

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-1

#### ADMINISTRATIVE PROCEDURES

##### Regulation 1-2-19

##### CONTRACT AND RECORD RETENTION RULES FOR PUBLIC ADJUSTERS

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##### **Section 1      Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-2-417, C.R.S.

##### **Section 2      Scope and Purpose**

This regulation sets forth the requirements and standards for contracts between a public adjuster and an Insured. This regulation also sets forth the requirements for the retention of records by public adjusters and the securing of evidence of the financial responsibility of a public adjuster through a surety bond executed and issued by an insurer.

##### **Section 3      Applicability**

This regulation shall apply to all resident and nonresident public adjusters licensed in the state of Colorado.

##### **Section 4      Definitions**

For purposes of this regulation, and unless the context requires otherwise:

- A. "Business entity" shall have the same meaning as defined in §10-2-103(5), C.R.S.
- B. "Commissioner" means the Commissioner of Insurance for the state of Colorado.
- C. "Division" means the Colorado Division of Insurance.

- D. "Erroneous act" means, for the purposes of this regulation, shall include, but not be limited to, a violation of Articles 2 or 3 of Title 10 of the Colorado Revised Statutes and Division of Insurance Regulations.
- E. "Home state" means, for the purposes of this regulation, the District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains his or her principal place of residence nor the state in which the public adjuster maintains his or her principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which he or she becomes licensed and acts as a public adjuster to be the "home state."
- F. "Person" shall have the same meaning as defined in § 10-2-103(8), C.R.S.
- G. "Public adjuster" shall have the same meaning as defined in § 10-2-103(8.5), C.R.S.

**Section 5      Contract and Disclosure Statement between Public Adjuster and      Insured**

- A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following:
  - 1. Legible full name of the adjuster signing the contract, as specified in Division records;
  - 2. Permanent home state business address and phone number;
  - 3. Division license number;
  - 4. Title of "Public Adjuster Contract";
  - 5. The insured's full name, street address, underwriting insurance company name and policy number, if known or upon notification;
  - 6. A description of the loss and its location, if applicable;
  - 7. Description of the services to be provided to the insured;
  - 8. Signatures of the public adjuster and the insured;
  - 9. Date contract was signed by the public adjuster and date the contract was signed by the insured;
  - 10. Attestation language stating that the public adjuster is fully bonded pursuant to state law;
  - 11. The policy number and issuing insurance company name for the surety bond required by § 10-2-417(2), C.R.S., and this regulation;
  - 12. Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services; and
  - 13. Notice of the right to rescind the contract within seventy-two (72) hours after the signing of the contract.
- B. The contract may specify that the public adjuster may be named as a co-payee on an insurer's payment of a claim.

1. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.
  2. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses approved by the insured.
  3. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Division.
- C. If the insurer, within seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the policy, the public adjuster shall:
1. Not receive a commission consisting of a percentage of the total amount paid by the insurer to resolve a claim;
  2. Inform the insured that the loss recovery amount might not be increased by the insurer; and
  3. Be entitled to only reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured until the claim is paid or until the insured receives a written commitment to pay from the insurer. Such reasonable compensation shall be based on the time spent and the expenses incurred by the public adjuster on the claim.
- D. A public adjuster contract shall not contain any contract term or clause that:
1. Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as a percentage of each check issued by an insurance company;
  2. Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
  3. Imposes collection costs or late fees; or
  4. Precludes any person from pursuing civil remedies.
- E. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process and the contract that states:
1. Property insurance policies obligate the insured to present a claim to his or her insurer for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three (3) types are as follows:
    - a. "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
    - b. "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company. They represent the insurance company's interest in the settlement of the claim and are paid by the insurance company. They will not charge you a fee.

- c. "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for you, the insured, to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.
  - 2. The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so;
  - 3. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim;
  - 4. The public adjuster is not a representative or employee of the insurer;
  - 5. The salary, fee, commission, or other consideration is the obligation of the insured, not the insurer; and,
  - 6. The insured has the right to rescind the contract within seventy-two (72) hours of the contract being signed. The rescission shall be in writing, addressed to the public adjuster, at the address in the contract, and the insurer, and placed in the mail or delivered to the public adjuster within seventy-two (72) hours.
- F. The contracts and disclosure statement shall be executed in duplicate to provide an original contract and disclosure statement to the public adjuster and an original contract and disclosure statement to the insured. The public adjuster's original contract and disclosure statement shall be available at all times for inspection by the Commissioner or his or her designee.
- G. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest. The letter shall be accompanied by a copy of the signed public adjuster contract.
- H. The public adjuster shall give the insured written notice of the insured's rights as provided in the Colorado Consumer Protection Act, Title 6 of the Colorado Revised Statutes.
- I. The insured has the right to rescind the contract within seventy-two (72) hours of the contract being signed. The rescission shall be in writing, addressed to the public adjuster, at the address in the contract, and the insurer, and placed in the mail or delivered to the public adjuster within seventy-two (72) hours.
- J. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.

## **Section 6      Financial Responsibility**

- A. A business entity acting as a public adjuster, as described at § 10-2-103(8.5), C.R.S., is required to obtain a public adjuster license and shall comply with § 10-2-417(2), C.R.S., by securing a surety bond in the format attached hereto as Appendix A.
- B. Effective January 1, 2014, all persons and business entities originally licensed as a public adjuster pursuant to § 10-2-417, C.R.S. (2012) must secure a surety bond in the format attached hereto as Appendix A, which is executed and issued by an insurer authorized to issue surety bonds in this state in order to satisfy the financial responsibility requirements of § 10-2-417(2), C.R.S. Effective January 1, 2014, a failure on the part of a person or business entity originally

licensed as a public adjuster pursuant to § 10-2-417, C.R.S. (2012), to secure a surety bond in the format attached hereto as Appendix A shall result in the summary suspension of the public adjuster licensee.

- C. Prior to receiving a public adjuster license, a person or business entity applying for the public adjuster license must secure a surety bond in the format attached hereto as Appendix A, which is executed and issued by an insurer authorized to issue surety bonds in this state in order to satisfy the financial responsibility requirements of § 10-2-417(2), C.R.S. A failure on the part of the person or business entity to secure the surety bond in the format attached hereto as Appendix A shall result in the denial of the license application.
- D. The original surety bond and power of attorney required pursuant to Section 6.B., above shall be mailed or delivered to the Commissioner of Insurance on or before January 2, 2014.
- E. The original surety bond and power of attorney required pursuant to Section 6.C. above shall be submitted, to the Division of Insurance, with the application for licensure.

## **Section 7      Record Retention**

- A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall be retained for five (5) years from the date of contract or upon completion of contract, whichever is longer. The records required by this section include the following:
  - 1. Name of the insured;
  - 2. Date, location and amount of the loss;
  - 3. Copy of the contract between the public adjuster and insured;
  - 4. Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
  - 5. Itemized statement of the insured's recoveries;
  - 6. Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;
  - 7. A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;
  - 8. Name of public adjuster who executed the contract;
  - 9. Name of the attorney representing the insured, if applicable, and the name of the claims representative(s) of the insurance company;
  - 10. A copy of the bond required by § 10-2-417(2), C.R.S., that was in effect during the course of the transaction;
  - 11. A copy of the letter mailed to the insurance company as required by Section 5.G. of this regulation;
  - 12. A copy of the written notice of the insured's rights as required by Section 5.H. of this regulation;

13. All written communication, whether stored electronically or by other means, between the public adjuster and the insured or between the public adjuster and the insurance company; and
14. A copy of the disclosure statement required by Section 5.E. of this regulation.

#### **Section 8 Severability**

If any provision of this regulation or the application to any person or circumstance is for any reason held to be invalid, the remainder of the Regulation shall not be affected.

#### **Section 9 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

#### **Section 10 Effective Date**

This regulation shall be effective January 1, 2014.

#### **Section 11 History**

Original Regulation 1-2-19, effective January 1, 2014.

## APPENDIX A

STATE OF COLORADO

POWER OF ATTORNEY NUMBER: \_\_\_\_\_

BOND NUMBER: \_\_\_\_\_

### PUBLIC ADJUSTER SURETY BOND

The condition of this surety bond is that \_\_\_\_\_  
(Name of Public Adjuster)

as PRINCIPAL and \_\_\_\_\_,  
(Name of Surety)

an insurer authorized to issue surety bonds in the State of Colorado, as SURETY, are hereby held and firmly bound to the Division of Insurance of the State of Colorado, as obligee, in the sum of TWENTY THOUSAND DOLLARS (\$20,000.00). Principal and Surety hereby bind themselves, their representatives, successors and assigns, jointly and severally, to the terms of this bond. Principal and Surety further agree that:

1. This surety bond is required by § 10-2-417(2), C.R.S., and secures the compliance of the Principal with the requirements of the Colorado statutes and regulations regulating public adjusters.
2. This surety bond specifically authorizes the Colorado Commissioner of Insurance to recover restitution against this surety bond for any person in this state who sustained damages as the result of the Principal's erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster. The term erroneous act shall include, but is not limited to, a violation by the Principal of Articles 2 or 3 of Title 10 of the Colorado Revised Statutes.
3. The aggregate liability of the Surety to all persons for losses incurred as a result of the Principal's actions shall in no event exceed the amount of this bond.
4. This surety bond shall remain in effect during the term of the license, until the Surety is released from liability by the Colorado Commissioner of Insurance, or until canceled by the Surety.
5. The Surety agrees to notify the Colorado Commissioner of Insurance and the licensee of any termination or cancellation of the surety bond thirty (30) days prior to terminating or cancelling the surety bond and to provide a date certain for the termination or cancellation of the surety bond. The Surety remains liable for any damages caused by the Principal's erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster prior to the termination date.
6. The Principal agrees that any failure to have a compliant surety bond shall result in the summary suspension of the Principal's public adjuster license.
7. The Principal agrees to notify the Colorado Commissioner of Insurance in writing within fourteen (14) days of any change to this surety bond that impairs the financial responsibility of the Principal.

\_\_\_\_\_  
(Print Name of Surety)

\_\_\_\_\_  
(Print Name of Principal)

By: \_\_\_\_\_  
Signature of Attorney in Fact for  
Surety or Surety must attach  
Power of Attorney)

By: \_\_\_\_\_  
(Signature of Principal)