

## **PUBLIC ADJUSTER RULEMAKING DRAFT**

### **836-071-xxxx Section 1. Purpose and Scope**

This rule governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims, excluding claims for personal or commercial auto lines of insurance.

### **836-071-xxxx Section 2. Definitions**

“Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:

- A. 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;
- B. Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
- C. 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.

### **836-071-xxxx Section 3. License Required**

- A. A person shall not act, hold himself/herself out as a public adjuster, solicit, or negotiate a contract for public adjusting services in this state unless the person is licensed as a public adjuster in accordance with this rule.
- B. A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer’s behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.
- C. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:
  - (1) The business entity has paid the fees set forth in OAR 836-009-0007; and
  - (2) The business entity has designated a licensed public adjuster responsible for the business entity’s compliance with the insurance laws, rules and regulations of this state.
- D. Notwithstanding subsection A through C, a license as a public adjuster shall not be required of the following:
  - (1) An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;
  - (2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
  - (3) 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;
  - (4) 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

- (5) A person who settles subrogation claims between insurers.

#### **836-071-xxxx Section 4. Application for License**

A person applying for a public adjuster license shall make application to the commissioner as outlined in ORS 744.518, OAR 836-071-0101, OAR 836-071-0105, OAR 836-071-0110, and OAR 836-071-0118.

#### **836-071-xxxx Section 5. Resident adjuster qualification; rules.**

Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant satisfies the requirements set forth under ORS 744.525

#### **836-071-xxxx Section 6. Nonresident adjuster qualification; rules.**

Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant satisfies the requirements set forth under ORS 744.528.

#### **836-071-xxxx Section 7. Examination**

An individual applying for a public adjuster license under this rule shall pass a written examination in accordance with OAR 836-071-0120 and OAR 836-071-0127.

#### **836-071-xxxx Section 8. Exemptions from Examination**

- A. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any precensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing.
- B. A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 5. No precensing examination shall be required of that person to obtain a public adjuster license.
- C. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete any precensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

#### **836-071-xxxx Section 9. Nonresident License Reciprocity**

- A. Unless denied licensure pursuant to Section 11, a nonresident person shall receive a nonresident public adjuster license if:
  - (1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state;
  - (2) The person has submitted the proper request for licensure, and has paid the fees required by OAR 836-009-0007.
  - (3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and

- (4) The person's home state awards non-resident public adjuster licenses to residents of this state on the same basis.
- B. The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.
- C. As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The non-resident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where non-resident license is issued must be made as soon as possible, yet no later than thirty (30) days of change in new state resident license. Licensee shall include new and old address. A new state resident license is required for non-resident licenses to remain valid. The new state resident license must have reciprocity with the licensing non-resident state(s) for the non-resident license not to terminate.

**836-071-xxxx Section 10. License**

- A. Unless denied licensure under this rule, persons who have met the requirements of this rule shall be issued a public adjuster license.
- B. A public adjuster license shall remain in effect unless revoked, terminated or suspended as long as the request for renewal and fee set forth in OAR 836-071-0130 and OAR 836-009-0007 is paid and any other requirements for license renewal are met by the due date.
- C. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.
- D. A licensed public adjuster shall be subject to ORS 746.230, and ORS 746.240.
- E. A public adjuster who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new public adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new public adjuster license. The new public adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty.
- F. Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department of Consumer and Business Services receives the request for reinstatement and the required lapsed license fee within 365 days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the person applies for reinstatement more than 365 days from date of lapse, the person shall reapply for the license under this rule.
- G. A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

**836-071-xxxx Section 11. License Denial, Non-renewal or Revocation**

The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license in accordance with ORS 744.584.

**836-071-xxxx Section 12. Continuing Education**

An individual, who holds a public adjuster license shall satisfactorily complete the continuing education requirements as provided in ORS 744.521(2)(a)(B).

**836-071-xxxx Section 13. Public Adjuster Fees**

- A. 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 rule and is not so licensed.
- B. 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 rule and is not so licensed.
- C. A public adjuster may pay or assign commission, service fees or other valuable consideration to persons who do not investigate or settle claims in this state, unless the payment would violate ORS 746.045
- D. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal of more than ten percent (10%) for any catastrophic insurance claim settlement, and no more than fifteen percent (15%) for any insurance claim settlement. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

**836-071-xxxx Section 14. 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 Department of Consumer and Business Services records;
  - (2) Permanent home state business address and phone number;
  - (3) Department of Consumer and Business Services 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 state 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.
  - (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.
  - (3) 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 a public adjuster 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.
  - H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest. The insurer shall verify the public adjuster holds a valid license with the Department of Consumer and Business Services.
  - I. 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.
  - J. 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.
  - K. Subject to its terms relating to assignability, a property insurance policy, whether heretofore or hereafter issued, under the terms of which the policy and its rights and benefits are assignable, may provide that the rights and benefits under the insurance may only be assigned to a person who has the legal authority to represent the named insured or to a subsequent owner of the property to whom title is transferred, and may explicitly prohibit assignment of rights and benefits to any other person, including a property repair contractor. For purposes of this subsection, having “legal authority to represent the named insured” includes the person named by the named insured as having the named insured’s power of attorney, the person who is the named insured’s licensed public adjuster, or any other comparable person. Property repair contractors operating in this State may not subvert the public adjuster licensing requirements of this rule through the acquisition of a power of attorney from the named insured.

**836-071-xxxx Section 15. Licensee’s place of business**

A public adjuster shall maintain a place of business and all of the usual and customary records in accordance with ORS 744.578.

**836-071-xxxx Section 16. 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.

**836-071-xxxx Section 17. 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 insurance 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.
- 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.

**836-071-xxxx Section 18. 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 licensee, as will best serve the insured's insurance claim needs and interest.
- B. A public adjuster shall not 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 advertise or infer damage unless an inspection of the property has been completed.
- D. A public adjuster shall not offer to pay an insured's deductible, or claim the insured's deductible will be waived, as an inducement to using the services of a public adjuster.

- E. 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 rule.
- F. 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. -
- G. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer.
- H. The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person:
  - (1) With whom the public adjuster has a financial interest; or
  - (2) From whom the public adjuster may receive direct or indirect compensation for the referral.
- I. Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.
- J. 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 Department of Consumer and Business Services, 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
  - (6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.
- K. A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

**836-071-xxxx Section 19. Notices required; rules**

The public adjuster shall report to the commissioner any of the conditions specified in ORS 744.581.