

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).

prime importance for the professional conduct of public insurance adjusters.<sup>6</sup> The rules require licensed public adjusters to comply with the following requirements:

- 1) Licensees shall conduct business with their clients, insurance companies, and the public, in a spirit of fairness and justice;
- 2) Licensees shall not employ any improper solicitation which would violate Insurance Code Article 21.07-5 or this subchapter;
- 3) Licensees shall not make a misrepresentation, in violation of Insurance Code Article 21.07-5, §23(m)(1), to an insured or to an insurance company in the conduct of their actions as a public insurance adjuster.
- 4) Licensees shall charge only commissions and fees which are in compliance with the requirements set forth in Insurance Code Article 21.07-5 and this subchapter;
- 5) Licensees shall complete continuing education as required by Insurance Code Article 21.07-5 and this subchapter.
- 6) Licensees shall have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise;
- 7) Licensees shall not engage in the unauthorized practice of law;
- 8) Licensees shall avoid situations of conflict of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly, in the reconstruction, repair or restoration of damaged property that is the subject of a claim adjusted by the licensee, except as allowed in Insurance Code Article 21.07-5 and this subchapter;
- 9) Licensees shall not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code Article 21.07-5, this subchapter or other provisions of the Insurance Code;
- 10) Licensees shall use only contracts that comply with Insurance Code Article 21.07-5 and this subchapter.<sup>7</sup>

#### 4 THE INSURANCE POLICY

- A. **The Consumer Bill of Rights for personal lines policies.** In addition to specific contract provisions regarding the coverages provided in the policy, the rules promulgated by Texas Department of Insurance require that a

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<sup>6</sup> 28 TAC § 19.713(a).

<sup>7</sup> 28 TAC § 19.713(b).