

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1313

Short Title: Regulate Public Adjusters.-AB (Public)

Sponsors: Representatives Goforth, Wray (Primary Sponsors); and Lucas.

Referred to: Insurance, if favorable, Finance.

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR MEANINGFUL REGULATION OF INSURANCE PUBLIC
3 ADJUSTERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 33A.

8 "Public Adjusters.

9 **"§ 58-33A-1. Purpose and scope.**

10 This Article governs the qualifications and procedures for the licensing of public adjusters.
11 It specifies the duties of and restrictions on public adjusters, which include limiting their
12 licensure to assisting insureds in first-party claims.

13 **"§ 58-33A-5. Definitions.**

- 14 (1) Business entity. – A corporation, association, partnership, limited liability
15 company, limited liability partnership, or other legal entity.
- 16 (2) Catastrophic incident. – As defined in the National Response Framework,
17 any natural or man-made incident, including terrorism, that results in
18 extraordinary levels of mass casualties, damage, or disruption severely
19 affecting the population, infrastructure, environment, economy, national
20 morale, and/or government functions. A catastrophic incident shall be
21 declared by the President of the United States or the Governor of the state or
22 district in which the disaster occurred. If state and local resources are
23 insufficient, the Governor may ask the President of the United States to
24 make such a declaration.
- 25 (3) Fingerprints. – An impression of the lines on the finger taken for purpose of
26 identification. The impression may be electronic or in ink converted to
27 electronic format.
- 28 (4) Home state. – The District of Columbia and any state or territory of the
29 United States in which the public adjuster's principal place of residence or
30 principal place of business is located. If neither the state in which the public
31 adjuster maintains the principal place of residence nor the state in which the
32 public adjuster maintains the principal place of business has a substantially
33 similar law governing public adjusters, the public adjuster may declare
34 another state in which it becomes licensed and acts as a public adjuster to be
35 the home state.
- 36 (5) Individual. – A natural person.
- 37 (6) Person. – An individual or a business entity.



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- 1 (7) Public adjuster. – Any person who, for compensation or any other thing of
2 value on behalf of the insured, does any of the following:
3 a. Acts or aids, solely in relation to first-party claims arising under
4 insurance contracts that insure the real or personal property of the
5 insured, on behalf of an insured in negotiating for, or effecting the
6 settlement of, a claim for loss or damage covered by an insurance
7 contract.
8 b. Advertises for employment as an public adjuster of insurance claims
9 or solicits business or represents himself or herself to the public as a
10 public adjuster of first-party insurance claims for losses or damages
11 arising out of policies of insurance that insure real or personal
12 property.
13 c. Directly or indirectly solicits business, investigates or adjusts losses,
14 or advises an insured about first-party claims for losses or damages
15 arising out of policies of insurance that insure real or personal
16 property for another person engaged in the business of adjusting
17 losses or damages covered by an insurance policy for the insured.
18 (8) Uniform individual application. – The current version of the NAIC Uniform
19 Individual Application for resident and nonresident individuals.
20 (9) Uniform business entity application. – The current version of the NAIC
21 Uniform Business Entity Application for resident and nonresident business
22 entities.

23 **§ 58-33A-10. License required.**

- 24 (a) A person shall not act or hold himself or herself out as a public adjuster in this State
25 unless the person is licensed as a public adjuster in accordance with this Article.
26 (b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or
27 she is an adjuster representing an insurer in any capacity, including acting as an employee of
28 the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to
29 act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is
30 prohibited from charging that specific claimant a fee when appointed by the insurer and the
31 appointment is accepted by the public adjuster.
32 (c) A business entity acting as a public adjuster is required to obtain a public adjuster
33 license. Application shall be made using the uniform business entity application. Before
34 approving the application, the Commissioner shall find all of the following:
35 (1) The business entity has paid the fees set forth in G.S. 58-33-125.
36 (2) The business entity has designated a licensed public adjuster responsible for
37 the business entity's compliance with the insurance laws and regulations of
38 this State.
39 (d) Notwithstanding subsections (a) through (c) of this section, a license as a public
40 adjuster shall not be required of any of the following:
41 (1) An attorney-at-law admitted to practice in this State, when acting in his or
42 her professional capacity as an attorney.
43 (2) A person who negotiates or settles claims arising under a life or health
44 insurance policy or an annuity contract.
45 (3) A person employed only for the purpose of obtaining facts surrounding a
46 loss or furnishing technical assistance to a licensed public adjuster, including
47 photographers, estimators, private investigators, engineers, and handwriting
48 experts.
49 (4) A licensed health care provider, or employee of a licensed health care
50 provider, who prepares or files a health claim form on behalf of a patient.
51 (5) A person who settles subrogation claims between insurers.

"§ 58-33A-15. Application for license.

(a) A person applying for a public adjuster license shall apply to the Commissioner on the appropriate uniform application or other application prescribed by the Commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

(c) In order to make a determination of license eligibility, the Commissioner may require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the State Bureau of Investigation and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the Commissioner shall require a criminal history record check on each applicant in accordance with this Article. The Commissioner shall require each applicant to submit a full set of fingerprints in order for the Commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.

(1) The Commissioner may contract for the collection, transmission, and resubmission of fingerprints required under this section. If the Commissioner does so, the fee for collecting, transmitting, and retaining fingerprints shall be payable directly to the contractor by the person. The Commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

(2) The Commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and those fingerprints are on file with the Central Repository of the NAIC or the NAIC's affiliates or subsidiaries.

(3) The Commissioner may submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates, or subsidiaries for permanent retention in a centralized repository. The purpose of such a centralized repository is to provide state insurance regulators with access to fingerprint records in order to perform criminal history record checks.

"§ 58-33A-20. Resident license.

(a) Before issuing a public adjuster license to an applicant under this section, the Commissioner shall find that the applicant meets all of the following criteria:

(1) Is eligible to designate this State as his or her home state or is a nonresident who is not eligible for a license under G.S. 58-33A-35.

(2) Has not committed any act that is a ground for denial, suspension, or revocation of a license as set forth in G.S. 58-33A-45.

(3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the Commissioner.

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in G.S. 58-33A-50.

(5) Has paid the fees set forth in G.S. 58-33-125.

(6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

(b) In addition to satisfying the requirements of subsection (a) of this section, an individual shall:

(1) Be at least 18 years of age; and

(2) Have successfully passed the public adjuster examination.

(c) The Commissioner may require any documents reasonably necessary to verify the information contained in the application.

"§ 58-33A-25. Examination.

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to G.S. 58-33A-30. The examination shall test the

1 knowledge of the individual concerning the duties and responsibilities of a public adjuster and
2 the insurance laws and regulations of this State. Examinations required by this section shall be
3 developed and conducted under rules and regulations prescribed by the Commissioner.

4 (b) The Commissioner may make arrangements, including contracting with an outside
5 testing service, for administering examinations and collecting the nonrefundable fee set forth in
6 G.S. 58-33-125.

7 (c) Each individual applying for an examination shall remit a nonrefundable fee as
8 prescribed by the Commissioner as set forth in G.S. 58-33-125.

9 (d) An individual who fails to appear for the examination as scheduled or fails to pass
10 the examination shall reapply for an examination and remit all required fees and forms before
11 being rescheduled for another examination.

12 **"§ 58-33A-30. Exemptions from examination.**

13 (a) An individual who applies for a public adjuster license in this State who was
14 previously licensed as a public adjuster in another state based on a public adjuster examination
15 shall not be required to complete any prelicensing examination. This exemption is only
16 available if the person is currently licensed in that state or if the application is received within
17 12 months of the cancellation of the applicant's previous license and if the prior state issues a
18 certification that, at the time of cancellation, the applicant was in good standing in that state or
19 the state's producer database records or records maintained by the NAIC, its affiliates, or
20 subsidiaries indicate that the public adjuster is or was licensed in good standing.

21 (b) A person licensed as a public adjuster in another state based on a public adjuster
22 examination who moves to this State shall apply within 90 days after establishing legal
23 residence to become a resident licensee pursuant to G.S. 58-33A-20. No prelicensing
24 examination shall be required of that person to obtain a public adjuster license.

25 (c) An individual who applies for a public adjuster license in this State who was
26 previously licensed as a public adjuster in this State shall not be required to complete any
27 prelicensing examination. This exemption is only available if the application is received within
28 12 months after the cancellation of the applicant's previous license in this State and if, at the
29 time of cancellation, the applicant was in good standing in this State.

30 **"§ 58-33A-35. Nonresident license reciprocity.**

31 (a) Unless denied licensure pursuant to G.S. 58-33A-45, a nonresident person shall
32 receive a nonresident public adjuster license if the person meets all of the following criteria:

33 (1) The person is currently licensed as a resident public adjuster and in good
34 standing in his or her home state.

35 (2) The person has submitted the proper request for licensure, has paid the fees
36 required by G.S. 58-33-125, and has provided proof of financial
37 responsibility as required in G.S. 58-33A-50.

38 (3) The person has submitted or transmitted to the Commissioner the
39 appropriate completed application for licensure.

40 (4) The person's home state awards nonresident public adjuster licenses to
41 residents of this State on the same basis.

42 (b) The Commissioner may verify the public adjuster's licensing status through the
43 producer database maintained by the NAIC, its affiliates, or subsidiaries.

44 (c) As a condition to continuation of a public adjuster license issued under this section,
45 the licensee shall maintain a resident public adjuster license in his or her home state. The
46 nonresident public adjuster license issued under this section shall terminate and be surrendered
47 immediately to the Commissioner if the home state public adjuster license terminates for any
48 reason, unless the public adjuster has been issued a license as a resident public adjuster in his or
49 her new home state. Notification to the state or states where nonresident license is issued must
50 be made as soon as possible, yet no later than 30 days after change in new state resident license.
51 Licensee shall include new and old address. A new state resident license is required for

1 nonresident licenses to remain valid. The new state resident license must have reciprocity with
2 the licensing nonresident state(s) for the nonresident license not to terminate.

3 **"§ 58-33A-40. License.**

4 (a) Unless denied licensure under this Article, persons who have met the requirements
5 of this Article shall be issued a public adjuster license.

6 (b) A public adjuster license shall remain in effect unless revoked, terminated, or
7 suspended as long as the request for renewal and fee set forth in G.S. 58-33-125 is paid and any
8 other requirements for license renewal are met by the due date.

9 (c) The licensee shall inform the Commissioner by any means acceptable to the
10 Commissioner of a change of address, change of legal name, or change of information
11 submitted on the application within 30 days after the change.

12 (d) A licensed public adjuster shall be subject to Article 63 of this Chapter.

13 (e) A public adjuster who allows his or her license to lapse may, within 12 months from
14 the due date of the renewal, be issued a new public adjuster license upon the Commissioner's
15 receipt of the request for renewal. However, an administrative fee in the amount of double the
16 unpaid renewal fee shall be required for the issuance of the new public adjuster license. The
17 new public adjuster license shall be effective the date the Commissioner receives the request
18 for renewal and the late payment penalty.

19 (f) Any public adjuster licensee that fails to apply for renewal of a license before
20 expiration of the current license shall pay a lapsed license fee of twice the license fee and be
21 subject to other penalties as provided by law before the license will be renewed. If the
22 Department receives the request for reinstatement and the required lapsed license fee within 60
23 days after the date the license lapsed, the Department shall reinstate the license retroactively to
24 the date the license lapsed. If the Department receives the request for reinstatement and the
25 required lapsed license fee after 60 days but within one year of the date the license lapsed, the
26 Department shall reinstate the license prospectively with the date the license is reinstated. If the
27 person applies for reinstatement more than one year from the date of lapse, the person shall
28 reapply for the license under this Article.

29 (g) A licensed public adjuster who is unable to comply with license renewal procedures
30 because of military service, a long-term medical disability, or some other extenuating
31 circumstance may request a waiver of those procedures. The public adjuster may also request a
32 waiver of any examination requirement, fine, or other sanction imposed for failure to comply
33 with renewal procedures.

34 (h) The license shall contain the licensee's name, city and state of business address,
35 personal identification number, the date of issuance, the expiration date, and any other
36 information the Commissioner deems necessary.

37 (i) In order to assist in the performance of the Commissioner's duties, the
38 Commissioner may contract with nongovernmental entities, including the NAIC or any
39 affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to
40 licensing, including the collection of fees and data, that the Commissioner may deem
41 appropriate.

42 **"§ 58-33A-45. License denial, nonrenewal, or revocation.**

43 (a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or
44 renew a public adjuster's license or may levy a civil penalty in accordance with G.S. 58-2-70 or
45 any combination of actions for any one or more of the following causes:

46 (1) Providing incorrect, misleading, incomplete, or materially untrue
47 information in the license application.

48 (2) Violating any insurance laws or violating any regulation, subpoena, or order
49 of the Commissioner or of another state's insurance regulator.

50 (3) Obtaining or attempting to obtain a license through misrepresentation or
51 fraud.

- 1 (4) Improperly withholding, misappropriating, or converting any monies or
2 properties received in the course of doing insurance business.
- 3 (5) Intentionally misrepresenting the terms of an actual or proposed insurance
4 contract or application for insurance.
- 5 (6) Having been convicted of a felony or a misdemeanor involving dishonesty
6 or breach of trust.
- 7 (7) Having admitted or been found to have committed any insurance unfair trade
8 practice or insurance fraud.
- 9 (8) Using fraudulent, coercive, or dishonest practices or demonstrating
10 incompetence, untrustworthiness, or financial irresponsibility in the conduct
11 of business in this State or elsewhere.
- 12 (9) Having an insurance license, or its equivalent, denied, suspended, or revoked
13 in any other state, province, district, or territory.
- 14 (10) Forging another's name to an application for insurance or to any document
15 related to an insurance transaction.
- 16 (11) Cheating, including improperly using notes or any other reference material,
17 to complete an examination for an insurance license.
- 18 (12) Knowingly accepting insurance business from an individual who is not
19 licensed but who is required to be licensed by the Commissioner.
- 20 (13) Failing to comply with an administrative or court order imposing a child
21 support obligation.
- 22 (14) Failing to pay state income tax or comply with any administrative or court
23 order directing payment of state income tax.

24 (b) If the action by the Commissioner is to deny an application for or not renew a
25 license, the Commissioner shall notify the applicant or licensee and advise, in writing, the
26 applicant or licensee of the reason for the nonrenewal or denial of the applicant's or licensee's
27 license. The applicant or licensee may make written demand upon the Commissioner in
28 accordance with Article 3A of Chapter 150B of the General Statutes for a hearing before the
29 Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall
30 be held pursuant to Article 3A of Chapter 150B of the General Statutes.

31 (c) The license of a business entity may be suspended, revoked, or refused if the
32 Commissioner finds, after hearing, that an individual licensee's violation was known or should
33 have been known by one or more of the partners, officers, or managers acting on behalf of the
34 business entity and the violation was neither reported to the Commissioner nor corrective
35 action taken.

36 (d) In addition to or in lieu of any applicable denial, suspension, or revocation of a
37 license, a person may, after hearing, be subject to a civil penalty according to G.S. 58-2-70.

38 (e) The Commissioner shall retain the authority to enforce the provisions of and impose
39 any penalty or remedy authorized by this Chapter against any person who is under investigation
40 for or charged with a violation of this Chapter, even if the person's license or registration has
41 been surrendered or has lapsed by operation of law.

42 **"§ 58-33A-50. Bond or letter of credit.**

43 (a) Before issuance of a license as a public adjuster and for the duration of the license,
44 the applicant shall secure evidence of financial responsibility in a format prescribed by the
45 Commissioner through any of the following instruments:

- 46 (1) A bond executed and issued by an insurer authorized to issue bonds in this
47 State which meets all of the following requirements:
 - 48 a. It shall be in the minimum amount of twenty thousand dollars
49 (\$20,000).
 - 50 b. It shall be in favor of this State and shall specifically authorize
51 recovery by the Commissioner on behalf of any person in this State

1 who sustained damages as the result of erroneous acts, failure to act,
2 conviction of fraud, or conviction of unfair practices in his or her
3 capacity as a public adjuster.

4 c. It shall not be terminated unless at least 30 days' prior written notice
5 will have been filed with the Commissioner and given to the licensee.

6 (2) An irrevocable letter of credit issued by a qualified financial institution,
7 which meets all of the following requirements:

8 a. It shall be in the minimum amount of twenty thousand dollars
9 (\$20,000).

10 b. It shall be to an account to the Commissioner and subject to lawful
11 levy of execution on behalf of any person to whom the public
12 adjuster has been found to be legally liable as the result of erroneous
13 acts, failure to act, fraudulent acts, or unfair practices in his or her
14 capacity as a public adjuster.

15 c. It shall not be terminated unless at least 30 days' prior written notice
16 will have been filed with the Commissioner and given to the licensee.

17 (b) The issuer of the evidence of financial responsibility shall notify the Commissioner
18 upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.

19 (c) The Commissioner may ask for the evidence of financial responsibility at any time
20 he or she deems relevant.

21 (d) The authority to act as a public adjuster shall automatically terminate if the evidence
22 of financial responsibility terminates or becomes impaired.

23 **"§ 58-33A-55. Continuing education.**

24 (a) An individual who holds a public adjuster license and who is not exempt under
25 subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing
26 education courses, including ethics, reported on a biennial basis in conjunction with the license
27 renewal cycle.

28 (b) This section shall not apply to any of the following:

29 (1) Licensees not licensed for one full year before the end of the applicable
30 continuing education biennium.

31 (2) Licensees holding nonresident public adjuster licenses who have met the
32 continuing education requirements of their home state and whose home state
33 gives credit to residents of this State on the same basis.

34 (c) Only continuing education courses approved by the Commissioner shall be used to
35 satisfy the continuing education requirement of subsection (a) of this section.

36 **"§ 58-33A-60. Public adjuster fees.**

37 (a) A public adjuster shall not pay a commission, service fee, or other valuable
38 consideration to a person for investigating or settling claims in this State if that person is
39 required to be licensed under this Article and is not so licensed.

40 (b) A person shall not accept a commission, service fee, or other valuable consideration
41 for investigating or settling claims in this State if that person is required to be licensed under
42 this Article and is not so licensed.

43 (c) A public adjuster may pay or assign commission, service fees, or other valuable
44 consideration to persons who do not investigate or settle claims in this State, unless the
45 payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).

46 (d) In the event of a catastrophic incident, there shall be limits on catastrophic fees, no
47 public adjuster shall charge, agree to, or accept as compensation or reimbursement any
48 payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any
49 insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee,
50 retainer, compensation, deposit, or other thing of value before settlement of a claim.

51 **"§ 58-33A-65. Contract between public adjuster and insured.**

- 1 (a) Public adjusters shall ensure that all contracts for their services are in writing and
2 contain all of the following terms:
- 3 (1) Legible full name of the adjuster signing the contract, as specified in
4 Department records.
 - 5 (2) Permanent home state business address and phone number.
 - 6 (3) Department license number.
 - 7 (4) Title of "Public Adjuster Contract."
 - 8 (5) The insured's full name, street address, insurance company name and policy
9 number, if known or upon notification.
 - 10 (6) A description of the loss and its location, if applicable.
 - 11 (7) Description of services to be provided to the insured.
 - 12 (8) Signatures of the public adjuster and the insured.
 - 13 (9) Date contract was signed by the public adjuster and date the contract was
14 signed by the insured.
 - 15 (10) Attestation language stating that the public adjuster is fully bonded pursuant
16 to state law.
 - 17 (11) Full salary, fee, commission, compensation, or other considerations the
18 public adjuster is to receive for services.
- 19 (b) The contract may specify that the public adjuster shall be named as a co-payee on an
20 insurer's payment of a claim.
- 21 (1) If the compensation is based on a share of the insurance settlement, the exact
22 percentage shall be specified.
 - 23 (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of
24 the claim payment shall be specified by type, with dollar estimates set forth
25 in the contract and with any additional expenses first approved by the
26 insured.
 - 27 (3) Compensation provisions in a public adjusting contract shall not be redacted
28 in any copy of the contract provided to the Commissioner. Such a redaction
29 shall constitute an omission of material fact in violation of Article 63 of this
30 Chapter.
- 31 (c) If the insurer, not later than 72 hours after the date on which the loss is reported to
32 the insurer, either pays or commits in writing to pay to the insured the policy limit of the
33 insurance policy, the public adjuster shall comply with all of the following:
- 34 (1) Not receive a commission consisting of a percentage of the total amount paid
35 by an insurer to resolve a claim.
 - 36 (2) Inform the insured that loss recovery amount might not be increased by
37 insurer.
 - 38 (3) Be entitled only to reasonable compensation from the insured for services
39 provided by the public adjuster on behalf of the insured, based on the time
40 spent on a claim and expenses incurred by the public adjuster, until the claim
41 is paid or the insured receives a written commitment to pay from the insurer.
- 42 (d) A public adjuster shall provide the insured a written disclosure concerning any
43 direct or indirect financial interest that the public adjuster has with any other party who is
44 involved in any aspect of the claim, other than the salary, fee, commission, or other
45 consideration established in the written contract with the insured, including but not limited to,
46 any ownership of, other than as a minority stockholder, or any compensation expected to be
47 received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair
48 shop, or any other firm that provides estimates for work, or that performs any work, in
49 conjunction with damages caused by the insured loss on which the public adjuster is engaged.
50 The word "firm" shall include any corporation, partnership, association, joint-stock company,
51 or person.

- 1 (e) A public adjuster contract may not contain any contract term that includes any of the
2 following terms:
- 3 (1) Allows the public adjuster's percentage fee to be collected when money is
4 due from an insurance company, but not paid, or that allows a public
5 adjuster to collect the entire fee from the first check issued by an insurance
6 company, rather than as a percentage of each check issued by an insurance
7 company.
- 8 (2) Requires the insured to authorize an insurance company to issue a check
9 only in the name of the public adjuster.
- 10 (3) Imposes collection costs or late fees.
- 11 (4) Precludes a public adjuster from pursuing civil remedies.
- 12 (f) Before the signing of the contract the public adjuster shall provide the insured with a
13 separate disclosure document regarding the claim process that states:
- 14 (1) Property insurance policies obligate the insured to present a claim to his or
15 her insurance company for consideration. There are three types of adjusters
16 that could be involved in that process. The definitions of the three types are
17 as follows:
- 18 a. "Company adjuster" means the insurance adjusters who are
19 employees of an insurance company. They represent the interest of
20 the insurance company and are paid by the insurance company. They
21 will not charge you a fee.
- 22 b. "Independent adjuster" means the insurance adjusters who are hired
23 on a contract basis by an insurance company to represent the
24 insurance company's interest in the settlement of the claim. They are
25 paid by your insurance company. They will not charge you a fee.
- 26 c. "Public adjuster" means the insurance adjusters who do not work for
27 any insurance company. They work for the insured to assist in the
28 preparation, presentation, and settlement of the claim. The insured
29 hires them by signing a contract agreeing to pay them a fee or
30 commission based on a percentage of the settlement or other method
31 of compensation.
- 32 (2) The insured is not required to hire a public adjuster to help the insured meet
33 his or her obligations under the policy, but has the right to do so.
- 34 (3) The insured has the right to initiate direct communications with the insured's
35 attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any
36 other person regarding the settlement of the insured's claim. Once a public
37 adjuster has been retained, the company adjuster or other insurance
38 representative may not communicate directly with the insured without the
39 permission or consent of the public adjuster or the insured's legal counsel.
- 40 (4) The public adjuster is not a representative or employee of the insurer.
- 41 (5) The salary, fee, commission, or other consideration is the obligation of the
42 insured, not the insurer.
- 43 (g) The contracts shall be executed in duplicate to provide an original contract to the
44 public adjuster, and an original contract to the insured. The public adjuster's original contract
45 shall be available at all times for inspection without notice by the Commissioner.
- 46 (h) The public adjuster shall provide the insurer a notification letter, which has been
47 signed by the insured, authorizing the public adjuster to represent the insured's interest.
- 48 (i) The insured has the right to rescind the contract within three business days after the
49 date the contract was signed. The rescission shall be in writing and mailed or delivered to the
50 public adjuster at the address in the contract within the three business day period.

1 (j) If the insured exercises the right to rescind the contract, anything of value given by
2 the insured under the contract will be returned to the insured within 15 business days after the
3 receipt by the public adjuster of the cancellation notice.

4 **"§ 58-33A-70. Escrow or trust accounts.**

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

9 **"§ 58-33A-75. Record retention.**

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

12 (1) Name of the insured.

13 (2) Date, location, and amount of the loss.

14 (3) Copy of the contract between the public adjuster and insured.

15 (4) Name of the insurer, amount, expiration date and number of each policy
16 carried with respect to the loss.

17 (5) Itemized statement of the insured's recoveries.

18 (6) Itemized statement of all compensation received by the public adjuster, from
19 any source whatsoever, in connection with the loss.

20 (7) A register of all monies received, deposited, disbursed, or withdrawn in
21 connection with a transaction with an insured, including fees, transfers, and
22 disbursements from a trust account and all transactions concerning all
23 interest-bearing accounts.

24 (8) Name of public adjuster who executed the contract.

25 (9) Name of the attorney representing the insured, if applicable, and the name of
26 the claims representatives of the insurance company.

27 (10) Evidence of financial responsibility in a format prescribed by the
28 Commissioner.

29 (b) Records shall be maintained for at least five years after the termination of the
30 transaction with an insured and shall be open to examination by the Commissioner at all times.

31 (c) Records submitted to the Commissioner in accordance with this section that contain
32 information identified in writing as proprietary by the public adjuster shall be treated as
33 confidential by the Commissioner and shall not be subject to Chapter 132 of the General
34 Statutes or G.S. 58-2-100.

35 **"§ 58-33A-80. Standards of conduct of public adjusters.**

36 (a) A public adjuster shall, under his or her license, serve with objectivity and complete
37 loyalty the interest of his or her client alone; and render to the insured such information,
38 counsel, and service, as within the knowledge, understanding, and opinion in good faith of the
39 licensee, as will best serve the insured's insurance claim needs and interest.

40 (b) A public adjuster shall not solicit, or attempt to solicit, an insured during the
41 progress of a loss-producing occurrence, as defined in the insured's insurance contract.

42 (c) A public adjuster shall not permit an unlicensed employee or representative of the
43 public adjuster to conduct business for which a license is required under this Article.

44 (d) A public adjuster shall not have a direct or indirect financial interest in any aspect of
45 the claim, other than the salary, fee, commission, or other consideration established in the
46 written contract with the insured, unless full written disclosure has been made to the insured as
47 set forth in G.S. 58-33A-65.

48 (e) A public adjuster shall not acquire any interest in salvage of property subject to the
49 contract with the insured unless the public adjuster obtains written permission from the insured
50 after settlement of the claim with the insurer as set forth in G.S. 58-33A-65.

1 (f) The public adjuster shall abstain from referring or directing the insured to get
2 needed repairs or services in connection with a loss from any person described by any of the
3 following criteria, unless disclosed to the insured:

4 (1) The public adjuster has a financial interest in the person.

5 (2) The public adjuster may receive direct or indirect compensation for the
6 referral from the person.

7 (g) The public adjuster shall disclose to an insured if the public adjuster has any interest
8 or will be compensated by any construction firm, salvage firm, building appraisal firm, motor
9 vehicle repair shop, or any other firm that performs any work in conjunction with damages
10 caused by the insured loss. The word "firm" includes any corporation, partnership, association,
11 joint-stock company, or person.

12 (h) Any compensation or anything of value in connection with an insured's specific loss
13 that will be received by a public adjuster shall be disclosed by the public adjuster to the insured
14 in writing including the source and amount of any such compensation.

15 (i) Public adjusters shall adhere to all of the following general ethical requirements:

16 (1) A public adjuster shall not undertake the adjustment of any claim if the
17 public adjuster is not competent and knowledgeable as to the terms and
18 conditions of the insurance coverage, or which otherwise exceeds the public
19 adjuster's current expertise.

20 (2) A public adjuster shall not knowingly make any oral or written material
21 misrepresentations or statements that are false or maliciously critical and
22 intended to injure any person engaged in the business of insurance to any
23 insured client or potential insured client.

24 (3) No public adjuster, while so licensed by the Department, may represent or
25 act as a company adjuster or independent adjuster on the same claim.

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

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

31 (6) A public adjuster shall ensure that all contracts for the public adjuster's
32 services are in writing and set forth all terms and conditions of the
33 engagement.

34 (j) A public adjuster may not agree to any loss settlement without the insured's
35 knowledge and consent.

36 (k) Public adjusters shall not solicit a client for employment between the hours of 9:00
37 P.M. and 9:00 A.M.

38 **"§ 58-33A-90. Reporting of actions.**

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

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

47 **"§ 58-33A-95. Rules.**

48 The Commissioner may, in accordance with Chapter 150B of the General Statutes, adopt
49 rules that are necessary or proper to carry out the purposes of this Article."

50 **SECTION 2.** This act becomes effective July 1, 2010.