

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 handling 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 encourage a miserly 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. 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, complaints filed with the Texas Department of Insurance or civil lawsuits alleging extra-contractual claims.

2 **WHO ARE TEXAS INSURANCE ADJUSTERS?**

- A. This means a person 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.¹
- 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 licensed adjuster.²

3 **SOURCES OF ETHICAL STANDARDS**

- A. 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.³ 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 and the claims handling

¹ See TEX. INS. CODE ANN. Art 21.07-4 § 2(a)(effective April 1, 2005 codified as TEX. INS. CODE ANN. § 4101.051.

² See TEX. INS. CODE ANN. Art 21.07-4 § 1(b) (effective April 1, 2005 codified as TEX. INS. CODE ANN. § 4101.002(b).

³ See www.webster.com.

process are heavily regulated by statute and administrative rules. Insurers are also bound by their 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. On an infrequent basis, ethical conduct for an insurer may also be proscribed by common law through the courts. Therefore, ethical conduct for an insurance adjuster comes from multiple sources: 1) the insurance contract; 2) common law as developed by Texas courts; 3) statutory law, primarily the Texas Insurance Code; and 4) rules from the Texas Department of Insurance.

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 licensed persons who act on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property or persons.⁴ The Texas Department of Insurance has established a non-exhaustive list of legal and ethical standards that are of prime importance for the professional conduct of public insurance adjusters.⁵ 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

⁴ TEX. INS. CODE ANN. Art. 21.07-5 § 1 (Vernon 2003).

⁵ 28 TAC § 19.713(a).

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.⁶

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, by order of the Texas Commissioner of Insurance, a consumer bill of rights must accompany each personal lines policy.⁷ 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 a good idea to become familiar with what the Texas Department of Insurance is telling consumers in Texas what their rights are with respect to the claims process. Please become familiar with the Homeowners Bill of Rights, which is included herein as Appendix A. Included in the bill of rights are explanations of many issues related to the insurer/insured relationship, including claims.

- 1) With respect to the claims process, the Consumer Bill of Rights in a homeowners and dwelling policy provides:

Claims

16. 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 TDI 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 Web or fax it to TDI at 512-475-1771.
17. 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.
18. The insurance company must tell you in writing why your claim or part of your claim was denied.
19. 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.
20. 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

⁶ 28 TAC § 19.713(b).

⁷ Texas Department of Insurance, Commissioner's Order Number 02-0507 (May 15, 2002). In October of 2004, an amended bill of rights was proposed as a TDI regulation, but to date it has not been approved by the Commission.