

HOUSE BILL 136

C4

7lr0067

By: **Chair, Economic Matters Committee (By Request – Departmental – Maryland Insurance Administration)**

Introduced and read first time: January 18, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Public Adjusters**

3 FOR the purpose of altering certain provisions concerning the licensing and practice of
4 public adjusters; adding and altering certain definitions relating to public adjusters;
5 providing an exception to licensing for certain marketing activities; repealing the
6 requirement that public adjuster license application forms include certain
7 employment disclosures; altering the title that a licensed public adjuster may use;
8 repealing the requirement for certain experience before taking a certain written
9 examination; establishing certain requirements for the payment of fees,
10 commissions, or other consideration to a public adjuster; requiring a public adjuster
11 contract to be in writing and to include certain terms; requiring a public adjuster to
12 make certain disclosures to an insured in a certain manner; requiring a public
13 adjuster to deposit certain funds in an escrow account in a certain manner; requiring
14 a public adjuster to maintain certain records for a certain period; providing for the
15 examination of certain records; requiring that certain records be kept confidential in
16 a certain manner; establishing certain standards of conduct for a public adjuster;
17 establishing certain ethical requirements for a public adjuster; requiring a public
18 adjuster to disclose certain administrative actions or criminal prosecution to the
19 Maryland Insurance Commissioner; making stylistic changes; providing for the
20 application of this Act; providing for a delayed effective date; and generally relating
21 to public adjusters.

22 BY repealing and reenacting, with amendments,

23 Article – Insurance

24 Section 10–401 through 10–403, 10–405 through 10–407, 10–409, and 10–409.1

25 Annotated Code of Maryland

26 (2011 Replacement Volume and 2016 Supplement)

27 BY repealing and reenacting, without amendments,

28 Article – Insurance

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 10–410
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

BY adding to
Article – Insurance
Section 10–411 through 10–416
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

10–401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Business entity” has the meaning stated in § [10–101(c)] **10–101** of this title.

(c) **“HOME STATE” MEANS:**

**(1) THE STATE WHERE A PUBLIC ADJUSTER’S PRINCIPAL PLACE OF
RESIDENCE OR PRINCIPAL PLACE OF BUSINESS IS LOCATED; OR**

**(2) THE STATE A PUBLIC ADJUSTER DESIGNATES UNDER §
10–409(A)(2) OF THIS SUBTITLE.**

(d) **“IMMEDIATE FAMILY MEMBER” MEANS A PUBLIC ADJUSTER’S:**

(1) SPOUSE;

(2) CHILD;

(3) CHILD’S SPOUSE;

(4) PARENT;

(5) SPOUSE’S PARENT;

(6) SIBLING; OR

(7) SIBLING’S SPOUSE.

1 ~~[(c)]~~ (E) “License” means a license issued by the Commissioner to act as a public
2 adjuster.

3 (F) **“MARKETING” MEANS THE DISTRIBUTION OF ADVERTISING MATERIALS**
4 **REGARDING THE SERVICES OF A PUBLIC ADJUSTER.**

5 ~~[(d)]~~ (G) (1) “Public adjuster” means a person [that:

6 (i) solicits business or represents itself to the public as an adjuster
7 of first party insurance claims for losses or damages arising under insurance contracts that
8 insure the real or personal property, or both, of an insured;

9 (ii) receives compensation for investigating, appraising, evaluating,
10 or otherwise giving advice or help to an insured in the adjustment of claims for losses or
11 damages arising under insurance contracts that insure the real or personal property, or
12 both, of an insured; or

13 (iii) for compensation, directly or indirectly, solicits business,
14 investigates or adjusts losses, or advises an insured about insurance claims for losses or
15 damages arising under insurance contracts that insure the real or personal property, or
16 both, of an insured for another person engaged in the business of adjusting losses or
17 damages arising under insurance contracts that insure the real or personal property, or
18 both, of an insured] **WHO FOR COMPENSATION OR ANY OTHER THING OF VALUE:**

19 (I) **ACTS OR AIDS, SOLELY IN RELATION TO FIRST-PARTY**
20 **CLAIMS ARISING UNDER AN INSURANCE POLICY THAT INSURES THE REAL OR**
21 **PERSONAL PROPERTY OF THE INSURED, ON BEHALF OF THE INSURED IN**
22 **NEGOTIATING FOR, OR EFFECTING THE SETTLEMENT OF, A CLAIM FOR LOSS OR**
23 **DAMAGE COVERED BY AN INSURANCE POLICY;**

24 (II) **EXCEPT AS PROVIDED IN § 10-403 OF THIS SUBTITLE,**
25 **DIRECTLY OR INDIRECTLY SOLICITS FOR EMPLOYMENT AS A PUBLIC ADJUSTER OF**
26 **INSURANCE CLAIMS, SOLICITS BUSINESS, OR REPRESENTS ONESELF TO THE PUBLIC**
27 **AS A PUBLIC ADJUSTER OF FIRST-PARTY INSURANCE CLAIMS FOR LOSSES OR**
28 **DAMAGES ARISING OUT OF INSURANCE POLICIES THAT INSURE REAL OR PERSONAL**
29 **PROPERTY; OR**

30 (III) **INVESTIGATES OR ADJUSTS LOSSES, OR ADVISES AN**
31 **INSURED ABOUT FIRST-PARTY CLAIMS FOR LOSSES OR DAMAGES ARISING OUT OF**
32 **AN INSURANCE POLICY THAT INSURES REAL OR PERSONAL PROPERTY FOR**
33 **ANOTHER PERSON ENGAGED IN THE BUSINESS OF ADJUSTING LOSSES OR DAMAGES**
34 **COVERED BY AN INSURANCE POLICY, FOR THE INSURED.**

35 (2) “Public adjuster” does not include a person that investigates, adjusts,
36 or appraises claims for loss or damage covered by a motor vehicle insurance policy.

1 10-402.

2 This subtitle does not apply to:

3 (1) an adjuster for or an insurance producer or employee of an insurer or
4 group of insurers under common control or ownership that, as representative of the insurer
5 or group, adjusts losses or damages under policies issued by the insurer or group;

6 (2) an insurance producer that acts as an adjuster without compensation
7 for an insured for whom the insurance producer is acting as an insurance producer; [or]

8 (3) an attorney at law who does not:

9 (i) regularly act as a public adjuster; and

10 (ii) represent to the public by sign, advertisement, or otherwise that
11 the attorney at law acts as a public adjuster;

12 (4) A PERSON WHO NEGOTIATES OR SETTLES CLAIMS ARISING
13 UNDER:

14 (I) A LIFE, HEALTH, OR MOTOR VEHICLE INSURANCE POLICY;
15 OR

16 (II) AN ANNUITY CONTRACT;

17 (5) A PERSON EMPLOYED ONLY FOR THE PURPOSE OF OBTAINING
18 FACTS SURROUNDING A LOSS OR FURNISHING TECHNICAL ASSISTANCE TO A PUBLIC
19 ADJUSTER, INCLUDING A PHOTOGRAPHER, AN ESTIMATOR, A PRIVATE
20 INVESTIGATOR, AN ENGINEER, AND A HANDWRITING EXPERT;

21 (6) A LICENSED HEALTH CARE PROVIDER, OR AN EMPLOYEE OF A
22 LICENSED HEALTH CARE PROVIDER, WHO PREPARES OR FILES A HEALTH CLAIM
23 FORM ON BEHALF OF A PATIENT; OR

24 (7) A PERSON WHO SETTLES SUBROGATION CLAIMS BETWEEN
25 INSURERS.

26 10-403.

27 (a) Except as otherwise provided in this subtitle, a person must obtain a license
28 before the person acts as a public adjuster in the State.

(b) **MARKETING ON BEHALF OF A PUBLIC ADJUSTER, AS DEFINED IN § 10-401 OF THIS SUBTITLE, DOES NOT REQUIRE A LICENSE.**

(c) A person that violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months or both for each violation.

10-405.

(a) An applicant for an initial license shall file with the Commissioner an application on the form that the Commissioner provides.

(b) The application form shall require:

(1) the name and address of the applicant;

(2) whether any other insurance license or certificate has been issued to the applicant;

(3) [the business in which the applicant has been engaged for the 5 years immediately preceding the date of application and, if employed by another, the name and address of each employer;

(4)] for a business entity applicant:

(i) the name of the individual licensed public adjuster employed by the business entity who is designated to act as the business entity's principal contact with the Administration; and

(ii) the name and address of each licensed public adjuster employed by the business entity, each individual who has direct control over its fiscal management, each owner, partner, member, or manager of the business entity, and each director of a business entity that is a corporation; and

[(5)] (4) any other information that the Commissioner requires of applicants to enable the Commissioner to determine the trustworthiness and competence of the applicant to transact business as a public adjuster so as to safeguard the interests of the public.

(c) An application shall be signed under oath:

(1) in the case of an individual applicant, by the applicant; or

(2) in the case of an applicant that is a business entity, by an individual who has direct control over its fiscal management, an owner, partner, member, or manager of the business entity, or a director of a business entity that is a corporation.

1 10-406.

2 [(a)] The Commissioner shall issue a license to each applicant who meets the
3 requirements of this subtitle.

4 [(b)] A person that is licensed as a public adjuster under this subtitle may be known
5 as a “certified public adjuster”.]

6 10-407.

7 The Commissioner [shall] **MAY** adopt regulations that specify:

8 (1) the scope, type, conduct, and grading of the written examination; **AND**

9 (2) the frequency, times, and locations within the State where the written
10 examination will be held[; and

11 (3) the experience requirements for an individual applicant to be eligible to
12 take a written examination].

13 10-409.

14 (a) **(1)** Except as otherwise provided in this section, the Commissioner shall
15 waive the license requirements for an applicant who is not a resident of the State if:

16 [(1)] **(I)** the applicant has a valid public adjuster license from the home
17 state of the applicant; and

18 [(2)] **(II)** the home state of the applicant awards nonresident public
19 adjuster licenses to residents of the State on the same basis.

20 **(2) IF NEITHER THE STATE WHERE THE PUBLIC ADJUSTER**
21 **MAINTAINS A PRINCIPAL PLACE OF RESIDENCE NOR THE STATE WHERE THE PUBLIC**
22 **ADJUSTER MAINTAINS A PRINCIPAL PLACE OF BUSINESS HAS A LAW GOVERNING**
23 **PUBLIC ADJUSTERS SUBSTANTIALLY SIMILAR TO THIS SUBTITLE, THE PUBLIC**
24 **ADJUSTER MAY DECLARE ANOTHER STATE WHERE THE PUBLIC ADJUSTER IS**
25 **LICENSED AND ACTS AS A PUBLIC ADJUSTER TO BE THE PUBLIC ADJUSTER’S HOME**
26 **STATE FOR PURPOSES OF THIS SUBTITLE.**

27 (b) Unless denied a license [pursuant to] **UNDER** § 10-410 of this subtitle, a
28 person [that] **WHO** is not a resident of the State may obtain a nonresident license to act as
29 a public adjuster if:

(1) the person currently is licensed as a resident public adjuster and in good standing in the person's home state;

(2) the person files an application on the form that the Commissioner provides;

(3) the person has paid the applicable fee pursuant to § 2-112 of this article; and

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

(c) A person who is not a resident of this State and whose home state does not issue a public adjuster license must meet the license requirements of §§ 10-404 and 10-405 of this subtitle.

10-409.1.

(A) Except as otherwise expressly provided by law, a person may not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, any valuable consideration to an insured as an inducement to use the services of a public adjuster.

(B) A PUBLIC ADJUSTER MAY PAY A COMMISSION, SERVICE FEE, OR ANY OTHER VALUABLE CONSIDERATION TO A PERSON ONLY IF THAT PERSON IS REQUIRED TO BE LICENSED, AND IS LICENSED, AS A PUBLIC ADJUSTER.

(C) A PERSON MAY NOT ACCEPT A COMMISSION, SERVICE FEE, OR ANY OTHER VALUABLE CONSIDERATION IF THE PERSON IS REQUIRED TO BE LICENSED, BUT IS NOT LICENSED, AS A PUBLIC ADJUSTER.

10-410.

(a) The Commissioner may deny a license to an applicant or suspend, revoke, or refuse to renew or reinstate a license after notice and opportunity for a hearing under §§ 2-210 through 2-214 of this article if the applicant or licensee:

(1) has violated this article;

(2) has made a material misstatement in the application for the license;

(3) has engaged in fraudulent or dishonest practices;

(4) has demonstrated incompetency or untrustworthiness to act as a public adjuster;

(5) has misappropriated, converted, or unlawfully withheld money that belongs to an insurer, insurance producer, insured, or other person;

(6) has willfully and materially misrepresented the provisions of a policy;

(7) has been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust;

(8) has willfully failed to comply with or has willfully violated a proper order or regulation of the Commissioner;

(9) has failed or refused to pay on demand money that belongs to an insurer, insurance producer, insured, or other person entitled to the money;

(10) is not carrying on or does not intend to carry on business in good faith while representing to the public that the person is a public adjuster;

(11) has been denied a license or has had a license suspended or revoked in another state; or

(12) has knowingly employed or knowingly continued to employ an individual acting in a fiduciary capacity who has been convicted within the preceding 10 years of a felony or crime of moral turpitude.

(b) (1) The Commissioner may deny a license to a business entity applicant or suspend, revoke, or refuse to renew or reinstate the license of a business entity after notice and opportunity for a hearing under §§ 2–210 through 2–214 of this article, if an individual listed in paragraph (2) of this subsection:

(i) violates any provision of this article;

(ii) is convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust; or

(iii) has any professional license suspended or revoked for a fraudulent or dishonest practice.

(2) The sanctions provided for under this subsection may be imposed on a business entity if the violation was committed by an individual who:

(i) is a public adjuster employed by the business entity;

(ii) 1. in the case of a limited liability company, is an officer, director, member, or manager;

2. in the case of a partnership, is a partner; and

1 3. in the case of a corporation, is a director, officer, or
2 controlling owner; or

3 (iii) has direct control over the fiscal management of the business
4 entity.

5 (c) Instead of or in addition to suspending or revoking the license of a public
6 adjuster, the Commissioner may impose on the licensee a penalty of not less than \$100 but
7 not exceeding \$500 for each violation of this article.

8 (d) Instead of or in addition to suspending or revoking the license, the
9 Commissioner may require that restitution be made to any citizen who has suffered
10 financial injury because of the violation of this article.

11 (e) If the license is suspended under this section, the Commissioner may require
12 the individual to pass an examination and file a new application before the suspension is
13 lifted.

14 **10-411.**

15 **(A) A CONTRACT FOR PUBLIC ADJUSTER SERVICES SHALL:**

16 **(1) BE IN WRITING;**

17 **(2) BE TITLED “PUBLIC ADJUSTER CONTRACT”; AND**

18 **(3) CONTAIN THE FOLLOWING:**

19 **(I) THE LEGIBLE FULL NAME OF THE PUBLIC ADJUSTER**
20 **SIGNING THE CONTRACT, AS SPECIFIED IN THE RECORDS OF THE ADMINISTRATION;**

21 **(II) THE PERMANENT BUSINESS ADDRESS AND PHONE NUMBER**
22 **OF THE PUBLIC ADJUSTER IN THE PUBLIC ADJUSTER’S HOME STATE;**

23 **(III) THE LICENSE NUMBER ISSUED BY THE ADMINISTRATION TO**
24 **THE PUBLIC ADJUSTER;**

25 **(IV) THE INSURED’S FULL NAME, STREET ADDRESS, INSURANCE**
26 **COMPANY NAME, AND POLICY NUMBER, IF KNOWN OR ON NOTIFICATION;**

27 **(V) A DESCRIPTION OF THE LOSS AND THE LOCATION OF THE**
28 **LOSS, IF APPLICABLE;**

29 **(VI) A DESCRIPTION OF SERVICES TO BE PROVIDED TO THE**
30 **INSURED;**

(VII) THE SIGNATURES OF THE PUBLIC ADJUSTER AND THE INSURED;

(VIII) THE DATES WHEN THE CONTRACT WAS SIGNED BY THE PUBLIC ADJUSTER AND THE INSURED, RESPECTIVELY;

(IX) AN ATTESTATION THAT THE PUBLIC ADJUSTER IS FULLY BONDED IN ACCORDANCE WITH STATE LAW;

(X) NOTIFICATION TO THE INSURED THAT:

1. THE PUBLIC ADJUSTER MAY INCUR OUT-OF-POCKET EXPENSES ON BEHALF OF THE INSURED; AND

2. THESE EXPENSES INCURRED BY THE PUBLIC ADJUSTER AND APPROVED BY THE INSURED WILL BE REIMBURSED TO THE PUBLIC ADJUSTER FROM THE INSURANCE PROCEEDS; AND

(XI) THE FULL SALARY, FEE, COMMISSION, COMPENSATION, OR OTHER CONSIDERATION THE PUBLIC ADJUSTER IS TO RECEIVE FOR SERVICES.

(B) (1) THE PUBLIC ADJUSTER CONTRACT MAY SPECIFY THAT THE PUBLIC ADJUSTER BE NAMED AS A CO-PAYEE ON AN INSURER'S PAYMENT OF A CLAIM.

(2) IF THE COMPENSATION IS BASED ON A SHARE OF THE INSURANCE SETTLEMENT, THE PUBLIC ADJUSTER CONTRACT SHALL SPECIFY THE EXACT PERCENTAGE TO BE PAID.

(3) (I) A COMPENSATION PROVISION IN A PUBLIC ADJUSTER CONTRACT MAY NOT BE REDACTED IN ANY COPY OF THE CONTRACT PROVIDED TO THE COMMISSIONER.

(II) A REDACTION OF A COMPENSATION PROVISION CONSTITUTES AN OMISSION OF MATERIAL FACT IN VIOLATION OF THIS SUBTITLE.

(C) IF THE INSURER, WITHIN 72 HOURS AFTER THE TIME 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:

(1) MAY NOT RECEIVE A COMMISSION CONSISTING OF A PERCENTAGE OF THE TOTAL AMOUNT PAID BY AN INSURER TO RESOLVE A CLAIM;

1 **(2) SHALL INFORM THE INSURED THAT LOSS RECOVERY AMOUNT**
2 **MIGHT NOT BE INCREASED BY THE INSURER; AND**

3 **(3) MAY BE ENTITLED ONLY TO REASONABLE COMPENSATION FROM**
4 **THE INSURED FOR SERVICES THE PUBLIC ADJUSTER PROVIDES ON BEHALF OF THE**
5 **INSURED, BASED ON THE TIME SPENT ON A CLAIM AND EXPENSES INCURRED BY THE**
6 **PUBLIC ADJUSTER, UNTIL THE CLAIM IS PAID OR THE INSURED RECEIVES A**
7 **WRITTEN COMMITMENT TO PAY FROM THE INSURER.**

8 **(D) (1) A PUBLIC ADJUSTER SHALL PROVIDE TO THE INSURED A WRITTEN**
9 **DISCLOSURE SIGNED BY THE PUBLIC ADJUSTER AND THE INSURED CONCERNING**
10 **ANY DIRECT OR INDIRECT FINANCIAL INTEREST THAT THE PUBLIC ADJUSTER OR**
11 **ANY IMMEDIATE FAMILY MEMBER OF THE PUBLIC ADJUSTER HAS WITH ANY OTHER**
12 **PARTY THAT IS INVOLVED IN ANY ASPECT OF THE CLAIM, OTHER THAN THE SALARY,**
13 **FEE, COMMISSION, OR OTHER CONSIDERATION ESTABLISHED IN THE WRITTEN**
14 **CONTRACT WITH THE INSURED.**

15 **(2) THE DISCLOSURE SHALL INCLUDE ANY OWNERSHIP OF, OR ANY**
16 **COMPENSATION EXPECTED TO BE RECEIVED FROM, ANY CONSTRUCTION FIRM,**
17 **SALVAGE FIRM, BUILDING APPRAISAL FIRM, MOTOR VEHICLE REPAIR SHOP, OR ANY**
18 **OTHER FIRM THAT PROVIDES ESTIMATES FOR WORK, OR THAT PERFORMS ANY**
19 **WORK, IN CONJUNCTION WITH DAMAGES CAUSED BY THE INSURED LOSS ON WHICH**
20 **THE PUBLIC ADJUSTER IS ENGAGED.**

21 **(E) A PUBLIC ADJUSTER CONTRACT MAY NOT CONTAIN ANY PROVISION**
22 **THAT:**

23 **(1) ALLOWS THE PUBLIC ADJUSTER'S PERCENTAGE FEE TO BE**
24 **COLLECTED WHEN MONEY IS DUE FROM, BUT NOT YET PAID BY, AN INSURANCE**
25 **COMPANY;**

26 **(2) ALLOWS A PUBLIC ADJUSTER TO COLLECT THE ENTIRE FEE FROM**
27 **THE FIRST CHECK ISSUED BY AN INSURANCE COMPANY, RATHER THAN AS A**
28 **PERCENTAGE OF EACH CHECK ISSUED BY AN INSURANCE COMPANY;**

29 **(3) REQUIRES THE INSURED TO AUTHORIZE AN INSURANCE COMPANY**
30 **TO ISSUE A CHECK ONLY IN THE NAME OF THE PUBLIC ADJUSTER; OR**

31 **(4) PRECLUDES EITHER PARTY FROM PURSUING ANY CIVIL REMEDY.**

32 **(F) BEFORE THE SIGNING OF THE PUBLIC ADJUSTER CONTRACT, THE**
33 **PUBLIC ADJUSTER SHALL PROVIDE THE INSURED WITH A SEPARATE DISCLOSURE**

1 DOCUMENT SIGNED BY THE INSURED REGARDING THE CLAIM PROCESS THAT
2 SUBSTANTIALLY STATES:

3 “(1) PROPERTY INSURANCE POLICIES OBLIGATE THE INSURED TO
4 PRESENT A CLAIM TO THE INSURANCE COMPANY FOR CONSIDERATION. THERE ARE
5 THREE TYPES OF ADJUSTERS THAT COULD BE INVOLVED IN THAT PROCESS. THE
6 DEFINITIONS OF THE THREE TYPES ARE:

7 (I) “COMPANY ADJUSTER” MEANS AN INSURANCE ADJUSTER
8 WHO IS AN EMPLOYEE OF AN INSURANCE COMPANY. A COMPANY ADJUSTER
9 REPRESENTS THE INTEREST OF THE INSURANCE COMPANY AND IS PAID BY THE
10 INSURANCE COMPANY. A COMPANY ADJUSTER WILL NOT CHARGE YOU A FEE.

11 (II) “INDEPENDENT ADJUSTER” MEANS AN INSURANCE
12 ADJUSTER WHO IS HIRED ON A CONTRACTUAL BASIS BY AN INSURANCE COMPANY
13 TO REPRESENT THE INSURANCE COMPANY’S INTEREST IN THE SETTLEMENT OF THE
14 CLAIM. AN INDEPENDENT ADJUSTER IS PAID BY YOUR INSURANCE COMPANY. AN
15 INDEPENDENT ADJUSTER WILL NOT CHARGE YOU A FEE.

16 (III) “PUBLIC ADJUSTER” MEANS AN INSURANCE ADJUSTER
17 WHO DOES NOT WORK FOR ANY INSURANCE COMPANY. A PUBLIC ADJUSTER WORKS
18 FOR THE INSURED TO ASSIST IN THE PREPARATION, PRESENTATION, AND
19 SETTLEMENT OF A CLAIM. THE INSURED HIRES A PUBLIC ADJUSTER BY SIGNING A
20 CONTRACT AGREEING TO PAY THE PUBLIC ADJUSTER A FEE OR COMMISSION BASED
21 ON A PERCENTAGE OF THE SETTLEMENT, OR ANOTHER METHOD OF COMPENSATION.

22 (2) THE INSURED IS NOT REQUIRED TO HIRE A PUBLIC ADJUSTER TO
23 HELP THE INSURED MEET THE INSURED’S OBLIGATIONS UNDER THE POLICY BUT
24 HAS THE RIGHT TO DO SO.

25 (3) THE INSURED HAS THE RIGHT TO INITIATE DIRECT
26 COMMUNICATIONS WITH THE INSURED’S ATTORNEY, THE INSURER, THE INSURER’S
27 ADJUSTER, THE INSURER’S ATTORNEY, OR ANY OTHER PERSON REGARDING THE
28 SETTLEMENT OF THE INSURED’S CLAIM.

29 (4) A PUBLIC ADJUSTER IS NOT A REPRESENTATIVE OR AN EMPLOYEE
30 OF THE INSURER.

31 (5) THE SALARY, FEE, COMMISSION, OR OTHER CONSIDERATION OF A
32 PUBLIC ADJUSTER IS THE OBLIGATION OF THE INSURED, NOT THE INSURER.”.

(G) (1) THE PUBLIC ADJUSTER CONTRACT SHALL BE EXECUTED IN DUPLICATE TO PROVIDE AN ORIGINAL CONTRACT TO THE PUBLIC ADJUSTER AND AN ORIGINAL CONTRACT TO THE INSURED.

(2) THE PUBLIC ADJUSTER'S ORIGINAL CONTRACT SHALL BE AVAILABLE AT ALL TIMES FOR INSPECTION WITHOUT NOTICE BY THE COMMISSIONER.

(3) A CONTRACT WITH AN ELECTRONIC SIGNATURE SHALL CONSTITUTE AN ORIGINAL CONTRACT.

(H) THE PUBLIC ADJUSTER CONTRACT SHALL CONTAIN A STATEMENT THAT:

(1) THE INSURED HAS THE RIGHT TO RESCIND OR CANCEL THE CONTRACT WITHIN 3 BUSINESS DAYS AFTER THE DATE THE CONTRACT WAS SIGNED;

(2) THE NOTICE OF RESCISSION OR CANCELLATION SHALL BE IN WRITING AND MAILED OR DELIVERED TO THE PUBLIC ADJUSTER AT THE ADDRESS STATED IN THE CONTRACT WITHIN THAT 3-BUSINESS-DAY PERIOD; AND

(3) IF THE INSURED EXERCISES THE RIGHT TO RESCIND OR CANCEL THE CONTRACT, THE PUBLIC ADJUSTER SHALL, WITHIN 15 BUSINESS DAYS AFTER THE PUBLIC ADJUSTER RECEIVES THE NOTICE, RETURN ANYTHING OF VALUE GIVEN BY THE INSURED UNDER THE CONTRACT.

(I) THE PUBLIC ADJUSTER SHALL GIVE THE INSURED WRITTEN NOTICE OF THE INSURED'S RIGHTS UNDER THE MARYLAND CONSUMER PROTECTION ACT.

10-412.

A PUBLIC ADJUSTER WHO RECEIVES, ACCEPTS, OR HOLDS ANY FUNDS ON BEHALF OF AN INSURED TOWARD THE SETTLEMENT OF A CLAIM FOR LOSS OR DAMAGE SHALL DEPOSIT THE FUNDS IN A NONINTEREST-BEARING ESCROW OR TRUST ACCOUNT IN A FINANCIAL INSTITUTION THAT IS FEDERALLY INSURED IN THE PUBLIC ADJUSTER'S HOME STATE OR WHERE THE LOSS OCCURRED.

10-413.

(A) (1) A PUBLIC ADJUSTER SHALL MAINTAIN A COMPLETE RECORD OF EACH TRANSACTION ENTERED INTO AS A PUBLIC ADJUSTER.

(2) THE RECORDS REQUIRED BY THIS SECTION SHALL INCLUDE:

1 (I) THE NAME OF THE INSURED;

2 (II) THE DATE, LOCATION, AND AMOUNT OF THE LOSS;

3 (III) A COPY OF THE CONTRACT BETWEEN THE PUBLIC
4 ADJUSTER AND THE INSURED;

5 (IV) THE NAME OF THE INSURER AND THE AMOUNT, EXPIRATION
6 DATE, AND NUMBER OF EACH POLICY CARRIED WITH RESPECT TO THE LOSS;

7 (V) AN ITEMIZED STATEMENT OF THE INSURED'S RECOVERIES;

8 (VI) AN ITEMIZED STATEMENT OF ALL COMPENSATION
9 RECEIVED BY THE PUBLIC ADJUSTER, FROM ANY SOURCE, IN CONNECTION WITH
10 THE LOSS;

11 (VII) A REGISTER OF ALL MONEY RECEIVED, DEPOSITED,
12 DISBURSED, OR WITHDRAWN IN CONNECTION WITH A TRANSACTION WITH AN
13 INSURED, INCLUDING:

14 1. FEES, TRANSFERS, AND DISBURSEMENTS FROM A
15 TRUST ACCOUNT; AND

16 2. ALL TRANSACTIONS CONCERNING ALL
17 INTEREST-BEARING ACCOUNTS;

18 (VIII) THE NAME OF THE PUBLIC ADJUSTER WHO EXECUTED THE
19 PUBLIC ADJUSTER CONTRACT;

20 (IX) THE NAME OF THE ATTORNEY REPRESENTING THE
21 INSURED, IF APPLICABLE; AND

22 (X) THE NAME OF THE CLAIMS REPRESENTATIVE OF THE
23 INSURANCE COMPANY.

24 (B) (1) THE RECORDS SHALL BE:

25 (I) MAINTAINED FOR AT LEAST 5 YEARS AFTER THE
26 TERMINATION OF THE TRANSACTION WITH AN INSURED; AND

27 (II) OPEN TO EXAMINATION BY THE COMMISSIONER AT ALL
28 TIMES.

1 **(2) ANY RECORDS REQUIRED TO BE MAINTAINED UNDER THIS**
2 **SECTION MAY BE STORED IN AN ELECTRONIC FORMAT.**

3 **(C) RECORDS SUBMITTED TO THE COMMISSIONER IN ACCORDANCE WITH**
4 **THIS SECTION THAT CONTAIN INFORMATION THAT THE PUBLIC ADJUSTER**
5 **IDENTIFIES IN WRITING AS PROPRIETARY:**

6 **(1) SHALL BE TREATED AS CONFIDENTIAL BY THE COMMISSIONER;**
7 **AND**

8 **(2) MAY NOT BE SUBJECT TO TITLE 4, SUBTITLE 2 OF THE GENERAL**
9 **PROVISIONS ARTICLE.**

10 **10-414.**

11 **(A) A PUBLIC ADJUSTER IS OBLIGATED TO:**

12 **(1) SERVE WITH OBJECTIVITY AND COMPLETE LOYALTY THE**
13 **INTEREST OF THE CLIENT ALONE; AND**

14 **(2) RENDER TO THE INSURED THE INFORMATION, COUNSEL, AND**
15 **SERVICE THAT WILL BEST SERVE THE INSURED'S INSURANCE CLAIM NEEDS AND**
16 **INTERESTS, WITHIN THE KNOWLEDGE, UNDERSTANDING, AND OPINION IN GOOD**
17 **FAITH OF THE PUBLIC ADJUSTER.**

18 **(B) A PUBLIC ADJUSTER MAY NOT ALLOW AN UNLICENSED EMPLOYEE OR**
19 **REPRESENTATIVE OF THE PUBLIC ADJUSTER TO CONDUCT BUSINESS FOR WHICH A**
20 **LICENSE IS REQUIRED UNDER THIS SUBTITLE.**

21 **(C) UNLESS FULL WRITTEN DISCLOSURE HAS BEEN MADE TO THE INSURED**
22 **IN ACCORDANCE WITH § 10-411 OF THIS SUBTITLE, A PUBLIC ADJUSTER MAY NOT**
23 **HAVE A DIRECT OR INDIRECT FINANCIAL INTEREST IN ANY ASPECT OF A CLAIM,**
24 **OTHER THAN THE SALARY, FEE, COMMISSION, OR OTHER CONSIDERATION**
25 **ESTABLISHED IN THE WRITTEN CONTRACT WITH THE INSURED.**

26 **(D) A PUBLIC ADJUSTER MAY NOT ACQUIRE ANY INTEREST IN SALVAGE OF**
27 **PROPERTY SUBJECT TO A PUBLIC ADJUSTER CONTRACT WITH THE INSURED UNLESS**
28 **THE PUBLIC ADJUSTER OBTAINS WRITTEN PERMISSION FROM THE INSURED.**

29 **10-415.**

(A) A PUBLIC ADJUSTER SHALL ADHERE TO THE FOLLOWING GENERAL ETHICAL REQUIREMENTS:

(1) A PUBLIC ADJUSTER MAY 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 THAT OTHERWISE EXCEEDS THE PUBLIC ADJUSTER'S CURRENT EXPERTISE;

(2) A PUBLIC ADJUSTER MAY NOT MAKE A STATEMENT THAT THE PUBLIC ADJUSTER KNOWS TO BE FALSE OR WITH RECKLESS DISREGARD AS TO THE STATEMENT'S TRUTH OR FALSITY CONCERNING THE QUALIFICATIONS OR INTEGRITY OF ANY PERSON ENGAGED IN THE BUSINESS OF INSURANCE TO ANY INSURED CLIENT OR POTENTIAL INSURED CLIENT;

(3) A PUBLIC ADJUSTER MAY NOT REPRESENT OR ACT AS A COMPANY ADJUSTER OR AS AN INDEPENDENT ADJUSTER ON THE SAME CLAIM;

(4) THE PUBLIC ADJUSTER CONTRACT MAY NOT BE CONSTRUED TO PREVENT AN INSURED FROM PURSUING ANY CIVIL REMEDY AFTER THE RESCISSION OR CANCELLATION PERIOD UNDER § 10-411(H) OF THIS SUBTITLE; AND

(5) A PUBLIC ADJUSTER MAY 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.

(B) A PUBLIC ADJUSTER MAY NOT AGREE TO ANY LOSS SETTLEMENT WITHOUT THE INSURED'S KNOWLEDGE AND CONSENT.

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(A) (1) A PUBLIC ADJUSTER SHALL REPORT TO THE COMMISSIONER, WITHIN 30 DAYS AFTER THE FINAL DISPOSITION OF THE MATTER, ANY ADMINISTRATIVE ACTION TAKEN AGAINST THE PUBLIC ADJUSTER IN ANOTHER JURISDICTION, OR BY ANOTHER GOVERNMENTAL UNIT IN THE STATE.

(2) THE REPORT SHALL INCLUDE:

(I) A COPY OF ANY ORDER;

(II) ANY CONSENT TO AN ORDER; AND

(III) ANY OTHER RELEVANT LEGAL DOCUMENTS.

1 **(B) (1) WITHIN 30 DAYS AFTER THE INITIAL PRETRIAL HEARING DATE, A**
2 **PUBLIC ADJUSTER SHALL REPORT TO THE COMMISSIONER ANY CRIMINAL**
3 **PROSECUTION OF THE PUBLIC ADJUSTER UNDERTAKEN IN ANY JURISDICTION.**

4 **(2) THE REPORT SHALL INCLUDE:**

5 **(I) A COPY OF THE INITIAL FILED COMPLAINT;**

6 **(II) ANY ORDER RESULTING FROM THE HEARING; AND**

7 **(III) ANY OTHER RELEVANT LEGAL DOCUMENTS.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 January 1, 2018, and shall apply to all public adjuster licenses issued or renewed on or
10 after January 1, 2018.