

prime importance for the professional conduct of public insurance adjusters.⁶ 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.⁷

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

⁶ 28 TAC § 19.713(a).

⁷ 28 TAC § 19.713(b).

consumer bill of rights must accompany each personal lines policy.⁸ A separate bill of rights was created for auto and dwelling policies. Since your insureds will see this when they look at their policies, it would be advisable to be familiar with what the Texas Department of Insurance is telling consumers in Texas about their rights with respect to the claims process. Please become familiar with the Consumer Bill of Rights, such as the one for Homeowners, Dwelling, and Renters Insurance, which is included as Appendix A of this Guide. Included in the bill of rights are explanations of many issues related to the insurer/insured relationship, including claims.

- 1) The Consumer Bill of Rights for a homeowners and dwelling policy provides:

What you should know when you file a claim

27. FAIR TREATMENT. You have the right to be treated fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI at <http://www.tdi.state.tx.us>. You can complete a complaint form on-line via the Internet or fax it to TDI at 512-475-1771.

28. SETTLEMENT OFFER . You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company. You have the right to have your home repaired by the repair person of your choice.

29. EXPLANATION OF CLAIM DENIAL. Your insurance company must tell you in writing why your claim or part of your claim was denied.

30. TIME FRAMES FOR CLAIM PROCESSING AND PAYMENT. When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

Generally, within 15 calendar days, your insurance company must acknowledge receipt of your claim and request any additional information reasonably related to your claim. Within 15 business days (30 days if the company reasonably suspects arson) after receipt of all requested information, the company must approve or deny your claim in writing. The law allows the insurance company to extend this deadline up to 45 days if it notifies you that more time is needed and tells you why.

⁸ 28 TAC § 5.9907.

After notifying you that your claim is approved, your insurance company must pay the claim within 5 business days.

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

31. RELEASE OF CLAIM FUNDS. Often an insurance company will make a claim check payable to you and your mortgage company or other lender and will send it to the lender. In that case, the lender must notify you within 10 days of receipt of the check and tell you what you must do to get the funds released to you.

Once you request the funds from the lender, within 10 days the lender must:

- release the money to you; or
- tell you in specific detail what you must do to get the money released.

If the lender does not provide the notices mentioned above or pay the money to you after all requirements have been met, the lender must pay you interest on the money at 10% per year from the time the payment or the notices were due.

32. NOTICE OF LIABILITY CLAIM SETTLEMENT. Your insurance company must notify you if it intends to pay a liability claim against your policy. The company must notify you in writing of an initial offer to compromise or settle a claim against you no later than the 10th day after the date the offer is made. The company must notify you in writing of any settlement of a claim against you no later than the 30th day after the date of the settlement.

33. INFORMATION NOT REQUIRED FOR CLAIM PROCESSING. You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.⁹

- 2) The Consumer Bill of rights for Personal Automobile Insurance provides as follows with respect to claims:

What you should know when you file a claim

23. FAIR TREATMENT. You have the right to be treated

⁹ *Id.*

fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI website at <http://www.tdi.state.tx.us> . You can complete a complaint form on-line via the Internet or fax it to TDI at 512/475-1771.

24. SETTLEMENT OFFER. You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company.

25. EXPLANATION OF CLAIM DENIAL. Your insurance company must tell you in writing why your claim or part of your claim was denied.

26. TIME FRAMES FOR CLAIM PROCESSING AND PAYMENT. When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

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After notifying you that your claim is approved, your insurance company must pay the claim within 5 business days .

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

27. CHOICE OF REPAIR SHOP AND REPLACEMENT PARTS. You have the right to choose the repair shop and replacement parts for your vehicle. An insurance company may not specify the brand, type, kind, age, vendor, supplier, or condition of parts or products used to repair your automobile. The insurance company must provide you notice of the above requirements as follows:

- claims submitted by telephone - written notice within 3 business days or immediate verbal notice, followed by written notice within 15 days;

- claims submitted in person - immediate written notice at the time you present your vehicle to an insurer or an insurance adjuster or other person in connection with a

claim for damage repair;

- claims submitted in writing - written notice must be provided within 3 business days of the insurance company's receipt of the notice.

28. DEDUCTIBLE RECOVERY. If another person is liable for damage to your auto and you filed a claim and paid a deductible on your own policy, your insurance company must make a reasonable and diligent effort to recover the deductible from that person within twelve months from the date your claim is paid. If not, your company must:

- authorize you, at least 90 days prior to the expiration of the statute of limitations, to pursue your own collection efforts, or

- refund your deductible.

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30. INFORMATION NOT REQUIRED FOR CLAIM PROCESSING.

You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.¹⁰

B. DUTIES SET OUT IN THE INSURANCE CONTRACT. Many of the duties relating to the claims process are also part of the insurance contract itself. Please refer to Appendix B of this Guide for provisions on "Duties after Loss" from standard personal lines policies regarding loss and claim adjustment.

5 COMMON LAW CONFLICT OF INTEREST. While conflict of interest is more commonly thought of in the context of an attorney-client or a fiduciary relationship, there are situations where Texas courts have applied the concept to an insurance company in the claims handling context. First, it has been applied in the context of a carrier's duty to defend an insured against third-party claims when the carrier issues a reservation of rights. This will be more closely examined later in this publication. Second, it has been applied in the context of an uninsured motorist claim where the carrier seeks to defend the uninsured motorist in direct opposition to the claim being advanced by the carrier's insured. This conflict has been referred

¹⁰ *Id.*