

DEVIATIONS FROM GUIDELINES

Issue

The unique circumstances of a project warrant deviation from carrier and/or TPA guidelines.

Peer-Reviewed Position Statement

TPAs should have a user-friendly platform to receive and entertain reasonable well-documented requests from contractors for deviation from carrier and/or TPA guidelines when warranted by the unique circumstances of a project.

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. They join by executing a contract, generically referred to here as a Service Level Agreement (SLA), with the TPA.

2. SERVICE LEVEL AGREEMENTS

SLAs require contractors to comply with an array of insurance company guidelines, including restrictive pricing and estimating rules. TPAs charge contractors Network Referral Fees (NRFs) as compensation for leads, job volume, freedom from collections issues, technical assistance, contractor support, communication with policyholders, and other services. The contractor is therefore a client of the TPA.

3. 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 NRF. TPAs also owe a duty to policyholders to help administer the claim in a way that will facilitate the prompt restoration of their properties to pre-loss condition.

4. DEVIATIONS FROM GUIDELINES

A guideline is merely a general rule. It is not feasible to write guidelines that should be applied to every conceivable situation. Every home is, in essence, a custom home. Custom homes require customized approaches to restoration. These approaches do not always lend themselves well to preordained guidelines. The carrier’s duty is to pay the reasonable and necessary price to return property to its pre-loss condition. In some cases, this cost may be different from prices set forth in generic price lists or program guidelines. To fulfill their duties to the policyholder and the contractor, TPAs and carriers should exercise a reasonable degree of flexibility to ensure that the policyholder is made whole.

Section 11.3 of the Xactware User License Agreement (EULA) states that the user of Xactimate shall not “prohibit or preclude deviations from the Price Data where contractor requirements, market conditions, demand or any other factor warrants the use of a different line-item price in the specific situation.” To comply with the spirit of the EULA, TPAs and carriers should not be unreasonably rigid in requiring adherence to generic price lists, or any other guideline where the reasonable requirements of the job, market conditions or any other factor warrants a different approach.

Therefore, TPAs should have a user-friendly platform to receive and entertain reasonable well-documented requests from contractors for deviation from carrier and/or TPA guidelines when warranted by the unique circumstances of a project.