

Draft: 4/18/24

Public Adjuster Licensing (D) Working Group  
Virtual Meeting  
April 5, 2024

The Public Adjuster Licensing (D) Working Group of the Producer Licensing (D) Task Force met April 5, 2024. The following Working Group members participated: Trinidad Navarro, Chair (DE); David Buono, Vice Chair (PA); Shawn Orme (KY); Matt Gendron and Rachel Chester (RI); Richard Tozer and Juan Rodrigues Jr. (VA); and Jeff Baughman (WA). Also participating were: Sara Stanberry (IL); and Jodie Delgado (TX).

1. Reviewed its Charge and Scope of Work

Commissioner Navarro said the Producer Licensing (D) Task Force began discussing public adjuster licensing issues in 2023 in response to marketplace issues. The Task Force circulated proposed amendments to the NAIC *Public Adjuster Licensing Model Act* (#228) in October of 2023. This resulted in 138 pages of comments being submitted. Commissioner Navarro said the Task Force adopted a new charge to appoint the Public Adjuster Licensing (D) Working Group for 2024 to review and amend Model #228 as needed to enhance consumer protections in the property/casualty (P/C) claims process. Commissioner Navarro said the NAIC Members adopted a Request for NAIC Model Law Development during the 2024 Spring National Meeting to strengthen regulatory standards governing the conduct of public adjusters for the following four issues: 1) individuals acting as unlicensed public adjusters; 2) contractors who are also acting as public adjusters on the same claim; 3) inappropriate Assignment of Benefit rights; and 4) excessive fees charged by public adjusters.

2. Reviewed Proposed Amendments to Model #228

Commissioner Navarro said the following proposed amendments were made to the model.

- Subsection 3.A was amended to require licensure for any person negotiating a contract for public adjusting services. This revision is intended to help eliminate individuals acting as unlicensed public adjusters.
- Section 14 was amended to become a mandatory section of the model (not an optional section) and place a compensation cap of 10% for catastrophe (CAT) claims and 15% for any claim settlement. This is intended to eliminate public adjusters charging excessive fees.
- Subsection 15.H was amended to require an insurer to verify a public adjuster holds a valid license. This is intended to help eliminate individuals acting as unlicensed public adjusters.
- Subsection 15.L is a new subsection that addresses inappropriate Assignment of Benefits. This new subsection limits the Assignment of Benefits to a person with the legal authority to represent the named insured and may explicitly prohibit the assignment of rights and benefits to any other person, including a property repair contractor. The new subsection also specifies that a property repair contractor operating may not subvert the public adjuster licensing requirements by acquiring a power of attorney from the insured.
- Section 16 is a new section to stress unlicensed individuals representing themselves as licensed public adjusters or conducting business, which requires a public adjuster license, are committing fraud. This is intended to be a deterrent to individuals who may be acting as unlicensed public adjusters.
- Section 19 was amended to include new subsections C and D to strengthen regulatory standards over the conduct of public adjusters. Subsection C prohibits a public adjuster from advertising or inferring damage has occurred unless an inspection of the property has been completed. Subsection D prohibits a public

adjuster from offering to pay an insured's deductible or claiming the insured's deductible will be waived. This type of activity would be considered an inappropriate inducement to use the services of a public adjuster.

- Language was deleted from Section 15 to eliminate situations where an entity is paying a public adjuster for repair referrals or where a public adjuster has a financial interest in the entity completing the repairs. These edits are intended to eliminate a conflict of interest where a person is acting as both the public adjuster and repair contractor for a claim.

### 3. Received Comments on Proposed Amendments

Ann Frohman (National Association of Public Insurance Adjusters—NAPIA) said NAPIA wants to ensure consumers understand what happens when they have a property loss and the role of multiple parties involved in the settlement of a claim. Frohman said NAPIA supports eliminating bad actors acting as unlicensed public adjusters and supports the proposed changes intended to eliminate unlicensed individuals acting as public adjusters. Frohman said NAPIA supports amendments prohibiting a public adjuster from having a financial interest in the entity selected to complete property repairs because a public adjuster has a fiduciary duty to the insured client. Frohman said a public adjuster with a financial interest in the entity completing the repairs creates an inherent conflict of interest. Frohman said the provision addressing the Assignment of Benefits needs further review but agreed with the need to protect consumers from assigning their benefits to a contractor, which may receive payment from an insurance company and then fail to complete the necessary repairs. Frohman said the fee caps are a challenge and suggested that the Working Group may want to consider what compensation is appropriate for a commercial line loss versus a personal lines loss or a loss arising from a catastrophic event.

Holly Soffer (American Association of Public Insurance Adjusters—AAPIA ) said AAPIA agrees, in principle, with the goals of the Public Adjuster (D) Working Group but that the proposed amendments go too far and may have unintended consequences that harm insurance consumers. For example, Soffer said the Assignment of Benefits provision would prohibit the property owner from selling a damaged property to a bona fide purchaser. Soffer said some consumers will choose to sell their property after a loss rather than repair or replace it. Soffer said the issue of fee caps is complicated, and most states have laws that allow a public adjuster to charge a reasonable fee, which seems to provide the necessary consumer protections against excessive fees. Soffer said some states have fee caps on catastrophic losses, which are usually large claims. Soffer said AAPIA has supported fee caps on catastrophic losses. Soffer said the Public Adjuster Licensing (D) Working Group should keep the fee cap provision of the model optional since states have different issues and views on fee caps. For example, Soffer said a 15% fee cap on claims is problematic on smaller claims and would limit a consumer's ability to obtain representation by a public adjuster. Soffer said a sliding fee scale would be more appropriate than a strict percentage fee cap on all claims.

Anthony DiUlio (Wheeler, DiUlio, & Barnabei) said 92% of property claims are \$25,000 or less and that a 15% fee cap would eliminate the ability of public adjusters to assist consumers in lower value claims. DiUlio said a sliding scale on fee caps based on the claim's value may be an appropriate solution. DiUlio said this would allow consumers with lower-value claims to obtain appropriate representation while also protecting consumers from a public adjuster charging 35% on a million-dollar claim. Commissioner Navarro said the members of the Public Adjuster Licensing (D) Working Group would discuss this issue and suggested a minimum public adjuster charge might also be a reasonable solution for lower-value claims.

Erica Eversman (Automotive Education Policy Institute—AEPI) said the proposed amendments will eliminate the ability of responsible automobile repair facilities to assist consumers with automobile repairs. Eversman said the proposed language would require any entity discussing any type of claim with an insurance company to be a

licensed public adjuster. Eversman said some repair facilities will agree to repair a consumer's vehicle at a cost greater than what an insurance company approved and then take an Assignment of Benefits to seek proper reimbursement from the insurance company. Eversman said this is good for consumers because a consumer will have their vehicle repaired correctly and in a timely manner. Eversman said the proposed amendments will prohibit this. Eversman said repair facilities are also able to identify deliberate patterns and practices of an insurer underpaying claims, which can provide an opportunity for a repair facility to bundle claims against an insurer and provide stronger evidence of an insurer underpaying claims. Eversman said fee caps on automobile claims and the inability of repair facilities to provide recommendations or referrals are not workable for automobile claims. Eversman said this type of regulatory framework is unfair because insurance companies are allowed to advocate and refer consumers to preferred body shops. Eversman said the proposed amendments will eliminate key consumer protections and leave consumers without the ability to hire an advocate to represent their interests.

Commissioner Navarro requested all parties submit additional comments by April 15. He said the Public Adjuster Licensing (D) Working Group plans to meet April 26.

Having no further business, the Public Adjuster Licensing (D) Working Group adjourned.

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

## PUBLIC ADJUSTER LICENSING MODEL ACT

### Table of Contents

Section 1.	Purpose and Scope
Section 2.	Definitions
Section 3.	License Required
Section 4.	Application for License
Section 5.	Resident License
Section 6.	Examination
Section 7.	Exemptions from Examination
Section 8.	Nonresident License Reciprocity
Section 9.	License
Section 10.	Apprentice Public Adjuster License [Optional]
Section 11.	License Denial, Nonrenewal, or Revocation
Section 12.	Bond or Letter of Credit
Section 13.	Continuing Education
Section 14.	Public Adjuster Fees
Section 15.	Contract Between Public Adjuster and Insured
<a href="#">Section 16.</a>	<a href="#">Unlicensed Actors</a>
Section <del>16</del> <a href="#">17</a> .	Escrow or Trust Accounts
Section <del>17</del> <a href="#">18</a> .	Record Retention
Section <del>18</del> <a href="#">19</a> .	Standards of Conduct of Public Adjuster
Section <del>19</del> <a href="#">20</a> .	Reporting of Actions
Section <del>20</del> <a href="#">21</a> .	Regulations
Section <del>21</del> <a href="#">22</a> .	Severability
Section <del>22</del> <a href="#">23</a> .	Effective Date

### 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.

#### Florida Department of Financial Services

Add “solicit”

#### Virginia Department of Insurance

A person shall not hold themselves out as a public adjuster by engaging in the business of public adjusting by soliciting and negotiating public adjusting contracts in this state without first applying for and obtaining a license from the commissioner in accordance with this Act.

#### Insurance Adjustment Bureau

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 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.

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

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.”

#### **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.~~

#### American Association of Public Insurance Adjusters (AAPIA)

This language works and should be left as is. It grants broad discretion to the Insurance Commissioners to determine what is reasonable on a case-by case, or state by state basis.

#### Florida Association of Public Adjusters

The language that is stricken out should remain and no changes should be made to the original Model Act language.

#### Insurance Adjustment Bureau

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 is 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.
- ~~EB.~~ 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].

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

**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.

#### Florida Department of Financial Services

If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss.

The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 15 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph below.

A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2 apply.
2. Fifteen percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.
3. One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the public adjusting contract is executed, whichever is later.
4. Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which the public adjusting contract is executed.

Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

Public adjuster rate of compensation may not be increased based solely on the fact that the claim is litigated.

#### Illinois Department of Insurance

If the loss giving rise to the claim for which the public adjuster was retained arises from damage to a personal residence, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other valuable consideration in excess of 10% of the amount of the insurance settlement claim paid by the insurer on any claim.

#### Virginia Department of Insurance

A public adjuster shall not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of ten percent (10%) of the amount of insurance claim settlement payments made by the insurer for claims based a catastrophic disaster as defined by Section 2C of the Act and no more than twenty percent (20%) of the amount of insurance settlement claim payments made by the insurer for claims that are not based on events related to a catastrophic disaster.

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

#### AAPIA

This restriction on fees should remain optional for the states, or be labeled as guidance, since the laws already vary state by state and most states do not have a cap on fees. Each state should decide this issue independently depending upon the situation in that state as to whether excessive fees are a concern. Specific language may be needed to address fee issues in some states, not an across-the-board, arbitrary fee cap. This cap on fees at 15% will hurt homeowners on smaller claims, who will not be able to help people with those claims since the fee is not enough in real dollars. Further, the void created with no professional help available on these smaller claims will leave the door open to unlicensed actors, which is a problem this committee is trying to address.

#### Florida Association of Public Adjusters

The language that is stricken out should remain and no changes should be made to the original Model Act language. Florida advocates for state-level determination of insurance regulations due to unique state economic and legislative landscapes. In Florida, fees for public adjusters are already capped at 20% for non-catastrophic claims and 10% for catastrophic claims, with flexibility for negotiation. A proposed 15% fee cap at the national level could hinder policyholders' access to experienced insurance assistance, particularly in more minor residential claims. We find no basis for a mandated 25% reduction in the already existing Florida fee cap. Florida has already adopted most aspects of the existing Public Adjuster Model Act, allowing states to regulate fees based on regional concerns. Florida questions the need for a change that could restrict this flexibility.

#### Insurance Adjustment Bureau

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**

- 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.

#### Virginia Department of Insurance

A public adjuster must provide prompt notice of property loss claims submitted to an insurer on which a public adjuster represents the policyholder at the time the claim or notice of loss is submitted to the insurer. The public adjuster must provide an unredacted copy of the public adjuster’s contract to the insurer and ensure the covered property is available for inspection of the loss or damage by the insurer or their representative, and the insurer is given an opportunity to interview the policyholder directly about the claim of loss. The insurer must be allowed to obtain necessary information to investigate and respond to the claim of loss.

#### AAPIA

Suggests: “Within 3 business days of receiving such notice, The insurer shall verify the public adjuster holds a valid license with the Department.” Without this time limitation, there will be a resulting claim delay.

#### Insurance Adjustment Bureau

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.” 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



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

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."

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.

#### Virginia Department of Insurance

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

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

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

(e) The assignment may not impair the interest of a mortgagee listed on the declarations page of the homeowners policy that is the subject of the assignment.

#### AAPIA

This language is too broad. We suggest the following instead : "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 limit to whom such rights and benefits under the insurance may be assigned, and may explicitly prohibit assignment of rights and benefits to any other person, including a property repair contractor.. 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."

#### Insurance Adjustment Bureau

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



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

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.

#### NAPIA

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

#### **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.**

#### Virginia Department of Insurance

##### Section 16. Unauthorized Practice of Public Adjusting

- A. A person engages in the unauthorized practice of public adjusting if they:
  - 1. Investigate, appraise, evaluate, give advice, advocate on behalf of or assist their customer in adjusting a claim

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

2. Prepare the insurance claim for their customer.
  3. Negotiate the claim with the insurance company on their customer's behalf.
  4. Offer to review the insurance policy or advise their customer on the insurance policy's coverage.
  5. Advertise or provide written materials that they can negotiate or investigate a claim on their customer's behalf. This includes advertising to be "claim specialists" or "claim analysts," or any other similar terms, or advertising or claiming that they can "deal with insurance companies" or in any way increase the claim settlement amount for the insured.
- B. Unlicensed persons shall not engage in the solicitation of public adjusting services even under the supervision of a licensed public adjuster.
- C. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not considered solicitation or unlicensed adjusting and is not violative of this title so long as the unlicensed persons engage in purely administrative matters and do not interpret, analyze or explain insurance, an insurance contract, or a public adjuster contract, or cause, urge, advise or attempt to enter into a contract for public adjusting services.
- D. Notwithstanding any other provision in this Act, no license shall be required of a person who recommends the use of a public adjuster while not causing, urging, advising or attempting to recommend an individual to enter into a public adjusting contract.

#### Insurance Adjustment Bureau

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

- C. A public adjuster shall not advertise or infer damage has occurred as result of unless an inspection of the property has been completed.

#### Florida Department of Financial Services

A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

#### AAPIA

AAPIA does not understand the purpose of this restriction and perhaps prohibiting misleading advertising, would be a better approach. A public adjuster who meets with an insured, or who views photographs, especially after a fire or other disaster, may discern that damage has occurred without a formal inspection of the property.

#### Florida Association of Public Adjusters

Florida cannot agree to this potentially unconstitutional language. Prohibiting businesses from advertising their lawful business violates commercial free speech. It would prompt costly legal challenges nationwide. Why is the government interested in restricting businesses from advertising lawful services? Overregulation of commercial free speech stifles innovation and competition, potentially deterring new market entrants. We question the purpose of adding this language to the Public Adjuster Model Act and seek to address any legitimate policy concerns while preserving constitutional rights. Additionally, the sentence is incomplete. As a result of what?

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

~~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.

Florida Department of Financial Services

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.

- (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.
  2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.
  3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.
  4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

**"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."**

A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

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

Florida Department of Financial Services

A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract or an agreement to adjust.

Virginia Department of Insurance

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

Insurance Adjustment Bureau

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

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

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.

~~F1.~~ The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, ~~unless disclosed to the insured:~~

~~(1) With whom the public adjuster has a financial interest; or~~

~~(2) From whom the public adjuster may receive direct or indirect compensation for the referral.~~

#### Washington State Office of the Insurance Commissioner

Prefer including subsection (1) and (2) as the standard. PA's have relationships with contractors- just as staff and independent adjusters have relationships with contractors. It's a problem if the PA has financial gain from using them, not because they know a good contractor to recommend.

#### AAPIA

As to paragraph I, this restriction is overly broad. Home and business owners rely on public adjusters to help vet and choose contractors. If there is no financial relationship between the public adjuster and the contractor, there is no conflict of interest, and only a benefit to the consumer from utilizing the expertise of the public adjuster in this regard.

#### Florida Association of Public Adjusters

Public adjusters play a crucial role in recommending reliable service providers, especially after disasters when scammers often target policyholders. Delays or poor repairs worsen property damage. Like doctors referring specialists, public adjusters connect policyholders with experts, enhancing service. Existing language in the Model Act prohibits financial interests and kickbacks, addressing concerns of impropriety.

Florida supports the prohibition of public adjusters accepting additional fees or kickbacks and we believe that is already addressed in the proposed section 19 G of the Model Act. Florida opposes this proposed restrictive violation of commercial free speech.

#### Insurance Adjustment Bureau

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.