

**CHAPTER 1
INSURANCE REGULATIONS
10% of Exam**

The following has been summarized as a reference, using the Laws and Regulations that govern Public Adjusters and Public Adjusters Solicitors.

1.1 LICENSING REQUIREMENTS

1.1a QUALIFICATIONS

The Insurance Commissioner may issue a license as a public adjuster or public adjuster solicitor to any person of at least 18 years of age and to any partnership, association or corporation which maintains a bonafide office in the states readily accessible to the general public.

No license as a public adjuster shall be issued to entities that are engaged or interested in, or receiving profit from any salvage or similar business.

The Insurance Commissioner may issue a license as a public adjuster or a public adjuster solicitor to a person not a resident of this state. Upon compliance with the applicable provisions of this act, if the state or the province of Canada of such person's residence will accord the same privilege to a resident of this state.

A written/computer exam is required of applicants for a public adjuster or a public adjuster solicitor in the state unless exempted or otherwise stated in the state regulations

1.1b APPLICATION

Before a license is granted, each applicant shall first answer, in writing and under oath, interrogatories on forms and supplements such as the Insurance Commissioner shall prepare.

When the Insurance Commissioner is satisfied that the applicant is trustworthy and competent to transact business as a public adjuster or public adjuster solicitor, in such manner as to safeguard the interest of the public, he/she shall be issued a license.

1.1c LICENSE FEES

A \$50.00 (different in each state) fee shall be paid by the applicant, at the time of application, to the Insurance Commissioner for a public adjuster solicitor's license.

A \$100.00 (different in each state) fee shall be paid by the applicant, at the time of application, to the Insurance Commissioner for a public adjuster license.

1.1d SURETY BOND

Each person receiving a public adjusters solicitors license, shall, before transacting any business there under, execute and deliver to the Insurance Commissioner a bond in the minimum penal sum of \$8,000.00 (different in each state) with such sureties as the Insurance Commissioner may approve. Public adjusters are required to execute a bond in the penal sum of \$40,000.00(different in each state) .

1.2a LICENSE RENEWAL

Each public adjuster solicitor must renew his/her license annually by the expiration date for the amount of \$50.00(different in each state) .

Each public adjuster must renew his/her license annually by the expiration date for the amount of \$100.00 (different in each state).

1.2b CONTRACT REQUIREMENTS (different in each state)

No public adjuster shall, directly or indirectly, act within this state as a public adjuster without having first entered into a contract, in writing, on a form approved by the Insurance Commissioner, and executed in duplicate by the public adjuster and the insured or a duly authorized representative. Once copy of this contract shall be kept on file by the public adjuster, available at all times for inspection, without notice, by the Insurance Commissioner or his/her duly authorized representative.

Any contract with a public adjuster may be rescinded by any person signing the contract. Such action must be taken within four calendar days after signature.

No public adjuster solicitor shall use any form of contract other than that approved for the public adjuster for whom he/she is soliciting, nor shall he/she make any contract or agreements for himself/herself or for the public adjuster other than such as are specified in the approved contract.

No public adjuster or public solicitor may adjust or solicit claims for any losses or damages on behalf of any person except claims by an insured against his/her own insurance company.

No public adjuster or public adjuster solicitor shall directly or indirectly enter into a contract with any insured for the repair, replacement, restoration or demolition of damaged property, at any time prior to the date of verdict or award is entered or payment is received from the insurance company, whichever event shall occur first. The definition of “repairs” stated above does not include repairs made for the purpose of protecting the insured’s property from further damage or to comply with the insurance policy terms and conditions.

1.2c CHANGE IN NAME ANE/OR ADDRESS

Each public adjuster or public adjuster solicitor must inform the Insurance Department of an address change within 15 days of the move. This change may now be reported via E-mail. At present, there are no continuing education requirements for maintaining these licenses in the State of Pennsylvania.

1.3 DISCIPLINARY ACTIONS

1.3a CEASE AND DESIST ORDERS

The Insurance Commissioner or a duly authorized representative may maintain an action for an injunction or other process against any person, partnership, association, corporation or other entity to restrain and prevent any of the foregoing from transacting business as a public adjuster or a public adjuster solicitor without a license. Such court may issue a restraining order or injunction under this act but shall determine any such action on its merit as soon as possible whether in term time or vacation.

1.3b SUSPENSION AND REVOCATION

Committing any of the following acts shall be grounds for fines, suspension or revocation of a public adjuster's or a public adjuster solicitor's license:

- Material misrepresentation of the terms and effect of any insurance policy
- Engaging in or attempting to engage in, any fraudulent transactions with respect to a claim or loss
- Misrepresentation of the services offered or the fees or commission to be charged
- Conviction by any court of or a plea of **nole contendere** (no contest) to a felony under the laws of this Commonwealth, any other state, the United States or a foreign country.
- Misappropriation, conversion to his/her own use or improper withholding of monies held on behalf of another party to the contract.
- To receive directly or indirectly, any compensation, commission or anything of value or profit from any entity engaged in the business of salvage, repair, replacement, restoration, renovation or demolition of damaged property unless such compensation, commission or thing of value or profit is disclosed to the insured and agreed to in the contract.
- Removal of a public adjuster's or public adjuster solicitor's office accounts or records from this Commonwealth.
- The closure of a licensee's office for a period in excess of 30 days, unless granted permission by the Insurance Commissioner.
- Making a material misstatement in the application for any such license.
- Being involved in the commission of fraudulent practices.
- Has, in the judgment of the Insurance Commissioner, demonstrated his/her incompetence or lack of trustworthiness to transact business as a public adjuster.

- You must notify the Insurance Department in writing within 10 days of any conviction for a misdemeanor or felony.

1.3c CIVIL PENALTIES AND VIOLATIONS

Regardless of whether the public adjuster or public adjuster solicitor was licensed or not, the Insurance Commissioner may, at his/her discretion, in cases warranting such an action, impose a civil penalty of not more than \$1,000.00 for each and every violation under this act. Violations under this act carry a charge of misdemeanor, and upon conviction, shall be sentenced to pay an amount not less than \$500.00, but not more than \$1000.00 for each violation and conviction.

1.4 CLAIM SETTLEMENT LAWS AND REGULATIONS (SUMMARIZED)

The following are minimum standards for insurance companies and representatives of which if violated with a frequency that indicates a general business, will be deemed to constitute unfair claims settlement practices.

- An insurer or agent may not fail to fully disclose to first party claimants, pertinent benefits, coverage's or other provisions of an insurance policy or insurance contract under which a claim is presented.
- An insurer may not deny a claim for failure of the insured to exhibit the damage property without showing proof of the demand and the refusal by the insured to comply with a said demand.
- An insurer may not, except where there is a time limit specified in the policy, make statements, written or otherwise requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seeks to relieve the company of its obligations if a time limit is not complied with unless the failure to comply with the time limit prejudices the right of the insurer.

1.4 CLAIM SETTLEMENT LAWS AND REGULATIONS cont'd

- Every time insurer, upon receiving notification of a claim, shall within 10 working days, acknowledge the receipt of the notice unless payment is made within that period of time.
- Every time insurer, upon receipt of an inquiry from the Insurance Department, with respect to a claim, shall, within 15 working days of receipt of the inquiry, furnish the Insurance Department with an adequate response to the inquiry.
- Every insurer, upon receiving notification, shall provide, within 10 working days necessary claim forms, instructions and reasonable assistance so that the first-party claimants can comply with the policy conditions and reasonable requirements of the insurer.

- Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot be reasonably completed within that time. If the investigation cannot be completed within 30 days, and 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision of the claim may be expected.
- Within 15 working days after receipt by the insurer of a properly executed proof of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. An insurer may not deny a claim on the grounds of a specific policy provisions, conditions or exclusions unless reference to the provisions, conditions or exclusions are included in the denial letter.
- Insurers may not fail to settle first-party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.
- Insurers may not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the rights of a claimant that may be affected by a statute of limitations or contract time limit, without written notice that the time limit may be expiring and may affect the rights of the claimant. The notice shall be given to the first-party claimant 30 days before the date the time expires.

1.5 ROLE OF THE ADJUSTER

1.5a DUTIES AND RESPONSIBILITIES

Public adjusters are retained by insured's to advise and assist them in presenting claims to the insurer. In Pennsylvania, public adjusters are limited to representing insured's against their own carrier. Typical losses would include damages to real and personal property, loss of use and loss of business use. The public adjuster's primary duties involve the protection of the insured's rights under a policy and the securing of an equitable settlement for losses sustained.

Since the public adjuster acts on behalf of the insured, he/she assumes the duties and responsibilities required by the insured, such as documenting and presenting the claim. Normally they view the loss, determine the damages and prepare an estimate of damage to the dwelling and/or personal property. Their duties also involve the presentation of the damages to the insurance company's adjuster.

1.5b INDEPENDENT ADJUSTER vs. PUBLIC ADJUSTER

The most significant distinction between the independent adjuster and the public adjuster, are the parties they represent. The public adjuster's duty is to represent the insured, whereas, the independent adjuster's duty is to represent the insurer. An independent adjuster is an individual or a company that is hired on a claim by a claim

1.5b INDEPENDENT ADJUSTER vs. PUBLIC ADJUSTER cont'd

basis by an insurer to investigate and adjust losses on their behalf. The independent adjuster is sometimes limited in his/her authority to offer settlement amounts on a claim. He/she may be required to submit a report to the insurer and wait for approval to make any settlement offers. One similarity between independent adjusters and public adjusters would include representation of clients with many types of insurance policies. The independent adjuster may represent many different insurers just as a public adjuster may represent many insured's. As a result, extensive knowledge is gained with respect to the many insurance policies on the market.

1.5c PUBLIC ADJUSTER vs. PUBLIC ADJUSTER SOLICITOR

A public adjuster's license permits the advertisement, solicitation and adjustment of claims for losses or damages arising out of policies of insurance, surety or indemnity of property, persons or insurable businesses.

A public adjuster may choose to employ one or more public adjuster solicitors; however a public adjuster solicitor cannot become licensed to function independently.

1.5d RELATIONSHIP TO THE LEGAL PROFESSION

A public adjuster's ability to represent a client is restricted to advising and assisting with respect to the adjustment of first-party property claims. Certain situations may occur which may motivate the insurer to invoke policy conditions that may require the insured to retain the services of a lawyer. One such condition would be the insurer's right to take a statement under oath from the insured. Although a lawyer is not required, it is strongly recommended in order to protect the legal rights of the insured. A public adjuster cannot interfere or object to questions posed in this forum.

A public adjuster cannot adjust claims involving personal injury or damage to automobiles.

Additional Information That Could Be In Your Test

The Unfair Insurance Practices Act:

Regulates trade practices by defining practices which constitute unfair methods of competition/deceptive practices

The Property and Casualty Licensing Examination may be waived for all of the following:

1. An individual applying for a Temporary License
2. Individuals holding the professional designation of CPUC
3. A qualified non-resident

A non-resident agent has both his business and legal address outside your state

Fair Credit Act was established to protect individuals from possible abuses of information contained in their credit files.

All of the following individuals are required to be licensed:

1. An insurance broker
2. An insurance agent
3. A public adjuster

A risk manager is not required to be licensed.

The policyholder's surplus of an insurance company represents the amount assets exceed liabilities.

All of the following are examples of the Unfair Claims Settlement Practices Act:

1. Misrepresenting policy facts and provisions
2. Failure to acknowledge and act promptly on written or oral communication
3. Refusing to pay claims without a reasonable investigation

Negotiating a claim that has questionable liability is an exception to the Unfair Claims Settlement Practices Act

According to the Immediate Contact Rule, the adjuster should make immediate contact with the insurance agent.