

The Unlicensed Practice of Public Adjusting - The Insurance Claims Keep Rolling In

You can bet that at any gathering of Florida licensed public adjusters, the conversation will eventually turn to how many Florida public adjusters currently exist. No question about it, Florida saw an explosion in the ranks of public adjusters after the big four storms of 2004. In the past few years however, the actual number of in-state licensed public adjusters has started a precipitous decline because of several factors.

These include but are not limited to what I believe to be unconstitutional legislation regarding the solicitation of business by public adjusters, prohibitions making it uneconomical to assist policyholders who are covered by Citizens Insurance Company, and sundry rules and regulations licensed adjusters are required to follow. Compare this trend to the explosion of quasi-adjusters in the de facto public adjusting business or put another way, folks without a license or regulatory oversight.

According to some, these new guns in town (unlicensed public adjusters) are driving claim frequency and cost. To give a recent example, the Sun Sentinel recently ran an article on July 3, 2014 titled Citizens creating special team to curb "water" lawsuits. This article says Citizens Property Insurance Corp. is swamped with legal costs from customers seeking payment for water damage. Ninety-six percent came from... you guessed it, South Florida's three big counties--Broward, Palm Beach, and you could knock me over on this one, Miami-Dade. Now get this, Citizens spent \$135.5 million on legal fees in that tri-county area over the five-year period studied. These are legal fees that go into defense lawyers' pockets, not dollars paid to fix insured properties damaged by water!

So what's going on here? Before I explain, let me make it clear that much of what is happening are self-inflicted wounds caused by insurance company lobbyists and regulators who go along with foolish reduction or elimination of common causes of losses such as water damage coverage.

For example, consider the thoughtless policy language allowed by regulators that says any water loss over 14 days old is excluded. When this policy form first came out, it was a jaw dropper. After all, insurance companies have covered and paid for water losses for as long as I have been in this business, which goes back four decades. And water losses are the most frequent cause of loss. But how do you date a water loss and how about that little pesky detail of how you separate the damages that occurred in the first 13 days? The kicker is that it has resulted in real damage and financial harm to one of Florida's bread and butter residents, our winter homeowners, a.k.a., the snowbirds who own condos and second homes in the Sunshine State and typically visit on a part-time basis.

So here we are: millions of policyholders' dollars being paid to lawyers because of an ill advised policy endorsement contrived to cut coverage for the most frequent type of claim. For all the new baby boomers on their way for a joyful, pleasant retirement.....welcome to Florida!

But wait! There's more to this story. Something else must have changed besides dumb policy



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modifications. According to some, it has to do with the cadre of unlicensed public adjusters, a.k.a., water extracting or restoration companies and contractors who are preying on both consumers and insurance companies by inflating water losses and, get this, hijacking the insured policyholder's property policy via something know as an "assignment of benefit form".

The assignment of benefit form issue was a very hotly debated issue in this past year's legislative session. In fact, one national insurance carrier said they would not re-enter the Florida property insurance market unless this issue was reformed. Guess what, money talks and the abusive assignment of benefit form lives on.

Want to know how it works? A covered water loss is discovered and is called into the insurance company or agent. The company either dispatches one of their preferred vendors or the homeowner is given a name to call by the insurance folks. After all, who knows of an insurance mitigation company? to Before the clean-up begins, there is this little detail that the homeowner (not the insurance company) has to sign called a "work authorization form." Folks, the devil is in the detail in these forms. If you read them, you will most likely find some innocent sounding language stating you are giving an assignment of benefits to the contractor for the work they perform. After all, the contractor will tell you they need to get paid and apparently you can't trust anyone to pay the bill these days. Not even the insurance company that sent them out to help you.

So now the stage is set for the contractor via the assignment of benefit form to basically take over your policy. What may have been a \$10,000 or \$15,000 water loss now becomes whatever the contractor can get away with. If the insurance company disagrees, the contractor can sue, demand an appraisal or have at their disposal any other dispute resolution process that may have been available to you. Remember, you (the policyholder) are out of the picture since you signed your benefits over to the contractor. Some might say, who cares, I got the water damage fixed. Let the insurance company and the contractor fight it out. Well that sure sounds good, but you have to remember all those millions of dollars going into lawyers' pockets, and the millions more into the contractors and others' pockets. As a result, guess who pays the bill via higher insurance premiums? Look in the mirror, surprise, surprise!

To avoid this assignment of benefit morass, and assuming there is no fraudulent intent on the part of the restoration contractor, either the policyholder or the public adjuster managing the claim should demand that the insurance company adjuster, the restoration contractor, and the insured/PA all agree on the scope and price of both the emergency services work and the subsequent repair of the loss before the work begins or as close to the commencement of work as possible. Otherwise the assignment of benefit form becomes a license to steal. And if a dispute arises, you'll have to engage an attorney to sue on a first party property claim which generates more fees.

What does all this have to do with the unlicensed practice of public adjusting? In my view, this assignment of benefits issue has morphed into a legion of contractors, acting as de facto public adjusters all without any type of regulatory oversight, licensing requirements or oversight of any type. Don't think this is not a big issue and big business. Take into consideration the fact that seminars are now being offered around the state to teach contractors how to skirt an unlicensed public adjusting charge from the State. As bold as it sounds, I'm not kidding.

Finally, I have placed an excerpt (with permission) from an email exchange with attorney Robert S. Walton, III in St. Petersburg, FL that I have a great deal of respect for. It highlights the concerns we both share on this issue. Maybe the regulators will take another look at this mess and see the rampant abuses.

He commented as follows:

"The most significant problem I encountered: contracts with the elderly. If the insurance company

does not fully pay, these guys (the restoration contractors) impose a lien. There is a suit going on over in Orlando, where the homeowner counterclaimed for fraud because the remediation company pursued him when it turned out to be a flood policy and there were no assignments. There is no standard for ethics. Adjusters have that as a matter of law. There is recourse against company, independent and public adjusters. The water remediation and restoration people are no holds barred. They interpret coverage's, request policies, send letters, make demands, negotiate costs of repair and cost of water extraction and drying. They bargain. They also go directly to lawyers based upon the assignment without consulting the insured because that is in their contract. An adjuster -whatever his or her stripe, cannot do that."

Robert S. Walton, III P.A.
204 37th Avenue N. No. 224
St.Petersburg, Florida 33704
Tel.: (813)842-2800
robertswaltoniii@msn.com

Well said Robert. Let us know what you think regarding this matter.

Sincerely,
Charles R. "Dick" Tutwiler, C.P.C.L.A., P.C.L.A.
Licensed Public Adjuster / Loss Appraiser / Certified Windstorm Umpire
Tutwiler & Associates, Inc.
5401 W. Kennedy Blvd., Suite 757
Tampa, FL 33609
www.PublicAdjuster.com
PH: 813.287.8090, Ext 105
CL: 813.293.1624
TF: 800.321.4488, Ext 105
FX: 813.287.0862
E-mail: tutwiler@publicadjuster.com

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