

**COMMENTS SUBMITTED ON PUBLIC ADJUSTER LICENSING MODEL ACT  
MODEL DRAFT OF OCT. 12, 2023**

**STATE DEPARTMENTS OF INSURANCE**

CALIFORNIA DEPARTMENT OF INSURANCE

COLORADO DIVISION OF INSURANCE

MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

VIRGINIA BUREAU OF INSURANCE

WASHINGTON STATE OFFICE OF THE INSURANCE COMMISSIONER

**INTERESTED PARTIES**

AMERICAN ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS

AUTOMATIVE EDUCATION & POLICY INSTITUTE

COALITION AGAINST INSURANCE FRAUD

COLLISSION CONSULTING OF WASHINGTON

HARBER APPRAISAL

INSURANCE ADJUSTMENT BUREAU, INC.

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

NATIOANAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS

SOCIETY OF COLLISION REPAIR SPECIALISTS

WASHINGTON INDPENDENT COLLISION REPAIRERS ASSOCIATION

## California (Charlene Ferguson)

California also has the following suggested “clean-up” amendments which are shown on the attached in blue bold text in the following sections:

- 1) Table of Contents - moves “Unlicensed Actors” in Section 17 to Section 16 and striking through and relabeling that section to be Section 17. Escrow or Trust Account”
- 2) Section 2H(2) and Section 7A and B - corrects “an public adjuster” to state “a public adjuster”
- 3) Section 4C – corrects “identificationbureau” to state “identification bureau”
- 4) Section 4819 C - amends terms and adds text for clarification as follows:

**A public adjuster shall not ~~advertise or infer~~ represent or imply damage has occurred as result of a loss or loss in question unless an inspection of the property has been completed.**

## Colorado Comments

We suggest considering the addition of the highlighted language below to Section 15 (H).

15 (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 and, if applicable, any public adjusting business entity holds a valid license with the Department.

## Public Adjuster Licensing Model Act: Comments from Michigan

### Section 14:

- Michigan believes that the fee percentage limits should be calculated only on the portion adjusted by the public adjuster and not the total claim. For example, if the insured was offered \$200,000 in settlement of a claim prior to hiring the public adjuster and the public adjuster was able to increase the offer to \$250,000, the 10% fee (or applicable percentage) would be \$5,000, not \$25,000. Michigan would recommend clarifying language.
- (D): Complaints have been received that a public adjuster will carve out charges and describe them as 'reimbursements' outside of the settlement fee limitations. Michigan would recommend clarifying language in Section D.

### Section 15:

- Recommend this section be updated to include that the form and required disclosure should be on forms approved by the Director/Commissioner, and filed and approved by the Director/Commissioner before use.
- (B): Michigan has encountered issues whereby an insurer will refuse to put the public adjuster on the claim checks. Based on our review of Michigan statute, we cannot force them to. This states the contract may specify. We may want to consider adding additional language clarifying this disputed issue.

### Section 14 or 15:

- It may be helpful to require the contract to specify the specific coverages the public adjuster is adjusting for loss and what percentage they are charging for each (additional living expenses, dwelling, etc.)

### Section 19:

- (D): Recommend adding language that a public adjuster shall not advance funds or anything of value.
- (I): Recommend adding language that a public adjuster will abstain from charging fees as a public adjuster regarding their interest in the salvage of property such as vehicle storage fees or towing fees.
- (L)(3): Perhaps add 'appraiser' to the list.
- (L)(4): Recommend adding language that an insured can cancel the contract at any time and the public adjuster can only be paid for the work performed up to that date.

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## PUBLIC ADJUSTER LICENSING MODEL ACT

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### Section 1. Purpose and Scope

This Act 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.

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

**Drafting Note:** This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

### Section 2. Definitions

- [A.](#) “Adjusting services” means the preparation, completion or filing of an insurance claim with the respective insurer for compensation or remuneration on behalf of an insured.
- [AB.](#) “Apprentice public adjuster” means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.
- [BC.](#) “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- [CD.](#) “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private

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sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.

~~D~~E. “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.

~~F~~E. “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.’

~~G~~F. “Individual” means a natural person.

~~H~~. “Insured” includes only the policyholder(s) listed in the declarations page and any beneficiaries named or similarly identified in the insurance policy contract who has contracted with a property and casualty insurer for insurance coverage.

~~I~~. “Negotiate” means the act of conferring directly with an insurer or their representatives to effectuate a settlement for a claim of loss for an insured.

~~H~~ ~~J~~. “Person” means an individual or a business entity.

~~H~~K. “Public adjuster” means any person who, for direct or indirect compensation or any other thing of value on behalf of the insured:

Commented [RT1]: Added direct or indirect

- (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 a public adjuster of insurance claims or solicits business or represents himself or herself to the public as ~~an~~ 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
- (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.

~~L~~. “Solicitation” means initiating contact with any person, whether in person, by mail, by telephone, or otherwise, and thereby seeking, causing, urging, advising, or attempting to have any person enter into any agreement engaging the services of a public adjuster for adjusting services.

~~M~~. “Solicitation of public adjusting services” means initiating contact with any person, whether in person, by mail, by telephone, or otherwise, and thereby seeking, causing, urging, advising, or attempting to have any person enter into any agreement engaging the services of a public adjuster for adjusting services.

~~I~~N. “Uniform individual application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.

~~J~~O. [Optional] “Uniform business entity application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

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P. “Unlicensed persons,” means those persons who are not currently licensed by the Commissioner as a public adjuster.

**Drafting Note:** Subsection J is optional and would apply only to those states that have a business entity license requirement.

**Drafting Note:** If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

### Section 3. License Required

- A. A person shall not act, ~~or~~ hold himself 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 Act.
- 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 [insert appropriate reference to state law or regulation]; 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.

Commented [RT2]: Added solicit

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement.

- 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.

### Section 4. Application for License

- A. A person applying for a public adjuster license shall make application 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

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applicant's knowledge and belief.

- C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.
- (1) The insurance 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 insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
  - (2) The insurance 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 National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.
  - (3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.
  - (4) The insurance commissioner is authorized to 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 insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

**Drafting Note:** The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

## **Section 5. Resident License**

- A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:
- (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 Section 8;
  - (2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;
  - (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 Section 12 of this Act;



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- (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
  - (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, an individual shall
- (1) Be at least eighteen (18) years of age; and
  - (2) Have successfully passed the public adjuster examination.
  - (3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
  - (4) Designate only licensed individual public adjusters to exercise the business entity's license.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement. C's PLMA Section 6B.

- C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

#### **Section 6. Examination**

- A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.
- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 7. 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 ~~an~~a public adjuster examination shall not be required to complete any prelicensing 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 ~~an~~a public adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become

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a resident licensee pursuant to Section 5. No preclicensing 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 preclicensing 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 8. 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, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC's PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;
  - (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.

**Drafting Note:** If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 9. License**

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act 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 [insert appropriate reference to state law or regulation] 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)

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days of the change.

- D. A licensed public adjuster shall be subject to [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- 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 receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.
- 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.

**Drafting Note:** References to license "renewal" should be deleted in those states that do not require license renewal.

- H. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary. I. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. ]

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 10. Apprentice Public Adjuster License [Optional]**

- A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].
- B. The apprentice public adjuster license shall be subject to the following terms and conditions:
  - (1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions of such applicant;
  - (2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;
  - (3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;
  - (4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;

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- (5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
- (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;
- (7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and
- (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].

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

A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application or any document filed with the commissioner;
- (2) Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract ~~or application for insurance;~~
- (6) Having been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or receiving payment or anything of value as a result of an unfair or deceptive practice or insurance fraud;
- (8) Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory;
- (10) Forging another's name ~~to an application for insurance or~~ to any document related to an insurance transaction;
- (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
- (12) Knowingly accepting ~~insurance~~ public adjusting business from an individual who unlawfully solicited business and who is not licensed but who is required to be licensed by the commissioner;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment

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of state income tax:

- (15) Paying or sharing a commission, fee, or other valuable consideration to a person who is required to be licensed under this article and is not so licensed;
- (16) Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, from anyone other than an insured;
- (17) Failing to report to the commissioner as required by [insert relevant statute];
- (18) Soliciting or otherwise taking advantage of a person who is vulnerable, emotional, or otherwise upset as the result of a being displaced from their residence due to a covered loss, catastrophic event, or other similar occurrence;
- (19) Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of any insurance law or any order or rule or regulation of the commissioner;
- (20) Knowingly employing any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the commissioner;
- (21) Being otherwise paid or accepting payment for public adjusting services that have not been performed;
- (22) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner;
- (23) Failing to no longer meet the requirements for initial licensure.

**Drafting Note:** Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.
- D. The license authority of any licensed resident public adjuster shall terminate immediately when such public adjuster has moved his residence from the state, whether or not the commissioner has been notified of such move.
- ~~E.~~ In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its

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relevant insurance producer statute to include public adjusters.

## Section 12. 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 insurance 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 this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state 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 licensee.
- 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 licensee.
- 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 commissioner.
- 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.

## Section 13. Continuing Education

- A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.
- B. This section shall not apply to:
  - (1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or
  - (2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.

**Commented [RT3]:** Model written in 2005. Minimum amount too low. Virginia has a \$50,000 bond requirement.

**Commented [RT4]:** Model written in 2005. Minimum amount too low. Virginia has a \$50,000 bond requirement.

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

#### **Section 14. Public Adjuster Fees**

- A. ~~[Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation].~~

**Drafting Note:** This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters.

- ~~BA.~~ 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.
- ~~CB.~~ 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 is not so licensed.
- ~~DC.~~ 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 [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].
- ~~ED.~~ ~~[Optional] In the event of a catastrophic disaster, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to or more than ten percent (10%) of any insurance settlement or proceeds 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.
- E. A public adjuster shall not charge a fee, commission, or other valuable consideration based, in whole or in part, on an amount paid to the insured by the insurer prior to the date of the written contract between the insured and the public adjuster.

**Drafting Note:** This model designates Section 14E, as optional. It is recommended that the states that establish catastrophic fees utilize the recommended language in this model.

#### **Section 15. 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 Insurance records and, if applicable, the name of the public adjusting entity or trade name being used;
  - (2) Permanent home state business address and phone number;
  - (3) Department of Insurance 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;

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- (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. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].
- 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.~~
- ED. 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;

Commented [RT5]: May?



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- (3) Imposes collection costs or late fees; or
  - (4) Precludes a public adjuster from pursuing civil remedies.
- FE.** 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.
  - (6) A statement that the public adjuster may not render services or perform acts that constitute the practice of law.
  - (7) A statement that the adjuster shall not act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.
- GF.** 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.
- HG.** 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.
- HH.** The public adjuster shall give the insured written notice of the insured’s right as provided in [cite the state consumer protection laws].
- IJ.** 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.

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~~K.~~ 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.

~~L.~~ 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 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 name 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 [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

(1) A post-loss assignment of rights or benefits to a residential contractor under a homeowners policy is subject to each of the following:

- (a) The assignment may authorize a residential contractor to be named as a copayee for the payment of post-loss proceeds only under the homeowners policy subject to the covered loss for which the contractor is effectuating repairs.
- (b) A copy of the assignment must be provided to the insured at the time the assignment is executed.
- (c) A copy of the assignment must be provided to the insurer that is processing the claim of the covered loss within five business days after execution.
- (d) The assignment must include a statement that the residential contractor made no assurances the claimed loss will be fully covered by an insurance contract and must include the following notice in capitalized fourteen-point type:

"YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY."

- (e) The assignment may not impair the interest of a mortgagee listed on the declarations page of the homeowners policy that is the subject of the assignment.
- (f) The assignment may not prevent or inhibit an insurer from communicating with the named insured or mortgagee listed on the declarations page of the homeowners policy that is the subject of the assignment.
- (g) The assignment must include the statement: "You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right".

L. Any contract for public adjusting services that is entered into by an insured with a person who is in violation of [Section 3] may be voided at the option of the insured.

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M. A public adjuster shall not provide services to an insured until a written contract with the insured has been executed.

**Drafting Note:** The details in this section should comply with your state's consumer protection contract rescission law.

#### **Section 16. Unlicensed Actors**

A person or entity commits a fraudulent insurance act if ~~he or she~~they:

**Commented [RT6]:** Gender neutral

- A. Represents or advertises themselves to be a public adjuster who has not met the requirements of licensure under [insert appropriate reference to state law].
- B. Conducts business for which a license is required under this Act without a license.
- C. Unlicensed persons shall not engage in the solicitation of public adjusting services even under the supervision of a licensed public adjuster.
- ~~C.~~D. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not considered solicitation or unlicensed adjusting and is not violative of this title so long as the unlicensed persons engage in purely administrative matters and do not interpret, analyze or explain insurance, an insurance contract, or a public adjuster contract, or cause, urge, advise or attempt to enter into a contract for public adjusting services.

**Commented [RT7]:** Similar to above?

#### **Section ~~16~~17. 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.~~

- A. All funds received by, accepted by, or held by a public adjuster on behalf of an insured toward the settlement of a claim shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate noninterest-bearing fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth no later than the close of the second business day from the receipt or acceptance of such funds. Such funds shall be held separately from any personal or nonbusiness funds, shall not be commingled, or combined with other funds, and shall be reasonably ascertainable from the books of accounts and records of the public adjuster. The public adjuster shall maintain an accurate record and itemization of the funds deposited into this account. Any such funds held by such public adjuster shall be disbursed within 30 calendar days of any invoice received by such public adjuster upon approval of the insured or claimant that the work has been satisfactorily completed.
- B. Any person who misappropriates or diverts such funds or any portion thereof to the individuals own use, may be deemed to have committed acts of larceny [insert appropriate reference to state law].
- C. The commissioner shall make a criminal referral to a law enforcement agency in the appropriate jurisdiction of each statement filed pursuant to subsection B of this section.

#### **Section ~~17~~18. 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;

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- (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 and shall not be subject to [insert reference to open record laws] of this state.

#### **Section 1819. 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.~~  
No person except a public adjuster duly licensed under this article shall:
- 1) Accept a commission, fee, or other compensation for investigating or settling claims.
  - 2) Prepare, complete, or file an insurance claim on behalf of an insured.
  - 3) Aid or act on behalf of an insured in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract.
  - 4) Advertise for employment as a public adjuster; or
  - 5) Solicit, investigate, or adjust a claim on behalf of a public adjuster or an insured.
- C. A public adjuster shall not advertise or infer damage has occurred as result of 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.
- ~~CEE.~~ 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.

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F. A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and shall have no financial interest in any aspect of an insured's claim other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster.

~~D.G.~~ ~~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 15G.~~

~~E.H.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 as set forth in Section 15G.

~~F.H.I.~~ 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, ~~unless disclosed to the insured:~~

~~(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.~~

**Drafting Note:** Optional language for Subsection F: "Licensees may not solicit a client for employment between the hours of \_\_\_ pm and \_\_\_ am."

I. A public adjuster shall not solicit or attempt to solicit a client during the progress of a loss producing occurrence as covered by the insurance contract.

J. A public adjuster shall not solicit a client for employment from 8:00 p.m. to 8:00 a.m. daily.

~~G.J.~~ ~~The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint stock company or individual as set forth in Section 15A(4).~~

~~H.K.~~ ~~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.~~

~~H.K.~~ 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, may represent or act as a company adjuster, or independent adjuster on the same claim;

**Drafting Note:** If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.

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- (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.
- ~~(7) A public adjuster shall not advise an insured to accept a settlement when the settlement would be disadvantageous to an insured who has been traumatized by a covered loss.~~
- ~~(8) A public adjuster shall not accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public adjuster of an insured to any third-party individual or firm, including an attorney, appraiser, umpire, construction company, contractor, or salvage company.~~
- ~~(9) A public adjuster shall not enter into a contract with any person, which would allow the public adjuster to accept an amount that would exceed the limitations of the public adjuster's compensation imposed by this Code.~~
- ~~(10) A public adjuster shall not act as an appraiser or umpire pursuant to the appraisal provisions in present law or any similar provision of a policy of insurance if that public adjuster is adjusting or has adjusted all or any part of the claim, or both or property subject to that appraisal provision.~~

~~JML.~~ A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

#### **Section 1920. 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 this state 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.
- 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 21. Power of Commissioner to investigate; penalties for refusal to permit investigation.**

The commissioner shall have power to examine and investigate the business affairs of any person engaged or alleged to be engaged in the business of public adjusting in the state to determine whether the person has engaged or is engaging in any violation of this title. The commissioner shall have the right to examine all records relating to the business of public adjusting by any such person in the state to determine whether the person is now or has been violating any of the provisions of this title. Any licensee under this article or any person purporting to be a licensee under this article or any person whose actions have led any person to believe that he is a licensee under this article who refuses to permit any employees or investigators designated by the commissioner to make an examination or who fails or refuses to comply with the provisions of this section, may, after notice and an opportunity to be heard, be subject to any of the penalties relating to licensees under this article, as provided in this title, including the termination, denial, suspension, or revocation of his license.

#### **Section 22. Immunities: confidentiality**

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- A. Any documents, materials, or other information in the control or possession of the commissioner that is furnished by an insurer, agent, or public adjuster or by an employee thereof acting on behalf of the insurer, agent, or public adjuster or obtained by the commissioner in an investigation pursuant to this article shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.
- B. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A of this section.
- C. Individuals or entities providing documents, materials, or other information to the commissioner without malice, fraud or intent subject to subsection A of this section shall be immune from civil liability.

### **23. False information and advertising**

- A. No person shall knowingly make, publish, disseminate, circulate, or place before the public, or cause or knowingly allow, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement relating to:
  - (1) The business of public adjusting or
  - (2) Any person in the conduct of his business of public adjusting, which is untrue, deceptive, or misleading.
- B. No individual person, firm or entity, with the intent of performing public adjusting services, shall in any way advertise public adjusting services as a public adjuster in this state, unless such individual person, firm or entity is licensed as a public adjuster, public adjusting firm or is a member of the state Bar Association.
- C. Any advertisement, in whatever format, by a public adjuster shall include the full name and license number, as specified in the commissioners records, of the public adjuster who has caused the advertisement to appear. Where a firm containing multiple licensed public adjusters is causing the advertisement to appear, the full name and license number of the designated licensed public adjuster as specified in the commissioners records shall appear in the advertisement.
- D. Nothing in this section shall prohibit the use of an unlicensed spokesperson as part of a written or electronic advertisement. However, such advertisements shall disclose that the party is a paid or unpaid spokesperson, is not licensed and is endorsing the services of a licensed public adjuster.
- E. The licensed public adjuster whose name and license number appears in the advertisement is responsible for personally reviewing the content of the advertisement and assuring that the advertisement complies with this title and is in all regards fair, accurate, and in no way untruthful, deceptive, or misleading.
- F. An advertisement does not include communications or materials used within a public adjuster's firm, not used as promotional aids, and not disseminated to the public.
- G. An advertisement does not include communications with insureds other than materials soliciting insureds to enter, renew, extend, or reinstate a contract for public adjuster services.
- H. An advertisement does not include material used solely for the recruitment, training, and education of a public adjuster's staff, provided it is not also used to induce the public to enter, renew, extend, or reinstate a contract for

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public adjuster services.

#### **Section 24. Termination, suspension, or revocation of license**

- A. A license issued to an individual public adjuster shall authorize him to act as a public adjuster until his license is otherwise terminated, suspended, or revoked.
- B. A license issued to a business entity shall authorize such business entity to act as a public adjuster until such license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation of law, shall automatically terminate the public adjuster license issued to such partnership. The commissioner shall automatically terminate all public adjuster licenses within 90 calendar days of receiving notification that the certificate of organization or charter of a domestic limited liability company or corporation respectively, whether by intent or by operation of law, has been terminated or that the certificate of registration or certificate of authority of a foreign limited liability company or corporation, respectively, has been revoked.
- C. Except as provided in subsection [list appropriate subsection], the license authority of any licensed resident public adjuster shall terminate immediately when such public adjuster has moved his residence from the state, whether or not the commissioner has been notified of such move.
- D. The license authority of any business entity licensed as a public adjuster shall terminate immediately if the sole licensed responsible public adjuster designated pursuant to [list appropriate subsection] for the business entity's compliance with the insurance laws, rules, and regulations of the state or the commissioner is removed for any reason and a new responsible public adjuster has not been designated and the commissioner notified within 30 calendar days of such removal and of the newly designated responsible public adjuster.
- E. The commissioner shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the commissioner. If the commissioner proposes to revoke or suspend an existing license, it shall give the licensee at least 10 calendar days' notice in writing of the time and place of the hearing if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license or the reason for its proposed revocation or suspension, as the case may be. The notice may be given to the licensee by registered or certified mail, sent to the last known address of record or the last known business address if the address of record is incorrect, or in any other lawful manner, the commissioner prescribes. The commissioner may summon witnesses to testify with respect to the licensee, and the licensee may introduce evidence in the licensee's behalf. No licensee whose license is revoked shall again apply for a license until after the expiration of a period of five years from the date of the commissioner's order or such other period as the commissioner prescribes in its order.
- F. The license of a business entity may be suspended or revoked if the commissioner finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers, or managers acting on behalf of the business entity or if it can be demonstrated to the satisfaction of the commissioner that responsibility for such violation by the individual can reasonably be imputed to one or more of the partners, officers, or managers acting on behalf of the business entity, and neither was the violation reported to the commissioner nor corrective action taken.
- G. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to [list appropriate subsection].
- H. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

#### **Section 2021-25. Regulations**



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The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

**Section ~~2122~~26. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

**Section ~~2223~~27. Effective Date**

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC's central repository for the purpose of obtaining criminal background information.

**Drafting Note:** A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*2005 Proc. 2<sup>nd</sup> Quarter 698 (adopted by parent committee).*

*2005 Proc. 3<sup>rd</sup> Quarter 26, 35-49 (amended and adopted by Plenary).*

Draft: 10/12/23

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**NAIC Public Insurance Adjuster Surety Bond Sample**

BOND NO. \_\_\_\_\_

**Know All Persons by These Presents:**

That we, \_\_\_\_\_ as Principal, whose address is \_\_\_\_\_ and \_\_\_\_\_ as Surety, being a surety company authorized to do business in the State of \_\_\_\_\_ re bound to the \_\_\_\_\_ Department of Insurance in the sum of \$10,000.00 as specified at [ insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code, [insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this instrument, we jointly and severally firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

**The conditions of the above obligations are:**

**Whereas** the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the [insert state] Insurance Code;

**Now, Therefore,** should the Principal discharge losses that result from any final judgment recovered against the Principal by any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the following conditions:

1. As of \_\_\_\_\_, 20\_\_\_\_, this bond will be in full force and effect indefinitely. Continuation or renewal certificates are unnecessary.
2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond committed prior to the termination date.
3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more claimants, exceed the penal sum of this bond.

**In Witness Whereof** said Principal and Surety have executed this bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SURETY

Draft: 10/12/23

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## PUBLIC ADJUSTER LICENSING MODEL ACT

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### Section 1. Purpose and Scope

This Act 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.

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

**Drafting Note:** This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

### Section 2. Definitions

- A. "Apprentice public adjuster" means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.
- B. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. "Catastrophic disaster" according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.
- D. "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.

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- E. “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. “Individual” means a natural person.
- G. “Person” means an individual or a business entity.
- H. “Public adjuster” means any person 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 a 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. “Uniform individual application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.
- J. [Optional] “Uniform business entity application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

**Drafting Note:** Subsection J is optional and would apply only to those states that have a business entity license requirement.

**Drafting Note:** If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

### Section 3. License Required

- A. A person shall not act, ~~or~~ hold himself out as a public adjuster, or negotiate a contract for public adjusting services in this state unless the person is licensed as a public adjuster in accordance with this Act.
- 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 [insert appropriate reference to state law or regulation]; and

**Commented [JB1]:** WA State has a definition of "adjuster" which clearly defines this so we may not adopt the new definition. However, we do like the "solicits business" part and would encourage this being included in Sec. 3 A.

**Commented [JB2]:** Encourage including "solicits business" in Sec. 3 A

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- (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.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement.

- 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.

#### **Section 4. Application for License**

- A. A person applying for a public adjuster license shall make application 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 insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.
  - (1) The insurance 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 insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
  - (2) The insurance 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 National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.
  - (3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.
  - (4) The insurance commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a

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centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

**Drafting Note:** The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

## Section 5. Resident License

A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:

- (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 Section 8;
- (2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;
- (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 Section 12 of this Act;
- (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
- (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, an individual shall

- (1) Be at least eighteen (18) years of age; and
- (2) Have successfully passed the public adjuster examination.
- (3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
- (4) Designate only licensed individual public adjusters to exercise the business entity's license.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement. C's PLMA Section 6B.

C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

## Section 6. Examination

A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

**Commented [JB3]:** While WA likes the inclusion of Sec. 5 A 3, we have concerns about how states are defining and if any legality issues (losing at hearings) have resulted from these being included in statutory language. Haven't most of the moral turpitude statutes been removed since the PLMA?

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- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other preclicensing requirements.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 7. 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 preclicensing 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 preclicensing 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 preclicensing 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 8. 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, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC's PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;
  - (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

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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.

**Drafting Note:** If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 9. License**

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act 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 [insert appropriate reference to state law or regulation] 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 [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- 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 receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.
- 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.

**Drafting Note:** References to license "renewal" should be deleted in those states that do not require license renewal.  
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- H. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary. I. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. ]

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

**Section 10. Apprentice Public Adjuster License [Optional]**

- A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].
- B. The apprentice public adjuster license shall be subject to the following terms and conditions:
- (1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions of such applicant;
  - (2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;
  - (3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;
  - (4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;
  - (5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
  - (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;
  - (7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and
  - (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].

**Commented [JB4]:** WA State presently does not have this as an option but strongly support the basis. We have a 6-9 month trainee program defined as 960 hours of unlicensed training with a WA State licensed adjuster (verified by documentation) required prior to taking the adjuster exam.

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

- A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
  - (2) Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;
  - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

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- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;
- (8) Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
- (12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

**Drafting Note:** Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its relevant insurance producer statute to include public adjusters.

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**Section 12. 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 insurance 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 this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state 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 licensee.
- 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 licensee.
- 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 commissioner.
- 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.

**Commented [JB5]:** WA State support the bond requirement for public adjusters and is required for both individuals and business entities (agencies) by statute. Our amount is outdated at \$5,000.

**Section 13. Continuing Education**

- A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.
- B. This section shall not apply to:
  - (1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or
  - (2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.
- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.

**Section 14. Public Adjuster Fees**

~~A. [Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation].~~

**Drafting Note:** This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters.

**BA.** 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.

**CB.** 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 is not so licensed.

**DC.** 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 [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].

**ED.** ~~[Optional] In the event of a catastrophic disaster, t~~There shall be limits on catastrophic fees. ~~n~~No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal ~~to~~of more than ten percent (10%) ~~of any insurance settlement or proceeds 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.

**Drafting Note:** This model designates Section 14E, as optional. It is recommended that the states that establish catastrophic fees utilize the recommended language in this model.

**Section 15. 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 Insurance records;
- (2) Permanent home state business address and phone number;
- (3) Department of Insurance 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.

**Commented [JB6]:** Not sure where this comment should be placed, but nonetheless getting it on record - do any states place limitations on the time period after loss (such as 72 hours) that a public adjuster is not permitted to contact a potential client?

**Commented [JB7]:** Is there a reason why there is a higher percentage allowed on cat losses than other situations? Cat losses are easier for the adjuster and less debated by the insurer. Is there any situation where an hourly rate would be acceptable (such as water losses only) in lieu of the percentage? WA / OR experience a high number of water losses (our #1) rather than total losses.

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

- 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. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].
- 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

**Commented [JB8]:** WA State is not certain how this can be accomplished. Is this disallowing a PA from not being able to collect from a contracted client who refuses to pay the PA's fee?

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

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.
- I. The public adjuster shall give the insured written notice of the insured’s right as provided in [cite the state consumer protection laws].
- J. 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.
- K. 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.
- L. 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 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 name 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 [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

**Commented [JB9]:** WA State agrees with the concept of the sub L but is voicing concerns regarding whether or not this would hold up in court. Does any state have experience with enforcing this and can demonstrate success upholding it in admin hearings or court actions?

Draft: 10/12/23

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

**Drafting Note:** The details in this section should comply with your state's consumer protection contract rescission law.

#### **Section 16.      Unlicensed Actors**

A person or entity commits a fraudulent insurance act if he or she:

- A. Represents or advertises themselves to be a public adjuster who has not met the requirements of licensure under [insert appropriate reference to state law].
- B. Conducts business for which a license is required under this Act without a license.

#### **Section ~~16~~17.      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.

#### **Section ~~17~~18.      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 and shall not be subject to [insert reference to open record laws] of this state.

Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.

**Section 1819. 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 has occurred as result of 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.
- EF. 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.
- DG. 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 15G.~~
- EH. 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 as set forth in Section 15G.
- FJ. 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; ~~unless disclosed to the insured.~~
  - (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.~~

**Commented [JB10]:** The additional add-on's to Sec. 19 are good, WA State agrees.

**Commented [JB11]:** WA State has questions regarding the meaning or intent of sub I. The language seems clearer before striking out subs 1 and 2? Is this meaning that referrals for claims or repairs cannot be made to a specific business? Suggest re-adding subs 1 and 2 back to the language.

**Drafting Note:** Optional language for Subsection F: "Licensees may not solicit a client for employment between the hours of \_\_\_ pm and \_\_\_ am."

- GJ. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint-stock company or individual as set forth in Section 15A(4).
- HK. 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.
- IL. 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, may represent or act as a company adjuster, or independent adjuster on the same claim;



Draft: 10/12/23

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

**Drafting Note:** If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.

- (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.

**IM.** A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

#### **Section 1920. 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 this state 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.
- 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### **Section 2021. Regulations**

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

#### **Section 2122. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

#### **Section 2223. Effective Date**

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC's central repository for the purpose of obtaining criminal background information.

**Drafting Note:** A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*2005 Proc. 2<sup>nd</sup> Quarter 698 (adopted by parent committee).*

*2005 Proc. 3<sup>rd</sup> Quarter 26, 35-49 (amended and adopted by Plenary).*

Draft: 10/12/23

Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.

**NAIC Public Insurance Adjuster Surety Bond Sample**

BOND NO. \_\_\_\_\_

**Know All Persons by These Presents:**

That we, \_\_\_\_\_ as Principal, whose address is \_\_\_\_\_ and \_\_\_\_\_ as Surety, being a surety company authorized to do business in the State of \_\_\_\_\_ re bound to the \_\_\_\_\_ Department of Insurance in the sum of \$10,000.00 as specified at [ insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code, [insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this instrument, we jointly and severally firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

**The conditions of the above obligations are:**

**Whereas** the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the [insert state] Insurance Code;

**Now, Therefore,** should the Principal discharge losses that result from any final judgment recovered against the Principal by any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the following conditions:

1. As of \_\_\_\_\_, 20\_\_\_\_, this bond will be in full force and effect indefinitely. Continuation or renewal certificates are unnecessary.
2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond committed prior to the termination date.
3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more claimants, exceed the penal sum of this bond.

**In Witness Whereof** said Principal and Surety have executed this bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SURETY



January 26, 2024

Trinidad Navarro  
Delaware Insurance Commissioner  
1351 West North Street  
Suite 101  
Dover, DE 19904  
*Via email:* Insurance.Commissioner@state.de.us

RE: Proposed Amendments to NAIC Public Adjuster Licensing Model Act

Dear Commissioner Navarro:

Thank you for the opportunity to address our concerns regarding the proposal to amend the Public Adjusters Licensing Model Act. The American Association of Public Insurance Adjusters, known as “AAPIA” is a national professional organization which advocates for both policyholders and public adjusters. Our members are diverse in geography as well as business models, running the gamut from helping people with very small claims to large commercial claims. AAPIA was involved as an Interested Party when the original Model Act was drafted in 2004 and 2005. We have responded with some suggested language edits on the comments submitted by both Washington and Virginia, and our comments are listed on the two attached versions of the Draft. This letter serves as a summary and further explanation of our comments. Some of the minor wording comments are addressed only on the Draft Act itself.

I. Definitions:

a. The definition of “public adjuster” is the subject of comment and amendment. The original Model Act has a broad definition of public adjuster that has been adopted successfully by many states, but some states have added a qualifying sentence to the definition so that administrative and other non-adjusting tasks are not included in the broader definition. AAPIA suggests incorporating that qualifier here by adding a paragraph to the definition that reads: (4) **The term public adjuster does not include a person who performs clerical or administrative duties for a public adjuster or who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license or designation, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.**

b. Virginia has added a broader definition of solicitation, based upon the FL law, and we would suggest that if that definition is adopted, that a sentence be added as paragraph M: **Solicitation does not include the recommendation of the use of a public adjuster on a claim.** Without this qualifier, the Act would remove the ability of a contractor to inform a homeowner that the contractor cannot adjust the claim, but that the homeowner has the option of hiring a public adjuster. The current suggested amendment would prohibit a contractor from “*advising.... any person to enter into any agreement engaging the services of a public adjuster.*”

1

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## II. Section 11 License Denial, Non-renewal or Revocation

a. AAPIA agrees with most of the additions by VA, but some of the wording is too vague, leaving room for misinterpretation. For instance, “moral turpitude “is too subjective,[see comments by others] and paragraph (18) “Soliciting or otherwise taking advantage of a person who is vulnerable, emotional, or otherwise upset as the result of a being displaced from their residence due to a covered loss, catastrophic event, or other similar occurrence” is similarly broad and subjective, since soliciting a claim from someone who is “upset”, cannot be considered to be a violation of state law.

b. Section D would terminate a public adjuster’s license “immediately” if such adjuster moved from his or her home state. AAPIA suggests allowing a grace period of 30 days to effect such transition, similar to the producer licensing laws. Currently, it can be difficult to switch a home state license, since each state has a different procedure, and a uniform grace period for the license to be switched from resident to non-resident and vice versa, would streamline the procedure for both the adjusters and the Insurance regulators.

## III. Bond or Letter of Credit

AAPIA understands the need for a greater bond amount and would suggest that the bond for individuals be in the lower range, and the company bond amount be higher.

## IV. Public Adjuster Fees

The comments to the original Act have suggested changing the optional fee cap language and replacing it with a “one size fits all” 15% cap on fees. Most states do not impose caps on public adjuster fees. In contrast to the current “reasonable” standard, a fifteen percent fee cap on funds received after date of contract [AAPIA members do not object to the limitation that fees only be charged on funds received after date of contract in the absence of the cap on fees, and most follow this practice already] has been suggested. This across-the-board cap on fees would prevent homeowners from obtaining professional help on small claims, which make up the majority of claims nationwide.<sup>i</sup> The dollar amount of the percentage fee on those claims is not enough to cover time and expenses in real dollars.

Public adjusters bring great value to the claims process and help home and business owners receive fair settlements for their property damage. Historically, based on the 2010 OPPAGA report from Florida (a government study) homeowners who used public adjusters on non-catastrophic claims received, on average, a 574% higher settlement amount<sup>ii</sup>. These numbers illustrate the great need for public adjusters. Public adjusters do not inflate fees, they *achieve the recovery of the actual value of the loss*. Most individuals do not have the time and/or expertise to properly estimate their damage, navigate their insurance policy, and effectively negotiate with the insurance company adjuster who *does* have such expertise. This inequality is what leads to the undervaluing of claims. A broad-based fee cap of 15% would limit representation to only

those with large losses, thus discriminating against the average homeowner or “mom and pop” business, with a small loss. These are the very people that need the services of the public adjuster the most. The consumer with these types of claims is less able to hire an attorney for representation either, due to the prohibitive cost of paying the attorney on an hourly basis or finding an attorney to charge a contingent fee on a small claim.

*Further, imposing a fee cap would eliminate the issue of choice for the consumer. As with all service industries, some public adjusters are simply better than others, and offer more services. Imposing the fee cap would eliminate the ability of homeowners to hire these those excellent, full-service adjusters.*

Another byproduct of the gap the fee limitation would create with the inability of most public adjusters to handle these smaller claims is the filling of this gap with unlicensed actors. One of the stated purposes of the revisions to the Model Act is to curb unlicensed actors from adjusting claims. Leaving a void on smaller claims where the homeowner cannot hire a licensed public adjuster will open the door to unscrupulous actors filling that gap for the homeowner, the very antithesis of the good intentions of this committee.

The current “reasonable” standard on fees allows the Insurance Commissioners broad discretion to determine what is a reasonable fee, on a case-by-case basis, by examining the facts of each case.

#### V. Contracts Between Public Adjuster and Insured

a. Section 4. AAPIA disagrees with the proposal to prohibit a public adjuster from pursuing collection fees or costs if an insured does not pay the public adjuster. Public adjusters, like other professionals, work hard for their fees, and the costs of pursuing the collection of those fees can be prohibitive. Other industries do not have this contract limitation.

b. Notification letter: AAPIA is not opposed to the carrier verifying licensing of the public adjuster as long as there is a time deadline of a few days so as not to delay the claims process.

#### c. Assignment of Benefits or Rights

AAPIA agrees with the goals here to limit unlicensed actors from using an Assignment of Benefits or Rights to adjust a claim. However, the language in this section is too broad, as it would eliminate the right of a homeowner to assign a claim to a future purchaser. Perhaps just leave the last sentence of the paragraph which reads: “Property repair contractors operating in this State may not subvert the public adjuster licensing requirements of [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.”

#### VI. Unlicensed Actors

The restriction on some of the activities should not extend to apprentice public adjusters, in states who choose that option, since those apprentices act under the supervision of a licensed public adjuster.



VII. Escrow or Trust Accounts

The two-business day limitation on depositing checks into escrow is not practical with multi-party checks that need several endorsements.

VIII.

a. The restriction prohibiting anyone but a public adjuster from “investigating” a claim is too restrictive. Other professionals legitimately investigate claims, such as attorneys, engineers, contractors and others that work with attorneys as experts on claims.

b. The complete prohibition on a public adjuster from acting as a contractor or receiving any remuneration from a contractor is too broad. Proper guidelines would limit these situations, and many states do already have such guidelines that do just that, such as limiting the public adjuster from performing both functions at the same time on the same claim.

IX. Right to licensed professional help:

AAPIA suggests adding to the Act a sentence that reads: “An insured shall have the right to assistance on a property insurance claim from a licensed professional or entity”. This sentence would clarify that policies cannot prohibit the use of a duly licensed public adjuster on a claim.

Sincerely,

*Holly K. Soffer*

Holly K. Soffer, Esquire, Counsel to AAPIA



AMERICAN ASSOCIATION  
of PUBLIC INSURANCE ADJUSTERS

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<sup>i</sup> III in its 2019 publication list the average claim at \$14,031.00.

<sup>ii</sup> OPPAGA report, pp. 7-8.



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November 10, 2023

Trinidad Navarro  
Delaware Insurance Commissioner  
1351 West North Street  
Suite 101  
Dover, DE 19904

**Re: Adjuster Licensing Working Group (Producer Licensing Task Force, Market Regulation D Committee), Public Adjuster Licensing Model Act Work Stream**

Dear Commissioner Navarro:

I would like to thank the NAIC for the opportunity to address proposed changes to the Public Adjusters Licensing Model Act. The Automotive Education & Policy Institute (“AEPI”) believes in appropriate licensing, within the correct framework, for all adjusters. However, some of the proposed revisions to the Public Adjusters Licensing Model Act could have starkly negative consequences for consumers, and AEPI believes consumers are better served by not adopting some of the proposed changes.

**SUMMARY OF POINTS**

**Section 15**

- Paragraph L harms consumers by:
  - removing one of the only remaining methods available to consumers to obtain fair payment of property loss by assigning the accrued loss value to a repair contractor;
  - creating a limitation allowing assignment only to a person “legally permitted to represent the insured”, *i.e.* a public adjuster, then creating an irreconcilable conflict by prohibiting a public adjuster from having an interest in the claim other than the contract fee per Section 19;
- Paragraphs I, J, and K harm consumers by:



- Creating a system that, of the three classes of adjusters, requires only public adjusters to comply with both insurance regulations and the consumer protection laws, raising McCarren-Ferguson Act implications.

### Section 16

- Section 16 harms consumers by failing to expressly establish that it is a fraudulent insurance act for insurers to engage in any act of “negotiating” with repair contractors regarding a consumer’s property loss.

### Section 19

- Proposed paragraph G likely conflicts with Section 15, paragraph L, and Section 14, paragraph D;
- Proposed changes to paragraph I would preclude consumers from benefiting from the knowledge and experience of the public adjuster in the pursuit of quality repair service providers.

## DETAILED COMMENTS

### SECTION 15

Section 15, Paragraph L proposes to allow insurers to change policy language to prohibit assignment of benefits or proceeds from an accrued claim. As an initial matter, the Public Adjuster Licensing Model Act is not the appropriate location for a legal provision that governs specifics of an insurer’s property/casualty policy language.

Furthermore, this language hurts consumers by removing from them a viable avenue from which to obtain their full loss payment.

The proposed language states:

- L. 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 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 name 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 [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

First, this proposed language is essentially about permitting insurers, particularly property/casualty insurers, from prohibiting post-loss assignments of proceeds. This language is directly contrary to the long-held legal position of the majority of jurisdictions in the U.S. that post-loss assignments of insurance benefits from one party to another are freely assignable, and attempts to prohibit them violate public policy. A non-exclusive list of jurisdictions adhering to the post-loss assignment of insurance benefits is included in the attached Amicus Brief.<sup>1</sup> These insurance contract proceeds are effectively an account receivable that has accrued to the insured, and the insured should be entitled to utilize those proceeds in the insured's preferred manner.

Preventing post-loss assignment will substantially harm consumers. In auto claims involving partial losses, if the insurer values the claim at a lower amount than the repair professional, the insured currently has few options to obtain full payment of what the insured believes to be owed.

First, the insured might be able to utilize the Appraisal Clause to obtain recourse via an umpire's opinion; yet, as the AEPI has noted for the NAIC, many auto insurers have, or are seeking to, remove the Appraisal Clause entirely from their policies, or to limit its application exclusively to total losses.<sup>2</sup> This appears to be due to insureds discovering the existence of the Appraisal Clause in partial losses and using it to great effect – underscoring that loss claims are not being properly compensated and insureds are not receiving the true benefit of their insurance contract.

Second, the insured can file a complaint with the Insurance Department. However, this typically results in the Department determining that the matter constitutes a factual issue that it has no ability to decide, and refers the insured to the legal system.

Third, the insured can file a lawsuit against the insurer. This requires insureds to be able to represent themselves, which typically they are not able to do, or be capable of finding an attorney who will undertake the property-loss claim – which the vast majority of attorneys currently refuse to take. This leaves the insured powerless against the resources and economic wherewithal of an insurer.

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<sup>1</sup> Attached Amicus Brief of Automotive Education & Policy Institute in *Nick's Garage, Inc. v. Adirondack Ins. Exchange, Onondaga Cty. Ct., N.Y., Appeal Index No: 08-9681, (Sept. 28, 2009)*. The appeal was successful, and the matter returned to the lower court for further proceedings.

<sup>2</sup> The AEPI has given two recent presentations on insurers' removals of the Appraisal Clause: *Uses And Recommendations for P&C Appraisal Clauses*, Summer Meeting, Seattle, WA, August 2023, and *The Appraisal Clause: Auto Insurer Abandonment Hurts Consumers*, Spring Meeting, Kansas City, MO, April 2022

Fourth, an insured in the majority of states, has the legal ability to assign the right to receive payment of the loss to a person or entity providing the repair services. This is a significant right, as auto repairers automatically acquire a lien securing the cost of repairs on the consumer's vehicle by state statute or common law. This lien ensures the repairer is compensated in full prior to the release of the vehicle. As a result, a repair contractor is permitted to hold the consumer's vehicle as security for full payment, and an insurer's refusal to address the issue only harms the consumer.

When an insurer disagrees with a repair contractor's professional determination of the procedures, parts, and activities necessary to safely and properly repair a consumer's vehicle, that amount may differ by a few hundred to many thousands of dollars. Forcing the consumer to pay out-of-pocket for the difference and then seek full indemnification from the insurer is often an undue hardship for the consumer. If the insurer has failed to pay the actual loss due, this leaves the consumer and the repair contractor with several equally poor choices:

- A. the consumer can pay out-of-pocket for the repair portion the insurer claims is unnecessary and seek to obtain full payment from the carrier;
- B. the repairer can ignore its professional duty to safely and properly repair the vehicle, and negligently provide a repair for the amount of money the insurer offers the insured;
- C. the repairer can safely and properly repair the vehicle per its repair blueprint and simply accept the amount of money the insurer offers the insured and write off the remainder;
- D. the repairer can refuse to perform repairs for the consumer; or
- E. the repairer can accept an assignment of the right to receive full payment of the insurance proceeds from the insured in exchange for releasing the vehicle, and pursue full recovery directly from the insurer.

Not all repair contractors are willing to accept assignments and proceed against the insurer directly. However, those that do are providing insureds with a valuable option that ensures quality repairs are being performed on consumers' vehicles while removing the financial burden from consumers unable to pay the difference in the invoice and pursue their own insurers for full payment.

It is option E that the proposed revisions to the Public Adjuster Model Act seek to remove from the consumer. Removing this option would substantially harm consumers, would limit their repair choices, and is contrary to public policy.

### **GARAGE KEEPERS INSURANCE V. AUTO INSURANCE**

Although auto insurers often write cost estimates anticipating vehicle repairs, those cost estimates are for insurer internal purposes, verifying claim investigation and creating reserve

values. Insurer cost estimates are not blueprints for determining how the vehicle will be safely and properly repaired, like the damage analyses created by professional repair contractors are. The professional repair contractors have the liability for performing safe, proper repairs that ensure every vehicle that is returned to the nation's highways will function appropriately and prevent the motoring public from being exposed to harm.

As insurers are not held liable for unsafe or improper repairs that may result from repairs performed per the amount of money offered by an insurer to an insured, insurers have the luxury of offering settlement payments based on antiquated repair techniques, improper parts, and labor rates that are artificially low and fail to keep pace with technological innovation. They also often deny compensation for repair procedures the auto makers deem necessary to safely and properly restore the vehicle. Yet again, insurers accept no liability for these determinations or actions in the event an unsafe repair promoted by an insurer is utilized and someone is harmed as a result.

In contrast, professional repairers have a legal duty to consumers to repair vehicles safely and properly. This means they must stay abreast of techniques to deal with new materials used in vehicles and complex electronics, utilize increasingly expensive equipment (frame alignment machines and EPA-compliant paint booths), provide significant time and money to train technicians to repair increasingly complex vehicles, and continue to maintain necessary overhead, like workers compensation and garage keepers insurance.

The terms and requirements of repairers' garage keepers coverage also often conflicts with the demands of an auto insurer regarding the consumer's repair. For example, some garage keepers policies refuse to provide coverage for repairs using non-original equipment parts and many are demanding that repairers provide services in compliance with auto makers' repair procedures. These mutually exclusive demands have created considerable friction between repairers dedicated to providing consumers with safe, proper repairs, and auto insurers seeking to minimize claims payments. Auto insurers in most states, however, have an option to directly control repairs and repair costs by selecting the "election to repair" remedy.

### **ELECTION TO REPAIR**

Insurers typically have a remedy contained within their property/casualty policies that allows the carrier to "elect to repair". Yet, insurers do not typically utilize this remedy for a significant reason: Historical case law holds that an insurer that elects to repair converts the insurance contract into a repair contract and makes the carrier liable for the propriety and efficacy of the repair. Under the repair contract, the insurer becomes the general contractor on the repair, and the repair professional becomes its sub-contractor. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Dodd*, 276 Ala. 410, 1964 Ala. LEXIS 363 (Ala., March 26, 1964 ); *Venable v. Import Volkswagen, Inc.*, 214 Kan. 43, 1974 Kan. LEXIS 339 (Kan., March 2, 1974, Opinion Filed ); *Mockmore v. Stone*, 143 Ill. App. 3d 916, 1986 Ill. App. LEXIS 2273 (Ill. App. Ct., June 2, 1986, Filed );

*Williams v. Gulf Ins. Co.*, 39 Mass. App. Ct. 432, 1995 Mass. App. LEXIS 823 (Mass. App. Ct., November 22, 1995, Decided ); *Drew v. Mobile USA Ins. Co.*, 920 So. 2d 832, 2006 Fla. App. LEXIS 2267 (Fla. 4th DCA, February 22, 2006, Decided )

Therefore, the insurer in these circumstances can entirely control the repair cost – but it does so only with the full assumption of liability for the repair. Accordingly, if insurers are certain that appropriate repairs can be made to consumers’ vehicles for the amount they offer in settlement, they have the ability in most states to validate that assertion by accepting full liability and undertaking repairs themselves.

## SECTION 16

New Section 16 establishes that it is a fraudulent insurance act for an unlicensed person to engage in activities reserved to licensed public adjusters. However, there is no corresponding provision making it a fraudulent insurance act for an insurer to engage in any aspect of “negotiating” a claim with anyone not licensed as a public adjuster or as an attorney.

This is an issue of particular import as, in recent years, auto insurers have routinely attempted to engage in negotiating consumers’ repair claims with repair contractors. This is not only inappropriate under the Public Adjusters Licensing Model Act, but it also exposes the repair contractors to charges of violating the state’s unauthorized practice of law provisions. Insurers have historically taken the position when challenged on this issue that their “negotiations” with repairers over a consumer’s repair matter does not constitute the repairer “negotiating the consumer’s claim”, and that neither the state’s existing public adjuster provisions nor the prospect that insurers are forcing repairers into violating the state’s prohibition against engaging in the unauthorized practice of law are offended. This has been the industry’s position even when the sole aspect of the insured’s claim is one for vehicle damage.

The proposed revisions to Section 15, Paragraph L, and new Section 16 appear to take the opposite approach and make clear that repairers would engage in unlawful conduct if they discuss the consumer’s repair with the insurer. Because of proposed new prohibitions against permitting a public adjuster from having a financial interest in an insured’s claim

other than a stated fee, the repairer cannot remedy this problem by becoming a licensed public adjuster. Thus, to protect themselves from engaging in illegal behavior, repair professionals would likely refuse to discuss a consumer’s claim with an insurer at all.

## SECTION 19

Revisions to proposed paragraph G conflict with other provisions of this Act. Proposed paragraph G prohibits a public adjuster from having a direct or indirect financial interest in any aspect of the insured's claim and states:

~~DG.~~ 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 15g.~~

However, new proposed paragraph L in Section 15 makes the public adjuster one of the few people permitted to receive an assignment of the insured's contract benefits. To the extent the assignment is unrelated to, or in excess of the public adjuster's fee, that provision places the public adjuster in conflict with the restrictions on having a financial interest in the insured's claim.

Further, Section 14, proposed paragraph D limits the amount a public adjuster may receive from an insurance claims settlement to 15% of a non-catastrophic loss. The language states:

~~ED.~~ ~~[Optional] In the event of a catastrophic disaster,~~ There shall be limits on ~~catastrophic~~ fees; ~~n~~ No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal ~~to~~ of more than ten percent (10%) ~~of any insurance settlement or proceeds 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

Allowing a consumer to assign proceeds of an insurance claim to a public adjuster, but placing a potential competing limitation on that amount could easily cause a public adjuster to inadvertently violate the cap on compensation. Also, it could easily create a non-enforceable scenario in which a consumer is attempting to assign various portions of the same claim to different persons, like a public adjuster and an attorney.

Moreover, placing an absolute fee cap on a non-catastrophic loss to only 15%, will virtually ensure that public adjusters will not be willing to assist auto damage loss consumers. In partial auto losses, an insured may be attempting to recover \$500 to \$1,000 that have been denied from the overall claim. It would not be economically feasible for a public adjuster to undertake the consumer's matter for only \$75. Just as attorneys will not undertake consumer's auto loss-only claims because it is not economically feasible for them, this change would now create the identical problem with public adjusters. This proposed change would actually harm consumers.

Section 19, proposed paragraph I would now prohibit public adjusters from referring or suggesting repair service providers to consumers. The specific language would read:

~~F1.~~ 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, ~~unless disclosed to the insured.~~

~~(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.~~

This proposed language would again place public adjusters at severe disadvantage to their company and independent adjuster counterparts. Company and independent adjusters routinely recommend and tout the repair services of the contractors that participate in insurers' preferred networks. In contrast, the public adjuster – one of the only people a consumer could consult who would likely have appropriate knowledge of the skills and quality of various service providers – would now be foreclosed from sharing that knowledge with the consumer. Such a provision does not help, but, rather, actively harms consumers.

### CONCLUSION

The AEPI asks the NAIC to seriously consider and weigh the proposed revisions to evaluate whether they will actually benefit consumers. AEPI believes that, if accepted, these provisions will cause substantial harm to consumers and will have the opposite result of the goals this work stream is attempting to achieve.

Thank you for your consideration of these comments and for your leadership on this matter.

Sincerely,



Erica L. Eversman, J.D.

President

Automotive Education & Policy Institute

Consumer Liaison Representatives Supporting:

Karol Kitt, University of Texas

Richard Webber, Life Insurance Consumer Advocacy Center

Birny Birnbaum, Center for Economic Justice

Silvia Yee, Disability Rights Education & Defense Fund

CC: Tim Mullen, Director, Market Regulation, National Association of Insurance Commissioners

Attachment: Automotive Education & Policy Institute Amicus Brief in *Nick's Garage, Inc. v. Adirondack Ins. Exchange, Onondaga Cty. Ct., N.Y., Appeal Index No: 08-9681, (Sept. 28, 2009)*



STATE OF NEW YORK  
COUNTY COURT

COUNTY OF ONONDAGA

Nick's Garage Inc., D/B/A Nick Orso's,  
Body Shop & Service Center

Plaintiff/Appellant

Index No.: 2008-2808CV

Appeal Index No: 08-9681

-vs-

Adirondack Insurance Exchange.

Defendant/Respondent

**BRIEF OF AMICI CURIAE, THE AUTOMOTIVE EDUCATION AND POLICY  
INSTITUTE AND VEHICLE INFORMATION SERVICES, INC.**

**STATEMENT OF AMICUS CURIAE INTEREST**

The Automotive Education and Policy Institute ("AEPI") is a non-profit organization providing education, information, and assistance to consumers and automotive repair businesses concerning motor vehicle safety, insurance responsibilities, and consumer rights. Legal determinations that affect consumers' rights to receive the benefits of their state-mandated insurance contracts, automotive repair businesses' duties to perform safe and proper repairs, and the rights of automotive repair businesses to be paid for the work they perform substantially impacts consumers, motor vehicle safety, and automobile repair businesses. Accordingly, the AEPI has significant interests in the outcome of this matter.

Vehicle Information Services, Inc. is an Ohio corporation providing information, expert analyses, and consulting services for consumers, insurers, financial institutions, government entities, and the automotive industry. The

company provides information to government entities and is a consultant regarding automotive consumer protection issues. Issues that impact consumers, motor vehicle safety, and collision repair practices are of substantial import to the clients of the company, and Vehicle Information Services, Inc. has a significant interest in the outcome of the case.

### **STATEMENT OF FACTS AND STATEMENT OF THE CASE**

Appellant, Nick's Garage, Inc., dba Nick Orso's Body Shop and Service Center ("Nick's") filed suit against Appellee, Adirondack Insurance Exchange ("Adirondack") to recover full payment for collision repair services rendered to two separate insureds of Adirondack. Both insureds, Michael Albino and David Hess, had purchased automobile insurance policies from Adirondack contracting to indemnify each for property loss occurring to the insured's vehicle. While each policy was in effect, each of the insureds was involved in an accident.

Both of the insureds selected Nick's to perform the collision repair work. Both insureds signed documents authorizing Nick's to repair the vehicle, function as the insured's designated representative for dealing with the insurer, and both eventually signed documents assigning their right to receive the full amount of payment from Adirondack under the insurance contracts to Nick's.

Adirondack self-determined the cost of repairs to be lower than the dollar amount identified by Nick's to be necessary and reasonable to return each vehicle to its "pre-loss condition". Adirondack paid Nick's directly on each claim the lower amount if deemed appropriate and refused additional payments for the amounts Nick's claimed was due and owing.

Rather than requiring each insured to pay the difference between the amount of Nick's repair invoice and the amount Adirondack elected to pay to obtain release of their vehicles, Nick's accepted an assignment of proceeds owed under the policy from each insured. Nick's then filed suit in the Syracuse City Court against Adirondack to recover the difference owed between the repair invoice and the amount paid by Adirondack on each claim.

Adirondack moved for summary judgment on the basis that each insurance contract contained an "anti-assignment" clause prohibiting assignment of any rights or duties under the insurance policy by the insured without consent of Adirondack. The Syracuse City Court found that neither insured had sought approval of the assignment, Adirondack had not approved either assignment, and, therefore, Nick's did not have standing to file suit against the insurer. The lower grant granted Adirondack's Motion for Summary Judgment.

Nick's appealed, asserting the assignment was valid and the Syracuse City Court erred by granting Adirondack's Motion for Summary Judgment.

#### **QUESTION PRESENTED**

Did the Syracuse City Court err in granting Appellee's Motion for Summary Judgment by determining that the insurance policy anti-assignment clause prohibited an insured's transfer of the right to receive payment to Appellant without Adirondack's approval?

#### **STANDARD OF REVIEW**

The standard of review for the propriety of granting summary judgment in this matter is *de novo* pursuant to the Uniform City Court Act § 1702(d).

## LAW AND ARGUMENT

### **A. NEW YORK LAW INVALIDATES ANTI-ASSIGNMENT INSURANCE CONTRACT PROVISIONS FOR INSURED'S POST-LOSS PROPERTY DAMAGE PROCEED ASSIGNMENTS.**

Insurance policies typically contain “anti-assignment” clauses prohibiting the insured from transferring rights or duties under the insurance contract to another without the prior approval of the insurer. When determining the validity of such clauses, courts routinely make distinctions between a pre-loss transfer and a post-loss transfer. Most jurisdictions uphold the prohibition of the insured’s transfer of any rights prior to the loss, but freely allow transfer after a loss as occurred.

To say that New York law has long followed the majority rule that an insured may transfer the right to receive payment under an insurance policy after a loss has occurred is not an exaggeration. In *Mellen v. Hamilton Fire Ins. Co.*, 17 N.Y. 609 (N.Y. 1858)(Syllabus 1), the New York Court of Appeals held that “[t]he assignment of a policy of insurance after a loss is not within the clause prohibiting a transfer without the consent of the insurers. The restriction is upon assignment during the pendency of the risk, and not of a transfer, of the debt arising from a loss.”

For over one hundred and fifty years, New York courts and courts applying New York law have recognized that, “[a]lthough assignment of the policy prior to loss was ineffective without the consent of the insurer, no such approval was necessary for an assignment of the right to the proceeds after the loss, see *Courtney v. New York City Ins. Co.*, 28 Barb. 116, 118 (N.Y.Sup. Ct. 1858); *Carroll v. Charter Oak Ins. Co.*, 38 Barb. 402, 408-409 (N.Y.Sup.Ct. 1862); 5 *Appleman, Insurance Law and Practice* §§ 3458-3459 (1941).” *Travelers Indem. Co. v. Israel*, 354 F.2d 488, 490 (2d

Cir. N.Y. 1965)(applying New York law)(citations in original.) New York courts have consistently upheld the propriety of post-loss assignment of rights under an insurance policy by the insured without consent of the insurer. In *Beck-Brown Realty Co. v. Liberty Bell Ins. Co.*, 137 Misc. 263, 264, 241 N.Y.S. 727, 728 (N.Y. Sup. Ct. 1930), the court stated:

Before loss, the insurer is subjected to a risk, and it is this risk which the insurer may exempt from assignability except upon its own consent. Upon loss, however, the risk disappears and nothing remains except the assured's right to payment -- a mere chose in action which may be assigned within the limitations of any other chose in action.

In its decision in *Globetron Group, LLC v. Hartford Fire Ins. Co.*, 434 F.3d 165, 170-71 (2<sup>nd</sup> Cir. 2006), overturning the lower court's entry of summary judgment in favor the insurer on assignment of proceeds for a presented claim, the Second Circuit Court of Appeals found under New York law that anti-assignment provisions cannot prohibit a transfer once a loss has accrued.<sup>1</sup>

As a general matter, New York follows the majority rule that such a provision is valid with respect to transfers that were made prior to, but not after, the insured-against loss has occurred. See *Travelers Indemnity Co. v. Israel*, 354 F.2d 488, 490 (2d Cir. 1965) ("Although assignment of the policy prior to loss [is] ineffective without the consent of the insurer, no such approval [is] necessary for an assignment of the right to the proceeds after the loss." (footnote omitted)); *SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props.*, 375 F. Supp. 2d 238, 245-46 (S.D.N.Y. 2005) ("Under [no-transfer] provisions, any unauthorized assignment of a property insurance policy before a loss occurs is invalid [but] after a loss occurs . . . a party to an insurance contract may assign its right to accrued insurance proceeds to another party, even in the face of express policy language prohibiting assignments." (citations

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<sup>1</sup> The *Globetron Group LLC* court did recognize that in certain unusual circumstances post-loss accrual assignment might be invalidated under the anti-assignment clause if, in fact, it increased the insurer's risk. Although not directly addressing the applicability of the question to the case, the court mused that it might be proper to limit post-accrual loss of business interruption insurance proceeds to the original business' losses, but prohibit the recovery of an assignee business asset purchaser for ongoing or future losses. *Id* at 172. The Second Circuit, however, did not countenance the upholding of an insurance contract anti-assignment clause for readily ascertainable property loss, such as the vehicle property damage at issue here.

omitted)).

The principle undergirding the enforceability of the anti-assignment clause pre-loss, yet negating it post-loss is simple. Prohibiting pre-loss transfer is about protecting the insurer from being exposed to risk it did not undertake and for which it did not collect a premium by substituting the insured party. Once a loss has occurred, however, the insured's right to receive payment is fixed and effectively becomes an account receivable – which imposes no increased risk on the insurer. "The accrual of an insurance claim extinguishes the insurer's interest in the risk profile of the insured, thereby converting the claim into, in effect, a chose in action." *Globecon*, 434 F.3d at 171; *see, also, R.L. Vallee, Inc. v. Am. Int'l Specialty Lines Ins. Co.*, 431 F. Supp. 2d 428, 435 (D. Vt. 2006)(applying Vermont law).

**B. MEDICAL POST-LOSS ANTI-ASSIGNMENT DECISIONS ARE INAPPOSITE.**

In its decision to grant summary judgment in favor of the insurer in this matter, the Syracuse City Court did not consider the well-established precedent set forth by the New York Court of Appeals in *Mellen v. Hamilton Fire Ins. Co.*, 17 N.Y. 609 expressly authorizing post-loss assignments of proceeds under insurance contracts. Instead, the lower court relied upon two medical insurance decisions, *Spinex Laboratories, Inc. v. Empire Clue Cross and Blue Shield*, 212 A.D.2d 906, 622 N.Y.S.2d 154 (NY App. Div. 1995), and *New Medico Associates, Inc. v. Empire Clue Cross and Blue Shield*, 267 A.D.2d 757, 701 N.Y.S.2d 142 (NY App. Div. 1996), in which the medical insurance policies contained language expressly prohibiting the assignment of monies from the insurance policy to any other party. Both decisions

are inapposite to the case at bar and the lower court's reliance upon them was flawed.

First, the Syracuse City Court failed to consider binding New York precedent holding that post-loss assignment of proceeds could not be prohibited by an anti-assignment clause contained in an insurance policy.

Second, the two medical decisions relied upon by the lower court also failed to consider New York Court of Appeals precedent pertaining to the post-loss invalidity of an anti-assignment clause in an insurance policy. As previously explained, via an insurance contract, the relationship between insurer and insured post-loss becomes one of debtor and creditor. As such, accrued losses can be readily assigned.

Instead, the court in *Spinex Laboratories, Inc.*, 212 A.D.2d at 906, 622 N.Y.S.2d at 155 relied upon *Allhusen v. Caristo Constr. Corp.* 303 NY 446 (NY 1951) and other construction contracts for the proposition that assignments made in contravention of clear and definite anti-assignment language in the contract were void. The court in *Spinex Laboratories, Inc.* failed to consider that the construction contracts were more in the nature of personal services contracts unlike accrued insurance losses. The *New Medico Associates, Inc.* court simply followed and relied upon the decision in *Spinex*.

Third, the anti-assignment language contained in the medical insurance policy considered by the *Spinex* was substantially different than the property loss policies at issue here. The *Spinex* court focused on the anti-assignment language of the medical policy stating that the insured could not assign his/her "right to collect money from [the insurer] for the services." *Spinex Laboratories, Inc.* at 906, 622

N.Y.S.2d at 155. The insurance policy language at issue does not expressly prohibit an insured from assigning accrued monies due him/her under the property loss policy.

Finally, there is a substantial difference in the nature of property loss and medical loss proceeds, which may reflect that the assignment of medical loss proceeds may actually increase the risk an insurer might face, rendering the medical loss assignments invalid. With medical losses and expenses, an insured may need ongoing and future treatment that is not liquidated or readily definable at the time of assignment. Unlike these losses, property loss proceeds are readily definable and fixed at the time of the assignment and do not impose any increased risk to an insurer.

Accordingly, the Syracuse City Court's reliance upon the medical insurance decisions was not proper, and Amici Curiae respectfully request this Court to reverse the grant of summary judgment in favor of Appellee and remand this matter for further proceedings.

**C. OTHER JURISDICTIONS FOLLOW THE MAJORITY RULE NEGATING POST-LOSS PROHIBITIONS ON ASSIGNMENTS**

Not only does New York law expressly sanction the post-loss assignment of rights in an insurance policy, it follows the majority rule adhered to by other jurisdictions do as well. States across the country that have addressed the issue of the efficacy of post-loss assignment of insurance proceeds to a third party have resoundingly found in favor of assignability and many have found prohibition of post-loss assignment by insurers void as against public policy.



*See Straz v. Kansas Bankers Sur. Co.*, 986 F. Supp. 563, 569 (E.D. Wis. 1997)(applying Wisconsin law)(citing, *Max L. Bloom Co. v. U.S. Cas. Co.*, 191 Wis. 524, 535-36, 210 N.W. 689 (Wis. 1927)); *Viola v. Fireman's Fund Ins. Co.*, 965 F. Supp. 654, 658 (E.D. Pa. 1997)(applying Pennsylvania law); *Action Auto Stores, Inc. v. United Capitol Ins. Co.*, 845 F. Supp. 417, 422-23 (W.D. Mich. 1993)(applying Michigan law)(citing, *Roger Williams Insurance Company v. Carrington*, 43 Mich. 252, 5 N.W. 303 (1880); *United States v. Lititz Mut. Ins. Co.*, 694 F. Supp. 159, 162 (M.D.N.C. 1988)(applying North Carolina law); *Int'l Rediscount Corp. v. Hartford Accident & Indem. Co.*, 425 F. Supp. 669, 673 (D.C. Del. 1977)(applying Delaware law); *Southwestern Bell Tel. Co. v. Ocean Accident & Guarantee Corp.*, 22 F. Supp. 686, 687 (D.C. Mo. 1938)(citing, *Archer v. Merchants' & Manufacturers' Ins. Co.*, 43 Mo. 434, 443 (Mo. 1869)); *Star Windshield Repair, Inc. v. Western Nat'l Ins. Co.*, 768 N.W.2d 346 (Minn. 2009); *In re Ambassador Ins. Co.*, 2008 VT 105, 965 A.2d 486, (Ver. 2008); *Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St. 3d 482, 861 N.E.2d 121, (Ohio 2006); *Egger v. Gulf Ins. Co.*, 588 Pa. 287, 903 A.2d 1219 (Penn. 2006); *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 237-38 (Iowa 2001); *Lexington Ins. Co. v. Simkins Indus., Inc.*, 704 So. 2d 1384, 1386 n.3 (Fla. 1998); *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 224, 77 So. 209, 211 (1917); *Pub. Util. Dist. No. 1 v. Int'l Ins. Co.*, 124 Wn.2d 789, 881 P.2d 1020, 1027 (Wash. 1994); *Smith v. Buege*, 182 W. Va. 204, 387 S.E.2d 109, 116 (W. Va. 1989); *Utica Mut. Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 468 A.2d 315, 317 (Me. 1983); *Alabama Farm Bureau Ins. Co. v. McCurry*, 336 So. 2d 1109, 1112-13 (Ala. 1976); *Gimbels Midwest, Inc. v. Northwestern Nat'l Ins. Co.*, 72 Wis. 2d 84, 92-3, 240 N.W.2d 140, 145 (Wis.

1976); *Georgia Co-Operative Fire Association v. Borchardt & Company*, 123 Ga. 181, 51 S.E. 429, 430 (Ga. 1905); *A.J. Maggio Co. v. Willis*, 316 Ill. App. 3d 1043, 738 N.E.2d 592, 597, 250 Ill. Dec. 376 (Ill. App. Ct. 2000); *Antal's Restaurant, Inc. v. Lumbermen's Mutual Casualty Co.*, 680 A.2d 1386, 1388 (D.C. Ct. of App. 1996); *Elat, Inc. v. Aetna Cas. & Sur. Co.*, 280 N.J. Super. 62, 654 A.2d 503, 505 (N.J. Super. Ct. App. Div. 1995); *St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co.*, 25 Ariz. App. 309, 311, 543 P.2d 147, 149 (Ariz. Ct. App. 1975); *Greco v. Oregon Mut. Fire Ins. Co.*, 191 Cal. App. 2d 674, 12 Cal. Rptr. 802, 806-07 (Cal. Ct. App. 1961).

The position that post-loss assignments cannot be prohibited by a clause in the insurance policy is further supported by the reasoning that what is being assigned by the insured to a third party is not the insurance policy, but merely a debt the insurer owes to the insured.

[O]nce the loss has triggered the liability provisions of the insurance policy, an assignment is no longer regarded as a transfer of the actual policy. Instead, it is a transfer of a chose in action under the policy. At this point, the insurer-insured relationship is more analogous to that of a debtor and creditor, with the policy serving as evidence of the amount of debt owed.

*Conrad Bros.*, 640 N.W.2d at 237-238 (citations omitted.); see *Antal's Restaurant, Inc.*, 680 at 1389 (post-loss relationship of insured and insurer now one of "creditor and debtor" and policy no longer significant except as evidence of existence and amount of debt.) Therefore, because the insured is not attempting to transfer the policy to another as an "insured", the anti-assignment clause is not triggered and has no application to post-loss assignments of proceeds – which is effectively the transfer of an account receivable.

As New York and many other courts have found, an insurer has no interest or protectable right to prevent the post-loss assignment of payment rights by the insured. There is simply no rational basis to prevent an insured's assignment of its "chose in action" or its right to receive payment to the collision repair facility effecting the vehicle's repairs other than an insurer's desire to make it as cumbersome as possible for the insured to obtain what it is owed under the insurance contract -- all to the insurer's economic gain.

**D. INSUREDS' ASSIGNMENT OF INSURANCE PROCEEDS TO COLLISION REPAIR FACILITIES PROMOTES EFFICIENCY AND JUDICIAL ECONOMY**

In addition to being a valid exercise of an insured's right under New York law, an insured's assignment of the "chose in action" with its right to receive payment from his/her insurer to the collision repair facility is efficient and promotes judicial economy. When a collision repair provider of goods and services is willing to forego the right to receive immediate full payment from the insured and will undertake to pursue the debtor-insurer, it is in the public interest to allow this to take place. In these economically fragile times, allowing an assignment of this nature alleviates hardship to consumer-insureds and ensures they receive the benefit of their state-mandated insurance contracts.

In an ordinary property loss vehicle damage claim, the insured notifies the insurer of the existence of the claim. The insurer verifies the existence of a valid claim, typically by viewing the damaged vehicle, and the insured enters into a contract with the collision repair facility to repair the vehicle. The insured is responsible for paying the collision repairer for the repairs effected, and the insurer

is responsible for reimbursing/indemnifying the insured for the repair costs. If a dispute arises between the insured and the insurer as to the amount necessary and reasonable to repair the vehicle, the insured would ultimately have to file suit against his/her insurer to recover the full amount owed.

The insured, however, is infrequently a person with sufficient knowledge of the necessities of collision repair to be able to offer testimony as to the parts and procedures required to safely and properly repair the vehicle. To prevail, therefore, the insured must present the testimony of a witness knowledgeable about the collision repair business – which will likely be the repairer or member of the facility that actually repaired the insured’s vehicle. Clearly it is far more efficient to allow the collision repairer to step into the shoes of the insured in this regard.

In addition, to obtain the vehicle from the collision repair facility during the time the suit is pending, the insured will have been required to pay out-of-pocket for the difference between the insurer’s payment and the amount of the repair facility’s invoice. The repair facility typically will not release the vehicle without payment in full, as *NY CLS Lien § 184* expressly recognizes a lien upon the vehicle arising by operation of law for one who has provided repairs, towing, storage or maintenance for a motor vehicle<sup>2</sup>. If the insured consumer is unable to pay the full amount owed

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<sup>2</sup> *NY CLS Lien § 184(1)* states in pertinent part: “A person keeping a garage, hangar or place for the storage, maintenance, keeping or repair of motor vehicles ... and who in connection therewith tows, stores, maintains, keeps or repairs any motor vehicle... at the request or with the consent of the owner ... has a lien upon such motor vehicle ... for the sum due for such towing, storing, maintaining, keeping or repairing of such motor vehicle ... and may detain such motor vehicle ... at any time it may be lawfully in his possession until such sum is paid, except that if the lienor, subsequent to thirty days from the accrual of such lien, allows the motor vehicle ... out of his actual possession the lien provided for in this section shall thereupon become void as against all security interests, whether or not perfected, in such motor vehicles... and executed prior to the accrual of such lien, notwithstanding possession of such motor vehicle ... is thereafter acquired by such lienor.

to the collision repair facility to obtain release of the vehicle, by the time the suit comes to trial, substantial storage charges will have accrued or the repair facility will have foreclosed upon the lien to obtain payment pursuant to *NY CLS Lien §§ 200 et seq.* As a result, insured consumers are exposed to substantial financial hardship if they cannot afford to pay the collision repair facility in full for the release of the vehicle and then pursue full indemnification for their insurers. If insureds cannot do so, insurers enjoy the windfall of retaining a portion of the actual losses owed to the insured-consumer.

Insurers are well aware of the difficulty insureds face both economically and logistically to obtain full payment for their property loss claims. by pursuing legal action. Economically, they must be capable of paying for their full vehicle repair costs up-front and capable of paying an attorney for representation – if they can find an attorney willing to undertake a vehicle property loss matter. Logistically, insureds must be capable of finding counsel or representing themselves, filing suit, marshalling documents and witnesses, and addressing court mandates. This is clearly a cumbersome process for insureds, and insured consumers typically do not have the ability to fight for proper payment. Allowing insurers to capitalize on the difficulties by preventing insureds from assigning their right to receive payment to the collision repair provider only provides incentives for insurers to underpay vehicle property loss claims and enjoy windfalls at the expense of consumers.

New York is unique among the state jurisdictions in that it expressly allows an insured to name a collision repairer as his/her “designated representative” to

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deal with an insurer and “negotiate” on behalf of the insured for the resolution of a vehicle property loss claim without being penalized for engaging in the unauthorized practice of law. *11 NYCRR § 216.7(a)(2)*. By allowing a collision repair shop to function as the agent of the insured in determining the amount necessary and reasonable for the repair of the insured’s vehicle, the New York Department of Insurance recognizes that the collision repairer is more knowledgeable than the insured about the necessities of repair and better able to ensure that the insurer pays the proper amount on the property loss claim. Given that New York law already recognizes the insured’s right to allow the repair facility to settle the property loss claim, it is no significant leap to see that allowing the insured to assign the right to receive the proper amount of the reasonable and necessary repairs to the repairer is beneficial to the insured consumers, the collision repair facilities, and the courts.

### **CONCLUSION**

Post-loss assignments of rights in insurance contracts is expressly authorized and approved by New York law. If collision repair facilities are willing to accept assignment from their customer-insureds to the proceeds for an accrued loss and are willing to undertake the necessary actions to recover the full cost of repairs owed by the insurer on the claim, it is in the best interests of the insureds and the courts to allow this to occur. It minimizes the economic and logistical hardships for insured-consumers and streamlines the process for the courts, rendering this practice a benefit to consumers, collision repairers, and the courts. Accordingly, the Automotive Education and Policy Institute and Vehicle Information Services, Inc.

respectfully request this Court to reverse the judgment of the lower court granting summary judgment in favor of the insurer, Adirondack Insurance Exchange, and remand the matter to the lower court for further proceedings.

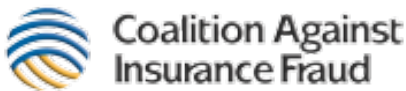
Respectfully submitted,

Dated: September 28, 2009



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**Matthew J. Smith, Esq.**  
Executive Director

A national coalition of consumers, government agencies and insurers dedicated to combating all forms of insurance fraud through public information and advocacy.

November 10, 2023

Director Larry Deiter, South Dakota Division of Insurance  
National Association of Insurance Commissioners (NAIC)  
Chair, Producer Licensing (D) Task Force

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**RE: Public Adjuster Licensing Model Act #228**

Thank you for allowing the Coalition Against Insurance Fraud to submit comment on the National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Model Act (draft dated 10/12/2023).

The Coalition strongly supports NAIC’s effort to amend this model to strengthen regulatory standards and recognize that the adoption of uniform standards is an important consumer protection.

After reviewing the proposed revisions to Model 228, the Coalition would like to submit the following comments:

We agree with the standard of conduct in Section 19.G, prohibiting a public adjuster from having a financial interest in any aspect of the claim.

- However, this important consumer protection seems to conflict with Section 15.D that allows for this financial interest if it is disclosed in writing to insured. We recommend deleting Section 15.D.
- The optional language in Sections 19.J and 19.K also seem to conflict with the important consumer protections established in Section 19.G. For this reason, we also recommend removing the optional language in Sections 19.J and 19.K.
- In addition, we recommend that the standards of conduct in Section 19 also include a clearer prohibition against being involved in the repair or restoration of the damaged property, as shown in the attached draft.

To provide further consumer protection, it may additionally be beneficial to ensure, as part of the licensing process, that an individual or business applying for a public adjuster license does not have an interest in a company that provides repair services. Proposed language that could be added to Section 5 has been provided for consideration.

Considering that the term “actor” does not appear to be defined in the model and for consistency with other models and state insurance laws, Section 16 may be retitled from *Unlicensed Actors* to *Unlicensed Activity* or *Unlicensed Persons and Activity*.

In addition, this model could be strengthened with a *Penalties* section, as suggested in the attached draft.

We thank you for your consideration and support the NAIC’s effort to strengthen regulatory standards governing the conduct of public adjusters in the interest of consumers. If there is any further assistance that we may provide, please contact me.

Sincerely,

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**Coalition Comments**

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

**PUBLIC ADJUSTER LICENSING MODEL ACT**

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**Section 1. Purpose and Scope**

This Act 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.

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

**Drafting Note:** This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

**Section 2. Definitions**

- A. “Apprentice public adjuster” means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.
- D. “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.

### Coalition Comments

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- E. "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. "Individual" means a natural person.
- G. "Person" means an individual or a business entity.
- H. "Public adjuster" means any person 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 a 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. "Uniform individual application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.
- J. [Optional] "Uniform business entity application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

**Drafting Note:** Subsection J is optional and would apply only to those states that have a business entity license requirement.

**Drafting Note:** If any term is similarly defined in a relevant section of the state's insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: "[term] is defined in [insert appropriate reference to state law or regulation]."

### Section 3. License Required

- A. A person shall not act, ~~hold himself out as a public adjuster, or negotiate a contract for public adjusting services~~ in this state unless the person is licensed as a public adjuster in accordance with this Act.
- 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 [insert appropriate reference to state law or regulation]; and

Deleted: or

## Coalition Comments

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- (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.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement.

- 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.

### Section 4. Application for License

- A. A person applying for a public adjuster license shall make application 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 insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.
  - (1) The insurance 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 insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
  - (2) The insurance 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 National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.
  - (3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.
  - (4) The insurance commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a

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centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

**Drafting Note:** The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

#### Section 5. Resident License

A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:

- (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 Section 8;
- (2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;
- (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 Section 12 of this Act;

~~(5) Is not engaged in any manner or degree, for compensation of any kind, in the business of repairing, remodeling, or replacing damaged or destroyed property, real or personal;~~

~~(6) Does not have a direct or indirect interest in, nor receive compensation of any kind from any person, firm, association, partnership, or corporation which is engaged in such business;~~

~~(7) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and~~

~~(8) 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, an individual shall

- (1) Be at least eighteen (18) years of age; and
- (2) Have successfully passed the public adjuster examination.
- (3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
- (4) Designate only licensed individual public adjusters to exercise the business entity's license.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement. C's PLMA Section 6B.

C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

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Commented [BW1]: To provide further consumer protection, it may additionally be beneficial to ensure, as part of the licensing process, that an individual or business applying for a public adjuster license does not have an interest in a company that provides repair services.

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Commented [BW2]: Items previously numbered Section 5.A. (5) and (6) renumbered to (7) and (8)

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### Section 6. Examination

- A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.
- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other preclicensing requirements.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

### Section 7. 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 an public adjuster examination shall not be required to complete any preclicensing 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 an 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 preclicensing 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 preclicensing 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act , it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

### Section 8. 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, has paid the fees required by [insert

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- appropriate reference to state law or regulation] [NAIC's PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;
- (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.

**Drafting Note:** If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

### Section 9. License

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act 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 [insert appropriate reference to state law or regulation] 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 [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- 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 receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.

## Coalition Comments

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- 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.

**Drafting Note:** References to license "renewal" should be deleted in those states that do not require license renewal.

- H. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary. I. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. ]

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

### Section 10. **Apprentice Public Adjuster License [Optional]**

- A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].
- B. The apprentice public adjuster license shall be subject to the following terms and conditions:
- (1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions of such applicant;
  - (2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;
  - (3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;
  - (4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;
  - (5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
  - (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;
  - (7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and
  - (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].

### Section 11. **License Denial, Non-renewal or Revocation**

- A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

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

**Drafting Note:** Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy



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authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its relevant insurance producer statute to include public adjusters.

### Section 12. 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 insurance 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 this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state 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 licensee.
- 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 licensee.
- 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 commissioner.
- 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.

### Section 13. Continuing Education

- A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.
- B. This section shall not apply to:
  - (1) Licensees not licensed for one full year prior to the end of the applicable continuing education

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biennium; or

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

- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

#### Section 14. Public Adjuster Fees

~~D.~~

- ~~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 Act 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 Act 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 [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].

- ~~D.~~ There shall be limits on fees. ~~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.

#### Section 15. 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 Insurance records;
- (2) Permanent home state business address and phone number;
- (3) Department of Insurance 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;

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**Deleted:** [Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation]....

**Deleted:** rafting **Note:** This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters. ¶

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- (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. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].
- 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.

**FD.** 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.

**FD.** 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

**Commented [BW3]:** The Coalition agrees with the standard of conduct in Section 19.G, prohibiting a public adjuster from having a financial interest in any aspect of the claim.

However, this important consumer protection seems to conflict with Section 15.D that allows for this financial interest if it is disclosed in writing to insured.

We recommend deleting Section 15.D.

This will require renumbering 15.E through L.

**Deleted:** 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.

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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.

**GF** 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.

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**HG** 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.

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**HI** The public adjuster shall give the insured written notice of the insured's right as provided in [cite the state consumer protection laws].

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**HL** 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.

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**KJ** 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.

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**LK** 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 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 name 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 [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

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**Drafting Note:** The details in this section should comply with your state's consumer protection contract rescission law.

#### Section 16. Unlicensed Activity or Unlicensed Persons and Activity

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A person or entity commits a fraudulent insurance act if he or she:

**Commented [BW4]:** Considering that the term "actor" does not appear to be defined in the model and for consistency with other models and state insurance laws, Section 16 may be retitled from *Unlicensed Actors to Unlicensed Activity or Unlicensed Persons and Activity*.

A. Represents or advertises themselves to be a public adjuster who has not met the requirements of licensure under [insert appropriate reference to state law].

B. Conducts business for which a license is required under this Act without a license.

#### Section 17. 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.

#### Section 18. 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 and shall not be subject to [insert reference to open record laws] of this state.

#### Section 19. Standards of Conduct of Public Adjuster

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- 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 has occurred as result of 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.
- F. 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.
- G. 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.
- H. 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 as set forth in Section 15G.
- I. 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.
- J. A public adjuster may not participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder.

Drafting Note: Optional language for Subsection F: "Licensees may not solicit a client for employment between the hours of \_\_\_ pm and \_\_\_ am."

- UC** 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, may represent or act as a company adjuster, or independent adjuster on the same claim;
- Drafting Note: If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.
- (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

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**Commented [BW5]:** The Coalition recommends that the standards of conduct in Section 19 also include a clearer prohibition against being involved in the repair or restoration of the damaged property.  
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**Deleted:** From whom the public adjuster may receive direct or indirect compensation for the referral....  
**Deleted:** GJ.-> The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint-stock company or individual as set forth in Section 15A(4). ¶  
HK.-> 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.... ¶

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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.

~~1~~ A public adjuster may not agree to any loss settlement without the insured’s knowledge and consent.

#### Section 20. 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 this state 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.
- 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.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act , it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

#### Section 21. Penalties

~~(A) Any person, firm, association, partnership, or corporation required to obtain a certificate of authority to act as a public insurance adjuster, who adjusts any insurance losses without previously having obtained the required certificate of authority or who adjusts any insurance loss after his, or its, certificate of authority has been revoked, shall be fined not less than [INSERT DOLLAR AMOUNT] nor more than [INSERT DOLLAR AMOUNT] for each loss adjusted without such certificate of authority.~~

~~(B) The penalties in division (A) of this section shall not limit the authority of the superintendent of insurance to suspend, revoke, or refuse to issue a certificate of authority for the causes set forth in section 11.~~

#### Section 22. Regulations

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

#### Section 23. Severability

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

#### Section 24. Effective Date

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC’s central repository for the purpose of obtaining criminal background information.

**Drafting Note:** A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

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Commented [BW7]: This model could be strengthened with a Penalties section.

Renumbering Sections 21 through 23 will be required.

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Draft: 10/12/23

## **Coalition Comments**

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

*2005 Proc. 2<sup>nd</sup> Quarter 698 (adopted by parent committee).*

*2005 Proc. 3<sup>rd</sup> Quarter 26, 35-49 (amended and adopted by Plenary).*



**Coalition Comments**

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

**NAIC Public Insurance Adjuster Surety Bond Sample**

BOND NO. \_\_\_\_\_

**Know All Persons by These Presents:**

That we, \_\_\_\_\_ as Principal, whose address is \_\_\_\_\_ and \_\_\_\_\_ as Surety, being a surety company authorized to do business in the State of \_\_\_\_\_ re bound to the \_\_\_\_\_ Department of Insurance in the sum of \$10,000.00 as specified at [ insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code, [insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this instrument, we jointly and severally firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

**The conditions of the above obligations are:**

**Whereas** the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the [insert state] Insurance Code;

**Now, Therefore,** should the Principal discharge losses that result from any final judgment recovered against the Principal by any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the following conditions:

1. As of \_\_\_\_\_, 20\_\_\_\_, this bond will be in full force and effect indefinitely. Continuation or renewal certificates are unnecessary.
2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond committed prior to the termination date.
3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more claimants, exceed the penal sum of this bond.

**In Witness Whereof** said Principal and Surety have executed this bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SURETY



Jeff D. Butler, AIC  
Public Adjuster,  
WAOIC#1098364  
11514 Lake City Way NE  
Seattle WA 98125  
(206) 367 5065  
info@ccofwa.com

*Sent via email 11/10/2023 2:33:04 PM*

November 10, 2023

Trinidad Navarro  
Delaware Insurance Commissioner 1351 West North Street  
Suite 101  
Dover, DE 19904

**Re: Proposed Revisions to the PUBLIC ADJUSTER LICENSING MODEL ACT**

Dear Commissioner Navarro:

I am writing to you today as an insurance claims expert who holds and AIC form the insurance institute, has worked as a public insurance adjuster, automotive appraiser, automotive repair expert, and forensic investigator in Washington State. I am also the past president of WICRA (Washington Independent Collision Repairers Association) and am actively engaged in the legislative process in Washington State to protect consumers from unfair and deceptive insurance claims practices and settlements.

It has come to my attention that the National Association of Insurance Commissioners (NAIC) has provided a comment period for feedback on proposed changes to the Public Adjusters Licensing Model Act, adopted by NAIC in 2015.

I believe protecting consumers through proper licensing of Public and Independent Adjusters with clearly defined rules is reasonable, however, there are some elements of the proposal which are highly inappropriate and simply anti-American. While I fully support the positions proposed by SCRS, I would like to further address other shortcomings of your proposed model legislation.

**Section 14. Public Adjuster Fees:**

- D. There shall be limits on fees. 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.

I don't believe the proposed model legislation is considering the context of a public adjuster working an automotive collision damage claim. Automotive collision or comprehensive claims are generally of low value as compared to residential or commercial property claim. Automotive claims can range from \$5,000 to \$15,000 dollars on average for vehicle repairs and \$15,000 to \$50,000 dollars for a total loss claim vs a residential or commercial property claim worth millions of dollars. With the low dollar values for auto claims, I work as a public adjuster on an hourly basis and not on a contingency basis.



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In nearly all of my cases, I am working to protect my client's rights and attempt to keep the insurance company's adjusters claims handling within the context of Washington State insurance unfair claims settlement rules, the duty of utmost good faith, fair dealings and equal consideration required in the common law as well as the insurance policy terms and conditions. In nearly all of my cases, the insurance company's adjusters DO NOT FOLLOW THE UNFAIR CLAIMS PRACTICE RULES and violate their policy holder's rights. This problem has been exacerbated since COVID 19 and the insurance industry's attempt to shift all claims handling to a virtual process solely based upon photos.

In the proposed edits, a public adjuster representing a consumer in a claim for automotive collision damage would be unable to charge for their time on an hourly basis until conclusion of a claim and then, not more than 15% of the claim value. Since a majority of my work is centered around the underpayment of a claim for repairs or vehicle value, I am working to recover the "short payment", not the full value of their claim. There is simply not enough money at stake to work on a contingency basis nor be limited by a percentage value of the claim.

The proposed legislation would make it impossible for me to protect consumers and charge reasonably for my time. In many cases, this proposed legislation would have me be relegated to work for less than minimum wage due to the ferocious nature many insurers refuse to cooperate and even acknowledge my representation or requests for information.

Furthermore, the proposed legislation creates a circumstance where the insurance industry could easily exploit public adjuster by creating bureaucracy and roadblocks that waste time and cause delays that take significant resources and time to address. Said another way, the insurance industry would be given a license to run public insurance adjusters out of business by forcing adjusters to spend unreasonable amounts of time that would be financially unrecoverable based on this proposed legislation. There is nothing more anti American then telling hard working Americans that they must work for free or dictating their wages with limits that can be exploited by an adversary.

This is problematic in that removes available experts that a consumer can retain in the event of a dispute about the amount owed for a loss. Creating model language that standardizes the removal of consumer rights is unfair and unreasonable.

I would like to point out that my clients have included legal professionals including lawyers and Superior Court judges along with regular consumers. In every one of these cases, I have found that I have vastly superior knowledge of the insurance claims adjusting process, the common law duties insurers are required to follow as well as the unfair claims settlement practice rules and the specific language of the insurance policy.



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### **Request for additional amendments to the proposed legislation:**

The job of government includes both protecting its citizens as well as creating and preserving opportunity for Business to grow and flourish under reasonable regulation. To that extent, currently in Washington state, public insurance adjusters do not have protection from the abuses perpetrated by some bad actors the insurance industry.

Example: In the past two years myself and my clients have filed more than 100 complaints with the office of insurance commissioner in Washington state regarding insurance bad faith claims handling and violations of the unfair practice claims rules. Many of these complaints are regarding the insurer's refusal to respond to my notice of public insurance adjuster representation and or provide reasonable information necessary for me to adequately represent my client with their settlement. This includes refusing to provide a copy of the insurance policy for more than eight months, refusing to provide claims investigation and appraisal information the insurance company has in its claims file, as well as speaking to me in person or on the phone regarding the facts of the loss and the specific settlement being offered. There is one insurer in particular that has sent me written notice that they will not speak to me in person nor will they inspect damaged vehicles with me.

Certainly, none of these actions demonstrate good faith claims settlement practices and violate many of our local rules. To this extent, I respectfully request some enhancements to the unfair claims practice rules to provide protection to individuals that work as public insurance adjusters that are protecting the public interest.

Washington state Unfair Claims Practice rules provide the following rule:

### **WAC 284-30-330**

#### **Specific unfair claims settlement practices defined.**

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

**(14) Unfairly discriminating against claimants because they are represented by a public adjuster.**

Providing specific penalties for a violation of this regulation and that a specific penalty can be levied for a single violation of this rule would go a long way to encourage the bad actors to play by the rules.



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**Final comment. Photo estimating and virtual claims handling:**

I want to provide some additional perspective to support the claims that I've made in my brief. In July of this year the insurance commissioner in Washington state reached out to my office and asked me to provide testimony at a public hearing on July 17<sup>th</sup> regarding photo estimating and its impacts in the marketplace.

To that extent, myself and the incoming president of the Washington Independent Collision Repairer's Association worked to put together a study of the marketplace conduct of auto insurers using photo estimating and virtual claims handling. We reached out to 65 collision repair facilities with a survey over a period of five days and then culminated the results. We heard from 30 collision repairers in Washington state regarding their daily experience with insurance photo estimates. See attached report that was submitted to the Office of Insurance Commissioner in Washington following the July 17<sup>th</sup> hearing.

The results speak for themselves. The report shows that the insurance industry at large is engaged in undervaluing insurance claims to its policyholders and claimants through the use of photo estimating and virtual claims handling on a systemic, industry wide scale. The average insurance repair estimate based on photo estimating and virtual claims handling is approximately \$0.20 on the dollar.

**Conclusion:**

Limiting the scope of work as well as the compensation that an insurance claims professional can obtain will only further allow the abuses of the insurance industry who are engaged in undervaluing claims and shifting the market to a virtual claims process.

Consumers deserve access to experts that is not limited to lawyers who charge \$400 per hour or more and decline to accept cases valued at only \$5,000 to \$10,000 in damages.

Thank you for your consideration and review of my comments. I am more than happy to discuss this matter and provide additional data and facts if you wish to have further discussion.

Jeff Butler, AIC | Public Adjuster

A handwritten signature in black ink that reads "Jeff Butler".

Collision Consulting of WA

## **Harber Appraisal Comments**

Tim

I would like to provide you with my concerns with some of the proposed language in the Public Adjuster Licensing Model Act.

I am a public adjuster in Washington State and I have never worked a catastrophic loss, but I see the need to place a limit on these claims.

I may be the only public adjuster in my state that represents insureds on auto loss claims.

The reason I believe public adjuster and attorneys decline auto property damage cases is they are typically much smaller than a homeowner or commercial loss.

To place a limit on smaller claims to 10 to 15% would make representing insureds prohibitive in auto property damage claims.

There are other issues that are of concern such as not allowing a public adjuster to recommend a service provider, even when no referral fee is paid to the public adjuster.

I apologize this is coming in after hours but I was called out today and made a last attempt to get my input to you.



**Mike Harber, AIC** | Licensed Public Adjuster

| Harber Appraisal

| **phone:**  [\(253\) 474-0967 ext. 102](tel:(253)474-0967)

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**PUBLIC ADJUSTERS**

Insurance Adjustment Bureau, Inc.

November 10, 2023

Tim Mullen  
Director, Market Regulation  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

RE: Proposed Revisions to Public Adjuster  
Licensing Model Act

Dear Mr. Mullen:

Thank you for including us in the process of revising the Public Adjuster Licensing Model Act. We have carefully reviewed the proposed revisions, and compared them to the existing Model Act. After having done so, we respectfully offer the following comments and suggestions for your consideration.

Regarding the proposed revisions on page 2 to **Section 3, License Required**, subsection A, we suggest expanding the scope of the revisions, to address not only the problem of persons falsely presenting themselves to insureds as public adjusters, but also the problem of other bad actors who, without misrepresenting themselves as public adjusters to insureds, still beguile insureds into letting them handle all or part of their insurance claims. Such bad actors include emergency service providers, contractors, consultants, and other persons or entities who otherwise misrepresent themselves to insureds as someone who can assist them with their insurance claims. These outfits and individuals, without referencing public adjusters, still mislead homeowners and business owners into thinking that they are allowed to represent them and adjust their property insurance claims, and that they have the requisite skills to do so, even though they have no public adjusting license whatsoever, nor the requisite knowledge, training, or experience to adjust property insurance claims. We often encounter such individuals and outfits who tell insureds, verbally or in writing, or in advertising (which could be printed or in other media), that they will handle their insurance claims or otherwise represent them or deal with their insurance companies. This all amounts to the illegal practicing of public adjusting.

And the problem is getting worse, not better. The problem of unlicensed persons and outfits acting as unlicensed public adjusters has proliferated in this country to the point that it has become an epidemic. It is particularly bad after a natural disaster, such as a tornado, hurricane, flood, etc., when insureds are most vulnerable. Regardless of when it happens, it endangers insureds, and it harms licensed, ethical public adjusters.

To prevent such misbehavior, and its resulting harm to insureds and licensed public adjusters, we suggest adding a sentence to subsection A, along the following lines: "A person also shall not represent to any other person, verbally or in writing, or in advertising, whether printed or in any other media, that he or she, in any way, will handle the other person's insurance claim in whole or in part, or act as the other person's representative in the claim, or otherwise communicate with an insurer on behalf of the other person, unless that person is licensed as a public adjuster in accordance with this Act."

The proposed revisions on page 10 to **Section 14, Public Adjuster Fees**, would delete the current subsection A, which states: "[Optional] a public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation]." The proposed revisions also would delete the related Drafting Note, which states: "This model designates Section 14A is optional. A majority of the states do not require a cap on fees of

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**PUBLIC ADJUSTERS**

Insurance Adjustment Bureau, Inc.

Tim Mullen

November 10, 2023

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public adjusters.” The new subsection D in the proposed Model Act (replacing subsection F in the current Act) would impose an across-the-board cap of 15% on all public adjuster fees. However, there are problematic losses, and claims that are very difficult and time-consuming to adjust, which warrant a higher fee. Most states still do not impose a cap on public adjuster fees. We respectfully suggest that the language of the current Model Act be retained. Failing that, we suggest that the cap in the proposed Model Act be increased to 25%.

Also, the proposed new subsection D states in its last sentence, as the current Model Act does: “No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.” Usually, a claim is not settled all at once – especially complex commercial claims and large homeowner claims involving a lot of money. Advances and partial payments are often made before there is a final settlement, and they can be substantial and the product of much effort expended by the public adjuster. This sentence could be construed to mean that no fee is due until a claim is finally and completely settled, no matter how much work the public adjuster did before then, or how much was advanced or paid by the insurer before the settlement. Therefore, we suggest that it be changed to read something like: “No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value, prior to payment, advance payment, or partial payment of a claim, and then only on what is actually paid to the insured or on behalf of the insured.”

**Section 15, Contract Between Public Adjuster and Insured** of the proposed Model Act, at subsection H on page 12, would add the following sentence to the end of the subsection: “The insurer shall verify the public adjuster holds a valid license with the Department.” It does not specify how the insurer shall verify it. At times, we have had problems with adjusters representing insurers demanding that we produce a copy of our public adjuster’s license, even though they know we are licensed, and it is really meant to harass the public adjuster. Furthermore, the most reliable way to verify that someone is licensed as a public adjuster is through the relevant state’s Insurance Department. In Pennsylvania, this information is readily available to the public on the Insurance Department’s website. Accordingly, we suggest using this language instead: “The insurer shall verify, with the relevant Insurance Department, that the public adjuster holds a valid license.”

**Section 15, Contract Between Public Adjuster and Insured**, of the proposed Model Act, on page 12, adds a new subsection L, relating to assigning rights and benefits under a property insurance policy. In that regard, we note the following for your consideration.

First, this new subsection L begins by stating that the insured’s right to assign post-loss benefits owed under a property insurance policy is: “Subject to its terms relating to assignability.” Typically, policies are not assignable, but the right to receive insurance proceeds after a loss is assignable. However, the above-quoted language could be construed as allowing an insurer to insert language into the policy, which would bar any post-loss assignments whatsoever. While we are not attorneys and do not act as such, we are advised by counsel that, under Pennsylvania law, once a property loss occurs, an insured may assign the insurance benefits from that loss as a matter of right, and the insurer may not prohibit it. This proposed revision could be construed as allowing an insurer to prohibit any post-loss assignment, which according to counsel would be contrary to existing law.

Second, this new subsection L would give insurers the power to restrict post-loss assignments to, “the person named by the named insured as having the named insured’s power of attorney, the person who is the name [sic] insured’s licensed public adjuster, or any comparable person.” Again, while we are not attorneys and do not act as such, we are





**PUBLIC ADJUSTERS**

Insurance Adjustment Bureau, Inc.

Tim Mullen

November 10, 2023

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advised by counsel that allowing insurers to restrict post-loss assignments in that way would also be contrary to existing law. One example that counsel gave us was when an insured suffers a loss to his property, and before the insurance claim is resolved, sells the property, and in either the agreement of sale or at closing, assigns the right to receive the insurance benefits to the buyer. This new language could be construed as allowing an insurer to forbid such an assignment, which counsel advises is legal under existing law.

Considering the foregoing, except as noted in the following paragraph, we respectfully suggest that new subsection L not be adopted, and that the issue be left to the courts to address under the well-established laws governing assignments of insurance proceeds.

However, we also believe that the last sentence of new subsection L should be adopted, and even strengthened. That sentence provides: "Property repair contractors operating in this State may not subvert the public adjuster licensing requirements of (insert appropriate reference to state law) through the acquisition of a power of attorney from the named insured." It has been our experience that, not only property repair contractors, but also other individuals and outfits, such as emergency service providers, consultants, and other persons or entities who misrepresent themselves to insureds as someone who can assist them with their insurance claims, attempt to subvert public adjuster licensing requirements by having insureds give them a power of attorney. We therefore suggest that this prohibition be set apart in its own subsection, and the language be broadened from applying only to "property repair contractors," to also encompassing other contractors, emergency service providers, consultants, and other persons or entities who misrepresent themselves to insureds as someone who can assist them with their insurance claims, and who may prey on insureds in this fashion.

Regarding the proposed new **Section 16, Unlicensed Actors**, we suggest that a third type of fraudulent insurance act be specified in this section, to cover the situation when emergency service providers, contractors, consultants, and other persons or entities who misrepresent themselves to insureds, tell an insured that they are able and willing to handle their insurance claim or a part of it, or to represent them against their insurance company. In that regard, it has been our experience that such bad actors frequently, without presenting themselves as public adjusters, nevertheless hold themselves out, verbally or in writing, or in their advertising, whether written or in other media, as able and willing to handle the insured's claim or a portion of it, or represent them against their insurance company. That should be prohibited as well. To prevent such misbehavior, we suggest adding a third fraudulent insurance act here, along the following lines: "A person or entity commits a fraudulent insurance act if he or she: ... C. Represents to any other person, in writing, verbally, or in any form of advertising, that he or she, in any way, will handle the other person's insurance claim in whole or in part, or act as the other person's representative in the claim, or otherwise communicate with an insurer on behalf of the other person, unless that person is licensed as a public adjuster in accordance with this Act."

**Standards of Conduct of Public Adjuster, Section 18**, subsection D, of the current Model Act allows a public adjuster to have an interest in the claim, other than the adjusting fee, so long as, "full written disclosure has been made to the insured." That quoted language has been deleted from the proposed Model Act, at **Section 19, Standards of Conduct of Public Adjuster**, subsection G. We believe that the aforesaid full written disclosure ensures transparency and adequately protects the insured, and respectfully suggest that it be retained.



**PUBLIC ADJUSTERS**

Insurance Adjustment Bureau, Inc.

Tim Mullen

November 10, 2023

Page 4

Similarly, **Section 18, Standards of Conduct of Public Adjuster**, subsection F, of the current Model Act allows the public adjuster to refer or direct the insured to obtain repairs or services from another entity with whom the public adjuster has a financial interest, or from whom the public adjuster may receive compensation for the referral, so long as it is “disclosed to the insured.” The proposed revision would be a total prohibition of any such referrals. While we are not attorneys, and do not act as such, counsel advises that, in Pennsylvania, the public adjuster is allowed to make such referrals so long as the proper disclosure is made to the insured. Therefore, again, we believe that this ensures transparency and adequately protects the insured, and we respectfully suggest that this provision remain as it is in the current Model Act.

In closing, thank you for allowing us to participate in this important process. If you have any questions regarding the foregoing, or wish to discuss any of it with us, we would be more than happy to do so.

Thank you very much.

Very truly yours,

INSURANCE ADJUSTMENT BUREAU, INC.

BY: 

IRA L. STRAFE, PRESIDENT

ILS/ebp

VIA E-MAIL TO: [TMullen@naic.org](mailto:TMullen@naic.org)

November 10, 2023

The Hon. Larry Deiter (SD), Chair  
NAIC Producer Licensing (D) Task Force  
c/o Tim Mullen, NAIC Director, Market Regulation  
Via email [tmullen@naic.org](mailto:tmullen@naic.org)

Re: NAMIC Comments on the NAIC Public Adjuster Model Act revisions (2023)

Dear Chair Deiter, Vice-Chair, and Members of the Committee:

On behalf of the National Association of Mutual Insurance Companies (NAMIC)<sup>1</sup>, we would like to thank the NAIC Producer Licensing Task Force for permitting comments on the NAIC Public Adjuster Model Act revisions. As stated and written, the “proposed amendments are intended to strengthen regulatory standards governing the conduct of public adjusters for the following issues including: (1) individuals acting as unlicensed public adjusters; (2) contractors who are also acting as public adjusters on the same claim; (3) inappropriate assignment of benefit rights; and (4) excessive fees charged by public adjusters.” NAMIC wants to thank the Task Force for managing these regulatory concerns and providing reforms that are supported by our members as needed to protect consumers in insurance marketplaces.

NAMIC is appreciative of the model language that curtails assignment of benefits to those who may have a conflict or not provide productive assistance to policyholders/consumers especially in catastrophic events. Further, we support the enforcement of unlicensed actors that would prey on individuals in their most dire times of need by misrepresenting who they are and their qualifications. Additions of prohibitions on false advertising and inferences as well as offering to pay for deductibles or other inducements is a key step in this process. Further guardrails on direct financial interest and referrals to third parties can also significantly improve the status of these relationships for the better.

Consequently, while NAMIC supports this activity, we would make a few suggestions of either concern or clarification requested in order to improve upon a well-intentioned and positive step in clarifying relevant conduct in this area.

- We believe a subsection should be added to Section 14 – *Public Adjuster Fees* that states “[A public adjuster shall not charge, agree to or accept compensation or reimbursement for values the insurer agrees to as compensable](#)”

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<sup>1</sup> The National Association of Mutual Insurance Companies consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country’s largest national insurers. NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

which predates the public adjuster's contract with the insurer." This is to avoid overcharging of the policyholder especially when such fees will detract from home repairs for instance that were already self-evident.

- As discussed in Section 15 – *Contract Between Public Adjuster and Insured*, it is important that the insurer still have an opportunity to communicate with the insured and should be included therein.
- In Section 15 – *Contract Between Public Adjuster and Insured*, we suggest language be added in B. that “The contract may specify that the public adjuster shall be named as a co-payee on an insurer’s payment of a claim but not for more than their financial interest.” This prevents putting a PA on a large reimbursement check of which their interest is only 15% for instance. The insurer may have the option to issue two checks that protects the PA interest but does not make them cosignatory to an extremely large amount.
- Further, in Section 15 – *Contract Between Public Adjuster and Insured*, we suggest adding a sentence to the end of section D that would read “The public adjuster's original written disclosure and all subsequent disclosures shall be available at all times for inspection without notice by the commissioner.”
- Further, in Section 15 – *Contract Between Public Adjuster and Insured*, we suggest adding a sentence that states “Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the insurer.” This is for obvious understanding of the interest entailed so the insurer can act accordingly in settlement provisions.
- As further discussed in new Section 18 - *Record Retention* and Section 19 - *Standards of Public Adjuster* sections, there should be linkage references or discussion concerning penalties for failure to comply. While this may be understood by some, this should be clarified and possibly an additional drafting note added as well.
- In new section 19 – *Standards of Conduct of Public Adjuster* – We believe it might be clearer in Section B. to simply use the drafting note that prohibits solicitation of employment during certain periods.
- In new section 19 – *Standards of Conduct of Public Adjuster* – in part D. we believe the language only refers to a prohibition in the inducement and therefore should state emphatically that “A public adjuster shall not offer to pay an insured deductible at any time.”

We close by again thanking the Task Force for undertaking these much-needed reforms to the Model and for shoring up concerns regarding policyholder protection in these areas. NAMIC looks forward to working with the Task Force to arrive at sensible solutions that protect and stabilize the insurance marketplace while benefiting all stakeholders.

Sincerely,



Andrew Pauley, CPCU, WCP  
Public Policy Counsel  
NAMIC

# NATIONAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS



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November 6, 2023

Director Larry Deiter  
South Dakota Division of Insurance  
Chair, Producer Licensing Task Force of (D) Committee  
National Association of Insurance Commissioners

Attention: Tim Mullen  
mailed to [Tmullen@naic.org](mailto:Tmullen@naic.org)

RE: Public Insurance Adjuster Licensing Model Act, MO-228-1

Dear Director Deiter:

Please accept this comment letter from the National Association of Public Insurance Adjusters ("NAPIA"), in response to the NAIC request for comment on suggested amendments to the Public Insurance Adjuster Licensing Model Act, MO-228-1. The proposed amendments would be the first changes reflected in the model since its adoption by the NAIC in 2005.

NAPIA sets the gold standard for ethics in the profession of public adjusting. In fact, its ethical requirements were codified into this NAIC model. NAPIA was founded in 1951 to provide in-depth continuing education, advocacy, and networking opportunities for its 700 plus public adjuster members who handle property losses ranging from large complex commercial losses to individual residential losses. Our members hold a unique combination of skills. Their knowledge on insurance laws, coverage, accounting, construction and materials is not only the key to effective representation of homeowners but can make the difference in whether a business is able to collect revenue and continue operations as a going concern. Consumers are entitled to representation. Public adjuster representation requires both a high and broad level of expertise, often with backgrounds in law, accounting, insurance, business, and construction.

Property losses prove to be a difficult time in the lives of claimants, regardless of the setting. For this reason, we are especially concerned with efforts by those who perform or attempt to perform public adjusting without either a license or the knowledge and skill to do so.

Consequently, NAPIA strives to improve consumer protections and the profession by educating others on how consumers are harmed by bad actors. The association participates as a member of the Coalition Against Insurance Fraud, and partners with FEMA, state Attorneys General, state fraud units, United Policyholders, insurers, and others focused on eradicating bad actors from the property claims process.

Our comments are listed below:

Section 3:

- A. A person shall not act hold himself out as a public adjuster or negotiate a contract for public adjusting services in this state unless the person is licensed as a public adjuster in accordance with this Act.

NAPIA supports the above language and further suggests including a reference to the definition of public adjuster so that the reader is reminded from the outset that public adjusters work with and settle first party claims:

- A. A person shall not act or hold himself out as a public adjuster by performing activities described in Section 2. H or by negotiating a contract for public adjusting services in this state unless....

Section 14. Public Adjuster Fees:

The proposed changes to this section clarify that fee caps will no longer be optional upon repeal of Section 14.A with specific caps to limit fees now recommended in Section 14.D. Back in 2005 when the model was originally adopted by the NAIC, most States did not impose fee caps on public adjusters and therefore, insurance regulators had little interest in pursuing fee caps in a model. Since that time, fee caps have been subject to more legislative scrutiny in disaster prone states. Currently there are 14 states that have fee caps for non-catastrophe claims and another seven impose caps on catastrophes only. Today, half the states either impose a fee cap or follow the NAIC reference in the current model that fees charged be reasonable. With that said, since the majority of states do not regulate a specific fee percentage, it is likely a good number of those will continue to have no interest in enacting a fee cap. This is largely due to a lack of population, lack of catastrophic disasters, or both. Regardless of the reason, NAPIA recommends a drafting note be considered with Section 14 to encourage these states to consider language requiring that fees be reasonable.

A. Proposed Drafting Note:

Many states have laws prescribing specific limits on fees charged by public adjusters. Some states have laws containing more general provisions in line with the previous NAIC requirement that fees be reasonable and not an actual fee cap. Still, some states do not impose a fee cap or even prescribe those fees be reasonable. This may be due to many reasons, including a lack of catastrophic disasters. In states where fee caps are not desired, it is recommended that States nevertheless enact laws to require fees charged by public adjusters be reasonable.

Fee caps are challenging discussion for any business subject to them. In the area of public adjusting, commercial public adjusters can better operate under a fee cap, with an important caveat that the fee cap is reasonable. On the other hand, public adjusters who focus on residential losses tend to require higher fees to operate at a baseline. For this reason, it is often the smaller residential customer in need of representation who is hurt most by a fee cap. This is the absolute irony of consumer protection and fee caps. NAPIA historically has taken a neutral position on fee caps for this reason. However, it is clear to us that regulators and legislatures are taking an increased interest in legislating fee caps in certain states and is requested and expected to weigh in. NAPIA will not oppose the proposed fee caps in Section 14. D. while highlighting the above irony in consumer protection.

The changes appear to have inadvertently removed a reference tying catastrophes to governmental declared disasters. NAPIA recommends the following changes to retain the governmental trigger by tying back to the defined term of catastrophic disaster:

There shall be limits on catastrophic fees. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee or other thing of value equal to or more than ten percent (10%) of any insurance settlement or proceed for any catastrophic **disaster** insurance claim settlement, and no more than fifteen percent (15%) for any **other** 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.

Section 15. Contract Between Public Adjuster and Insured:

NAPIA supports the addition of provision at 15. H. to reduce consumer confusion between public adjusters and contractors following a property loss. We also suggest including language from Rhode Island law, Section 27-10-1.1 to create an incentive to reduce consumer harm caused by this confusion and fairly balance the needs of the insurer:

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 that any person providing services identified in section 2A of this act is properly licensed as a public adjuster with the Department. Negotiating, or effecting the settlement of a claim for loss or damage covered by an insurance contract with an unlicensed public adjuster acting on behalf of an insured shall be considered an unfair claims settlement practice. Nothing contained in this section shall be construed to preclude an insurer from dealing with any individual or entity that is not required to be licensed as a public adjuster.

NAPIA further supports the addition of language addressing assignment of benefits at 15. L. Assignment of a contract is a common law right observed in contract law where an individual can assign rights, not just payment, to a third party. The problem with assignment in property loss is that once an assignment occurs, the relationship incentivizing a party to continue to perform obligations under the contract is extinguished. Consequently, some state legislatures have placed limits on assignments in property and life insurance. Real estate transfers, mortgages, personal injury rights are other areas where assignments are limited. NAPIA suggests an additional sentence be included to prevent modification of consumer rights in representation or to circumvent verification requirement as follows:

L. 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 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 insured as having the named insured's power of attorney, the person who is the name insured's licensed public adjuster, or any other comparable person. Property repair contractors or other services providers operating in the State may not subvert the public adjuster licensing requirement of [Insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured. Nothing contained in the property insurance policy shall allow an insurer to exclude a person who has legal authority to represent an insured from providing services within the scope of that authority or when verification indicates the individual is properly licensed.

Section 16. Unlicensed Actors:

NAPIA supports Section 16. We recommend a drafting note be added to clarify inclusion will trigger application of state insurance fraud laws or insert a cross reference the specific state insurance fraud law.

Section 19. Standard of Conduct of Public Adjuster

NAPIA supports the changes to Section 19 C., G., and I., with the following suggested edits to C.

C. A public adjuster shall not represent or infer damage has occurred as a result of any particular event unless inspection of the property has been completed.

Thank you for your time and consideration on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Goodman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian S. Goodman  
General Counsel

Cc: Chris Aldrich  
Matthew Blumkin  
Jeffrey Gould  
Ann Frohman





# SOCIETY OF COLLISION REPAIR SPECIALISTS

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John Bean Alignment  
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National Coatings & Supplies  
Nissan North America  
NuGen IT  
OEM Collision Repair Roundtable  
PPG Industries  
Saint-Gobain Abrasives, Inc.  
Sherwin-Williams Automotive Finishes  
Spark Underwriters  
Subaru of America, Inc.  
Sun Collision  
Teroson  
Toyota Motor Sales, U.S.A., Inc.  
Volkswagen of America, Inc.

November 9, 2023

Trinidad Navarro  
Delaware Insurance Commissioner  
1351 West North Street  
Suite 101  
Dover, DE 19904

## **Re: Proposed Revisions to the PUBLIC ADJUSTER LICENSING MODEL ACT**

Dear Commissioner Navarro:

I am writing to you today as Executive Director of the Society of Collision Repair Specialists (SCRS), a national trade association responsible for representing the interests of hardworking collision repair facilities across North America. I am also a resident of the great state of Delaware and appreciate your interest and work in protecting our state's consumers.

It has come to my attention that the National Association of Insurance Commissioners (NAIC) has provided a comment period for feedback on proposed changes to the Public Adjusters Licensing Model Act, adopted by NAIC in 2015.

While we think protecting the consumer through proper licensing of Public Adjusters with clearly defined rules is generally a good thing, there are some elements of the proposal which we believe limit consumer protections where it is most necessary. SCRS would like to caution against outright acceptance of the proposed changes and request a reevaluation of Section(s) 15 and 16.

### Section 15, Contract Between Public Adjuster and Insured:

In the proposed edits, a carrier underwriting a property insurance policy would be allowed to change or alter policy language to explicitly prohibit assignment of benefits or proceeds from a claim to any other person, including a property repair contractor.

This is problematic in that it strips consumers of one of a very limited number of recourses available to them in the event of a dispute about the amount owed for a loss. Creating model language that standardizes the removal of consumer rights creates unnecessary obstacles to obtaining full indemnification for a covered loss.

Assignments, in most states, are viable consumer protections and the model language would nullify their existence.

The proposed language states:



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John Bean Alignment  
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Mercedes-Benz USA, LLC  
Mitchell International  
NAPA Paint & Supply-Martin Senour  
National Coatings & Supplies  
Nissan North America  
NuGen IT  
OEM Collision Repair Roundtable  
PPG Industries  
Saint-Gobain Abrasives, Inc.  
Sherwin-Williams Automotive Finishes  
Spark Underwriters  
Subaru of America, Inc.  
Sun Collision  
Teroson  
Toyota Motor Sales, U.S.A., Inc.  
Volkswagen of America, Inc.

L. *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 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 name 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 [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.*

The argument could also be made that a Public Adjusters Licensing Model is an unlikely, and perhaps even inappropriate, forum to write off consumer policy rights.

What this provision equates to is requirement for a consumer to assume out-of-pocket expenses, after already facing the hardship of inflated premium costs, to be able to address a disputed difference between the repair professional's bill for services, and the insurance company's assessment of costs.

Does NAIC believe that consumers must face increased financial hardship to seek full indemnification from the insurer, rather than allowing the consumer to assign such hardship to their service provider to advocate on their behalf?

We believe the model act should be about preserving consumer protection through appropriate licensing, rather than a loophole to discard important and valuable policy protection to the policyholder.

## Section 16, Unlicensed Actors:

Section 16 establishes that it is a fraudulent insurance act to:

B. *Conducts business for which a license is required under this Act without a license.*

We are concerned at how this may be interpreted by states adopting the model language, given the common businesses relationships that exist within the collision repair and property insurance claims ecosystem.



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Saint-Gobain Abrasives, Inc.  
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Spark Underwriters  
Subaru of America, Inc.  
Sun Collision  
Teroson  
Toyota Motor Sales, U.S.A., Inc.  
Volkswagen of America, Inc.

“Company adjusters” and “Independent adjusters” routinely put collision repair facility employees in a position to debate, and some may say “negotiate,” the extent of repairs and repair costs. Does this force a collision repair center into inappropriately performing the task of a “Public adjuster,” potentially opening allegations of fraudulent insurance acts?

Has NAIC additionally evaluated how this section may otherwise be interpreted in an instance where a collision repair center who has entered into a repair agreement with a consumer, and is party to a Direct Repair Program (DRP) Agreement with a property insurance company who is responsible for indemnifying the policyholder? Especially in circumstances where the DRP Agreement specifies concessions to fees, charges, services, or any other aspect that would otherwise affect full indemnification of the loss. We believe the unintended consequences would limit the way repair professionals could communicate on behalf of their client, or potentially open the repair facility to accusations of fraudulent insurance acts.

## Section 19, Standards of Conduct of Public Adjuster:

To the extent that Section 16 potentially compromises a collision repair professional for committing fraudulent insurance acts as a result of common interactions with insurance industry representatives to justify necessary costs of repair, Section 19 actually removes the ability for a collision repair professional from obtaining a license and extending their professional expertise in a more legal and official manner.

- G. *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 15g.~~*

In the existing language that has survived since 2015, the model simply specified that a public adjuster could not have a financial interest in the claim, unless full written disclosure has been made to the insured.

Clearly, a collision repair business operator has a financial interest in the outcome of the claim as it relates to the cost of repair. However, that person has been independently chosen by the consumer and entrusted with their safety and their property because of their professional experience.

If the consumer has been fully disclosed in writing the various roles a repair representative may serve in their capacity of advocating for the consumer’s interest, as the party most familiar with the technical repair demands, it seems to intentionally disadvantage the consumer to remove their repairer as a potential public adjuster.



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Spark Underwriters  
Subaru of America, Inc.  
Sun Collision  
Teroson  
Toyota Motor Sales, U.S.A., Inc.  
Volkswagen of America, Inc.

Especially when the public adjuster may be working directly with a "Company adjuster" who is an employee of an insurance company who also has a direct financial interest in the outcome of the claim.

This edit seems to protect the policy issuer, to the disadvantage of the policyholder, by removing knowledgeable resources to aid in recovery during a loss.

In conclusion, and on behalf of our members across the United States, SCRS simply asks those responsible for evaluating the new NAIC proposal to consider the unintended consequences that may otherwise limit or remove consumer protections, and consumer advocacy that the motoring public enjoys today. If passed as proposed, we believe consumers will be left further disadvantaged in an economic construct already swayed to the advantage of the bill-payer.

Thank you for your thorough and thoughtful deliberation, and review of our comments. I am more than happy to meet locally if you wish to have further discussion on this matter.

Sincerely,

Aaron Schulenburg  
SCRS Executive Director

CC: Tim Mullen, Director, Market Regulation, National Association of Insurance Commissioners

Erica Eversman, J.D., President, Automotive Education & Policy Institute and Consumer Liaison, National Association of Insurance Commissioners

# WICRA

Washington Independent  
Collision Repairers  
Association

WICRA Repair Facility  
Questionnaire Presentation to  
The Office of Insurance  
Commissioner July 2023

## WICRA

### Washington Independent Collision Repairers Association

WICRA represents Independent, locally owned small businesses, provides education and training, discuss regulatory compliance as well as ethical and professional business practices. We seek to pass legislation to improve consumer protection for safe vehicle repairs.

We advocate and promote:

- Education and skills development for Collision Repair professionals.
- Ensure consumers get safe and proper repairs.
- Create networking opportunities between shops, vendors of parts, equipment, and other services.
- Foster relationships with industry leaders representing innovations in technology, vehicle construction materials, tools and equipment.
- Develop a Code of Ethics and Professional Conduct for Collision Repairers

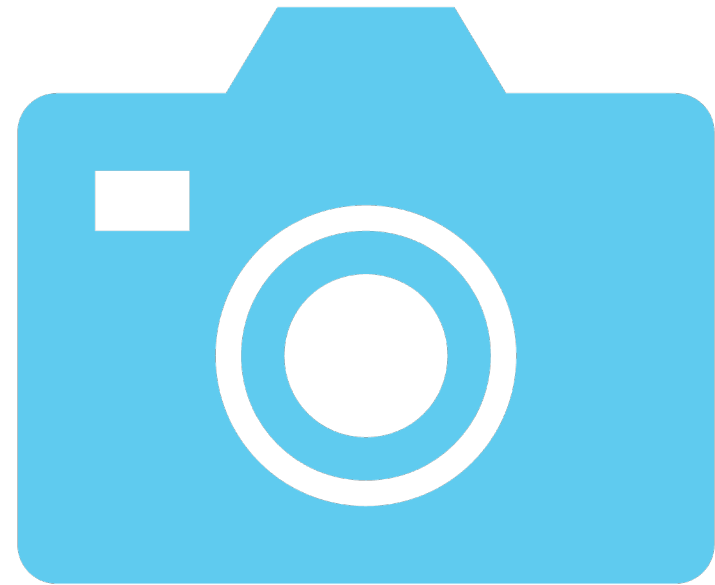
WICRA was asked to speak to the Insurance Commissioner's Office regarding photo estimating and the impacts it has had on the collision repair marketplace.

The information we are providing regarding photo estimating is compiled from a survey we sent to independent collision repair shops across Washington in the last 4 days (prior to July 17<sup>th</sup>, 2023). We sent out 65 plus surveys and received 30 responses.

The results of the survey reflect the market conditions in present time

## Photo Estimating Before Repairs

These Survey questions addressed how accurately vehicle damages were evaluated by insurers prior to a consumer taking their vehicle to a repair facility for an estimate or to have repairs performed.





## Question 1:

How many initial photo estimates from insurance companies do you see at your repair facility each month?

**Answer:  
1291 photo  
estimates**

30 independent shops reported seeing 1291 photo estimates at their repair facilities each month

## Question 2:

What percentage of these initial insurance photo estimates were accurate, and economically restore the vehicle to its pre-loss condition?

Answer:

Only 2% of insurer photo estimates were reported by collision repair professionals as accurate

That means 26 out of 1291 of insurer photo estimates were reported as accurate

80% of repairers reported that *ZERO* % of Insurance photo estimates they saw were accurate

### Question 3:

Shops were asked on a % basis (scale 0 - 100%), how accurate were the insurance photo estimates

#### Answer:

- 28% accurate for Small Damages
- 18.5% accurate for Moderate Damages
- 14% accurate for Major Damages

## Survey Question 4:

How many vehicles per month are driven to your repair facility that had an initial insurance photo estimate, ***and*** were unsafe to drive?

Note: unsafe is defined as the collision energy management system was compromised including deployment of air bags and/or seat belt pre-tensioners, air bag light is on (meaning air bags will not deploy), the vehicle has structural or frame damage, has suspension damage and/or has structural wheel damage, and/or has other issues that make the vehicle unsafe for the operator or other vehicles on the road.

# 319 unsafe vehicles

On average, per month, surveyed shops saw consumers drive 319 vehicles (or 24.7% of the vehicles they saw with photo estimates) to their repair facility that are unsafe to drive.

## Desk Review Estimates by Photos/Virtual Claims Processing

**This section  
addresses how  
insurers interact  
with repair  
facilities while a  
vehicle is repaired**



## Question 1:

What percentage of insurers send damage appraisers to your repair facility to perform in-person inspections, and discuss necessary repairs with your facility?

### Answer:

Just 6.6% of insurers sent field inspectors to repair facilities to inspect damaged vehicles and discuss the needed repairs with the shop

93.4% of automobile property damage claims are settled solely based on a review of photos

## Question 2:

When your repair facility submits an initial or supplemental repair plan with photos to an insurance company, how often does the insurer pay the full cost of the repairs from your initial submission?

**Answer:**

**6.9%**

**Shops reported that just 6.9% of the time, insurers responded with full payment the first time the information was submitted**

### Question 3:

On average, how often does your repair facility have to submit substantially the same information to an insurer or insurer's 3<sup>rd</sup> party adjuster or appraiser?

**Answer:**  
**70.6%**

Repair facilities reported they had to submit substantially the same information to the insurer over and over to an insurer before they received a response and/or full payment.

Responses ranged from 3 to 12 additional submissions with substantially the same information



Question 4:

When your repair facility submits an initial or supplemental repair plan with photos to an insurance company, how many days does it take for the insurer to respond?

**Answer:**

**Average  
response  
11.5 Days**

**Range 1 - 32  
days**

## Question 5:

When your repair facility submits photos to an insurer to document damage and repairs, have you ever had an insurance company adjuster tell you they can't see that much damage in the photos and reduce its payment for that portion of the repair?

If so, how often does this happen?

**Answer:**

**63.3%**

Of repair facilities said insurers routinely tell them, "we can't see all the damage" in the photos provided from the shops and listed on their repair invoice

## Question 6:

How often do insurance company adjusters deny your repair plan and tell you that your repair facility needs to provide a supplement based off the insurance estimate instead?

**Answer:**

**63.4%**

of surveyed shops reported that insurers regularly denied their repair plans and instead insisted the shop utilize the insurer's estimate to submit additional damages.

Insurers (arbitrarily) denied 818 estimates from the surveyed repair facilities over this period.

## Photo Claim Handling Results

The following slides were provided by the surveyed repair facilities. These slides represent the results of claims settled with photo-estimating

**\$8,760.00 Insurance photo estimate**

**\$31,269 actual costs to repair**



**\$2,277 Insurance photo estimate**

**\$19,604 Actual cost to repair**



Internal



**Close-up of  
silver Toyota  
Tacoma  
suspension  
damage in prior  
slide**

Internal

**\$5,894 Insurance photo estimate**

**\$12,682 Insurance estimate (based on photos) after vehicle at shop disassembled and diagnosed**

**\$20,007 actual repair costs**



Internal



**\$3,504 Insurance photo estimate**

**\$8142 initial shop estimate based on in-person inspection, prior to disassembly and diagnosis**

**\$15,193 actual costs to repair**



Internal

**\$649.15 Insurance photo estimate**

**\$5,448.00 Shops estimate based on in-person inspection**



Internal

**Bumper cover is broken, parking sensor is missing, splash shield is torn but is difficult to see in previous photo.**



**Same vehicle as previous slide.**

Internal

\$10,000 insurance photo estimate. This vehicle is unsafe to drive; Air bags have deployed; safety systems are inoperable, and the vehicle has significant structural and frame damage. **His insurer DID NOT advise their policy holder his vehicle was unsafe to operate.**

\$40,000 Repair shop estimate after in person inspection includes replacement of the trucks frame, right Uni-side, box assembly.



Internal

## Market place impacts of photo estimating and virtual claims adjusting that are currently being utilized by most of the insurance industry

- ▶ Thousands of consumers are unknowingly driving collision damaged vehicles that are unsafe to operate after getting a repair estimate from an insurance company. Vehicles with frame and structural damage and/or deployed air bags and other safety systems that are compromised WILL NOT perform as the vehicle manufacturer designed in a subsequent collision, but many insurers are not informing consumers of these safety hazards because either they are not vehicle repair experts and/or are simply trying to save money on towing and rental costs.
- ▶ Rental car coverage is unreasonably being exhausted due to large delays created by insurers when consumers wait day/weeks for insurers to respond to repair facilities damage analysis.
- ▶ Current insurance regulations allow insurers to settle claims based on repair estimates insurers themselves create but insurers are not vehicle repair experts and have no liability for the repairs. Insurance estimates are shown to be MASSIVELY DEFICIENT, up to 85% LESS than the actual costs to repair the vehicle.

## Market place impacts of photo estimating and virtual claims adjusting that are currently being utilized by most of the insurance industry

- ▶ Many consumers are left to pay out of pocket for a portion of vehicle repair costs beyond their insurance photo estimate payment, akin to having a second deductible that was not disclosed to them when they purchased the insurance.
- ▶ Insurers have shifted the burden and expense of investigating the claim to the consumer and/or their repair facility by relying on photo estimates and virtual claims adjustments.
- ▶ Many Insurers are using out of area adjusters or 3<sup>rd</sup> party adjuster services to write estimates but most of these adjusters are not auto repair experts, nor do they know Washington insurance claims settlement rules. This practice significantly and consistently undervalues claims settlements.
- ▶ The practice of insurance photo estimating unfairly undervalues thousands of claims settlement each month, and consumers **ARE NOT** consistently made whole, especially when repairs are not performed.

Why do the insurance regulation give credibility to estimates provided by insurers, but insurers are not auto repair experts nor do insurers have any liability for the repairs they are estimating?

**WAC 284-30-390**

**Acts or practices considered unfair in the settlement of motor vehicle claims.**

**(c) If the claimant chooses to take the loss vehicle to a repair facility where the overall cost to restore the loss vehicle to its condition prior to the loss exceeds the insurer's estimate, the claimant must be advised that he or she may be responsible for any additional amount above the insurer's estimate.**

**(a) A denial of the claimant's estimate for repairs to be completed at the chosen repair facility based solely on the repair facility's hourly rate is considered arbitrary if the rate does not result in a higher overall cost of repairs.**

(3) Why are there no standards defining what a “*reasonable investigation*” is for insurers in Washington state?

(11) Needs to be updated to include “*the repair facility chosen by the policy holder*”

#### **WAC 284-30-330**

**Specific unfair claims settlement practices defined.**

**The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:**

**(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.**

**(11) Delaying the investigation or payment of claims by requiring a first party claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.**



# Recommendations to improve the marketplace and protect consumers

- ▶ Washington State needs law like Oregon, and should require a standard "Right To Appraisal" clause in all auto policies
- ▶ Washington State needs law to enforce the National Highway Transportation and Safety Administration federal standards for safe vehicles by mandating OEM repair procedures for safe vehicle repairs
- ▶ Revise the current WAC's to reflect 2023, not 1977 when the model claims act was passed
- ▶ Take enforcement action when insurers violate the Washington Administrative Code Unfair claims settlement practices and fine insurers for their violations.

# WICRA

Washington Independent  
Collision Repairers Association

Thank you for listening

Internal