

Chapter 8 Ethical Requirements

626.878 Rules; Code of Ethics

An adjuster must subscribe to the code of ethics specified in the rules of the department. The rules implement the provisions of this part and specify the terms and conditions of contracts, including the right to cancel a contract, and require practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of the claimant to participate in the adjustment of claims.

69B-220.201 Ethical Requirements for Adjusters & Apprentices

69B-220.201(1) Definitions

“Adjuster,” when used without further specification, includes all types and classes of insurance adjusters, (company employee, independent, and public), subject to Chapter 626, F.S., regardless of whether permanent, temporary, apprentice, or emergency licensees.

“Department” means the Florida Department of Financial Services.

“Person” includes natural persons and legal entities.

Florida Association of Public Insurance Adjusters Code of Ethics

The Florida Association of Public Insurance Adjusters (FAPIA) also requires its members to follow both the Adjuster Code of Ethics and the FAPIA Code of Ethics. Notably, the FAPIA Code of Ethics states that all members of FAPIA must:

- conduct themselves in a spirit of fairness and justice to their clients, insurance companies, and the public
- refrain from improper solicitation
- not make misrepresentations of any kind to insureds or insurance companies
- charge commission rates that are fair and equitable, and in accordance with prevailing laws and regulations of the Florida Insurance Department
- conduct themselves so as to command respect and confidence, and work in harmony with one another, with their clients, and with insurance companies’ representatives, to foster a cordial and harmonious relationship with all branches of the insurance business and with the general public
- have knowledge and experience for the work they undertake (they may not endanger the interests of the public adjusting profession, or risk injustice to insureds or to insurance companies by attempting to handle losses or claims for which they are not qualified, and for which they cannot find competent technical assistance)
- not engage in the unauthorized practice of law
- not acquire any interest in salvaged property or participate in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property, except with the knowledge, consent, and permission of the insured
- be cooperative and assist one another in every possible way
- not disseminate or use any form of agreement, advertising, or printed matter that is harmful to the public adjusting profession, or which does not comply with the rules and

regulations of the state insurance department where the adjuster works professionally, or which might subject public adjusting and public adjusters to criticism or disrespect

Penalties

According to Rule 69B-220.201 F.A.C., when carrying out the daily tasks with which they are charged, public 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.

General Ethical Duties and Guidelines

As we just learned, public adjusters in Florida are bound by the Code of Ethics, which defines certain activities as unlawful in the process of adjusting insurance claims. Public adjusters who are members of FAPIA are also required to follow the FAPIA Code of Ethics, which imposes general ethical duties when working with consumers and others in the profession. These ethical codes recognize that public 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, public 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 the claimants 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

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. 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.

To a claimant, a public adjuster is typically viewed as an expert in a field the claimant knows very little about. This status undeniably gives an adjuster credibility and what has been termed "justified believability" among consumers and business organizations. Public 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.

A public adjuster's failure to understand the insurance policies that apply to the losses and claims he or she adjusts, and any misrepresentations by the adjuster 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, a public 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 public adjusters to ask themselves whether they would follow the same course of action if they were in the claimant's identical situation.

Utmost Good Faith

The doctrine of utmost good faith calls for each party to an insurance contract to be entirely and completely honest. Although public adjusters are not direct parties to an insurance contract, they are representatives of the insureds 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.

Understanding Industry Products and Suitability

The issue of suitability is more often viewed as being important in the marketing and sales of insurance than it is in the adjustment of losses and claims. However, the adjustment process requires that all advice given, and coverage explanations made, are suitable for the claimant based on the policy purchased to provide coverage for the loss or claim. Accordingly, an adjuster must strive to answer all of the following questions:

- How do the coverages, terms, and conditions of the policy apply to the particular loss?
- Does the claimant understand completely the policy and its provisions?
- Does the claimant understand and accept the policy's limitations?

- What disclosures, notices, and advice is the public adjuster required to provide to the claimant?
- Within what time frame must the public adjuster respond to, and settle, the loss?

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 public 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, public adjusters do not become involved in the insurance transaction until after a loss has occurred. Therefore, the focus of the public adjuster should be on providing fair, honest, and timely claims service in compliance with ethical obligations and requirements of insurance codes and laws.

In general, 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 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.

Another important attribute is a commitment to comply with laws that prohibit unfair claims settlement practices. Unfair claims settlement practices (discussed later in the chapter) address many aspects of claims 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 them by the Department.

Public 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, public adjusters must strive to develop a reputation for helping insureds get claims resolved quickly and negotiating fair settlements for their clients.

It is important for public 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.

Public 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.