



20th Annual Windstorm Insurance Conference

January 29 – February 2, 2019 | Walt Disney World Dolphin Resort

events.windnetwork.com

Good Faith Claims Handling Practices

Good Faith Claims Handling Practices



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Agenda

1. Introductory View
from Each Side on
Ethical Claims
Handling Practices

Agenda

2. Where Ethics Rules are Found

Agenda

3. Ethical Requirements in Adjusting- “Good Faith”

Agenda

4. Unfair Claims Settlement Practices

Agenda

5. Avoiding Unauthorized Practice of Law

Agenda

6. Disciplinary and Industry Trends

Introductory View from Policyholder Lawyer Perspective





MENTAL GROUP


**Why can't
we all get
along?**



**Introductory View from
Insurance Company
Lawyer Perspective**

Introductory View from The Middle

Where Ethics Rules are Found

The background of the slide is a light blue color with a subtle, wavy pattern that creates a sense of depth and movement. The waves are more pronounced towards the bottom right corner.

How is the Practice of Law Regulated?

Attorneys

State Bar or State Supreme Court



Adjusters

- Statutes and Regulations

Effective January 1, 2018



. . . No person, except an **attorney at law or a public adjuster**, may for money, commission, or any other thing of value, directly or indirectly

- (a) prepare, complete, or file an insurance claim for an insured or third-party claimant;
- (b) act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- (c) advertise for employment as a public adjuster; or
- (d) solicit, investigate or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

F.S. 626.854(19)a-d

Adjusters

- Insurance company internal code of conduct



Independent Adjusters



NAIIA Code of Ethics

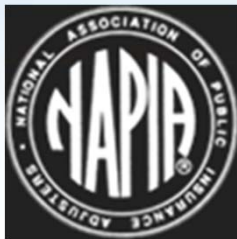
To serve the business of insurance with loyalty and cooperate with insurers and their loss and claim executives and representatives in the proper handling of claims and losses.

Public Adjusters

- Statutes and Regulations that license adjusters **in the state where the loss occurred.**

Public Adjusters

- Trade Association Code of Ethics



NAPIA Ethics

**Members shall conduct themselves . . .
. . . to command respect and confidence
. . . [w]ork in harmony. . . with their
clients, and the insurance company's
representatives, so as to foster a
cordial and harmonious relationship**

• • •

Engineers

- Professional Society or Associations

ASCE AMERICAN SOCIETY[®]
OF CIVIL ENGINEERS

**Ethical Requirements
in Adjusting—
“Good Faith”**

States have statutes
and/or written
regulations concerning
the ethical requirements
for *all* adjusters

“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. . . .”

Fla. Admin. Code 69B-220.201(3)



An adjuster shall not **directly**
or indirectly steer any claimant
needing repairs to any person
with whom the adjuster has an
undisclosed financial interest.

Fla. Admin. Code 69B-220.201(3)(a)

An adjuster shall treat all claimants equally and adjust claims strictly in accordance with the insurance contract.

Fla. Admin. Code 69B-220.201(3)(B)(1) and (2)



An adjuster should not approach investigations, adjustments, or settlements in a manner prejudicial to the insured.

Fla. Admin. Code 69B-220.201(3)(c)

An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.

Fla. Admin. Code 69B-220.201(3)(d)



An adjuster should not knowingly misrepresent the facts or coverages available to a claimant, or otherwise mislead the claimant.

An adjuster should only adjust claims concerning those areas for which the **adjuster is competent and knowledgeable** about the terms of the insurance.

Fla. Admin. Code 69B-220.201(3)(k)

Many states have additional ethical regulations that *apply only to public adjusters.*

- No public adjuster shall represent any person on a claim if he previously adjusted that claim as an adjuster representing any insurer or independent adjusting firm.

Fla. Admin. Code 69B-220.201(4)(f)

- Public adjuster shall respond to a request for claims status from a claimant or insured within thirty (30) days.

Fla. Admin. Code 69B-220.201(4)(g)



- Public adjuster shall not accept a settlement of a claim unless the terms and conditions of the settlement are approved by the insured or claimant.

Fla. Admin. Code 69B-220.051(7)

Unfair Claim Settlement Practices

Many states have
adopted NAIC
Model Unfair
Settlement Claims
Practices Acts

Adopted NAIC Model

44 States

Alaska

Idaho

Arizona

Illinois

Arkansas

Indiana

California

Kansas

Colorado

Kentucky

Connecticut

Louisiana

Delaware

Maine

Florida

Maryland

Georgia

Massachusetts

Hawaii

Michigan

Minnesota

Missouri

Montana

Nebraska

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Oregon

Pennsylvania

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Virginia

West Virginia

Wisconsin

Wyoming

How the Act Regulates Insurers

Administrative

VS.

Private right of action

Examples of insurer
Unfair Claim Practices
that should be explored in
a lawsuit seeking to
expose bad faith conduct
on the part of the
insurance company

- Failing to thoroughly investigate
 - An insurer cannot reasonably and in good faith deny payments to its insured without thoroughly investigating the foundation for a denial of payment in whole or in part.

- Exploiting the financial vulnerability of the policyholder to obtain a favorable settlement of a coverage dispute.

- Making unreasonable demands on the policyholder during claims investigation, amounting to harassment.

- Claims “extortion” – for example, accusing the policyholder, without reasonable basis, of wrongdoing or using abusive or coercive practices to compel the compromise of a claim.

- Refusing to compromise claims until litigation is threatened

- Making repeated low-ball settlement offers, even after a basis for denial is shown to be weak.



WAIT...



THAT WAS A SERIOUS OFFER?

- Making unreasonably low counteroffers in negotiating the settlement.

- Appealing an arbitration award to compel settlement.

- Failure to pay the full value of a claim.



- Conditioning payment of the **undisputed** portion of the claim on the settlement of the **disputed** portion.



- Retaliatory rescission or cancellation of policy after claim is made.



- Failing to inform the policyholder of its rights under the policy.





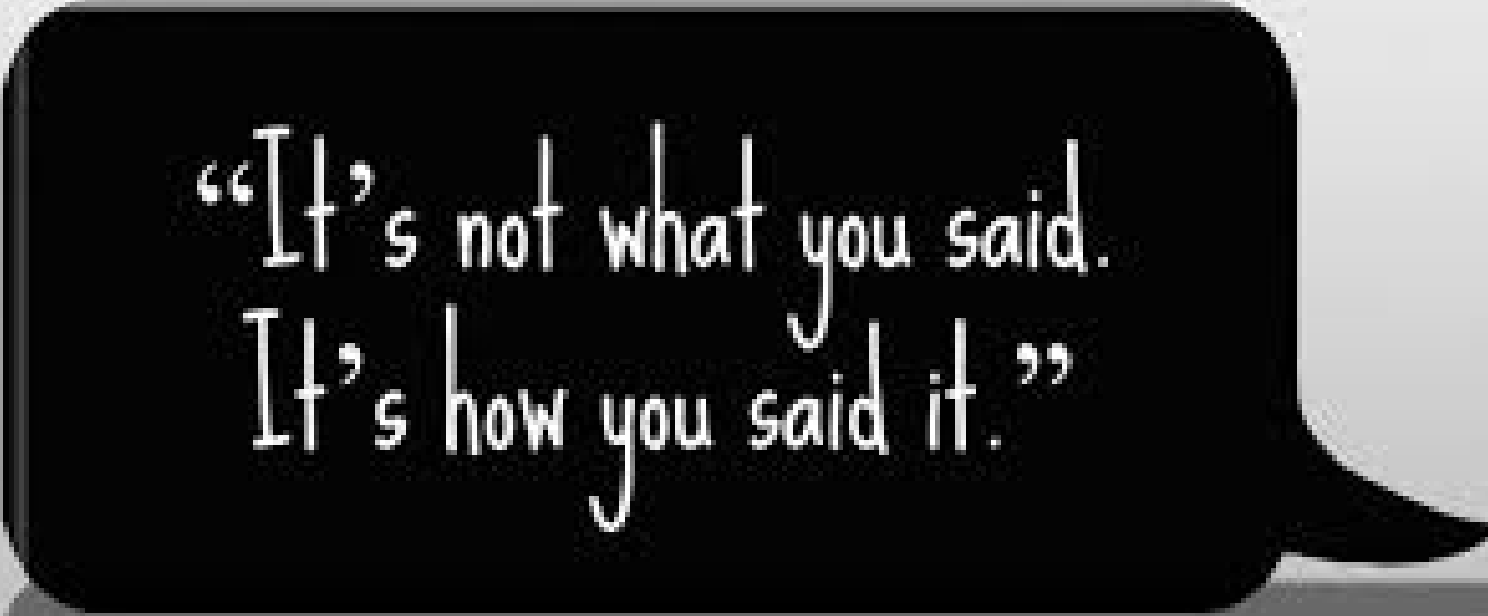
**Are these
similar living
conditions?**





**How to Ensure
You Are Following
The Proper
Practices**

Communication



“It’s not what you said.
It’s how you said it.”

Asking the insurance company for written evaluations



Understanding the documents needed to process the claim



Maintaining a complete claim record



Adjuster should look at insurance policy for ways to indemnify policyholder rather than looking for ways to avoid paying claim

Checklist of Proper Claims Processes



Administrative Penalties for Unfair Claims Practices

Wolters Kluwer publishes
an annual list of the
Top 10 Most Frequent
Market Conduct Issues

The top market conduct actions taken against U.S. property/casualty insurers during **2017**:

1. Failure to acknowledge, pay, investigate or deny claims within specified timeframes
2. Failure to cancel, non-renew, renew policies in accordance with requirements
3. Failure to issue correct payments and/or compliant denial notices
4. Failure to provide required compliant disclosures in claims processing
5. Using unapproved/unfiled rates and rules, or misapplying rating factors

6. Failure to process total loss claims properly
7. Failure to adhere to producer appointment, termination, records and/or licensing requirements
8. Improper/incomplete documentation of underwriting files
9. Failure to provide required compliant disclosures in underwriting processes
10. Improper/incomplete documentation of claim files

Source: Wolters Kluwer

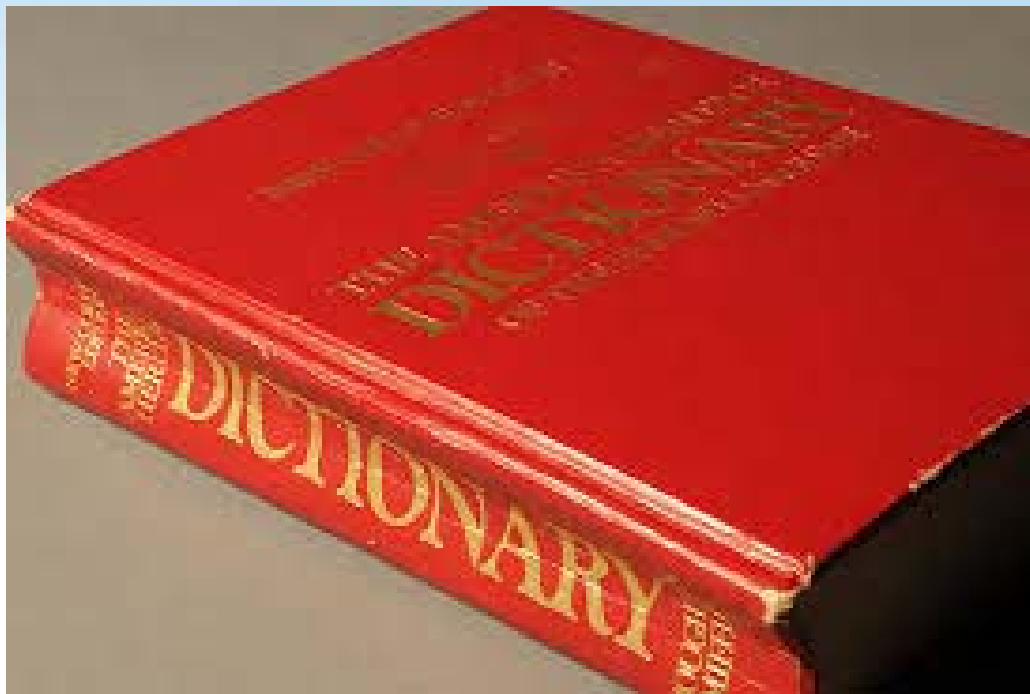


**Avoiding
Unauthorized
Practice of Law**

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?

Where is one place
to start?



Definition from *Black's Law Dictionary*:

... the rendition of services requiring the knowledge and application of legal principles and techniques to serve the interests of another with his consent. It includes giving legal advice and counsel.”



ABA Model Code of Professional Responsibility

EC 3-1 . . . 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.**

Unlicensed Practice of Law

- ABA Opinion 198

“What constitutes unauthorized practice of law in a particular jurisdiction is a matter for determination by the courts of that jurisdiction.”



Unlicensed Practice of Law

- 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).



Typical Actions that Constitute the Practice of Law

- **Interpreting** an insurance policy
- Advising a client of his or her **liability** under insurance policy
- Advising a client of his or her **legal rights** under an insurance policy.



Unauthorized Practice of Law

What is a
lawyer's
responsibility?



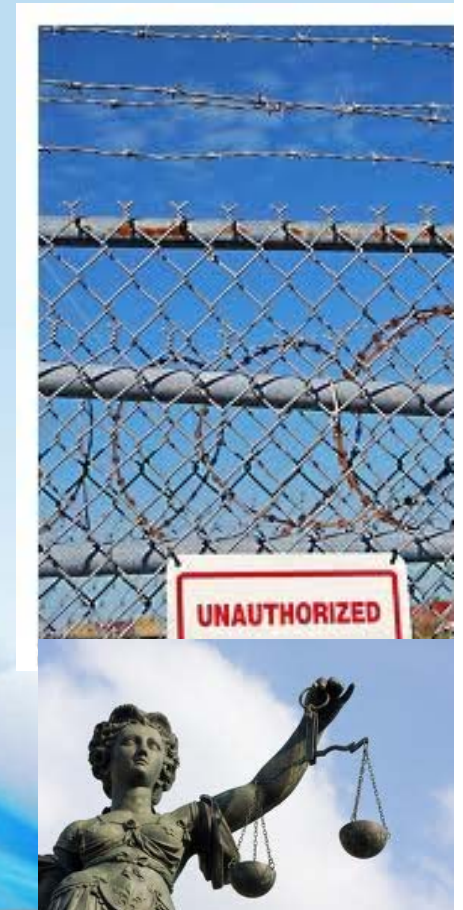
Unauthorized Practice of Law

An attorney involved in a situation which a public adjuster is acting on behalf of a claimant against a third party's insurer is in **violation of Rule 4-5.5(b)**

Prohibits attorneys from assisting in activity that constitutes the unlicensed practice of law

Unauthorized Practice of Law

What is a public
adjuster's
responsibility?





NAPIA

Rules of Professional Conduct and Ethics

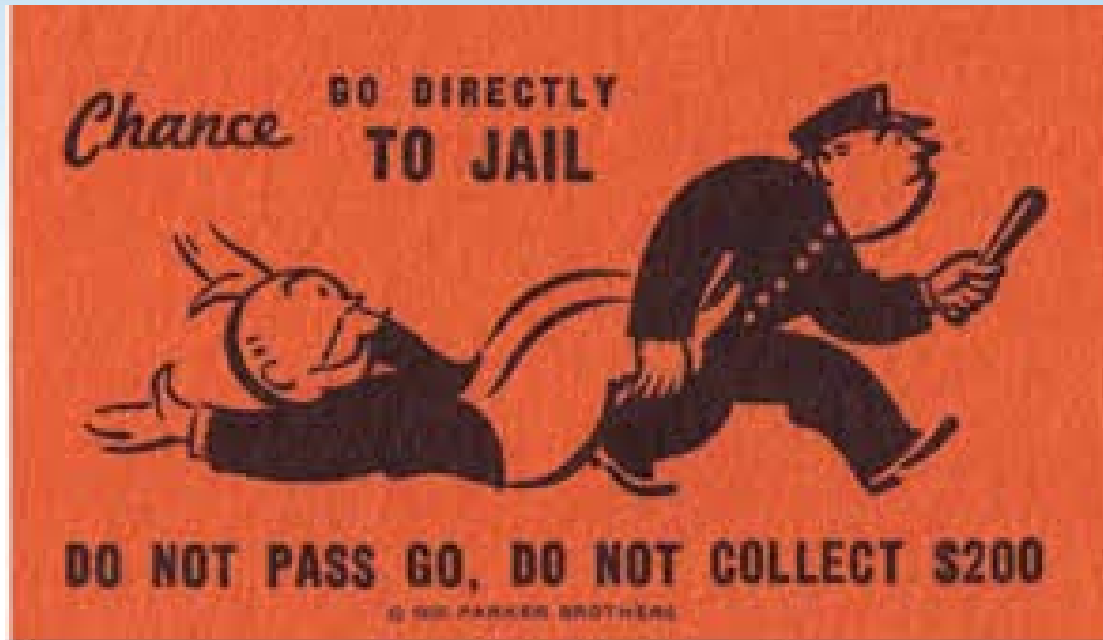
The following Rules of Professional Conduct and Ethics are applicable to all members of the Association:

7. Members shall not engage in the unauthorized practice of law.

When does an action
cross the line between
adjusting and the
practice of law?

It is a fact-specific
inquiry!

Disciplinary and Industry Trends



Recent violations &
enforcement actions of
licensed insurance
professionals

Florida



Contractor allegedly repairs roof without Florida license

November 29, 2018, Panama City, FL — Chief Financial Officer (CFO) Jimmy Patronis announced the arrest of Ashley Porterfield, owner of Porterfield Building, by his Disaster Fraud Action Strike Force (DFAST) for allegedly conducting unlicensed roofing repairs following Hurricane Michael.

CFO Jimmy Patronis said, "The Panhandle is recovering after Hurricane Michael, but unlicensed contractors could deal another blow to Florida families. Unlicensed activity puts Floridians in danger and takes business away from reputable contractors that follow the law. Before allowing anyone to make repairs, verify they have the required licenses and insurance. While hurricane season ends tomorrow, we will keep working to protect residents and business owners as they rebuild."

While deployed to the Panhandle following Hurricane Michael, CFO Patronis' Disaster Fraud Action Strike Team (DFAST) observed employees of Porterfield Building repairing a damaged roof. Investigators made contact to verify the company had the proper licensure and workers' compensation insurance coverage required by Florida law. It was discovered that Porterfield was not licensed to conduct business in the state.

Porterfield was arrested November 20 and booked into the Bay County Jail on charges of unlicensed contracting, a third-degree felony during a state of emergency. If convicted, Porterfield could face up to 5 years in prison.

Source: [Florida's Chief Financial Officer](#)

- After Hurricane Michael, Contractor performed roof repairs without being licensed in state of Florida.
- Arrested and booked into Bay County Jail on charges of unlicensed contracting, a third-degree felony during a state of emergency.
- Could face up to 5 years in prison.



CFO'S INITIATIVES

Transparency
Florida

Finances &
Economy

Fraud & Consumer
Protection

FIND A SERVICE

CITIZEN RESOURCES

CONSUMER PROTECTION

BUSINESS & PROFESSIONAL

GOVERNMENT ACCOUNTING

STATE EMPLOYEES

STAY CONNECTED

Follow the
Department of
Financial Services



WEEKLY RUNDOWN

Sign up for the CFO's
weekly newsletter!

Click Here >>

Press Release

► News ► RSS ► Press Office ► Archive

CFO Jimmy Patronis: Hurricane Irma Insurance Scammer Arrested for Stealing \$14,000 from Homeowners
1/15/2019

For Immediate Release: Tuesday, January 15, 2019
Contact: Devin Galetta, 850.413.2842, devin.galetta@myfloridacfo.com

CFO Jimmy Patronis: Hurricane Irma Insurance Scammer Arrested for Stealing \$14,000 from Homeowners

ORANGE CITY, Fla. – Chief Financial Officer (CFO) Jimmy Patronis today announced the arrest of Mary Bruce for unlicensed public adjusting and filing false and fraudulent liens on individuals' homes following Hurricane Irma. In total, Bruce stole \$14,000 from homeowners.

CFO Jimmy Patronis said, "After a hurricane, Florida families are incredibly vulnerable and my fraud teams ensure that scammers who take advantage are found and thrown in jail. If you need repairs to your home and an offer sounds too good to be true, it probably is. Report these incidents so we can get these criminals off the streets and deter others from committing these crimes."

Following Hurricane Irma in September 2017, CFO Patronis' investigators discovered that Bruce approached roofing companies and homeowners in Central Florida and falsely identified herself as a "claims manager." Bruce told homeowners she could increase prior hurricane insurance claim settlements up to \$30,000, but would require homeowners to sign a Power of Attorney document in order to do so.

Once signed, Bruce would submit an adjusted claim to the insurance company, doubling the original cost estimates submitted previously. If the insurance company refused to pay the increased adjusted amount, Bruce would then place a lien on the homeowner's property.

Bruce was arrested and booked into the Volusia County Jail on charges of unlicensed public adjuster and filing of false and fraudulent lien. If convicted, Bruce faces up to 10 years in prison.

- After Irma, a woman approached roofing companies and homeowners and falsely identified herself as a "claims manager."
- She told homeowners she could increase their settlement up to \$30,000 but required them to sign a power of attorney.

- She would submit the adjusted claim to the insurance company, doubling the original cost estimates submitted previously.
- If the insurance carrier refused to pay the increased adjusted amount she would place a lien on the homeowners' property.
- She was arrested and booked into Volusia County Jail on charges of unlicensed public adjusting and filing false and fraudulent lien.
- Could face up to 10 years in prison.

Texas



Texas Department of Insurance

Commissioner's Actions : 2018

Order Number	Date Issued	Subject(s)	Action Taken	Violation
	10/5/2018	[REDACTED]	Fined \$5,000; cease and desist from performing acts of a public insurance adjuster	Engaged in the unauthorized practice of public insurance adjusting
	5/24/2018	[REDACTED]	Fined \$2,000; cease and desist from performing acts of a public insurance adjuster	Engaged in unauthorized practice of public insurance adjusting
	5/24/2018	[REDACTED]	Fined \$3,000	Operated as a public insurance adjuster firm without a license
	5/23/2018	[REDACTED]	Fined \$2,000; cease and desist from performing acts of a public insurance adjuster	Engaged in the unauthorized practice of public insurance adjusting
	2/7/2018	[REDACTED]	Fined \$1,000; public insurance adjuster firm license granted	Operated as a public insurance adjuster firm without a license

Showing 1 to 5 of 5 entries (filtered from 204 total entries)

New and important
terminology applicable to
licensed insurance
professionals



New Law in Effect
January 1, 2018

Effective January 1, 2018

. . . No person, except an **attorney at law or a public adjuster**, may for money, commission, or any other thing of value, directly or indirectly

- (a) prepare, complete, or file an insurance claim for an insured or third-party claimant;
- (b) act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- (c) advertise for employment as a public adjuster; or
- (d) solicit, investigate or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

F.S. 626.854(19)a-d

Florida



Florida Statute 626.8738 states:

“... 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 ...”

Florida



Florida Statute 626.854 section 1 defines a public adjuster as any person, except an attorney, who “... 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 ...” and further states this “... 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.”

Texas



A Public Insurance Adjuster is a person who for direct, indirect, or any other compensation acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property. *Tex. Ins. Code 4102.001(3)*

Texas



A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license issued by the commissioner.

Tex. Ins. Code Ann. § 4102.051(a)



Thank you!