Certified Adjuster (CA) Pre-class Assignment – Law and Ethics

Adjuster: 5-20 License (Resident) or 75-20 (Non-Res)

APPLICATION QUALIFICATIONS:
• Complete an online application for License and submit appropriate fees. [Apply for license]
• 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. [Fingerprint locations and additional information]
• If licensed in another state within three years, provide a Letter of Clearance.
• If an individual holds a general lines agent license and wish to add or convert over to an adjuster, you **must** apply online and submit the fees of $55. (No examination is required)
• Prior Criminal History Requirements [Click Here]

STATE EXAMINATION QUALIFICATIONS
• There are **no** required pre-licensing courses

Adjuster CE Requirement:

There are (24) hours of continuing education required. (2-ethics, 10-laws; 12-optional) every two years.

Ethics in the Insurance Industry: Adjusters

*Ethics* describes the system of moral values we utilize to differentiate between appropriate and inappropriate behaviors in any given situation.

When we make decisions that affect other individuals in our immediate environment, our sense of *ethics* nearly always comes into play: Will my decision ultimately have an impact on someone else? Will my actions negatively influence others? What is my moral duty or obligation in this situation? What would be the *right thing* to do?
Our sense of ethics describes more than just what we think is "right" or "wrong." Ethics encompasses a entire platform of social norms and standards created by society, that, in turn, attempt to prescribe what an individual *ought to do* in a situation.

If we are held to a *high ethical standard*, we are expected to behave in a manner that takes into consideration the rights, obligations and feelings of other individuals or society as a whole; if we are said to maintain *poor ethical standards*, it reflects our inability to take into consideration the negative repercussions of our actions on other people, or society in general.

Our personal sense of ethics reflects our level of adherence to societal approved behaviors. Most people are ethical, and their behaviors and decisions generally take into account a sense of:

- honesty
- integrity
- fairness
- loyalty
- compassion
- the rights and feelings of others

Others, however, may behave in ways that seem to emphasize a sense of self-interest to the detriment of others. They may display behaviors that highlight an ignorance to, or complete disregard for, societally accepted norms. We often label these types of behaviors as "unethical".

Some types of behavior we generally regard as *unethical* might include:

- dishonesty
- disloyalty
- a lack of concern for the feelings of others
- a disinterest in the consequences of one's actions
- selfishness or self-serving behaviors
- lying

In this chapter, we will briefly examine some basic guidelines developed by the State of Florida to encourage and enforce ethical behaviors amongst insurance adjusters while performing under the scope of their employment. First we will examine the Insurance Adjuster Code of Ethics, and then we will examine the Florida Unfair Insurance Trade Practices Act.
Ethics in Insurance Adjusting

Insurance adjusters have a *fiduciary duty* to protect the financial interests of their employer.

A *fiduciary duty* is a legal relationship of confidence and trust between two parties, and as a *fiduciary agent* for the insurance company, the insurance adjuster promises to perform their job with honesty and in good faith in regards to all financial matters of the insurer.

Conversely, an insurance adjuster must also act responsibly in evaluating the financial damages realized by a claimant. The adjuster must determine whether specified damages are covered by the insurance policy, and if so, exactly how much is due the claimant as per the terms of the insurance contract.

In an ideal world, claimants and insurers would always agree on a proper amount of indemnification due the policyholder for damages; in truth, however, this is rarely the case.

Naturally, an insurance company seeks to *minimize* their insurance claim payouts in order to increase profits, while individual claimants simultaneously try to *maximize* their claim settlements. An insurance adjuster operates in the middle, carefully evaluating the claim in order to reach a fair and equitable settlement for both parties.

As you might suspect, an insurance adjuster often feels pressure from each side to tilt a settlement in the favor of one party or another. The claimant usually wants more money from the adjuster, while the insurer wants to pay out as little as possible as per terms of the insurance contract.

**This brings up two issues for the adjuster:**

First, consider the pressure from the adjuster's employer to minimize claim payouts. As an employee, wouldn't you want to please your bosses and develop a track record of exemplary performance on the job? Don't you enjoy the stable and lucrative career of insurance adjusting? As such, an adjuster may feel pressured to satisfy his employer's desires before those of the claimant. He wants to keep his job, he enjoys his career, and he enjoys the financial stability. Why risk all three by upsetting your employer?
Secondly, consider the pressure from the claimant. The claimant likely has just gone through an extremely traumatic event, and may desperately need indemnification for a wide range of completely unexpected costs. Whether to acquire a larger settlement or simply because of their fragile emotional state, claimants often overestimate their financial damages.

The claimant knows you, as an adjuster, makes the ultimate determination of the insurance settlement. As such, a claimant may try to sway an adjuster to tip the scales in favor of the claimant through a variety of inducements ranging from bribes to kickbacks.

To make things even more difficult, consider that many insurance adjusters are paid as a percentage or proportion of the settlement. The larger the settlement figure, the more the adjuster earns on the claim. Wouldn't an adjuster want to maximize their own income when given the opportunity?

It is easy to see how an insurance adjuster faces a multitude of employment related ethical dilemmas every day.

With so many people depending on the outcome of their decisions, an insurance adjuster wields an enormous amount of power, especially when large sums of money come into play. Adding or subtracting a few specified damages from an insurance settlement can cause wide fluctuations in a settlement figure, often by tens or even hundreds of thousands of dollars. Which in turn, can cause huge fluctuations in an adjuster's income.

Insurance adjusters hoping to maintain a long and lucrative career in insurance adjusting must stick to the basic tenet of adjusting: determine a fair and equitable settlement figure that abides by the terms stated in the insurance contract. They must do this in each and every case, avoiding any action or practice that may appear ethically questionable in nature.

**Common Ethical situations**

While every insurance adjuster will face a multitude of opportunities to go ethically astray over the course of his / her career, here's a few common situations every adjuster will likely experience at some point in their career:

Claimants know that you, as an insurance adjuster, hold the key to the final settlement figure in an insurance claim.
Claimant inducements

1. Claimant inducements

Claimants may offer a wide variety of inducements in order to get you to pad that settlement figure as much as possible in their favor. An inducement is an action, item, or promise made to someone in order to motivate that individual towards certain desired behaviors.

This includes, but is not limited to, bribery, kickbacks, favors, gifts, trades and even sexual relationships. Adjusters must never accept any kind of offer from a claimant; not only is it unethical, but an adjuster can easily lose his / her license, get sued in court, and perhaps even serve time in jail.

Kickbacks

2. Contractor kickbacks

Contractors may approach you as an adjuster in an effort to steer business in their direction, usually offering some kind of kickback or commission on sales. Adjusters must never accept any kind of side business deals related to their adjusting work.

Padding

3. Settlement padding

Adjusters often get a paid a straight commission on settlements, or earn their income via a fee schedule that increases their fee according to increases in the final settlement figure. Not only is it a crime, but padded settlements will be discovered eventually. The short-term benefits certainly do not outweigh the long-term effects of padding settlements.

Unruly Claimants

4. Unruly Claimants
Claimants frequently find themselves in an extremely traumatic emotional state, and often find themselves desperate for money. They can be intrusive, needy, demanding, rude and even insulting. Adjusters may begin to resent a claimant's attitude and behavior so much that they may begin to feel it's time for a little "payback" for their behavior. An adjuster might ignore their calls, purposely minimize a settlement figure, withhold or stall their settlement check, or conduct themselves in an unprofessional manner with a claimant.

Adjusters must remember that insurance is a business, and there is no place for their emotions in a claim adjustment case. The best solution is to simply do your job, do it correctly, and complete the claimant's case as soon as possible. Strength of moral character and ethical behavior is essential; succumbing to the power of your position is the quickest way to lose that position.

**Misappropriation**

5. *Salvage Misappropriation*

Adjusters must never misappropriate salvaged property for their own use or the use of others.

**Common Ethical situations**

6. *Denying, misrepresenting or withholding coverage*

An adjusters job is to fully explain the rights and coverages of the insurance policy to the insured party when applicable. Adjusters must never withhold or misinform a claimant regarding their rights in order to save money for an insurer. If an insurer tries to cut costs through improper settling practices, the best option is to find a new employer lest you ruin your reputation in the industry.

These are just some of the situations an adjuster may encounter which may challenge the adjuster's ethical principles. Every day may bring a new enticement or demand, and adjusters must learn to deal with possible lapses in ethical behavior by always remaining true to the calling of an adjuster; investigate, evaluate, and provide a fair and equitable settlement to every claim. No more, no less.
State of Florida-Insurance Adjusting Code of Ethics (per Florida Statute)

To further encourage the application of ethical behaviors to the insurance adjustment industry, the State of Florida drafted a Code of Ethics to act as a set of guidelines for licensed insurance adjusters. The Code of Ethics is found in the Florida Administrative Code 4-220.201. In this section, we'll examine some of the provisions put forth by the Code of Ethics.

State of Florida-Insurance Adjusting Code of Ethics

1. An adjuster shall disclose all financial interests in any direct or indirect aspect of an adjusting transaction.

Adjusters should not attempt to direct any claimants in need of repairs, medical services or replacement property to any businesses with which the adjuster has a direct or indirect relationship, or which the adjuster may have an undisclosed financial interest.

For example, an adjuster cannot refer a claimant to a family member's auto repair business without first disclosing his relationship with that business to the claimant. Adjusters also are prohibited from referring claimants to particular businesses that may have agreed to provide direct or indirect compensation to the adjuster for the referral, or for any resulting business for such referrals.

2. An adjuster shall treat all claimants equally.

An adjuster's job is adjust all claims strictly in accordance with the insurance contract. Adjusters may frequently encounter hostile or impolite claimants, and may feel a desire to "exact revenge" upon the claimant for their behavior by stalling the claim, ignoring communications with the claimant, favoring other claimant's cases, or even refusing to properly acknowledge an unruly claimant's total damages.

Adjusters must conduct themselves professionally at all times, and not provide favored treatment to any claimant, nor punish claimants for their unacceptable behaviors.

3. An adjuster shall never approach investigations, adjustments, and settlements in a manner prejudicial to the insured.

Particularly in matters of liability, an adjuster may approach a case with a predilection to "protect" the insured party and therefore the insurance company that employs the adjuster. While adjusters are required to protect the financial interests of their employer,
they cannot attempt to cut costs for the insurer by acting in a prejudicial manner toward the insured party. An adjuster's job is simply to adjust all claims strictly in accordance with the insurance contract.

4. An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.

An adjuster's job is strictly to investigate, record and evaluate a claim thoroughly. Opinions, judgments and prejudices have no place in the adjusting process, and could prove damaging to all parties involved in the event a claim reaches the courtroom.

5. An adjuster shall handle every adjustment and settlement with honesty and integrity.

An adjuster should ensure a fair adjustment or settlement to all parties without any remuneration to himself except that to which he is legally entitled.

6. An adjuster, upon undertaking the handling of a claim, shall act with dispatch and due diligence in achieving a proper disposition thereof.

Essentially, this means adjusters need to handle claims promptly and efficiently from inception to completion. While an adjuster may view each case as "just another claim", claimants are often financially stressed and psychologically distraught individuals who have just gone through a traumatic circumstance of events. Adjusters should act accordingly, and treat every case with a sense of urgency and importance for the benefit of all parties involved.

7. An adjuster shall promptly report licensed insurance representatives whose conduct violates any insurance law, rule or order.

An insurance adjuster has an ethical duty to report any malfeasance in the insurance industry to the proper authorities immediately. While violations may not affect the adjuster personally, wrongdoers damage the reputation of the insurance industry as a whole, and that affects an adjuster's work environment in the long run. Plus, it's simply the right thing to do.

8. An adjuster shall exercise extraordinary care when dealing with elderly clients, to assure that they are not disadvantaged in their claims transactions by failing memory or impaired cognitive processes.

Adjusters in the State of Florida will frequently handle the cases of elderly individuals, some of whom may not have a clear recollection of the circumstances surrounding an
insurance claim. Adjusters must use due diligence in investigating these claims to ensure the claimant receives proper indemnification.

Adjusters may want to contact family members or neighbors to aid in the investigation of damages, or perhaps just to facilitate communication. Are there damages the claimant may have missed? Does the elderly claimant need help in understanding their policy? Does the elderly claimant have any policy coverage that could help them immediately, such as additional living expense coverage that could help put them up in a hotel if their home was damaged?

9. An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney, if said adjuster has knowledge of such representation, except with the consent of the attorney. For purposes of this subsection, the term “third-party claimant” does not include the insured or the insured’s resident relatives.

A claimant has the right to representation by an attorney, and adjusters are strictly prohibited from dealing directly with a claimant in order to circumvent the advice of an attorney.

10. An adjuster is permitted to interview any witness, or prospective witness, without the consent of opposing counsel or party.

Adjusters have full authority to interview any and all witnesses during the investigation process. But adjusters shall scrupulously avoid any suggestions calculated to induce a witness to suppress or deviate from the truth, or in any degree affect their appearance or testimony at a trial or on the witness stand. Witnesses are also permitted, upon demand, a copy of any signed or recorded statements.

11. An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel to protect the claimant’s interest.

A claimant has the right to representation by an attorney, and adjusters are strictly prohibited from trying to convince a claimant otherwise, whether verbally or by inducement.

12. Adjusters shall not attempt to negotiate with, or obtain any statements from, claimants or witnesses who appear to be in shock or under severe emotional distress.
Adjusters frequently deal with claimants who have just experienced traumatic and life-altering events. Consequently, adjusters may come upon claimants under serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss.

Severe psychological stress can impair an individuals recollection of events, their ability to think rationally, and their judgment; adjusters must refrain from conducting business affairs when a claimant is in such a state. Furthermore, adjusters shall never offer a settlement when such settlement would be disadvantageous to a claimant who is in the traumatic or distressed state described above.

13. An adjuster shall not knowingly fail to advise a claimant of their claim rights in accordance with the terms and conditions of the contract and of the applicable laws of this state.

While an adjuster has thorough knowledge of insurance contracts and the coverages contained therein, members of the general public generally do not. A claimant may not understand what type of property is covered, how much medical care they are entitled to, or whether an insurance company will pay for a hotel. The insurance adjuster has a duty to inform the claimant of every right and protection afforded by their insurance contract, without attempts to deceive, distort or falsify the tenets of coverage.

14. An adjuster shall not draft, unless approved in writing in advance by the insurer, any form of release.

An adjusters job is to investigate, report and evaluate a claim. Upon determination of a settlement figure, an adjuster must seek approval from the insurer to offer a release to a claimant. Adjusters, in practice, are only permitted to only fill in the blanks of a release form approved by the insurer they represent.

15. An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster’s current expertise.

In fairness to the claimant and the insurer, an insurance adjuster must never handle a specialized case for which they are either unprepared to handle or unknowledgeable thereof. A proper settlement is highly unlikely, and could prove detrimental to the insurer or the claimant, or possibly both.
Unfair Claims Settlement Practices

Every state has enacted a series of regulations laws prohibiting unfair, discriminatory, or deceptive insurance practices. Like most states, the State of Florida has also compiled a specific list of unfair claim settlement practices under Florida Statute 626.9541. Non-adherence can result in the suspension or revocation of your adjusters license, and possibly even revocation of an insurer's license if their behavior tends to indicate that a prohibited practice is, in fact, a standard practice at an insurance company.

For example, if an unscrupulous insurer makes a habit of drawing out claims, making late payments, or allowing cases with clear liability to advance to a court of law, the State of Florida has a right to censure the insurance company for their behavior.

In this section, we're going to take a brief look at the provisions of the Unfair Claim Settlement Practices Act.

Unfair Claims Settlement Practices

1. Insurers are prohibited from settling upon the basis of policies that have been altered without notice, knowledge, or consent of the insured.

Essentially, this provision states that an insurer cannot change the provisions of a policy without first giving adequate notice to the insured party that certain changes are coming into effect. Insurers are required to give notice to policyholders of changes in policy terms.

Florida statute: 627.4133 Notice of cancellation, nonrenewal, or renewal premium.
- 10 days for cancellation due to non-payment
- 45 days for changes in personal lines or commercial residential property insurance
- 45 days for workers compensation policy changes
- 180 days for some policies that have been in effect for 5 years

2. Insurers are prohibited from making material misrepresentations in an effort to induce a less than favorable outcome for the insured.

Insurers and adjusters must, in every case, provide the claimant with full and reasonable indemnification according to the terms of the policy without attempting to distort, deceive or restrict coverage in an effort to save money for the insurer.
3. **Insurers are strictly prohibited from committing or performing the following with such regularity that it constitutes a general business practice:**

   a. failing to adopt or implement standards for the proper investigation of claims.
   b. misrepresenting important facts or insurance policy provisions relating to coverages at issue.
   c. failing to acknowledge and act promptly upon communications with respect to claims.
   d. denying claims without conducting reasonable expectations based upon available information.
   e. failure to affirm or deny full or partial claims within 30 days of receiving proof-of-loss statements.
   f. failure to provide reasonable explanations for the denial of claims.
   g. failing to promptly notify a claimant of additional information necessary for the processing of a claim.
   h. failing to clearly explain the nature of the requested information and the exact reasons why such information is necessary.

4. **Failing to pay undisputed claims within 90 days of receiving a claim.**

   Insurers must pay undisputed claims to which the insurer has agreed to coverage, unless such payments are prevented by an act of God, the impossibility of performance (i.e. massive area destruction from a hurricane), or by some nature of fraud or misrepresentation by the insured.

**Unethical behaviors**

Insurers are also expected to behave ethically at all times when issuing insurance policies to consumers. Below, we'll take a brief look at a few behaviors that state regulators deem unethical.

**Misrepresentation**

*Misrepresentation* applies to both an insurer *and* the policies an insurer offers. An insurance company *cannot* misrepresent itself to any member of the public, nor make misleading statements regarding its insurance policies.

This includes making untrue or misleading statements about their insurance products or their insurance company, omitting or failing to disclose relevant facts about an insurance
product, or purposely leading the public to false conclusions about an insurance company and its products.

For example, if an applicant asks an insurance agent for XYZ Insurance about the benefits of XYZ Insurance, the agent cannot reply "unlike our competitors, we pay out on 97% of our claims."

Such a statement causes consumers to believe that they would have a greater chance of successfully filing a claim with Insurance Company X than they would with any of Insurance Company X's competitors, when in fact Insurance Company X has no factual basis for such a statement, nor do they payout on 97% of their claims.

Insurers also cannot induce members of the public to cancel or let lapse existing policies in order to sell a new policies.

**False Information and Advertising**

False information and advertising relates to an insurance company or its representatives disseminating false information or falsely advertising facts about an insurance company or policy that is untrue, deceptive, or misleading through any media channel.

For example, XYZ Insurance cannot produce a radio or television spot for the public proclaiming that XYZ Insurance sells a $250,000 auto insurance policy for $2.99 a month, when they in fact do not offer such a policy.

Nor could XYZ Insurance advertise a $250,000 auto insurance policy for $2.99 a month even if they did offer such a policy, without mentioning the fact that the policy has a $200,000 deductible. Such a statement would be intentionally deceptive.

**Rebates and Insurance "Kickbacks"**

Insurers cannot offer rebates or "kickbacks" in the sale of insurance policies, nor can they provide kickbacks to vendors or contractors.

A kickback is any kind of compensation given to someone else, such as an insurance broker, contractor, or vendor, etc. with the intent to gain favorable treatment in the insurance transaction or interaction at hand.

Concerning the sale of insurance policies, insurance companies are not permitted to engage in providing kickbacks to insurance brokers to push consumers into certain policies they may not need or desire.
Kickbacks are also often found in corporate and government insurance contracts, where an insurer agrees to "kickback" a certain amount of money to an individual who makes the decision regarding which insurance policy to purchase. An insurance specialist for XYZ Materials, for example, may take a $5,000 kickback from ABC Insurance to ensure that XYZ Materials will only buy insurance from ABC Insurance.

Insurance companies are also not allowed to provide kickbacks to contractors or vendors to "lowball" damage estimates or repair costs.

**Defamation of Insurers**

Insurance companies cannot make false, maliciously critical or derogatory statements about other insurance companies or their representatives in order to benefit themselves.

For example, XYZ Insurance or any of its representatives cannot claim to prospective policyholders that they should not go with ABC Insurance because ABC Insurance "is going broke", "doesn't pay their claims", or "doesn't care about their policyholders."

Insurers cannot make such claims to individual persons or insurance applicants, nor can they use such statements in any form of advertising, promotion or public relations.

**Boycott, Coercion or Intimidation**

Insurance companies cannot participate in boycotts, nor coercive or intimidating trade practices in the sale of insurance.

For example, an XYZ Insurance cannot strike a deal with an auto sales dealership that will restrict a consumers access to an auto loan on the condition that the consumer purchase auto insurance from XYZ Insurance.

In a similar situation, ABC Insurance cannot strike a deal with a real estate company that allows real estate agents to only sell properties to home buyers that agree on the spot to sign an ABC Insurance contract as a condition of buying the home.

**Unfair Discrimination**
Insurance companies may not discriminate between individuals of the same class and of equal life expectancy in any premiums charged, dividends paid, or any other policy terms and conditions.

Insurance companies may also not discriminate on the basis of race, sexual preference, religion, language, or disability if not applicable to the insurance policy.

Insurance companies may charge different premiums based upon age or gender, if evidence can prove a statistical difference in the number of claims. For example, younger drivers tend to cause more accidents and drive recklessly.

**Conclusion**

A successful and prolonged career in insurance adjusting requires an individual to maintain high ethical standards and exhibit strong moral character at all times. The power of the position is immense, and the temptations to stray from our ethical principles abound.

While the State of Florida provides a rudimentary set of guidelines to keep us on track, only our own behaviors will determine our personal success in the industry. We are required to investigate, evaluate and settle cases promptly and efficiently and according to contract, without succumbing to numerous outside influences. Nothing more, nothing less.

*Adhere to these principles, and you are guaranteed a lifetime of success in insurance adjusting.*