

DEPARTMENT OF FINANCIAL SERVICES
Division of Insurance Agent 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 and Public Adjuster Apprentices

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 40, No. 164, August 22, 2014 issue of the Florida Administrative Register.

A. 69B-220.051

In paragraph (2)(a), the word "return" has been changed to "payment."

In paragraph (3)(a), the words "and guidance" have been added after the words "direct supervision."

In paragraph (4)(a), the words "the Florida Insurance Code" have been changed to "Parts I, VI, and IX of Chapter 626, F.S."

When adopted, paragraph (4)(b) will read: Advertisements to Include Licensee's Full Name and License Number. Any advertisement, in whatever format, by a public adjuster shall include the full name and license number, as specified in Department records, of the public adjuster who has caused the advertisement to appear. Where a firm containing multiple licensed public adjusters is causing the advertisement to appear, the full name and license number of the designated primary adjuster as specified in Department records shall appear in the advertisement.

In paragraph (4)(c), the words "the rules of the Department and the Florida Insurance Code" have been changed to "Rules 69B-220.051 and 69B-220.201, F.A.C., and Parts I, VI, and IX of Chapter 626, F.S."

In subsection (5), the words "the terms required by Sections 626.854 and 626.8796, F.S., and" have been added after the word "contain."

In paragraph (5)(a), the words "if available" have been added after the words "phone number."

In paragraph (5)(c), the words "to include the actual date and cause of loss or, if not known with certainty, the approximate date and assumed nature of the event causing the loss (i.e., windstorm, fire, sinkhole, or other peril) to the best of the public adjuster's ability" have been deleted.

In paragraph (5)(d), the words "if available" have been added after "policy number."

B. 69B-220.201

Paragraphs numbered (3)(g), (h), (j), (n), (q), and (r) have been deleted.

When adopted, subsection (4) will read: Public Adjusters, Other Ethical Constraints. In addition to the ethical requirements found in Part VI of Chapter 626,

F.S., and those set out above in subsection (3) for all adjusters, the following ethical considerations are specific to public adjusters and shall be binding upon public adjusters.

Paragraph (5)(d) has been deleted.

THE FULL TEXT OF THE PROPOSED RULE 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 payment for adjusting services performed.

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

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

(c) (d) "Licensed Public adjuster" means those and "public adjuster" refer to and include only persons currently licensed and appointed in good standing by the Department as a public adjusters, whether the licensure is resident licensure under Section 626.865, F.S., or nonresident licensure under Section 626.8732, F.S. The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.

(d) "Public adjuster apprentice" means those persons currently licensed and appointed in good standing by the Department as a public adjuster apprentice.

(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 a resident or nonresident public adjusters or public adjuster apprentice.

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

(g) "Adjusting services" means the preparation, completion or filing of an insurance claim with the respective insurer for compensation or remuneration on behalf of an insured or third party claimant.

(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 a public adjusters or as a public adjuster apprentice under the direct supervision and guidance of the supervisory public adjuster. 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, or otherwise, and thereby ~~therein~~ seeking, causing, urging, advising, or attempting-

~~to~~ to have any person enter into any agreement engaging the services of a

public adjuster for adjusting services, in any capacity; or

~~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) Answering Telephone Calls. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not considered solicitation or unlicensed adjusting and is not violative of this rule so long as the unlicensed persons engage in purely administrative matters and do not in judgment or interpretation, analyze or explain insurance, an with regard to any insurance contract, or a public adjuster contract, or cause, urge, advise or attempt to enter into a contract for adjusting services 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), F.S., as well as any other section within Parts I, VI and IX of Chapter 626, F.S., the Insurance Code that relates to advertising.

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

(b) (c) Advertisements to Include Show Licensee's Full Name and License Number. Any advertisement, in whatever format, by a public adjuster shall include 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 firm containing multiple licensed public adjusters is causing the advertisement to appear, ~~the firm shall designate one of said licensees whose full name and license number of the designated primary adjuster~~ 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 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 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.~~

(c) (d) Responsibility of Advertising Licensee. The licensed adjuster whose name appears in the advertisement is responsible for personally reviewing the content of the advertisement and assuring that the advertisement complies with Rules 69B-220.051 and 69B-220.201, F.A.C., the rules of the Department and Parts I, VI and IX of Chapter 626, F.S., the Insurance Code and is in all regards fair, accurate, and in no way untruthful, deceptive or misleading.

(d) Use of a Spokesperson. Nothing in this rule shall prohibit the use of an

unlicensed spokesperson as part of a written or electronic advertisement. However, such advertisements shall disclose that the party is a paid or unpaid spokesperson, is not licensed and is endorsing the services of a licensed public adjuster.

~~(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. Public adjusters shall ensure that all contracts for their adjusting services contain the terms required by Sections 626.854 and 626.8796, F.S., and the following information 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:~~

~~(a) 1. The insured's full name and street address phone number, if available. †~~

~~(b) 2. The Address of loss if different from the insured's current street address.~~

†

~~(c) 3. A brief description of the loss.†~~

~~(d) 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. All methods of The full compensation and all fees or other amounts required to be paid by the insured 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.~~

~~(f) 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 contract and any addendum thereto, signed by all parties, shall be provided to the insured or claimant at the time he or she signs the contract.~~

~~(7) (8) A 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. No public adjuster may settle a claim unless the terms and conditions of settlement are approved by the insured.~~

Rulemaking 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), 626.878, 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 and Public Adjuster Apprentices.

(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, F.S., regardless of ~~whether resident or nonresident, and whether permanent, temporary, apprentice, 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) No change.

(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) through (d) No change.

(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 compensation or remuneration to himself or herself except that to which he or she is legally entitled.

(f) No change.

~~(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 Insurance Code or Department rule or order.~~

~~(h) An adjuster 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 processes.~~

(g) ~~(i)~~ No change.

~~(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.~~

(h) ~~(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.

(i) ~~(l)~~ No change.

(j) ~~(m)~~ An adjuster shall not knowingly fail to advise a claimant of the claimant's claim options rights in accordance with the terms and conditions of the insurance

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.

~~(n) A company 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 or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.~~

~~(k) (e)~~ No change.

~~(l) (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 ethical requirements found in Part VI of Chapter 626, F.S., and those considerations set out above in subsection (3) for all 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.~~

~~(b) The public adjuster shall notify the insured or 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 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.~~

~~(a) (d)~~ A public adjuster shall not prevent, or attempt to dissuade or prevent, an

insured or 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.~~

~~(b) (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 perform repair work.~~

~~(c) (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. and Sections 626.854 and 626.8796, F.S.~~

(d) No public adjuster who represents a claimant with regard to a particular claim shall enter into any contract, agreement or other arrangement with any person, which would allow the public adjuster to accept an amount that would exceed the limitation of the public adjuster's compensation imposed by Section 626.854(11), F.S.

(e) 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.

~~(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.~~

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

(g) A public adjuster shall respond with specific information to a written or electronic request for claims status from a claimant or insured or their designated representative within 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, 626.852(2), 626.854, 626.8541, 626.859, 626.864, ~~626.865(2)~~, 626.8651, 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, _____ .