



Illinois Department of Insurance

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Governor

ANN GILLESPIE
Acting Director

TO: Illinois Public Adjusters and Property and Casualty Insurers

FROM: Ann Gillespie, Acting Director *ARG*

DATE: August 27, 2024

RE: Company Bulletin 2024-16 – Changes to the Regulation of Public Adjuster

The purpose of this bulletin is to notify all Illinois public adjusters, and the insurers who work with them, of the recent changes to the Department’s regulations on public adjusters and to provide clear guidance on how public adjusters can demonstrate compliance with Illinois’ public adjuster regulations.

All public adjusters must comply with [Article XLV of the Illinois Insurance Code](#) (“Public Adjusters Law”) and [Part 3118 of the Illinois Department of Insurance Rules](#) (“Public Adjuster Rules”) (together, “regulations”). The Department will hold all Illinois public adjusters accountable to the current regulations as described in this company bulletin. If you do not understand what public adjusters can and cannot do under these regulations, you should consult an attorney. The Department does not provide public adjusters individual legal advice or counsel regarding their business practices.

I. Department Rulemaking on Public Adjusters

Changes to the [Public Adjuster Rules](#), 50 Ill. Admin. Code 3118, took effect on April 30, 2024.

A. Summary of Changes to Contract Regulations

Many of the revisions to the Rules mirror the changes made to the Public Adjuster Law by [Public Act 103-0216](#), effective January 1, 2024, and impact the requirements relating to *The Contract Between Public Adjuster and Insured*. A summary of these rule revisions are as follows:

- 10% Cap:** Every contract for public adjuster services must specifically state that the public adjuster’s compensation/consideration is subject to the applicable 10% cap when the claim either (a) arose from damage to a personal residence; or (b) resulted from a catastrophic event.
- Cancellation Timing:** Every public adjuster contract must specifically state that the insured may void/cancel the contract within 5 business days after a copy of *the contract is received by the insurance company*. Previously, cancellation was allowed within 5 business days of execution of the public adjuster contract.
- Cancellation Process:** Every public adjuster contract must specifically state that the insured may cancel/void the public adjuster contract *via email*, in addition to the option to cancel via registered or certified mail or personal service.

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4. **No Special Cancellation Process for Damage Caused by Fire:** The Fire Damage Representation Agreement Act was repealed by PA 102-0216. Now, requirements regarding insureds canceling contracts are the same regardless of whether the damage was caused by a fire.

B. Changes to Public Adjuster Recommended or Preferred Contractor Rules

1. **Repealed Rules:** Public adjusters who recommend or refer clients to a contractor or other vendor or service provider are no longer required to:
 - a) Provide clients with at least two good faith, competitive bids, for such services; or
 - b) Warrant that all work will be performed in a workmanlike manner and conform to all statutes, ordinances, and codes.
2. **New Rule, effective April 30, 2024:**

A public adjuster shall not recommend any contractor unless the public adjuster first receives confirmation from the contractor that the contractor has liability insurance, a performance bond, any necessary licenses required to perform the particular work, and a written warranty of workmanship in the contractor's contract.

Public adjusters are expected to document their compliance with this requirement by maintaining a copy of the written warranty of workmanship, and proof of liability insurance and performance in the records required by Section 1585 of the Public Adjuster Law.

II. Clarification on the Scope of the New 10% Cap for Personal Residences

A few questions have repeatedly come up during the contract form review process regarding the Department's interpretation and enforcement of the new 10% cap for personal residence claims. Here is the exact statutory language of Section 1570(e) of the Public Adjuster Law:

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.

A. Definition of "Personal Residence" in the Public Adjuster Law

The term "personal residence" is used in Section 1570(e) and 1590(i) but is not defined in the Public Adjuster Law. "Personal residence" as used in the Public Adjuster Law means any property that is insured by a "policy of fire and extended coverage insurance" as defined in 215 ILCS 5/143.13(b), which "covers real property used principally for residential purposes up to and including a 4 family dwelling or any household or personal property that is usual or incidental to the occupancy to any premises used for residential purposes."

D. Public Adjuster Compensation vs. Emergency Services Reimbursement

Public adjusters cannot charge a 10% commission plus expenses on personal residence claims unless the expense is for emergency mitigation services or other costs covered by the insurance policy.

Section 1575(b)(2) of the Public Adjuster Law allows public adjusters to collect expenses *reimbursed from the proceeds of the claim* in addition to the full salary, fee, commission, compensation, or other considerations required to be specified in the contract pursuant to Section 1575(a)(11). An expense is only *reimbursed from the proceeds of a claim* if it is covered by the insurance policy, such as the cost of removing debris and reasonable and necessary repairs that prevent further damage to the property (i.e., emergency services).

Expenses like travel, lodging, meals, and employing third parties to provide expert or technical assistance to support the public adjuster's services are not Section 1575(b)(2) expenses because they are not reimbursed from the proceeds of the claim. Additionally, Section 1590(j)(1) provides that public adjusters have an ethical requirement to not take on the adjustment of a claim that exceeds their current expertise. If a public adjuster needs the assistance from outside experts/consultants in order to properly adjust a claim, the public adjusters can hire such third parties pursuant to Section 1515(d)(3), but the public adjuster, not the insured, must pay the third parties. If the insured is required to pay outside experts/consultants or other third parties in addition to the 10% fee in order for the public adjuster to provide competent services, then the public adjuster is violating the Section 1590(j)(1) prohibition on taking on claims that exceed the public adjuster's current expertise and violating the 10% cap when applicable.

Reimbursement for the cost of emergency mitigation services provided to an insured can only be recovered by a public adjuster as itemized in the applicable claim payment issued by the insurance company. Public adjusters must include a copy of the claim payment in the complete record or transaction required to be maintained pursuant to Section 1585 of the Public Adjuster Law. This documentation is required in order to demonstrate compliance with this regulation and the limited exception described above.

If a public adjuster has an additional expense provision in their contract form, the only types of expenses that can be included in that provision are those that are covered by the insurance policy. If a public adjuster provides emergency mitigation services as part of their business model, the contract form may provide that emergency mitigation services (1) can be reimbursed to the public adjuster in addition to the amount an insured must pay for the public adjusting services and (2) are not included in any applicable 10% cap.

The Department will take regulatory action against any public adjuster who attempts to collect "reimbursement for expenses" that are not covered by the insurance policy and paid out by the insurance company.

III. Preferred Contractor Price Variations are Prohibited by Rule 3118.90

Public adjusters must charge, and an insured must pay, the same amount for public adjuster services regardless of who the insured chooses to make the repairs. Public adjusters cannot waive their fees or charge less because an insured used a particular contractor or service provider. Public adjusters cannot promise that a preferred contractor will pay the public adjuster fee that the insured would otherwise be responsible to pay under the public adjuster contract. The contractor is not a party to the public adjuster contract and the public adjuster and insured cannot have any agreements outside of the public adjuster contract.

Price variations for public adjuster services based on an insured's use of a particular contractor/service provider is prohibited by Rule 3118.90(a) which states:

A public adjuster client shall not be required by the licensed public adjuster, or its agent, to pay higher fees to the public adjuster if the client does not elect to work with the contractor or vendor preferred or primarily recommended by the public adjuster.

The Department will not approve a contract that contains variations in the amount an insured pays the public adjuster based on contractor choice as prohibited by Rule 3118.90. Additionally, a public adjuster cannot include in their financial disclosures to the insured a promise that a contractor will pay the public adjuster's fee if the insured chooses to use the contractor's

services. Not only does this violate Rule 3118.90, but it is also an inappropriate use of a financial disclosure.

A. Misuse of Financial Interest Disclosures

The financial interest disclosure requires public adjusters to be completely transparent with the insureds about any direct or indirect financial interest the public adjuster has (or their employees/agents/assignees or immediate family members have) with any other party who is involved with any aspect of the claim. The financial interest involved may be that the contractor business and public adjuster business are owned by all or some of the same people. It may be that the contractor is an investor in the public adjuster business or vice versa. It may involve employees of the public adjuster also being employees of the contractor or vice versa. It may be an agreement that public adjuster employees or business receive a referral fee from the contractor for any public adjuster client who uses the contractor or vice versa. Or the financial interest could involve all or some of these examples. The exact nature and amount of that financial interest, whatever it is, must be disclosed to the insured in writing before the insured signs the public adjuster contract.

Financial interest disclosures should not be used to alter the legal responsibilities of the insured under the public adjuster contract or describe/promise a financial benefit that the insured will receive if the preferred contractor is used. Please review Sections 1575(d) and 1590(d),(g) and (h) of the Public Adjuster Law and Rule 3118.85 for all requirements regarding the financial interest disclosures. If assistance is needed to determine whether a disclosure of a financial interest in another business is required or how to write a disclosure for a particular situation, please consult an attorney.

B. Duty of Loyalty and Public Policy

An Illinois public adjuster is required by Section 1590(a) of the Public Adjuster Law to serve with objectivity and complete loyalty for the interest of their client alone. Illinois allows public adjusters to have business relationships with contractors, but those relationships are subject to specific guardrails including the prohibition on price variations for using a particular contractor and the requirement to explicitly disclose all types of financial interests which may appear to conflict with the public adjuster's duty of loyalty. Public adjusters are required to comply with these regulations. The prohibition on public adjuster price variations is an important consumer protection that ensures public adjusters are acting on behalf of the insured and not third-party financial pressures.

IV. The Importance of Record Retention

Public adjusters can demonstrate compliance with the 10% cap requirements and prohibition on fee variations described above by keeping a complete record of each transaction as required by Section 1585 of the Public Adjuster Law, including but not limited to:

- 1) A copy of the contract between the public adjuster and insured and a copy of the separate disclosure documents;
- 2) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
- 3) An itemized statement of the insured's recoveries; and
- 4) An itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss.

These records can be used to show that:

- a) The public adjuster received what the insured agreed to pay under the contract from the insured (or the insurance company) and not from a third party (i.e., no variable fee structures);
- b) The amount received from the insured for public adjuster services was less than or equal to 10%; and
- c) The amount received for any emergency mitigation services were consistent with what was covered by and paid for under the insurance policy.

The Department may ask to examine public adjuster records at any time for any reason. All public adjusters should review their record keeping practices to ensure they meet requirements Section 1585 of the Public Adjuster Law and as specifically mentioned above.

V. Enforcement, Complaints, and Questions

The Department will enforce all aspects of the recently revised regulations as described above. Consistent enforcement ensures fair competition amongst public adjusters.

Consumers should be encouraged to file a consumer complaint with the Department if they have a grievance with a public adjuster.

Other parties, including insurers and other public adjusters, can report an Illinois public adjuster who is not following our public adjuster regulations as described above to the Department via email to DOI.ProducerReg@illinois.gov.

Questions from public adjusters or their attorneys regarding the Public Adjuster Law, Rules, or this Company Bulletin can be directed to:

Kathryn Williams
Assistant General Counsel
Phone: 312-814-8212

Please Note: The Department does not provide public adjusters individual legal advice or counsel them on their business practices. Any information shared with any Department employee regarding a public adjuster's business practices can be used against them in a regulatory action. Public Adjusters should first consult an attorney if they need guidance regarding whether certain business practices comply with this company bulletin.