

**2022 4-HOUR LAW AND ETHICS UPDATE  
LIFE, HEALTH, AND VARIABLE LINES (5-215)**



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# 2022 4-HOUR LAW AND ETHICS UPDATE LIFE, HEALTH, AND VARIABLE LINES (5-215)

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# **INTRODUCTION**

An important part of a life, health, and variable insurance agent's duties is to ensure that he or she is familiar with all laws and administrative regulations applicable to the license held. In Florida, the Department of Financial Services and Office of Insurance Regulation have created several Web sites to help producers keep up to date regarding Department communications and procedures, licensing requirements, and compliance issues. These entities also issue bulletins, memorandums, and newsletters so that insurance producers and insurers are aware of the latest industry news and alerts. Agents who transact insurance business in Florida must be very familiar with the state's insurance laws. Those not in compliance risk having their licenses suspended, not renewed, or revoked. In addition, administrative fines and criminal penalties may also be in order.

This course presents an overview of Florida insurance regulation and looks at the licensing, recordkeeping, and continuing education requirements that apply to life, health, and variable annuity agents and insurance companies. It introduces new laws that came about as a result of the Florida Legislature's 2022 legislative session. The course examines in-depth ethical issues faced by insurance producers in their practice. It also highlights actions that violate the state's laws against unfair or deceptive practices and discusses recent examples of individuals and entities against whom disciplinary action has been taken. Finally, the course explains the most recent terminology and technology that Florida agents should be familiar with.

This course is directed at the regulation of life, health, and variable annuity producers. It has been approved by the state for meeting the five-hour Law and Ethics update requirement (5-215).

# **SECTION ONE**

## **REGULATORY AWARENESS**

### **INTRODUCTION**

The Department of Financial Services (DFS or Department) and the Office of Insurance Regulation (Office or OIR) both play a role in the regulation of the insurance industry in Florida. The Department is primarily responsible for regulating insurance licensees, combating insurance fraud and protecting consumers, while the Office oversees the conduct and licensing of insurance companies. The Office also administers the state's banking and securities laws. These entities ensure that agents, agencies, adjusters, and insurers are licensed properly and conduct insurance business in accordance with Florida's Insurance Code.

In this section, we will review the regulatory structures that oversee the insurance industry in the state of Florida. We will examine the role that each of these entities plays in regulating the insurance industry, and will review the requirements necessary to maintain an insurance license. We will learn about appointment procedures, recordkeeping requirements, and the penalties for noncompliance. Finally, we will review the function and protection afforded by the Florida Insurance Guaranty Association.

### **SECTION OBJECTIVES**

In this section, we will:

- review the regulatory structures that oversee the insurance industry in the state of Florida;
- study the role that each entity plays in regulating the industry;
- review the requirements necessary to maintain an insurance license;
- learn about appointment procedures, recordkeeping requirements, and the penalties for noncompliance; and
- examine the function and protection offered by the Florida Life and Health Insurance Guaranty Association.

### **JURISDICTION OF DUTIES AND RESPONSIBILITIES**

#### **Chief Financial Officer (CFO)**

The office of Chief Financial Officer (CFO) was established by the state constitution, and the CFO serves as an elected member of the state cabinet. The CFO, together with the Governor and Lieutenant Governor, leads the executive branch of state government. The CFO serves as the chief fiscal officer in Florida and is responsible for

settling and approving accounts against the state and keeping all state funds and securities.

As part of his or her duties, the CFO serves as head of the Department of Financial Services (DFS) and oversees all 13 of its divisions, plus the Office of Insurance Consumer Advocate. The CFO's responsibilities include:

- investigating fraud, including identity theft and insurance fraud;
- overseeing the licensing of insurance adjusters, agents, and agencies;
- ensuring that businesses maintain workers' compensation insurance;
- overseeing the state's bureau of unclaimed property;
- monitoring the state's deferred compensation program for state employees;
- administering the state's accounting and auditing functions; and
- regulating cemeteries and funeral homes.

As the department head, the CFO is responsible for directing, coordinating, and executing the powers, duties, and functions vested in the DFS and its divisions.

Secs. 17.001, 20.05(1)(a) F. S.

## **Florida Department of Financial Services (DFS)**

Florida's Department of Financial Services is led by the CFO and regulates a wide range of activities through its various divisions.

The Department regulates the state's banking, securities, insurance, mortgage lending, and funeral and cemetery businesses. It is comprised of 13 divisions, plus the Office of Insurance Consumer Advocate. Several of these divisions have a role in regulating insurance, including the Division of Agent and Agency Services, the Division of Investigative and Forensic Services, and the Division of Consumer Services, as explained here

### **Department Divisions**

Three of the divisions specifically deal with the insurance industry.

- **The Division of Agent and Agency Services** regulates the licensing of individuals and entities that transact insurance. The division includes the Bureau of Licensing and the Bureau of Investigations. The Bureau of Licensing ensures that licenses are issued only to individuals who meet the state's licensing requirements, while the Bureau of Investigations investigates possible violations of the Florida Insurance Code.
- **The Division of Investigative and Forensic Services (formerly the Division of Insurance Fraud)** is a law enforcement agency that protects Florida citizens and businesses from all types of financial and insurance fraud, including claims fraud, workers' compensation fraud, unauthorized insurance entity fraud, and insurance licensee crimes. The Division also issues public information announcements and provides training for insurers to help prevent and fight fraud.



- **The Division of Consumer Services** provides information and educational materials to consumers to help them make informed insurance and financial decisions. Consumers can contact this division’s insurance specialists with insurance related questions and request consumer guides about topics such as purchasing insurance, natural disasters, fighting insurance fraud, and handling claim disputes.

In addition to the 13 divisions, the DFS houses the **Financial Services Commission**, an independent regulatory body that oversees insurers and financial institutions.

*Secs. 20.121, 20.121(3) F. S.*

### **General Duties of the Department**

The Department is headquartered in the State Capitol. Together the Department and Office have broad powers to regulate the insurance industry in Florida. Collectively they are responsible for the following:

- conducting investigations into possible violations of the Insurance Code;
- overseeing the licensing of producers and insurance companies;
- monitoring insurance activities and trade practices;
- enforcing the Insurance Code by imposing fines and other disciplinary measures;
- conducting hearings;
- examining insurers;
- making reports and maintaining records;
- issuing cease and desist orders to protect the public; and
- making rules and regulations to administer the state’s insurance laws.

Within the framework of the above powers and functions, the Department focuses on compliance by producers and marketing entities, while the Office focuses on insurers.

*Sec. 624.302–.3161 F. S.*

### **Financial Services Commission**

The CFO, the Governor, the Attorney General, and the Commissioner of Agriculture compose the **Financial Services Commission**, which though administratively located within the Department of Financial Services, acts as an independent entity. The Commission oversees two offices: the **Office of Financial Regulation**, which regulates the banking, finance, and securities industries in Florida, and the **Office of Insurance Regulation**, which regulates insurance companies. Both of these offices are headed by directors, who are appointed by the Commission.

*Sec. 20.121(3)(a) F. S.*

### **Office of Financial Regulation (OFR)**

The OFR oversees and regulates financial entities and individuals, including state chartered banks, mortgage loan originators, securities industry participants, consumer

finance companies, money transmitters, foreign currency exchangers, and payday lenders. The OFR is comprised of three divisions and one bureau:

### **Divisions and Bureaus**

- **The Division of Financial Institutions** ensures that each state financial institution meets state and federal requirements for safety and soundness. Different bureaus within the Division regulate commercial banks, trust companies, trust banks, international banks, and credit unions throughout the state.
- **The Division of Consumer Finance** licenses and regulates nondepository financial service industries and individuals, investigates complaints, examines licensees involved in mortgage lending, and processes licenses to ensure that only licensed individuals and businesses conduct business in the state.
- **The Division of Securities** regulates the sale of securities in Florida by securities dealers, issuer dealers, investment advisers, branch offices, and individuals affiliated with these firms, and ensures that these entities and individuals comply with state securities laws.
- **The Bureau of Financial Investigations** is a criminal justice agency that investigates securities and mortgage fraud in the state and presents cases to OFR attorneys and/or criminal prosecutors for administrative, civil, or criminal prosecution.

The Director of the OFR is selected either from the financial services industry or from among those with direct experience as an examiner of financial institutions.

*Sec. 20.121(3)(a)2 F. S.*

### **Office of Insurance Regulation (OIR)**

The Office of Insurance Regulation is also responsible for enforcing the laws governing the business of insurance. It oversees the regulation of insurance companies and any organization in the business of bearing financial risks. The Office is entrusted with the duty of carefully monitoring statewide industry markets. It regulates these entities with regard to licensing, issuing certificates of authority, policy rates and forms, market conduct, claims, solvency, premium financing, and administrative supervision. While the Office has discretion to examine an insurer's books and records whenever it deems necessary, it must examine each domestic insurers' records at least once every five years. The Office may also examine the books and records of any insurer seeking a certificate of authority to transact insurance in Florida.

### **Business Units and Activities**

The business units within the office are:

- Company Admissions
- Communications Office
- Legal Services
- Government Affairs
- Life and Health Financial Oversight

- Life and Health Product Review
- Market Investigations
- Market Research and Technology
- Property and Casualty Financial Oversight
- Property and Casualty Product Review
- Specialty Product Administration

The Office ensures that insurers are financially sound and operating lawfully. The Office regulates premium rates, policy forms, market conduct, claims, and solvency. There are a number of groups within the Office that perform these regulatory functions.

Three of these units directly regulate entities providing products and services to the life and health segment of the insurance market.

- The **life and health financial oversight unit** monitors the solvency of life and health insurers by periodically reviewing their financial statements and conducting actuarial reviews, field examinations, and financial statement analyses of managed care entities.
- The **life and health product review unit** approves insurance rates to ensure products are offered at fair and adequate prices and that premiums are reasonable in relation to the benefits provided. It also examines policy form filings for new products as well as changes to existing products. The unit reviews applications and marketing materials to be used with some insurance lines.
- The **market investigations unit** examines and investigates insurers' business practices and alleged violations of the Florida Insurance Code.

The Office also regulates the state's residual markets and joint underwriting associations, which provide insurance to consumers who cannot obtain coverage in the private market. The Director of the Office of Insurance Regulation is also known as the Commissioner of Insurance Regulation.

*Secs. 20.121(3)(a)1, 20.121(3)(a)1 F. S.*

## **The Shape of Insurance Regulation in Florida**

Together the Department and Office have broad powers to regulate the insurance industry in Florida. Collectively, they are responsible for:

- conducting investigations into possible violations of the Insurance Code;
- overseeing the licensing of adjusters, agents, and insurance companies;
- monitoring insurance activities and trade practices;
- enforcing the Insurance Code by imposing fines and other disciplinary measures;
- conducting hearings;
- rehabilitating and liquidating insurers when required;
- issuing cease and desist orders to protect the public; and

- making rules and regulations to administer the state’s insurance laws.

Within the framework of the above powers and functions, the Department focuses on compliance by licensees and marketing entities, while the Office focuses on insurers.

## **LIFE AND HEALTH INSURANCE DEFINITIONS**

Let’s begin by defining some terms as set forth by Florida’s Insurance Code.

- “Health agent” means an agent representing a health maintenance organization or, as to health insurance only, an insurer transacting health insurance.
- “Life agent” means an individual representing an insurer as to life insurance and annuity contracts or acting as a viatical settlement broker, including agents appointed to transact life insurance, fixed dollar annuity contracts, and variable contracts by the same insurer.
- An “ordinary class insurer” is an insurer writing life insurance on the legal reserve plan, for amounts of \$1,000 or more, with premiums payable on the annual, semiannual, quarterly, monthly, or weekly basis.
- An “ordinary variable contract class insurer” is an insurer writing an ordinary class of insurance where the insurer issues life insurance or annuity contracts providing for payments or values that vary directly according to investment experience.

*Secs. 626.015, 626,780, 626,781*

## **LICENSING REQUIREMENTS**

The Department of Financial Services oversees the licensing of agents, adjusters, and customer service representatives in Florida. All of these individuals must be properly licensed in order to transact insurance. This requirement also applies to insurance agencies doing business within the state. Agency licensing is covered in more detail later in this chapter.

To receive a license, a person must submit an online application at [www.MyFloridaCFO.com/Division/Agents](http://www.MyFloridaCFO.com/Division/Agents). In the application, applicants must identify themselves and show that they have met the qualifications for licensing. Individuals applying for an agent’s license must generally be:

- at least 18 years old
- a U.S. citizen or legal alien
- a resident of Florida

They must also be trustworthy and competent, complete pre-licensing education, submit fingerprints and an application, pay a fee, and pass a written exam, among other requirements.

Note that continuing licensure is contingent on compliance with the law. If a licensee is convicted of a felony or violating the Insurance Code, the Department will immediately revoke that person’s licenses and appointments. The licensee may subsequently request a hearing on the matter, in which case the Department will expedite the requested hearing. However, the sole issue at that hearing will be whether the

revocation should be rescinded because the licensee was not in fact convicted of a felony or violating the Insurance Code.

The Department's papers, documents, reports, and evidence that are used at a hearing for license or appointment revocation or suspension are subject to discovery in keeping with the licensee's right to due process. However, these materials are otherwise confidential and are not subject to public disclosure until after they have been published at a hearing.

*Sec. 626.631 F. S.*

## **Application for License**

The Department may not issue an insurance license to any person except upon written application filed with the Department and which meets the qualifications of the license applied for. Payment must be made in advance of all applicable fees.

The application must be made under the oath of the applicant and be signed by him or her. An applicant may permit a third party to complete, submit, and sign an application on the applicant's behalf, but the applicant is responsible for ensuring that the information on the application is true and correct. The applicant is accountable for any misstatements or misrepresentations.

The Department is required to accept the Uniform Application for Nonresident Agent Licensing.

In the application, the applicant must indicate:

- his or her full name, age, Social Security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address;
- a statement indicating the method the applicant is using to meet any required prelicensing education, knowledge, experience, or instructional requirements for the type of license applied for;
- a statement of whether he or she has been refused, or has voluntarily surrendered or has had suspended or revoked, a license to solicit insurance by the Department or by the supervising officials of any other state;
- a statement of whether any insurer or any managing general agent claims the applicant is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense, if any;
- proof that the applicant meets the requirements for the type of license for which he or she is applying;
- the applicant's gender (male or female);
- the applicant's native language;
- the highest level of education achieved by the applicant;
- the applicant's race or ethnicity (African American, white, American Indian, Asian, Hispanic, or other); and

- any additional information the Department may deem proper to enable the determination of the character, experience, ability, and other qualifications of the applicant to hold himself or herself out to the public as an insurance representative.

**Note** that federal law requires that the application contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language. The application must state the he or she will not be penalized for not so disclosing and that the Department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

Each application must be accompanied by payment of any applicable fee.

An applicant for a license as an insurance producer must submit a set of individual fingerprints. If the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors must be submitted, along with a fingerprint processing fee. Fingerprints will be used to investigate the applicant's qualifications and history.

The fingerprints are taken by a law enforcement agency, designated examination center, or other Department approved entity. The Department requires all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The Department may not approve an application for licensure if fingerprints have not been submitted. However, a licensee seeking an additional license and who has submitted fingerprints within the previous 48 months does not have to submit to fingerprinting again.

Members of the United States Armed Forces and their spouses, and veterans of the Armed Forces who have been separated from service within 24 months before application for licensure, are exempt from the application filing fee. Qualified individuals must provide a copy of one of the following that indicates the applicant is currently in good standing or was honorably discharged:

- military identification card;
- military dependent identification card;
- military service record;
- military personnel file;
- veteran record;
- discharge paper, or
- separation document.

*Sec. 626.171, F. S.*

## **Number of Applications for Licensure Required**

After a license as agent, customer representative, or adjuster has been issued to an individual, the same individual is not required to take another examination for a similar

license, regardless, in the case of an agent, of the number of insurers he or she represents.

Exceptions are:

- unless the Department specifically orders an individual to complete a new application for license; or
- during any period of 48 months since the filing of the original license application, the individual was not appointed as an agent, customer representative, or adjuster (unless the failure to be appointed was due to military service).

In the event of military service, the period within which a new application is not required may, at the discretion of the Department, be extended to 12 months following the date of discharge, as long as the military service does not exceed three years. In no event can this time period be extended more than six years from the date of filing the original application for license.

Note that the failure to meet the state's continuing education requirements may result in cancellation of an appointment that could lead to termination of the license.

*Secs. 626.181 F. S.*

## **Qualifications for License**

### **Life Agent**

To receive a life insurance agent license, a person must be trustworthy and competent. In addition, an applicant must submit an online application at the Agency Services Web site and submit a set of fingerprints, pay the appropriate fee, and meet the following qualifications:

- be a natural person of at least 18 years old;
- be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and a bona fide resident of the state;
- not be an employee of the United States Department of Veterans Affairs or state service office;
- not be a funeral director or direct disposer, or an employee or representative, or have an office in, or in connection with, a funeral establishment, except that a funeral establishment may contract with a life insurance agent to sell preneed contracts. An agent so contracted may sell limited policies of insurance covering the expense of final disposition or burial of an insured in the amount of \$21,000, plus an annual percentage increase based on the annual Consumer Price Index (CPI).
- take and pass the required examination for license; and
- be qualified as to knowledge, experience, or instruction in the business of insurance.

A funeral director, a direct disposer, or an employee of a funeral establishment that holds a preneed certificate of authority may obtain an agent's license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise that provide funds at the time services and merchandise are needed. The face amount of insurance covered by such policies may not exceed \$21,000, plus an annual percentage increase based on the annual CPI.

*Sec. 626.785 F. S.*

## **Health Agent**

To receive a health insurance agent license, a person must be trustworthy and competent. In addition, an applicant must submit an online application at the Agency Services Web site and submit a set of fingerprints, pay the appropriate fee, and meet the following qualifications:

- be a natural person of at least 18 years old;
- be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and a bona fide resident of the state;
- not be an employee of the United States Department of Veterans Affairs or state service office;
- take and pass the required examination for license; and
- be qualified as to knowledge, experience, or instruction in the business of insurance.

*Sec. 626.831 F. S.*

## **Investigation**

The Department or Office may bring forward any reasonable interrogatories, in addition to those contained in the application, to any applicant – or on any renewal, reinstatement, or continuation – relating to the applicant's qualifications, residence, prospective place of business, and any other matter which, in the opinion of the Department or Office, is deemed necessary or advisable for the protection of the public and to ascertain the applicant's qualifications.

The Department or Office may, upon completion of the application, make any further investigation it may deem advisable of the applicant's character, experience, background, and fitness for the license or appointment. Such an inquiry or investigation is in addition to any examination required.

An inquiry or investigation of the applicant's qualifications, character, experience, background, and fitness must include consideration of any state criminal records, federal criminal records, or local criminal records obtained from Florida's Department of Law Enforcement, the Federal Bureau of Investigation, and from local law enforcement agencies.

*Sec. 626.201, F. S.*



## **Examination Requirements and Exemptions**

The Florida Insurance Code has been requires pre-licensing and written examination exemptions for some applicants, including life, health, annuity, and variable contract lines. The law now creates an exemption from pre-licensing course and the examination for life insurance applicants who:

- hold a CLU designation from the American College of Financial Services
- have received a degree from an accredited institution of higher learning approved by the Department if the degree includes nine hours of insurance instruction in the license area they are applying for

The Bureau of Licensing will review each applicant's exemption criteria to determine whether applicants are eligible for exemption.

*Sec. 626.221 F. S.*

## **Disqualification**

An applicant who has been found guilty of, or who has pleaded guilty or no contest to, any of the following crimes, regardless of adjudication, is permanently barred from licensure under the Florida Insurance Code: :

- a felony of the first degree;
- a capital felony;
- a felony involving money laundering;
- a felony embezzlement; or
- a felony directly related to the financial services business.

An applicant who has been found guilty of, or who has pleaded guilty or no contest to, a crime not included in this list, regardless of adjudication, is subject to:

- a 15-year disqualifying period for all felonies involving moral turpitude;
- a 7-year disqualifying period for all felonies to which neither the permanent bar nor the 15-year disqualifying period applies; or
- a 7-year disqualifying period for all misdemeanors directly related to the financial services business.

*Sec. 626.207 F. S.*

## **Approval or Disapproval of Application**

If after a completed application for license, further inquiry or investigation, and all pertinent fees have been paid, the Department will approve the application.

Upon approval, the Department will notify the applicant when and where he or she may take the required examination, unless the applicant has taken and passed the examination within the one-year period prior to the date of filing the application.

Upon approval of an applicant who is not subject to examination, the Department will promptly issue the license.

If upon the basis of the completed application and further inquiry or investigation, the Department deems the applicant to be lacking in one or more of the required qualifications for the license, it will disapprove the application and notify the applicant, stating the grounds of disapproval.

*Sec. 626.211 F. S.*

## **Appointment**

Importantly, agents must also be appointed by an insurer in order to transact insurance. An insurer can appoint any number of agents it wants to transact insurance on its behalf. If an agent will represent more than one insurer, a separate appointment must be obtained from each insurer the agent represents. The insurer appoints an agent by applying to the Department, which will approve an appointment after receiving the application and the prescribed appointment taxes and fees.

All applications must be submitted electronically through eAppoint, the state's electronic appointment system that is used for original and renewal appointments as well as appointment terminations. Appointment fees must also be paid online by credit card or eCheck, an electronic checking system. The Department no longer accepts appointments submitted by mail (with the exception of bail bond appointments).

An insurance company must submit an application to the Department within 45 days after first appointing a person as its agent. Otherwise, a late fee will be imposed. For example, if an insurer appoints an agent on February 1, 2015, but does not submit the application for appointment until May 1, 2015 (more than 45 days after the appointment), the insurer must pay a late fee along with the original appointment fee.

An agent may not transact insurance or receive commissions until he or she has been appointed by an insurer.

When an insurer appoints a person as its agent, the insurer is certifying to the Department that it has investigated the licensee and has determined that the person is of good moral character and fit to transact insurance. The insurer is also certifying that it is willing to be bound by the agent's acts that are within the scope of his or her employment. Insurers and managing general agents must be careful not to provide non-appointed agents with any forms or other supplies that may be used to solicit business on their behalf.

*Sec. 624.501, 626.015(3), 626.311, 626.322, 626.331, 626.341, 626.342, 626.371, 626.381, 626.431, 626.441, 626.451, 626.461, 626.471, 626.511, 626.631, 626.2815(10) F. S.; Rule 69B-211.004, 69B-211.005, 69B-211.007 F.A.C.*

**Special note:** Attorneys at law duly licensed to practice law in the courts of Florida and in good standing with the Florida Bar Association are exempt from having to obtain a license in accordance with Section 626.860 of the Florida statutes. However, this does *not* exempt attorneys from the state examination if a producer license is applied for.

## **Initial Appointments**

All initial appointments must be submitted to the Department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form. Otherwise, a late fee of \$250 will be imposed. For example, if

an insurer appoints a life or health agent on February 1 but does not submit the application for appointment until May 1 (more than 45 days after the appointment), the insurer must pay a late fee along with the original appointment fee.

When an entity appoints a person as its agent, the appointing entity is certifying to the Department that it has investigated the licensee and has determined that the person is of good moral character and is fit to transact insurance. The insurer is also certifying that it is willing to be bound by the person's acts that are within the scope of his or her employment.

Failure to timely renew an appointment by an appointing entity prior to the expiration date of the appointment results in the appointing entity being assessed late filing, continuation, and reinstatement fees.

*Secs. 626.371, 626.451 F. S.*

### **When Not Properly Appointed**

If, upon application and qualification for an initial or renewal appointment, an investigation made by the Department suggests that an individual who was formerly licensed or who is currently licensed but not properly appointed, has been actively engaged as an appointee, the Department will respond as described here.

If the Department finds that the failure to be appointed was an inadvertent error on the part of the insurer or employer, it will nevertheless authorize the appointment as applied for, but subject to the condition that, before the appointment is issued, all fees and taxes due for current and prior periods will be paid.

*Secs. 626.371 F. S.*

### **Self-Appointment or Unaffiliated Insurance Agent**

An "unaffiliated insurance agent" is a licensed insurance or agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, an insurer appointed insurance agent, or insurance agency contracted with or employing insurer appointed insurance agents.

An agent who appoints his or her license as an unaffiliated insurance agent may not:

- hold an appointment from an insurer for any license he or she holds;
- transact, solicit, or service an insurance contract on behalf of an insurer;
- interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or
- receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of self-appointment.

An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of the commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received.

*Sec. 626.311 F. S.*

### **Appointment Renewal Notification and Expiration**

An insurance agent's appointment continues in force until it is suspended, revoked, or terminated, and it must be renewed every 24 months during the agent's birth month. The appointing entity must then pay an appointment renewal fee.

The Department will send each appointing entity an email notification 90 days before an appointment must be renewed. The Department will also post the renewal invoice in the entity's eAppoint account. Any appointees whose names are listed in red on the renewal invoice have an invalid email or mailing address on file with the Department, and their appointments cannot be renewed until they have updated these addresses.

On the first day of a renewal month, the Department will send another email notice, which states that the appointments that need to be renewed can be paid via eAppoint. The appointing entity can then renew an appointment at any time from the first through the last day of the renewal month. A late fee will be imposed if the fee is not paid within this time frame.

If an appointing entity does not remember to timely renew its appointments, the Department will send an email notice to the entity on the first day of the month following the expiration date of an appointment. The email will advise that payment was not received, a late fee (per expired appointment) has been assessed, and the invoice will continue to be available for 45 more days for payment. If the appointment is not renewed within 45 days, it will be cancelled, and an email notification will be sent to the appointing entity and the licensee. It will notify them of the cancellation, along with providing information on the process for reappointment and applicable late fee. Keep in mind that the appointing entity must pay all late fees and cannot charge these to the agent.

Once an agent's appointment expires, he or she may not engage in any activity that requires him or her to hold an appointment.

*Secs. 626.381; 624.501 F. S.*

### **Appointment Termination**

Naturally, an insurer is not required to renew an agent's appointment; it can terminate an agent's appointment at any time by giving the agent 60 days' notice. Upon so doing, the insurer must also notify the Department within 30 days and must state the reasons for the termination. Agents may also terminate their appointments at any time by giving electronic or written notice to the insurer or the Department. The effective date of termination will be the date indicated in the filing by the person or entity making the termination. If no date is provided, the effective date of termination will be the date the filing was received by the Department.

If an agent's appointment for a particular class of insurance has been terminated or not renewed, the agent remains eligible to be appointed as an agent for that line of business for 48 months. During this time, the person may not engage in insurance activity for that line of business until he or she has received a new appointment. If the agent does not obtain another appointment during the 48-month period, then his or her qualification for that line of authority will expire.

Appointments are valid only as to the specific person named and cannot be transferred to another person. This means that agents cannot allow other individuals to transact insurance by using the licenses or appointments that they have been issued.

*Sec. 626.471 F. S.*

### **Reasons for Termination**

Any employer terminating the appointment of an agent, whether the termination is by direct action or by failure to renew or continue the appointment, is required to file with the Department or Office a statement of the reasons, if any, for the termination. The facts relative to the termination must be disclosed.

In the case of terminations by failure to renew or continue the appointment, the information required must be filed as soon as possible, but no later than 30 days after the date notice of intention not to renew or continue. In all other cases, the information required must be filed at the time the notice of termination is filed with the Department, but not later 10 days after.

*Sec. 626.511 F. S.*

### **Notification to Department**

If an entity discovers that one of its appointed agents has plead guilty or no contest or has been convicted of a felony, it must notify the Department or Office within 15 days.

Similarly, Florida licensees are required to notify the Department within 30 days after being found guilty of or pleading guilty or no contest to a felony or a crime that is punishable by at least one year's imprisonment.

*Sec. 626.451 F. S.*

### **Contact Information**

The Department keeps records of licensed individuals' names, addresses, and other contact information, such as phone numbers and email addresses. If a licensee does not have a valid address on file with the Department, the appointing entity cannot renew his or her appointment. It is therefore important to always keep contact information up to date with the Department.

Agents must update and/or verify their addresses and other information through their MyProfile accounts (this will be discussed in detail later in the course). An agent must notify the Department within 30 days of a change in:

- name;
- residential address;
- principal business street address;

- mailing address;
- telephone number; and
- email address.

Licensed agents or adjusters doing business under a business name other than the agent's individual name must comply with similar requirements. Within 30 days after first transacting insurance under that business name, the agent must file the business's name and address with the Department along with the name and Social Security number of all the business's officers and directors and all individuals transacting insurance for the firm or using its name. If the business's name or address is changed or if there are any changes in personnel or in the information provided in the license application, the Department must be notified within 30 days.

Agents who do not notify the Department about changes to their contact information within the 30-day period may be subject to the following:

- a fine of up to \$250 for the first offense; and
- a fine of at least \$500 or license suspension or revocation for any subsequent offenses.

The Department will immediately terminate the license and appointments of an agent who moves from Florida to another state.

*Sec. 626.541, 626.551 F. S.*

## Insurance Agency Licensing

### Requirements

Florida has licensing requirements for individuals who operate insurance agencies in the state. In Florida, agencies must be licensed. Agency licenses continue in force until they are canceled, suspended, revoked, or otherwise terminated by operation of law.

An **insurance agency** is an office or location from which insurance business is transacted. An agency may consist of a one-agent office, or several agents may transact insurance at one location. Agencies may consist of a sole proprietor, a corporation, a partnership, or other entity acting under its own name or a trade name. However, an agency license is not required for an insurance agency that is owned and operated by a single licensed agent who conducts business in his or her own name and who does not appoint, employ, or otherwise use the services of other licensees. Insurers are excluded from the definition of "insurance agency" in Florida.

In Florida, agencies must be **licensed** (previously, they could be licensed *or* registered). Agency licenses continue in force until they are canceled, suspended, revoked, or otherwise terminated by operation of law.

To receive a license, an agency must submit an application through MyProfile, which must include:

- the names and residential addresses of the owners, partners, directors, and officers of the agency (including the president, secretary, treasurer, and each

senior vice president and limited liability company member who participates in the management or control of the agency);

- the name of the agency, its email address, and its business address;
- the name, email address, and business address of the agent in charge and any individual authorized to accept legal service on behalf of the agency;
- the location and physical address of each branch location, including its name, email address, and telephone number, and the date that the branch began conducting business; and
- fingerprints of all owners, officers, partners, directors, and individuals required to be listed on the agency application (with some exceptions).

Each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency must also sign the license application.

Agency license applications can be completed, signed, and submitted on behalf of the agency by a third party. However, the applicant remains responsible for any misstatements or misrepresentations in the application.

### **Agency Name**

Agents who work for an agency should be aware that under Florida law, an agency's name must be approved by the Department. The Department may disapprove agency names on the following grounds:

- The name interferes with or is too similar to a name already filed and in use by another agency or insurer.
- The name is deemed to be generally misleading to the public.
- The name chosen implies that the agency is an insurance company, governmental agency, or any other national or state organization states.
- The name implies that the agency is an insurer, motor club, hospital service plan, state or federal agency, charitable organization,
- The name implies the agency primarily provides advice and counsel rather than sells or solicits insurance.
- The name implies that the agency is entitled to engage in insurance activities not permitted under licenses held or applied for.

*Secs. 626.015, 626.112, 626.172, 626.602 F. S.*

### **Penalty**

If an agency must be licensed but fails to file an application for a license, the Department may impose a penalty of up to \$10,000.

An agency that transacts insurance in Florida without a license commits a third degree felony.

*Secs. 626.112(7)(A)(1), 626.112(7)(A)(2) F. S.*

## **Agent in Charge and Branch Locations**

Each person operating an insurance agency must designate a full time licensed general lines agent to manage the agency and must file his or her name and license number with the Department, agent in charge. To be the agent in charge for an agency, an individual must hold both license and appointment for the line of license that matches the type of insurance being sold. Individuals holding limited lines licenses or other types are not eligible to be the agent in charge.

A branch agency does not have to have its own separate agency license as long as it transacts business under the same name and uses the federal tax identification number as the licensed agency. It must, however, designate a licensed agent to be the agent in charge, and it must submit the branch's address and telephone number to the Department for inclusion in the agency's licensing record within 30 days after insurance transactions began at the branch location, along with the agent in charge's name and license number.

While an agent may be in charge of more than one agency location, insurance related activities cannot take place if an agent is not physically present at the branch office, and unlicensed employees at the locations cannot engage in insurance activities that require licensing.

If the agent in charge of an agency changes, the agency must notify the Department and add a new agent to be in charge through its MyProfile account within 30 days. An agency's license will automatically expire if a new agent in charge is not designated within 90 days.

*Secs. 626.172, 626.747, 626.0428 F. S.*

## **Transfer, Surrender, and Termination of Licensing**

An agent who is licensed in good standing in another state may apply to the Department to have his or her license transferred to Florida in order to obtain a Florida resident license. To qualify for a license, the applicant must:

- become a Florida resident;
- have held a license for a minimum of one year in his or her home state before applying for a license in Florida;
- submit a license application and fee within 90 days after becoming a Florida resident;
- provide an original letter of clearance (A certification issued by the appropriate official of the applicant's home state identifying the type of license and lines of authority under the license and stating that, at the time the license from the home state was canceled, the applicant was in good standing in that state or that the state's producer database records, maintained by the National Association of Insurance Commissioners (NAIC), its affiliates, or subsidiaries, indicates that the applicant is or was licensed in good standing for the line of authority requested);
- submit a set of fingerprints; and



- satisfy Florida’s licensing exam requirements, unless the applicant completed the same kind of requirements in the state where he or she was previously licensed.

A license belongs to and can only be used by the person named on the license. This means that agents cannot transfer their licenses to another person, nor can they let another person engage in insurance activities by using their license or appointment.

Licenses are considered property of the state of Florida. Whenever a license has been suspended or revoked, or not renewed or expired, the license no longer is valid. However, a person is required to physically surrender a license to the Department only if the Department requests.

If an agent decides to retire from the insurance industry, in which case the agent should surrender his or her license to the Department. Otherwise, the Department will require compliance with the continuing education requirements and will continue sending communications relating to the license, even if it is no longer being used.

To surrender a license, an agent should mail a letter to the Bureau of Licensing stating that he or she wishes to surrender his or her license. The agent should also include his or her name, Florida license ID number, mailing address, telephone number, and signature. The agent should also include his or her Florida insurance license ID or a statement indicating that the agent no longer has the ID.

*Secs. 626.292, 626.641, 626.661 F. S.*

## **Grounds for Compulsory Refusal, Suspension, or Revocation of Licenses and Appointments**

When transacting insurance activities, life and health agents should be aware of the different reasons that disciplinary actions may be taken. Note that there are both *compulsory* and *discretionary* grounds for license revocation, suspension, and refusal in Florida.

The Department will suspend, revoke, or refuse to continue a licensee's license and appointment, or deny an application for a license for the following reasons:

- failing to maintain the qualifications required for a license or appointment;
- material misstatement, misrepresentation or fraud in obtaining the license or appointment;
- failing to pass an examination required for a license;
- using a license or appointment to willfully circumvent the Insurance Code;
- intentionally misrepresenting the terms of an insurance policy in person or through advertising;
- misrepresenting the terms and coverage of an insurance policy in order to settle a claim on less favorable terms than those provided in the contract;
- demonstrating lack of fitness or trustworthiness to transact insurance;
- lacking the knowledge and competence to transact insurance;
- fraudulent or dishonest practices in conducting insurance;

- misappropriation, conversion, or unlawful withholding of money belonging to insurers or others;
- rebating or unlawfully offering to share commissions with others;
- obtaining or using a license or appointment to engage in controlled business;
- intentionally violating Florida's insurance laws, or a rule or order of the Department;
- being found guilty or pleading guilty or no contest to a felony or crime punishable by imprisonment of one year or more that involves moral turpitude; or
- fraudulently submitting an application for worker's compensation.

If a licensee is indicted for a first degree felony, a capital felony, a felony involving money laundering, fraud, embezzlement, or another felony directly related to the financial services business, the Department will immediately impose a temporary suspension of the license. If the individual is appealing a conviction or plea of no contest, the suspension will continue during the time of the appeal.

*Sec. 626.611 F. S.*

## **Procedure for Refusal, Suspension, or Revocation of License**

### **Upon Conviction**

If a court convicts an agent of a felony or violating the Insurance Code, the Department will immediately revoke the person's license and appointments. The licensee may subsequently request a hearing, and the Department is required to expedite a requested hearing. The sole issue at the hearing is whether the revocation should be rescinded because the person was not in fact convicted of a violation of the Insurance Code or a felony.

The papers, documents, reports, and evidence of the Department relative to a hearing for revocation or suspension of a license or appointment are confidential. However, such documents and evidence are subject to discovery in a hearing for revocation or suspension of a license or appointment.

*Sec. 626.631 F. S.*

### **Action Against Associated Licenses**

If the Department revokes, suspends, or refuses to continue a license, the same action will be taken against all other insurance licenses or appointments held by that individual.

*Sec. 626.651 F. S.*

## **Duration of License Suspension or Revocation**

### **License Suspension**

The Department, in its order suspending a license or appointment, must specify the period during which the suspension is to be in effect. This period may not be longer than two years. The license or appointment remains suspended during this time subject,

however, to any rescission or modification by order by the Department or modification or reversal by a court of law.

A license or appointment that has been suspended may not be reinstated except upon the filing and approval of an application for reinstatement, and the Department has the discretion over whether to approve the application.

If a second suspension takes place, completion of prescribed continuing education is required. The Department will not approve an application for reinstatement if it finds that the circumstance(s) of the suspension still exist or are likely to recur. In addition, an application for reinstatement is subject to denial and subject to a waiting period prior to approval on the same grounds that apply to applications for licensure.

### **License Revocation**

Anyone whose license has been revoked must wait at least two years before applying for another license.

*Sec. 626.641 F. S.*

### **Grounds for Discretionary Suspension, Revocation, or Refusal to Renew or Continue License or Appointment**

The Department also has the *discretion* to suspend, revoke, or refuse to renew or continue an agent's license or appointment or deny a person's application for a license in certain cases. For example, the Department may take disciplinary action if a licensee:

- violates the Insurance Code or other law applicable to the insurance business;
- violates an order or rule of the Department, Commission, or Office;
- fails to remit money owed to an insurer that the licensee represents;
- engages in unfair methods of competition or deceptive acts or practices;
- is found guilty or pleads guilty or no contest to a felony or crime punishable by one year or more (other than for a crime involving moral turpitude);
- cheats on a licensing examination;
- fails to notify the Department within 30 days after pleading guilty or no contest, or is convicted of a felony or crime punishable by imprisonment of one year or more;
- knowingly helps another violate the Insurance Code or a rule or order of the Department, Commission, or Office;
- has a license, appointment, or registration to conduct business suspended, revoked, or denied by a court, state or federal agency, or national securities exchange due to violation of a federal or state securities law; or
- fails to comply with a civil, criminal, or administrative action to determine paternity or to establish or collect child support.

The Department may also suspend, revoke, or refuse to continue or renew a license if it discovers information that, had it been aware of when issuing the license, it could have refused to issue the license initially.

Finally, the Department may refuse, suspend, or revoke the license of a producer for directly or indirectly accepting compensation from an inspector for a client referral relating to an inspection that will be submitted to an insurer to obtain a premium discount.

*Sec. 626.621 F. S.*

## **Administrative Fine or Probation in Lieu of Suspension or Revocation**

The Department may levy an administrative fine when there are discretionary grounds for suspending, revoking, or refusing to renew a license. The Department may impose a fine of up to \$500 in addition to or instead of suspending, revoking, or refusing a license. Those who commit willful violations may be fined up to \$3,500.

The Department may also place an agent on probation for up to two years. The Department may impose probation in lieu of other penalties, or in addition to any discretionary suspension, revocation, or administrative action taken.

*Secs. 626.681, 626.691 F. S.*

## **Restitution**

The Department may order a Florida licensee to pay restitution to anyone who has been injured by the licensee's misappropriation, conversion, or unlawful withholding of funds. Restitution may be ordered in addition to other penalties.

*Sec. 626.692 F. S.*

## **Compulsory and Discretionary Grounds for Denying, Suspending, Revoking, or Refusing to Continue Agency Licenses**

The Department, which is responsible for licensing insurance agencies in Florida, also has the authority to deny, suspend, revoke, or not renew an agency's license in certain cases. The Department can take disciplinary action against any licensee in response to acts committed by anyone who manages or controls the agency, including a majority owner, partner, manager, director, officer, or anyone else authorized to make management decisions on the agency's behalf.

### **Compulsory Grounds for Action**

The Department will deny, suspend, revoke, or refuse to continue an insurance agency's license if it finds, with respect to the agency or any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, that any of the following grounds exist:

- the agency lacks one or more of the qualifications required for an agency license, as specified in the Insurance Code;
- there were material misstatements, misrepresentations, or fraud in obtaining or attempting to obtain the license; or

- the state of Florida or another state, nation, possession or district of the United States, court, or agency has denied, suspended, or revoked a license to practice a regulated profession, business, or vocation relating to the insurance business.

*Sec. 626.6115 F. S.*

## **Discretionary Grounds for Action**

The Department has the discretion to deny, suspend, revoke, or refuse to continue an insurance agency's license if any of the following grounds exist with respect to the agency or any majority owner, partner, manager, director, officer, or other person who manages or controls the agency:

- discovering a reason that would have been grounds for the Department to refuse to issue the license, if it had existed and been known to the Department;
- using the license to circumvent any requirements or provisions of the Insurance Code;
- having been found guilty of (or pleaded guilty or no contest to) a felony relating to the insurance business or an insurance agency, regardless of whether a court has entered a judgment;
- knowingly employing a person in a managerial capacity or one dealing with the public who is under a suspension or revocation order issued by the Department;
- failing to take corrective action or report a violation to the Department within 30 days after one or more partners, officers, or managers of the agency knew or should have known about an individual licensee's violation;
- committing any of the following acts frequently enough so that operating the agency is hazardous to the public:
  - misappropriating, converting, or unlawfully withholding moneys belonging to insurers, insureds, or beneficiaries that were received while transacting insurance;
  - unlawfully rebating or dividing commissions with another (or attempting to do so);
  - misrepresenting an insurance policy (whether in person or through advertising);
  - violating any provision of the Insurance Code or other law pertaining to the insurance business;
  - violating an order or rule of the Department;
  - failing or refusing, when asked, to pay money owed to and belonging to an insurer;
  - engaging in twisting;
  - engaging in unfair methods of competition or unfair or deceptive acts or practices when transacting insurance;

- willfully over insuring a property insurance risk;
- engaging in fraudulent or dishonest practices when transacting insurance; or
- demonstrating a lack of fitness or trustworthiness to engage in the insurance business.

If the Department suspends or revokes an agency's license, the same action may be taken against the license of any associated agency where violations occurred. The Department will not issue a license to any new agency associated with the same individuals who committed those violations.

*Secs. 626.6215, 626.6515 F. S.*

## **Duties of Licensed and Unlicensed Personnel**

As noted earlier, it is unlawful for anyone to act as, advertise, or hold themselves out as an insurance agent unless they are currently licensed by the Department and appointed by an insurer. Anyone who knowingly transacts insurance in Florida without a license commits a third-degree felony.

Therefore, a person must be licensed as an insurance agent in order to solicit insurance. **Soliciting insurance** means attempting to persuade a person to purchase insurance by:

- describing the benefits or terms of insurance coverage (including premiums or rates of return)
- distributing an invitation to contract to prospective purchasers
- making general or specific recommendations about insurance products
- completing orders or applications for insurance products
- comparing insurance products, giving advice about insurance matters, or interpreting policies or coverages
- offering or attempting to negotiate a viatical settlement contract on behalf of another person

Florida exempts certified public accountants (CPAs) from its licensing requirements if they simply advise clients about general insurance matters such as why it is important to purchase insurance, the amount of insurance needed, or the line of coverage suited for the client. However, a CPA cannot receive or share in any commission or referral fees for performing these activities.

Agents generally can pay a fee to an unlicensed person for making referrals of potential clients. However, it is unlawful for agents to pay an unlicensed person a fee *only* if the referral results in the sale of an insurance product.

*Sec. 626.022, 626.0428, 626.112, 626.311, 626.321, 626.342, 626.431, 626.7845, 626.794, 626.838, 626.8305 F.S. Rule 69B-222.010-.060. F.A.C.*

## **Unlicensed Employees**

Agents and insurance agencies sometimes hire unlicensed individuals to help perform clerical and administrative duties for their business. While these employees can

complete some types of insurance agency tasks without having to be licensed, their compensation cannot be related to the production of insurance or applications, which would be considered the illegal sharing of commissions. However, agencies can pay a small bonus or similar reward each year to unlicensed staff members, for example, a holiday bonus, without violating the law.

The Insurance Code specifies acts that unlicensed employees can lawfully do. These include explaining claims procedures or advising claimants about the status of their claims, as long as they read from agency records or files and do not interpret or judge information. Employees can also answer calls from clients regarding purely administrative matters, for example, when a client's premium is due or when a policy expires.

If requested by an agent, unlicensed employees may return customers' telephone calls and set up meetings between customers and the agent. An agent may also authorize an employee to convey specific information to clients such as, "Agent Jones wanted me to call you to let you know she received your paperwork on your new car and it is covered under your existing policy effective immediately."

Unlicensed employees may conduct some insurance-related activities as long as those activities are *incidental* to their regular duties. Work will be "incidental" if an employee spends 10 percent or less of his or her time on the task, and the exact amount and timing of the work is unpredictable. Thus, an unlicensed employee can perform the following tasks only if they are "incidental":

- taking insurance applications in the agent's office for a person who has called or come into the office ("Taking applications" includes filling in the blanks on an application form after an applicant discloses information and then giving the application to the agent. However, it does not include applying judgment, processing, binding, interpreting a policy, signing applications, explaining procedures, or giving insurance advice.)
- giving quotes in an agent's office to someone who has called or come into the office ("Giving a quote" means obtaining certain basic underwriting answers from a person and then consulting written underwriting materials regarding the rate. Again, this does not include applying judgment, processing, binding, interpreting a policy, signing applications, explaining procedures, or giving insurance advice.)
- receiving premiums in an agent's office (Mailroom employees or unlicensed employees who sort mail are also permitted to handle premiums that arrive.)

The individual designated as the agent-in-charge is responsible for supervising both licensed and unlicensed personnel in the agency. The agent-in-charge must make sure that individuals engage only in activities that are appropriate to their license status. For example, when supervising licensed personnel, the agent-in-charge would make sure that limited lines licensees in the agency solicited only the type of insurance they were licensed for, and that life insurance agents did not solicit variable products without having successfully passed the variable products exam. Similarly, when supervising unlicensed personnel, the agent-in-charge would make sure that these individuals did not undertake tasks requiring a license.

There are certain activities that unlicensed agency personnel are *never* allowed to perform, including:

- comparing insurance products
- advising customers about their insurance needs or other insurance matters
- interpreting policies or coverages
- binding new, additional, or replacement coverage for new or existing customers
- binding coverage on or recording additional property under existing policies
- soliciting the sale of insurance by telephone, in person, or by other communication methods

*Rules 69B-222.020 –69B-222.060 F. A. C.*

## **Licensed Employees**

There are certain activities that *always* require an appropriate license. This would include interpreting policies or coverages.

This requirement reflects the basic underlying presumption, which a reasonable consumer would make, that the person offering advice has a modicum of education and training, and that the person interpreting coverage is authorized to do so. Compliance with the state's licensing and appointment standards is the only way to legitimately address the consumer's expectations, as required by law.

The Florida Insurance Code thus prohibits unlicensed individuals from engaging in transactions that require licensing.

*Sec. 626.112 F. S.*

## **OTHER REQUIREMENTS**

Agents must also be aware of other important rules and regulations that apply to their licenses. These other areas include continuing education requirements, fiduciary obligations, reporting administrative actions taken against them in other jurisdictions to the Department, and reporting unlicensed insurance activity. The Florida Insurance Code also spells out a number of guidelines that agents must follow when advertising products and services and with regard to keeping records.

### **Continuing Education Requirements**

Florida's continuing education requirements generally apply to all individuals licensed to sell insurance or adjust claims in the state if they were required to pass an examination as part of their licensing process. The CE requirements do not apply to:

- individuals who hold limited lines licenses for which no exam is required
- limited lines crop, hail, or multi-peril crop insurance agents
- public adjusters for workers' compensation insurance or health insurance (However, other public adjusters are subject to the continuing education requirements.)



Licensees who cannot comply with the CE requirements because they are on active military duty may request a waiver from the Department.

One aspect of the CE requirements is that all licensees, other than title insurance agents, must complete a Department-approved five-hour course every two years, which is designed to update them on current Florida insurance laws and other topics. The update course must be developed and offered by an approved continuing education provider and must cover the following topics:

- insurance law updates
- ethics for insurance professionals
- disciplinary trends and case studies
- industry trends
- premium discounts
- determining suitability of products and services
- other similar insurance-related topics the Department determines are relevant to legally and ethically carrying out the responsibilities of the license granted

Different types of update courses are available, each of which contains subject matter that corresponds to one of the various lines of insurance for which examination and licensure are required. Licensees must complete a course that pertains to the specific type of license they hold. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held.

The five-hour update course is a mandatory element of the CE requirements. However, completing the five-hour update course will not entirely fulfill an agent's CE requirement. Licensees will need more than five hours of CE credit per two-year compliance period in order to renew their licenses. Any required hours of CE that remain after completing the mandatory five-hour update course are elective and may consist of any CE course approved by the Department.

The number of elective CE hours a licensee must complete depends on certain factors, such as the type of license and the number of years the license has been held. Most licensees are required to complete an additional 19 hours of elective CE courses every two years. However, some individuals are subject to lower elective requirements:

- Individuals who have been licensed for six years or more must complete 15 hours of elective CE courses every two years.
- Individuals who have been licensed for 25 years or more must complete five hours of elective CE courses every two years if they satisfy either of the following:
  - hold a CLU or a CPCU designation
  - have a Bachelor of Science degree in risk management or insurance with 18 or more semester hours in insurance-related courses
- Individuals must complete five hours of elective CE every two years if they are not a licensed life or health agent, but are licensed as any of the following:
  - a customer representative or limited customer representative

- a motor vehicle physical damage and mechanical breakdown insurance agent
- an industrial fire insurance or burglary insurance agent
- Individuals who are licensed as bail bond agents must complete nine hours of elective CE every two years.

Title insurance agents are not required to take the five-hour update course that is mandatory for most other agents. However, they must complete at least ten hours of CE every two years in Department-approved courses dealing with title insurance and escrow management specific to Florida. These courses must also include at least three hours of CE on the subjects of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

Licensees who earn excess hours during any two-year compliance period may carry them forward to the next compliance period.

Individuals who teach approved CE courses earn the same number of classroom credit hours as students who successfully complete the course.

*Sec. 626.2815 F.S.*

## **Fiduciary Obligations**

When transacting insurance business, licensees may come into possession of funds that actually belong to another party. For example, insurance agents may be given premiums meant to be forwarded to an insurance company, or insurers may give agents the money for a premium refund that should be paid to a policyholder.

Florida law makes it clear that when such funds are given to licensees in the course of transacting insurance business, the licensee receives these funds in a fiduciary capacity. In other words, the licensee stands in a position of special trust with regard to the funds, which must be treated with special care. This principle applies to all types of licensees: agents, insurance agencies, customer representatives, and adjusters.

Licensees must, in the regular course of business, account for and pay those amounts that are due the insurer, insured, or other person entitled to them. Agents—or the insurance agency if no agent has been appointed for an insurer—must keep the funds belonging to each insurer (other than surplus lines carriers) in a separate account so that the Department or Office will be able to properly audit those funds.

As part of their fiduciary duties, licensees are also subject to recordkeeping requirements, which will be described in more detail later in this chapter

Any agent, insurance agency, customer representative, or adjuster who unlawfully misappropriates any portion of such funds, diverts them even temporarily, or otherwise deprives the other person of any benefit from them has committed an offense punishable under the criminal code. Potential penalties depend on the amount of the funds improperly handled. If the amount is:

- \$300 or less, the offense is a misdemeanor of the first degree, punishable by a fine of up to \$1,000 and prison for up to one year
- more than \$300, but less than \$20,000, the offense is a felony of the third degree, punishable by a fine of up to \$5,000 and up to five years in prison

- \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable by a \$10,000 fine and up to 15 years in prison
- \$100,000 or more, the offense is a felony of the first degree, punishable by a fine of \$10,000 and up to 30 years in prison

For any offenses that are considered felonies, the penalties that may be imposed are even greater for habitual offenders.

*Sec. 626.561 F.S.*

## **Reporting of Administrative Actions**

It is possible that a licensee may be sanctioned by an agency other than the Department. If an administrative action is taken against a licensee by a governmental agency or other regulatory agency in Florida or in another state or jurisdiction, the Department may need to know about it.

Licensees must report an action if it relates to the insurance business, selling securities, or activity involving fraud, dishonesty, lack of trustworthiness, or breach of fiduciary duty. In such cases, the licensee has 30 days after the final disposition of the action to submit a copy of the relevant legal documents to the Department.

*Sec. 626.536 F.S.*

## **Reporting Unlicensed Insurance Activity**

Transaction of insurance by entities not authorized to do insurance business in the state is a problem that Florida regulatory authorities have devoted considerable effort to address. To help in that effort, the Florida Insurance Code enlists the help of licensees and others involved in the legitimate conduct of insurance business in Florida.

The law requires any agent, third-party administrator, or insurer that knows about an unlicensed insurer doing business in the state to report that entity's activities to the Department. More information about this topic, including the reporting requirements, is provided in the next chapter.

*Rule 69B-230.033 F.A.C.*

## **Advertising**

While many consumers obtain life and health insurance through group plans offered by their employers, many others purchase coverage in the individual market. Numerous marketing campaigns are therefore directed toward these individuals. In fact, the first point of contact with a prospect may well be a promotion or advertisement in any of the following ways:

- in a newspaper, magazine, or other publication
- in a notice, circular, pamphlet, letter, or poster
- over a radio or television station
- over the Internet
- through a cold call

- through a referral

To protect consumers, Florida regulates the content of life and health insurance advertisements to ensure that the public receives clear and unambiguous information about the benefits, limitations, and exclusions of these insurance policies. The Insurance Code sets forth specific guidelines that insurers and agents must follow to make sure that advertisements are accurate and not deceptive or misleading. The requirements that apply to agents generally apply to sales representatives of HMOs, as well.

What exactly is an “advertisement”? The definition is fairly broad and includes a wide range of marketing media used to solicit insurance, including newspapers, magazines, and other publications as well as pamphlets, letters, and posters. Billboards, sales presentations, and television and radio advertisements are regulated as well. While the rules for using social media—such as Facebook and Twitter—to promote insurance products are not as clear-cut, agents and insurers would be wise to carefully monitor any statements made on such outlets to avoid running afoul of the insurance rules prohibiting improper inducements, misleading representations, and deceptive advertising.

Insurance companies are responsible for the content of all advertisements that directly or indirectly benefit them. While most insurance companies exercise strict controls over the advertising of their appointed agents, non-captive producers have more latitude and may be tempted to take liberties.

There are strict prohibitions, however, against distributing an advertisement or announcement containing an untrue, deceptive, or misleading statement regarding the producer, insurer, or insurance product. In Florida, agents and insurers that use advertisements that are untrue, deceptive or misleading will be guilty of an unfair method of competition and unfair or deceptive act. Specifically, agents and insurers are prohibited from intentionally making or using an advertisement that:

- misrepresents the benefits, advantages, conditions, or terms of a policy
- misrepresents the dividends or share of surplus to be received on a policy or that were previously paid
- misrepresents an insurer’s financial condition or the legal reserve system upon which it operates
- uses a name or title for an insurance policy that is misleading
- misrepresents a policy as being shares of stock
- causes a person to believe mistakenly that the state or federal government guarantees payment or returns on insurance policies

*Sec. 626.112(7)(b)4.d, 626.887, 626.9531, 626.9541(1)(a)-(b), 626.9541(1)(m)-(n) F.S.*

*Rule 69B-150 F.A.C.*

## Other Advertising Rules

Florida has also promulgated a number of general advertising rules that apply to life and health insurance advertisements. Agents and insurers should keep these rules in mind, discussed next, to ensure that their advertisements comply with state requirements.

As a starting point, insurers must approve any form of advertising that agents will be using, and they remain responsible for the content of such advertising when done on behalf of the insurer. Some types of advertisements—including those for long-term care and Medicare supplement insurance—must be filed with the Office of Insurance Regulation before they can be used.

In addition, advertisements must clearly identify the insurer and that the policy advertised is a “health insurance policy,” “life insurance policy,” or “annuity contract.” An ad must also refer to the product’s generic name such as “group term life,” “flexible premium life,” or “immediate annuity.” If an ad includes any statistics, it must disclose the source of the statistics.

The Insurance Code also prohibits insurers from using marketing materials that give the impression that an insurer or its products are recommended or endorsed by a governmental entity, society, association, or other organization unless that is true.

Advertisements must disclose the policy’s provisions relating to renewability, cancelability, and termination.

Advertisements cannot imply that claim settlements will be liberal or generous beyond the terms of the policy. They also cannot contain untrue or misleading statements about an insurer’s assets, financial standing, or position in the insurance industry.

Sometimes, advertisements may include testimonials from a spokesperson about different insurance products. While testimonials may be used, they must be genuine and represent the author’s current opinion. They also must be reproduced accurately and completely enough to avoid misleading prospective customers about the nature or scope of the endorsement. If a person is paid for an endorsement, this fact must be disclosed in the advertisement as well.

An ad cannot make unfair or incomplete comparisons of policies or benefits offered by other insurers. It cannot disparage competitors, their products, services, or business methods, and cannot disparage other methods of marketing insurance. Advertisements also cannot use certain words or phrases that could be misleading, such as “no red tape” or “here is all you have to do to receive benefits.” Misleading awards, such as “safe driver awards,” cannot be used in advertisements for health insurance.

Advertisements for group policies may not state or imply that prospective policyholders become group or quasi-group members and enjoy special rates or underwriting privileges, unless that is true.

Finally, an ad may not state or imply that a particular policy is an introductory, initial, or special offer and that the applicant will receive advantages by accepting the offer, unless that is true.

*Rules 69B-150.006, 69B-230.033, 69B-191.057. F.A.C.*

## Recordkeeping

Agents must keep records of their books, accounts, and records relating to premium payments for at least three years after payment. However, the three-year requirement does not apply to insurance binders when a policy is not issued and no premium is collected.

Agents can maintain these records electronically or in photographic form, as long as they are readily accessible in the agent's office. Of course, it is recommended that agents keep back-up copies of all required records in the event a hurricane or other disaster damages a business's primary records. The Department has the right to examine an agent's records at any time.

In addition, agents must keep records of all the policies they have sold in their offices, and must make this information available to policyholders and the Department.

Somewhat longer recordkeeping requirements apply when life insurance and annuities are sold to consumers. In this case, insurers, insurance agencies, and agents must keep records of all information collected from the senior consumer that was used to make a product recommendation for five years. This would include documents such as applications, questionnaires, illustrations, account review documents, and any correspondence between the insurer or agent and the client. Records can be kept in almost any form—paper, photographic, micro-process, magnetic, mechanical, or electronic.

Sec. 626.561(2), 626.748, 627.4554 F.S.

## Advertising Files

Insurers must keep a file in their home office that contains every advertisement used to market their individual and group insurance policies, along with information explaining how and to what extent the ads were distributed. Insurers must maintain files of advertisements for at least four years or until their next regular examination, whichever period is longer. The Office of Insurance Regulation can examine an insurer's advertising files at any time.

## DEPARTMENT COMMUNICATION

In recent years, the Department has increasingly sought to make the licensing process faster, easier, and more secure for licensees and insurance agencies. Online communication is now the predominant form of communication within the Department.

As we learned earlier, license applications and appointments must now be submitted online, continuing education requirements are reported electronically, and contact information must be updated through a licensee's MyProfile account. Florida insurance licensees must therefore understand the various tools that the Department uses to communicate with producers and insurers as well as with the general public.

## My Profile

**MyProfile** is the online Web site for the Florida Department of Financial Services' Bureau of Licensing. Producers need to create a MyProfile account where they can:

- view their licenses and appointments;
- verify name and address changes;
- apply for licenses;
- update information;
- view information about and any deficiencies;
- check their continuing education compliance status;
- print duplicate copies of their licenses; and
- make payments.

MyProfile also helps licensees find approved continuing education courses for their specific line of authority and allows insurance agencies to terminate and make changes to their agents in charge, owners, and officers. Agents are also required to update the Department about any changes to their phone numbers and home, business, or email addresses through their MyProfile account.

**Note:** Florida applicants and licensees are required by state and federal law to disclose their social security numbers in their MyProfile accounts. Federal law requires each state to obtain the social security number of each applicant for a professional or occupational license on the application for the license. Section 626.171(6) of the Florida statutes implements the federal law. The purpose of collecting social security numbers is for administration of the child support enforcement provisions of the Social Security Act. The Department of Financial Services also uses social security numbers for identity verification purposes in conjunction with background checks of applicants and for identity verification purposes in the Department's electronic database for licensees and applicants.

## Department Web Site

The Department maintains a Web site—[www.myfloridacfo.com](http://www.myfloridacfo.com)—where insurance licensees, consumers, and businesses can find information about Department updates and news. The site also contains information about the specialized divisions within the Department, including the Agent and Agency Services and the Insurance Fraud divisions, and contains a link to each division's web page where licensees can obtain more information about licensing requirements, industry alerts, and enforcement matters.

The Department's home page also includes links to:

- updates about the CFO's initiatives;
- information about unclaimed property in the state;
- press releases issued by the Department;
- the state's annual financial report; and
- resources for Florida residents, such as:
  - consumer guides; and

- how to report fraud.

Similarly, the Office of Insurance Regulation maintains a Web site—[www.floir.com/](http://www.floir.com/)—which contains important information about the Florida insurance industry, lists of companies that are authorized to transact insurance, and rate and form filings.

## **Insurance Insights**

The Department’s Division of Insurance Agent and Agency Services issues an online newsletter, *Insurance Insights*, which provides information for agents, adjusters, and agencies about the latest trends and news in the insurance industry. It includes information about the Department’s current legislative agenda, new initiatives the Department is launching, changes in the Florida Insurance Code and rules, and continuing education updates.

*Insurance Insights* includes a section entitled “Compliance Corner,” which highlights various areas in which the Department has noted a pattern of noncompliance among licensees. It features rules that licensees should be aware of to ensure that they are transacting insurance in compliance with Florida law. For example, recent editions have addressed the legal requirements for reporting criminal and administrative actions taken against licensees working in the insurance industry after a license has been suspended and transacting insurance after moving out of state. Compliance Corner also highlights the types of disciplinary action that may be taken for violating these laws.

*Insurance Insights* also includes a “Case Notes” section, which summarizes the facts of various cases where licensees and others have violated the Insurance Code. It highlights the administrative action the Department has taken against these persons, as well as whether the Department referred any matters to the Division of Insurance Fraud for criminal investigation.

The last section of *Insurance Insights*—“Enforcement Actions”— lists the names of individuals and businesses against whom disciplinary action has been taken, including license suspension, revocation, probation, and fines.

## **Division of Agent and Agency Services Web Site**

The Division of Agent and Agency Services has a Web site that licensees should use when seeking information about licensing, continuing education, and other industry matters. The Web site is located at:

**[www.myfloridacfo.com/division/agents](http://www.myfloridacfo.com/division/agents)**

The Department has also created several other Web sites to communicate with the general public about a variety of insurance related matters.

## **Transparency Florida Web Site**

The Department maintains a Web site, Transparency Florida, where Florida residents can track government spending and view finance reports, fund balances, state and local receipts and disbursements, and government contracts. The purpose of the Web site is to provide transparency regarding how the state government is managed and funded



and to hold state leaders accountable for how tax dollars are spent. This Web site is located at:

**[www.myfloridacfo.com/transparency/](http://www.myfloridacfo.com/transparency/)**

## **Financial Frontlines Web Site**

The Florida CFO has launched Financial Frontlines, a new Web site to help military members and their families learn how to protect themselves from financial fraud and to manage debt.

The site contains information and videos about:

- identity theft;
- the Service Members Civil Relief Act;
- credit scoring;
- budgeting and savings;
- predatory lending; and
- financial planning for marriage, retirement, health care, college, homeownership, and other life events.

The web address is:

**[www.myfloridacfo.com/yymm/financialfrontlines/](http://www.myfloridacfo.com/yymm/financialfrontlines/)**

## **On Guard for Seniors Web Site**

The Department has created another Web site, On Guard for Seniors, to help seniors, their family members, and caregivers avoid becoming victims of fraud or misleading sales tactics. The site provides information about annuities, reverse mortgages, long-term care insurance, and identity theft. It lists key questions to ask when purchasing insurance and provides videos on how various insurance and financial products work.

The Web site also includes a consumer alert section that highlights different financial schemes used to defraud seniors as well as success stories from seniors who sought help from the Department on these topics.

This web address is:

**[www.myfloridacfo.com/onguard/](http://www.myfloridacfo.com/onguard/)**

## **GUARANTY ASSOCIATION**

The Florida Life and Health Insurance Guaranty Association was formed in 1979 to protect policyholders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, and annuity contracts if an insurer fails to perform its contractual obligations because it becomes impaired or insolvent. The association also helps the Office of Insurance Regulation detect and prevent insurer impairments and insolvencies.

All 50 states, as well as the District of Columbia and Puerto Rico, have life and health insurance guaranty associations to protect policyholders.

Sec. 631.001 et seq. (Chapter 631), 631.711–.737 F.S.

## **Membership and Assessments**

All insurers licensed to sell life insurance, accident and health insurance, and certain types of annuities must be members of the association in order to transact insurance in Florida. Each year, insurers are assessed fees to help the association carry out its duties. The association maintains three accounts for this purpose:

- a life insurance account
- a health insurance account
- an annuity account

## **Powers and Duties**

If a member insurer becomes impaired, the association can take any of the following actions:

- guarantee, assume, or reinsure the insurer's policies and contracts
- provide money, pledges, and guarantees to assume payment of the insurer's obligations
- loan money to the insurer

If a member insurer becomes insolvent and is ordered liquidated, a court will appoint a receiver to take over the insurer and wind up its affairs. The association then assumes liability for the liquidated insurer's obligations to Florida policyholders and will service the policies, collect premiums, and pay any valid claims that become due. The association will also try to find another insurance company to take over the policies.

The association has a number of other powers, including the right to:

- enter into contracts to carry out its purpose
- sue or take legal action to recover unpaid assessments
- borrow money
- employ individuals to handle its financial transactions
- negotiate and contract with liquidators, rehabilitators, conservators, or receivers
- take legal action to avoid improperly paying claims
- exercise the powers of a domestic life or health insurer

## **Coverage Provided**

While the association will pay covered claims, its coverage is limited. Notably, the association provides the following maximum amounts of protection for one person when an insurer becomes insolvent:

- \$300,000 in life insurance death benefits

- \$100,000 in life insurance cash surrender value
- \$300,000 for health insurance claims
- \$250,000 in annuity cash surrender value
- \$300,000 in annuity benefits

## **Examinations and Annual Reports**

The Department is responsible for regulating and examining the association. By May 1 each year, the association's board of directors must submit a financial report to the Department, along with a report of its activities for the preceding year.

## **Prohibited Advertising of the Association**

It is an unfair trade practice for anyone to use the existence of the Florida Life and Health Insurance Guaranty Association, or the protections the association offers, in order to sell insurance. However, insurers and agents are allowed to give policyholders and applicants written information prepared by the association that summarizes the claim, cash value, and annuity cash value limits of the association, if requested.

## **FLORIDA HEALTH MAINTENANCE ORGANIZATION CONSUMER ASSISTANCE PLAN**

Florida has a similar type of guaranty association for health maintenance organizations (HMOs), which is known as the **Florida Health Maintenance Organization Consumer Assistance Plan**. In the same way that the Florida Life and Health Insurance Guaranty Association protects insureds and beneficiaries from the insolvency of life and health insurers, the Florida Health Maintenance Organization Consumer Assistance Plan protects enrollees in health maintenance organizations from the insolvency of their HMO.

All health maintenance organizations operating in Florida are required to be members of the Florida Health Maintenance Organization Consumer Assistance Plan as a condition for being authorized to do business in the state. The plan exercises its powers through a board of directors and is supervised by the Department. Members are assessed fees, which are used to operate the plan.

If a health maintenance organization becomes insolvent, the plan will assume the HMO's obligations to its enrollees. An enrollee's coverage under the plan ceases when any of the following occurs:

- when the plan has provided \$300,000 of benefits to the enrollee
- if the enrollee fails to pay the required premium
- six months after the health maintenance organization became insolvent

Advertising or using the existence of the Florida Health Maintenance Organization Consumer Assistance Plan to solicit HMO coverage is prohibited.

*Sec. 631.811–.828 F.S.*

## **SECTION ONE SUMMARY**

The Department of Financial Services and the Office of Insurance Regulation are primarily responsible for regulating the insurance industry in Florida. Agents must obtain licenses while insurance agencies must either be licensed or registered. If licensees fail to act ethically, the Department can revoke, suspend, or refuse to continue a person's license. Criminal penalties and fines may also be imposed.

Today, the Department and Office communicate with agents, agencies, and insurers primarily online. MyProfile and eAppoint are the online portals for the Department and must be used when submitting applications, changing addresses, and making appointments, among other matters. The Department's online newsletter—Insurance Insights—highlights important updates affecting the insurance industry. Agents who do not use the online tools the department provides to keep up-to-date with changing industry rules and regulations risk the possibility that they may not be transacting insurance in accordance with the law.

## SECTION ONE QUIZ

1. Any agent, insurance agency, customer representative, or adjuster who unlawfully misappropriates any portion of such funds, diverts them even temporarily, or otherwise deprives the other person of any benefit from them has committed an offense punishable under the criminal code.

- a. True
- b. False

2. The Department may levy an administrative fine when there are discretionary grounds for suspending, revoking, or refusing to renew a license. The Department may impose a fine of up to \$\_\_\_ in addition to or instead of suspending, revoking, or refusing a license. Those who commit willful violations may be fined up to \$3,500.

- a. \$100
- b. \$1,000
- c. \$500
- d. \$5,000

3. If funds of \$100,000 or more were improperly handled, the offense is a felony of the first degree, punishable by a fine of \$10,000 and up to 20 years in prison.

- a. True
- b. False

**QUIZ ANSWERS: 1. A 2. C 3. B**

# **SECTION TWO**

## **INSURANCE LAW AND UPDATES**

### **INTRODUCTION**

The insurance industry is continually changing to make improvements to its products and operations and to reflect legislative developments. Every year, insurance related laws are modified to improve the regulatory process. It is, therefore, critically important for insurance producers to understand new laws and regulations, industry trends, and state requirements to ensure that they continue to comply with the laws, where applicable, and are able to best serve their customers' needs.

In this section, we will take a look at the recent changes to Florida state laws that life and health licensees should be aware of. All the legislation discussed in this section result from the 2022 legislative session.

Finally, we will look at the Federal Insurance Office's 2022 Annual Report on the Insurance Industry. This report is a review of insurance industry activities nationwide. It presents and analyzes the financial performance and condition of both the life and health and property and casualty sectors. From this federal update we learn about the fiscal health of the insurance industry and its direction.

### **SECTION OBJECTIVES**

In this section, we will:

- study of the recent changes to Florida law as a result of the state's 2022 legislative session;
- learn about changes at the federal level affecting Florida life and health agents; and
- examine the Federal Insurance Office's annual report on the Insurance Industry.

## **FLORIDA INSURANCE LAW UPDATES**

There were several important changes to the insurance laws brought about by the 2022 Legislature, and these are presented here.

### **Senate Bill 156**

#### **Loss Run Statements**

This bill requires admitted and nonadmitted insurers to provide a loss run statement within 15 days after an individual or entity designated by the insurer receives the insured's written request. For personal lines of insurance, the insurer must provide loss run statements within 15 days of an insured's request after first providing information on how to obtain a loss run statement from a consumer reporting agency. For nonadmitted insurers, the insurer is deemed to be in compliance if the surplus lines agent provides the loss run statement on behalf of the nonadmitted insurer.

The bill reduces the number of preceding years of claims history that a group health insurer must include within a loss run statement from 5 years to 3 years. For group health insurers, the loss run statement must include certain information. The bill specifies that only the group policyholder may request and receive a loss run statement for a group health insurance policy, and repeals a conflicting statute related to group health insurance claims data.

The bill also exempts life insurers from the requirement to provide loss run statements.

*Sec. §626.9201, §626.9202, §627.444 F.S.*

Effective Upon becoming law.

### **House Bill 689**

#### **Workers' Compensation Benefits for Posttraumatic Stress Disorder**

Effective October 1, 2022, the compensability standards for posttraumatic stress disorder (PTSD) benefits for first responders is revised by extending the deadline for filing the notice of injury to 90 days after a qualifying event or a diagnosis, whichever is later. Current law provides the time for notice of injury or death is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. The bill also extends the deadline for a first responder to file a claim to 52 weeks after the qualifying event or the diagnosis, whichever is later. Current law requires a claim be filed within 52 weeks after the qualifying event.

The bill provides wage replacement benefits to a correctional officer who suffers PTSD, in certain circumstances, without the correctional officer having also sustained a physical injury in the course and scope of employment. PTSD is deemed an occupational disease, thereby providing wage replacement benefits, as well as the current medical benefits for the correctional officer. The correctional officer will qualify for PTSD disability benefits if the correctional officer was acting within the course and scope of employment; and the correctional officer is diagnosed with PTSD due to experiencing a qualifying event. A correctional officer must file a notice of injury within 90 days of a qualifying event or a diagnosis of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

*Sec. §112.815, §112.18155, F.S.*  
Effective July 1, 2022.

## **Senate Bill 749**

### **Fraud Prevention**

#### **Electronic Insurance Verification**

The bill requires that, in addition to driver licenses and identification cards, the Department of Highway Safety and Motor Vehicle's (DHSMV) electronic credentialing system display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage, and allow the driver to update policy information in the system. The bill requires DHSMV to provide the legislature with recommendations by October 1, 2023, regarding electronic verification of drivers' compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

#### **Service Contracts and Agreements**

The bill provides that a seller of a service contract that includes an automatic renewal provision must allow a consumer to cancel the contract in the same manner, and by the same means, as the consumer accepted the contract.

The bill expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties; requires that a service agreement company's or salesperson's disclosures in written advertisements meet certain requirements; requires such company or salesperson disclose the company's or salesperson's full name in radio or television advertisements; and requires that a service agreement salesperson provide his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending a call.

#### **Public Adjusters and Public Adjuster Apprentices**

The bill creates a new maximum fine amount, not to exceed \$20,000 per act, for a public adjuster or public adjuster apprentice who commits certain prohibited acts during a state of



emergency declared by the Governor. Unlicensed persons who engage in these prohibited acts are subject to the same penalties as licensed persons.

Investigations by the Division of Investigative and Forensic Services (DIFS) or the State Fire Marshal (SFM)

The bill authorizes the Department of Financial Services (DFS) to fine insurers up to \$2,000 per day if the insurer fails or refuses to comply with the investigation of a fire or explosion by DIFS or the SFM.

### **Prosecution of False and Fraudulent Insurance Claims**

The bill authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty. The bill clarifies that prosecutions of workers' compensation fraud or false and fraudulent insurance claims must be commenced within five years of a violation.

*Sec. §324.252, §626.854, §633.126, §817.234 F.S.*

Effective Upon becoming law.

# House Bill 959

## Department of Financial Services

This bill amends sections of Florida Statutes relating to the powers and duties of the Department of Financial Services (DFS) and the head of DFS, the Chief Financial Officer (CFO). The bill provides the following changes:

### Service of Process

- Requires the DFS to create a secure online portal as the sole means for the Chief Financial Officer to accept service of process as the agent for service of process on insurers, insurance agents, and other specified persons regulated under the Florida Insurance Code.
- Provides that service of process is valid and binding upon the insurer on the date the process served on the CFO is delivered to the insurer, or the insurer has been notified by the DFS that such information has been made available on the DFS online portal.

### Division of Insurance Agents and Agencies

- Adds an exemption to the examination requirements for an all-lines adjuster.
- Authorizes an adjuster who holds an adjuster license and who is an unaffiliated insurance agent to obtain an adjuster appointment while maintaining his or her unaffiliated agent appointment.
- Revises provisions relating to fingerprinting requirements to comply with federal law.
- Creates notice requirements for agencies that cease doing business, and creates penalties for noncompliance.
- Increases the authority of the DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered.
- Revises provisions relating to the qualifications and bond requirements of public adjusters.
- Specifies that public adjuster compensation may not be:
  - Based on attorney fees and costs paid to the insured;
  - Increased solely because the claim is litigated;
  - Based on amounts attributable to additional living expenses coverage, unless a specified disclosure is made.
  - Clarifies that in addition to the agent, the insurance agency must also hold an appointment issued by an insurer in order to sell a title insurance policy.

## **Funeral, Cemetery, and Consumer Services**

- Eliminates the fee cap of \$50 for a consumer transferring the burial rights from one purchaser to another and revises the licensure requirements for embalmers and funeral directors.
- Allows funeral directors and embalmers licensed in other states to obtain reciprocal licensure in Florida if they have engaged in full-time licensed practice in that state for at least five years. A funeral director may also obtain reciprocal licensure if the applicant meets certain educational requirements.

## **State Fire Marshal**

- Authorizes expenditure of funds from the Firefighter Assistance Grant Program for the purchase of other equipment and tools and protective clothing and equipment compliant with certain standards;
- Revises firefighter certification requirements by eliminating the option of passing an exam, rather than completing 54 hours of continuing education, to renew a fire safety certificate;
- Increases penalties the State Fire Marshal may impose on contractors and unlicensed persons by authorizing the State Fire Marshal to impose an administrative fine of up to \$10,000, in addition to or in lieu of revocation or suspension of a fire protection contractor's certificate; and
- Updates provisions relating to the inspection of boiler rooms to reflect current industry standards and clarifies that a fee is required if an inspector is required to make a special trip to conduct a testing and verification inspection.

## **Division of Workers' Compensation**

- Specifies an employer applying for an exemption from workers' compensation coverage to provide a valid driver license or valid identification card and complete an online tutorial as a condition for application;
- Revises the formula for calculating coverage penalties to reduce the period subject to a penalty, with exceptions;
- Provides a penalty credit for an employer who has been issued a stop-work order or an enforcement action if the employer successfully completes an online tutorial;
- Extends the deadline for an employer to produce requested business records from 10 business days to 21 days before the DFS can take an administrative action;
- Requires the carrier to send an informational brochure to the injured worker within three business days, instead of three days, after the employee or employer notifies the carrier of an injury; and

- Revises onsite audit requirements of construction classes by requiring such annual audits if the estimated annual premium is \$10,000 or more.

#### **Florida Patient's Compensation Fund**

- Revises the structure and authority of the Fund by eliminating the board of governors of the Fund and transferring the supervision of the Fund to the CFO or his or her designee; and
- Prescribes duties of the CFO and the DFS to wind down the Fund, and to dissolve the Fund on or before December 31, 2023.

*Sec. §48.151, §440.02, §440.107, §626.015, §626.311, §626.015, §626.321, §626.173, §626.8732 F.S.*  
Effective July 1, 2022.

## **House Bill 1023**

### **Insolvent Insurers**

makes several technical changes to the assessment mechanisms for the Florida Insurance Guaranty Association (FIGA) and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casual insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss due to the insolvency of a workers' compensation insurer

The bill makes the following changes to FIGA's assessment mechanism:

- Allows FIGA to request that the Office of Insurance Regulation, in its order levying an assessment, authorize insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of FIGA assessments;
- Requires an insurer electing to not recoup advances of assessment to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism; and
- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method.

The bill makes the following changes to FWCIGA's assessment mechanism:

- Authorizes FWCIGA to allow an insurer to make assessment payments in a single payment or on a quarterly basis based on cash-flow needs; and
- Reduces the frequency of annual reconciliation reports subsequently filed with the FWCIGA after the assessment year from a period of three years to a period of two years.

The bill also amends Florida's Rating Law to require that past loss experience and prospective loss experience for insolvent insurers be used in the determination and fixing of workers' compensation rates, and provides that data previously reported by insolvent insurers may be used to assess the impact on rates.

Sec. §627.072, §631.57; §631.914, F.S..  
Effective July 1, 2022.

## **Senate Bill 7014**

### **COVID-19-Related Claims Against Health Care Providers**

Extends the length of time that health care providers receive certain liability protections from COVID-19-related claims to such claims that accrue before June 1, 2023.

*Pursuant to legislation passed during the 2021 Legislative Session, liability protections from COVID-19-related claims apply to claims accruing within one (1) year after the effective date of the act, which was March 29, 2022. Thus, this bill provides a 14-month extension to those liability protections for health care providers.*

Sec. §768.381, F.S..  
Effective February 25, 2022.

## **FEDERAL UPDATE ON THE INSURANCE INDUSTRY**

This part of the course is intended to identify insurance industry trends.

### **Federal Insurance Office Annual Report on the Insurance Industry**

**The Federal Insurance Office (FIO)** was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The FIO is charged with:

- monitoring all aspects of the insurance sector, including identifying activities within the sector that could potentially contribute to a systemic crisis to the broader financial system;
- monitoring the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance (except health insurance);
- determining whether state insurance measures are preempted by covered agreements; and
- consulting with the states (including state insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance.

#### **Annual Report**

The FIO has no supervisory or regulatory authority over the insurance industry. However, any suggestions or endorsements it offers can have an effect on state regulators when they consider the issues affecting their states. The FIO advises the Secretary of the Treasury on major domestic and prudential international insurance matters.

The FIO is responsible for issuing an annual report to the President; the Committee on Financial Services of the House of Representatives; and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report covers information on the insurance industry and any other information as deemed relevant by the Director of the FIO or requested by the Committees.

The report is an overview of the insurance industry presenting and analyzing the financial performance and condition of the key U.S. insurance industry sectors -- the life and health sector and the property and casualty sector. The FIO released its 2021 annual report pursuant to its statutory mission, which is to provide advice to Congress and federal agencies on public policy issues affecting the insurance industry. This discussion is a brief summary of some of the report's most pertinent facts relating to recent life and health insurance industry activities nationwide, and these should be of interest to Florida licensees.

## **Addressing Longevity Risk Through Annuities**

Annuity sales decreased nine percent in 2020 (after record growth in 2019) with the notable exception of sales growth in registered index-linked annuities (RILAs). FIO has been monitoring the growth in sales of RILAs, a type of variable annuity with features common to a fixed indexed annuity, which offers tax-free build up like other life and annuity products that include a savings feature. A RILA offers investors a variety of pay out plans such as a lump sum or fixed payments over a specified period (e.g., fixed number of years, a minimum number of years, or the remainder of the investor's life). RILA account returns are linked to changes in a specified security index such as the S&P 500. RILAs expose the annuity provider, usually an insurance company, to fluctuations in equity market returns. These fluctuations require insurer hedging or the ability to absorb losses arising from the boundary or buffer features in the RILAs. When an insurance company hedges with equity derivatives transactions, such arrangements generates interconnectedness with other firms in the financial sector.

RILAs typically are classified as either “floor” or “buffer” annuities. “Floor” RILAs limit the investor's maximum potential loss in the event of a market downturn, often combined with a ceiling that limits the potential upside gains as well. “Buffer” RILAs absorb a certain amount of losses on the downside, although investors are exposed to losses that exceed the buffer. While offering protection against specific levels of losses, buffer RILAs limit returns on the market upside, thus protecting investors from small fluctuations in market returns as measured by a security index, but leaving them exposed to large changes in returns.

## **Ongoing Decline of Private Long-Term Care Insurance**

The EO Report also reviewed the ongoing decline of the private long-term care insurance (LTCI) market and observed that the private market for traditional LTCI has continued its steep, nearly 20-year decline. The number of individual LTCI policies sold peaked in 2002 and has decreased in nearly every year since then. Following a slight uptick in 2019, the downward sales trend continued in 2020, as annualized new premium for individual LTCI policies fell nine percent to \$152 million; similarly, the estimated number of new policies sold fell to a record low of 49,000, an 11 percent decrease from 2019.

As an alternative to stand-alone LTCI policies, some insurers and consumers have turned to “combination” products, which combine a traditional life insurance policy or annuity with a long-term care benefit. These products offer protection from several financial risks and address the “use or lose” nature of stand-alone LTCI. After posting strong results in 2019, sales of life combination products slowed significantly in 2020. Combination products generated \$4.8 billion and \$3.7 billion in premiums in 2019 and 2020, respectively, likely reflecting the difficulty of selling complex products during the COVID-19 pandemic. Over the longer term, the outlook for combination products may be brighter: A recent survey suggested that the pandemic increased consumer interest

in life combination products. In early 2021, 26 percent of consumers surveyed said they were very likely to consider purchasing a life combination product, up from 17 percent in a 2019 survey. Consumers who experienced challenges providing care to adult relatives or children were the most likely to consider them.

## **Financial Overview**

In its 2021 annual report, the FIO reported that although the financial health of the life and health sector has generally been sound, there are signs of some weakening. In the last five years, the life and health sector has been experiencing negative net premium growth.

Net premiums written for the sector were approximately \$628 billion in 2020, marking an eight percent decrease from the \$680 billion reported in 2019. Net ceded reinsurance swelled by 75 percent to \$144 billion, the highest level in the last ten years.

Net premiums written, which have represented on average 71 percent of total L&H sector revenues over the past 10 years, represented 73 percent in 2019 and 72 percent in 2020. Annuity premiums and deposits dropped by nearly 13 percent, while life insurance premiums decreased by almost six percent, and A&H premiums were essentially flat compared to 2019. For 2020, annuity premiums and deposits constituted 48 percent of total net premiums written.

At the end of 2020, the life and health sector held approximately \$8.0 trillion of total assets (including \$3.0 trillion held in separate accounts),<sup>1</sup> and the health sector held approximately \$767 billion. Capital and surplus in the life and health sector stood at approximately \$440 billion as of December 31, 2020, and the health sector reported approximately \$244 billion.

## **SECTION TWO SUMMARY**

Florida insurance producers must be aware of the changes made by the state's legislature and changes happening at the federal level of government. These changes impact their business and the industry in general.

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<sup>1</sup> Ibid.



## SECTION TWO QUIZ

1. This bill authorizes the Department of Financial Services (DFS) to fine insurers up to \$\_\_\_\_\_ per day if the insurer fails or refuses to comply with the investigation of a fire or explosion by DIFS or the SFM.

- a. \$1,000
- b. \$1,500
- c. \$2,000
- d. \$2,500

2. “Buffer” RILAs limit the investor’s maximum potential loss in the event of a market downturn, often combined with a ceiling that limits the potential upside gains as well.

- a. True
- b. False

3. This bill reduces the frequency of annual reconciliation reports subsequently filed with the Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) after the assessment year from a period of three years to a period of two years.

- a. Senate Bill 749
- b. House Bill 689
- c. Senate Bill 156
- d. House Bill 1023

**QUIZ ANSWERS: 1. C 2. B 3. D**

# **SECTION THREE**

## **ETHICAL REQUIREMENTS**

### **INTRODUCTION**

In the insurance industry, ethics is a major concern for licensees and regulators. The insurance industry has had to address many issues associated with certain unethical practices within its ranks, at the corporate level as well as in the field. Insurance companies and licensees have an obligation to support and advance the business through proper, principled, and ethical practices. To the extent that agents are committed to and guided by a code of ethical practice standards, it is virtually assured that they will be able to competently and appropriately fulfill their professional duties and responsibilities.

The insurance business is based on trust and honesty. The products the industry offers and the benefits these products provide are ultimately future promises. For insurance products to have any value, the public as a whole, and insurance consumers individually, must trust that those promises will be kept.

To earn and keep such trust, insurance agents – as representatives of the industry, its products, and its promises – must embrace the principles of ethical marketing and ethical service standards.

The issue of ethics and responsibility in life and health insurance is not limited to notions of legality or economics. There is a dimension of professionalism that exceeds minimum legal prescription. To many insurance agents, there are major elements of pride, expertise, and personal responsibility implicit in their activities. Practiced professionals take their positions of responsibility so seriously that they devote considerable time and effort to the obtaining professional designations such as Long-Term Care Professional (LTCP), Chartered Life Underwriter (CLU), and Accredited Estate Planner, (AEP).

### **SECTION OBJECTIVES**

In this section we will:

- gain an understanding of the ethical practices expected of Florida life and health licensees;
- learn about the Florida Code of Ethics;
- study insurance fraud;
- explore the unauthorized practice of law;
- examine product suitability; and
- illustrate unfair and deceptive insurance trade practices.

# ETHICS IN THE INSURANCE BUSINESS

## Dealing With Ethical Dilemmas

The focus on ethics in the insurance business has been heightened by, among other things, the increased questioning of the industry's solvency by politicians and the public in general and the perception of various forms of unethical behavior as key contributing factors. Industry leaders are challenged to deal with ethical issues if the public trust is to be maintained.

Fortunately, life and health agents are showing an increasing interest in and responsibility for dealing with the ethical dilemmas encountered in their work. At the same time, managers and supervisors must be alert to identify and handle, on an individual basis, those situations where very significant challenges are encountered in attempting to respond appropriately to the ethical dilemmas faced in business.

The denial of ethical responsibility is an interesting phenomenon that is worth mentioning. People are very uncomfortable talking about the ethical issues that impact them, particularly unresolved ethical issues. Not surprisingly, they find it much easier to talk about other people's issues or the ethical dilemmas created by others.

People have a difficult time looking at their own ethical conflicts and should be encouraged to take responsibility for those areas in which they can exercise control. Still, we find it much easier to observe the shirking of ethical responsibilities in other people's lives than in our own. This often holds true in business situations as well.

## Knowing Right From Wrong

Some people would argue that ethics cannot be taught, that most people inherently know right from wrong. But the many conflicting pressures and demands in the work lives of people make it difficult to always do what they know is right. In the complex world of product proliferation, changing regulations, intense competition, and the constant threat of economic failure, knowing the right thing to do is not always as easy as it sounds.

How do licensees prioritize their ethical obligations? To whom do they owe the greatest loyalty? How much time do they need to spend attending to insureds and potential customers? These ethical uncertainties can be learned.

Teaching ethics does not mean lecturing on right and wrong. Ethics courses give students the opportunity to think about the ethical implications of alternative policies and practices. Such courses are worthwhile because they give students and professionals permission to talk about ethical dilemmas that they may not be able to air in their work environment. These dilemmas often represent some of the most challenging issues facing business people today, merging values across cultures, challenging the moral reasoning of company management, and meeting economic requirements while concurrently fulfilling ethical obligations.

Unfortunately, it is all too rare that ethical issues are discussed in the business environment, even though it is clear that such issues arise daily in the course of business activities. By neglecting the discussion of these issues, what is delicately

communicated to generations of fledgling business people is that ethical implications do not need to be considered.

The result is a society where “the real world” is perceived to be a world where ethics and morals do not matter to the power players. Before assuming that ethics is too easy to be worth talking about, think about the wide range of tough ethical decisions facing us on a day to day basis.

## **REGULATORY AND ETHICAL GUIDELINES**

The insurance business is based on trust. The products and services the industry offers and the benefits they provide are promises to insureds and to consumers in general. For insurance to have any value, the general public and individual insurance consumers must trust that those promises will be kept. To earn and keep such trust, insurance licensees – as representatives of the industry – must embrace the principles of ethical service standards.

Acting ethically is not a once in a lifetime accomplishment, nor is it a steady state. Insurance licensees are constantly confronted with situations that require careful evaluation of the ethical repercussions. But ethical decision making can be improved with practice. Licensees must appreciate this great opening to foster improved ethical decision making by recognizing the opportunity for ethical analysis of daily activities.

## **FLORIDA CODE OF ETHICS**

In Florida, specific codes of ethics have been developed that apply to particular areas of the insurance business. For example, there are separate codes of ethics for life insurance agents, public adjusters, and bail bond agents. All applicants for a life insurance agent’s license are required to subscribe to the code of ethics developed specifically to guide their activities as life insurance agents.

The Florida Code of Ethics sets forth broad guidelines that life insurance agents must follow in their relations with the public, other agents, and insurers. These standards of conduct are designed to keep agents from:

- committing acts or getting into circumstances that would constitute grounds for the suspension, revocation, or refusal of their license
- violating the law by engaging in unfair trade practices or unfair methods of competition

The Code states that the life insurance business is a matter of public trust in which all agents must work together to serve the public's best interests. To achieve this goal, agents must:

- understand and observe the laws governing life insurance
- accurately present facts that impact clients' decisions
- be fair when working with colleagues and competitors
- always place the policyholders' interests first

The Code of Ethics addresses four main activities:

- misrepresentation
- twisting
- rebating
- defamation

*Sec. 626.797 F.S.*

*Rule 69B-215.210 et. seq. F.A.C.*

*Rules 69B-220, 69B-221 F.A.C.*

## **Misrepresentation**

According to the Code of Ethics, it is unlawful for agents to make false or misleading statements about dividends paid on a policy or on similar policies, or to make false or misleading statements about the financial condition of an insurer.

It is also unlawful for agents to publish or circulate a false, deceptive, or misleading statement about the insurance business or about anyone involved in the insurance business.

More specifically, this means that advertisements may not:

- conceal the true identity of the insurer
- mislead the public as to the true role of the agent
- misrepresent the product as something other than insurance
- provide incorrect information regarding a product's features or benefits

In many cases, an agent may unintentionally make a misrepresentation and may believe he or she is being truthful. However, an agent's ignorance of the facts or the law is not a defense against liability for misrepresentation.

In sum, agents are responsible for the statements they make because they have an ethical duty to understand the products they sell and to present the policies truthfully.

## **Twisting**

The Code of Ethics also prohibits twisting, which involves making a misrepresentation or fraudulent comparison to induce a policyholder to lapse, forfeit, surrender, or terminate an insurance policy and take out a policy with another insurer.

Of course, it is not illegal for agents to encourage clients to replace an existing policy with another if it is in the clients' best interests to do so. However, inducing clients to change their insurance coverage based on misrepresentations or deception is unlawful.

## **Rebating**

Under the Code of Ethics, rebating is also unethical and, as we'll learn later, is permitted in Florida only in very limited circumstances. Insurers and agents generally cannot pay or offer to pay anything of value to induce someone to buy insurance, including a rebate of the premium, dividends, or stocks and securities. They also cannot pay or offer to pay

anything of value that is not specified in the insurance contract, such as by agreeing to give customers tickets or gift cards in exchange for purchasing insurance.

## **Defamation**

Defamation is defined as publishing or circulating a false, deceptive, or misleading statement about—or a statement that is maliciously critical of or derogatory to—the financial condition of an insurer, when such a statement is designed to injure anyone in the insurance business.

Defamation can include both written (libel) and spoken (slander) statements about a third party in the insurance industry.

## **Use of Designations**

The Florida Code of Ethics also regulates the use of certifications and professional designations when marketing, soliciting, and selling insurance to protect consumers from dishonest, deceptive, misleading, and fraudulent trade practices.

Agents can use designations only from an organization that maintains standards for assuring that its certificants are competent on specific subject matters. In addition, agents cannot use:

- designations if they have not actually earned them or are ineligible to use them;
- nonexistent or self-conferred designations; or
- designations that indicate or imply a level of occupational qualifications obtained by education, training, or experience that the person does not actually have.

## **Penalties**

A life insurance agent's license may be suspended or revoked for violating the Florida Code of Ethics.

## **NAIFA Code of Ethics**

The Florida Department of Financial Services encourages all licensed agents to embrace the Code of Ethics set forth by the National Association of Insurance and Financial Advisors (NAIFA). Serving to protect and promote the critical role of insurance and the role of professional agents and advisors, NAIFA advocates the following code of ethics and related responsibilities:

Those engaged in offering insurance and other related financial services occupy the unique position of liaison between the purchasers and the suppliers of insurance and closely related financial products. Inherent in this role is the combination of professional duty to the client and to the company as well. Ethical balance is required to avoid any conflict between these two obligations.

Therefore, I Believe It To Be My Responsibility:

- To hold my profession in high esteem and strive to enhance its prestige.
- To fulfill the needs of my clients to the best of my ability.

- To maintain my clients' confidences.
- To render exemplary service to my clients and their beneficiaries.
- To adhere to professional standards of conduct in helping my clients to protect insurable obligations and attain their financial security objectives.
- To present accurately and honestly all facts essential to my clients' decisions.
- To perfect my skills and increase my knowledge through continuing education.
- To conduct my business in such a way that my example might help raise the professional standards of those in my profession.
- To keep informed with respect to applicable laws and regulations and to observe them in the practice of my profession.
- To cooperate with others whose services are constructively related to meeting the needs of my clients.

## **Other Codes of Ethics**

In addition to the ethical requirements set forth by Florida law, life and health agents subscribe to the codes of ethics of the associations where they are members. These codes of ethics express aspirational goals and suggest practical models of behavior. Some professional associations are national organizations, and some are organized at the state level.

## **REPORTING REQUIREMENTS: UNLICENSED INSURANCE ACTIVITY BY MEWAs, LABOR LEASING ORGANIZATIONS, AND COLLECTIVELY BARGAINED PLANS**

In recent years, Florida has seen an increase in the number of unauthorized entities offering low cost health insurance plans in the state. These plans are often marketed as multiple employer welfare arrangements (MEWAs) or ERISA plans that are exempt from state regulation. In fact, many agents, induced by slick promotional materials and promises, have sold health insurance products for these unauthorized entities, which collected premiums but failed to pay claims.

To protect the public, Florida requires agents, brokers, third-party administrators, adjusters, and other licensees to notify the Department whenever they become aware of any unlicensed insurance activity occurring in the state.

Specifically, agents, third-party administrators, and insurers that become aware of an unlicensed insurer doing business in Florida must report the activities to the Department, along with the following information (if known) about the MEWA, employee leasing arrangement, welfare benefit plan, employee organization, collectively bargained arrangement, or other unlicensed insurer:

- organizational information concerning a reportable multiple employer welfare arrangement (MEWA), employee leasing arrangement, welfare benefit plan, employee organization, collectively bargained arrangement, or other unlicensed insurer;

- information on any insurance or reinsurance contracts, benefits, or coverage offered by those listed above;
- the names, addresses, and phone numbers of officers or agents of the reportable MEWA, arrangement, plan, organization, or unlicensed insurer; and
- the names, addresses, and phone numbers of employers, employees, or individuals who may be enrolled by, or who will be receiving services from, those listed above.

The required report can be made to the Department by phone at (850) 413-4000 or sent by mail to:

Florida Department of Financial Services  
 Attn: Unlicensed Entity Coordinator, Division of Insurance Fraud  
 2020 Capital Circle, S. E., Alexander Building  
 Tallahassee, FL 32301

*Rule 69B-230.033 F.A.C.*

## **INDIVIDUAL AGENT ETHICS**

As we just learned, life insurance agents in Florida are bound by the Code of Ethics, which defines certain activities as unlawful in the insurance business. Agents are also encouraged to follow the NAIFA Code of Ethics, which imposes general ethical duties when working with clients and others in the profession. Ethical codes recognize that agents occupy positions of confidence and public trust, and must maintain high ethical standards at all times when interacting with clients.

In addition to the specific practices prohibited by these codes, agents must keep in mind other general ethical practices:

- conducting business with clients, prospects, and other industry professionals according to high standards of honesty and fairness;
- efficiently handling business, including complaints and disputes;
- providing informed and client focused service; and
- engaging in fair competition and trade practices.

With respect to insureds and customers, the duty owed by life and health licensees is to provide prompt, fair, and effective service. At all times, licensees should treat these people with respect.

### **Responsibilities to Clients**

Whether by law or as an ethical matter, agents may have certain fiduciary responsibilities to act in the best interests of their clients and the companies they represent. The term *fiduciary* refers to a relationship of confidence or trust between two or more parties. A fiduciary is one who acts on behalf of another, giving rise to a special relationship of trust and confidence.



The duties a fiduciary owes to his or her clients are broad. They include honesty and integrity, full disclosure, loyalty, good faith, and fairness. As a practical matter, they also require that an agent:

- act in the best interest of the client;
- make product recommendations that best serve the client's needs;
- honestly and accurately represent the features and costs of these products; and
- provide prompt and conscientious service.

### **Good Faith**

A duty of good faith and fair dealing is asserted into every contract by Florida law. In the context of an insurance policy, the duty of good faith exists because of the fiduciary relationship that is also created when the insured surrenders to the insurer all control over the handling of the claim, including all decisions regarding the evaluation of the policyholder's exposure to loss.<sup>2</sup>

### **Duty of Service**

An agent's clients have the right to expect professional and competent service. The client needs to know that the agent regards his or her responsibilities toward servicing customers as an important professional duty.

Some of these responsibilities include:

- obtaining the specific product the client desires and notifying the client promptly if the agent is unable to do so
- informing the client of any specific risk the policy does not cover if the client specifically had mentioned the risk
- advising the client with regard to the recommended product, as well as investigating and ascertaining the financial condition of prospective insurance companies
- notifying the client of any premature termination or cancelation of a policy
- notifying the client of possible financial problems with the insurer that issued the product
- keeping the client informed of changes in available insurance coverage
- maintaining a relationship with the client to ensure that, should circumstances or needs change, the appropriate coverage is in place or recommended

### **Professional Competence**

A client views an agent as an expert in a field about which the client often knows very little. The client turns to the agent for advice, recommendations, and guidance. Agents have an ethical obligation to live up to these standards and expectations by maintaining

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<sup>2</sup> [Boston Old Colony Insurance vs. Guitierrez, 386 So.2d 783 (Fla. 1980)]

an appropriate level of knowledge regarding the products they are selling and the needs these products address.

### **Standard of Care**

When working with clients, an agent is required to apply the level of care and service that is obtained through specialized knowledge, training, skills, and experience. A client has a right to depend on an agent to apply that knowledge and skill to the very best of his or her ability and to assume that the agent is acting in the client's best interest.

Due care is often defined by the so called prudent man (or prudent person) rule: "the care, skill, and diligence that would be exercised under similar circumstances by a reasonably prudent person who is familiar with such matters." The measure of the duty of care is the degree of care and diligence that a person of ordinary care and prudence would exercise in the management of his or her own business. When working with clients, a good rule of thumb is for agents to ask themselves whether they would follow the same course of action if they were in the client's situation.

## **MARKETING REGULATORY AND ETHICAL GUIDELINES FOR FLORIDA LICENSED INSURANCE PROFESSIONALS**

### **Advertising Practices**

The word "advertising" covers a lot of ground. In its broadest sense, it encompasses any form of messaging designed to promote the solicitation, sale, or negotiation of insurance contracts. The first messages that come to mind are ads that are common in traditional mass media—television, radio, newspapers, billboards, and magazines. There is also direct mail and email advertising to consumers registered as Web site users.

While marketers using the Internet may place Web ads linking consumers to company Web sites, the new trend is content based marketing, which entices consumers to engage in commerce by first providing them with information that speaks to their interests. It represents a migration to marketing that draws consumers to sellers, rather than pushing selling messages at consumers. A key arena for such marketing is found on social media sites, such as Facebook and Twitter.

Because the rules regulating the promotion of insurance products and services in new types of social media are not as clear cut as in traditional channels, insurance professionals would be wise to carefully monitor any statements made on such outlets to avoid running afoul of the insurance rules prohibiting misleading representations and deceptive advertising.

All Florida licensees must adhere to the general standard that ads must be truthful and clear. False advertising, which is considered an unfair trade practice, will be discussed in detail later in this section.

## Military Sales Practices

Florida insurance regulations include a rule specifically designed to protect active duty service members of the U.S. Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

The rule applies generally to the solicitation or sale of life insurance or annuity products by an insurance producer to an active duty service member of the U.S. Armed Forces. However, the following types of products are exempt from the rule:

- credit insurance;
- group life insurance or group annuities where there is no in person, face to face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
- individual stand alone health policies, including disability income policies;
- contracts offered by Service Members' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI);
- life insurance contracts offered through a nonprofit military association, if they are not underwritten by an insurer; and
- contracts used to fund retirement plans qualified under the Internal Revenue Code, nonqualified deferred compensation arrangements, legal settlements, or prearranged funeral contracts.

The following acts or practices are considered unfair or deceptive when they are done during an in person, face to face solicitation of life insurance on a military installation by an insurance producer:

- solicitations made door to door, or without first establishing a specific appointment for each meeting with the prospective purchaser;
- solicitations made to a group or "captive" audience where attendance is not voluntary;
- appointments or solicitations made during service members' normally scheduled duty hours;
- appointments or solicitations made in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;
- solicitations made without first obtaining permission from the installation commander or the commander's designee;
- the posting of bulletins, notices, or advertisements that have not been authorized by the installation commander;
- failure to present the Personal Commercial Solicitation Evaluation Form (DD Form 2885) during solicitations or encouraging service members not to complete or submit the form;
- failure to obtain from an applicant a completed copy of any required form confirming that the applicant has fulfilled any counseling requirement for the sale

of life insurance established by the Department of Defense or any branch of the Armed Forces;

- the use of Department of Defense personnel in any official capacity in solicitations; and
- participation in any U.S. Armed Forces sponsored education program.

The following acts or practices are prohibited as corrupt practices or improper inducements, regardless of where they are committed:

- attempting to disguise the flow of funds with which premiums will be paid;
- using anything of value to induce attendance at events where life insurance will be solicited;
- advising a service member to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance;
- using any title that implies affiliation with or endorsement by the U.S. government, the Armed Forces, or any state or federal agency, such as "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor";
- using a military service organization in solicitations to falsely imply affiliation with or endorsement by the U.S. government or Armed Forces;
- implying that the credited interest rate on a life insurance policy is a net return on premium paid;
- misrepresenting life insurance mortality costs or implying that the product "costs nothing" or is "free";
- misrepresenting Service Members Group Life Insurance or Veterans Group Life Insurance;
- using lead generating materials that do not clearly and conspicuously disclose that the recipient will be solicited by an insurance producer, if that is the case;
- not disclosing that a life insurance solicitation will be made when establishing an appointment for a face to face meeting with a prospective purchaser;
- failing to clearly and conspicuously disclose that the product being sold is life insurance or an annuity;
- failing to make the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act";
- not explaining how to cancel a policy during the free look period;
- not providing an applicant with either a copy of the application or a written disclosure identifying the type of annuity contract, the death benefit applied for, and its expected first year cost;
- selling life insurance with a side fund, unless certain requirements are met; and
- selling any life insurance product to a service member that excludes coverage for death related to war or military service, other than an accidental death benefit.

*Rule 69B-240.001 F.A.C.*

# Insurance Fraud

## The Cost of Fraud

Perhaps one of the most serious problems facing the insurance industry – and directly tied to ethical deliberations – today is insurance fraud. It is estimated that insurance fraud costs the United States \$80 billion dollars or more a year, which is ultimately passed down to consumers.<sup>3</sup>

In Florida, the Division of Investigative and Forensic Services (formerly the Division of Insurance Fraud) enforces the state's criminal laws with respect to insurance transactions. Investigators are certified law enforcement officers with the authority to bear arms and make arrests. The Division serves and safeguards the public and businesses in Florida against acts of insurance fraud and the resulting impact of those crimes on taxpayers. According to its most recent report, the division made a record setting number of arrests for insurance fraud over the past year and obtained convictions resulting in court ordered restitution of more than \$112 million.

All Florida licensees should be on the lookout for fraud in their daily insurance practices as part of an overall ethical approach to business.

## What Constitutes Fraud?

What constitutes insurance fraud in Florida? A person commits insurance fraud if he or she:

- makes a statement when submitting a claim that contains false, incomplete, or misleading information;
- helps another person make a statement in connection with a claim that contains false, incomplete, or misleading information; or
- knowingly submits an insurance application containing false, incomplete, or misleading information or conceals information that is material to the application.

To discourage fraud, all application and claims forms must contain the following statement:

*"Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."*

If a person is found guilty of insurance fraud, the insurer may recover compensatory damages as well as its investigation and litigation expenses, including attorney's fees, from such person.

Sec. 817.234 F.S.

## Further Defining Fraud

The subject of fraud is so important to the study of ethics that it deserves its own discussion. For the purposes of fraud in Florida law, a person commits a "fraudulent

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<sup>3</sup> <http://www.myfloridacfo.com/Division/Fraud/>. March 10, 2016.

insurance act” if he or she knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, any written statement as part of, or in support of, a claim for payment or other benefit under an insurance policy.

This definition refers to applications and claims submitted to:

- insurers;
- self-insurers;
- self-insurance funds;
- servicing corporations;
- purported insurers;
- brokers; and
- any agent of the above.

In order for the definition of fraud to apply, the person must know that the claim contains materially false information or must conceal a material fact.

*Sec. 626.989 F. S.*

### **False and Fraudulent Statements for Claim Payment or Other Benefit**

Furthermore, a person commits insurance fraud if he or she, with the intent to injure, defraud, or deceive any insurer, carries out any of the following acts:

- presents, or causes to be presented, a written or oral statement as part of, or in support of, a claim for payment or other benefit under an insurance policy, knowing that the statement contains any false, incomplete, or misleading information material to the claim;
- prepares or makes a written or oral statement that is intended to be presented to an insurer in connection with, or in support of, a claim for payment or other benefit, knowing that the statement contains any false, incomplete, or misleading information material to the claim; or
- knowingly presents or prepares, with knowledge or belief that it will be presented to any insurer, any false, incomplete, or misleading information or written or oral statement as part of an insurance policy application or knowingly conceals a material fact about a policy application.

An insurer damaged as a result of a violation described here, after a determination of guilt, has a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys’ fees.

*Sec. 817.234, F. S.*

### **Florida’s Anti-Fraud Reward Program**

Florida’s Division of Investigative and Forensic Services has implemented an Anti-Fraud Reward Program. Tipsters can contact the insurance fraud hotline to provide information relating to a suspected fraud allegation. The tipster may remain

anonymous. The reward is conditional upon an arrest and a conviction and is based on the estimated or potential amount of monetary loss of the suspected fraudulent act.

Employees and insurance licensees cannot participate in the state's anti-fraud reward program.

## **PERSPECTIVE ON THE UNAUTHORIZED PRACTICE OF LAW**

The increasing complexities of insurance draw more and more upon considerations of legal analysis and advice. Perhaps it is inevitable that in the business of transacting insurance, a licensee may occasionally stray into the established territory of professional law.

### **Law is a Regulated Profession**

The practice of law is a regulated profession throughout the United States with standards varying from state to state. When insurance personnel trespass in domains reserved for the lawyer, the consequences can be significant, ranging from possible jail sentences and monetary fines to the loss of licenses.

Basic to the regulation of lawyers are the privileges of the professional and the elements of trust and confidence which are placed in its members. Standards of knowledge, education, and training are maintained, and assurances of character and moral fitness are sought. There is great public interest in the essential integrity of the bar.

Confidentiality of communications between the lawyer and the client play no small part. Because of the importance of legal affairs to the general public and the harm that can be inflicted by one not appropriately trained and licensed, the rendering of legal advice by unlicensed practitioners has always been a matter of concern.

On the other hand, licensees who specialize in complex insurance matters may have particular knowledge and expertise which surpass that of a general legal practitioner. The reconciliation of the competing interests of the legal and the insurance professions is the objective of this discussion.

Among other things, these activities would likely be construed as practicing law:

- evaluating legal forms, such as wills or trust documents;
- supplying legal forms along with advice or instructions as to their use; and
- and drafting legal documents adapted to particular circumstances, such as pension plans, health plans, and trust agreements.

### **What Constitutes the Practice of Law?**

The role of reason must be considered in defining the practice of law. The practice of law is not easy to define, once the apparent examples of drafting documents (such as wills, trusts, pleadings, and other litigation papers) and courtroom or administrative tribunal representations are put aside. After all, the recognition or reminder of the law may be involved in the most ordinary of activities.

For example, an accountant can tell a client that it is a crime to cheat on income taxes, an auto driving instructor can tell a customer that she must drive within the speed limits, and a building contractor can tell his customer that a requested procedure violates the municipal building code. A rule of reason necessarily results to permit people to advise or remind others of general legal prescriptions which apply to their activities.

## **Legal Knowledge**

Practicing law has been defined by the American Bar Association as “the giving of advice ... when the giving ... requires the use of any degree of legal knowledge or skill.” Legal knowledge, which is in the general perception of a business activity, ordinarily can be shared with others. However, these legal matters must be either generally informative or, if specific, so obvious as to be common knowledge in the calling involved.

For example, a life insurance agent may explain the terms of a policy but may not advise a potential insured regarding the reasonableness of the terms or the legal consequences of the contract at the time of the insured’s death.

## **Prohibitions**

Insurance licensees may not engage in any activity that may be construed as practicing law. They cannot try to prevent clients from seeking legal advice or attempt to convince them to change lawyers. A licensee’s attempt to obtain “free” legal services by compensating an attorney with barter or exchanging services is illegal. In addition, licensees may not circulate the legal opinions that they receive from attorneys.

## **The Evolving Law of Liability**

The evolving law of insurance licensee liability is not certain. However, the following conclusions are reasonable and should be followed:

- Life and health agents are expected to take applications and service customers in a manner that is in keeping with upholding fiduciary responsibilities;
- Life and health agents are expected to possess the knowledge and ability reasonably expected of one in this occupation and to exercise reasonable care, skill, and diligence in carrying out their duties; and
- Life and health agents who represent themselves as having special skills or expertise will be required to exercise that degree of expertise.

# **UNDERSTANDING INDUSTRY PRODUCTS AND SUITABILITY OF SALES AND SERVICES**

## **Foundation of Market Conduct Practices**

The issue of suitability is particularly important when selling insurance products. Referring to the relationship between a customer’s needs and capabilities and an



agent's product recommendation and placement, suitability is the foundation of market conduct practices. It requires that all product recommendations and sales are suitable for the customer based on his or her needs, circumstances, and abilities (financial and otherwise).

Accordingly, an agent must strive to answer all of the following questions:

- What are the client's needs?
- What product or products best address those needs?
- Does the client completely understand the product and its provisions?
- Does the client understand and accept the product's limitations?
- Does the product serve the client's interest, and does the product advance the client's objectives?

Suitability also requires putting the client's interests first. To base a product recommendation on the agent's best interests (namely, the chance to earn a commission or company production credit) violates this basic principle.

Of course, suitability means knowing that no financial product is suitable for everyone and, conversely, that for every person some products are more or less suitable than others. Making an appropriate placement requires that the agent first know the client's financial profile, including needs and circumstances. The only sure fire way to successfully draw that profile is through a discovery or "fact finding" process. Suitability is based on the *totality* of a client's situation, which can only be determined through a careful, thoughtful, and thorough fact finding and needs analysis.

Suitability also demands that the client give input on and accept an agent's product recommendation. A well informed consumer is in the best position to make critical decisions about his or her financial situation and the products that will support and advance his or her goals. To this end, the agent must always present a full and accurate picture of any recommended product, explaining all of its features, positive and negative. Such disclosures must be meaningful so that the client can evaluate the product recommendation, and not so that they automatically steer the client to a purchase.

## **Suitability and Annuity Sales**

The issue of suitability also has significant application in the life and health insurance arena. For these products particularly, regulatory authorities have implemented strict suitability requirements. For example, when recommending the purchase, sale, or exchange of any variable life insurance or variable annuity contract, both state insurance law and Financial Industry Regulatory Authority (FINRA) suitability rules apply. Generally speaking, these laws and rules require that there be reasonable grounds for believing that the recommendation is suitable for the customer.

Florida affords additional protections to all consumers who are considering whether to buy or exchange an annuity. Agents must have an objectively reasonable basis for believing that the recommendation is suitable for the consumer based on facts the

consumer discloses regarding investments, other insurance products, and financial situation and needs.

At a minimum, agents must obtain the following information before selling or exchanging an annuity:

- personal information, for example, the age of the parties to the annuity – the contract owner and the annuitant;
- the customer's annual income;
- the customer's financial situation, determining if an annuity is affordable;
- the source of funds used to purchase the annuity;
- the customer's need, for example, if there are, or are not, other investment products in place;
- the customer's financial experience and investment knowledge;
- the customer's investment objectives, for example, to accumulate wealth or to leave a legacy;
- the intended use of the annuity, for example, college funding, retirement, or life insurance funding;
- the customer's time horizon, which is generally relevant to his or her age;
- existing assets, including life insurance and other investments;
- the consumer's liquid net worth and short- and long-term liquidity needs;
- the customer's risk tolerance, which will affect the type of investment selected;
- the customer's tax status, for example, if he or she looking to defer taxation; and
- any other relevant information.

The Department of Financial Services advises agents to refer to its “**Annuity Suitability Questionnaire**” to ensure that the correct information is obtained. A completed form must be submitted to the insurer along with an annuity application within ten days of its execution. Upon issue and delivery of the annuity contract, the consumer must also be given a copy of the form, which serves as the basis for the sale and issue of the contract.

In addition to requiring agents to gather client information, agents must also disclose certain information to clients, including:

- information regarding the annuity's crediting methods;
- the source of interest credits;
- the crediting formula;
- guaranteed vs. nonguaranteed credits;
- information regarding potential tax implications;
- income taxation of interest earnings;

- when income tax deferral is advantageous;
- risk factors associated with the contract;
- any potential for loss of principal;
- guarantees that are supported only by the strength and claims paying ability of the issuing insurer;
- known vs. expected interest earnings;
- any limitations imposed on contract value reallocations; and
- changes in market conditions or company financial condition.

Florida law also requires that an annuity **buyer's guide** and **contract summary** be given whenever any annuity is proposed. The buyer's guide must contain information about the various kinds of annuity contracts available to fit the prospective buyer's needs, the characteristics of annuities in general, and benefits of the annuity contract. The contract summary, on the other hand, describes the terms, provisions, and conditions of the contract that was purchased.

*Sec. 627.4554 F.S.*

*Rule 69B-162.011 F.A.C.*

## **Suitability and Replacement of Life Insurance**

The question of whether a product is suitable for a client also arises when a person is considering whether to replace a life insurance policy.

Potential consequences of a life insurance policy replacement are:

- The applicant must give evidence of insurability.
- The new policy may have terms that are less favorable to the insured than those of the existing policy.
- The applicant will need to satisfy a new contestability period (usually two years from the effective date of coverage).
- The new policy may impose a new suicide period.
- The new policy will usually not have current cash values.

An ethical agent must disclose these possible consequences. Sometimes replacement is in the best interest of the applicant, especially if the policy no longer meets the insured's needs. In some cases, however, agents have orchestrated changes that were not in their clients' best interests simply to generate sales commissions.

## **Twisting and Churning**

The practice of providing misleading information to induce a client to replace one policy with another—or to deplete an existing policy of its cash value and apply it to another—to increase commissions is prohibited by law in Florida and in all states.

Depending on the situation, this practice is known as either twisting or churning:

- **Twisting** is when one insurer's policy is replaced by a policy from another insurer.
- **Churning** is when the existing and replacement policy are both issued by the same insurer.

Either way, the improper replacement of insurance policies is strictly prohibited.

To ensure that replacement is in the best interests of a client, agents in Florida are required, when submitting an application to an insurer for a life insurance policy, to include a statement signed by the agent and the applicant that indicates whether the applicant already has any existing insurance. If the applicant does not have insurance, the agent is not required to do anything more.

## Notice Regarding Replacement

However, if the new policy will replace an existing one, the agent must give the applicant no later than at the time of application a "Notice Regarding Replacement" form. The applicant and the agent must sign this notice indicating that the required disclosures have been made and that the applicant understands the consequences of replacement. The agent must also leave a copy of the form with the applicant.

The notice will list all life insurance policies that would be replaced by the new policy and will identify the names of the insurer, the insured, and the new policy. This notice will also state whether each policy will be replaced or whether a policy will be used to fund the new policy.

In addition to the Notice Regarding Replacement, the agent must leave with the applicant the original or a copy of all marketing communications used to solicit and sell the policy or contract. Copies of every document used in the transaction must also be given to the replacing insurer.

*Rule 69B-151.201 F.A.C.*

## UNFAIR METHODS OF COMPETITION, AND UNFAIR OR DECEPTIVE ACTS

A substantial body of state insurance law covers the area of **marketing** and **unfair insurance trade practices**. Every state has enacted regulations that define certain activities as unfair in the business of insurance and prohibit their practice. These regulations, which apply to both agents and insurers, are intended to protect the public from unfair methods of competition and unfair and deceptive acts or practices in the marketing of insurance.

### Florida Life Insurance Solicitation Law

Florida's Life Insurance Solicitation Law sets forth the information and procedures that agents and insurers must follow when marketing life insurance to prospective buyers. It requires insurers to provide certain information to life insurance purchasers that will help them:

- select the most appropriate insurance plan for their needs;

- understand the basic features of the policy being purchased; and
- evaluate the relative costs of similar insurance policies.

Sec. 626.99 F.S.

## **Buyer's Guide and Policy Summary**

Insurers must give prospective purchasers a buyer's guide and a policy summary before they accept any premiums. However, if a policy contains an unconditional refund period of at least 14 days (also known as a free look period), the insurer can deliver the buyer's guide and policy summary with the policy or before it is delivered.

Insurers must also give purchasers a buyer's guide and policy summary any time they request one. Insurers and agents who do not provide buyer's guides or policy summaries when required will be considered to have engaged in misrepresentation.

## **Other General Solicitation Rules**

Florida also prescribes several other rules that agents must follow when soliciting life insurance. Again, the purpose is to regulate agents' marketing procedures to protect the interests of consumers who may have limited understanding of the products they are considering.

For example, before beginning a life insurance sales presentation, agents must inform prospective purchasers that they are acting as agents for a particular insurance company and that insurance is the subject of the solicitation.

Agents cannot use terms such as *financial planner*, *investment advisor*, or *financial consultant* to imply that they are engaged in an advisory business where their compensation is unrelated to sales, unless that is true.

If agents refer to policy dividends during their presentations, they must state that dividends are not guaranteed. In addition, any presentation of guaranteed and nonguaranteed benefits must be shown separately.

And, if an agent uses cost comparison indexes, he or she must note that the indexes are useful only for comparing the relative costs of two or more similar policies.

Insurers also have recordkeeping responsibilities with respect to the documents their agents use during sales presentations. Florida requires that insurers keep these records for at least three years after the date of their last authorized use.

Sec. 626.9531 F.S.

## **Unfair and Deceptive Trade Practices Defined**

Like other states, Florida regulates trade practices relating to insurance to protect consumers, and the Insurance Code defines a number of practices that are considered unfair methods of competition or unfair or deceptive acts. A person's license or license application may be denied, suspended, revoked, or refused for engaging in any of the acts discussed next. And, in some cases, criminal penalties may be imposed. In general, these prohibitions apply to any person engaged in the business of insurance.

The term *insurance policy* is broadly defined to include all clauses, riders, endorsements, and other related papers attached to the policy document.

Sec. 626.951, 626.9511 F.S.

## **Recommending Products and Services**

One category of unfair practices involves those that occur during the actual sales process. These generally involve practices that induce a person to purchase a policy that he or she would not have bought if there had been an honest presentation and he or she had known all the facts.

### **Misrepresentation**

Misrepresentation occurs when an insurer or its agent provides a customer with information that is untrue, deceptive, or misleading. This may take the form of an advertisement, sales literature, illustrations, or oral statements. A violation occurs when any method of marketing fails to disclose in a conspicuous manner that its purpose is the solicitation of insurance. Knowing or purposeful misrepresentation can result in loss of an agent's license or an insurer's certificate of authority.

Among other things, misrepresentation can include the following acts, when committed intentionally in order to obtain a fee or other benefit from an insurer, agent, or broker:

- making a false or fraudulent statement in an insurance application; and
- making a material omission when comparing a new policy with another policy that will be replaced (including failing to advise insureds about a preexisting condition clause in the replacement policy).

Sec. 626.9541 F.S.

### **Sliding**

Most insurance contracts come with offers of additional coverage, generally in the form of optional riders that the insured may choose for an additional premium. **Sliding** occurs when an agent sells an applicant a coverage or product without the applicant's knowledge or informed consent. This can include:

- persuading an applicant that an additional product or policy feature is required by law when it is not;
- telling the applicant that an additional product or policy feature is included at no additional cost when there is an additional charge; and
- adding a product or policy provision and charging the policyholder without obtaining his or her consent.

Sec. 626.9541 F.S.

### **Boycott, Coercion, and Intimidation**

Agents are prohibited from entering into an agreement to boycott, coerce, or intimidate anyone that results in the unreasonable restraint of, or monopoly in, the insurance business.

Sec. 626.9541 F.S.

## **Twisting**

As noted earlier, a person cannot make a false or misleading statement or comparison about an insurance policy in order to induce someone to lapse, surrender, terminate, retain, or convert an insurance policy or buy a policy with another insurer. This unfair practice is known as twisting.

Sec. 626.9541 F.S.

## **Churning**

Churning involves using the policy values in an existing life insurance policy to purchase another policy without having a reasonable basis for believing that the new policy will provide the policyowner with an actual benefit. This unlawful activity generally increases the amount of commission a producer will receive. Churning is illegal and is a violation of the fiduciary responsibility a producer has to act in a client's best interest.

Sec. 626.9541 F.S.

## **Unfair Discrimination**

Unfair discrimination occurs when persons of the same class and substantially equal life expectancy are charged different premiums, fees, or other charges, or when different benefits or dividends are paid to these persons under life insurance policies. Similarly, unfair discrimination exists with respect to health insurance when individuals of the same class and the same hazard are charged different premiums, fees, or rates or when different benefits are payable to these persons.

Florida life and health insurers are also prohibited from refusing to insure, continuing to insure, or limiting the amount of coverage available solely because a person has made a claim or sought medical or psychological treatment for abuse, domestic battery, or assault. Similar prohibitions apply to discriminating against individuals with severe disabilities or with the genetic trait for sickle cell anemia.

Sec. 626.9541, 626.9705, 626.9706, 626.9707 F.S.

## **Refusal to Insure**

Unfair discrimination can also occur if an insurer refuses to insure or continue to insure a person or risk solely because of:

- race, color, creed, marital status, sex, or national origin;
- the person's residence, age, or lawful occupation or the location of the risk (unless there is a reasonable relationship between these factors and the coverage issued or to be issued);
- the insured's or applicant's failure to agree to place collateral business with an insurer, unless the coverage applied for would provide liability coverage that is excess over that provided in policies maintained on property or motor vehicles;
- the insured's or applicant's failure to purchase noninsurance services or commodities, including automobile services;

- the fact that the insured or applicant is a public official; or
- previous denial of insurance coverage by an insurer.

*Sec. 626.9541 F.S.*

### **Voluntary Selection of Insurer on Loans**

While lenders may require that borrowers have insurance for a loan, they may not require borrowers to obtain insurance from a particular insurer or agent. Borrowers must be free to choose their own insurer and agent, as long as the insurer is financially sound and the agent is reputable.

If lenders wish to provide information that they have obtained from borrowers about insurance premiums, coverage, or claims to other parties for the purpose of soliciting insurance, they must first obtain the borrower's written permission or give the borrower a chance to object to having that information shared.

The borrower must be given written notice of the right to object to sharing information.

*Sec. 626.9551 F.S.*

### **Life Insurance Limits Based on Foreign Travel**

In Florida, insurers may ask life insurance and annuity applicants questions about their past or future foreign travel plans. However, it is illegal to refuse to issue, continue, or limit the amount of life insurance coverage available to a person based solely on the person's past or future foreign lawful travel experiences.

*Sec. 626.9541 F.S.*

### **Defamation**

Defamation involves making false statements, written or oral, that are derogatory and intended to injure an insurer or person engaged in the insurance business. An agent or insurer might defame another agent or insurer, for example, by spreading false information regarding the integrity or financial condition of a competitor.

Defamation is also considered a violation of the Florida Code of Ethics, as discussed earlier.

*Sec. 626.9541 F.S.*

*Rule 69B-215.225 F.A.C.*

### **Unfair Claims Settlement Practices**

One of the most important areas when dealing with existing customers concerns the processing of **claims**. After all, when a claim is presented, the policyowner is asking the insurer to fulfill the promise the policy represents. While claims are generally administered through a claims department of the home office, policyholders frequently look for assistance from the agent who sold them the policy. Indeed, some insurance companies promote their agents' involvement at claims time in their advertisements.

With that in mind, agents should be familiar with their companies' rules on handling claims as well as Florida's laws on unfair claims practices.

For instance, it is considered an unfair claims settlement practice for insurers to:



- attempt to settle claims based on an application that was changed without the insured's consent or notice; and
- make a material misrepresentation to an insured or other person in order to settle a claim on less favorable terms than those provided by the policy.

It is also an unfair claims settlement practice for insurers to engage in the following acts so frequently that it constitutes a general business practice:

- failing to use standards to promptly investigate and settle claims;
- misrepresenting pertinent facts or policy provisions relating to coverages at issue;
- failing to promptly acknowledge communications about claims;
- denying claims without conducting reasonable investigations;
- failing to affirm or deny coverage of claims within 30 days after proof of loss statements have been completed;
- failing to provide a reasonable explanation of the basis in the policy for denying a claim or offering a compromise settlement;
- failing to promptly notify the insured that additional information is needed to process a claim;
- failing to clearly explain why additional information is needed to process a claim and the nature of the information requested; and
- failing to pay personal injury protection insurance claims within certain prescribed times.

*Sec. 626.9541 F.S.*

*Rule 69B-215.225 F.A.C.*

## **Complaint Handling Procedures**

Insurers are also required to have complaint handling procedures in place so that complaints can be handled promptly when they arise. It is considered an unfair practice if insurers do not maintain complete records of all written complaints they have received since the date of their last examination.

*Sec. 626.9541 F.S.*

*Rule 69B-215.225 F.A.C.*

## **Excessive Charges**

Florida also protects consumers by making it unlawful for insurers and agents to knowingly collect any sum as a premium or charge for insurance that is not provided for in the policy or to collect more than the amount of premium stated in the policy.

A person who overcharges consumers may be fined:

- up to \$5,000 for each nonwillful violation (up to \$20,000 total for all violations arising out of the same action); or

- up to \$40,000 for each willful violation (up to \$200,000 total for all violations arising out of the same action).

Sec. 626.9521, 626.9541 F.S.

Rule 69B-215.215 F.A.C.

## Unlawful Use of Designations

The Code of Ethics, as noted earlier, prohibits licensees from unlawfully using designations that they do not currently hold. Agents are also prohibited from using a designation or title during a sales presentation or when soliciting insurance that falsely implies that they:

- possess special financial knowledge or have obtained specialized financial training; and
- are certified or qualified to provide specialized financial advice to senior citizens.

For example, an agent may not use terms such as *financial advisor* or *financial planner* to falsely imply that he or she is licensed or qualified to sell or recommend financial products other than insurance products. Agents are also prohibited from falsely implying that they are qualified to recommend or sell securities or other investment products in addition to insurance products.

However, it is not unlawful for an agent to inform customers that he or she holds a designation as a certified financial planner (CFP), chartered life underwriter (CLU), chartered financial consultant (ChFC), or life underwriter training council fellow (LUTC), or holds a license to sell securities from the Financial Industry Regulatory Authority (FINRA).

Sec. 626.9521, 626.9541 F.S.

Rule 69B-215.215 F.A.C.

## Rebating

In some industries, it is customary to give gifts to customers who purchase products. In the insurance industry, however, giving gifts, inducements, or rebates can lead to ethical problems. As a result, Florida law states that it is unlawful to offer anything of value to induce someone to buy insurance, including a rebate of premium, dividends, or stocks and securities.

However, Florida does permit agents and insurers to give merchandise to insureds and prospective insureds, as long as the value of the items does not exceed \$100 to one person in any calendar year.

Insurers can also lawfully take the following actions without violating the rebating rules:

- pay equitable bonuses to annuity or life insurance policyholders or otherwise lower premiums out of surplus accumulated from nonparticipating insurance;
- make allowances to industrial life policyholders who have paid premiums directly to the insurer for a specified period, which represent the saving in collection expenses;

- readjust premiums for group insurance policies based on the loss or expense experience at the end of a policy year (made retroactive for that policy year only);
- issue group life insurance policies or annuity contracts at a lower rate than for individual policies or contracts; and
- issue a life or health insurance policy on a salary savings, payroll deduction, or similar plan at a reduced rate related to the savings made by using such a plan.

## Commission Rebates

In Florida, rebating is allowed in the following circumstances:

- The rebate is available to all insureds in the same actuarial class. In other words, the agent cannot pick and choose which clients will receive rebates.
- The rebate is given in accordance with a rebating schedule that the agent has filed with the insurer issuing the policy.
- The rebating schedule is uniformly applied so that all insureds who purchase the same policy receive the same percentage rebate.
- The agent must prominently display the rebate schedule in his or her office, and must give a free copy to insureds on request.

Of course, an insurer may prohibit its agents from offering rebates, in which case the agent cannot rebate any part of his or her commission earned from that company.

Rebates may not be withheld or limited based on factors that are unfairly discriminatory. This means that agents and insurers cannot use the age, sex, place of residence, race, nationality, ethnic origin, marital status, or occupation of the insured or location of the risk to determine the rebate percentage or whether a rebate is available. Agents and insurers also cannot require clients to purchase other products in order to obtain a rebate.

An agent must maintain a copy of all rebate schedules for five years. Only rebates that are shown on the rebate schedule can be given.

*Sec. 626.572 F.S.*

*Rule 69B-215.220 F.A.C.*

## Controlled Business

The Department will not grant or continue a license if an agent is using the license primarily to engage in controlled business. **Controlled business** is insurance that an agent writes primarily on the lives, property, or risks of the licensee or of the licensee's family members, employer, or business associates.

Many agents will naturally sell insurance to family members and business associates, which is considered lawful activity. Selling to these individuals and entities will be considered controlled business only if, during a 12-month period, the total amount of premiums written on controlled business exceeds the premiums written on other insurance sold to the general public.

*Sec. 626.784, 626.830 F.S.*

## Investigations and Hearings

The Department has the power to investigate and examine the affairs of every person involved in the insurance business in Florida to determine whether he or she has engaged in any unfair or deceptive acts or practices. If the Department has reason to believe that the insurance laws have been violated, it may conduct a hearing on the matter.

Persons may be compelled by subpoena to appear at a hearing, and they may be ordered to disclose information pertinent to the investigation. Statements of charges, notices, and orders issued during an investigation may be served in the same manner as service of process in civil actions or by certified mail sent to the person's residence or principal place of business. Anyone who fails to comply with a subpoena to appear or an order of discovery may be fined up to \$1,000 per violation.

*Sec. 626.9561, 626.9571 F.S.*

## Penalties

The Department may suspend, revoke, or not renew the licenses of any agents who commit unfair trade and marketing practices.

The Department may also impose the following additional penalties:

- a fine of up to \$5,000 for each nonwillful violation (a total of \$20,000 for all violations arising out of the same act); or
- a fine of up to \$40,000 for each willful violation (a total of \$200,000 for all violations arising out of the same act).

Twisting and churning carry higher penalties. A person who engages in twisting or churning in Florida commits a misdemeanor of the first degree and may be fined up to \$5,000 for each nonwillful violation (\$75,000 for each willful violation, which means that fraudulent conduct was involved).

Anyone who intentionally submits insurance applications or policy related documents with fraudulent signatures commits a felony of the third degree and may be fined up to \$5,000 for each nonwillful violation (\$75,000 for each willful violation).

*Sec. 626.9521 F.S.*

## UNDERSTANDING REQUIRED PREMIUM DISCOUNTS

In the life and health insurance arena, insurers are not legally required to offer premium discounts to applicants and policyholders. However, when underwriting individual life and some types of health insurance policies, insurers will charge lower premiums to applicants who present a very low risk of loss to the insurer. These individuals are classified as preferred risks.

Conversely, an insurer may deny the applications of individuals who pose a risk that is so great that they are considered uninsurable, perhaps because they have certain medical problems or a history of such problems. Insurers may also deny applications if applicants intentionally misrepresented or omitted information on the application about work history, alcohol and tobacco use, and risky hobbies.

While insurers may simply deny the applications from individuals who in some way present a greater mortality risk, they might also classify such risks as substandard instead. In this case, the insurer may adjust the premium to compensate for the additional risk, an approach known as rating.

Some companies that offer group health insurance to employees sponsor wellness programs, such as anti-smoking and weight loss programs. Employers typically reward employees who participate in wellness programs by offering premium discounts and other incentives. Employees who do not participate in such programs may face penalties, such as higher premiums or not having access to cheaper, better plans. The goal of wellness programs is to promote healthier behavior, which in turn reduces health care costs.

### **SECTION THREE SUMMARY**

Agents must make important ethical decisions every day when working with clients, insurers, and the public. They must choose the sales methods they use, whether to disclose certain information about products, and how they will interact with others. Of course, there are certain mandated ethical requirements that agents must always follow. The Florida Code of Ethics, for example, sets forth broad guidelines that life insurance agents must abide by when selling life insurance and prohibits specific types of behavior, including rebating, twisting, defamation, and misrepresentation. Agents must also ensure that product recommendations are suitable for clients.

There are certain activities that agents must avoid when soliciting customers, selecting and recommending products, and servicing clients. The Florida Insurance Code outlines a number of unethical practices, such as churning, unfair discrimination, and unfair claim settlement practices. Agents and insurers who violate these rules risk license suspension and revocation, as well as fines and potential criminal penalties for the most serious violations.

## SECTION THREE QUIZ

**1. The Florida Department of Financial Services may suspend, revoke, or not renew the licenses of any agents who commit unfair trade and marketing practices.**

- a. True
- b. False

**2. In addition to suspending, revoking and/or not renewing the licenses of agents who commit unfair trade and marketing practices, the Department may also impose additional penalties. Which of the following is an accurate description of potential penalties.**

- a. A fine of up to \$7,000 for each nonwillful violation (a total of \$20,000 for all violations arising out of the same act)
- b. A fine of up to \$50,000 for each willful violation (a total of \$250,000 for all violations arising out of the same act)
- c. A fine of up to \$40,000 for each willful violation (a total of \$200,000 for all violations arising out of the same act).
- d. A fine of up to \$5,000 for each nonwillful violation (a total of \$50,000 for all violations arising out of the same act)

**3. Churning involves using the policy values in an existing life insurance policy to purchase another policy while having a reasonable basis for believing that the new policy will provide the policyowner with an actual benefit.**

- a. True
- b. False

**SECTION THREE QUIZ ANSWERS:**

**1. A    2.C    3. B**

# **SECTION FOUR**

## **DISCIPLINARY AND INDUSTRY TRENDS**

### **INTRODUCTION**

In Florida, the insurance industry is strictly regulated to protect consumers from fraudulent and deceptive practices. In this section, we will examine some recent disciplinary actions that the Department has taken against licensees who violate the insurance laws and the penalties that may be imposed. We will also learn about duties to ensure that the insurers a licensee is transacting insurance with are licensed, as well as new and important terminology that students must understand in their day-to-day practices.

### **SECTION OBJECTIVES**

In this final section, we will:

- examine recent violations and enforcement actions against life and health licensees for violation of Florida law;
- study unauthorized insurance products and entities; and
- learn new and important technology taking place in the insurance industry today.

### **RECENT VIOLATIONS AND ENFORCEMENT ACTIONS OF FLORIDA LICENSED INSURANCE PROFESSIONALS**

In every edition of *Insurance Insights*, the Department publishes a compendium of cases involving agents, agencies, and unlicensed individuals who violate Florida's insurance rules and regulations.

The Department also publishes a monthly list on its Web site of individuals and entities that have been subject to disciplinary proceedings, including fines and license suspension, revocation, and probation. The list includes licensees' names, license numbers, lines of authority, city, and how the case was disposed. Copies of enforcement action documents can be found on the Division of Legal Services' database under "Final Orders."

The Department is very active in enforcing the insurance laws. Some of the most recent cases and enforcement actions are discussed here.

#### **Fraudulent Application**

**CASE FACTS:** An investigation was opened on the agent in charge of a life, health, annuity, and general lines agency after a consumer complained to the Department that she had received a life insurance policy she did not apply for. The customer received a life insurance policy in the mail after speaking to a customer representative at the

agency by phone. The consumer never authorized anyone to initiate a policy on her behalf and never met the agent in charge. The agent stated she knew the customer representative completed the life insurance application on the consumer. Customer representatives are prohibited from transacting life insurance business.

**CASE DISPOSITION:** The agent in charge was fined \$2,500 and placed on probation for one year.

## **Fraudulent Group Applications**

**CASE FACTS:** According to an insurance company appointment termination, a life, health, and annuity agent intentionally made fraudulent statements on employee group insurance applications submitted to the insurer. Investigators confirmed the agent added individuals to the group plan that were not employed by the group policyholder. An audit of the group's application records revealed the individuals added to the group plan as employees did not reside at the addresses on their applications, and they could not be contacted at the phone numbers or email addresses on the applications.

**CASE DISPOSITION:** The agent's license suspended for nine months.

## **Fraudulent Application, Failure to Notify the Department of Action**

**CASE FACTS:** According to a complaint filed with the Department by an insurer, a life, health, and variable annuity agent admitted to application misrepresentation by falsifying the signatures on behalf of three consumers. The agent also failed to report a FINRA action to the Department.

**CASE DISPOSITION:** The agent's license suspended for 12 months.

## **Failure to Notify the Department of Action**

**CASE FACTS:** Investigators opened a case on a non-resident general lines agent after regulatory monitoring found enforcement action was taken against the agent in his home state. The action alleged the agent failed to procure proper insurance for a business client, which violated certain sections of that state's laws. He was fined \$5,000 and placed on probation for one year in his home state. A search of Department records and the NAIC database revealed the agent failed to report this action to the Department as required by Florida law.

**CASE DISPOSITION:** The agent was fined \$1,500 and placed on probation for one year.

## **Conversion, Forgery**

**CASE FACTS:** A case was opened on a life, health, and variable annuity agent when the Financial Industry Regulatory Authority barred the agent from associating with any FINRA member in any capacity, which includes holding any type of individual registration. FINRA's findings concluded the agent converted money from elderly customers, forged or falsified the signatures of four customers on nine separate documents, and changed the account address of record for three customers from their home addresses to the agent's business address.



The agent paid most of the surrender charges a customer incurred as the result of his recommendation to surrender a variable annuity contract, thereby guaranteeing her against loss, a violation of FINRA rules.

**CASE DISPOSITION:** The agent's license was revoked.

## **Unlicensed Activity, Failure to Respond to Administrative Complaint**

**CASE FACTS:** Failing to respond to the Department's administrative complaint does not make it go away, as a life, health, and variable annuity agent discovered when his license was suspended. The case began with an anonymous tip from the Department's Division of Insurance and Forensic Services. The tip alleged an agent was running a call center staffed with unlicensed employees transacting insurance business. Department records indicated the agency was not licensed. The agent mentioned in the tip was listed as the owner of another licensed agency. While conducting an inspection of the location listed in corporate records for the unlicensed agency, investigators found a licensed agent, an administrative assistant, and several employees. Notably, there was no signage or license posted for either agency. The agent told investigators the business was being used for tax purposes only. Investigators contacted an insurer the agent was appointed by and obtained applications for health insurance bearing the unlicensed agency name. The subject failed to respond to the administrative complaint.

**CASE DISPOSITION:** The agent's license was suspended for 12 months.

## **Misrepresentation, Failure to Follow Annuity Replacement Rules**

**CASE FACTS:** An investigation was opened after receiving a complaint from an insurer's Special Investigative Unit (SIU) alleging a life, health, and variable annuity agent misrepresented the replacement of an existing annuity on a new annuity application and did not submit the required replacement and annuity disclosure forms. In their statement to investigators, the senior consumers said they were misled by the agent's advertised "bonus" rate of 20 percent, which motivated them to surrender their annuities. The agent instructed the consumers to notify him when they received their checks. Surrender charges totaling more than \$16,000 were assessed and the failure to file for a 1035 Exchange resulted in a taxable event.

**CASE DISPOSITION:** The agent was fined \$6,500.

## **Fraudulent Annuity Applications**

**CASE FACTS:** An investigation was opened on a life, health and variable annuity agent when consumers filed complaints with the insurer regarding the replacement of 28 annuity contracts and life insurance policies. Investigators met with the consumers and reviewed application documents and found that many included false information that the consumers attested to in their statement to investigators. During the investigation, investigators also determined the agent enlisted the help of several insurance agents to target policies of an elderly couples who had recently relocated to Florida.

**CASE DISPOSITION:** The agent's license was revoked.

## Unsuitable Annuity Recommendations

**CASE FACTS:** Insurance companies are required to notify the Department when they terminate the appointment of any licensee for cause. When the Bureau of Investigation received notice that an agent was terminated for cause regarding the sale of annuities to two elderly consumers, an investigation was opened. The investigator visited the affected senior consumers, both over 80 years old, and took their statements. The consumers stated that the agent advised them to directly surrender their existing annuities, without the benefit of a 1035 Exchange. The agent further instructed the senior consumers to provide personal checks for the surrendered funds to pay for the new annuities, stating that doing so would allow the contracts to be issued sooner.

Analysis of the transactions determined that the agent inflated the consumers' net worth and income on suitability forms and failed to disclose that the transactions involved the replacement of existing annuities. In addition to making unsuitable recommendations to the consumers, the transactions created significant tax consequences for them because the value of the replaced annuities was not transferred by a tax free 1035 Exchange.

**CASE DISPOSITION:** The agent's license was suspended for 18 months.

## Agency Fraud

**CASE FACTS:** An investigation was opened after an agent alleged an insurance agency used his license and appointment to sell life insurance policies to insureds that he had never met. Investigators obtained affidavits from the agent, the involved consumers, and insurance company personnel concerning those transactions.

Investigators followed the money trail, which led directly to the agency. According to documentation from the insurer, the agency received commissions for the policies issued under the complaining agent's name.

**CASE DISPOSITION:** The agency's license was administratively surrendered.

## UNAUTHORIZED PRODUCTS AND ENTITIES INVOLVED IN FLORIDA COMMERCE

### Authorized vs. Unauthorized Insurance Companies

Over the past several years, a substantial problem has arisen with licensed Florida agents selling unapproved insurance through unauthorized entities. An unauthorized entity is an organization not licensed to transact insurance in Florida. By contrast, an authorized insurer has been duly certified and authorized by the Department of Financial Services to transact insurance in the state and has received a certificate of authority as evidence of that right.

## **Consequences of Unauthorized Insurer Activities**

Licensed insurers have met Florida's stringent statutory financial requirements for licensure, and policyholders are protected by the Florida Life and Health Guaranty Association Act should a licensed insurer become insolvent. Unauthorized insurance does not offer these protections. Unauthorized insurance, particularly unauthorized health insurance, can lead to significant unpaid claims and out of pocket costs for victims.

In many cases, agents who acted on behalf of, or interact with, unauthorized entities did not realize they were working with companies that were not authorized to conduct business in Florida; in other cases, the agents were fully aware of the status of the company. Regardless of whether the parties were acting knowingly or unknowingly, the problems and results are the same: the loss of hundreds of millions of dollars due to unpaid claims and theft of premiums. And because unlicensed entities do not participate in the state's guaranty fund, which covers unpaid insurance claims in the event of insurer bankruptcy, contract owners holding unlicensed plans are usually left with unpaid claims when the businesses fold. In many cases, the operators of unauthorized entities would not have been able to reach potential buyers without the assistance of Florida licensees.

Although a majority of agents are not marketing unlicensed insurance, the law will hold unscrupulous agents accountable for leading their clients into buying unlicensed coverage.

## **Warning Signs**

Quite often, unauthorized entities offer insurance coverages at very low premium rates or with other terms that sound too good to be true, which tend to entice both buyer and agent. However, these rates may not be actuarially sound, and the entity may not have set aside money for reserves to cover its claims or liabilities. Other times, unauthorized entities may use fabricated letters from regulators to give the appearance of legitimacy or may state that consumers must join certain trade associations, unions, or other association groups to be eligible for coverage. Florida licensees should be aware that all of these are red flags indicating potential problems, and the Department's Division of Insurance Agent and Agency Services cautions licensees to not allow themselves to be recruited by a marketer touting cheaper health insurance or a guaranteed "can't lose" investment for their clients.

The Department often becomes aware of the plans that shut down when policyholders begin complaining about slow or no payment of claims. Regulators determine that the entities run into financial trouble when claims outpace incoming premiums.

Another warning sign is the use of the phrase "multiple employer welfare arrangement" (MEWA). While MEWAs can be legitimate, they must be licensed by the state, and not many are. The marketers may claim their plan is a federal plan or an Employee Retirement Income Security Act (ERISA) plan and is exempt from state regulation, which is a definite red flag.

There is always someone who has a guaranteed, get rich quick investment seeking out insurance professionals with an established market of clients to whom they can sell

these products. These bogus investments can range from communications equipment companies to real estate and land development opportunities, which almost always turn out to be unregistered securities. These investments have been so well packaged and pitched that some agents have also purchased them, as did their family members.

Too often unsuspecting agents have allowed themselves and their clients to become victims by purchasing a less expensive health plan that ultimately never paid any claims, or an investment promising high returns that turned out to be a sham. Whenever there is a peak in this type of activity, numerous consumers have been financially devastated as they were left holding unpaid medical bills or worthless investments. As a result, agents lost their insurance licenses and were also subjected to criminal penalties and civil lawsuits.

## **Conducting Necessary Due Diligence**

As an insurance professional you are responsible for conducting necessary due diligence to avoid putting your clients at risk. The excuses, "I thought it was legitimate," and "I was fooled and am also a victim," are not acceptable defenses. When verifying an insurance company's license or whether an investment is registered, agents must make sure that they have the correct and complete insurance company names, as some scams will use names similar to licensed companies and registered investments to create confusion. A good practice is always to verify that insurance company is authorized before offering any of its products.

For these reasons, Florida law specifically prohibits its insurance licensees from representing unauthorized entities. This means that no person may, directly or indirectly, act for or in any way represent an unauthorized entity with respect to residents or property or subjects to be insured in this state. In this context, the terms "act for" and "represent" refer to the following:

- soliciting, negotiating, procuring, or effectuating insurance contracts, or renewals;
- disseminating information as to coverage or rates;
- forwarding applications;
- delivering policies or contracts;
- inspecting risks;
- fixing rates;
- investigating or adjusting claims or losses;
- collecting or forwarding premiums; and
- representing or assisting such an insurer in any other manner or means in transacting insurance.

## **Penalties**

If an unauthorized insurer fails to pay any claim or loss, the consequences for the licensee who aided the business can be severe. Florida law provides that any person who knew (or reasonably should have known) that the contract was issued by an

unauthorized insurer and who solicited, negotiated, took application for, or effectuated the contract is liable to the insured for the full amount of the claim or loss not paid. The fact that the policy was issued by an unauthorized insurer does not invalidate the contract.

In addition, a Florida insurance licensee who knowingly represents or aids an unauthorized insurer commits a felony of the third degree, which may be punished by a fine of up to \$5,000 per count and imprisonment of up to five years.

Agents will find that, in most cases, the simple procedures outlined in the discussion that follows will help to easily identify those insurance companies presently authorized to conduct insurance business in Florida.

*Secs. 626.901, 626.902, 775.082, 775.083 F. S.*

## **Department Web Site of Unauthorized Insurers**

The state of Florida has taken a very strong position on the issue of unauthorized entities. Florida licensees are responsible for conducting reasonable research to ensure that they are not placing business with, investigating claims for, or aiding unauthorized entities. It is the duty and responsibility of all licensees to perform the due diligence necessary so that the only products sold or serviced in Florida are issued by authorized companies. Any question about the authorized status of a company can be checked by calling the Florida Department of Financial Services at 1-877-693-5236.

The Department maintains a Web site, [www.floir.com/CompanySearch](http://www.floir.com/CompanySearch), where licensees and consumers can verify whether a company or individual is authorized to sell insurance products in Florida. This Web site lists authorized insurers involved in insurance business in Florida. If they are not listed on the Web site, agents should assume they are not authorized.

## **Steps to Identifying Authorized and Unauthorized Insurers**

Licensees should follow these steps to ensure they are placing coverage with authorized insurers:

Make sure you have the complete and correct name of the insurance company. Many insurance company names are very similar.

- Go to the Department's Web site: [www.floir.com/CompanySearch](http://www.floir.com/CompanySearch).
- Enter the insurance company's name and click on the "Search" button.
- Confirm that the insurance company as identified in Step 1 is listed and authorized to conduct the line of business contemplated. Depending on the line of business, the following authorization types confer authority:
  - Certificate of Authority
  - Information Only
  - Letter of Approval
  - Letter of Eligibility
  - Letter of Registration

- License
- Provisional Certificate of Authority
- Residual Market

Insurance companies shown with an authorization status as “Active” and authorization type as “Permit” have only begun the authorization process, and are not authorized to conduct insurance business in the state of Florida.

If the insurance company is not listed on the Web site or the insurance company is shown with an authorization type not shown in the list above, the agent should not place insurance business with that company. Agents should keep in mind that simply because an insurer is currently authorized does not necessarily mean that it will continue to be authorized in the future. To minimize the chance of any problems occurring, licensees are advised to always check an insurer’s status before transacting any insurance.

## **Furnishing Supplies**

To help prevent the operation of unauthorized insurers, Florida law speaks to furnishing supplies to unlicensed agents. An insurer, a managing general agent, an insurance agency, or an agent—directly or through a representative—may not furnish to an agent any blank forms, applications, stationery, or other supplies to be used in soliciting, negotiating, or effecting contracts of insurance on its behalf unless these supplies relate to a class of business for which the agent is licensed and appointed, whether for that insurer or another insurer.

The law goes on to state that an insurer, general agent, insurance agency, or agent who furnishes any of the supplies describe to an agent or prospective agent not appointed to represent the insurer and who accepts from or writes any insurance business for the agent or agency is subject to civil liability to an insured just as if the agent had been appointed or authorized by the insurer.

*Sec. 626.342, F. S.*

## **Alert the Department**

To alert the Department of possible unauthorized insurance or unregistered securities being sold, licensees are asked to notify the Department at **[askDFS@MyFloridaCFO.com](mailto:askDFS@MyFloridaCFO.com)**.

## **OIR Resources**

The Office of Insurance Regulation also maintains a list of unlicensed entities and their affiliates that have been ordered to cease and desist from transacting insurance in Florida or with Florida consumers.

The OIR company search service can provide full names, business addresses, and identifying information for insurance companies and entities doing business in the state of Florida. They can be searched by any combination of company name, company type, address type, and authorized lines of business. The service will provide a list of results, if more than one possible match to a search is found. Once a match is found, a list of

companies in receivership can be checked to see if the company has been placed in receivership.

Again, licensees should consult this online list to ensure the entities and individuals with whom they transact insurance are licensed. If it is discovered that an insurance company is not listed on the Web site or that it is not authorized to transact insurance, the licensee should not be doing business with that insurer.

## **Unlicensed Insurance Entity Case Examined**

The director of a Hollywood and Boca Raton based insurance company was charged with acting as an insurer without a certificate of authority. The company had been ordered to cease its insurance operations, and the company ultimately lost a court challenge seeking federal protection as a Native American business.

The company's director was arrested by investigators with the Department of Financial Services, Division of Insurance Fraud. He was booked into the Broward County Jail. The company had never sought state authority to transact insurance in Florida and claimed to be exempt from state regulation because its president and sole officer was a member of the Seminole Indian Tribe. The company argued that only the federal government could regulate businesses owned by Native Americans. The Seminole Tribe of Florida made it clear that it had no connection with the company.

The Southern District Court of Florida issued a ruling dismissing company's challenge. Investigators said that the company proceeded to solicit multiple insurance benefits including health, life, and workers' compensation liability coverage, and used an interactive Web site to recruit customers and agents to sell its products. At least a dozen policies were sold.

The Department's Division of Insurance Fraud was assisted in its investigation by the U.S. Postal Inspector's Office.

## **NEW AND OTHER IMPORTANT TERMINOLOGY APPLICABLE TO FLORIDA LICENSED INSURANCE PROFESSIONALS**

Throughout this course, we have examined new laws and rules that impact the insurance industry. We have also reviewed some of the initiatives that the Department and Office have recently taken to enhance communications with licensees and insurers and to provide consumers with additional product information.

Now let's review some of the important terms that Florida licensees must understand in their day to-day practices and introduce some new technology that they should know in order to keep pace in today's high tech environment.

### **Artificial Intelligence**

Artificial intelligence (AI) is the development of computer systems than can perform tasks that normally require human intelligence, for example, visual perception, speech

recognition, and translation. The most recognized form of AI – and arguably the most disliked – is the automated menus we all experience when calling businesses.

In the insurance industry, artificial intelligence can be used to perform functions such as:

- interacting with consumers through Web site chat bots;
- analyzing photos of crashes;
- asking customers a series of questions about their habits and risk factors;
- spotting suspicious claims; and
- tracking safety habits through wearable trackers.

## **Customer Centricity**

Customer centricity is focused on an optimized customer experience. A customer centric model for business provides a positive customer experience before and after the sale. An insurance company brand that is customer centric creates a culture that drives repeat business and loyalty. At the same time, it drives profits.

Customer centricity is the element that differentiates an insurance company from its competition in the eyes of the end customer. It requires an investment in people, tools, and technology.

A customer centric business approach takes into consideration all of the newer technologies discussed here—the economics and accuracy of artificial intelligence, the capability to digitize data, mobile technologies for quick response, portals for easy access to products and services, social media for exposure and support, and the personalization of usage based insurance.

## **Digitization**

Digitization is the conversion of text, pictures, an object, sound, or signal into a digital form that can be processed by a computer. This end result is called a “digital representation.” Digitization is important to data processing, transmission, and storage. It allows information in differing formats to be combined into a single representation and conveyed efficiently. Unlike analog data, which typically suffers some loss of quality each time it is copied or transmitted, for example, copies of copies, digital data can be reproduced almost indefinitely without deterioration.

Digitization is today’s way of sharing and preserving information.

## **eAppoint**

eAppoint is the Department’s electronic appointment system where insurers can submit appointment applications, renewals, and terminations. They can also check the status of appointment related submissions and pay any appointment fees that are due.

## **Mobility**

Mobile devices are here to stay. Their popularity is essentially driven by convenience and a proliferation of useful mobile apps. Phones, tablets, and laptops affect how



insurance companies conduct business and interact with policyholders, agents, and consumers in general.

Inventory management apps allow insureds to take photos of their belongings and catalog them along with the purchase price and date.

Mobile based technology provide agents with real time access to carrier systems.

## **MyProfile**

MyProfile is the online Web site, maintained by the Department of Financial Services' Division of Agent and Agency Services, where insurance licensees and insurance agencies can apply for licenses, change their addresses, verify their continuing education status, obtain duplicate licenses, and view their appointments.

## **Portals**

A Web portal is a specially designed Web site that provides easy-to-use services for producers and policyholders. Content is customized for the user who accesses the portal with a password.

Insurance company portals provide policyholders with a means of accessing product and service information, claims and payment history, and self-service tasks such as printing coverage verification ID cards.

A portal environment can also be used to facilitate agent and field functions, for example, providing application upload, quick quotes to bind and issue endorsements, and access to proprietary forms and training information.

## **Social Media**

Social media is designed to help people connect. Connection takes place on a business level as well as on a social level. Social media tools such as Facebook and Twitter are frequently used by insurance companies to connect with their customers, market their products and services, and drive brand awareness.

Social media tools also provide the opportunity for people to collaborate and share information both internally and externally. Insurance carriers on the edge of technology have moved beyond the Twentieth Century communication and collaboration mediums of face-to-face meeting and email and embrace social media as a centralized platform for sharing documents, ideas, insight, and know how.

## **Usage Based Insurance (UBI)**

Usage based insurance (UBI) is a recent innovation that auto insurers use to monitor driving behaviors and coordinate them with premium rates. Mileage and driving behaviors are tracked using communication devices (telematics) in the vehicles.

Some insurers offer discounted rates for placement of the device. Once driving characteristics have been collected, pricing accuracy can be improved based on actual driving behavior. Drivers who demonstrate exceptional driving skills will be rewarded with a lower premium.

The Pay How You Drive (PHYD) monitoring model takes into consideration:

- rate of speed;
- rapid acceleration;
- frequent deceleration;
- driving time of day; and
- routes driven.

A Pay as You Drive (PAYD) model rates drivers based on actual miles driven.

Industry observers claim that the feedback provided to drivers through their telematic control devices has the potential for improving driving behavior.

## **Other Terminology**

Other relative new terminology that is Florida specific is discussed here.

### **Agent in Charge**

An **agent in charge** is a full time licensed general lines who manages an insurance agency. Agents holding other types of licenses are not eligible to act as an agent in charge. In Florida, each branch location must have an agent in charge.

### **Authorized Insurance Company**

An authorized insurance company (also known as an admitted company) is a company that is licensed and authorized to do business in Florida. The OIR issues certificates of authority to authorized companies.

### **Department of Financial Services**

The Department of Financial Services is responsible for regulating Florida's banking, securities, insurance, mortgage lending, and funeral and cemetery businesses. The Department's divisions include the Division of Agent and Agency Services, the Division of Insurance Fraud, and the Division of Consumer Services.

### **Division of Agent and Agency Services**

The name of the former Division of Agents and Agency Services was recently changed to the **Division of Agent and Agency Services**. This agency regulates the licensing of individuals and entities that transact insurance.

### **Federal Insurance Office**

The Dodd-Frank Wall Street Reform and Consumer Protection Act established the Federal Insurance Office (FIO) within the Department of the Treasury. The FIO provides advice to Congress about insurance matters and identifies activities that could pose systemic risk to the industry. The FIO represents the United States in international insurance matters and consults with states about national and international insurance issues. The FIO also helps the Treasury Secretary administer the Terrorism Risk Insurance Program.

## **Florida Bureau of Fire and Arson Investigations**

The Division of State Fire Marshal is now the Bureau of Fire and Arson Investigations. The Bureau operates within the new Division of Investigative and Forensic Services.

## **Florida Bureau of Forensic Services**

The Division of Insurance Fraud is now **the Bureau of Forensic Services**. The Bureau operates within the new Division of Investigative and Forensic Services.

## **Florida Insurance Guaranty Association**

The Florida Life and Health Insurance Guaranty Association is a nonprofit entity created by statute to pay certain claims of insolvent insurance companies. The Association will pay the valid claims of eligible policyholders, subject to coverage limits. All insurers licensed to sell life and health insurance in Florida must be members of the Association.

Similarly, the Florida Health Maintenance Organization Consumer Assistance Plan protects enrollees in health maintenance organizations from the insolvency of their HMOs.

## **Office of Insurance Regulation**

The Office of Insurance Regulation is responsible for regulating and enforcing state laws governing insurance and monitoring company solvency, policy forms, rates, and market conduct performance. The Office issues certificates of authority to companies intending to transact insurance in Florida.

## **Unaffiliated Insurance Agent**

An unaffiliated insurance agent is a licensed, self-appointed agent who is not affiliated with an insurance company and does not sell insurance. Unaffiliated agents provide insurance counseling services to clients in return for a fee.

## **Unauthorized Insurer**

An unauthorized insurer is a company that is operating without a certificate of authority. It is unlawful for agents to place business with an unauthorized insurer and other licensees to aid them. In Florida, an agent who represents an unauthorized insurer can be charged with a third degree felony.

## **SECTION FOUR SUMMARY**

In this section, we learned about types of violations that are grounds for administrative action by the Department, such as conducting insurance business without a license and submitting fraudulent applications. We also examined the problem of unauthorized entities selling insurance products in the state as well as the penalties that may be imposed against those who transact insurance business with them. Finally, we introduced some of the new technology and reviewed important terminology that Florida licensees should understand when transacting insurance in Florida.

## SECTION FOUR QUIZ

**1. Usage Based Insurance (UBI) is a form of insurance in which auto insurers monitor driving behaviors and coordinate them with premium rates. Once driving characteristics have been collected, pricing accuracy can be improved based on actual driving behavior. The driving characteristics monitored in this insurance model include:**

- a. rate of speed
- b. frequent deceleration
- c. driving time of day
- d. all of the above

**2. Which of the following can not be submitted through the Florida Department of Financial Services Electronic Appointment System (eAppoint)?**

- a. appointment applications
- b. renewals
- c. certificate of Authorization
- d. terminations

**3. In the insurance industry, artificial intelligence can be used to perform functions such as:**

- a. interacting with consumers through Web site chat bots
- b. analyzing photos of crashes
- c. tracking safety habits through wearable trackers
- d. all of the above

**SECTION FOUR QUIZ ANSWERS:**

**1. D 2. C 3. D**