

Comments on Public Adjuster Licensing Model Act (#228)

Colorado

Florida

American Adjuster Association

American Association of Public Insurance Adjusters

American Property Casualty Insurance Association

Chicagoland Public Adjusters Association

DIMONT

Florida Association of Public Insurance Adjusters

Insurance Adjustment Bureau

Independent Insurance Agents & Brokers of America

Mid-America Association of Public Insurance Adjusters

National Association of Mutual Insurance Companies

National Association of Public Insurance Adjusters

Colorado - Steven A. Giampaolo

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 [SG1]** holds a valid license with the Department.

[\[SG1\]](#)Colorado comment added to Section 15. H.

FLORIDA COMMENTS - EMBEDDED COMMENTS IN DOCUMENT

Draft: 6/18/24

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, [excluding claims for personal or commercial auto lines of insurance](#).

Drafting Note: It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.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

Drafting Note: [This Act is not intended to apply to the settlement of claims for personal or commercial auto lines of insurance.](#)

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 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.
- 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/herself out as a public adjuster, solicit, or negotiate a contract for public adjusting services in this state unless the person is licensed as a public adjuster in accordance with this 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

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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

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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;
 - (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

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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 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 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 prelicensing 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 prelicensing 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

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- (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.
- 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].

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

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- 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 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.

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.

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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**

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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.
- 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:**

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

- (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:
 - (a) “Company adjuster” means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
 - (b) “Independent adjuster” means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
 - (c) “Public adjuster” means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.
 - (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.
 - (3) The insured has the right to initiate direct communications with the insured’s attorney, the insurer, the insurer’s adjuster, and the insurer’s attorney, or any other person regarding the settlement of the insured’s claim.
 - (4) The public adjuster is not a representative or employee of the insurer.
 - (5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.
- G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the commissioner.
- H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest. The insurer shall verify the public adjuster holds a valid license with the Department of Insurance.
- 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 or to a subsequent owner of the property to whom title is transferred, and may explicitly prohibit assignment of rights and benefits to any other person, including a property repair contractor. For purposes of this subsection, having “legal authority to represent the named insured” includes the person named by the named insured as having the named insured’s power of attorney, the person who is the 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

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

appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

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.

~~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.

~~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 ~~18~~19. Standards of Conduct of Public Adjuster

- A. A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.
- B. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- C. A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed.
- D. A public adjuster shall not offer to pay an insured's deductible, or claim the insured's deductible will be waived, as an inducement to using the services of a public adjuster.
- ~~E.~~ A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.
- ~~F.~~ A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured; ~~unless full written disclosure has been made to the insured as set forth in Section 15G.~~
- ~~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.
- ~~H.~~ The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person; ~~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."

- ~~G.~~ ~~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.~~ 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.
- ~~I.~~ 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

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

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 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.

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

Section ~~19~~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 ~~20~~21. 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 ~~21~~22. 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 ~~22~~23. 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).

2005 Proc. 2nd Quarter 698 (adopted by parent committee).

2005 Proc. 3rd Quarter 26, 35-49 (amended and adopted by Plenary).

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, out heir s, 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



1566 Saint Paul St
Denver, CO 80206
303-748-0321
AmericanAdjusterAssociation.org

August 30, 2024

TO:

Chairman Deiter, Producer Licensing (D) Task Force
Chairman Navarro, Public Adjuster Licensing (D) Working Group

RE: Comments on the 6/18/24 draft of the Public Adjuster Model Act

I write you today on behalf of the American Adjuster Association—a 501(c)(6) organization dedicated to promoting balance and fairness in the claims adjusting process.

We have been tracking the working group's progress on revising the Public Adjuster Model Act. We have not provided any official comment prior to this point because we largely agreed with the comments made by the various public adjuster associations.

Thank you for postponing the vote on this draft and allowing further comment to perfect this model.

While this is only a model act, we believe it is imperative that it models provisions that are most beneficial to policyholders across the country and in vastly differing insurance markets. We do not believe that this current draft of the Public Adjuster Model Act reflects what's best for policyholders in most markets for the following reasons:

Section 14 D. (Fee Caps)

The proposed fee cap of 10% on catastrophe claims and 15% on all other claims may appear on the surface to be a consumer-friendly provision—intended to prevent gouging of insureds with unreasonably high fees. However, the practical effect of a fee cap is the economical prevention of public adjusters from representing any claim unless it is a large loss.

The only sustainable way for public adjusters to handle claims is to charge enough in fees to cover their cost with enough margin to justify the risk and make a profit. Every public adjuster that desires to remain in business must consider these many factors when determining what percentage to charge a potential client. If 15% is the most that can be charged on any claim, the conscientious public adjuster must turn down all claims that are not of substantial size.



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According to a study performed by ISO and published by the Insurance Information Institute, the average homeowners insurance claim severity from 2018-2022 was only \$15,570. (<https://www.iii.org/fact-statistic/facts-statistics-homeowners-and-renters-insurance>) If a public adjuster is limited to charging 15% on a claim of this size, the fee would only amount to \$2,336. This amount would not be enough to cover the time spent negotiating the contract, inspecting and documenting the loss, reviewing the policy, preparing the estimate and other claim documents and submitting and negotiating the claim with the insurer. Nor would a fee of this amount justify the risk, overhead and opportunity cost of handling this claim.

Fee caps may prevent a small number of bad actors within the public adjusting profession from overcharging relative to the value of their service; however, that small correction is significantly outweighed by the harm caused to the many insureds who will not be able to get qualified help on valid—but small—claims.

Creating this dead zone for legitimate representation of most homeowners claims will create massive pressure in the market for illegitimate representation (i.e. contractors and other unlicensed persons supplementing claims under the radar and without any of the regulatory oversight until discovered). This is already a huge issue in states without enough public adjusters or states where fee caps or other regulatory burdens prevent public adjusters from handling small claims.

As an alternative to a unilateral fee cap, we would be happy to see a return to the original model language: “A public adjuster may charge the insured a reasonable fee as determined by state law.” We believe this language gives authority to the regulator or other law enforcement to take action in cases where a public adjuster is charging an unreasonable fee (which in some cases may be less than the proposed fee cap in a situation where the public adjuster is charging a fee without providing any service of value).

Section 15 L. (Assignments and Power of Attorney)

The language and intent of this section of the draft does not belong in a public adjuster licensing act.

First, an important distinction should be made between an insured assigning their claim to another party and an insured granting power of attorney to another party.

An assignment (AOB) requires an exchange between the parties. To be valid, an AOB requires consideration between the assignor and the assignee. The assignor transfers the rights and benefits of the claim to the assignee in exchange for something from the assignee (e.g. money, work



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to be performed, or any other thing of value). The assignee does not represent the interest of or have any duty to the assignor outside of providing the consideration outlined in the contract.

A power of attorney (POA) is a completely different type of agreement. A POA creates agency and does not require consideration (though the agent/attorney-in-fact may be compensated for his/her time). The agent/attorney-in-fact is generally considered to have a fiduciary duty to the principal party and should not allow any alternative interests to outweigh his/her loyalty to the interests of party the agent represents.

A person or entity that receives an assignment is not representing the assignor's interests; they are representing their own interest. By the very definitions of this Model, a public adjuster is only someone who acts "on behalf of the insured." Accordingly, an assignee is not acting as a public adjuster—they are acting as the insured and negotiating their own claim just as every insured has the right to do.

We agree that any person receiving a power of attorney from an insured is still subject to all the conditions of this Act as the attorney-in-fact is still operating in a fiduciary capacity for the principal party—not their own interests. This is just as a power of attorney does not allow the agent to represent the principal party in court unless the agent is an attorney.

Once again, this provision appears on the surface to advance consumer protection by preventing bad actors from swindling insureds into signing away their rights and autonomy in a claim situation. Somewhat ironically, this language perpetrates the same wrong by taking away consumer choice of certain arrangements that may provide value and benefit to the consumer in certain situations.

There is no doubt that some contractors and others utilize AOBs and POAs unethically; however, we do not believe that the solution is broad brushstrokes to ban the practice entirely. We think a more considerate approach that encourages disclosure and education be mandated for AOB and POA users. Such efforts are certainly outside the scope of the Public Adjuster Model and should be dealt with on a state-by-state basis.

Section 16 (Unlicensed Actors)

Fraud is generally reserved for classifying actions that are intentionally deceitful. There are myriad examples across many states of contractors and others being found to have perpetrated the unlicensed/unauthorized practice of public adjusting (UPPA) without knowingly or intentionally doing so. These are not fraudulent actors.



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Cuffing unintentional violators of this Act with a crime that is a felony in most jurisdictions is very heavy-handed and unnecessary in our opinion. We think this entire section should be removed from the Model, but, if it is the Task Force's strong desire to classify all UPPA as fraud, the same standard should also be applied to unlicensed persons acting as staff and independent adjusters.

Section 19 C. (Advertising and Inferring Damage)

This rule makes no sense. How else can a public adjuster solicit business but by inferring that damage has occurred. Indeed, a public adjuster's very interest in talking to an insured infers there is damage. We are not sure what the working group's intentions were with drafting this language, but there must be a better way to word it so that public adjusters are not restricted from soliciting insureds with legitimate claims.

Section 19 F., H., ~~G.~~ (Alternative Financial Interests)

We believe the original Model Act got this right: allow the alternative interest, but require disclosure. Once again, we understand the intention behind this change was consumer protection, specifically, the potential breach of fiduciary duty to the insured if the public adjuster has an alternative interest.

We are not naïve. A public adjuster having an alternative interest in a claim can cause them to breach their fiduciary duty to the insured. However, this only happens when that alternative interest conflicts with interest of the insured. Even still, the conflicting interest alone doesn't breach the fiduciary duty. Only when the public adjuster chooses their conflicting interest over the interest of the insured is the fiduciary duty breached.

The complete prohibition of alternative interests is particularly toxic in combination with fee caps. Preventing public adjusters from having supplementary financial interests in a claim (e.g. profits from the construction company) and capping their fees ensures that most homeowners will not have access to legitimate representation unless willing to pay large amounts out of pocket to hire an attorney.

Instead of prohibiting alternative interests altogether, we think that the disclosure requirement should be bolstered. The disclosure should be a separate document and should include the nature and details of the alternative interest(s) of the public adjuster and a signed statement by the public adjuster that the alternative interests will not compromise his/her fiduciary duty to the insured. The insured should also be required to sign the disclosure document as proof that they read and understood it.



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We also would not be opposed to a contractual provision that allows the insured to cancel the public adjuster contract at any time, without penalty, and anything of value given to the public adjuster returned to the insured, if the insured can prove that the public adjuster has breached their fiduciary duty to the insured. If the insured only perceives a breach of the fiduciary duty, but cannot prove it, the insured may still cancel the contract without penalty, but any fee earned by the public adjuster up to the point of cancelation can be kept by the public adjuster.

We encourage the working group to think beyond the immediate problems and consider also what harm can come to consumers through heavy-handed regulation. The negative impact to consumer access and choice brought by many of these changes will outweigh the reduction in abuse by bad actors. Indeed, this appears to be a case of punishing the masses for the wrongdoing of a few. We believe there are better ways to curb the bad behavior than the language currently being considered.

Thank you for considering our comments and we look forward to seeing an amended draft soon.

Sincerely,

Caeden Tinklenberg
President
American Adjuster Association



National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001
via email: tmullen@naic.org

Dear Chairman Navarro and Members of the NAIC Public Adjuster Model Act Task Force:

RE: Comments on the Public Adjusting Model Act

Thank you for allowing us this additional opportunity to address a few remaining issues with the Public Adjuster Model Act. We appreciate the committee's work on this important model legislation. We have identified several critical issues in the current draft that require further attention to ensure the Act effectively serves both consumers and the public adjusting profession.

Limits on Compensation:

The current draft of the Model Act caps public adjuster fees at 15%, a provision that could have significant consequences for both adjusters and consumers. This cap may make it economically unfeasible for public adjusters to assist with smaller claims, which often constitute a large portion of the claims handled by our profession. This restriction would limit consumers' access to professional assistance, particularly in more complex cases. We propose considering alternative language, such as:

"[Optional] A public adjuster may charge the insured a reasonable fee as determined by state law."

This language would allow for more flexibility and ensure that consumers continue to have access to the services they need. At the last few meetings the committee expressed doubt about using the word "reasonable" and we would encourage further discussion about finding an acceptable alternative.

Every claim is different and there is no one size fits all model. We and the state association that have submitted comments on this issue strongly believe that 15% is too low for an across the board fee cap, as you will read in their comments.

Licensing Issues:

Inconsistencies in licensing rules across states present a substantial challenge for public adjusters



AMERICAN ASSOCIATION
of PUBLIC INSURANCE ADJUSTERS

who need to move their primary residence from one state to another. Our goal is to align these regulations with those for producer licensing to streamline the process and reduce the administrative burden on both public adjusters and insurance regulators. We had submitted earlier comments with draft language and would suggest that, or simply a grace period of 30 days when moving from one reciprocal state to another in which to transfer the resident license to the new state.

Advertising Clauses:

The current wording in the draft regarding advertising requires amendments to avoid creating unintended restrictions on communication with consumers. The existing provision, "A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed," poses significant challenges. We propose replacing this language with the following:

"(8) It is an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading. The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading: A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have damage to insured property."

This language more accurately targets deceptive practices while allowing legitimate communications with consumers.

We are aware that many other associations in the public adjusting industry share these concerns and are equally committed to ensuring that the final legislation is both fair and effective. We believe that addressing these issues is essential to protecting consumers and supporting the vital work of public adjusters.

Again, we appreciate the opportunity to provide our comments and look forward to continued collaboration in refining the Public Adjusting Model Act.

Thank you for your consideration.
Respectfully,

Cole Kline

Cole Kline, President

American Association of Public Insurance Adjusters (AAPIA)



October 29, 2024

National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001
via email: tmullen@naic.org

Dear Chairman Deiter, and Members of the NAIC Producer Licensing (D) Task Force:

RE: Comments on the Public Adjusting Model Act

Thank you for allowing us this opportunity to address the Producer Licensing Task Force with a few remaining issues with the Public Adjuster Model Act. We appreciate the work on this Act thus far by Commissioner Navarro and the members of the Public Adjuster Model Act Task Force.

The remaining issues that were the subject of the last set of comments sent by the AAPIA and many other members of the industry (the letters from late August 2024) are a request to keep optional the limitation on public adjusting fees, a request to re-word a broad restriction on advertising, and a request to add a grace period of 30 days to obtain a resident license when moving a public adjuster's home state from one state to another, among other issues.

Fees: AAPIA has attached a draft with suggested language on the fee issue, consistent with our previous suggestions, and those of the other industry associations. We have also attached a state map of the country which illustrates which states have fee caps on non-catastrophic losses, and the amounts of such caps, as a convenient point of reference for the committee. You will see from the map that the vast majority—about 70% of states—do not have a cap on fees on non-catastrophic losses, and of those that do, the amount of such cap varies from state to state.

As seen by the variations in the map, a uniform approach may not suit all markets, and the flexibility of an “optional” provision would provide guidance, while allowing all states to maintain their current laws.

Advertising

The current wording in the draft regarding advertising requires amendment to avoid creating unintended restrictions on communication with consumers. The existing provision, "*A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed,*" poses significant challenges. We propose replacing this language with the following:



AMERICAN ASSOCIATION
of PUBLIC INSURANCE ADJUSTERS

"(8) It is an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading. The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading: A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have damage to insured property."

The suggested language more accurately targets deceptive practices while allowing legitimate communications with consumers.

Licensing: Inconsistencies in licensing rules across states present a substantial challenge for public adjusters who need to move their primary residence from one state to another. Our goal is to align these regulations with those for producer licensing to streamline the process and reduce the administrative burden on both public adjusters and insurance regulators. We would like to add a grace period of 30 days when moving from one reciprocal state to another in which to transfer the resident license to the new state.

We and the other industry representatives who are submitting comments and/or speaking at the upcoming meeting are equally committed to ensuring that the final legislation is both fair and effective. We believe that addressing these issues is essential to protecting consumers and supporting the vital work of public adjusters.

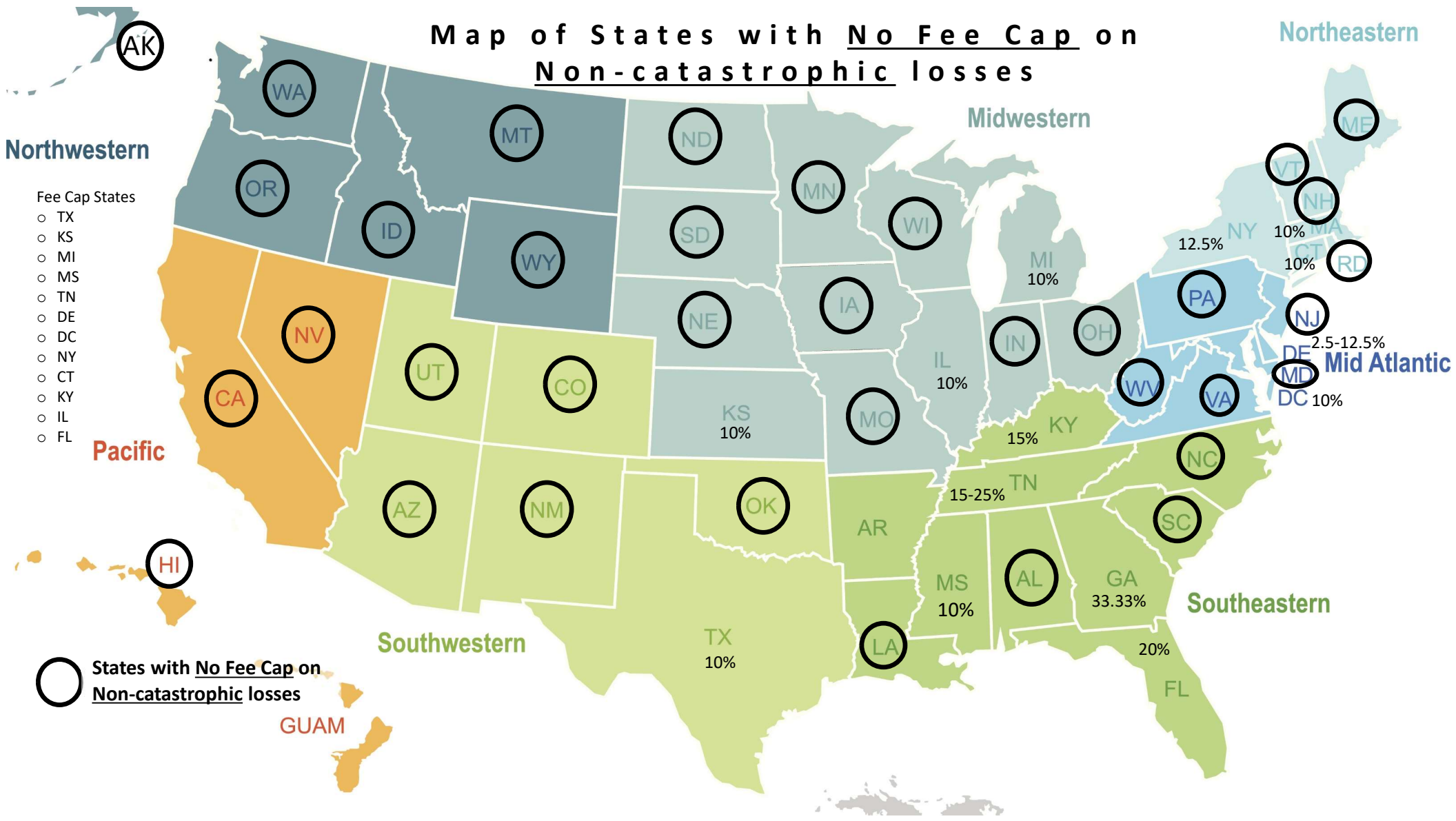
Again, we appreciate the opportunity to provide our comments and look forward to continued collaboration in refining the Public Adjusting Model Act.

Thank you for your consideration.
Respectfully,

Holly K Soffer

Holly K. Soffer, Esq., counsel AAPIA

Map of States with No Fee Cap on Non-catastrophic losses



- Fee Cap States**
- TX
 - KS
 - MI
 - MS
 - TN
 - DE
 - DC
 - NY
 - CT
 - KY
 - IL
 - FL

○ States with No Fee Cap on Non-catastrophic losses

GUAM

Proposed Amendment to Model Act Draft Dated 6/18/2024

PUBLIC ADJUSTER LICENSING MODEL ACT

Table of Contents

Section 14. Public Adjuster Fees

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, and those that do have varying fee amounts.

- B. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- C. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- D. 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].
- E. [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 more than ten percent (10%) of any insurance settlement or proceeds. 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.

Commissioner Trinidad Navarro,
Chair
Public Adjuster Licensing Working Group
National Association of Insurance Commissioners (NAIC)

August 30, 2024

Re: Proposed Revisions to the Public Adjuster Licensing Model Act (#288) -- Public Adjuster Licensing Working Group.

Sent via electronic mail to Tim Mullen: TMullen@naic.org.

Dear Commissioner Navarro and Members of the Public Adjuster Licensing Working Group,

Thank you for the opportunity to comment on the National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Act. Representing nearly 65 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

APCIA and its insurer members would like to thank the NAIC for accepting comments on proposed revisions to the Public Adjuster Model Act (#288). We strongly support the NAIC's effort to strengthen the standards used to manage public adjuster conduct and protect consumers.

APCIA and its members strongly believe that there is significant need bring clarity and openness to the interaction between consumers and public adjusters through effective licensing, clear communication of the financial interest of adjusters and third parties, proper management of assigned benefits, transparent contracting, and appropriate fee structuring.

Accordingly, we wish to reiterate previously stated positions of support and provide recommendations for the following issues.

Licensing

Integral to the protection of consumers interacting with public adjusters and third parties is clear communication between the parties, defining their roles in claims adjustment, recovery, and rebuilding. The first and most significant step in providing clarity to consumers is that of licensing to public adjusters to exclude potentially bad acting third parties misrepresenting themselves to exploit the insurance

claims process to their benefit. Therefore, we are supportive of the limitation offered in Section 3: License Required, that will prohibit non-public adjusters from negotiating a contract for public adjuster services unless so licensed.

In furtherance of the importance of clear communication and consumer understating of public adjuster licensing, APCIA also supports the changes to Section 16. Unlicensed Actors which bring within the definition of a “fraudulent insurance acts” unlicensed persons representing themselves as public adjusters or conducting business for which a license is required.

Fees

Primary to the consideration of fees related to the services provided by public adjusters is that such fees are fair and appropriate to the services being provided. The inclusion of articulated fee caps within the Model language is supported by APCIA.

While fee caps remain a minority provision amongst the states, there is a strong correlation between states that have adopted such caps and the occurrence of catastrophic events producing significant loss. This relationship, APCIA believes, is the result of regulators and decision makers taking affirmative action to protect consumers in instances where regular and significant abuses by bad actors have been recorded. We support the NAIC adopting the lessons learned in these states to disincentivize bad actors through inclusion of the fee caps proposed to be added to the Model Act. Previously proposed and discussed fee caps will provide clarity for consumers and provide limits to potentially excessive charges from adversely impacting policyholders.

Contracting

The contract governing the relationship between public adjusters and policyholders is integral to transparency and fair dealing on the part of adjusters and to limit the influence of bad actors attempting to take advantage of policyholders.

Of particular importance is the matter of assignability of benefits under the insurance contract between the insurers and insured. It is essential to fair dealing in the claim’s adjustment process that the rights of the insured be retained by the insured and that assigned rights be allowed in a manner understood by the insured. APCIA supports the changes under Section 15: Contract Between Public Adjuster and Insured that allow for the express prohibition of assignment of rights under the insurance agreement. Additionally, APCIA believes that exceptions to the prohibition for a person named to hold power of attorney is necessary and to the benefit of the insureds. Essential to these protections is that they cannot be subverted by third parties via alternative agreements or improper creation of a power of attorney.

Because contractual agreements governing the claims process, rebuilding, and restoration are implemented on an ongoing basis, the need for clear communication between the insurers and insureds is essential to effective management of the process. APCIA believes that an affirmative statement in Section 15, either via language adopted or a drafting note, that expressly protects the ability of the insurer to communicate with the insured would serve to improve the claims process and protect the insured.

We would like to thank the Public Adjuster Licensing Working Group for the good work it is doing, and for consideration of our comments. APCI and its members look forward to working with the NAIC in the future to improve claims adjustment, consumer protections, and insurance availability across the nation.

Sincerely,

Michael Richmond-Crum

Michael Richmond-Crum
Director, Personal Lines & Counsel
American Property Casualty Insurance Association



August 8, 2024

Commissioner Larry Deiter
Chair, NAIC Public Adjuster Model Act Committee
National Association of Insurance Commissioners

Dear Mr. Deiter,

Thank you in advance for reviewing our letter below. We know that you have many competing priorities and appreciate your time and responsibility as Chair for the NAIC Public Adjuster Model Act.

Although we have not had direct discussions previously, it has come to our attention that you are poised to pass an updated Model Act for which other Public Adjuster organizations, who have had direct communications, have shared concerns with some proposed language and changes that will have a direct effect on a consumer's ability to have equitable representation with property insurance claims.

Over the last few years, we have worked diligently and directly with the Illinois Department of Insurance for changes to IL Statute and Rules and we feel very strongly that we were able to accomplish fair regulation by understanding the Department's needs to root out bad actors.

We would welcome the opportunity to work with you and your leadership team to resolve these concerns but at the moment we respectfully request a delay in the implementation of the current proposal so that all sides can be heard. Naturally, it is our hope that we can do so as quickly as possible because some of the proposed items will have an adverse and unfair impact on the Public Adjuster profession and ultimately the consumers that we serve.

Again, please let us know the best way to accomplish any possible next steps to assist in making the next Model Act as fair as possible to insurers, insureds and all those that work in the property claim adjustment space.

Respectfully,

ROSS AUSLANDER
President

Chicagoland Public Adjuster Association

Founding Member Firms

A. Schoeneman & Co., Inc • Adjusters International (Globe Midwest) • Alpha Adjusting • Carter Auslander & Associates • Fields Insurance Services • Insurance Adjustment Group • M&M Insurance Specialists • Musick Loss Management • P.M Adjusting LLC.



Who We Are

The Chicagoland Public Adjuster Association members help policyholders with many of the complex provisions and processes involved with a typical insurance property claim. Most importantly PAs represent the policyholder to ensure that the claim is handled fairly, quickly, and with the appropriate financial restitution. Generally, we work on a percentage basis to assist insureds with all aspects of their property damage claim. We step into the insured's shoes to detail and document claims, comply with technical policy requirements, communicate with the insurance company adjuster to level the playing field for the insured, and help organize all necessary steps from emergency services and claim filings through repair completion, etc.. In our experience, a consumer simply relying on the insurance company adjusters who in today's environment have large case files and are less experienced in claims adjudication than ever before, can be fatal to proper claim recovery by the consumer. The policy itself is a complex contract that an insured does not typically understand in detail or have the experience to interpret. To that end, when a large loss happens, they need help, and we are their advocate to reasonably recover loss related to the incident.

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August 27, 2024

Commissioner Larry Deiter
Chair, NAIC Public Adjuster Model Act Committee
National Association of Insurance Commissioners

Dear Mr. Deiter,

Thank you in advance for postponing the vote for the new Public Adjuster Model Act and allowing time to consider all viewpoints. We know there are a lot of moving parts to consider but at the end of the day protection of the consumer is paramount. Again, one of the primary functions of a Public Adjuster is to protect the consumer and advocate for fair property claim settlements.

That said, while we are mostly neutral to reasonable fee caps (based on the type of work our members do), we strongly believe that any revisions with respect to fee caps should absolutely be notated as "optional".

We applaud consistency and fair regulation, but different states and regions have variations to claim handling expectations and requirements which is in part why each individual state Department of Insurance is responsible for regulation. In our opinion, adding fee cap limitation language without the "optional" language will encourage Departments of Insurance to simply adopt the recommended language as gospel without consideration for all types of losses and claims for which a range of fee amounts can be appropriate.

Please strongly consider our comments now as the Model Act doesn't get updated often and the language we identified above should protect consumers' access to representation.

Respectfully,

ROSS AUSLANDER

President

Chicagoland Public Adjuster Association

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6275 W Plano Parkway, Suite 500, Plano, TX 75093

August 6, 2024

Larry Deiter, South Dakota Director of Insurance
South Dakota Division of Insurance
124 S Euclid Ave, 2nd Floor
Pierre, SD 57501

RE: Public Adjuster Licensing Model Act

Dear Director Deiter and members of the Task Force:

We are writing to you in regards to the proposed changes to the Public Adjuster Model Act which is imposing a 15% fee cap on all non-catastrophic claims. DIMONT has been in business since 1996 helping mortgage servicers and investors manage their portfolio of foreclosed and vacant assets through the adjustment of hazard insurance claims. These companies manage thousands of mortgage loans following strict timelines and compliance guidelines.

As one of the premier public insurance adjusting companies, our clients rely on our expertise to help them manage a complex insurance process. Our team of licensed public adjusters aid these companies in navigating damage assessment, carrier policy limitations, document compilation, scoping, estimate reviews, denials, and much more. We provide all of these services and more under a contingency-based fee model. The benefits our clients receive affords them expertise which in turn results in our clients receiving maximum allowable insurance proceeds. While we operate in a niche business, we understand the scope of work needed to adjust claims for consumers and mortgage services and investors and the benefit this provides – our work product and level of effort aligns with the fee structure approved by our client base. Therefore, we do not believe there should be any limitation or fee cap on services provided.

Over the years we have made significant investments in our technology, services, and processes to better support our customers. Imposing a fee cap of 15% would significantly limit our ability to provide the offerings we currently support today. Capping fees at 15% would not only damage our business but also the insured. By contracting with us to provide adjuster services our clients recognize the value of our service (and fee) and ensure full insurance restitution on their loss. In a competitive landscape, we believe our clients should have the right to hire the best-qualified company for the services they require. Limiting the fee we can collect would impact



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the services we provide and thus negatively impact the rights of our clients to hire the most qualified company providing excellent performance results.

We ask that the committee to consider our position and solicit the industry stakeholders to further discuss this matter and postpone this vote so we have more time to evaluate the impact this will have on not only the industry but our clients.

Sincerely,

Laura MacIntyre

Laura MacIntyre
President
DIMONT
6275 W Plano Parkway, Suite 500
Plano, TX 75093

Sent via: Larry.deiter@state.sd.us, tmullen@naic.org, rhelder@naic.org,
gwelker@naic.org



9100 South Dadeland Blvd, Suite 1500 • Miami, FL 33156

Office: 866-235-6489

Email: administrator@fapia.net

The Honorable Larry Deiter
National Association of Insurance Commissioners Producer Licensing Task Force
larry.deiter@state.sd.us

Dear Representative Deiter:

I hope this letter finds you well. On behalf of the Florida Association of Public Insurance Adjusters, I want to express our appreciation for the Committee's diligent work in addressing critical issues such as the fraudulent unlicensed practice of public adjusting. This issue poses a significant danger to consumers, and we commend the Committee's efforts to ensure the protection and fair treatment of policyholders.

We understand that the NAIC Public Adjuster Model Act is scheduled for a vote this month. However, despite our active participation in the working group, we have not received a final copy of the draft that will be subject to the vote. Our last access to the draft included language that many regulators on the call agreed required correction, particularly concerning the solicitation of claims.

Furthermore, as you know, Florida has had a maximum fee cap of 20% on residential claims for over a decade. We have made public records requests to Florida and have been unable to find any data that would support policyholders are damaged by the fees they are charged for the professional services rendered by public insurance adjusters. Indeed the [Office of Program Policy and Government Accountability \(OPPAGA\) concluded a decade ago that policyholders who were represented by public adjusters received significantly more indemnity than policyholders who went without representation.](#) If the ultimate goal is to protect consumers, the last thing the committee should be considering is how to make it more difficult for insurance consumers to get help by making it economically unfeasible for licensees to represent them, particularly on smaller claims.

We are concerned about the proposed arbitrary reduction in the amount of fees that a licensee can charge for their services by 25% in Florida. This reduction is not acceptable as it undermines the value of the services provided by public adjusters and will negatively impact both the industry and the policyholders we represent. The Committee's original concept of making this language "optional" would be more agreeable, as it would make it clear to Departments that there is flexibility and adaptation to the unique circumstances of each jurisdiction. Failure to pass this language without stating that it is optional would greenlight efforts by insurers or anyone who would prefer public adjusters were eliminated, to do just that.

The learning curve for policyholders to participate in the claims process and defend their rights is steep. Public adjusters play an important advocacy role in the insurance ecosystem, and our



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role should not be diminished. This is particularly true when the cost of doing business continues to increase each day and small business owner public adjusters are feeling the same if not more, financial stresses. [We encourage you to watch the testimony of former Senator Joe Negron of Florida on this issue from 2014 beginning at 1:38 which discusses an arbitrary attempt to reduce fees in Florida which](#) discusses this very issue in detail.

We believe it is crucial to get this right for policyholders, even if it means postponing the final vote to allow for further discussion. Our priority is to ensure that the regulations protect consumers while respecting the important role that public adjusters play in advocating for fair and full compensation.

Additionally, we urge the Committee to address the growing issue of Anti-Public Adjuster endorsements. Some carriers' endorsements completely prohibit policyholders from obtaining the professional representation they may require, undermining their right to seek assistance in navigating the complexities of insurance claims. Adding language to the model act such as what was passed in Texas (see attached) would constitute another important consumer protection that should exist at a national level.

We respectfully request a final copy of the draft to review and provide any further input necessary. Our aim is to support the Committee in refining this important guidance to best serve policyholders and licensed public adjusters while upholding the standards of our industry.

There is still important work to be done and we appreciate the opportunity to participate in this process. Thank you for your attention to this matter. We look forward to continuing our collaborative efforts in shaping fair and effective regulations for public adjusting.

Sincerely,

John Hornbuckle

John Hornbuckle, President

Cc: Tim Mullen tmullen@naic.org

Randy Helder rhelder@naic.org

Greg Welker gwelker@naic.org

From: [Nancy Dominguez](#)
To: [Mullen, Tim](#)
Subject: PA Model Act Task Force Letter
Date: Wednesday, August 28, 2024 4:34:41 PM
Attachments: [PA Model Act letter to NAIC Part Two \(3\).pdf](#)

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Good afternoon Mr. Mullen.

Attached is a follow up letter for the Task Force's consideration during deliberations on the Pa Model Act.

While we've mentioned it in a prior communication, we'd like to bring the Task Force's attention to a link included in our letter where public adjuster fees were discussed and debated in Florida ten years ago. The content of that discussion is relevant to the measures the task force is considering. We ask that the task force members please visit the below link to a Florida Senate Banking and Insurance Committee meeting and begin watching at 1:38 to view the relevant part.

<https://thefloridachannel.org/videos/2-18-14-senate-banking-and-insurance-committee/>

Thank you in advance and please let us know when the next meeting is scheduled. We appreciate your assistance as well as the opportunity to represent our 900 members.

NANCY DOMINGUEZ
Managing Director
Florida Association of Public Insurance Adjusters
Phone: 866-235-6489
Email: administrator@fapia.net
Visit us at: www.fapia.net

Do your due diligence and check on the license of anyone you are working with. An easy way to do that is at BeClaimSmart.com

About FAPIA - FAPIA was founded in 1993 to protect residential and business policyholders in the wake of devastating Hurricane Andrew in South Florida. Today FAPIA consists of over 900 members who are committed to ensuring homeowners who suffer an insured loss receive full and fair compensation from their insurance carriers. FAPIA members are located throughout the state and commit to a strict code of ethics as well as continuing education requirements to ensure policyholders receive the best representation. FAPIA consists of licensed insurance professionals who use their expertise to advocate for the consumer. The association is working to grow and enhance the industry by improving laws and regulations that govern public adjusters and their services to policyholders. For more information, visit www.fapia.net.



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August 28, 2024

National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001

Dear Members of the NAIC Public Adjuster Model Act Committee:

As President of the Florida Association of Public Insurance Adjusters, I am sharing the concerns of our 900 members regarding the proposed Public Adjuster Model Act, which is vital for both consumers and the public adjusters who assist them through the claims process.

As advocates for consumer rights, Florida has led the implementation of key provisions from the 2005 Model Act. Our 31-year-old association upholds the highest professionalism, transparency, and fairness standards in public adjusting.

There are some items in the new proposal that we feel require attention to ensure that we do not have negative unintended consequences for policyholders seeking assistance.

As we have stated previously, public records requests have proven that in the five years following Hurricane Irma - 2017 to 2022, there were only 99 complaints against public insurance adjusters as opposed to 105,000 complaints against carriers. We would be happy to share those public records with you if you would like.

Public Adjuster Fees:

We are very concerned that strict fee regulations would make it hard for public adjusters to handle smaller claims. Florida's current fee caps have proven to be fair—dropping to 10% during emergencies and capped at 20% for daily claims, with the flexibility of a lower contingency fee based on the work required. States should be able to set these regulations based on their specific needs, not through a one-size-fits-all NAIC model that could undermine successful state-level approaches. The original model act language read *(Optional) A public adjuster may charge the insured a reasonable fee as determined by state law.* We believe that original language should remain in the model act. [We encourage you to watch the testimony of former Senator Joe Negron of Florida on this issue from 2014 beginning at 1:38](#) which discusses an arbitrary attempt to reduce fees in Florida which discusses this very issue in detail.



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Public Adjuster Advertising Prohibitions:

The proposed language reads: *"A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed."* While we understand the intent, we believe that Florida's already existing language would quash any concerns while not infringing on the protected commercial free speech of law-abiding and already heavily regulated professionals. Florida's regulatory language in FS 626.854 read:

(8) It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

In conclusion, we encourage the National Association of Insurance Commissioners to revisit and take inspiration from FAPIA's proactive approach to working with the Florida Department of Financial Services in self-regulating the public adjusting industry. By doing so, you will play a pivotal role in safeguarding the interests of policyholders across the United States and promoting fair and ethical practices within the insurance industry.

Thank you for your time and consideration.

Sincerely,

John Hornbuckle

John Hornbuckle
President

JH/nad

Ira L. Straff

From: John E. Schuppert, III
Sent: Wednesday, April 24, 2024 10:18 AM
To: TMullen@naic.org
Cc: Ira L. Straff
Subject: RE: Proposed Amendments to the Public Adjuster Licensing Model Act
Attachments: Insurance Adjustment Bureau, Inc.'s Comments Regarding and Suggested Changes to the Public Adjuster Licensing Model Act.doc

Dear Tim:

Pursuant to your request, attached please find the Word document version of Insurance Adjustment Bureau, Inc.'s Comments Regarding and Suggested Changes to the Public Adjuster Licensing Model Act. Again, we inserted into the comment boxes, both comments regarding and our suggested changes to, the proposed amendments to the Public Adjuster Licensing Model Act. Please note that our comments and suggested changes inserted into the comment boxes were mostly taken from our letter to you dated November 10, 2023. Would you please upload the attached to the Working Group's webpage so that it will be available to all the persons participating in the conference call scheduled for Friday, April 26, 2024.

Once again, thank you for including us in the process of revising the Public Adjuster Licensing Model Act.

John

JOHN E. SCHUPPERT, III

Insurance Adjustment Bureau, Inc.



PUBLIC ADJUSTERS

5209 Militia Hill Rd

Suite 101

Plymouth Meeting Pa, 19462

(610) 667-1617 Ext. 102

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From: Mullen, Tim <TMullen@naic.org>
Sent: Tuesday, April 23, 2024 11:51 AM
To: Ira L. Straff <ils@iabclaims.com>
Subject: RE: Proposed Amendments to the Public Adjuster Licensing Model Act

Ira, thanks again for submitting the comments. For ease of compilation of the comments, would you be able to send me the suggested revisions as a Word document?

Tim

From: Emily Paist <ebp@iabclaims.com> **On Behalf Of** Ira L. Straff
Sent: Wednesday, April 17, 2024 1:16 PM
To: Mullen, Tim <TMullen@naic.org>
Cc: Ira L. Straff <ils@iabclaims.com>
Subject: Proposed Amendments to the Public Adjuster Licensing Model Act

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attached please find correspondence to your attention with enclosure dated April 17, 2024 with reference to the above matter.

Thank you.

Please send any and all replies to this e-mail communication only to Ira L. Straff, President: ils@iabclaims.com.

Emily Paist

Insurance Adjustment Bureau, Inc.



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

**INSURANCE ADJUSTMENT BUREAU, INC.'S COMMENTS REGARDING AND
SUGGESTED CHANGES TO THE PUBLIC ADJUSTER LICENSING MODEL ACT**

(Please note that we have inserted, into the below comment boxes, both comments to the proposed amendments to the Public Adjuster Licensing Model Act, which are in regular type, and suggested changes to the proposed amendments to the Model Act, which suggested changes have been italicized and bolded.)

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

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

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.
- 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.

Insert Suggested Language

Regarding the proposed revisions 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

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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, or is an attorney."

- 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.

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.

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- 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 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

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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.
- 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.

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- 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 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.

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- 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.

- 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;

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- (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;
 - (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

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- (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.

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

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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.
- 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.~~

Insert Suggested Language

The proposed revisions 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 as optional. A majority of the states do not require a cap on fees of 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 proposed amendment not be adopted, and that the above-quoted language of the current Model Act, and its Drafting Note, be retained. Failing that, we suggest that the cap in the proposed Model Act be increased to 25%.

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.

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~~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.~~

~~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.~~

Insert Suggested Language

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

- 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

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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.
- 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:

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- (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:
 - (a) “Company adjuster” means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
 - (b) “Independent adjuster” means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
 - (c) “Public adjuster” means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.
 - (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.
 - (3) The insured has the right to initiate direct communications with the insured’s attorney, the insurer, the insurer’s adjuster, and the insurer’s attorney, or any other person regarding the settlement of the insured’s claim.
 - (4) The public adjuster is not a representative or employee of the insurer.
 - (5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.
- G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster’s original contract shall be available at all times for inspection without notice by the commissioner.
- H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest. The insurer shall verify the public adjuster holds a valid license with the Department.

Insert Suggested Language

Section 15, Contract Between Public Adjuster and Insured of the proposed Model Act, at subsection H, 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.”⁸ 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.”

- 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

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

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.

Insert Suggested Language

Section 15, Contract Between Public Adjuster and Insured, of the proposed Model Act, 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 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.

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].

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

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

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Insert Suggested Language

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, or is an attorney."

Section 4617. 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 4718. 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.

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

- 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 4819. 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.~~

Insert Suggested Language

None

~~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.~~

Insert Suggested Language

None

~~E. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.~~

~~F. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in Section 15G.~~

Insert Suggested Language

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, and that the proposal amendment not be adopted.

~~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.~~

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

~~F.L.~~ 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.

Insert Suggested Language

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 the proposed amendment not be adopted, and that this provision remain as it is in the current Model Act.

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

~~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.L.~~ 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 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.

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

Section 1920. Reporting of Actions

Draft: 10/12/23

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

- 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.

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

2005 Proc. 2nd Quarter 698 (adopted by parent committee).

2005 Proc. 3rd 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



Independent Insurance Agents
& Brokers of America.

August 30, 2024

The Honorable Larry Deiter
Chair
Producer Licensing Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: Proposed Amendments to the Public Adjuster Licensing Model Act

Dear Director Deiter:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), the largest insurance agent and broker organization in the country, I write to offer our association's comments regarding the proposed revisions to the *Public Adjuster Licensing Model Act* that are now under consideration by the Producer Licensing Task Force. The proposal contains several important and significant reforms, and we greatly appreciate the work of the Public Adjuster Licensing Working Group and the task force.

Public Adjuster Fees

A critical aspect of the revised model is the manner in which Section 14D addresses public adjuster fees and the effect the proposal will have on existing laws. A diverse and growing universe of jurisdictions (including the District of Columbia, Illinois, Massachusetts, Michigan, Mississippi, and Texas) have already enacted adjuster fee caps that are lower than those outlined in the proposed model. If adopted in its current form and without additional clarification, the model and Section 14D in particular will be used by some interested parties to argue that states with existing fee restrictions (and those who may act similarly in the future) should follow the NAIC's guidance and raise their limits to mirror those contained in the updated proposal. In order to avoid this unintended outcome, IIABA strongly urges the task force to provide clear guidance that addresses this concern. Specifically, we propose the addition of the following drafting note:

Drafting Note: The fee caps included in this model are the maximum fees the model allows. States may, and some states do, impose lower caps, and the intent of this model is not to replace any lower caps.

The NAIC is not the first organization of state insurance leaders to grapple with this specific question. The National Council of Insurance Legislators (NCOIL) adopted a model law concerning public adjusters (the *Public Adjuster Professional Standards Reform Act*) in April. That model includes the same fee cap thresholds contained in your proposal, but NCOIL included the drafting note we propose above in order to provide additional clarity. NCOIL addressed the issue and threaded the proverbial needle in a thoughtful manner, and we urge the NAIC to address this concern in a similar way (and, at a minimum, incorporate the second sentence of the drafting note proposed above into the model).

Conflicts of Interest

One of the most notable elements of the proposed model is the manner in which it seeks to prohibit an adjuster from either (1) performing repair work or services or acting as a contractor in connection with a claim it is adjusting or (2) benefitting financially as a result of a relationship with another person performing such work or services. IIABA greatly appreciates the NAIC's focus on these important issues, but we urge to you to consider revisions to Section 19F that provide further clarity and eliminate any ambiguity about the effect of the subsection. Specifically, IIABA urges the task force to revise the provision in the following manner:

- F. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured. A public adjuster shall also have no financial or ownership interest in and receive no direct or indirect compensation from any person that provides estimates for repairs, services, or other work, or performs repairs, services, or other work in conjunction with any claim in which the adjuster is engaged.

On a related note, IIABA also recommends that the task force delete Section 15D since this subsection would require the *disclosure* of activities and compensation arrangements that will be *prohibited* by the updated model.

Other Standards of Conduct

Section 19D would be a new addition to the model, and it would prohibit a public adjuster from offering to pay an insured's deductible or claiming a deductible is waived *if* such an offer or payment is as an inducement to using the services of a public adjuster. The final clause in this subsection creates confusion and seems unnecessary since such an offer or payment would act as an inducement in any situation. Accordingly, we urge you to delete the phrase "as an inducement to using the services of a public adjuster."

We also wanted to highlight the need for a technical revision. In light of the deletion of the "old" subsection G (i.e., Section 15G of the existing model), the "new" Section 19G found in the current draft should be revised to delete the phrase "unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in Section 15G."

Conclusion

Thank you for the opportunity to submit these comments. We are happy to assist the task force's consideration of the proposed revisions to the model in any way you deem

appropriate. Please feel free to contact me at 202-302-1607 or via email at wes.bissett@iiaba.net with any questions or if we can assist in any manner.

Very truly yours,

A handwritten signature in black ink that reads "Wesley Bissett". The signature is written in a cursive, slightly slanted style.

Wesley Bissett
Senior Counsel, Government Affairs



President: Paul Yemm
Vice President: Brandon Ettinger
Treasurer: Brenda Heffner
Executive Director: Joe DeSanctis

Larry Deiter, Tim Mullen, Randy Helder, Greg Welker

Via email: (Larry.deiter@state.sd.us, tmullen@naic.org, rhelder@naic.org, gwelker@naic.org)

NAIC - Producer Licensing Task Force

Dear NAIC Producer Licensing Task Force:

I hope this letter finds you well. I am reaching out on behalf of MAPIA, the Mid-Atlantic Association of Public Insurance Adjusters, the largest regional public adjusting organization in the Northeast. We have long stood for protecting policyholders and providing proper education for public adjusters. I am the current president of MAPIA and speaking on behalf of the organization.

We have reviewed the proposed changes to the Public Adjuster Model Act and would like an opportunity to be heard on a few concerning issues regarding the proposed changes.

First, I would like to comment that there are a number of fantastic provisions being added that will truly help consumers. Protecting insureds from unlicensed actors is a big step forward for the industry. In addition, the requirement for carriers to confirm that they are working with a licensed public adjuster is also great.

We would like to suggest one additional provision that should be considered for addition to the act. Specifically, we would ask that a provision be added that indicates a person or entity has a right to obtain professional assistance on an insurance claim. As you may or may not be aware, some carriers are including provisions within their policies that indicate a person is not permitted to retain professional assistance on a claim. This clearly infringes on a consumer's right to representation and goes against all tenets of consumer protective regulation. We strongly request that this provision be included so that all insureds are able to obtain professional help when needed.

As for the current draft, there are three main concerns which we would like an opportunity to be heard on and discuss further. First, the Act proposes a 15% fee cap on all non-catastrophic claims that will devastate the vast majority of property owners with insurance claims. Second, the Act uses vague language surrounding advertising that leaves gray areas. Third, the Act suggests that a public adjuster may never refer a client to a construction company for which the adjuster has a financial interest. While we expand on these issues briefly below, we ask that any vote on this bill be postponed until all of these issues can be flushed out and resolved.

First, as to the 15% fee cap. In the US, the average claim is around \$15,000. These claims are often critical for insureds and can mean the difference between repairing their home or eating.

These insureds deserve the option of professional assistance. Unfortunately, in today's insurance climate, the amount of time and effort required to adjust these losses will often not justify professional assistance at 15%. An average claim will now have 2-3 inspections now, estimate writing, scoping and measuring the loss, documenting damages, assisting with contents and ALE relocation, and so much more. If a person has roof damage, and the carrier says only 3 shingles need to be replaced for \$350 but the homeowner's roofers are saying they cannot do a patch and need to replace the roof for \$10,000, who is out there to help that insured? It is an obvious problem to cap fees on small claims. There is absolutely no benefit to the homeowner, your consumer, to cap lower value claims. 15% is too low to ensure consumers are protected.

While we have reviewed the proposed sliding scale concept and fully back that option, even if there was just a shift to 20%, a homeowner on an average claim would be more likely to be able to get professional assistance. We implore you to let us discuss this, provide testimonials from actual clients, and work towards a fee cap that could work for everyone.

Second, the Act as written has the following provision: "A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed." This provision creates significant gray areas of concern for public adjusters who are attempting to follow the letter of the Act. Does this regulation state that a public adjuster cannot advertise unless an inspection has been completed? It can easily be read as - a public adjuster shall not advertise unless an inspection of the property has been completed, or infer damage unless an inspection of the property has been completed. Getting to the core of what we believe is intended by the NAIC, we would recommend the following language in place of this provision; "A public adjuster shall not advertise that your home has been damaged or indicate that your home was damaged unless an inspection of the property has been completed."

Third, and finally, the proposed changes have removed a phrase which allowed a public adjuster to refer a client to a construction company that the adjuster had an interest in so long as it was disclosed to the insured. This restriction is against the interest of the consumer who often seeks recommendations for repair contractors. A claims adjuster for a carrier can own a construction company and refer an insured without issue. Why is the standard different for public adjusters? If a homeowner has a trusted professional as a public adjuster, someone they can rely on and would like to work with, why would we want to restrict that person's ability to choose a construction company simply because it is connected to that trusted professional?

We truly hope that these ideas will be heard in their entirety and fully considered as we are both acting for the benefit of the consumer. We want to protect them. We want to make sure they get the coverage they paid for. We want to make sure they have freedom of choice. We are requesting that the vote be postponed at the upcoming NAIC meeting to allow discussion on the issues above.

Sincerely,



Paul F. Yemm
President of MAPIA

August 30, 2024

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

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)¹, we would like to thank the NAIC Producer Licensing Task Force for extending an additional comment opportunity on the most recent version of proposed NAIC Public Adjuster Model Act (MDL-228) revisions. As we have previously noted, NAMIC supports the task force's continued attention on these important reforms that will help protect consumers.

NAMIC remains appreciative of the proposed model language that curtails assignment of benefits to those who may have conflicts of interest, as well as the provisions related to enforcement against unlicensed actors that prey on individuals in their most dire times of need by misrepresenting who they are and their qualifications. We also continue to strongly support the limits on fees set forth in Section 14D, although we note that some states already have across-the-board limits on such fees, and it may be worth including a drafting note that this model is not intended to encourage increases to existing limits in those circumstances. We continue to believe that adding specific prohibitions on false advertising and a complete bar against the payment of deductibles would further strengthen consumer protection, and we encourage the Task Force to consider adding such language to Sections 16 and 19D. These and the other proposed guardrails on direct financial interest will significantly improve public adjuster processes for the better.

While NAMIC supports the most recent draft, we would like to take this opportunity to offer a few additional recommendations in the name of consumer protection. These are not entirely new concerns, but we believe discussions and developments including NCOIL's passage of its *Public Adjuster Professional Standards Reform Model Act*² this Spring help provide additional context and continue to render the suggestions relevant and worthy of the Task Force's consideration as potential improvements on the already positive steps proposed:

¹ The National Association of Mutual Insurance Companies consists of almost 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.

² <https://ncoil.org/wp-content/uploads/2024/04/NCOIL-Public-Adjuster-Model-April-2024.pdf>



- Section 14 – *Public Adjuster Fees*
 - To avoid overcharging of policyholders, particularly fees charged by public adjusters that will detract from the home repairs that were already self-evident, we believe a subsection should be added that states “A public adjuster shall not charge, agree to or accept compensation or reimbursement for values the insurer agrees to as compensable which predates the public adjuster’s contract with the insurer.”

- Section 15 – *Contract Between Public Adjuster and Insured*
 - To prevent insurers from issuing large reimbursement checks to public adjusters, of which their interest may only be 15%, we suggest language be added to paragraph 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.” Making this revision would allow insurers the additional option and flexibility to issue two checks, protecting the financial interests of all parties involved in the transaction.
 - To provide transparency of the interests involved and ensure settlement provisions are followed accordingly, we suggest revisions be made to paragraph B.(3) that “Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the commissioner or insurer.”

- Section 19 – *Standards of Conduct of Public Adjuster* (previous Section 18)
 - We believe the current draft 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 commend the Task Force for the courage to take on these much-needed reforms to the Model in the name of genuine policyholder protection. NAMIC looks forward to working with the Task Force to get the proposed updates across the finish line to improve accountability and clarity around the entirety of the public adjuster process.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Tony Cotto'.

Tony Cotto, Esq.
Public Policy Counsel | Director of Auto and Underwriting

From: [Ann Frohman](#)
To: [Mullen, Tim](#)
Subject: Public Adjuster Licensing Model
Date: Wednesday, August 28, 2024 11:50:27 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tim,

NAPIA understands others have asked for time to provide additional comments to the model law suggestions. NAPIA doesn't have anything further to add and continues to support the draft as recommended to the Producer Licensing Task Force.

Best,
Ann
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