

## NOTICE OF PROPOSED RULE

### DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE NO.:	RULE TITLE:
69B-220.001	Licensure of Emergency Adjusters
69B-220.051	Conduct of Public Adjusters and Public Adjuster Apprentices
69B-220.201	Ethical Requirements for All Adjusters

**PURPOSE AND EFFECT:** The purpose of the proposed amendments is to update the rules and incorporate recent legislative changes to Part VI of Chapter 626, F.S.

**SUMMARY:** The proposed amendments to Rule 69B-220.001, F.A.C., define when an "emergency" exists and provide the procedures to obtain an online emergency adjuster license from the Department. The proposed changes to Rule 69B-220.051, F.A.C., clarify the responsibilities and requirements of public adjusters and public adjuster apprentices, specify the terms and conditions of contracts, require the license number on advertisements, and prescribe practices to ensure fair dealing between public adjusters and claimants. The proposed changes to Rule 69B-220.201, F.A.C., update the code of ethics for all adjusters, clarify the ethical responsibilities and requirements of all adjusters, and provide special requirements for public adjusters.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 624.308(1), 626.878, 626.9611(1) FS

LAW IMPLEMENTED: 624.307(1), 624.501(12), 626.015, 626.112, 626.611, 626.621, 626.852(2), 626.854, 626.8541, 626.855, 626.856, 626.858, 626.8584, 626.859, 626.864, 626.865(2), 626.8695(4), 626.8698, 626.870, 626.8736, 626.874, 626.877, 626.878, 626.8795, 626.8796, 626.9521, 626.9541(1)(b), (i) FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: July 30, 2010 @ 10:00 A.M.

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting Eric Purvis (850) 413-5659 or Eric.Purvis@myfloridacfo.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Eric Purvis, Financial Administrator, Division of Insurance Agent and Agency Services, Room 412C, Larson Building, 200 E. Gaines Street, Tallahassee, FL 32399-0320 (850) 413-5659 or Eric.Purvis@myfloridacfo.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

69B-220.001 ~~Pre-Qualification and~~ Licensure of Emergency Adjusters.

(1) Purpose. This rule sets forth Department policy and procedure for licensure of emergency ~~company adjusters and emergency independent~~ adjusters under Section 626.874, Florida Statutes.

(2) Scope. Each emergency is unique and the terms, conditions, and other provisions of emergency licensure for particular emergencies must often be tailored by emergency rule to the scope and nature of the particular emergency. This rule sets out what are essentially default licensure provisions which are effective for emergency adjuster licensure unless and to the extent the Department office issues emergency rules modifying, supplementing, or replacing this rule. Where not expressly modified or replaced by emergency rule regarding a particular emergency, the provisions of this rule shall apply.

(3) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "Department" means the Department of Financial Services.

(b) "Licensed adjuster" ~~means those and similar terms, refer to and include only~~ persons currently licensed in good standing by the Department as a company employee adjuster or independent adjuster, whether the licensure ~~is~~ be permanent resident licensure, permanent nonresident licensure or emergency licensure pursuant to this rule, and whether limited licensure or unlimited licensure. The terms ~~does~~ not include persons licensed as public adjusters or public adjuster apprentices by the Department or persons licensed as any type of adjuster or public adjuster by states other than the State of Florida.

(c) "Emergency" and "Catastrophe." These two terms as used in Section 626.874, Florida Statutes, are synonymous, and no separate treatment is afforded catastrophe over emergency adjusters.

(d) "Emergency adjuster" means a person who is not a licensed adjuster with the Department but who has been designated and certified to the Department by an insurer, an independent resident adjuster, or a licensed general lines agent as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer in the event of a catastrophe or emergency ~~when used in this rule without further specification, includes emergency company adjusters and emergency independent adjusters.~~

(e) "Unlicensed persons" ~~as used in this rule means and refers to persons who are not currently licensed in good standing by the department as an adjuster.~~

(4) General Provisions Applicable to All Emergency Adjusters.

(a) ~~Declaration of Emergency;~~ Determination that Emergency Exists.

~~1. The department does not issue proclamations or other formal declarations of emergency. Instead, any person believing that an emergency exists and desiring licensure under Section 626.874, Florida Statutes, shall apply or cause application to be made to the department for such licensure.~~

~~1. 2.~~ For purposes of Section 626.874, Florida Statutes, an emergency or catastrophe exists when, due to a specific, infrequent, and sudden natural or manmade disaster or phenomenon, that has occurred or is imminent, there are ~~have arisen~~ losses or anticipated losses to insured Florida property in Florida that are covered by

insurance, and the losses are or likely will be so numerous and severe that resolution of claims related to such covered property losses may will not occur expeditiously without the licensing of emergency adjusters ~~due to the magnitude of the catastrophic damage.~~

~~2. 3. When the Department determines that an emergency or catastrophe exists or is likely to occur, it shall make available on its website the online emergency adjuster license application. A failure of claims to be resolved expeditiously shall exist upon an insurer's filing with the department a written statement that one of the following conditions exists:~~

~~a. The insurer expects to incur at least 500 claims as a result of the event; or~~

~~b. The magnitude of the event is expected to generate twice the mean number of claims for one month for the affected area.~~

~~(b) Online applications Requests for emergency adjuster licensure as an independent adjuster must be accompanied by a statement from an insurer, an independent adjusting firm, a licensed independent resident adjuster, or a licensed general lines agent certifying that the emergency adjuster applicant is qualified to act as an adjuster.~~

~~(5) Procedures for Licensing and Appointment of Emergency Adjusters; Responsibilities of Appointing Entity.~~

~~(a) All Florida-licensed insurers, independent adjusting firms, independent adjusters, and general lines agents, shall use the following procedures to utilize emergency company or independent adjusters. The entities or persons listed in the preceding sentence may immediately and without advance paperwork to this Department, engage and cause commencement of catastrophe adjusting work for themselves, by any persons, whether on their staff, or hired by them, or engaged by them as independent contractors or as employees of a contractor engaged by them, although the person is not currently licensed as an adjuster in Florida, if the Florida-licensed insurer, independent adjusting firm, independent adjuster or general lines agent utilizing these persons as emergency or catastrophe adjusters determines that these persons are qualified to do such adjusting work and provides these persons with proof of authority to represent the insurer. These persons shall present the proof of authority and a photo ID upon demand by the insured or the insured's representative. A person is not qualified to adjust claims for any entity or person who utilizes computer software program(s) in the adjusting process, unless the person has received training in and is capable of correctly utilizing the program(s). Within 7 calendar days after adjusting work has begun, the appropriate official must electronically complete and submit to the Department the Emergency Adjuster Application, "Initial Application for Adjuster License," Form number DFS-H2-495, Rev. 1/2010 ~~7/2006~~, which is hereby adopted and incorporated by reference. All applications shall be submitted through the Department's website at www.myfloridacfo.com/Agents ~~https://aalf.fldfs.com/common/com\_index.asp~~. Applicable fees shall be submitted by electronic payment at the time of submission of an online application.~~

~~1. The insurance company representative, independent adjusting firm, independent adjuster or general lines agent who submits the online application certifies that the emergency adjuster applicant is qualified, thereby appointing ~~appoints~~ the emergency adjuster applicant to represent that company, independent adjusting firm, independent adjuster or general lines agent, ~~;~~ and once the license is issued, The the appointing~~

person or entity is bound by the acts of the emergency adjuster applicant as in the case of any regular licensed (non-temporary or non-catastrophic) adjuster licensed pursuant to Chapter 626, Florida Statutes, appointed by that company, independent adjusting firm, independent adjuster or general lines agent. This responsibility continues until the appointing entity, appointing person or emergency adjuster licensee notifies the Department through the online appointment system, or the emergency adjuster licensee notifies the Department through the online application process, that the appointing entity, appointing person or emergency adjuster licensee desires to terminate the appointment.

2. The insurance company, independent adjusting firm, independent adjuster or general lines agent who certifies to the Department that the emergency adjuster applicant is qualified, is responsible for assuring, by due diligence inquiry, that the emergency adjuster applicant is in fact qualified to adjust claims, has received training in and is capable of correctly utilizing any computer software program(s) utilized by the appointing entity or person to adjust claims, and is of good and honest character.

(b) There is an affirmative duty on the insurance company, independent adjusting firm, independent adjuster or general lines agent, who certifies to the Department that the emergency adjuster applicant is qualified, to provide continuing and significant supervision of the emergency adjuster applicant after licensure.

(c) Emergency adjuster licenses are valid for 180 days from the date of issuance of the emergency license, unless a shorter period of time is specified in the license as issued. Because emergency licensure is an extraordinary deviation from regular licensing procedures, it is Department policy to specify, as the duration of emergency licensure, the shortest possible time in each particular emergency.

(6) Procedures for Extension of an Emergency Adjuster License. The Department shall grant an extension of emergency adjuster licensure if it determines the conditions set forth in subparagraph (4)(a)1. 2. of this rule still exist. Each extension will last for a period of up to an additional 180 days.

(a) To apply for an extension of licensure as an emergency ~~company or independent~~ adjuster, the entity requesting a license extension shall electronically complete and submit to the Department the Emergency Adjuster Extension Application, Form DFS-H2-2022, Eff. 1/2010, which is hereby incorporated by reference an application for the extension on the Department's website at www.fldfs.com. All applications for an extension shall be submitted through the Department's website at www.myfloridacfo.com/Agents. Applicable fees shall be submitted by electronic payment at the time of submission of an online application for the extension.

(b) Only the licensure type and class that the licensee holds at the time of application for extension shall may be extended.

(c) "Temporary Licenses." The provisions of Section 626.872, Florida Statutes, regarding "Temporary Licenses" are not applicable to licensing persons temporarily for catastrophe or emergency situations.

(d) Emergency-Related Losses Only. Licensure as an emergency adjuster shall may be used only for adjustment of losses directly resulting from the emergency regarding which the license was issued.

(e) Natural Persons Only. The Department issues emergency adjuster licenses only to natural persons.

~~(f) Address and Website for the Department. Unless a different address is specified herein, any notice or other item to be provided to the department, shall be addressed as follows: Bureau of Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319. The department's website address is www.fldfs.com.~~

~~(f) (g) Administrative and Civil Jurisdiction. By obtaining a license as an emergency adjuster, the licensee agrees that:~~

~~1. The licensee is subject to all the disciplinary provisions and penalties of the Florida Insurance Code and the administrative procedures set forth in the Florida Statutes for the routine processing of such charges;~~

~~2. The licensee is subject to the jurisdiction of the courts of Florida concerning civil liability for all acts in any way related to the licensee's activities under licensure in Florida;~~

~~3. Jurisdiction for acts committed prior to licensure or while licensed continues after the emergency licensure expires or is terminated;~~

~~4. If after the license licensure expires or is terminated, the Department has reason to believe there was a violation of any provision of the Florida Insurance Code or Chapter 69B, Florida Administrative Code these rules by the former licensee while licensed, the Department may file is not precluded from filing administrative action against the former licensee, and from serving the charges by certified mail to the licensee, or by publication of notice of action in the legal notices section of a newspaper of general circulation in or near the city or county of permanent residence or place of business as shown on the licensee's application for emergency licensure if certified mail service is unsuccessful;~~

~~5. The licensee or former licensee will respond to and defend the charges in Florida, or be defaulted;~~

~~6. The licensee or former licensee will not assert lack of jurisdiction; and~~

~~7. The licensee or former licensee believes that the preceding provisions satisfy minimum due process requirements of all state and federal constitutions.~~

~~(g) (h) By the act of obtaining licensure as an emergency adjuster, a nonresident licensee irrevocably designates the Chief Financial Officer, and his or her successors in office, as the licensee's attorney to receive agent for service of all process in any way related to the licensee's activities as an emergency adjuster.~~

Rulemaking Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 624.501(12), (5), 624.501(13), 624.501(15), 626.015, 626.112, 626.621, 626.171, 626.855, 626.856, 626.858, 626.8584, 626.859, 626.870, 626.8732, 626.8734, 626.8736, 626.874 837.06 FS. History—New 2-25-93, Amended 8-18-94, 1-7-97, 10-20-97, 1-9-03, Formerly 4-220.001, Amended 9-3-06,\_\_\_\_\_.

69B-220.051 Conduct of Public Adjusters and Public Adjuster Apprentices.

(1) Purpose and Scope. This rule sets forth Department policy as to certain matters generally affecting public adjusters and public adjuster apprentices. Emergency adjuster license procedures are contained in Rule 69B-220.001, F.A.C. Procedures regarding application for licensure are not dealt with in this rule. Ethical requirements for all types of adjusters are contained in Rule 69B-220.201, F.A.C. provisions are not dealt with in this rule.

(2) Definitions. The following definitions shall apply for purposes of this rule.

(a) "Compensation" or "remuneration" means anything of value, whether received directly or indirectly, in payment for services performed.

(b) "Department" means Florida Department of Financial Services.

~~(c) "Financial Interest" means direct or indirect ownership.~~

~~(c) (d)~~ "Licensed public adjuster" and "licensed public adjuster apprentice," hereinafter referred to as "public adjuster," means those refer to and include only persons currently licensed in good standing by the Department as public adjusters and as public adjuster apprentices, whether the licensure is resident licensure under Sections 626.865 and 626.8541, Florida Statutes, or nonresident licensure under Section 626.8732, Florida Statutes. The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.

~~(d) (e)~~ "Unlicensed persons," means those as used in this rule, ~~means and refers to~~ persons who are not currently licensed and appointed in good standing by the Department as resident or nonresident public adjusters.

(e) "Supplemental claim" or "reopened claim" means a claim that seeks additional payment from an insurer for property damage caused by the same occurrence for which a claim was previously filed by the insured and settled or considered to be paid in full by an insurer.

(3) Communications Concerning Public Adjuster Services.

(a) Solicitation. The solicitation of public adjusting business for compensation is deemed to be a material part of the business of public adjusting and, therefore, requires licensure as a public adjuster under the laws of Florida and the rules of the Department, and shall be engaged in only by persons licensed by the Department as public adjusters. Unlicensed persons shall not engage in such activity even under the supervision of a licensed public adjuster. The phrase "solicitation of public adjusting business" ~~and similar phrases as used in this rule~~ means, for compensation, initiating contact with any person, whether in person, by mail, by telephone, by brochure, by advertisement, or otherwise, and therein seeking, causing, urging, advising, or attempting:

1. To have any person enter into any agreement engaging the services of a public adjuster ~~in any capacity;~~ or

2. To have any person describe the benefits, terms or services of a public adjuster;

or

~~3.~~ 2. To have any person subsequently speak or meet with a licensed public adjuster for the purpose of engaging the services of a public adjuster ~~in any capacity or for the purpose of being advised by a public adjuster in any regard.~~

(b) A public adjuster, public adjusting firm or public adjuster apprentice:

1. 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.

2. May enter into a contract with an insured or claimant under an insurance policy within 48 hours after the occurrence of an event if the insured or claimant initiates contact with the public adjuster, public adjusting firm or public adjuster apprentice.

3. May initiate contact and solicit business within the 48-hour period of time by means of mail, email or other advertising to the general public, as well as door hangers

and other such written flyers left on the damaged property, provided that no further solicitation activity is undertaken by the public adjuster at that time. It is the intent of this provision that the claimant may initiate contact with the public adjuster at a later time in response to such written communications, but the claimant shall not be subjected to face-to-face or telephonic solicitation conduct initiated by the public adjuster prior to the expiration of 48 hours after the occurrence of an event that may become the subject of a claim under an insurance policy.

(c) ~~(b)~~ Answering Telephone Calls. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not violative of this rule so long as the unlicensed persons engage in purely administrative matters and not in judgment, or interpretation or solicitation with regard to any insurance contract, public adjuster contract, claim, or potential claim.

(4) Advertising.

(a) As with all forms of advertising concerning the business of insurance, public adjusters shall not falsely inform or advertise as set forth in Section 626.9541(1)(b), Florida Statutes, as well as any other section within the Florida Insurance Code that relates to advertising.

~~(b) Only Licensed Adjusters to Advertise.~~ No individual person or entity, with the intent of performing public adjusting services, shall in any way advertise public adjusting services as a public adjuster in this state, unless such individual person or entity is licensed as a public adjuster, public adjusting firm or is a member of the Florida Bar.

(c) Advertisements to Show Licensee's Full Name and License Number. Any advertisement by a public adjuster shall legibly state the full name and license number, as specified in Department records, of the public adjuster who has caused the advertisement to appear. Where a public adjusting firm containing multiple licensed public adjusters is causing the advertisement to appear, the public adjusting firm shall designate one of said licensees whose full name and license number, as specified in Department records, shall appear in the advertisement.

1. Print and Website Advertisements. In print and website advertisements the public adjuster's full name and license number, as specified in Department records, shall be in typeface no smaller than the typeface of the main body of text in the advertisement. Print advertisements include newspapers, magazines, flyers, brochures, business cards, adhesive and magnetic publication, and similar printed materials. If the material is already printed when this rule takes effect, the required public adjuster's full name and license number shall be added by means of rubber stamp, adhesive label, or other means.

2. Television Advertisements. In television advertisements the public adjuster's full name and license number, as specified in Department records, shall be made to appear on the screen for a period reasonably calculated to allow a viewer to write the name and license number down.

3. Radio Advertisements. In radio advertisements, the public adjuster's full name and license number, as specified in Department records, shall be read during the advertisement, and at a speed reasonably calculated to allow an average listener to note the name of the licensee as it appears on his or her licensure.

(d) Responsibility of Advertising Licensee. The licensed adjuster whose name and license number appears in the advertisement is responsible for personally reviewing the

content of the advertisement and assuring that the advertisement complies with the rules of the Department and the Florida Insurance Code and is in all regards fair, accurate, and in no way untruthful, deceptive or misleading.

(5) It is an affirmative duty of every primary public adjuster, as defined in Section 626.8695, Florida Statutes, to supervise their business affairs and their staff to ensure to the extent it is within the primary public adjuster's supervision or control power that the Florida Insurance Code and Rule Chapter 69B-220, F.A.C., are not violated.

(6) Required Contract Terms. In addition to the contract terms required by Sections 626.854 and 626.8796, Florida Statutes, public Public adjusters shall ensure that all contracts for their services contain the following terms:

(a) The contract shall legibly state the full name, as specified in Department records, of the public adjuster signing the contract.

(b) All public adjuster contracts shall show the public adjuster's:

1. Permanent business address and phone number; and
2. Florida Department license number.

(c) The contract shall show:

1. The insured's full name, and street address, home phone number, business phone number, email address and any other current contact information;

2. Address of loss;

3. A brief description of the loss to include the date, cause and damage;

4. The insured's insurance company name and policy number, if available.

(d) The contract shall show the date the contract with the public adjuster was actually signed by the insured or claimant.

(e) 1. The full compensation to the public adjuster shall be stated in the contract.

2. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

3. Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified in either the contract or an addendum to the contract, which shall be signed and dated by the parties.

4. The contract shall contain the following language with a check box to indicate which provision applies to the contract and the insured or claimant shall place his or her initials by the box that is checked:

Claim during a state of emergency:

This contract is subject to Florida law that prohibits a public adjuster from charging, agreeing to, or accepting any compensation, payment, commission, fee, or other thing of value in excess of 10% 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.

Regular non-emergency claim:

This contract is subject to Florida law that prohibits a public adjuster from charging, agreeing to, or accepting any compensation, payment, commission, fee, or other thing of value in excess of 20% of the amount of all insurance claim payments made by the insurer for this claim.

Reopened claim or supplemental claim:

This is a contract to reopen a claim or file a supplemental claim. It is subject to Florida law that prohibits a public adjuster from charging or accepting any money or

other thing of value based on previous payments made to you by the insurer for the same cause of loss. However, if fees under this contract are based on a percentage of claim payments obtained through the work of the public adjuster after entering into this contract, Florida law does not limit the percentage that can be charged.

(f) The Department's toll free Consumer Assistance Helpline telephone number (1-877-MY-FL-CFO or 1-877-693-5236).

(7) All contracts for public adjuster services must be in writing. The contract must be signed by the public adjuster who solicited the contract. A copy of the completed contract shall be provided to the insured or claimant at the time he or she signs the contract.

(8) No public adjuster shall may settle a claim unless the terms and conditions of settlement are approved in writing and dated by the insured.

(9) If a contract between a public adjuster and an insured contains a statement that it is for the purpose of filing a supplemental claim or reopened claim when in fact the claim does not meet the definition of supplemental claim or reopened claim set forth in this rule, the public adjuster shall be subject to the fee restrictions set forth in Section 626.854(11)(b), F.S.

(10) A complete and unaltered copy of each executed contract and addendum for public adjuster services with the insured must be provided to the insured's insurance company within thirty (30) days of execution.

(11) Required disclosure: A legible copy of the full text of Rule 69B-220.051, F.A.C., entitled "Conduct of Public Adjusters and Public Adjuster Apprentices," Rule 69B-220.201, F.A.C., entitled "Ethical Requirements for All Adjusters" and any Department emergency rule then in effect, shall be attached to the signed and dated public adjuster contract that is provided to the insured or claimant. These copies shall be dated and signed by the insured or claimant.

Rulemaking Specific Authority 624.308(1), 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.112(1)(a), (3), 626.611, 626.852(2), 626.854, 626.8541, 626.865(2), 626.8695(4), 626.878, 626.8795, 626.8796, 626.874, 626.9541(1)(b), (i) FS. History—New 4-26-94, Amended 12-18-01, Formerly 4-220.051, Amended 3-27-05, 9-3-06.

#### 69B-220.201 Ethical Requirements for All Adjusters.

(1) Definitions. The following definitions shall apply for purposes of this rule:

(a) "Adjuster," when used without further specification, includes all types and classes of insurance adjusters, (company employee, independent, and public), subject to Chapter 626, Florida Statutes, regardless of whether resident or nonresident, and whether permanent, temporary, or emergency licensees.

(b) "~~Client~~" ~~includes both clients and potential clients; and~~ means any person who ~~consults with or hires or employs~~ an adjuster to provide adjusting services.

(c) "Department" means the Florida Department of Financial Services.

(d) "Person" includes natural persons and legal entities.

(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:

~~(a) An adjuster shall not directly or indirectly refer or steer any claimant needing repairs or other services in connection with a loss to any person with whom the adjuster has an undisclosed financial interest, or who will or is reasonably anticipated to provide the adjuster any direct or indirect compensation for the referral or for any resulting business.~~

~~(a)~~ (b) An adjuster shall treat all claimants equally.

1. An adjuster shall not provide favored treatment to any claimant.

2. An adjuster shall adjust all claims strictly in accordance with the insurance contract.

~~(b)~~ (c) An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.

~~(c)~~ (d) An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.

~~(d)~~ (e) An adjuster shall handle every adjustment and settlement with honesty and integrity, and allow a fair adjustment or settlement to all parties without any remuneration to himself except that to which he is legally entitled.

~~(e)~~ (f) An adjuster, upon undertaking the handling of a claim, shall act with dispatch and due diligence in achieving a proper disposition of the claim. The lack of dispatch and due diligence shall include the failure of the adjuster to perform services for the client, or where the adjuster engages in a pattern of neglect which causes or could potentially cause injury to the client.

~~(f)~~ (g) The adjuster shall respond with specific information to a written or electronic request for claims status from a party to the insurance policy or the party's designated representative, in no less than fifteen (15) days from the date of the request and shall document the file accordingly.

(g) An adjuster shall promptly report to the Department any conduct by any licensed insurance representative of this state which violates any provision of the Florida Insurance Code or Department rule or order.

(h) An adjuster shall exercise extraordinary care when dealing with ~~elderly~~ clients 65 years of age and older to assure that they are not disadvantaged in their claims transactions by failing memory or impaired cognitive processes.

(i) An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney, if the adjuster has knowledge of such representation, except with the consent of the attorney. For purposes of this subsection, the term "third-party claimant" does not include the insured or the insured's resident relatives.

(j) An adjuster is permitted to interview any witness, or prospective witness, without the consent of opposing counsel or party. In doing so, however, the adjuster shall scrupulously avoid any suggestion calculated to induce a witness to suppress or deviate from the truth, or in any degree affect the witness's appearance or testimony during

deposition or at the trial. If any witness making or giving a signed or recorded statement so requests, the witness shall be given a copy of the statement.

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

(l) An adjuster shall not attempt to negotiate with or obtain any statement from a claimant or witness at a time that the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss. The adjuster shall not conclude a settlement when the settlement would be disadvantageous to, or to the detriment of, a claimant who is in the traumatic or distressed state described above.

(m) 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 and of the existence of 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 employee adjuster 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 employee adjuster or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

(o) An adjuster shall not undertake the adjustment of any 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.

(p) ~~No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm.~~ No person shall, as a company employee adjuster or independent adjuster, represent him or herself or any insurer or independent adjusting firm against any person or entity that the adjuster previously represented as a public adjuster.

(q) ~~A public adjuster shall not represent or 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 rights under an insurance policy.~~ No insurer, independent adjuster, or company employee adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.

(r) ~~No public adjuster, while so licensed in the Department's records, may represent or act as a company adjuster, independent adjuster, or general lines agent.~~

(r) ~~(s)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim shall provide at least 48 hours notice to the insured, ~~or claimant,~~ public adjuster or legal representative prior to scheduling a meeting with the claimant or an on-site inspection of the insured property. The insured or claimant may deny access to the property if this notice has not been provided. The insured or claimant may waive this 48 hour notice.

(s) The 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 individual shall be licensed by the Florida Department of Business and Professional Regulation, if so required by law.

(4) Public Adjusters, Other Ethical Constraints. In addition to the 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 ~~or~~ and claimant in writing on or before entering into the public adjuster contract ~~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 contact information ~~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 adjusting the insurance claim ~~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) The 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.~~

(c) ~~(d)~~ A public adjuster shall not prevent, or attempt to dissuade or prevent, a claimant from speaking privately with the insurer, company employee adjuster, 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.~~

(d) ~~(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, public adjuster apprentice or any other person or entity shall compensate any person, whether directly or indirectly, for the principal purpose of referring business to a ~~the~~ public adjuster or public adjusting firm.

~~(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.~~

(e) ~~(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 estimate damages, perform testing, or perform repair work, except if the contract or power of attorney is prepared or approved by the insured's attorney.

(f) ~~(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., or as otherwise required by law.

~~(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:~~

~~(g) (a) No public adjuster or public adjusting firm 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 a payment on the claim by the insurer. No public adjuster or public adjusting firm shall accept any form of payment or remuneration for adjusting services that have not been performed.~~

~~(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 or claim payment.~~

~~(h) (e) 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 Section 626.854(11), Florida Statutes 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.~~

~~(i) A public adjuster shall not represent to any client or potential client that insurers, company employee adjusters, or independent adjusters attempt to, or do in fact, deprive claimants of their full rights under an insurance policy.~~

~~(j) No public adjuster, while so licensed in the Department's records, may represent or act as or be appointed as a company employee adjuster or independent adjuster. A public adjuster may hold a general lines agent license. However, no public adjuster, while so licensed in the Department's records, may represent or act as both a public adjuster and a general lines agent for the same insurance claim.~~

~~(k) A public adjuster shall not restrict or prevent an insurer, company employee 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.~~

~~(l) No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any~~

insurer or independent adjusting firm.

(m) If the appraisal clause in an insured's insurance policy has been triggered, a public adjuster or public adjusting firm that has entered into a public adjusting contract with the insured or claimant shall not charge an appraisal fee or otherwise receive direct or indirect compensation or remuneration in addition to the statutory compensation limit for the public adjuster contract for acting as the insured's or claimant's appraiser.

Rulemaking Specific Authority 624.308(1), 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.015(1), 626.611, 626.621, 626.854, 626.8541, 626.858, 626.859, 626.864, 626.865(2), 626.8695, 626.8698, 626.877, 626.878, 626.8795, 626.9521, 626.9541(1)(i) FS. History—New 6-2-93, Amended 12-18-01, Formerly 4-220.201, Amended 3-27-05, 9-3-06, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Eric Purvis, Financial

Administrator, Division of Insurance Agent and Agency Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink,

Chief Financial Officer, Department of Financial Services

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