



# The Florida Senate

*Issue Brief 2011-203*

*October 2010*

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Committee on Banking and Insurance

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## PUBLIC ADJUSTERS

### Statement of the Issue

In 2010, the Legislature passed CS/CS/SB 2044, which would have imposed wide-ranging changes to the regulation of property insurance. The bill included several regulatory changes to the way in which public adjusters would operate. These changes were supported by the National Association of Public Adjusters, the Florida Association of Public Adjusters and the insurance industry, and included:

- Prohibiting public adjusters from making certain statements in advertisements or solicitations and mandating that certain disclosures be included in contracts.
- Instituting a 3 year claims filing deadline for new, supplemental, or reopened claims.
- Capping fees in supplemental or reopened claims.
- Requiring persons acting on behalf of an insurer to provide at least 48 hours' notice to an insured or claimant, public adjuster, or legal representative prior to scheduling a meeting with the claimant or an onsite inspection of the insured property.
- Prohibiting an insurer from excluding the public adjuster from in-person meetings with the insured. Prohibiting a public adjuster from restricting or preventing an insurer, or other person acting on behalf of the insurer, from having a reasonable access to any insured or to the insured property.
- Requiring public adjuster apprentices to complete additional hours of continuing education.

The Governor vetoed CS/CS/SB 2044, leaving the current regulation of public adjusters unchanged. As a result, concerns over the current practices of public adjusters and the effect on consumers and the insurance industry, remains unaddressed. This issue brief will explore issues relating to the regulation of public adjusters in Florida and other States.

### Discussion

A public adjuster, as defined in section 626.854, F.S., is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party. Public adjusters are employed exclusively by policyholders who have sustained an insured loss. Public adjusters inspect the loss site, analyze the damages, assemble claim support data, review the insured's coverage, determine current replacement costs, and confer with the insurer's representatives to adjust the claim. The statute provides that a public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim. Public adjusters are prohibited from charging more than 20 percent of the insurance claims payment on non-hurricane claims and 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of the emergency. These fee caps apply only to residential property insurance policies and condominium association policies. There is no fee cap on reopened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract. Insureds or claimants have five business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor. Insureds or claimants have three business days to cancel a contract as to claims involving non-emergencies. Public adjuster contracts must be in writing and must display a warning that insurance fraud is a third degree felony.

### ***License Regulations in Florida***

Public adjusters are licensed by the Department of Financial Services (DFS), and must meet the following requirements:

- Be a natural person at least 18 years of age.
- Be a resident of the state of Florida.
- Be a United States citizen or legal alien who possesses a work authorization from the United States Immigration and Naturalization Services.
- Be fingerprinted at one of the Department's fingerprint sites.
- File a \$50,000 surety bond.
- First time licensees for a Florida public adjuster license must provide a sworn affidavit verifying the public adjuster apprentice employment requirements have been satisfied.

Requirements for a public adjuster apprentice are as follows:

- Complete a minimum of 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all lines public adjuster in order to qualify for licensure as a property and casualty public adjuster, all lines public adjuster or motor vehicle public adjuster.
- Provide the name and license number of a supervising all lines public adjuster who shall be responsible and accountable for the acts of the public adjuster apprentice which are related to transacting business as a public adjuster apprentice.
- Complete the Florida approved Accredited Claims Adjuster designation.
- Pass the new public adjuster all lines examination.
- Be a natural person at least 18 years of age.
- Be a resident of the state of Florida.
- Be a United States citizen or legal alien who possesses a work authorization from the United States Immigration and Naturalization Services.
- Be fingerprinted at one of the Department's fingerprint sites.
- File a \$50,000 surety bond.

As of September, 2010, Florida had 2511 licensed public adjusters, down from 2914 in June, 2009.

### **2010 Legislation Related to Public Adjusters**

#### ***Advertising***

Deceptive advertising practices have been a concern for consumers, the insurance industry and the public adjuster associations. The Office of the Florida Insurance Consumer Advocate, which reports directly to the Chief Financial Officer, has received complaints from consumers that some public adjusters' advertisements are misleading and have been printed on copied CFO letterhead along with the State Seal. All groups indicated that current law is not stringent enough and supported the 2010 legislation which would have:

- Prohibited any statement or representation that invites a policyholder to submit a claim when the policyholder does not have covered damage to the insured property.
- Prohibited any statement or representation that invites a policyholder to submit a claim by offering monetary or other valuable inducement.
- Prohibited any statement or representation that invites a policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.
- Prohibited any statement or representation, or use of a logo or shield, that would imply or could be mistakenly construed that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.
- Required the following disclaimer to be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by any public adjuster: "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR

AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT.”

### *Statute of Limitations*

In Florida, the statute of limitations to recover a claim applicable to a written contract is five years. This limitation applies to all types of written contract claims, including a claim by a policyholder against an insurance company. In most instances that involve insurance contracts, the date on which the five years begins to run is the date of loss, which, for catastrophic claims, would be the date of the catastrophe.<sup>1</sup>

The 2010 legislation would have instituted a three year claims filing deadline for new, supplemental, or reopened claims.

### *Fee Caps<sup>2</sup>*

Currently, Florida statutes provide that a public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim. Public adjusters are prohibited from charging more than 20 percent of the claim payment on non-hurricane claims; for hurricane claims made during the first year after the declaration of an emergency the fee is limited to 10 percent of the claim payment. These fee caps apply only to residential property insurance policies and condominium association policies.

There is no fee cap on the percentage that a public adjuster can charge on reopened or supplemental hurricane claims; however, the fee percentage cannot be applied to any of the payments made by the insurer prior to the time of the public adjuster contract. The 2010 legislation would have limited compensation for a reopened or supplemental claim not to exceed 20 percent of the payment.

### *Solicitation*

Section 626.854(5) and (6), F.S., provides that a public adjuster must wait at least 48 hours after the occurrence of an event that may be the subject of a claim before: directly or indirectly through any other person or entity initiating contact with a policyholder; engaging in face-to-face or telephonic solicitation; or entering into a contract with any insured or claimant under an insurance policy. This prohibition does not apply if the contact is initiated by the insured or claimant. Public adjusters are prohibited from soliciting an insured except on Monday through Saturday and only between the hours of 8 a.m. and 8 p.m.<sup>3</sup>

The Florida Association of Public Insurance Adjusters, had filed a lawsuit in Leon County Circuit Court to challenge the constitutionality of the 48-hour solicitation law<sup>4</sup>. On May 7, 2010, the court ruled that the 48-hour solicitation law was constitutional and ruled against the plaintiff. This decision is currently under appeal at the First District Court of Appeal.<sup>5</sup>

### *Apprentice Training*

As of August 2010, there were 345 public adjuster apprentices. As indicated previously, public adjuster apprentices must complete a minimum of 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all lines public adjuster in order to qualify for licensure as a property and casualty public adjuster, all lines public adjuster or motor vehicle public adjuster. The 2010 legislation would have increased training for apprentices to complete a minimum of 8 hours of continuing education specific to the practice of a public adjuster, 2 hours of which must relate to ethics, in order to qualify for licensure as a public adjuster. The continuing education must be in subjects designed to inform the licensee regarding the current insurance laws of Florida for the purpose of

<sup>1</sup> Certain legal exceptions exist that may provide for an extension of the statute of limitations.

<sup>2</sup> Louisiana, Mississippi, New York, Tennessee and Texas all have fee caps ranging from 10-25%. Delaware has a cap of 2.5% of the first \$25,000 and 12% in excess of \$25,000.

<sup>3</sup> Several other states have similar laws.

<sup>4</sup> Case number 37 209 CA 003926 Fla. 2nd Cir., filed on October 6, 2009.

<sup>5</sup> Case number 1D10-2459 First District Court of Appeal.

enabling him/her to engage in business as an insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the insurance contract and the laws of Florida.

### ***Enforcement***

The Bureau of Investigation, Division of Agent and Agency Services, under DFS, is responsible for investigating complaints relating to public adjusters.

In 2009 there were 275 complaints received by DFS. The following chart is a breakdown as to where the complaints originated:

Adjusting Firms	34
Agent and Agency Investigation	56
Attorney	9
Consumer Assistance/Private Citizen	58
Fraud	16
Industry Trade Association	1
Insurance Company	56
Licensee	35
Other	10
Total	275

Of those 275 complaints, 166 cases were opened. As of September 2010, 140 of those cases have been closed. Of the 140 closed cases, 57% resulted in disciplinary action being taken against the public adjuster. The following chart provides a breakdown of the actions taken:

Type of Action	Number of Actions Taken
Letter of Guidance	52
License Revoked	9
License Suspended	2
Probation and Fine	7
Cease and Desist	3
Fine Only	7
Closed Without Further Action	60

According to the Florida Division of Insurance Fraud, there were 248 public adjuster referrals received and 230 of those cases were opened for further investigation. The Division continues to work 86 of the 230 cases. Eight cases resulted in the public adjuster being arrested.

Representatives from the insurance industry and the public adjusters urge DFS to exercise greater oversight and enforcement against fraudulent claims. The Florida Association of Public Adjusters has even recommended an increase in their own licensing fees, earmarked for enforcement and prosecution against unscrupulous public adjusters. The Florida Division of Insurance Fraud believes that greater penalties for public adjusters that are convicted of a crime, would provide a greater deterrent to fraud in this area.