

# INSURANCE ADJUSTERS CODE OF CONDUCT

## SECTION 1 – INTEGRITY

**ADJUSTERS SHALL DISCHARGE THEIR DUTIES TO THEIR CLIENTS, MEMBERS OF THE PUBLIC, FELLOW ADJUSTERS, AND INSURERS WITH INTEGRITY.**

### COMMENTARY:

#### Basic Principles

Integrity is a fundamental quality demanded of every adjuster. If personal integrity is missing, there is little that can be done to compensate for its absence or to repair the damage to the adjuster's reputation. Deliberate wrongdoing and gross neglect are equally reprehensible.

#### Examples

##### The Adjuster Shall:

1. Diligently follow the instructions of the adjuster's Principals or policy holders and exercise skill and care at all times, refusing to be influenced in his or her investigation or in any settlement by self-interest or by subversive considerations urged upon the adjuster by others;
2. make full and prompt disclosure to the adjuster's Principals of all policy violations and of all cases of fraud, misrepresentation, non-disclosure, falsification of facts or records, or attempts improperly to influence findings or reports to Principals or policy holders;
3. provide full disclosure to the insured of coverage for which the policy must respond;
4. act to promote public confidence in the adjuster's Principals through fair and conscientious dealing, and refraining from any fraud, deceit, misrepresentation, willful non-disclosure, undue influence or other mischievous practice.

##### The Adjuster Shall Not:

1. Seek or make any secret profit or acquire any financial interest in any matter entrusted to him or her;
2. enter upon any investigation without prior authorization, specific or general, from the adjuster's Principal and in particular shall not ask or encourage any person other than a representative of the Principal to advise the adjuster of the occurrence of any accident or loss or form any alliance with any person outside of the business of insurance for the purpose of securing such information;
3. seek to influence for his or her own benefit or directly or indirectly for the benefit of any Principal the conduct of any person by any gratuity, emolument or financial inducement, or solicit or seek to acquire the business of any Principal by any gratuity, emolument or financial inducement of any kind to brokers, agents, officers or employees of any Principal or of any policyholder;

4. commit any act in the performance of the adjuster's duties which reflects negatively upon the adjuster's integrity, e.g. any act of fraud or dishonesty;
5. take improper advantage of a policy holder's inexperience, lack of education, youth, lack of sophistication, language barrier, unbusinesslike habits or ill health;
6. discourage a policy holder from making legitimate insurance claims, or delay them from being presented, in a manner which may prejudice the policy holder's best interests or for the reasons which may serve the interests of the adjuster, agent, broker or company.

#### **ADJUSTERS SHALL ASSIST IN MAINTAINING THE INTEGRITY OF THE PROFESSION.**

##### Duty to Report Misconduct and Incompetence

Where an adjuster who tends toward professional misconduct is not checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, upon investigation, disclose a more serious situation or may indicate the beginning of a course of conduct which could lead to serious breaches in the future. It is therefore proper for an adjuster to report to the Insurance Council of Manitoba (the "Council") any instance involving a breach of the Insurance Act, its regulations, this Code of Conduct or the Insurance Adjusters Licensing Rules by any adjuster. Where however, there is a reasonable likelihood that someone will suffer serious damage as a result of an apparent breach of the Insurance Act, its regulations, this Code of Conduct and the Insurance Adjusters Licensing Rules, you have an obligation to report the matter to Council.

In all cases, such a report must be made in good faith, without malice or ulterior motive.

Adjusters shall attempt to persuade and assist any member of the public to report any facts to the Council which may constitute an act of misconduct.

Adjusters have a duty to reply promptly to any communication from the Council.

Adjusters will on occasion become aware of potential concerns or irregularities with policies during the course of conducting their business. All situations which suggest a possible impropriety should be reported to the Council.

## SECTION 2 – COMPETENCE

### **ADJUSTERS OWE A DUTY TO THE PRINCIPAL OR POLICY HOLDER TO BE COMPETENT TO PERFORM THE SERVICES WHICH THE ADJUSTERS UNDERTAKE ON THEIR BEHALF.**

#### COMMENTARY:

##### Scope of Duty

An adjuster's duty to the Principal or policy holder is to give competent guidance based on sufficient knowledge of the specific risks entailed, adequate consideration of the relevant insurance principles and the adjuster's experience and expertise.

## Knowledge and Skill

The public regards licensing as a badge of competence, which calls for a clear understanding, of insurance principles. It requires sound knowledge of the practice and procedures to apply them effectively in the best interest of the Principal or policy holder.

A licensed adjuster is held out as being knowledgeable, skilled and capable to perform as an insurance intermediary. The Principal or policy holder is therefore entitled to assume that an adjuster has the ability and capacity to deal adequately with insurance claims on their behalf. Therefore evidence of gross neglect or a pattern of neglect or mistakes over time may be evidence of failing to meet the standards expected under this section, regardless of whether or not the adjuster is liable for negligence as a result of his action or failure to act. Where either negligence or incompetence are established, disciplinary action may be taken by the Council.

An adjuster should be sensitive to any weakness in personal abilities and realize the disservice that would be done to a client by attempting to act beyond the adjuster's personal level of competence. Where warranted, an adjuster should either decline to act, or call for assistance from experts (i.e. accountants or lawyers). Adjusters should not hesitate to recommend that the client consult such experts as circumstances dictate.

## SECTION 3 – QUALITY OF SERVICE

**ADJUSTERS SHALL SERVE THEIR PRINCIPAL, POLICY HOLDER OR CLAIMANT IN A CONSCIENTIOUS, DILIGENT AND EFFICIENT MANNER, CHARACTERIZED BY COURTESY AND GOOD FAITH. ADJUSTERS SHALL ENCOURAGE PUBLIC RESPECT FOR AND TRY TO IMPROVE THE PRACTICE OF THEIR PROFESSION.**

### COMMENTARY:

#### Standard of Service

All adjusters are required to provide service to Principals, policy holders and claimants on a standard at least equal to the service a prudent and competent adjuster would provide. If undue delay or other impediments in providing conscientious, diligent and efficient service can be foreseen, the Principal, policy holder and/or claimant should be so informed.

#### Examples

##### The Adjuster Shall:

1. Return telephone calls, letters and other communications promptly and in sufficient detail and respond to enquiries without undue delay.
2. Where coverage is denied under a policy of insurance the adjuster shall take steps to arrange for the claimant or policy holder to be advised promptly in writing, of the reason for the denial of liability.

3. When consideration is not given to a potential claim by a third party the adjuster shall, on the instruction of his Principal, promptly notify the claimant of the denial.
4. Avoid ill-considered, uninformed or unnecessary criticism of the competence, conduct, advice or charges of other adjusters and be prepared, when requested, to properly advise a policy holder or claimant of the complaint procedure. To cooperate with the Council and other regulatory authorities in the investigation of complaints and enforcement of the law.
5. Strive to establish and maintain harmony and at all times to cooperate with opposing adjusters consistent with conscientious and unbiased service to his own Principals.

The Adjuster Shall Not:

1. Fail to inform a Principal or policy holder of any matter or fact which may materially affect the claim or prejudice their interests.
2. Fail to meet deadlines or make the policy holder aware of such deadlines to the prejudice of a policy holder with respect to prescription periods under the terms of the policy and under the Insurance Act of Manitoba.
3. In the course of business, write letters, whether to a Principal, policy holder, claimant, another adjuster or any other person, which are abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from an adjuster.

#### SECTION 4 – ADVISING CLIENTS

##### **ADJUSTERS SHALL BE BOTH CANDID AND HONEST WHEN ADVISING POLICY HOLDERS, PRINCIPALS OR CLAIMANTS.**

###### COMMENTARY:

###### Scope of Advice

Recommendations to Principals, policy holders or claimants shall be complete, open and clear. The adjuster should indicate in detail, the facts and assumptions upon which his or her recommendations are based. The adjuster should not make false or misleading statements as to the terms, benefits or advantages of any contract or policy of insurance.

###### Disclosure

The adjuster has an obligation to inform policy holders at all times about all aspects of the insurance policy coverage that is applicable to the loss in question.

The adjuster will provide proof of identity to a policy holder or claimant.

###### Conflict of Interest

(a) The relationship of the adjuster to his Principal or policy holder is one of trust and confidence calling for the highest degree of good faith in all transactions;

(b) When instructed to act under separate policies by more than one Principal in the same matter, the adjuster must notify and gain approval from each Principal prior to commencing the adjustment;

(c) The Adjuster must not place himself or herself in a conflict of interest with a Principal, policy holder or claimant unless such Principal, policy holder or claimant approves of the adjuster's intended conduct in writing, after the existence of the potential conflict of interest has been openly, honestly and fully disclosed.

#### Withdrawal of Services

When terminating a relationship with a Principal or policy holder, an adjuster must comply with all applicable laws and professional obligations, including the obligation to give the client adequate notice so as not to prejudice their interests.

## SECTION 5 – CONFIDENTIALITY

**ADJUSTERS SHALL HOLD IN STRICT CONFIDENCE ALL INFORMATION ACQUIRED IN THE COURSE OF THE PROFESSIONAL RELATIONSHIP CONCERNING THE BUSINESS AND AFFAIRS OF A PRINCIPAL, POLICY HOLDER OR CLAIMANT, AND SHALL NOT DIVULGE SUCH INFORMATION UNLESS, AUTHORIZED BY THE PRINCIPAL, POLICY HOLDER, CLAIMANT OR IF REQUIRED BY LAW.**

#### COMMENTARY:

##### Guiding Principles

The adjuster owes the duty of confidentiality to every Principal, policy holder or claimant without exception. The duty survives the professional relationship and continues indefinitely after the adjuster has ceased to act for the Principal, policy holder or claimant, whether or not differences may have arisen between them.

This preceding paragraph may not apply to facts which are public knowledge, but nonetheless, the adjuster should guard against participating in or commenting upon speculation concerning the affairs or business of a Principal, policy holder or claimant.

An adjuster cannot render meaningful adjustments to a policy holder or claimant unless the adjuster enjoys full and unreserved communication with them. At the same time, they must feel completely secure that, without any express stipulation or request, matters disclosed to the adjuster will be held completely confidential by you and your staff.

Notwithstanding the foregoing disclosure of otherwise confidential information may be made by an adjuster where required by law or court order, or to defend the adjuster or the adjuster's staff against any allegation of incompetence or misconduct, provided that in either such event the adjuster shall not disclose any more information than is reasonably required by the law, the order, or to defend the

allegation as the case may be.

## SECTION 6 – DUTY TO CLIENT WHERE ADJUSTER HAS ANOTHER BUSINESS OCCUPATION

**ADJUSTERS WHO ENGAGE IN ANOTHER BUSINESS OR OCCUPATION CONCURRENTLY WITH THE PRACTICE OF INSURANCE ADJUSTING SHALL NOT ALLOW SUCH OUTSIDE INTEREST TO JEOPARDIZE THEIR INTEGRITY, INDEPENDENCE OR COMPETENCE.**

### COMMENTARY:

#### Application of Duty

This section applies in any case where it would appear that participation in another occupation would detract from an adjuster's ability to comply with the Code of Conduct.

It is important that adjusters with other outside occupations spend the majority of their time dealing with insurance claims. The second occupation must not impair the ability to focus on the adjusting business with the attention and dedication required of a competent and diligent adjuster.

#### Conflict of Interest and Undue Influence

The obligations imposed by this paragraph also require that an adjuster avoid situations which would result in the adjuster being in a conflict of interest or in which the adjuster could exercise undue influence upon the client.

## SECTION 7 – FEE DISCLOSURE

**ADJUSTERS SHALL NOT CHARGE OR ACCEPT ANY FEE WHICH IS SO DISPROPORTIONATE TO THE SERVICE PROVIDED AS TO BE UNCONSCIONABLE. WHEN REQUESTED BY THEIR PRINCIPAL THE ADJUSTER WILL DISCLOSE HIS FEES.**

### COMMENTARY:

#### Relevant Factors

An adjuster must always be able to justify a fee when requested. A fee may be unconscionable if it cannot be justified in the light of all pertinent circumstances such as:

- (a) The time and effort required to be spent;
- (b) The difficulty and importance of the matter;
- (c) Whether special skill or service will be required or provided.

## SECTION 8 – UNAUTHORIZED PRACTICE OF THE PROFESSION

## **ADJUSTERS SHALL ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF THE PROFESSION.**

### COMMENTARY:

#### Reasons for Prohibition

Unauthorized persons may have technical or personal ability, but they are not subjected to the necessary control, regulation and discipline by the Council.

#### Supervision of Employees/Assistants

You must assume complete professional responsibility for all business entrusted to you. Designated Representatives are responsible for supervision over staff and assistants to whom they delegate particular tasks and functions.

#### Use of Unlicensed Individuals

Any activities falling within the definition of "assistant adjuster or adjuster contained in The Insurance Act of Manitoba or its Regulations must be performed by a person who is licensed. You must ensure that all matters which by law must be performed by a licensed adjuster are, indeed, so performed.

## SECTION 9 – CONDUCT TOWARDS OTHERS

### **ADJUSTERS CONDUCT TOWARDS OTHER LICENSEES, MEMBERS OF THE PUBLIC, INSURERS AND THE COUNCIL SHALL BE CHARACTERIZED BY COURTESY AND GOOD FAITH.**

### COMMENTARY:

#### Principles

Public interest, industry practice and legal requirements demand that matters entrusted to you be dealt with effectively and expeditiously. Fair and courteous dealings on the part of each licensee will contribute materially to this end. By behaving otherwise, you do a disservice to yourself, your client and to the industry as a whole.

#### Promptness

You should answer with reasonable promptness all professional letters and communications which require an answer, and should be punctual in fulfilling all your commitments. The same courtesy and good faith should characterize your conduct towards members of the public.

#### Other Adjusters

You should avoid ill-considered, uninformed or unnecessary criticism of the competence, conduct, advice or charges of other adjusters, but should be prepared, when requested, to properly advise a client in the procedure and to cooperate with the Council and other regulatory authorities in the investigation of complaints and enforcement of the law.