

# Insurance Claim Guide

## For Licensed Public Adjusters

A Public Adjuster is any person who complete or files an insurance claim form for an insured or 3<sup>rd</sup> party or acts in negotiating a settlement of a claim for money, and includes a person who solicits, investigates or adjusts claims for a Public Adjuster. *F.S. 626.854 (1)*

**Licensing Requirements** *F.S. 626.851 et seq; FAC 69B-220.001 et seq*

- Public Adjusters must be licensed by the Office of Insurance Regulation, Florida

### REQUIRED CONTRACT TERMS

- Contract must state the full name of the public adjuster signing the contract;
- Public Adjuster's permanent business address and phone number;
- Florida Department license number;
- Insured's full name and street address;
- Address of loss'
- Brief description of the loss;
- Insurance company name and policy number, if available;
- The date the contract with the public adjuster was actually signed by the insured or claimant;
- The full compensation to the public adjuster shall be stated in the contract;
- Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified in an addendum to the contract;
- All contracts for public adjuster services must be in writing;
- The contract must be signed by the public adjuster who solicited the contract;
- Insured has 3 business days from the signing of contract or notifying insurer of the claim in which to cancel the contract. *F.S. 626.854 (7)*

- Contract and Proof of Loss must contain specific language that submitting a false or misleading Proof of Loss or estimate is a 3<sup>rd</sup> degree felony. *F.S. 626.38796*

- No public adjuster may settle a claim unless the terms and conditions of settlement are approved by the insured;

### IMPORTANT TIME FRAMES IN FLORIDA

- Notice of loss; Immediate

- Failure to give timely notice of loss is legal basis for denial of recovery under the policy. *Ideal Mut. Ins. Co. v. Waldrep, 400 So.2d 782 (Fla 3<sup>rd</sup> DCA 1981)*

- Proof of loss: Look to policy provisions; 30 days, 60 days upon request

- Failure to file a statement of proof of loss within 60 days was a breach of contract, and therefore grounds for the claim to be denied. *Starling v Allstate, 956 S.2d 511 (Fla 5<sup>th</sup> DCA 2007)*

- Statute of Limitations: Contractual – 5 years from date of denial; 4 years for agent negligence

- FIGA claim: Suit must be filed within 1 year after the deadline for filing claims with the receiver of the insolvent insurer or barred by statute of limitations. *F.S. 631.68*

- Insurer must pay or deny a claim within 90 days of notice of a property insurance claim from a policyholder on a residential property or commercial. Property 10,000 square feet or less. Any payment after 90 days bears interest from the date insurer received notice of the claim. *F.S. 627.70131(5)(a)*

- **Flood Insurance is different:**

- Must file proof of loss within 60 days of damage.

- Failure to do so is a bar to recovery. *Lucien v. U.S. Sec. Ins. Corp., 143 Fed. Appx 152 (CA 11 2005)*

- Proof of loss should be submitted on the standard form utilized by FEMA, and it must be completely filled out.

- Supplemental Proofs of loss submitted after additional damage is discovered may be disallowed under the lood

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policy. *Dogwood Grocery v. South Carolina Is. Co.*, 49 F. Supp.2d 511 (W.D. La. 1999)

### APPRAISALS

- There is usually not a time frame for invoking appraisal.
- Once invoked, look to policy for time requirements on appraisal appointment.
- Can be waived. *Bankers v. Brady*, 765 So.2d 870 (Fla. 5<sup>th</sup> DCA 2000) – Insurance company could not demand appraisal after public adjuster and company adjuster agreed on loss amount.
- Appraisal clauses are enforceable. *Southern Homes Ins. Co. v. Faulkner*, 49 So. 542 (Fla.1909).
- Condition precedent to filing suit if appraisal clause in policy is invoked. *New Amsterdam Cas. Co. v. Blackshear*, 156 So. 659 (Fla. 1934).
- Critical to read appraisal clause in policy for any notice requirements, time frames, number of appraisers and any requirements for the appointment of appraisers.
- Insureds can't demand appraisal until they have complied with all post-loss policy provisions, including notice of loss, EUO, and providing all reasonable information requested by the insurer.
- Binding.
- Causation may be analyzed by appraisers, yet coverage disputes are reserved for courts.

### CIVIL REMEDY NOTICES

- Must file CRN as a condition precedent to filing suite under F.S. 624.155.
- Not ripe until damages are determined. *Liberty Mutual Ins. Co. v Farm, Inc.* 754 So.2d 865 (Fla. 3<sup>rd</sup> DCA 2000).
- Insurer has 60 days from receipt of notice to pay claim or correct violation.
- Time doesn't start until complete CRN filed.
- CRN must be on a form provided by the Department and contain:

- Statute number and specific language of statute that insurer violated.
- Facts and circumstances giving rise to the violation.
- Names of all individuals involved in violation.
- Specific policy language relevant to the violation.
- Statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by 624.155.
- Within 30 days of receipt of notice, Department can return if not specific enough.
- Department must indicate specific deficiencies in the CRN return.
- Statute of limitations tolled 65 days by mailing CRN (or any required subsequent CRN) to insurance company and the Department.

### EXAMINATION UNDER OATH

- Read the insurance policy because many policies are now expanding the definition of who the policyholder has to provide for EUO.
- Books & Records; Very broad discretion in what can be demanded to be provided by insurer. Practical Tips: Provide everything that the insurance company asks for regarding books and records, or run the risk of having the claim denied.

### ETHICAL STANDARDS

F.S. 626.878; FAC 69B-220.201; 690-220.201

- Can't give legal advice. F.S. 626.0854 (3) – See *Florida Bar v Public Adjuster of South Florida, Inc.* 666 So.2d 145 (Fla. 1995), for laundry list of activities that constitute the unlicensed practice of law. (See also *Florida Bar v York*, 689, So.2d 1037 (Fla 1996), for a list of authorized Public adjuster activities.
- Can't aid any person in negotiating claim for personal injury, death or noneconomic damages.
- Cannot refer or steer any claimant needing repairs or other services in connection with a loss to any person whom the adjuster has an undisclosed financial interest, or who will or is reasonably anticipated to provide the

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adjuster any direct or indirect compensation for the referral.

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- Shall adjust all claims strictly in accordance with the insurance contract.
- Shall make truthful and unbiased reports of the facts after making a complete investigation.
- Shall act with dispatch and due diligence in achieving a proper disposition of the claim.
- Shall exercise extraordinary care when dealing with elderly clients to assure that they are not disadvantaged in their claims transactions by failing memory or impaired cognitive process.
- Public adjuster cannot represent any person whose claim the adjuster has previously handled while an adjuster representing an insurer.
- Public adjuster shall not imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full right under an insurance policy.
- No public adjuster may represent or act as a company adjuster, independent adjuster, or general lines agent.
- No individual public adjuster can be employed during the same period by more than one public adjuster or public adjuster firm. *F.S. 626.876*. The DFS is interpreting this statute to mean that an individual PA cannot be self-appointed, list his/her address with Department and sign up claims as an independent contractor for another PA firm. The DFS is interpreting the word “employed” to encompass independent contracting agreements.
- Must 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.
- Shall notify the 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 may exercise veto power of any of these persons.

- Any professional used by the public adjuster in formulating estimates shall be licensed by the Florida Department of Business and Professional Regulation.
  - A public adjuster shall not prevent, or attempt to dissuade, a claimant from speaking privately with the insurer, company or independent adjuster, attorney, or any other person, regarding the settlement of the claim.
  - Shall not acquire interest in salvaged property, except with the written consent and permission of the insured.
  - Except 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.
  - Contract or power of attorney cannot vest in the public adjuster the authority to choose the persons who shall perform repair work.
  - All contracts for the public adjuster’s services must be in writing and set forth all terms and conditions of the engagement.
  - Public adjusters 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 to an insured or claimant or to the insured property that is the subject of a claim.
  - No other activities that could reasonably be construed as a conflict of interest.
  - Department may suspend or revoke license and impose up to \$5,000 fine per act, for violating any provisions of rules. *F.S. 626.8698*
- RESIDENTIAL & CONDO Claims (*F.S. 626.854(5)-(122)*)
- Can only solicit between 8am-8pm Monday-Saturday
  - Cannot initiate contact with insured or enter into a contract until at least 48 hours after occurrence which

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may be the subject of a claim, unless contract is initiated by the insured.

- Cannot give loan or advance to a client or prospective client.
- Cannot give merchandise valued over \$25 to any individual to enter into a contract.
- In a contract to reopen a file or file a supplemental claim for additional payments, fee cannot be based on previous payments. There are no fee percentage caps on such contracts.
- For all other residential claims, not arising out of a state of emergency, the fee cannot exceed 20% of claim payment.
- Public adjuster must provide claimant a written estimate of that loss and retain the written estimate for at least 5 years.

### ETHICAL CONTRINTS DURING STATE OF EMERGENCY

In addition to the above, the following ethical considerations shall apply to public adjusters in the event that the Governor declares a state of emergency:

- Cannot 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 a payment on the claim by the insurer.
- Cannot charge a fee of more than 10% of the amount of the settlement or claim payment.
- During a state of emergency and 1 year following the loss, a claimant has 5 business days to cancel a contract.
- If loss arises out of a declared state of emergency, there is a 10% fee cap on any claim made within 1 year of the loss.