

# REFERRAL FEES FOR JOBS NOT REFERRED BY THE TPA

## Issue

TPA charges a network contractor a referral fee for a job that was not referred to the contractor by the TPA.

## Peer-Reviewed Position Statement

TPAs should not charge referral fees for jobs they did not refer to the contractor.

### 1. THE NATURE OF CONTRACTOR/TPA RELATIONSHIP

Third party administrators (TPAs), also referred to as “managed repair networks,” exist to aid in the orderly administration of property insurance claims and repairs, for the mutual benefit of the carrier, contractor, and policyholder.

Although the networks make no guarantees, contractors join these networks in hopes of increasing job volume and reducing business development expenses. The main reason contractors join a network is to receive referrals. Without referrals, the contractor receives no benefit from program membership. The contractor pays fees to TPAs for referrals and is therefore a client of the TPA.

### 2. DUTIES OF THE TPA

As a client, the contractor is owed duties of due care and good faith by the TPA. This duty requires the TPA to exert its best efforts to help foster the contractor’s success, and refrain from any action that would interfere with the contractor’s ability to enjoy the benefits of a project administered by the TPA or thwart the purpose of the contractor’s payment of the Network Referral Fee (NRF).

### 3. REVENUE SOURCES

Contractors can and should cultivate business from multiple sources and have a diversified business development program. In fact, some TPAs recommend that contractors allow program work to be no more 25% of their total business portfolio. Nearly all restoration contractors invest in business development independent of TPA networks. This often involves substantial financial investments in marketing, advertising, events, social media, and sweat equity. These investments are risky and there is no guarantee of a return. Therefore, the contractor alone is entitled to reap the rewards of these investments—not the TPA.

### 4. REFERRAL FEES

Consideration is the exchange of things of value between two parties to a contract. It ensures that both parties have made a bargain and are getting something out of the deal. Consideration is not only an essential element of an enforceable contract—it is the *main* element of a legal contract. TPAs charge contractors Network Referral Fees (NRFs) as compensation for referrals. If no referral is made, no referral fee should be charged.

If a TPA charges a referral fee for a job it did not refer to the contractor, the TPA breaches its duty to help foster the contractor’s success and becomes a liability to the contractor, rather than an asset. It also undermines the restoration industry’s trust and confidence in the TPA system. Unearned referral fees also cause confusion and disruption when insurance carriers work through multiple TPAs and more than one TPA attempts to charge fees for the same job. It therefore behooves TPAs to show reverence and respect to the fruits of contractors’ business development efforts.

**Therefore, TPAs should not charge referral fees for jobs they did not refer to the contractor.**