are also of note.

National Flood Insurance Program Changes

National Flood Insurance Program Expands Private Sector Reinsurance

The National Flood Insurance Program (NFIP), the federal insurance and risk management program managed by FEMA, continued to expand its private sector reinsurance program. Beginning January 2017, FEMA began purchasing reinsurance to help diversify and lessen the NFIP's net exposure to catastrophic losses. On January 1, 2019, FEMA secured $1.32 billion in reinsurance to cover any qualifying flood losses occurring in calendar year 2019.

Under the 2019 reinsurance agreement, 28 reinsurance companies agreed to indemnify FEMA for flood losses from individual flood events (as opposed to aggregate losses from multiple flood events). The agreement is structured to cover 14 percent of losses between $4 billion and $6 billion, 25.6 percent of losses between $6 billion and $8 billion, and 26.6 percent of losses between $8 billion and $10 billion. FEMA paid a total premium of $186 million for the coverage.

Also in 2018, for the first time, FEMA transferred a portion of the NFIP's financial risk to capital markets investors through a $500 million catastrophe bond for claims from a qualifying flood event between August 1, 2018, and July 31, 2021. FEMA worked with brokers, book runners, and a catastrophe modeler to structure this transaction. The FIO continued to provide FEMA with information and advice about reinsurance and alternative risk instruments.

National Flood Insurance Program Premium Increase

The National Flood Insurance Program (NFIP) saw premium increases in 2018 and will see more increases in 2019.

Effective January 1, 2019, preferred risk policy premiums increased by an average of 8 percent with a total increase of 6 percent, including fees.

Newly Mapped Policy Increases

Newly mapped policies are initially charged preferred risk policy premiums during the first year following the effective date of the map change. Annual increases to these policies result from using a multiplier that varies by the year of the map change, which is applied to the base premium before surcharges and other fees are added.

The program increased the multiplier effective January 1, 2019. Premiums for newly mapped policies increased at that time by 15 percent, with a total increase of 11 percent after surcharges and other fees are considered.

Terrorism Risk Insurance Act of 2002 (TRIA) Extended

After 9/11, it became clear that property losses from terrorist-related acts could be significant and might seriously erode the ability of the insurance industry to cover such losses. After much of the financial fallout from 9/11 fell on reinsurers, many reinsurers withdrew from the market for terrorism coverage because they could not accurately price terrorism exposures. Without coverage from reinsurers, primary insurers excluded terrorism losses from their coverage. Many sectors of the economy—notably, transportation, construction, energy, and utilities—were therefore vulnerable to future losses from terrorist attacks.

As a result, Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA), which created the Terrorism Risk Insurance Program (TRIP). TRIP was established primarily to incentivize the private market to offer insurance for terrorism risk, while providing a transitional period for the private market to resume pricing terrorism risk and build capacity to absorb future insurance losses. Under the TRIP Reauthorization Act, TRIP has been extended through December 31, 2020. The Act requires the Department of Treasury to

collect data annually regarding the effectiveness of the program, which is then submitted to Congress. The reporting period for 2019 is currently in progress.

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.

Chapter 9 Terminology & New Technology

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.

Affordability Index

An affordability index is a standard developed by the Federal Insurance Office to measure the affordability of personal auto liability insurance. It is defined as the ratio of the average annual written personal auto liability premium in the voluntary market to the median household income for zip codes in which Affected Persons (traditionally underserved communities and consumers, minorities, and low-to-moderate income persons) are the majority population. Personal auto insurance is presumed to be unaffordable if its affordability index within one of these zip codes is above 2 percent.

Agent-in-Charge

An agent-in-charge is a full-time licensed general lines, life, or health agent who manages an insurance agency. Agents holding other types of licenses are not eligible to act as an agent-in-charge. In Florida, each branch location must have an agent-in-charge. In Florida, each agency must have at least one agent-in-charge per location.

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.

Brokering Agent

A brokering agent is an agent in the process of placing a policy through an insurance company with whom he or she does not hold an appointment.

Customer Representative

Customer representatives are individuals appointed by a general lines agent or agency to assist in transacting insurance from that agent's or agency's office. Although customer representatives are not agents, they must be licensed by the Department of Financial Services and appointed by an insurer or employer.

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 numerous divisions, several of which have a role in regulating insurance, including the Division of Agent and Agency Services, the Division of Investigative and Forensic Services, the Division of Rehabilitation and Liquidation, and the Division of Consumer Services. The Chief Financial Officer heads the Department.

Division of Insurance Agent and Agency Services
The Division of Insurance Agent and Agency Services regulates the licensing of individuals and entities that transact insurance. Within this division are the Bureau of Licensing and the Bureau of Investigation: The Bureau of Licensing ensures that licenses are only issued to individuals who meet the state's licensing requirements, while the Bureau of Investigation looks into possible violations of the Florida Insurance Code.

Division of Investigative and Forensic Services
The Division of Insurance Fraud has been renamed and is now known as the Division of Investigative and Forensic Services. The new division, in addition to its insurance investigatory responsibilities, also performs the investigative functions previously undertaken by the Office of Fiscal Integrity and the State Fire Marshall.

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 an adjuster or producer owes to his or her clients, to the company represented, to competitors, and to 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. It 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.

Mediator
A mediator is an individual approved by the Department to serve in either of two alternate dispute resolution programs, one for property insurance and the other for automobile insurance claims.

MyProfile
MyProfile is the online Web site, maintained by the Department of Financial Services' Division of Insurance Agent and Agency Services, where adjusters, adjusting firms, agents, and insurance agencies can apply for licenses, change their addresses, verify their continuing education status, view messages from the Department, obtain duplicate licenses, and view their appointments.

National Flood Insurance Program
The National Flood Insurance Program (NFIP) was established as part of the National Flood Insurance Act of 1968. The goal of the NFIP is to give property owners access to flood insurance for their homes and property if they live in areas that are subject to frequent flooding. In addition to providing flood insurance and reducing flood damages through floodplain management regulations, the NFIP identifies and maps floodplains in the United States.

Neutral Evaluation Program
The Department operates the Neutral Evaluation Program to resolve disputed sinkhole damage claims. Insurers are required to notify policyholders of the program following the denial of a claim for sinkhole loss.

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.

Terrorism Risk Insurance Program Reauthorization Act of 2015
The Terrorism Risk Insurance Program Reauthorization Act of 2015 extended the Terrorism Insurance Program, which helps cover terrorism losses so that commercial insurers are willing to offer coverage for terrorism risk.

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 be held liable for any unpaid premium taxes.

Some of the new technologies and technological terms that Florida adjusters should be familiar with are discussed briefly here.

Artificial Intelligence
Artificial intelligence (AI) is the use of computer systems to perform tasks that would have required a human. Some examples of AI include:

-Autonomous automobiles

-Robotic readers

-Robotic callers

-Voice-to-text features

-Mobile check deposits

-Telephone menu navigation

-Automatic translators

Customer Centricity

Customer centricity refers to conducting business in a way that the customer receives a positive experience both before and after the sale of an item or service. An insurance company's customer centric approach generates repeat business, loyalty, and profit.

Digitization

Digitization is the conversion of text, pictures, object, sound, or signal into a digital form that can be processed by a computer. These objects can be stored and then transmitted efficiently between customers and business affiliates.

Electronic Delivery

Nearly anything can be delivered electronically—mail, voice messages, books, and music. Insurance companies use this method to deliver policies, premium notices, proof of coverage, claims status, and other documents.

Electronic Signature

An electronic signature is a sound, symbol, or process, logically associated with a document. It must be unique to each user, under the sole control of the signer, linked to a document in a way that prevents tampering, and capable of authentication. Examples of digital signatures are PIN numbers, passwords, online clicks, and using fingers on a display to trace a signature.

Portal

A portal is a gateway on the Internet to a specific field of interest, an industry, or even a company. Once inside, content is personalized for the user. Insurance company portals provide policyholders with a means of accessing policy information and available services, claims, Web sites, and applications that enable users to create and share content or to participate in social networking.

Social Media

Social media is any communication channel, for example, Web sites or applications, that enable users to connect. Insurances companies use social media to create a presence and to service existing customers.

Usage Based Insurance (UBI)

Usage based insurance (UBI) is a type of vehicle insurance whereby the cost depends on the time the vehicle is used, the distance traveled, and driving behaviors. This information is automatically transmitted to the insurer by an electronic logging device.