

## Suggested Amendments to Maryland Public Adjuster Act

### § 10-401. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Business entity. -- "~~Business entity~~" ~~has the meaning stated in § 10-101(e) of this title.~~ means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(c) License. -- "License" means a license issued by the Commissioner to act as a public adjuster.

(d) Person. -- "Person" means an individual or a business entity.

(e) Home State. -- "Home state" means the District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the 'home state.'

(f) Fingerprints. -- "Fingerprints" for the purposes of this act, means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

~~(d)~~(g) Public adjuster. -- "Public adjuster" means any person ~~that~~ who for compensation or any other thing of value on behalf of the insured::

- (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
- (2) Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
- (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

~~(i) solicits business or represents itself to the public as an adjuster of first party insurance claims for losses or damages arising under insurance contracts that insure the real or personal property, or both, of an insured;~~

~~—— (ii) receives compensation for investigating, appraising, evaluating, or otherwise giving advice or help to an insured in the adjustment of claims for losses or damages arising under insurance contracts that insure the real or personal property, or both, of an insured; or~~

~~—— (iii) for compensation, directly or indirectly, solicits business, investigates or adjusts losses, or advises an insured about insurance claims for losses or damages arising under insurance contracts that insure the real or personal property, or both, of an insured for another person engaged in the business of adjusting losses or damages arising under insurance contracts that insure the real or personal property, or both, of an insured.~~

~~(24) "Public adjuster" does not include a person that investigates, adjusts, or appraises claims for loss or damage covered by a motor vehicle insurance policy.~~

#### § 10-402. Scope of subtitle

This subtitle does not apply to:

(1) an adjuster for or an insurance producer or employee of an insurer or group of insurers under common control or ownership that, as representative of the insurer or group, adjusts losses or damages under policies issued by the insurer or group;

~~(2) an insurance producer that acts as an adjuster without compensation for an insured for whom the insurance producer is acting as an insurance producer; or~~

(3) an attorney at law who does not:

(i) regularly act as a public adjuster; and

(ii) represent to the public by sign, advertisement, or otherwise that the attorney at law acts as a public adjuster.

(4.) A person who negotiates or settles claims arising under a life, health or motor vehicle insurance policy, or an annuity contract,

(5) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;

(6) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(7) A person who settles subrogation claims between insurers

§ 10-405. Applications for initial licenses

(a) In general. -- An applicant for an initial license shall file with the Commissioner an application on the form that the Commissioner provides.

(b) Contents of application form. -- The application form shall require:

(1) the name and address of the applicant;

(2) whether any other insurance license or certificate has been issued to the applicant;

(3) the applicant's fingerprints, for the department to receive national criminal history records information from the Criminal Justice Information Services Division of the Federal Bureau of Investigation; the business in which the applicant has been engaged for the 5 years immediately preceding the date of application and, if employed by another, the name and address of each employer;

(4) for a business entity applicant:

(i) the name of the individual licensed public adjuster employed by the business entity who is designated to act as the business entity's principal contact with the Administration; and

(ii) the name and address of each licensed public adjuster employed by the business entity, each individual who has direct control over its fiscal management, each owner, partner, member, or manager of the business entity, and each director of a business entity that is a corporation; and

(5) any other information that the Commissioner requires of applicants to enable the Commissioner to determine the trustworthiness and competence of the applicant to transact business as a public adjuster so as to safeguard the interests of the public.

(c) Signature under oath. -- An application shall be signed under oath:

(1) in the case of an individual applicant, by the applicant; or

(2) in the case of an applicant that is a business entity, by an individual who has direct control over its fiscal management, an owner, partner, member, or manager of the business entity, or a director of a business entity that is a corporation.

§ 10-405.1 Bond or Letter of Credit

Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the Commissioner through a security bond or irrevocable letter of credit:

A. A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

(1) Shall be in the minimum amount of \$20,000;

(2) Shall be in favor of Maryland and shall specifically authorize recovery by the Commissioner on behalf of any person in Maryland who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster; and

(3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the Commissioner and given to the license holder.

B. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:

(1) Shall be in the minimum amount of \$20,000;

(2) Shall be to an account to the Commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster; and

(3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the Commissioner and given to the license holder.

C. The issuer of the evidence of financial responsibility shall notify the Commissioner upon termination of the bond or letter of credit, unless otherwise directed by the

D. The Commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.

E. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

#### § 10-406. Issuance of license

(a) In general. -- The Commissioner shall issue a license to each applicant who meets the requirements of this subtitle.

~~(b) Certified public adjuster. — A person that is licensed as a public adjuster under this subtitle may be known as a "certified public adjuster".~~

#### § 10-407. Regulations

The Commissioner shall adopt regulations that specify:

(1) the scope, type, conduct, and grading of the written examination;

(2) the frequency, times, and locations within the State where the written examination will be held; and

~~(3) the experience requirements for an individual applicant to be eligible to take a written examination.~~

#### § 10-409.1. Prohibited inducements and other fees.

A. Except as otherwise expressly provided by law, a person may not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, any valuable consideration to an insured as an inducement to use the services of a public adjuster.

B. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.

C. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this Act and it not so licensed.

§ 10-411. Contract Between Public Adjuster and Insured

A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

- (1) Legible full name of the adjuster signing the contract, as specified in Maryland Insurance Administration records;
- (2) Permanent home state business address and phone number;
- (3) Maryland Insurance Administration license number;
- (4) Title of "Public Adjuster Contract";
- (5) The insured's full name, street address, insurance company name and policy number, if known or upon notification;
- (6) A description of the loss and its location, if applicable;
- (7) Description of services to be provided to the insured;
- (8) Signatures of the public adjuster and the insured;
- (9) Date contract was signed by the public adjuster and date the contract was signed by the insured;
- (10) Attestation language stating that the public adjuster is fully bonded pursuant to Maryland law; and
- (11) Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.

B. The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

(1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

~~(1)~~(2) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner.

C. If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

(2) Inform the insured that loss recovery amount might not be increased by insurer; and

(3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

D. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm which that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company or person.

E. A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

(3) Imposes collection costs or late fees; or

(4) Precludes either party from pursuing civil remedies.

F. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:

(a) "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.

(b) "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

(c) "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.

(3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim.

(4) The public adjuster is not a representative or employee of the insurer.

(5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner. A contract with an electronic signature shall constitute an original contract

H. The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three (3) business day period.

- I. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.

§ 10-412 Escrow or Trust Accounts

A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

§ 10-413 Record Retention

A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

- (1) Name of the insured;
- (2) Date, location and amount of the loss;
- (3) Copy of the contract between the public adjuster and insured;
- (4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
- (5) Itemized statement of the insured's recoveries;
- (6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;
- (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;
- (8) Name of public adjuster who executed the contract;
- (9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and
- (10) Evidence of financial responsibility in a format prescribed by the Commissioner.

- B. Records shall be maintained for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times. Any records required to be maintained under this section are permitted to be stored in an electronic format.
- C. Records submitted to the Commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the Commissioner and shall not be subject to the Md. General Provisions Code Ann. § 4-201 .

#### § 10-415 Standards of Conduct of Public Adjuster

- A. A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the license holder, as will best serve the insured's insurance claim needs and interest.
- B. Neither a public adjuster nor a contractor, or any other service provider shall solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- C. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.
- D. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in Section 10-411 (F)

#### § 10-415.1: Ethical Standards of Public Adjuster

- A. Public adjusters shall adhere to the following general ethical requirements:
  - (1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;
  - (2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;
  - (3) No public adjuster, while so licensed by the Commissioner, may represent or act as a company adjuster, or independent adjuster on the same claim;

(4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

(5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and

§ 10-416: Reporting of Actions

A. The public adjuster shall report to the Commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in Maryland within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

A.B. Within thirty (30) days of the initial pretrial hearing date, the public adjuster shall report to the Commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents