

PUBLIC ADJUSTER LICENSING LAW
Act of Dec. 20, 1983, P.L. 260, No. 72
AN ACT

Cl. 40

Providing for the licensing and regulating of public adjusters and public adjuster solicitors.

Compiler's Note: Section 8 of Act 21 of 2012, provided that a person licensed as a public adjuster solicitor prior to the effective date of section 8 shall be licensed as a public adjuster in accordance with Act 72.

Section 9 of Act 21 of 2012, provided that regulations which are inconsistent with the provisions of Act 21 are hereby abrogated to the extent of their inconsistency.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Application." A form approved by the Insurance Department to be used to apply for a public adjuster license.

"Business entity." A corporation, partnership, association, limited liability company or limited liability partnership.

"Business entity application." A form approved by the Insurance Department to be used by a business entity to apply for a public adjuster license.

"Department." The Insurance Department of the Commonwealth.

"Home state." The District of Columbia, a state, commonwealth or territory of the United States in which a public adjuster resides and is licensed to act as a resident public adjuster.

"Licensee." A person licensed by the Insurance Department as a public adjuster.

"Nonresident public adjuster." A public adjuster whose home state is not this Commonwealth.

"Public adjuster." Any person advertising, soliciting business or holding himself out to the public as an adjuster of claims for losses or damages arising out of policies of

insurance, surety or indemnity upon property, persons or insurable business interests within this Commonwealth, and receiving any compensation or reward for the giving of advice or assistance to the insured in the adjustment of claims for such losses, or who for compensation or reward, whether by way of salary or commission or otherwise, directly or indirectly, solicits business, investigates or adjusts losses or advises the insured with reference to claims for losses on behalf of any other person engaged in the business of adjusting losses. The term does not include an agent or employee of an insurance company, association or an exchange, through whom a policy of insurance was written, in adjusting loss or damage under such policy, nor does it include an insurance producer acting as an adjuster if the services of the insurance producer in the adjustment are without compensation.

"Public adjuster solicitor." (Def. deleted by amendment)

"Repairs." Shall not include temporary or emergency repairs made for the purpose of protecting the insured property or to comply with policy terms and conditions.

(1 amended Apr. 3, 2012, P.L.209, No.21)

Section 2. License.

(a) License required.--No person shall, directly or indirectly, act within the Commonwealth as a public adjuster without first procuring from the Insurance Commissioner a license as a public adjuster.

(b) (Reserved).

(c) (Reserved).

(d) License not to be issued to certain persons.--No license as a public adjuster shall be issued to any person engaged or interested in, or receiving any profit from, nor shall the holder of any such license engage or be interested in, or receive any profit from, any salvage or similar business.

(2 amended Apr. 3, 2012, P.L.209, No.21)

Section 2.1. Application for public adjuster license.

(a) Individuals.--An individual who is a resident of this Commonwealth may apply to the department for a resident public adjuster license. An individual who is not a resident of this Commonwealth may apply for a nonresident public adjuster license. To apply for a public adjuster license, an individual shall submit to the department:

(1) a completed application on forms approved by the department;

(2) the applicant's fingerprints, for the department to receive national criminal history records information from the Criminal Justice Information Services Division of the Federal Bureau of Investigation;

(3) documentation verifying the applicant passed or is exempt from the public adjuster licensing examination; and

(4) the required license fee and fees for obtaining national criminal history records information.

(b) Business entities.--Upon designating one or more officers or partners licensed under this act to be responsible for the business entity's compliance with the insurance laws and regulations of the Commonwealth, a business entity may apply to the department for a public adjuster license. A business entity with an office in this Commonwealth shall apply for a resident public adjuster license. A business entity that does not have an office in this Commonwealth shall apply for a nonresident public adjuster license. The designated licensees of the business entity shall submit to the department:

(1) a completed business entity application on forms approved by the department;

(2) proof of the public adjuster license held by the designated licensees; and

(3) the required license fee.

(c) License fee.--A nonrefundable \$200 fee shall accompany a completed application for a resident or nonresident public adjuster license until modified by the department by regulation.

(2.1 added Apr. 3, 2012, P.L.209, No.21)

Section 2.2. Licensing.

(a) Individuals.--The department shall review each application and may conduct an investigation of each individual who applies for a license in accordance with this act. The department shall issue a resident or nonresident public adjuster license, as appropriate, to the applicant when the department is satisfied the following criteria have been met:

(1) the applicant has reached 18 years of age;

(2) the applicant has not committed any act which is prohibited under this act;

(3) the applicant has passed or is exempt from the public insurance adjuster licensing examination;

(4) the applicant has paid the applicable fees established under this act;

(5) the applicant possesses the general fitness, competence and reliability sufficient to satisfy the department that the applicant is worthy of licensure; and

(6) other criteria as the department may establish.

(b) Business entities.--The department shall review each business entity application and may conduct an investigation of each business entity seeking licensure and its designated licensees. The department shall issue a resident or nonresident public adjuster license, as appropriate, to the business entity when the department is satisfied the following criteria have been met:

(1) the business entity has one or more designated licensees who are responsible for the business entity's compliance with the insurance laws and regulations of this Commonwealth;

(2) the business entity's designated licensees and officers, partners or members are licensees in good standing with the department;

(3) if a corporation or limited liability company, individual public adjuster licenses shall be held by or secured for each officer of the corporation or limited liability company;

(4) if a partnership, limited liability partnership or association, individual public adjuster licenses shall be held by or secured for each partner or member of the association;

(5) the business entity or its designated licensees have not committed an act which is prohibited under this act;

(6) the business entity is owned, operated and managed by persons possessing the general fitness, competence and reliability sufficient to satisfy the department that the business entity is worthy of licensure;

(7) the business entity has paid the applicable fees established under this act; and

(8) other criteria as the department may establish.

(2.2 added Apr. 3, 2012, P.L.209, No.21)

Section 2.3. Issuance and term of license.

A public adjuster license issued by the department shall be:

(1) issued only in the name of the individual or business entity. If a licensee is doing business under a

fictitious name other than the name appearing on the public adjuster license, the licensee is required to notify the department in writing prior to using the fictitious name;

(2) issued in paper or electronic form;

(3) nontransferable; and

(4) issued for a period not to exceed two years.

(2.3 added Apr. 3, 2012, P.L.209, No.21)

Section 2.4. License renewals.

(a) General rule.--A licensee may request renewal of the license. The licensee shall submit to the department a completed renewal form, the required fee and verification the licensee has completed the continuing education required by this act. Upon receipt and review, the department shall renew the license unless it determines the licensee is not in compliance with this act.

(b) Continuing education.--A licensee who is not a business entity shall successfully complete 24 credit hours of approved continuing education for each two-year license period as a condition for license renewal unless modified by the department by regulation. A licensee may carry forward excess continuing education credit hours up to 24 credit hours from one licensing period to the next licensing period.

(c) Lapses.--A licensee who allows his license to lapse by failing to timely renew the license, pay the fee required by this act or complete the continuing education required by this act may, within 60 days of the license renewal date, request the department to reinstate the license. Persons requesting reinstatement of a lapsed license shall submit a completed renewal form, the fee required by this act and verification the person has completed all continuing education required by subsection (b) for the previously licensed and lapsed periods. If the department receives a request for reinstatement together with a completed renewal application, payment of the lapsed license fee and proof of continuing education compliance within 60 days after the license lapsed, the department shall reinstate the license retroactively with the reinstatement effective on the date the license lapsed. Except as set forth in subsection (d), if a person applies for reinstatement more than 60 days after the lapse date, the person shall reapply for a license under this act.

(d) Extenuating circumstances.--A licensee who is unable to timely comply with the requirements of subsection (a) as a result of military service or other extenuating circumstance may request the department to waive the requirements of completing continuing education for the period in which the license had lapsed and payment of the lapsed license fee. The request shall include sufficient detail and supporting documentation to determine the necessity of the waiver. If the department determines that there is good cause for noncompliance, the department shall grant the waiver and permit the licensee to request renewal of the license in accordance with this act.

(e) Renewal fees.--The following nonrefundable fees shall accompany an application for renewal of a public adjuster license unless modified by the department by regulation:

(1) Resident or nonresident renewal fee, \$200.

(2) Lapsed license renewal fee, \$400.

(2.4 added Apr. 3, 2012, P.L.209, No.21)

Section 2.5. Reciprocal licensing.

(a) Nonresident individuals.--

(1) An individual who is currently licensed as a resident public adjuster in another state or territory may

apply to the department for a nonresident public adjuster license. The individual shall submit to the department a completed application, proof of the individual's current home state license in a form or manner determined acceptable by the department and the required license fee.

(2) Upon receipt and review of the application, proof of the home state license in a form or manner determined acceptable by the department and the fee, the department shall issue a nonresident public adjuster license to the individual. The department may deny the application if the individual's home state does not award nonresident public adjuster licenses to resident licensees of this Commonwealth on the same basis.

(b) Nonresident business entities.--

(1) Upon designating one or more individuals licensed under this act to be responsible for the business entity's compliance with the insurance laws and regulations of this Commonwealth, a business entity which is currently licensed as a resident public adjuster in another state or territory may apply to the department for a nonresident public adjuster license. The designated licensees of the business entity shall remit to the department a completed business entity application, proof of the business entity's current home state license in a form or manner determined acceptable by the department and the required license fee.

(2) Upon receipt and review of the application, proof of the home state license in a form or manner determined acceptable by the department and the fee, the department shall issue a nonresident public adjuster license to the business entity if the department determines that the business entity, its partners, members or officers and its designated licensees are licensees in good standing in the business entity's home state. The department may deny the application if the business entity's home state does not award nonresident public adjuster licenses to resident licensees of this Commonwealth on the same basis.

(2.5 added Apr. 3, 2012, P.L.209, No.21)

Section 3. (Reserved).

(3 amended Apr. 3, 2012, P.L.209, No.21)

Section 3.1. Written disclosure of financial interest.

(a) Requirement.--A public adjuster shall provide the insured a written disclosure concerning a direct or indirect financial interest the public adjuster has with another party involved in an aspect of the claim other than the salary, fee, commission or other consideration established in the written contract with the insured, including ownership of or compensation expected to be received from a construction firm, building appraisal firm, motor vehicle repair shop or another firm that provides estimates for work or that performs work in conjunction with damages caused by the insured loss on which the public adjuster is engaged.

(b) Definition.--As used in this section, the term "firm" shall include a corporation, partnership, association, joint-stock company or person.

(3.1 added Apr. 3, 2012, P.L.209, No.21)

Section 4. Bond.

(a) Public adjuster's bond.--Each person receiving a public adjuster's license shall, before transacting any business thereunder, execute and deliver to the Insurance Commissioner a bond in the minimum penal sum of \$20,000 with such sureties as the Insurance Commissioner may approve.

(b) (Reserved).

(c) Condition of bond.--The bond of the public adjuster shall be conditioned that said public adjuster will faithfully comply with all the requirements of this act and shall not embezzle, take, secrete or otherwise dispose of or fraudulently withhold, appropriate, lend, invest or otherwise use or apply any money or substitutes for money or any salvage, goods or property received by him as such public adjuster or employee of a public adjuster, contrary to the instructions or without the consent of the assured or his legal representative. Any person, firm or corporation who has entered into a contract with a public adjuster, as provided in section 5, and who shall suffer loss by reason of the failure of the public adjuster to comply with this act and faithfully perform his duties shall have the right to intervene and be made a party to any action instituted by the Commonwealth on the bond of the public adjuster and to have his, her or its rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the Commonwealth. If the amount of the liability of the surety on said bond is sufficient to pay the full amount due the Commonwealth, the remainder shall be distributed pro rata among said intervenors. If no suit should be brought by the Commonwealth of Pennsylvania, upon application therefore and furnishing affidavit to the department that loss has been suffered by reason of failure of the public adjuster to comply with this act or faithfully perform his duties, such insured shall be furnished with a certified copy of said bond, upon which he, she or it shall have a right of action, and shall be and are hereby authorized to bring suit in the name of the Commonwealth for his, her or its use and benefit against said public adjuster and his sureties and to prosecute the same to final judgment and execution. Where suit is instituted by any such insureds on the bond of the public adjuster, it shall be commenced within one year after the performance and final settlement of said contract, and not later. Where suit is so instituted by an insured or insureds, no other action shall be brought by any other claimant, but any other claimant may file his claim in the action first brought and be made party thereto within one year from the completion of the work under said contract, and not later. If two or more actions be brought on the same day, the action in which the largest claim is demanded shall be regarded as the first action. Any creditor who has brought an action within one year as aforesaid, but after suit brought by another creditor or on the same day, may intervene in the suit first brought within the year, notwithstanding the fact that the intervention in such case be after the expiration of the year, provided said intervention be made within 30 days after the expiration of the year. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into the court, for distribution among said claimants and creditors, the full amount of the surety's liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the Commonwealth by reason of the execution of said bond, and, upon so doing, the surety will be relieved from further liability. In all suits instituted under the provisions of this act, such personal notice of the pendency of such suits, informing them of their right to intervene, as the court may order, shall be given to all known creditors and, in addition thereto, notice shall be given by publication in newspapers of general circulation, published in the county or

municipality where the contract was performed, once a week for at least three successive weeks: Provided, however, That, when such suit has begun within three weeks of the end of the year within which suit may be brought, said notice by publication shall be only for the period intervening between the time of instituting such suit and the end of the year.

(4 amended Apr. 3, 2012, P.L.209, No.21)

Section 5. Contract.

(a) Written contract required.--No public adjuster shall, directly or indirectly, act within this Commonwealth as a public adjuster without having first entered into a contract, in writing, on a form approved by the department and executed in duplicate by the public adjuster and the insured or a duly authorized representative. One copy of this contract shall be kept on file by the public adjuster, available at all times for inspection by the department. The department shall disapprove a contract form if, in the department's opinion, the contract or its provisions:

- (1) Fail to comply with this section.
- (2) Are unreasonable.
- (3) Are contrary to the interests of the public.
- (4) Are misleading or unfair to the insured.

At the department's discretion, the department may also require the submission of advertising or solicitation material.

(a.1) Rescission.--A contract with a public adjuster may be rescinded by any person signing the contract.

(a.2) Disclosure.--The contracts shall disclose the following items with each of these items separately signed or initialed by the insured and the public adjuster:

- (1) That the insured has the right to rescind the contract within three calendar days after signature.
- (2) Fees to be charged or assessed by the public adjuster together with an explanation about how the fees will come from a portion of the claims payment, if any, made by the insurer under the policy and are not in addition to the payments.
- (3) That the adjuster will provide the insured a copy of an estimate or report of losses and, upon the insured's request, any supporting documentation it sends to the insurer.
- (4) That the public adjuster is not a representative or employee of the insurer and is an independent licensee of the department.

(a.3) Regulations.--The Insurance Commissioner may issue regulations to assure the implementation of this section.

(b) Contracts only authorized by insured against his own carrier.--No public adjuster may adjust or solicit a contract for the adjustment of any claim for losses or damages on behalf of any person except claims by an insured against his own insurance carrier.

(c) Personal injury and automobile property damage claims prohibited.--No public adjuster shall act in any manner in relation to claims for personal injury or automobile property damage.

(d) Contracts limited to adjustment of insurance losses.--No public adjuster shall, directly or indirectly, through or with any person, partnership, corporation or association in which it has an indirect or beneficial interest, enter into any contract with any insured for the repair, replacement, restoration, renovation or demolition of damaged property, real or personal, at any time prior to the date a verdict or award

is entered or payment is received from the insurance carrier, whichever event shall occur first.

(5 amended Apr. 3, 2012, P.L.209, No.21)

Section 6. Revocation, etc., of license.

(a) Grounds for fines, suspensions or revocations.--Committing any of the following acts shall be grounds for fine, suspension or revocation of a public adjuster's license:

(1) Material misrepresentation of the terms and effect of any insurance contract.

(2) Engaging in, or attempting to engage in, any fraudulent or misleading conduct with respect to a claim or loss that the licensee is adjusting. Misleading conduct shall not be considered a felony unless the conduct constitutes fraud.

(3) Misrepresentation of the services offered or the fees or commission to be charged.

(4) Conviction by any court of or a plea of nolo contendere to a felony under the laws of this Commonwealth, any other state, the United States or any territory or foreign country.

(5) Misappropriation, conversion to his own use or improper withholding of moneys held on behalf of another party to the contract.

(6) Paying or causing to be paid any commission or any other compensation or thing of value whatsoever to any agent, broker, attorney, partner, clerk, servant, employee or any other person, whosoever hired by or employed by or with any insured named in any policy of insurance as an inducement or solicitation to influence the contracting of services for the services of public adjuster with any insured. A public adjuster may utilize the services of any person authorized by the insurer to assist in connection with an insurance claim: Provided, That said services must not conflict with the services required to be rendered by a public adjuster.

(7) Receiving, directly or indirectly, any compensation, commission or thing of value or profit from any person, partnership, association or corporation engaged or interested in the business of salvage, repair, replacement, restoration, renovation or demolition of damaged property, real or personal, unless such compensation, commission or thing of value or profit is disclosed to the insured and agreed to in the contract.

(8) (Reserved).

(9) Closing of a licensee's office for a period in excess of 30 days, unless granted permission by the Insurance Commissioner to close the office for a longer period.

(10) Violation of any provision of this act or any rule or regulation promulgated, published and adopted thereunder.

(11) Making a material misstatement in the application for any such license.

(12) The commission of fraudulent practices.

(13) Demonstrating, in the judgment of the Insurance Commissioner, his incompetency or untrustworthiness to transact the business of a public adjuster.

(14) Having a public adjuster license or other professional license, or its equivalent, denied, suspended or revoked by a governmental entity or self-regulating professional association.

(15) Failing to comply with an administrative or court order imposing a child support obligation.

(16) Failing to pay State income tax or comply with any administrative or court order directing the payment of State income tax.

(17) Committing a misdemeanor that involves the misuse or theft of money or property belonging to another person.

(18) Failing to notify the department of a change of address within 30 days.

(19) Soliciting business during the progress of a loss-producing occurrence such as a fire, tornado, severe storm or other catastrophe where the immediate safety and security of persons and property is paramount. For purposes of this paragraph, it shall be presumed that the loss-producing occurrence is still in progress while emergency responders are present at the scene, unless the emergency responders have determined that the emergency status of the event has ended.

(20) Prohibiting communication between the insurer and the insured.

(21) Failing to notify the insured's insurer within two calendar days of entering into a contract.

(b) Civil penalty.--Regardless of whether the public adjuster was licensed or not, the Insurance Commissioner may, at his discretion, in cases warranting such action, impose a civil penalty of not more than \$5,000 for each and every violation of this act.

(c) Notice and hearing.--Before the Insurance Commissioner shall take any action as above set forth, he shall give written notice to the person accused of violating the law, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such a hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable. When the Insurance Commissioner shall have taken any actions as above set forth, the party aggrieved may appeal therefrom to the Commonwealth Court.

(d) Adjusters responsible for conduct of employees.--Any public adjuster employing, or using the services of, any person to solicit business shall be held fully responsible for the conduct of that person in connection with business dealings, including, but not limited to, making certain that such person has a valid license as a public adjuster.

(6 amended Apr. 3, 2012, P.L.209, No.21)

Section 7. Violations.

A person that willfully violates section 6(a)(1), (2), (3), (5), (6) or (12) shall be guilty of a felony of the third degree. A violation of another provision of this act shall constitute a misdemeanor and, upon conviction, a violator shall be sentenced to pay a fine of not less than \$500 nor more than \$1,000 for each violation and conviction.

(7 amended Apr. 3, 2012, P.L.209, No.21)

Section 7.1. Civil remedy.

In addition to the authority of the Attorney General under Article XI of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, and 18 Pa.C.S. § 4117 (relating to insurance fraud), if the Attorney General finds that there has been a violation of this act, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, under the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(7.1 added Apr. 3, 2012, P.L.209, No.21)

Section 8. Administration and enforcement.

(a) Insurance Commissioner to administer and enforce act.--The Insurance Commissioner is hereby charged with the administration and enforcement of this act and shall prescribe, publish, adopt and promulgate rules and regulations in connection herewith.

(b) Insurance Commissioner may bring actions.--The Insurance Commissioner or a duly authorized representative may maintain an action for an injunction or other process against any person or other entity to restrain and prevent any of the foregoing from transacting business as a public adjuster without a license. Any such action shall be instituted in the court of common pleas in any county where the alleged unlicensed activity occurred. Such court may issue a temporary restraining order or injunction under this act but shall determine any such action on its merits as soon as possible whether in term time or in vacation. No bond shall be required of and no costs shall be taxed against the Insurance Commissioner, his duly authorized representative or the department on account of any such action.

(c) Act to be supplementary.--The provisions of this act shall be constructed as supplementary to all other acts dealing with the same subject matter. No action brought under the provisions of this act shall prevent the prosecution or institution of any civil or criminal action otherwise provided by law for violation of any licensing act or departmental rule or regulation promulgated thereunder.

(8 amended Apr. 3, 2012, P.L.209, No.21)

Section 9. Repeals.

(a) Specific act.--The act of April 25, 1921 (P.L.276, No.136), entitled, as amended, "An act requiring persons, partnerships, associations, or corporations advertising for or soliciting business as adjusters of claims within this Commonwealth for loss or damage arising out of policies of insurance, surety, or indemnity on property, persons, or insurable business interests within this Commonwealth, to be licensed by the Insurance Commissioner; requiring persons, partnerships, associations, or corporations acting as solicitors for said adjusters to be licensed by the Insurance Commissioner; regulating the issuance and revocation of such licenses; prescribing certain conditions for the transaction of such business; providing for the filing of bonds by public adjusters and public adjuster solicitors, and for recovery thereon by parties in interest; and providing penalties," is repealed.

(b) General repeal.--All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 10. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

Section 11. Effective date.

This act shall take effect immediately.