



ETHICS IN CLAIMS MANAGEMENT

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§626.878, Florida Statutes

Rules; code of ethics

- 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.

69B-220.201

Ethical Requirements

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.

Purpose of Insurance

- To protect against unknown calamities which may or may not ever occur (but which now have occurred). For peace of mind.
- Expectations = full and prompt indemnification.
- Versus financial incentive to insurance companies for reducing the amount of claims.
- Result is the need for insurance to be highly regulated.

Public Trust - Presumptions

- The adjuster may dictate in large part the speed by which the claim will be processed and the amount of the ultimate settlement.
- Unfortunately for adjusters, there is a presumption that an insurer and its agents are not being forthright.
- Even innocent mistakes, innocent false steps and innocent misrepresentations are presumed to be intentional acts to deceive.

Public Interest

- This is not necessarily what is best for the insured with regard to a particular claim.
- It is what is best for the public at large.

Undisclosed Financial Interest

- No Direct or Indirect Compensation
 - For a Referral
 - Or for any Resulting Business

Cannot send a claimant or insured needing repairs or other services to someone with whom the adjuster has a financial interest or who will provide compensation.

Treat Claimants Equally

- No favored treatment to any claimant
- Claims adjusted in accordance with contract.

No Prejudice to Insured

- An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.
- Strive to keep personal feelings and prejudices from influencing judgment
- Keep an open mind
- Conflict with adjuster as agent of insurer.

Investigation

- An adjuster shall make **truthful and unbiased** reports of the **facts** after making a **complete** investigation.
 - Truthful and Unbiased
 - Facts [all material facts]
 - Complete

Investigation (Continued)

- Seek only relevant information
- Use legal and ethical means of obtaining that information
- Do not mislead or misinform
- Discussion re: copies to insureds/claimants.

Investigation (3)

- The motivation of claims note-taking and reporting is not to create a self-serving record to use in an anticipated piece of litigation.
- The goal of claims note-taking is to communicate and memorialize accurately, objectively and fairly all material facts that would assist the decision-makers in evaluating and deciding upon the claim – even if some of the facts documented would appear to be detrimental to the carrier.

Honesty and Integrity

- Maintain a courteous and sensitive attitude.
- Remember this is a time of distress.
- Maintain professional business relationships with other carriers and adjusters.
- Goals should be fairness and justice.

Due Diligence

Timing is everything. Lack of diligence or delay is the cornerstone to almost all bad faith claims.

Respond Timely

Take Allegations Seriously

Document All Activity

Keep a Record

Investigate Thoroughly

Unlawful Conduct

Report Unlawful Conduct
to Department of Insurance

Elderly Clients

- Does this increase the standard of care?
- Florida is ripe for these kinds of claims – more arguments may be headed our way.
- Florida law re: lawsuits

Attorney Representation

- An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney.

Interviewing Witnesses

- Avoid any **suggestion** calculated to:
 - Induce a witness to suppress or deviate from the truth;
 - Affect the witness's appearance or testimony during deposition or at trial.
- Provide a copy of the statement to the witness

Legal Advice

- Shall not advise a claimant to refrain from seeking legal advice.
- Shall not advise against the retention of counsel to protect the claimant's interest.

Negotiations

- Do not attempt if the claimant or witness **is or would reasonably be expected to be** in shock or serious mental or emotional distress.
- Do not conclude a settlement when it would be disadvantageous to or to the detriment of a claimant in such a state.

Claim Rights

- An adjuster shall not knowingly fail to advise a claimant of the claimant's claim rights in accordance with the terms and conditions of the contract.
- Does this create a duty?
- Yet, at the same time, an adjuster shall exercise care not to engage in the unlicensed practice of law.

Releases

- An adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release.
- Acceptable to use forms or fill in blanks in forms previously approved by the carrier.

Competence

- An adjuster shall not undertake the adjustment of a claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage or which otherwise exceeds the adjuster's current expertise.
 - Coverage Counsel
 - Expert Witnesses

Other Considerations

- Privacy

- Take reasonable measures to protect sensitive information from illegal or unauthorized examination

CONSEQUENCES

- Reprimand
- Suspension
- Revocation



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Questions or comments?

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