

ETHICAL ISSUES IN PRESENTING CLAIMS

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I. INTRODUCTION

It is incredibly important for a public adjuster to understand ethical issues that can arise in presenting claims. In order to ethically represent policyholders when they are at their most vulnerable it is important for a public adjuster to appreciate and abide by the ethical rules and obligations under Florida Law. The ethical representation of policyholders is the foundation upon which the system of insurance is designed to operate. Without the system's ethical foundation it cannot achieve its purpose to protect the policyholder.

II. THE UNLICENSED PRACTICE OF LAW

What is the unlicensed practice of law?

Any discussion about the “unlicensed practice of law”, also called the “unauthorized practice of law”, needs to begin with the following question: What is the practice of law?

One place to start is a dictionary. In fact, Black’s Law Dictionary defines the “practice of law” this way:

Practice of Law. The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent. It is not limited to appearing in court, or advising and performing of services in the conduct of the various shapes of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and in larger sense includes legal advice and counsel and preparation of legal instruments by legal rights and obligations are established. A person engages in the “practice of law” by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.

Black’s Law Dictionary 1172 (6th ed. 1991).

The American Bar Association does not specifically define the “practice of law” when it discusses the prohibition on the “unauthorized practice of law”. Rather, the organization explains why laypersons should not be allowed to undertake the practice. The comment to Rule 5.5 of the Model Rules of Professional Conduct states:

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons....

ABA Model Rules of Professional Conduct (1983).

Similarly, the Ethical Considerations of the prior ABA Model Code of Professional Responsibility explain that the protection of the public and the integrity of the profession are of utmost importance:

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-5. It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law.¹ Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

ABA Model Code of Professional Responsibility (1969).

As one scholar has noted:

In every state, nonlawyers are generally prohibited from practicing law, deemed the “unauthorized practice of law” (“UPL”). The definition of what constitutes “the practice of law” or “the unauthorized practice of law” is by no means uniform, even within the same jurisdiction. Whatever the definition of UPL, however, the states almost universally limit the

¹ “What constitutes unauthorized practice of the law in a particular jurisdiction is a matter for determination by the courts of that jurisdiction.” *ABA Opinion* 198 (1939).

practice of law to those who have been licensed by the government and admitted to the state's bar association after meeting certain requirements of education, examination, and moral character. In addition, the members of the bar are subject to professional discipline, which is a form of peer review by other members of the bar, the outcome of which is usually enforced by the state courts As a result, UPL restrictions often prohibit nonlawyers from either giving out-of-court legal advice or helping prepare legal documents, except where no accompanying advice is given.

Derek A. Denckla, *Responses to the Conference: Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 Forham L. Rev. 2581 (Apr. 1999).

According to the Florida Supreme Court:

The single most important concern in this Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation.

Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980).

What constitutes the unlicensed practice of law in Florida?

The Florida Supreme Court has spoken on what constitutes the unlicensed practice of law as follows:

In determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962).

The preparation of legal documents by a nonlawyer, beyond taking down and filling in information to complete a form approved by the Florida Supreme Court, is the unauthorized practice of law. *Florida Bar v. Smania*, 702 So. 2d 184 (Fla. 1997); *Florida*

Bar v. American Senior Citizens Alliance, Inc., 689 So. 2d 255 (Fla. 1997); *Florida Bar v. Schramek*, 616 So. 2d 979 (Fla. 1993).

The rendering of services, which could reasonably cause members of the public to rely upon those services to properly prepare legal documents, is the unauthorized practice of law. *Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000).

The use of a business name that may mislead the public and give the expectation that the company has expertise in the field of law is the unlicensed practice of law. *Florida Bar v. Davide*, 702 So. 2d 184 (Fla. 1997).

The Florida Supreme Court, in *Florida Bar v. Public Adjusters of South Florida, Inc.*, 666 So. 2d 145 (Fla. 1995), presented a laundry list of activities that constitute the unlicensed practice of law:

- a. Advertising to the public either through the media or direct solicitation that they are able to provide legal service, including, but not limited to, settling claims relating to bodily injury;
- b. Negotiating claims for bodily injury with an insurance company or insured;
- c. Holding themselves out as attorneys;
- d. Giving legal advice to third parties regarding claims for bodily injury;
- e. Representing or agreeing to represent a third party in a matter involving bodily injury;
- f. Negotiating, prosecuting and/or settling a bodily injury claim under a power of attorney;
- g. Corresponding with insurance companies, third parties or claimants as legal representative of the claimant;
- h. Advertising to the public either through the media or direct solicitation that they are an alternative to attorneys.

Furthermore, the Bar's Unlicensed Practice of Law Counsel has taken the position that a public adjuster engages in the unlicensed practice of law if the adjuster acts on behalf of a claimant against a tortfeasor's insurance company; the authorized activities of a public adjuster are limited to adjusting claims with the claimant's insurer.² Therefore, an attorney who is involved in a situation in which a public adjuster is acting on behalf of

² See *The Florida Bar Ethics Opinion 92-3*, October 1, 1992, <http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+92-3?opendocument>.

a claimant against a third party's insurer would be in violation of Rule 4-5.5(b), which prohibits attorneys from assisting someone in activity that constitutes the unlicensed practice of law.

Many jurisdictions other than Florida also consider third-party adjusting by a public adjuster to be the unauthorized practice of law:

Utah State Bar v. Summerhayes & Hayden, Public Adjusters, 905 P.2d 867 (Ut. 1995). Third-party adjusting is not based on principles of contract law but on principles of common law tort, and there is no legal relationship between the party asserting the claim and the insurance company. Thus, the claim cannot be settled by merely allocating the risk according to the insurance contract, as is done with first-party adjusting. To give any advice or counsel, or to facilitate a settlement, the adjuster must determine the legal rights, duties, and relationships of the different parties. Moreover, since third-party adjusting requires consideration of such legal principles as statutes of limitations, jurisdictional issues and affirmative defenses, the practice of third-party adjusting is the practice of law.

Dauphin County Bar Ass'n v. Mazzacaro, 351 A.2d 229 (Pa. 1976). Third-party adjusting constitutes the unauthorized practice of law when performed by a public adjuster, since legal assessments were a part of the negotiation process between a victim of an injury and the party causing the injury. A distinction was noted between company adjusters and public adjusters, because the company adjuster is an agent of the company that is hired to investigate and evaluate the claim made against the company. That adjuster does not hold himself out to the public as competent to represent their interests, and normally deals with the public from an adversarial position. The company adjuster's dealings with his employer is as an adjunct to a legal department, and as a consequence is not required to exercise any independent legal judgment.

Liberty Mutual Ins. Co. v. Jones, 130 S.W. 2d 945 (Mo. 1939). A company adjuster works only for the insurer, and when that adjuster deals with a claimant, it is on an adversary basis, not on a representative basis, so there is no implication of a fiduciary relationship. Thus, the settling of claims with an injured party is appropriate for that company adjuster. A company adjuster: may fill in information on preprinted forms or leases; may represent to the claimant or the claimant's representative when the company's attorney has advised as to the liability of the company or its insured; may express his opinion about the monetary extent of the liability of the insurer or insured, as long as he or she does not pass on any question of law or legal liability; may state the opinion of company counsel on any question of liability and may determine the amount of

money the insurer is willing to pay to settle the claim; may determine which form of release to be used in settling a claim.

How is the practice of law regulated?

In Florida, as in many other jurisdictions, the practice of law is governed by the State's highest court, the Florida Supreme Court. Statutory provisions address this practice, along with the penalties for practicing law without a license:

§ 454.021. Attorneys; admission to practice law; Supreme Court to govern and regulate

(1) Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.

(2) The Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.

§ 454.23. Penalties

Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out of the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree, punishable as provide in s. 775.082, s. 775.083, or s. 775.084³.

§ 775.082. Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison

* * *

(3) A person who has been convicted of any other designated felony may be punished as follows:

* * *

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

³ Section 775.084 deals with habitual offenders.

* * *

§ 775.083. Fines

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes for the noncriminal violations shall not exceed:

* * *

(c) \$5, 000, when the conviction is of a felony of the third degree.

* * *

The Florida Supreme Court has also adopted rules governing the State's mandatory bar association, the Rules Regulating the Florida Bar. Specifically, Chapter 10 is entitled Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, which provide:

Rule 10-1.1. Jurisdiction

Pursuant to the provisions of article V, section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law.

Rule 10-1.2. Duty of the Florida Bar

The Florida Bar, as the official arm of the court, is charged with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The court shall establish a standing committee on the unlicensed practice of law and at least 1 circuit committee on unlicensed practice of law in each judicial circuit.

Rule 10-2.1. Generally

(a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the state of Florida. For purposes of this chapter:

(1) It shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form.

* * *

(c) Nonlawyer or Nonattorney. For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of the Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from the Florida Bar. A suspended lawyer, while a member of the Florida Bar during the period of suspension as provided elsewhere in these rules, does not have the privilege of practicing law in Florida during the period of suspension.

* * *

Injunctive relief, as well as indirect criminal contempt, along with a fine up to \$2500 and imprisonment of up to 5 months, are remedies available under Rule 10 directed toward the investigation and prosecution of the unlicensed practice of law.

The Florida Bar's website, in its Unlicensed Practice of Law Information page, explains the procedure for seeking advisory opinions on activities which may constitute the unlicensed practice of law:

Introduction to Proposed Formal Advisory Opinions

Rule 10-9.1 of the Rules Regulating The Florida Bar allows the Standing Committee on Unlicensed Practice of Law to issue proposed form advisory opinions concerning activities which may constitute the unlicensed practices of law. Requests for advisory opinions must be in writing addressed to the UPL Department, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300. The request for an advisory opinion must state in detail all operative facts upon which the request for opinion is based and contain the name and address of the petitioner. Rule 10-9.1(a)(2) defines petitioner as an individual or organization seeking guidance as to the applicability, in a hypothetical situation, of the prohibitions against the unlicensed practice of law. No

opinion may be entered with respect to any case or controversy pending in any court in Florida and no informal opinions shall be issued. Rule 10-9.1(c). The proposed advisory opinion is only an interpretation of the law and does not constitute final court action.

If the Standing Committee agrees to accept the request for a formal advisory opinion, notice will be published and a public hearing will be held. At the hearing, the committee will take testimony from all interested individuals. Written testimony may also be submitted prior to the hearing. The holding of a hearing does not guarantee the issuance of a proposed formal advisory opinion.

After the hearing, the Standing Committee will vote on whether to issue a proposed formal advisory opinion and on the substance of the opinion. If the Standing Committee finds that the conduct constitutes the unlicensed practice of law, the proposed formal advisory opinion is filed with the Supreme Court of Florida. If the Standing Committee finds that the conduct does not constitute the unlicensed practice of law, the Standing Committee may publish the opinion in the Florida Bar News or the committee may file the proposed opinion with the Supreme Court of Florida.

The petitioner and interested parties may file comments in support of or in opposition to the proposed formal advisory opinion. The Standing Committee is given an opportunity to reply. Any party may request oral argument before the Court.

<http://www.flabar.org/tfb/TFBLawReg.nsf>

Who needs to worry about the unlicensed practice of law?

Any professional who provides services to the public, and who is not a licensed member of the Florida Bar, should be aware of the prohibitions against the unlicensed practice of law and the consequences of attempting to provide legal advice without a license. This includes realtors, bankers, accountants, paralegals and adjusters, particularly public adjusters.

This concern is reflected in the statutes and rules governing adjusters. Florida's statute dealing with public adjusters specifically addresses the unauthorized practice of law:

§ 626.854. "Public adjuster" defined; prohibitions⁴

⁴ § 626.854 was recently amended to include subsection (13) after Governor Crist approved and entered into law 2009 Fla. HB 1495 on May 27, 2009.

The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A “public adjuster” is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims, as also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

* * *

(3) A public adjuster may not give legal advice. A public adjuster may not act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or non-economic damages.

(4) For purposes of this section, the term “insured” includes only the policyholder and any beneficiaries named or similarly identified in the policy.

* * *

III. Codes of Ethics

Florida law mandates that public adjusters subscribe to the code of ethics specified in the rules of the department of financial services as provided in the Florida Administrative Code.

§ 626.878. Rules; code of ethics

(13) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreements to compensate the person, whether directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

An adjuster shall subscribe to the code of ethics specified in the rules of the department. The rules shall implement the provisions of this part and specify the terms and conditions of contracts, including a right to cancel, 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.

The Florida Administrative Code advises adjusters in general, as well as directing references specifically to public adjusters:

69B-220.201 Ethical Requirements.

* * *

(2) Violation.

(a) Violation of any provision of this rule shall constitute grounds for administrative action against the licensee.

(b) A breach of any provision of this rule constitutes an unfair claims settlement practice.

(3) Code of Ethics. The work of adjusting insurance claims engages the public trust. 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:

* * *

(k) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel to protect the claimant's interest.

* * *

(m) An adjuster shall not knowingly fail to advise a claimant of their claim rights in accordance with the terms and conditions of the contract and of the applicable laws of this state. An adjuster shall exercise care not to engage in the unlicensed practice of law as prescribed by the Florida Bar.

(n) A company or independent adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release, unless advance written approval by

the insurer can be demonstrated to the Department. Except as provided above, a company or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

* * *

(4) Public Adjusters, Other Ethical Constraints. In addition to considerations set out above for adjusters, the following ethical considerations are specific to public adjusters and shall be binding upon public adjusters.

(a) A public adjuster shall advise the insured and claimant in advance of the insured or claimant's right of counsel, and choice thereof, to represent the insured or claimant, and that such choice is to be made solely by the insured or claimant.

(b) The public adjuster shall notify the insured or claimant in advance of the name and location of any proposed contractor, architect, engineer, or similar professional, before any bid or proposal by any of these persons may be used by the public adjuster in estimating the loss or negotiating settlement. The insured or claimant may exercise veto power of any of these persons, in which case that person shall not be used in estimating costs.

(c) Thus public adjuster shall ensure that if a contractor, architect, engineer, or other professional is used in formulating estimates or otherwise participates in the adjustment of the claim, the professional shall be licensed by the Florida Department of Business and Professional Regulation.

(d) A public adjuster shall not prevent, or attempt to dissuade or prevent, a claimant from speaking privately with the insurer, company or independent adjuster, attorney, or any other person, regarding the settlement of the claim.

(e) A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured.

(f) A public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster. Except as between licensed public adjusters, no public adjuster shall compensate any person, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

(g) A public adjuster's contract with a client shall be revocable or cancellable by the insured or claimant, without penalty or obligation, for at least 3 business days after the contract is executed. The public adjuster shall disclose to the insured that the insured has the right to cancel with prompt notice within the revocation period. If the insured elects to cancel the contract, prompt notice shall be provided to the adjuster. Nothing in the provision shall be construed to prevent an insured from pursuing any civil remedy after the 3-day cancellation period.

(h) A public adjuster shall not enter into a contract or accept a power of attorney which vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

(i) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement, including the terms required by subsection 69B-220.051(6), F.A.C.

(j) A public adjuster shall not restrict or prevent an insurer, company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(5) Public Adjusters, Ethical Constraints During State of Emergency. In addition to considerations set forth above, the following ethical considerations shall apply to public adjusters in the event that the Governor of the State of Florida issues an Executive Order, by virtue of the authority vested in Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, declaring that a state of emergency exists in the State of Florida.

(a) No public adjuster shall require, demand, charge or accept any fee, retainer, compensation, commission, deposit, or other thing of value, prior to receipt by the insured or claimant of the payment on the claim by the insurer.

(b) As to any one insured or claimant, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of the amount of any insurance settlement of claim payment.

(c) No public adjuster shall enter into any contract, agreement or other arrangement with any person, including an attorney, building contractor, architect, appraiser or repairman, by which the person would

enter into an agreement to assist a claimant or insured on an insurance claim, utilize the services of the adjuster to carry out the agreement and pay the adjuster an amount that would exceed the limitation of the adjuster's compensation or reimbursement as provided in paragraph (b) above.

(d) This subsection applies to all claims that arise out of the events that created the State of Emergency, whether or not the adjusting contract was entered into while the State of Emergency was in effect and whether or not a claim is settled while the State of Emergency is in effect.

Florida's Rules Regulating the Florida Bar also address the authority to rule on questions of ethics, which may also lead to inquiries relating to the unlicensed practice of law. The Bar's Ethics Opinions are available on its website, and one opinion, in particular, addresses the propriety of arrangements between lawyers and public adjusters:

Opinion 92-3
October 1, 1992

It is unethical for an attorney to enter into a working arrangement with a public adjuster. Ethical problems exist regarding solicitation, fee-splitting, and assisting the unlicensed practice of law.

* * *

The inquiring attorney has been contacted by a public adjusting firm (the "Company") regarding participation in a proposed arrangement involving personal injury claims. The Company would employ a nonlawyer to pick up accident reports each week from local law enforcement agencies. Those persons with significant claims who have been injured by insured vehicles would then be solicited by the Company. The injured persons (the "claimants") would be given the opportunity to contract with the Company, which, for a fee of 20% of the claimant's recovery, would attempt to negotiate settlement of the claimant's personal injury claim within the tortfeasor's policy limits.

* * *

It would be unethical for the attorney to participate in the proposed arrangement. A number of ethical problems are apparent. For example, the proposed fee division arrangements would violate Rule 4-5.4(a), Rules Regulating The Florida Bar, which prohibits attorneys from sharing legal fees with nonlawyers. The Company's fee would be paid out of the attorney's portion of the recovery, which clearly would constitute improper fee-splitting.

* * *

III. UNLICENSED PUBLIC ADJUSTING AND OTHER STATUTORY REQUIREMENTS

As is the case with attorneys, the legislature has specified that only *licensed* public adjusters may assist policyholders with their insurance claims, and the failure to obtain the proper licensure before attempting to act as a public adjuster carries similarly stiff penalties. The licensing of adjusters is addressed by Chapter 626 of Florida Statutes, and provides:

§ 626.851. Short title

This part may be referred to in any legal proceedings as the “Insurance Adjusters Law.”

§ 626.852. Scope of this part

- (1) This part applies only to insurance adjusters as defined in this part.
- (2) Unless otherwise required by context, the term “adjusters” as used in this part applies to all licensees defined as any type of adjuster.
- (3) This part does not apply as to life insurance or annuity contract.
- (4) This part does not apply to third-party administrators or a person employed by a third-party administrator holding a certificate of authority pursuant to ss. 626.88-626.894.
- (5) This part does not apply to any employee or agent of a state university board of trustees providing services in support of any self-insurance program created under former s. 240.213 or s. 1004.24
- (6) This part does not apply to any person who adjusts only multiple-peril crop insurance or crop hail claims.

§ 626.854. “Public adjuster” defined; prohibitions⁵

⁵ § 626.854 was recently amended to include subsection (13) after Governor Crist approved and entered into law 2009 Fla. HB 1495 on May 27, 2009.

The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A “public adjuster” is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims, as also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

* * *

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.

* * *

(8) It is unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(13) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreements to compensate the person, whether directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

(9) A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

(10) A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of \$ 25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

* * *

(12) Each public adjuster shall provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. The public adjuster shall retain such estimate for at least 5 years and shall make such estimate available to the claimant or insured and the department upon request. The provisions of subsections (5)-(13) apply only to residential property insurance policies and condominium association policies as defined in s. 718.111(11).

* * *

§ 626.8541. Public adjuster apprentice

(1) A "public adjuster apprentice" is any person who is not a licensed public adjuster, who is employed by or has a contract with a licensed an appointed public adjuster in good standing with the department or a public adjusting firm that employs at least one licensed an appointed public adjuster in good standing with the department to assist a public adjuster in conducting business under the license, and who satisfies the requirements of s. 626.8651.

(2) A public adjuster apprentice must work with a licensed and appointed public adjuster for a period of 12 months as set forth in this section, and must otherwise be in full compliance with this chapter, prior to being eligible for appointment as a licensed public adjuster.

§ 626.8582. "Nonresident adjuster" defined

A "nonresident public adjuster" is a person who:

(1) Is not a resident of this state;

(2) Is a currently licensed public adjuster in his or her state of residence for the type or kinds of insurance for which the licensee intends to adjust claims in this state or, if a resident of a state that does not license public adjusters, has passed the department's adjuster examination as prescribed in s. 626-8732(1)(b); and

(3) Is a self-employed public adjuster or associated with or employed by a public adjusting firm or other public adjuster.

§ 626.860. Attorneys at law; exemption

Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under the provisions of this code to authorize them to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance.

§ 626.864. Adjuster license types

(1) A qualified individual may be licensed and appointed as either:

- (a) A public adjusters;
- (b) An independent adjuster, or
- (c) A company employee adjuster.

(2) The same individual shall not be concurrently appointed as to more than one of the adjuster types referred to in subsection (1).

§ 626.865. Public adjuster's qualifications, bond⁶

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

- (a) Is a natural person at least 18 years of age.

⁶ § 626.865 was recently amended after Governor Crist approved and entered into law 2009 Fla. HB 1495 on May 27, 2009. The amendment deleted subsection (1)(e); deleting a requirement that an applicant for a license as a public adjuster pass a written examination as a prerequisite for licensure.

(b) Is a United States citizen or legal alien who possesses work authorization from the United State Bureau of Citizenship and Immigration Services and a bona fide resident of this state.

(c) Is trustworthy and has such business reputation as would reasonably assure that the applicant will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(d) 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 the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state 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 the applicant may have business as a public adjuster.

* * *

§ 626.8651. Public adjuster apprentice license; qualifications⁷

(1) The department shall issue a license as a public adjuster apprentice to an applicant who is:

(a) A natural person at least 18 years of age.

(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state.

(c) Trustworthy and has such business reputation as would reasonably ensure that the application will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.

* * *

(3) An applicant must pass the required written examination before a license may be issued.

(4) An applicant must have received designation as an accredited claims adjuster (ACA) after completion of training that qualifies the

⁷ § 626.8651 was recently amended to include subsections (3), (4), and (7) after Governor Crist approved and entered into law 2009 Fla. HB 1495 on May 27, 2009.

applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state related to insurance contracts.

* * *

(7) An appointing public adjusting firm may not maintain more than 12 public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than 3 public adjuster apprentices simultaneously and shall be accountable for the acts of all public adjuster apprentices which are related to transacting business as a public adjuster apprentice.

* * *

§ 626.8732. Nonresident public adjuster's qualifications, bond

(1) The department shall, upon applications therefore, issue a license to an applicant for a nonresident public adjuster's license upon determining that the applicant has paid the applicable license fees requirement under s. 624.501 and:

(a) Is a natural person at least 18 years of age.

(b) Has passed to the satisfaction of the department a written Florida public adjuster's examination of the scope prescribed in s. 626.241(6).

(c) Is self-employed as a public adjuster or associated with or employed by a public adjusting firm or other public adjuster. Applicant licensed as nonresident public adjusters under this section must be appointed as such in accordance with the provisions of ss. 626.112 and 626.451. Appointment fees in the amount specified in s. 624.501 must be paid to the department in advance. The appointment of a nonresident public adjuster shall continue in force until suspended, revoked, or otherwise terminated, but subject to biennial renewal or continuation by the licensee in accordance with procedures prescribed in s. 626.381 for licensees in general.

(d) Is trustworthy and has such business reputation as would reasonably assure that he or she will conduct his or her business as a nonresident public adjuster fairly and in good faith and without detriment to the public.

(e) Has been licensed and employed as a public adjuster in the applicant's state of residence on a continual basis for the past 3 years, or, if the applicant's state of residence does not issue licenses to individuals who act as public adjusters, the applicant has been licensed and employed as a resident insurance company or independent adjuster, insurance agent, insurance broker, or other insurance representative in his or her state of residence or any other state on a continual basis for the past 3 years. This paragraph does not apply to individuals who are licensed to transact only life insurance and annuity business.

* * *

§ 626.869. License, adjusters; continuing education

(4)(a) Any individual holding a license as a company employee adjuster or independent adjuster for 24 consecutive months or longer must, beginning in his or her birth month and every 2 years thereafter, have completed 24 hours of courses, 2 hours of which relate to ethics, in subjects designed to inform the licensee regarding the current insurance laws of this state, so as to enable him or her to engage in business as an insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and the laws of this state.

* * *

(c) The department shall adopt rules necessary to implement and administer the continuing education requirements of this subsection. For good cause shown, the department may grant an extension of time during which the requirements imposed by this section may be completed, but such extension of time may not exceed 1 year.

(d) A nonresident public adjuster must complete the continuing education requirements provided by this section; provided, a nonresident public adjuster may meet the requirements of this section if the continuing education requirements of the nonresident public adjuster's home state are determined to be substantially comparable to the requirements of this state's continuing education requirements and if the resident's state recognizes reciprocity with this state's continuing education requirements. A nonresident public adjuster whose home state does not have such continuing education requirements for adjusters, and who is not licensed as a nonresident adjuster in a state that has continuing education requirements and reciprocates with this state, must meet the continuing education requirements of this section.

* * *

§ 626.8695. Primary adjuster

(1) Each person operating an adjusting firm and each location of a multiple location adjusting firm must designate a primary adjuster for each such firm or location and must file with the department the name of such primary adjuster and the address of the firm or location where he or she is the primary adjuster, on a form approved by the department. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be sent to the department within 30 days after such change.

* * *

§ 626.875. Office and records

* * *

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 3 years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

§ 626.876. Exclusive Employment; public adjusters, independent adjusters

(1) No individual licensed and appointed as a public adjuster shall be so employed during the same period by more than one public adjuster or public adjuster firm or corporation.

* * *

§ 626.8795. Public adjusters; prohibition of conflict of interest

A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract or an agreement to adjust.

§ 626.8697. Grounds for refusal, suspension, or revocation of adjusting firm license

(1) The department shall deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds, as to any adjusting firm or as to any majority owner, partner, manager, director, officer, or other person who manages or controls the firm, that any of the following grounds exist:

(a) Lack by the firm of one or more of the qualifications for the license as specified in this code.

(b) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license.

(2) The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds that any of the following applicable grounds exist with respect to the firm or any owner, partner, manager, director, officer, or other person who is otherwise involved in the operation of the firm:

(a) Any cause for which issuance of the license could have been refused had it then existed and been known to the department.

(b) Violation of any provision of this code or of any other law applicable to the business of insurance.

(c) Violation of any order or rule of the office or commission.

* * *

(4) If any adjusting firm, having been licensed, thereafter has such license revoked or suspended, the firm shall terminate all adjusting activities while the license is revoked or suspended.

§ 626.8698. Disciplinary guidelines for public adjusters and public adjuster apprentices

The department may deny, suspend, or revoke the license of a public adjuster or public adjuster apprentice, and administer a fine not to exceed \$5,000 per act, for any of the following:

(1) Violating any provision of this chapter or a rule or order of the office or commission;

- (2) Receiving payment of anything of value as a result of an unfair or deceptive practice;
- (3) Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise; entering into a split-fee arrangement with another person who is not a public adjuster; or being otherwise paid or accepting payment for services that have not been performed;
- (4) Violating s. 316.066 or s. 817.234;
- (5) Soliciting or otherwise taking advantage of a person who is vulnerable, emotional or otherwise upset as the result of a trauma, accident, or other similar occurrence; or
- (6) Violating any ethical rule of the department.

§ 626.8738. Penalty for violation

In addition to any other remedy imposed pursuant to this code, any person who acts as a resident or nonresident public adjuster or holds himself or herself out to be a public adjuster to adjust claims in this state, without being licensed by the department as a public adjuster and appointed as a public adjuster, commits a felony of the third degree, punishable as provided in s. 775.082, s.775.083, or s.775.084. Each act in violation of this section constitutes a separate offense.

§ 775.082. Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison⁸

* * *

- (3) A person who has been convicted of any other designated felony may be punished as follows:

⁸ § 775.082 was recently amended to include subsection (10) after Governor Crist approved and entered into law 2009 Fla. SB 1722 on May 27, 2009.

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third-degree felony but not a forcible felony as defined in s. 776.08, and excluding any third-degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a non-state prison sanction. However, if the court makes written findings that a non-state prison sanction could present a danger to the public, the court may sentence the offender to a state correction facility pursuant to this section.

* * *

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

* * *

§ 775.083. Fines

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes for the noncriminal violations shall not exceed:

* * *

(c) \$5, 000, when the conviction is of a felony of the third degree.

* * *

IV. PUBLIC ADJUSTER CONTRACTS

The Florida legislature has set requirements for public adjuster contracts to ensure full disclosure and to prevent against fraud.

§ 626.854. "Public adjuster" defined; prohibitions

* * *

(7) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The public adjuster's contract shall disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing which provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for a period of 1 year after the date of loss, the insured or claimant shall have 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

* * *

(11) (a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or to file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee or other thing of value based on a previous settlement or previous claim payment by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or other thing of value may be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the period of 1 year after the declaration of emergency.

2. Twenty percent of the amount of all other insurance claim payments.

* * *

§ 626.8796. Public adjuster contracts; fraud statement

All contracts for public adjuster services must be in writing and must prominently display the following statement on the contract: Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

§ 626.8797. Proof of loss; fraud statement

All proof of loss statements must prominently display the following statement: Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

V. CONCLUSION

Ethical issues in presenting claims are serious issues. To violate the code of ethics, or fail to comply with a statutory requirement, can bring serious consequences. Anyone who has been involved in insurance claim handling or presentation needs to be aware of these issues and the potential ramifications that can result if a person is deemed to have engaged in an ethical violation.