

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH80288-MH-93 (03/26)

Short Title: Regulate Public Adjusters.-AB

(Public)

Sponsors: Representatives Goforth and Wray (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR MEANINGFUL REGULATION OF INSURANCE PUBLIC
3 ADJUSTERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 58 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 33A.

8 "Public Adjusters.

9 "**§ 58-33A-1. Purpose and scope.**

10 This Article governs the qualifications and procedures for the licensing of public adjusters.
11 It specifies the duties of and restrictions on public adjusters, which include limiting their
12 licensure to assisting insureds in first-party claims.

13 "**§ 58-33A-5. Definitions.**

- 14 (1) Business entity. – A corporation, association, partnership, limited liability
15 company, limited liability partnership, or other legal entity.
- 16 (2) Catastrophic incident. – As defined in the National Response Framework,
17 any natural or man-made incident, including terrorism, that results in
18 extraordinary levels of mass casualties, damage, or disruption severely
19 affecting the population, infrastructure, environment, economy, national
20 morale, and/or government functions. A catastrophic incident shall be
21 declared by the President of the United States or the Governor of the state or
22 district in which the disaster occurred. If state and local resources are
23 insufficient, the Governor may ask the President of the United States to
24 make such a declaration.
- 25 (3) Fingerprints. – An impression of the lines on the finger taken for purpose of
26 identification. The impression may be electronic or in ink converted to
27 electronic format.
- 28 (4) Home state. – The District of Columbia and any state or territory of the
29 United States in which the public adjuster's principal place of residence or
30 principal place of business is located. If neither the state in which the public
31 adjuster maintains the principal place of residence nor the state in which the
32 public adjuster maintains the principal place of business has a substantially
33 similar law governing public adjusters, the public adjuster may declare
34 another state in which it becomes licensed and acts as a public adjuster to be
35 the home state.



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- 1 (5) Individual. – A natural person.
2 (6) Person. – An individual or a business entity.
3 (7) Public adjuster. – Any person who, for compensation or any other thing of
4 value on behalf of the insured, does any of the following:
5 a. Acts or aids, solely in relation to first-party claims arising under
6 insurance contracts that insure the real or personal property of the
7 insured, on behalf of an insured in negotiating for, or effecting the
8 settlement of, a claim for loss or damage covered by an insurance
9 contract.
10 b. Advertises for employment as an public adjuster of insurance claims
11 or solicits business or represents himself or herself to the public as a
12 public adjuster of first-party insurance claims for losses or damages
13 arising out of policies of insurance that insure real or personal
14 property.
15 c. Directly or indirectly solicits business, investigates or adjusts losses,
16 or advises an insured about first-party claims for losses or damages
17 arising out of policies of insurance that insure real or personal
18 property for another person engaged in the business of adjusting
19 losses or damages covered by an insurance policy for the insured.
20 (8) Uniform individual application. – The current version of the NAIC Uniform
21 Individual Application for resident and nonresident individuals.
22 (9) Uniform business entity application. – The current version of the NAIC
23 Uniform Business Entity Application for resident and nonresident business
24 entities.

25 **§ 58-33A-10. License required.**

26 (a) A person shall not act or hold himself or herself out as a public adjuster in this State
27 unless the person is licensed as a public adjuster in accordance with this Article.

28 (b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or
29 she is an adjuster representing an insurer in any capacity, including acting as an employee of
30 the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to
31 act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is
32 prohibited from charging that specific claimant a fee when appointed by the insurer and the
33 appointment is accepted by the public adjuster.

34 (c) A business entity acting as a public adjuster is required to obtain a public adjuster
35 license. Application shall be made using the uniform business entity application. Before
36 approving the application, the Commissioner shall find all of the following:

37 (1) The business entity has paid the fees set forth in G.S. 58-33-125.

38 (2) The business entity has designated a licensed public adjuster responsible for
39 the business entity's compliance with the insurance laws and regulations of
40 this State.

41 (d) Notwithstanding subsections (a) through (c) of this section, a license as a public
42 adjuster shall not be required of any of the following:

43 (1) An attorney-at-law admitted to practice in this State, when acting in his or
44 her professional capacity as an attorney.

45 (2) A person who negotiates or settles claims arising under a life or health
46 insurance policy or an annuity contract.

47 (3) A person employed only for the purpose of obtaining facts surrounding a
48 loss or furnishing technical assistance to a licensed public adjuster, including
49 photographers, estimators, private investigators, engineers, and handwriting
50 experts.

1 (4) A licensed health care provider, or employee of a licensed health care
2 provider, who prepares or files a health claim form on behalf of a patient.

3 (5) A person who settles subrogation claims between insurers.

4 **"§ 58-33A-15. Application for license.**

5 (a) A person applying for a public adjuster license shall apply to the Commissioner on
6 the appropriate uniform application or other application prescribed by the Commissioner.

7 (b) The applicant shall declare under penalty of perjury and under penalty of refusal,
8 suspension, or revocation of the license that the statements made in the application are true,
9 correct, and complete to the best of the applicant's knowledge and belief.

10 (c) In order to make a determination of license eligibility, the Commissioner may
11 require fingerprints of applicants and submit the fingerprints and the fee required to perform the
12 criminal history record checks to the State Bureau of Investigation and the Federal Bureau of
13 Investigation (FBI) for state and national criminal history record checks; the Commissioner
14 shall require a criminal history record check on each applicant in accordance with this Article.
15 The Commissioner shall require each applicant to submit a full set of fingerprints in order for
16 the Commissioner to obtain and receive National Criminal History Records from the FBI
17 Criminal Justice Information Services Division.

18 (1) The Commissioner may contract for the collection, transmission, and
19 resubmission of fingerprints required under this section. If the Commissioner
20 does so, the fee for collecting, transmitting, and retaining fingerprints shall
21 be payable directly to the contractor by the person. The Commissioner may
22 agree to a reasonable fingerprinting fee to be charged by the contractor.

23 (2) The Commissioner may waive submission of fingerprints by any person that
24 has previously furnished fingerprints and those fingerprints are on file with
25 the Central Repository of the NAIC or the NAIC's affiliates or subsidiaries.

26 (3) The Commissioner may submit electronic fingerprint records and necessary
27 identifying information to the NAIC, its affiliates, or subsidiaries for
28 permanent retention in a centralized repository. The purpose of such a
29 centralized repository is to provide state insurance regulators with access to
30 fingerprint records in order to perform criminal history record checks.

31 **"§ 58-33A-20. Resident license.**

32 (a) Before issuing a public adjuster license to an applicant under this section, the
33 Commissioner shall find that the applicant meets all of the following criteria:

34 (1) Is eligible to designate this State as his or her home state or is a nonresident
35 who is not eligible for a license under G.S. 58-33A-35.

36 (2) Has not committed any act that is a ground for denial, suspension, or
37 revocation of a license as set forth in G.S. 58-33A-45.

38 (3) Is trustworthy, reliable, and of good reputation, evidence of which may be
39 determined by the Commissioner.

40 (4) Is financially responsible to exercise the license and has provided proof of
41 financial responsibility as required in G.S. 58-33A-50.

42 (5) Has paid the fees set forth in G.S. 58-33-125.

43 (6) Maintains an office in the home state of residence with public access by
44 reasonable appointment and/or regular business hours. This includes a
45 designated office within a home state of residence.

46 (b) In addition to satisfying the requirements of subsection (a) of this section, an
47 individual shall:

48 (1) Be at least 18 years of age; and

49 (2) Have successfully passed the public adjuster examination.

50 (c) The Commissioner may require any documents reasonably necessary to verify the
51 information contained in the application.

"§ 58-33A-25. Examination.

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to G.S. 58-33A-30. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Commissioner.

(b) The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in G.S. 58-33-125.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Commissioner as set forth in G.S. 58-33-125.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

"§ 58-33A-30. Exemptions from examination.

(a) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 12 months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries indicate that the public adjuster is or was licensed in good standing.

(b) A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this State shall apply within 90 days after establishing legal residence to become a resident licensee pursuant to G.S. 58-33A-20. No prelicensing examination shall be required of that person to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in this State shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within 12 months after the cancellation of the applicant's previous license in this State and if, at the time of cancellation, the applicant was in good standing in this State.

"§ 58-33A-35. Nonresident license reciprocity.

(a) Unless denied licensure pursuant to G.S. 58-33A-45, a nonresident person shall receive a nonresident public adjuster license if the person meets all of the following criteria:

(1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state.

(2) The person has submitted the proper request for licensure, has paid the fees required by G.S. 58-33-125, and has provided proof of financial responsibility as required in G.S. 58-33A-50.

(3) The person has submitted or transmitted to the Commissioner the appropriate completed application for licensure.

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

(b) The Commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the Commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or

1 her new home state. Notification to the state or states where nonresident license is issued must
2 be made as soon as possible, yet no later than 30 days after change in new state resident license.
3 Licensee shall include new and old address. A new state resident license is required for
4 nonresident licenses to remain valid. The new state resident license must have reciprocity with
5 the licensing nonresident state(s) for the nonresident license not to terminate.

6 **"§ 58-33A-40. License.**

7 (a) Unless denied licensure under this Article, persons who have met the requirements
8 of this Article shall be issued a public adjuster license.

9 (b) A public adjuster license shall remain in effect unless revoked, terminated, or
10 suspended as long as the request for renewal and fee set forth in G.S. 58-33-125 is paid and any
11 other requirements for license renewal are met by the due date.

12 (c) The licensee shall inform the Commissioner by any means acceptable to the
13 Commissioner of a change of address, change of legal name, or change of information
14 submitted on the application within 30 days after the change.

15 (d) A licensed public adjuster shall be subject to Article 63 of this Chapter.

16 (e) A public adjuster who allows his or her license to lapse may, within 12 months from
17 the due date of the renewal, be issued a new public adjuster license upon the Commissioner's
18 receipt of the request for renewal. However, an administrative fee in the amount of double the
19 unpaid renewal fee shall be required for the issuance of the new public adjuster license. The
20 new public adjuster license shall be effective the date the Commissioner receives the request
21 for renewal and the late payment penalty.

22 (f) Any public adjuster licensee that fails to apply for renewal of a license before
23 expiration of the current license shall pay a lapsed license fee of twice the license fee and be
24 subject to other penalties as provided by law before the license will be renewed. If the
25 Department receives the request for reinstatement and the required lapsed license fee within 60
26 days after the date the license lapsed, the Department shall reinstate the license retroactively to
27 the date the license lapsed. If the Department receives the request for reinstatement and the
28 required lapsed license fee after 60 days but within one year of the date the license lapsed, the
29 Department shall reinstate the license prospectively with the date the license is reinstated. If the
30 person applies for reinstatement more than one year from the date of lapse, the person shall
31 reapply for the license under this Article.

32 (g) A licensed public adjuster who is unable to comply with license renewal procedures
33 because of military service, a long-term medical disability, or some other extenuating
34 circumstance may request a waiver of those procedures. The public adjuster may also request a
35 waiver of any examination requirement, fine, or other sanction imposed for failure to comply
36 with renewal procedures.

37 (h) The license shall contain the licensee's name, city and state of business address,
38 personal identification number, the date of issuance, the expiration date, and any other
39 information the Commissioner deems necessary.

40 (i) In order to assist in the performance of the Commissioner's duties, the
41 Commissioner may contract with nongovernmental entities, including the NAIC or any
42 affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to
43 licensing, including the collection of fees and data, that the Commissioner may deem
44 appropriate.

45 **"§ 58-33A-45. License denial, nonrenewal, or revocation.**

46 (a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or
47 renew a public adjuster's license or may levy a civil penalty in accordance with G.S. 58-2-70 or
48 any combination of actions for any one or more of the following causes:

- 49 (1) Providing incorrect, misleading, incomplete, or materially untrue
50 information in the license application.

- 1 (2) Violating any insurance laws or violating any regulation, subpoena, or order
2 of the Commissioner or of another state's insurance regulator.
- 3 (3) Obtaining or attempting to obtain a license through misrepresentation or
4 fraud.
- 5 (4) Improperly withholding, misappropriating, or converting any monies or
6 properties received in the course of doing insurance business.
- 7 (5) Intentionally misrepresenting the terms of an actual or proposed insurance
8 contract or application for insurance.
- 9 (6) Having been convicted of a felony or a misdemeanor involving dishonesty
10 or breach of trust.
- 11 (7) Having admitted or been found to have committed any insurance unfair trade
12 practice or insurance fraud.
- 13 (8) Using fraudulent, coercive, or dishonest practices or demonstrating
14 incompetence, untrustworthiness, or financial irresponsibility in the conduct
15 of business in this State or elsewhere.
- 16 (9) Having an insurance license, or its equivalent, denied, suspended, or revoked
17 in any other state, province, district, or territory.
- 18 (10) Forging another's name to an application for insurance or to any document
19 related to an insurance transaction.
- 20 (11) Cheating, including improperly using notes or any other reference material,
21 to complete an examination for an insurance license.
- 22 (12) Knowingly accepting insurance business from an individual who is not
23 licensed but who is required to be licensed by the Commissioner.
- 24 (13) Failing to comply with an administrative or court order imposing a child
25 support obligation.
- 26 (14) Failing to pay state income tax or comply with any administrative or court
27 order directing payment of state income tax.

28 (b) If the action by the Commissioner is to deny an application for or not renew a
29 license, the Commissioner shall notify the applicant or licensee and advise, in writing, the
30 applicant or licensee of the reason for the nonrenewal or denial of the applicant's or licensee's
31 license. The applicant or licensee may make written demand upon the Commissioner in
32 accordance with Article 3A of Chapter 150B of the General Statutes for a hearing before the
33 Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall
34 be held pursuant to Article 3A of Chapter 150B of the General Statutes.

35 (c) The license of a business entity may be suspended, revoked, or refused if the
36 Commissioner finds, after hearing, that an individual licensee's violation was known or should
37 have been known by one or more of the partners, officers, or managers acting on behalf of the
38 business entity and the violation was neither reported to the Commissioner nor corrective
39 action taken.

40 (d) In addition to or in lieu of any applicable denial, suspension, or revocation of a
41 license, a person may, after hearing, be subject to a civil penalty according to G.S. 58-2-70.

42 (e) The Commissioner shall retain the authority to enforce the provisions of and impose
43 any penalty or remedy authorized by this Chapter against any person who is under investigation
44 for or charged with a violation of this Chapter, even if the person's license or registration has
45 been surrendered or has lapsed by operation of law.

46 **"§ 58-33A-50. Bond or letter of credit.**

47 (a) Before issuance of a license as a public adjuster and for the duration of the license,
48 the applicant shall secure evidence of financial responsibility in a format prescribed by the
49 Commissioner through any of the following instruments:

- 50 (1) A bond executed and issued by an insurer authorized to issue bonds in this
51 State which meets all of the following requirements:

- 1 a. It shall be in the minimum amount of twenty thousand dollars
2 (\$20,000).
- 3 b. It shall be in favor of this State and shall specifically authorize
4 recovery by the Commissioner on behalf of any person in this State
5 who sustained damages as the result of erroneous acts, failure to act,
6 conviction of fraud, or conviction of unfair practices in his or her
7 capacity as a public adjuster.
- 8 c. It shall not be terminated unless at least 30 days' prior written notice
9 will have been filed with the Commissioner and given to the licensee.
- 10 (2) An irrevocable letter of credit issued by a qualified financial institution,
11 which meets all of the following requirements:
- 12 a. It shall be in the minimum amount of twenty thousand dollars
13 (\$20,000).
- 14 b. It shall be to an account to the Commissioner and subject to lawful
15 levy of execution on behalf of any person to whom the public
16 adjuster has been found to be legally liable as the result of erroneous
17 acts, failure to act, fraudulent acts, or unfair practices in his or her
18 capacity as a public adjuster.
- 19 c. It shall not be terminated unless at least 30 days' prior written notice
20 will have been filed with the Commissioner and given to the licensee.
- 21 (b) The issuer of the evidence of financial responsibility shall notify the Commissioner
22 upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.
- 23 (c) The Commissioner may ask for the evidence of financial responsibility at any time
24 he or she deems relevant.
- 25 (d) The authority to act as a public adjuster shall automatically terminate if the evidence
26 of financial responsibility terminates or becomes impaired.
- 27 **§ 58-33A-55. Continuing education.**
- 28 (a) An individual who holds a public adjuster license and who is not exempt under
29 subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing
30 education courses, including ethics, reported on a biennial basis in conjunction with the license
31 renewal cycle.
- 32 (b) This section shall not apply to any of the following:
- 33 (1) Licensees not licensed for one full year before the end of the applicable
34 continuing education biennium.
- 35 (2) Licensees holding nonresident public adjuster licenses who have met the
36 continuing education requirements of their home state and whose home state
37 gives credit to residents of this State on the same basis.
- 38 (c) Only continuing education courses approved by the Commissioner shall be used to
39 satisfy the continuing education requirement of subsection (a) of this section.
- 40 **§ 58-33A-60. Public adjuster fees.**
- 41 (a) A public adjuster shall not pay a commission, service fee, or other valuable
42 consideration to a person for investigating or settling claims in this State if that person is
43 required to be licensed under this Article and is not so licensed.
- 44 (b) A person shall not accept a commission, service fee, or other valuable consideration
45 for investigating or settling claims in this State if that person is required to be licensed under
46 this Article and is not so licensed.
- 47 (c) A public adjuster may pay or assign commission, service fees, or other valuable
48 consideration to persons who do not investigate or settle claims in this State, unless the
49 payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).
- 50 (d) In the event of a catastrophic incident, there shall be limits on catastrophic fees, no
51 public adjuster shall charge, agree to, or accept as compensation or reimbursement any

1 payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any
2 insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee,
3 retainer, compensation, deposit, or other thing of value before settlement of a claim.

4 **"§ 58-33A-65. Contract between public adjuster and insured.**

5 (a) Public adjusters shall ensure that all contracts for their services are in writing and
6 contain all of the following terms:

- 7 (1) Legible full name of the adjuster signing the contract, as specified in
8 Department records.
- 9 (2) Permanent home state business address and phone number.
- 10 (3) Department license number.
- 11 (4) Title of "Public Adjuster Contract."
- 12 (5) The insured's full name, street address, insurance company name and policy
13 number, if known or upon notification.
- 14 (6) A description of the loss and its location, if applicable.
- 15 (7) Description of services to be provided to the insured.
- 16 (8) Signatures of the public adjuster and the insured.
- 17 (9) Date contract was signed by the public adjuster and date the contract was
18 signed by the insured.
- 19 (10) Attestation language stating that the public adjuster is fully bonded pursuant
20 to state law.
- 21 (11) Full salary, fee, commission, compensation, or other considerations the
22 public adjuster is to receive for services.

23 (b) The contract may specify that the public adjuster shall be named as a co-payee on an
24 insurer's payment of a claim.

- 25 (1) If the compensation is based on a share of the insurance settlement, the exact
26 percentage shall be specified.
- 27 (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of
28 the claim payment shall be specified by type, with dollar estimates set forth
29 in the contract and with any additional expenses first approved by the
30 insured.
- 31 (3) Compensation provisions in a public adjusting contract shall not be redacted
32 in any copy of the contract provided to the Commissioner. Such a redaction
33 shall constitute an omission of material fact in violation of Article 63 of this
34 Chapter.

35 (c) If the insurer, not later than 72 hours after the date on which the loss is reported to
36 the insurer, either pays or commits in writing to pay to the insured the policy limit of the
37 insurance policy, the public adjuster shall comply with all of the following:

- 38 (1) Not receive a commission consisting of a percentage of the total amount paid
39 by an insurer to resolve a claim.
- 40 (2) Inform the insured that loss recovery amount might not be increased by
41 insurer.
- 42 (3) Be entitled only to reasonable compensation from the insured for services
43 provided by the public adjuster on behalf of the insured, based on the time
44 spent on a claim and expenses incurred by the public adjuster, until the claim
45 is paid or the insured receives a written commitment to pay from the insurer.

46 (d) A public adjuster shall provide the insured a written disclosure concerning any
47 direct or indirect financial interest that the public adjuster has with any other party who is
48 involved in any aspect of the claim, other than the salary, fee, commission, or other
49 consideration established in the written contract with the insured, including but not limited to,
50 any ownership of, other than as a minority stockholder, or any compensation expected to be
51 received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair

1 shop, or any other firm that provides estimates for work, or that performs any work, in
2 conjunction with damages caused by the insured loss on which the public adjuster is engaged.
3 The word "firm" shall include any corporation, partnership, association, joint-stock company,
4 or person.

5 (e) A public adjuster contract may not contain any contract term that includes any of the
6 following terms:

7 (1) Allows the public adjuster's percentage fee to be collected when money is
8 due from an insurance company, but not paid, or that allows a public
9 adjuster to collect the entire fee from the first check issued by an insurance
10 company, rather than as a percentage of each check issued by an insurance
11 company.

12 (2) Requires the insured to authorize an insurance company to issue a check
13 only in the name of the public adjuster.

14 (3) Imposes collection costs or late fees.

15 (4) Precludes a public adjuster from pursuing civil remedies.

16 (f) Before the signing of the contract the public adjuster shall provide the insured with a
17 separate disclosure document regarding the claim process that states:

18 (1) Property insurance policies obligate the insured to present a claim to his or
19 her insurance company for consideration. There are three types of adjusters
20 that could be involved in that process. The definitions of the three types are
21 as follows:

22 a. "Company adjuster" means the insurance adjusters who are
23 employees of an insurance company. They represent the interest of
24 the insurance company and are paid by the insurance company. They
25 will not charge you a fee.

26 b. "Independent adjuster" means the insurance adjusters who are hired
27 on a contract basis by an insurance company to represent the
28 insurance company's interest in the settlement of the claim. They are
29 paid by your insurance company. They will not charge you a fee.

30 c. "Public adjuster" means the insurance adjusters who do not work for
31 any insurance company. They work for the insured to assist in the
32 preparation, presentation, and settlement of the claim. The insured
33 hires them by signing a contract agreeing to pay them a fee or
34 commission based on a percentage of the settlement or other method
35 of compensation.

36 (2) The insured is not required to hire a public adjuster to help the insured meet
37 his or her obligations under the policy, but has the right to do so.

38 (3) The insured has the right to initiate direct communications with the insured's
39 attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any
40 other person regarding the settlement of the insured's claim. Once a public
41 adjuster has been retained, the company adjuster or other insurance
42 representative may not communicate directly with the insured without the
43 permission or consent of the public adjuster or the insured's legal counsel.

44 (4) The public adjuster is not a representative or employee of the insurer.

45 (5) The salary, fee, commission, or other consideration is the obligation of the
46 insured, not the insurer.

47 (g) The contracts shall be executed in duplicate to provide an original contract to the
48 public adjuster, and an original contract to the insured. The public adjuster's original contract
49 shall be available at all times for inspection without notice by the Commissioner.

50 (h) The public adjuster shall provide the insurer a notification letter, which has been
51 signed by the insured, authorizing the public adjuster to represent the insured's interest.

1 (i) The insured has the right to rescind the contract within three business days after the
2 date the contract was signed. The rescission shall be in writing and mailed or delivered to the
3 public adjuster at the address in the contract within the three business day period.

4 (j) If the insured exercises the right to rescind the contract, anything of value given by
5 the insured under the contract will be returned to the insured within 15 business days after the
6 receipt by the public adjuster of the cancellation notice.

7 **"§ 58-33A-70. Escrow or trust accounts.**

8 A public adjuster who receives, accepts, or holds any funds on behalf of an insured, toward
9 the settlement of a claim for loss or damage, shall deposit the funds in a noninterest-bearing
10 escrow or trust account in a financial institution that is insured by an agency of the federal
11 government in the public adjuster's home state or where the loss occurred.

12 **"§ 58-33A-75. Record retention.**

13 (a) A public adjuster shall maintain a complete record of each transaction as a public
14 adjuster. The records required by this section shall include all of the following:

15 (1) Name of the insured.

16 (2) Date, location, and amount of the loss.

17 (3) Copy of the contract between the public adjuster and insured.

18 (4) Name of the insurer, amount, expiration date and number of each policy
19 carried with respect to the loss.

20 (5) Itemized statement of the insured's recoveries.

21 (6) Itemized statement of all compensation received by the public adjuster, from
22 any source whatsoever, in connection with the loss.

23 (7) A register of all monies received, deposited, disbursed, or withdrawn in
24 connection with a transaction with an insured, including fees, transfers, and
25 disbursements from a trust account and all transactions concerning all
26 interest-bearing accounts.

27 (8) Name of public adjuster who executed the contract.

28 (9) Name of the attorney representing the insured, if applicable, and the name of
29 the claims representatives of the insurance company.

30 (10) Evidence of financial responsibility in a format prescribed by the
31 Commissioner.

32 (b) Records shall be maintained for at least five years after the termination of the
33 transaction with an insured and shall be open to examination by the Commissioner at all times.

34 (c) Records submitted to the Commissioner in accordance with this section that contain
35 information identified in writing as proprietary by the public adjuster shall be treated as
36 confidential by the Commissioner and shall not be subject to Chapter 132 of the General
37 Statutes or G.S. 58-2-100.

38 **"§ 58-33A-80. Standards of conduct of public adjusters.**

39 (a) A public adjuster shall, under his or her license, serve with objectivity and complete
40 loyalty the interest of his or her client alone; and render to the insured such information,
41 counsel, and service, as within the knowledge, understanding, and opinion in good faith of the
42 licensee, as will best serve the insured's insurance claim needs and interest.

43 (b) A public adjuster shall not solicit, or attempt to solicit, an insured during the
44 progress of a loss-producing occurrence, as defined in the insured's insurance contract.

45 (c) A public adjuster shall not permit an unlicensed employee or representative of the
46 public adjuster to conduct business for which a license is required under this Article.

47 (d) A public adjuster shall not have a direct or indirect financial interest in any aspect of
48 the claim, other than the salary, fee, commission, or other consideration established in the
49 written contract with the insured, unless full written disclosure has been made to the insured as
50 set forth in G.S. 58-33A-65.

1 (e) A public adjuster shall not acquire any interest in salvage of property subject to the
2 contract with the insured unless the public adjuster obtains written permission from the insured
3 after settlement of the claim with the insurer as set forth in G.S. 58-33A-65.

4 (f) The public adjuster shall abstain from referring or directing the insured to get
5 needed repairs or services in connection with a loss from any person described by any of the
6 following criteria, unless disclosed to the insured:

7 (1) The public adjuster has a financial interest in the person.

8 (2) The public adjuster may receive direct or indirect compensation for the
9 referral from the person.

10 (g) The public adjuster shall disclose to an insured if the public adjuster has any interest
11 or will be compensated by any construction firm, salvage firm, building appraisal firm, motor
12 vehicle repair shop, or any other firm that performs any work in conjunction with damages
13 caused by the insured loss. The word "firm" includes any corporation, partnership, association,
14 joint-stock company, or person.

15 (h) Any compensation or anything of value in connection with an insured's specific loss
16 that will be received by a public adjuster shall be disclosed by the public adjuster to the insured
17 in writing including the source and amount of any such compensation.

18 (i) Public adjusters shall adhere to all of the following general ethical requirements:

19 (1) A public adjuster shall not undertake the adjustment of any claim if the
20 public adjuster is not competent and knowledgeable as to the terms and
21 conditions of the insurance coverage, or which otherwise exceeds the public
22 adjuster's current expertise.

23 (2) A public adjuster shall not knowingly make any oral or written material
24 misrepresentations or statements that are false or maliciously critical and
25 intended to injure any person engaged in the business of insurance to any
26 insured client or potential insured client.

27 (3) No public adjuster, while so licensed by the Department, may represent or
28 act as a company adjuster or independent adjuster on the same claim.

29 (4) The contract shall not be construed to prevent an insured from pursuing any
30 civil remedy after the three business day revocation or cancellation period.

31 (5) A public adjuster shall not enter into a contract or accept a power of attorney
32 that vests in the public adjuster the effective authority to choose the persons
33 who shall perform repair work.

34 (6) A public adjuster shall ensure that all contracts for the public adjuster's
35 services are in writing and set forth all terms and conditions of the
36 engagement.

37 (j) A public adjuster may not agree to any loss settlement without the insured's
38 knowledge and consent.

39 (k) Public adjusters shall not solicit a client for employment between the hours of 9:00
40 P.M. and 9:00 A.M.

41 **"§ 58-33A-90. Reporting of actions.**

42 (a) A public adjuster shall report to the Commissioner any administrative action taken
43 against the public adjuster in another jurisdiction or by another governmental agency in this
44 State within 30 days after the final disposition of the matter. This report shall include a copy of
45 the order, consent order, or other relevant legal documents.

46 (b) Within 30 days after the initial pretrial hearing date, the public adjuster shall report
47 to the Commissioner any criminal prosecution of the public adjuster taken in any jurisdiction.
48 The report shall include a copy of the initial complaint filed, the order resulting from the
49 hearing, and any other relevant legal documents.

50 **"§ 58-33A-95. Rules.**

1 The Commissioner may, in accordance with Chapter 150B of the General Statutes, adopt
2 rules that are necessary or proper to carry out the purposes of this Article."

3 **SECTION 2.** This act becomes effective July 1, 2010.