



## FLORIDA ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS

### THE GREATEST THREAT TO THE INSURANCE INDUSTRY AND FLORIDA HOMEOWNERS: UNLICENSED CLAIM SOLICITATIONS AND ACTIVITY

Florida's public insurance adjusters are the only licensed claim adjusters in the state who have a fiduciary responsibility to help policyholders quantify and navigate an often-complex claims process. Unfortunately, illegal, unlicensed activity has left policyholders vulnerable to fraudulent actors and predatory solicitation practices. A cottage industry of roofers, contractors, restoration companies, and unlicensed and unregulated individuals referring to themselves as "loss consultants" is growing rapidly and creating unsustainable increases in claim frequency and severity for insurers. These individuals sometimes represent themselves as "licensed" and "compliant public adjusters" when in most cases they are neither. This activity has severely damaged the reputation of licensed public insurance adjusters and is playing a role in the social inflation that is driving up insurance costs.

The Florida Association of Public Insurance Adjusters (FAPIA) believes there is a direct relationship between the increased frequency in unlicensed activity and the perpetual need for increases in insurance premiums. Implementing greater statutory prohibitions pertaining to unlicensed activity, and instituting a clearer process for enforcement, will provide policyholders greater availability to alternative insurance options at affordable rates.

**FAPIA has drafted proposed legislation to address the detailed fraudulent unlicensed activity for the state's review and consideration.**

**Current Legislation:** Unlicensed activity has led to a surge in claims and is a detriment to insured Floridians. The Legislature F.S. 626.854 (19) was created to protect policyholders from a surge of unlicensed individuals soliciting and offering to prepare, complete or file insurance claims for policyholders. Only attorneys and public insurance adjusters are legally permitted to solicit or file insurance claims for policyholders and a violation of this statute is a third-degree felony, per F.S. 626.8738.

**Proposed Legislative Clarification:** FAPIA representatives are insurance professionals who deal with these issues daily. We offer valuable perspectives on these issues and should be included in the dialogue to improve Florida's insurance project. Our proposed legislative changes for the Florida Legislature include:

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

- (a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;
- (b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- (c) Advertise for employment as a public adjuster; or



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(d) Solicit, **advertise, or market services** to investigate, **advise, assist** or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

**The department may take administrative actions and impose fines against any persons performing claims adjusting, soliciting, marketing, or any other services under this section or 626.854 without the required licensure under s. 626.112 or s. 626.854.**

The highlighted language above expands the definition of solicit to include the terms “advertise and market their services” in 626.854 (19)(d). The suggested language above also provides the Department of Financial Services (DFS) with the ability to administratively enforce FS 626.854 (19)(d) and issue fines for non-compliance for anyone violating this provision.

Recently proposed [House Bill 717](#) (sponsored by Senator Clemons and Senator Tant) and [Senate Bill 1598](#) (sponsored by Senator Gruters) provide some much-needed clarification on what does or does not constitute unlicensed claims solicitation and fraud. The language, which is similar in both bills, broadens DFS’ authority to regulate unlicensed insurance claims solicitations and activity by defining the behaviors considered to be a violation. FAPIA commends the introduction of these bills and hopes they will pass during the 2021 session. If the language suggested by FAPIA above was to also be considered, it would provide even stronger enforcement ability to the Department of Financial Services.

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**FAPIA Proposes a Prohibition on Financial Inducements to File Claims:**

Financial inducements, referrals or kickbacks should never be involved in the insurance claim process. Representative David Santiago attempted to address this issue in his proposed 2016 Bill HB 177, as follows:

626.8699 Prohibited practices related to repair, mitigation, and restoration services; penalties.—

(1) A person or entity may not give a referral fee, commission, bonus, kickback, or rebate, or engage in any split fee arrangement, with any person or entity for any repair, mitigation, or restoration service if the repair, mitigation, or restoration service is for an amount greater than \$25 and is covered under an insurance policy in this state.

(2) A penalty for a violation of subsection (1) shall be administered by the department and may include:

(a) A fine no greater than \$10,000 per violation.

(b) A recommendation by the department to the appropriate licensing board that disciplinary action be taken.

FAPIA suggests revisiting this recommendation that explicitly prohibits financial inducements tied to insurance claims.

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### **In addition to changes in statutory language, FAPIA has some further recommendations to support enforcement and action on unlicensed claims solicitation and activity:**

- **Build a Dedicated Homeowners Fraud Unit:** Local State Attorney offices have limited resources to investigate and prosecute lower severity homeowner fraud when higher severity crimes such as violent offenses and drug violations consume their available bandwidth. The creation of a dedicated homeowners fraud unit with investigatory and prosecutorial powers would increase the frequency of enforcement, disincentivize criminal behavior and reduce market disruptions driven by fraudulent actors. Simply put, Florida property owners (and the insurance market itself) can no longer accept the lack of enforcement related to homeowner insurance fraud, which is resulting in double digit rate increases and further reductions in available insurance coverage offerings.
- **Update the Complaint Portal:** FAPIA strongly encourages that “unlicensed activity” be added as a keyword in the Department of Financial Services’ online complaint portal, to make it easier to report and track the frequency of these violations.

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### **FAPIA Recommends Increasing Florida Hurricane Catastrophe Fund Offerings:**

In 1993, the [Florida Hurricane Catastrophe Fund](#) (FHCF) was created by the Florida Legislature due to the hardening reinsurance market after Hurricane Andrew. Historically, the Florida Legislature has increased or decreased the FHCF’s reinsurance capacity to provide an affordable and stable supply of reinsurance capacity for the benefit of Florida’s property owners. If FHCF’s reinsurance offerings were increased now, that would provide additional reinsurance capacity and lessen the insurance rate pressure that Florida property owners are experiencing.

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### **Senate Bill 76 – Not the Answer to Florida’s Insurance Woes:**

[Senate Bill 76](#) (sponsored by Senator Boyd) has been proposed as a potential solution to the issue of social inflation/rising insurance costs, with the goal of strengthening the insurance market in Florida. Although well intended, the solutions proposed in the bill would ultimately harm homeowners throughout the state through the erosion of their coverage, such as:

- Insurers would be allowed to adjust roof claims to actual cash values for roofs that are over 10 years in age, which means that the claim payout would not be based on the true replacement cost for a roof. This coverage would be provided according to a “roof surface reimbursement schedule” that varies based on the roof material ... from 70% for a metal roof (which is not a common material used on Florida homes) to just 25% for a shingled roof that is not made of wood (which is very common). Considering this decreased payout on policies that have been paid into for years by homeowners, not to mention deductible costs, there will be many Florida residents who will be unable to pay for necessary roof repairs.



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- The period for filing an insurance claim would decrease from three to two years. This has the potential to particularly hurt homeowners following a busy storm season, when there is an increase in filings and inspections, prolonging the claims process. Additionally, not all roof damage is immediately apparent; this bill would prevent homeowners from submitting a supplemental claim when more damage has been found.

See lines 76 through 93 in [the proposed bill](#) for the full roof schedule and lines 117 through 133 for details on the decreased filing period.

The suggestion to offer actual cash value will, in particular, be a detriment to the many home and other property owners who have federally backed loans provided by Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac's federally backed loans are not allowed to accept property insurance policies that limit or exclude from coverage windstorm, hurricane, hail damages or any other perils that are normally included under an extended coverage agreement. In fact, the [replacement cost insurance loan servicing requirements](#) for Fannie Mae and Freddie Mac state that **"coverage must provide for claims to be settled on a replacement cost basis."** This means, that if the roof surface reimbursement schedule contained within Senate Bill 76 becomes law, property owners with federally backed loans provided by Fannie Mae or Freddie Mac would not qualify for the limited coverage proposed, and the loan servicers who unintentionally allow the purchase of such policies providing less than the required coverage, may be exposed to undue litigation liability in the event that an insured's roof needs full replacement.

If the Legislature makes the decision to pass Senate Bill 76, FAPIA firmly believes the financial implications need to be disclosed more clearly and upfront, before a policy is purchased. Insurance agents could be held liable if they fail to educate policyholders. This may warrant the execution and signing of a document that clearly outlines what is or isn't covered, so that policyholders understand their options and so there are no surprises when the policyholder submits a claim for roof damage that may not be covered.

The statement proposed in the bill ([lines 94 through 103](#)) for notifying policyholders of a "roof surface reimbursement schedule" is not enough on its own to educate homeowners on this significant change to coverage, and homeowners may not even see it until after purchasing a policy. As consumer advocates, the members of FAPIA fight for homeowners and want them to be able to make informed decisions that are in their best interest.

**ABOUT FAPIA:** Florida Association of Public Insurance Adjusters (FAPIA) was founded in 1993 to protect residential and business policyholders in the wake of devastating Hurricane Andrew in South Florida. Today, FAPIA consists of over 600 members who are committed to ensuring that property owners who suffer insured losses receive full and fair compensation from their insurance carriers.

FAPIA consists of trained and licensed insurance professionals who use their expertise to advocate for policyholders. The association is working to grow and enhance the industry by improving laws and regulations that govern public adjusters and their services to policyholders. To learn more, visit [www.FAPIA.net](http://www.FAPIA.net).