

# THE INSURANCE ADJUSTER'S ESSENTIAL GUIDE FOR HANDLING TEXAS CLAIMS

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1 **INTRODUCTION.** Adjusting insurance claims is an inherently stressful profession. The job requires daily encounters with claimants who themselves are usually stressed due to some loss or injury, encounters with plaintiff's attorneys seeking a payday, encounters with the customary negative attitudes and bias against insurance companies, and the daily encounters with supervisors and insurance company management about how a claim is being handled or what was paid to settle a claim. While adjusters are seen as bankers and welfare workers by claimants, they are seen as bank vault guards by insurance company management who many times encourage a frugal approach to claims resolution. And all the while there is the added pressure that actions taken by an adjuster during the claims process may subject the adjuster and company to a subsequent lawsuit or even personal liability. Texas law recognizes that an insurance adjuster can be held personally liable for violations of the Texas Insurance Code, the Texas Deceptive Trade Practices Act, and common law fraud.<sup>1</sup> So not only is there pressure to get good claim results for the company, but making a serious mistake can possibly subject the adjuster to personal liability. Navigating these waters can be tricky, with little ultimate reward aside from knowing that a good job was done. The purpose of this publication is to provide insurance adjusters with an easy to understand guide on the basic requirements and prohibitions involved in handling claims in the State of Texas. Obtaining a working knowledge of these rules is perhaps the single best thing an adjuster can do to avoid, or at least minimize, claims against the adjuster, complaints filed with the Texas Department of Insurance and civil lawsuits alleging extra-contractual claims. This Guide explores the ethical and statutory duties for adjusters under Texas law.

## 2 **WHO ARE TEXAS INSURANCE ADJUSTERS?**

- A. Insurance adjusters are persons licensed by the Texas Department of Insurance to act as an insurance adjuster. A person may not act as, or represent that the person is, an adjuster in the state of Texas unless the person holds a license with the Texas Department of Insurance.<sup>2</sup>
- B. But a nonresident adjuster is not required to hold a license to: (1) adjust a single loss in this state; (2) adjust losses arising out of a catastrophe common to all those losses; or (3) act as a temporary substitute for a

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<sup>1</sup> See, e.g., *Liberty Mutual Inc. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998); *Gasch v. Hartford Accident & Indemnity Co.*, 491 F.3d 278, 282 (5th Cir.2007); *Blanchard v. State Farm Lloyds*, 206 F.Supp.2d 840, 845 (S.D.Tex.2001) (citing *Griggs v. State Farm Lloyds*, 181 F.3d 694, 700 (5th Cir.1999)).

<sup>2</sup> TEX. INS. CODE ANN. § 4101.051(formerly TEX. INS. CODE ANN. Art 21.07-4 § 2(a).

licensed adjuster.<sup>3</sup>

### 3 SOURCES OF ETHICAL STANDARDS

A. **INSURANCE ADJUSTERS.** Ethics is defined by the Merriam-Webster Online Dictionary as a set of moral principles or values; a theory or system of moral values; the principles of conduct governing an individual or a group.<sup>4</sup> In the insurance claims context this essentially means the “dos” and “don’ts” when handling a claim. In Texas, there is no set of rules titled “ethics” for insurance adjusters. But insurers are heavily regulated by statute and administrative rules, including the claims handling process. Insurers are also bound by their own contract or policy of insurance issued to the insured. Accordingly, the principles of conduct for an insurance adjuster are primarily governed by the contract of insurance with the policyholder, the law as expressed in the Texas Insurance Code and the rules as established by the Texas Department of Insurance. Required conduct for an insurer may also be prescribed by common law through the courts. Another source of ethics that an adjuster needs to be aware of in conducting their work is their employer’s own ethics policy or statement which are common at insurance companies. This can be used by claimants to establish a standard of care which should be followed by that insurer. Therefore, ethical or required conduct by an insurance adjuster comes from the following sources which are used as the organizing framework for this Guide:

- 1) Insurance policy or contract;
- 2) Common law as developed by Texas courts, primarily in three areas:
  - a. Conflict of Interest
  - b. Breach of the Duty of Good Faith and Fair Dealing
  - c. Responding to policy limits demands, commonly referred to in Texas as the *Stowers* duty;
- 3) Statutory law, primarily the Texas Insurance Code;
- 4) Rules from the Texas Department of Insurance;
- 5) A company’s own ethics statement/policy.

B. **PUBLIC ADJUSTERS,** on the other hand, are not subject to the same heavy regulation or contract, and therefore, a set of ethical rules was required and established. Public adjusters are persons who act on behalf of an insured in negotiating for or effecting the settlement of a claim for loss or damage under any policy of insurance covering real or personal property; or a person who advertises, solicits business, or holds themselves out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.<sup>5</sup> The Texas Department of Insurance has established a non-exhaustive list of legal and ethical standards that are of

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<sup>3</sup> TEX. INS. CODE ANN. § 4101.002(b) (formerly TEX. INS. CODE ANN. Art 21.07-4 § 1(b)).

<sup>4</sup> See [www.webster.com](http://www.webster.com).

<sup>5</sup> TEX. INS. CODE ANN. § 4102.001(3).