

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE NO.:

RULE TITLE:

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.

SUBJECT AREA TO BE ADDRESSED: 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, delete provisions that reiterate or paraphrase statutory material, and clarify the responsibilities and requirements of all adjusters.

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

LAW IMPLEMENTED: 624.307(1), 626.015(1), 626.112(1)(a), (3), 626.611, 626.621, 626.852(2), 626.854, 626.8541, 626.858, 626.859, 626.864, 626.865(2), 626.8651, 626.8695(4), 626.8698, 626.877, 626.878, 626.8795, 626.8796, 626.9541(1)(b), (i) FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: March 22, 2012 @ 9:30 A.M.

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

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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Eric A. Purvis, Government Analyst II, Division of 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 text of the proposed rule is also available on the Department's website @

<http://www.MyFloridaCFO.com/LegalServices/ruleHearing/>

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

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. Ethical requirements for all types of adjusters are contained in Rule 69B-220.201, F.A.C. ~~Procedures regarding application for licensure are not dealt with in this rule. Ethical 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 return for services performed.

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

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

(f) "Direct supervision" means the physical presence of the supervising public adjuster when soliciting or executing a contract for public adjusting services.

(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, for compensation, 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.

(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 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 public

adjuster apprentice under the direct supervision and guidance of a licensed, supervising public adjuster, 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.

(d) 4. 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, yard signs 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 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 down.~~

~~3. Radio Advertisements. In radio advertisements, the public adjuster's full name 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.~~

(e) ~~(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 public adjuster to supervise their business affairs and their staff to ensure to the extent it is within the public adjuster's power that this Florida Insurance Code and Rule Chapter 69B-220, F.A.C., are not violated.~~

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

(a) The contract shall legibly state the full name₁ as specified in Department records₁ of the public adjuster signing the contract.

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

1. The public adjuster's ~~p~~Permanent business address and phone number₁; ~~and~~
2. Florida Department license number.

~~(c) The contract shall show:~~

3. ~~1.~~ The insured's full name₁ ~~and~~ street address, home phone number, business phone number, email address and any other current contact information;

4. ~~2.~~ The ~~a~~Address of loss;

5. ~~3.~~ A brief description of the loss to include the approximate date and the nature of the event causing the loss (i.e., windstorm, fire, sinkhole, etc.);

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

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

8. ~~(e)~~ ~~4.~~ The full compensation to the public adjuster shall be stated in the contract.

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

10. ~~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.

(6) ~~(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.

(7) ~~(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.

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), 626.8651, 626.8695(4), 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 an adjuster to provide adjusting services.~~

(b) ~~(e)~~ "Department" means the Florida Department of Financial Services.

(c) ~~(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.

(b) An adjuster shall treat all claimants in accordance with the laws and regulations

of Florida equally.

(c) ~~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.~~

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

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

(f) ~~(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.

~~(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.~~

(g) An adjuster shall promptly report to the Department any conduct by another licensed adjuster that constitutes or is believed to constitute a violation of any licensed insurance representative of this state which violates any provision of the Florida Insurance Code or Chapter 69B, F.A.C. Department rule or order.

(h) An adjuster shall exercise heightened ~~extraordinary~~ care when dealing with persons 65 years of age and older ~~elderly clients~~ 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 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.~~

(m) ~~(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.

(n) ~~(e)~~ 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.

(o) ~~(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 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.~~

~~(s) A company adjuster, independent adjuster, attorney, investigator, or other person 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 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.~~

(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 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.~~

~~(a) (b) Five working days prior to submitting any claim to the insurer, the The public adjuster shall notify the insured or claimant in advance of the name, and location and telephone number of any ~~proposed~~ contractor, architect, engineer, or similar other professional, whose ~~before any bid or proposal~~ was used in whole or in part by the public adjuster in the preparation of the claim 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 over the use of said persons, such that the public adjuster may not submit a claim to which that veto power has been applied 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.~~

(b) ~~(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.~~

~~(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.~~

(c) ~~(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.

(d) (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 Rule subsection 69B-220.051(6), F.A.C.

(e) 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.

(f) 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.

(g) No public adjuster, while so licensed in the Department's records, shall 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, shall represent or act as both a public adjuster and a general lines agent for the same insurance claim.

(h) (i) 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.

(i) 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.

(j) A public 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 public adjuster to perform services for the person under contract, or where the adjuster engages in a pattern of neglect which causes or could potentially cause injury to the insured or claimant.

(k) In the absence of a declared emergency by the Governor, the public adjuster shall respond with specific information to a written or electronic request for claims status from a party to the public adjuster contract or the party's designated representative, no less than thirty (30) days from the date of the request and shall document the file accordingly.

~~(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 a 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 or 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.~~

Rulemaking Authority 624.308, 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, 8-14-11, _____.