



MARKETING AND RELATED P&C COMPLIANCE ISSUES

Association of Insurance Compliance Professionals

Gulf States Chapter E-Day

Fred E. Karlinsky, Esq.

Atlanta, GA

Friday, July 30, 2010

9:00-10:00 A.M.

www.cftlaw.com



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



DISCLAIMER

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



AGENDA

- **E-Marketing/Advertising**
 - **Overview of Insurance e-Business: The Internet & Insurance**
 - **Advertising Online**
 - **Insurer's Webpage: Is it an Advertisement?**
 - **Pop-Ups, Banners, and Hyperlinks**
 - **E-mails**
 - **Internet Sales/Issuance of Policies**
 - **Obtaining Insurance Through Your Phone- There's an App for That**
 - **Social Media Communication**



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



AGENDA (con't)

- **Playing by the Rules: Marketing & Advertising in the Insurance Industry**
 - **Unfair Insurance Trade Practices Act:**
 - Unfair claims tactics; and,
 - Unfair marketing tactics.
 - **Related Model Acts & Regulations**



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

e-MARKETING/ADVERTISING

OVERVIEW OF INSURANCE e-BUSINESS: THE INTERNET & INSURANCE



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

INSURANCE e-BUSINESS

How Far Have We Come?



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE



What kind of man owns his own computer?

Rather revolutionary, the whole idea of owning your own computer? Not if you're a diplomat, printer, scientist, inventor . . . or a kite designer, too. Today there's Apple Computer. It's designed to be a *personal* computer. To uncomplicate your life. And make you more effective.

It's a wise man who owns an Apple.

If your time means money, Apple can help you make more of it. In an age of specialists, the most successful specialists stay away from uncreative drudgery. That's where Apple comes in.

Apple is a real computer, right to the core. So just like big computers, it manages data, crunches numbers, keeps records, processes your information and prints reports. You concentrate on what you do best. And let Apple do the rest. Apple makes that easy with three programming languages—including Pascal—that let you be your own software expert.

Apple, the computer worth not waiting for.

Time waiting for access to your company's big mainframe is time wasted. What you need in your department —

on your desk — is a computer that answers only to you. . . Apple Computer. It's less expensive than timesharing. More dependable than distributed processing. Far more flexible than centralized EDP. And, at less than \$2500 (as shown), downright affordable.

Visit your local computer store.

You can join the personal computer revolution by visiting the Apple dealer in your neighborhood. We'll give you his name when you call our toll free number (800) 538-9696. In California, (800) 662-9238.

Apple Computer, 10260
Bandley Drive,
Cupertino,
CA 95014.



www.CFTLAW.com

© 2010 All Rights Reserved.



e-MARKETING/ADVERTISING

Internet & Insurance

- According the U.S. Bureau of Labor Statistics:
 - “The Internet is an important tool for insurance carriers in reaching potential and existing customers.
 - Carriers use the Internet to enable customers to access online account and billing information, submit claims, view insurance quotes, and purchase policies.
 - In addition...several ‘lead-generating’ sites have emerged...These sites allow potential customers to input information about their insurance policy needs.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Internet & Insurance (con't)

- For a fee, the sites forward customer information to a number of insurance companies, which review the information and, if they decide to take on the policy, contact the customer with an offer.
- This practice gives consumers the freedom to accept the best rate...Many successful insurance companies will recognize the Internet's potential as a powerful marketing tool, increasing employment growth of some occupations while slowing growth of others.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Internet & Insurance (con't)

- Growing use of the Internet might reduce costs for insurance companies, but it also could enable many clients to turn first to the Internet to get information on their policies, obtain price quotes on possible new policies, or submit claims...As insurance companies begin to offer more information and services on the Internet, employment in some occupations, such as insurance sales agents, could be adversely affected...



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Internet & Insurance (con't)

- Productivity gains caused by the greater use of computer software will continue to limit the growth of certain jobs within the insurance industry.
- For example, upgrades to underwriting software have helped increase underwriter productivity....
- Automated underwriting quickly rates and analyzes insurance applications, reducing the need for underwriters. In addition, adoption of this technology into other segments of insurance, such as life and health and long-term care, will result in declining employment of underwriters...



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Internet & Insurance (con't)

- ...Workers in claims now may not have to visit the site of customers' damage; they may use satellite imagery to inspect the damage from their computers.
- In addition, the Internet allows insurance investigators to handle an increasing number of cases by drastically reducing the amount of time it takes them to perform background checks, limiting the additional investigators that must be hired to handle a growing workload...



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Internet & Insurance (con't)

- ...Also, computers have made communications easier among sales agents, adjusters, and insurance carriers—making all much more productive—by linking them directly to the databases of insurance carriers and other organizations.
- Furthermore, insurance carriers contain costs by increasing using customer service representatives to deal with the day-to-day processing of policies and claims.”

-See U.S. Dep't Labor, Bureau of Labor Statistics, *Carrier Guide to Industry 2010-11*, available at <http://www.bls.gov/oco/cg/cgs028.htm>.



Association
of Insurance
Compliance
Professionals





MARKETING/ADVERTISING

Internet & Insurance (con't)

- Given the inevitable reliance upon the internet, the industry must also be mindful of regulations regarding online advertising and best practices for website, banners, pop-ups, email solicitations and social media.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Advertising Online

- Multi-state advertising laws apply the same way to electronic or online advertising (“e-advertising”) as they do to more traditional forms of advertising (i.e., newspapers or trade magazines).
- Because electronic communications are generally accessible by anyone at any place, e-advertising is capable of transcending state boundaries.
- Therefore, insurers must be knowledgeable of multi-state advertising laws to ensure compliance.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Advertising Online (con't)

- Generally, an advertisement may be defined as a information “designed to create public interest in insurance, an insurer, or a producer” or “induce the public to purchase, increase, modify, reinstate or retain an insurance policy.”
- Some states, such as Alabama, California, Louisiana, Virginia, and New Jersey have enacted legislation that includes “electronic” material within the definition of “advertisement.”



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Advertising Online (con't)

- Additionally, some insurance departments, such as Florida, New York and Ohio, have issued guidelines to assist in understanding which electronic communications fall within the purview of the state's advertising laws.
- Typically, if an advertisement constitutes a "solicitation," in a particular state, then the advertising-insurer must be licensed in such state.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Advertising Online: Points to Consider (con't)

- Insurers should be mindful of applicable record retention requirements for all e-advertisements (discussed later).
- All e-advertisements should also be able to be accurately reproduced.



- If an insurer's paper advertisement requires prior approval from the department, then an e-advertisement would also likely require approval.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Advertising Online: Points to Consider (con't)

- Insurers must also consider which e-communications constitute “advertisements” (i.e., websites, homepages, pop-ups, banners, blogs, social media (Facebook), etc.).
- Rule of thumb is if the online content is insurer or product specific and used to create public interest, it is most likely an advertisement.

Cool Internet Marketing Tools



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Insurer's Website: Is it an Advertisement?

- According to the National Association of Insurance Commissioner's ("NAIC") in a 1998 white paper, "the fact that an insurer or producer maintains a website or other electronic presence, does not, in and of itself, necessarily mean that the insurer is 'advertising' insurance products or transacting the business of insurance within a state."
 - NAIC's Rule: If the site is designed to "create public interest" in the insurer and to "induce the public to purchase the insurance," then it is likely an advertisement.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Insurer's Website: Is it an Advertisement? (con't)

- However, states such as Alaska, Colorado, Florida, Maine, Maryland, Mississippi, Nevada, Oregon, and Texas have all ruled that an insurer's website is a per se advertisement.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Insurer's Website: Is it an Advertisement? (con't)

- Typically, standard applied when determining whether homepage is “advertisement” is based upon the “context and content.”
- Does the content promote the insurer, but not a specific product? If so, then the content will likely be deemed an “institutional advertisement.”
- If so, state laws generally require that the insurer be specifically identified in the ad and that the ad comply with fair trade practices standards and applicable insurance and advertising laws.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING



Insurer's Website: Is it an Advertisement? (con't)

- Does the content promote a specific product? If so, then the content may be deemed an “invitation to inquire or contract.”
- **Invitation to Inquire:** Usually where website includes a general description of the product and makes broad statements about benefits/coverages, but not enough information is provided for consumer to make an informed decision (requires consumer to contact insurer).
- **Invitation to Contract:** Advertisement that allows consumer to purchase product based upon information provided (i.e., detailed pricing and product benefit information and ability to submit application or contract).



Association
of Insurance
Compliance
Professionals



MARKETING/ADVERTISING



Best Practices: Invitation to Contract?

- If webpage is deemed “offer to contract,” insurer must be licensed in the respective state.
- Higher scrutiny applied when content appears to be an offer to contract; may likely trigger prior approval and filing of webpages;
- Clearly state product name, form number, and formatting requirements, such as font type, color, and emphasis requirements; and,
- Clearly and unambiguously inform consumer of *all* policy limitations, exceptions, waiting periods, pre-existing conditions and renewal provisions.



Association
of Insurance
Compliance
Professionals



MARKETING/ADVERTISING



Best Practices: Invitation to Inquire

- An insurer should at least include the following in an offer to inquire:
 - Clearly state type of insurance offered,
 - Product limitations,
 - Do not refer costs/premiums rates,
 - Do not use scare tactics,
 - Testimonials must be real, and,
 - Inform consumer if he/she will be contacted by agent.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING



Website & Advertising: Points to Consider

- Clearly identify the insurer on the website and list the states the insurer is licensed in. Utilize tools to prevent “advertising” in states where the insurer is not licensed, (i.e., drop-down box to sort online traffic that only lists current states insurer is licensed in).
- Include “terms & conditions” -limits insurer's liability and defines consumer’s rights when using website (disclaimers).
- Include “privacy & security policies” -states what information the website collects and how it is used; should be drafted by legal counsel.



Association
of Insurance
Compliance
Professionals



MARKETING/ADVERTISING



Website: Homepage Points to Consider (con't)

- Comply with all institutional advertising requirements.
- Retain dated copies of all website versions of all pages.
- Product specific content should be limited to internal webpages –this way, obtaining prior approval for internal-specific pages is much easier than resubmitting the entire website for approval.
- Specify the states that the product is and is not available in. Be clear.
- Keep a file of all dated webpages, revisions, etc., and keep a copy for at least four (4) years.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Pop-Ups, Banners, and Hyperlinks -Oh My!

- Remember to comply with multi-state insurance, advertising, and content requirements.
- If you allow third-parties to post pop-ups, banners, or hyperlinks on your website, be mindful of content in the insurance realm; be wary of consumer confusion or misleading information and include a disclaimer of responsibility to all linked sites.
- If you advertise on a third-party website, you must still comply with all applicable regulations; host site may be considered a “referral.”



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING



Emails –Points of Consideration

- Email solicitations may be viewed as an invitation to contract or inquire, depending on the content, attachments, or requests contained therein.
- Best Practices:
 - Email solicitation must comply with state insurance and advertising laws and e-record retention requirements.
 - May require prior approval.
 - Should contain insurer's licensing information.
 - Should contain disclaimer that content intended only for intended recipient.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING



Internet Sales/Issuance Policies: Points of Consideration

- Generally, from an insurer's website, consumers can make appointments with an agent, request a premium quote, or purchase and receive their policy online.
- Issues associated with binding and issuing coverage:
 - Signatures and authentication;
 - Electronic binding;
 - Electronic delivery of policy;
 - Payment of premium; and,
 - Electronic record retention.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Obtaining Insurance Through Your Phone- There's An App For That.

- By 2010, insurance companies such as Progressive started launching insurance applications for smartphones.
- Progressive claims to be the first auto-insurer to introduce an app on the Google Android operating system and saw a 30% increase in website traffic in only four-months.
- P&C insurers, such as State Farm and Nationwide are reportedly not far behind.



Association
of Insurance
Compliance
Professionals



MARKETING/ADVERTISING

Progressive's App Allows Consumers To:

- Obtain car insurance quotes and buy a policy;
- Make payments and update policy information;
- Get directions to a local independent insurance agent;



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Progressive's App (con't)

- Get directions to the nearest service center, where customer receive Progressive's concierge level of claims service;
- Research crash test results and recall notices;
- Compare the relative costs to insure different types of cars;
- Report and track claims; and,
- Watch latest TV commercials.

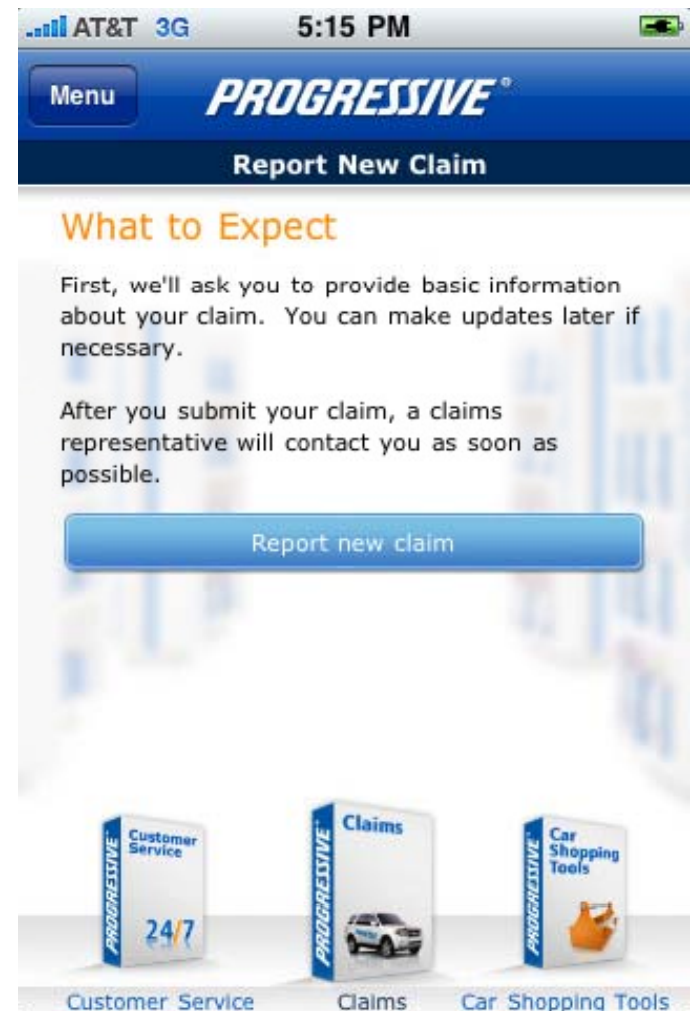


Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com



© 2010 All Rights Reserved.

MARKETING/ADVERTISING

Social Media Communication

- Defined as media for social interaction, using highly accessible and scalable publishing techniques. Social media uses web-based technologies to transform and broadcast media monologues into social media dialogues.
- Examples include:
 - Blogs (Blogger, LiveJournal, WordPress);
 - Micro-Blogging (Twitter); and,
 - Social Networking (Facebook, MySpace, LinkedIn).



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE



twitter



LIVEJOURNAL

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Social Media (con't)

- State insurance and advertising laws apply to social media; state insurance-licensing laws may also apply.
- Market conduct exams could include examining social media sites, i.e., insurer's policies, employee training, insurer's ability to monitor site, and ability of insurer to reconstruct data and process to archive.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Social Media (con't)

- Could this type of communication be the next mainstream form of advertising? Has true potential.
 - Why? The pros...brand exposure; recruitment tool; receive direct referrals from “friends;” and, a solid direct sales mechanism.
 - Why not? The cons...compliance with state licensing, advertising, and unfair trade practices laws; risk of hurting reputation based upon an unsubstantiated consumer review; privacy law and policy compliance (i.e., accidentally disclosing personal and private information); and, litigation and e-discovery.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

MARKETING/ADVERTISING



Social Media: Points to Consider

- All insurers should establish a social media policy and actively monitor use of social media for business by all employees;
- Ensure content of all social media adheres to state insurance and advertising laws, and remember to submit material for prior approval where applicable;
- Acknowledge and respond to consumer complaints; and,
- Maintain compliant record retention policies.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

WHEN ADVERTISING GOES TOO FAR...

PLAYING BY THE RULES: MARKETING & ADVERTISING IN THE INSURANCE INDUSTRY



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Overview: Unfair Trade Practices in Insurance

- Unfair trade practices in insurance have existed as long as the industry of insurance itself.
- Unfair Trade Practices laws and regulations are consumer protection mechanisms that traditionally focus on two aspects:
 - Unfair claims tactics; and,
 - Unfair marketing tactics.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

UNFAIR TRADE PRACTICES

National Association of Commissioners

- Originally established in 1871 as the National Convention of Insurance Commissioners, the NAIC, as it is known today, serves as a vehicle for individual state regulators to coordinate their activities and share resources.
- The NAIC functions as an advisory body and service provider for state insurance departments, and has assumed a national role in establishing standards for state regulation of insurers' financial solvency.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

REGULATION OF UNFAIR CLAIMS TACTICS



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

NAIC Model Laws & Regulations: Property & Casualty Lines

- The NAIC has adopted several Model Laws and Regulations regarding Unfair Trade Practices in insurance.
- Those applicable to Property & Casualty (“P&C”) lines include:
 - Unfair Trade Practices Act (“UTPA”) (Model 880);
 - Model Regulation for Complaint Records to be Maintained (Model 884);
 - Unauthorized Transaction of Insurance Criminal Model Act (Model 890);



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

NAIC Model Laws & Regulations: P & C Lines (con't)

- After Market Parts Model Regulation (Model 891);
- Unfair Discrimination Against Subjects of Abuse in P&C Insurance Model Act (Model 898);
- Unfair Claims Settlement Practices Act (Model 900);
- Unfair P&C Claims Settlement Practices Model Regulation (Model 902);
- Market Conduct Record Retention Model Regulation (Model 910); and,
- Improper Termination Practices Model Act (Model 915).



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Unfair Trade Practices Model Act (Model 880)

- The purpose of the Unfair Trade Practices Model Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress, by defining, or providing for the determination of, all such practices that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.
- The Model Act does not create a private cause of action for violations.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 880 (con't)

- Section 3 of the Model Act states: “It is an unfair trade practice for any insurer to commit any practice defined in Section 4 of this Act if:
 - It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or,
 - It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.”



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 880 (con't)

- “Insurer” is defined broadly to include any person, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including producers, adjusters and third-party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 880 (con't)

- Section 4 - Unfair Trade Practices Defined:
 - Misrepresentations and False Advertising of Insurance Policies;
 - False Information and Advertising Generally;
 - Defamation;
 - Boycott, Coercion and Intimidation;
 - False Statement and Entries;
 - Stock Operations and Advisory Board Contracts;
 - Unfair Discrimination;
 - Rebates;
 - Prohibited Group Enrollments



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 880 (con't)

- Failure to Maintain Marketing and Performance Records;
- Failure to Maintain Complaint Handling Procedures;
- Misrepresentation in Insurance Applications;
- Unfair Financial Planning Practices;
- Failure to File or to Certify Information Regarding the Endorsement or Sale of Long-Term Care Insurance;
- Failure to provide claims history;
- Violation of specified provisions of state insurance law.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Model 880 (con't)

- Other Sections of the Model Act include:
 - Section 5 – Favored Agent or Insurer; Coercion of Debtors;
 - Section 6 – Power of Commissioner;
 - Section 7 – Hearings, Witnesses, Appearances, Production of Books, and Service of Process;
 - Section 8 – Cease and Desist and Penalty Orders;
 - Section 9 – Judicial Review of Orders;
 - Section 10 – Judicial Review by Intervenor;



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 880 (con't)

- Section 11 – Penalty for Violation of Cease and Desist Orders – \$25,000 for each and every violation not to exceed an aggregate of \$250,000; and/or suspension or revocation of the insurer's license;
- Section 12 – Regulations;
- Section 13 – Provisions of Act Additional to Existing Law;
- Section 14 – Immunity from Prosecution; and,
- Section 15 – Separability Provision.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Model 880 (con't)

- Model 880 has been adopted in its entirety by 43 states, the District of Columbia, the Northern Marianas, and Puerto Rico.
- The following jurisdictions have adopted an older version of the NAIC Model Act, portions of the NAIC model, legislation or regulation derived from other sources, bulletins and administrative rulings:
 - Alabama, Illinois, Oregon, Utah, Virgin Islands, and Wisconsin.
- American Samoa and Guam have not taken any action with respect to the Model Act.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model Regulation for Complaint Records to be Maintained Pursuant to the NAIC Unfair Trade Practices Act (Model 884)

- The Unfair Trade Practices Act makes it an unfair trade practice for a person subject to the Act to fail to maintain a record of complaints.
- The purpose of this regulation is to prescribe the minimum information required to be maintained in such a record of complaints in order to comply with the statute, and sets forth a format for such record.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.

UNFAIR TRADE PRACTICES

Model 884 (con't)

○ Attachment A – Complaint Record Format:

Column A	Column B		Column C	Column D	Column E	Column F	Column G	Column H
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Department Complaint	State of Origin
(Agent's Number)								
(Staff Adjuster's Number)								
(Independent Adjuster)								



Association of Insurance Compliance Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 884 (con't)

- Model Regulation for Complaint Records has been adopted in Arkansas, Colorado, Connecticut, Illinois, Kansas, Nebraska, New Jersey, New Mexico, Texas and Vermont.
- States that have adopted something other than the Model Regulation include: Alaska, Delaware, Georgia, Iowa, Kentucky, Louisiana, Nevada, New Hampshire, and Oregon.
- All other jurisdictions have not taken any action to date with respect to this Regulation.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Unauthorized Transaction of Insurance Criminal Model Act (Model 890)

- This Act relates to criminal penalties for the unlawful transaction of insurance or health coverage.
- This Act has not been adopted by any jurisdictions.
- The following jurisdictions have adopted something other than the Model Act:
 - Alaska, Florida, Georgia, Iowa, Maryland, Nebraska, South Carolina, Texas, and West Virginia.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

After Market Parts Model Regulation (Model 891)

- The purpose of this regulation is to set forth standards for the prompt, fair and equitable settlements applicable to automobile insurance with regard to the use of after market parts.
- It is intended to regulate the use of after market parts in automobile damage repairs that insurer pay for on their insured's vehicle.
- The regulation requires disclosure when the use of a non-original manufacturer part is proposed. It also requires that all after market parts be identified and be of the same quality as the original part.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 891 (con't)

- The After Market Parts Model Regulation has been adopted in the following states: Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Dakota, Utah, Virginia, and Wyoming.
- The following states have adopted something other than the Model Regulation: Alabama, California, Connecticut, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Oregon, Rhode Island, West Virginia, and Wisconsin.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act (Model 898)

- The purpose of Model 898 is to prohibit unfair discrimination by property and casualty insurers and insurance professionals on the basis of abuse status.
- The Act requires insurers to develop and adhere to written policies specifying procedures to be followed by employees, and insurance professionals they contract with, for the purpose of protecting the safety and privacy of a subject of abuse.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 898 (con't)

- This Act has been adopted by Hawaii, Kansas, Nebraska, New Mexico, Rhode Island, and Tennessee.
- The following jurisdictions have adopted something other than the Model Act: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Unfair Claims Settlement Practices Act (Model 900)

- The purpose of this Act is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance.
- It is not intended to cover claims involving workers' compensation, fidelity, suretyship or boiler and machinery insurance.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900 (con't)

- Section 3 of the Act states that it is an improper claims practice for a domestic, foreign or alien insurer transacting business in this state to commit an act defined in Section 4 of this Act if:
 - It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or,
 - It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900 (con't)

- Section 4 – Unfair Claims Practices Defined:
 - Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
 - Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
 - Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Model 900 (con't)

- Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- Refusing to pay claims without conducting a reasonable investigation;
- Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900 (con't)

- Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Model 900 (con't)

- Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900 (con't)

- Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use; and,
- Failing to adopt and implement reasonable standards to ensure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900: Penalties for Cease & Desist Order Violation (con't)

- Penalties for violating a cease and desist order issued pursuant to the Unfair Claims Settlement Practices Act include:
 - A monetary penalty of not more than \$25,000 for each and every act or violation not to exceed an aggregate of \$250,000; and/or,
 - Suspension or revocation of the insurer's license.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 900: Adoption (con't)

- Unfair Claims Settlement Practices Act has been adopted in 45 states, the Northern Marianas and Puerto Rico.
- The following states have adopted something other than the Model Act:
 - Alabama and Oklahoma.
- The following jurisdictions have not taken any action with respect to the Model Act:
 - American Samoa, District of Columbia, Guam, Iowa, Mississippi, Nevada, and the Virgin Islands.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Unfair Property/Casualty Claims Settlement Practices Model Regulation (Model 902)

- The purpose of this regulation is to set forth minimum standards for the investigation and disposition of property and casualty claims arising under contracts or certificates.
- The regulation mandates insurers maintain claims data and detailed documentation. It also includes provisions regarding misrepresentation of policy provisions, failure to acknowledge pertinent communications, as well as standards for prompt, fair and equitable settlements.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 902 (con't)

- The following states have adopted the Model Regulation: Alabama, Alaska, Arizona, Arkansas, Florida, Kansas, Kentucky, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, and West Virginia.
- The following jurisdictions have adopted something other than the Model Regulation: California, Colorado, Delaware, Georgia, Illinois, Maryland, Minnesota, New Hampshire, North Carolina, Puerto Rico, and Texas. Jurisdictions not listed have not taken any action with respect to this Regulation.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Market Conduct Record Retention Model Regulation (Model 910)

- This regulation implements the Unfair Trade Practices Model Act/the Unfair Claims Settlement Practices Model Act/the state examination authority statute regarding the retention and maintenance of records required for market conduct purposes.
- Insurers or related entities must maintain its books, records and documents in a manner so that the commissioner can readily ascertain during an examination the insurer's compliance with state insurance laws and rules, etc.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Model 910 (con't)

- Records must be retained for the current year plus three (3) years. Records to be maintained include policy files, claim files, licensing records, and complaint records.
- The producer of record must maintain a file for each policy sold, and the file shall contain all work papers and written communications in his or her possession pertaining to the policy documented therein.
- During an examination of the insurer, the insurer shall provide a copy of the written contract entered into with each third party vendor or service provider as requested by an examiner.



Association
of Insurance
Compliance
Professionals





UNFAIR TRADE PRACTICES

Model 910 (con't)

- The Model Regulation also provides for the format of records, location of files, and time limits to provide requested records to examiners.
- Only Colorado, Missouri, New Hampshire, and Rhode Island have adopted the Model Regulation.
- North Carolina and Ohio have adopted something other than the Model Regulation.
- All other jurisdictions have not taken any action with respect to the Model Regulation.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

Improper Termination Practices Model Act (Model 915)

- The purpose of this Act is to protect policyholders from improper terminations of insurance coverage and to set forth standards for the regulation and disposition of terminations of policies or certificates of insurance.
- No jurisdictions have adopted this Act.
- The following states have adopted something other than this Act:
 - California, Indiana, Michigan, New Jersey, Oregon, Rhode Island, South Carolina, Texas, and Virginia.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



UNFAIR TRADE PRACTICES

REGULATION OF MARKETING/ADVERTISING



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Mass Marketing of Property and Liability Insurance Model Regulation (Model 710)

- The purpose of this regulation is to prescribe rules to prevent abuses in connection with the sale of property-liability insurance pursuant to mass marketing plans, while preserving for consumers the potential benefits of this form of marketing.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 (con't)

- “Mass marketing plan” means a method of selling property-liability insurance wherein (i) such insurance is offered to employees of particular employers or to members of particular associations or organizations or to persons grouped in other ways and (ii) the employer, association or organization, if any, has agreed to or otherwise affiliated itself with the sale of such insurance to its employees or members.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 (con't)

- Fictitious Arrangements Prohibited. No insurer shall, without the approval of the commissioner, sell insurance pursuant to a mass marketing plan to members of any association or organization formed principally for the purpose of obtaining such insurance.
- Statistics. Insurers selling insurance pursuant to mass marketing plans shall maintain separate statistics as to loss and expense experience pertinent thereto.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 (con't)

- Compulsory Participation Prohibited. No insurer shall sell insurance pursuant to a mass marketing plan if it is a condition of employment or of membership in an association, organization, or other group that any employee or member purchase insurance pursuant to such a plan, or if any employee or member shall be subject to any penalty by reason of his non-participation.
- Tie-in Sales Prohibited.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 (con't)

- Disclosure Required. Every insurer, agent or broker selling insurance pursuant to a mass marketing plan shall, prior to sale, make full and fair disclosure to prospective insureds of all features of such plan, whether favorable or unfavorable, including premium rates, benefits, duration of coverage, policyholder services, conversion privileges available, and the financial interests in the plan, if any, of the sponsoring employer, association, organization or the group.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 (con't)

- Underwriting Standards. Insurers are not permitted to use underwriting standards for individual risk selection in a mass marketing plan that are, on the whole, more restrictive than the standards used by such insurer for individual risk selection in the sale of the same kind of insurance other than pursuant to mass marketing plans.
- Cancellation and Nonrenewal Restrictions.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 710 Adoption (con't)

- The Model Regulation has been adopted by:
 - Colorado, Maine, New Jersey, New York, Oregon and West Virginia.
- The following jurisdictions have adopted something other than the Model Regulation:
 - Connecticut, Hawaii, Puerto Rico and South Dakota.
- Other jurisdictions have not taken any action with respect to the Regulation.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Unauthorized Insurers False Advertising Process Act (Model 840)

- The purpose of this Act is to subject to the jurisdiction of the Insurance Commissioner and to the jurisdiction of the courts, insurers not authorized to transact business in a state that place in or send into the state any false advertising designed to induce residents of that state to purchase insurance from insurers not authorized to transact business in that state.



Association
of Insurance
Compliance
Professionals



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.



MARKETING/ADVERTISING

Model 840 (con't)

- No unauthorized foreign or alien insurer shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state, any estimate, illustration, circular, pamphlet or letter, or cause to be made in any newspaper, magazine, or other publication or over any radio or television station, any announcement or statement to this state's residents misrepresenting its financial condition, or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practices Act.



Association
of Insurance
Compliance
Professionals





MARKETING/ADVERTISING

Model 840 (con't)

- The following states have adopted the Model Act:
 - California, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio and South Dakota.
- The following jurisdictions have adopted something other than the Model Act:
 - Delaware, Georgia, Hawaii, Idaho, Massachusetts, Nevada, Puerto Rico, Texas and Wyoming.
- Jurisdictions not listed have not taken any action with respect to the Model Act.



Association
of Insurance
Compliance
Professionals





FOR MORE INFORMATION



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

Fred E. Karlinsky, Esq.
fkarlinsky@cftlaw.com

Direct: (954) 332-1749

Main: (954) 492-4010

Fax: (954) 492-1144



Association
of Insurance
Compliance
Professionals

South Florida Office
One Financial Plaza
23rd Floor
100 Southeast 3rd Avenue
Fort Lauderdale, FL 33394

Tallahassee Office
215 South Monroe Street
Suite 701
Tallahassee, FL 32301



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

www.CFTLAW.com

© 2010 All Rights Reserved.