ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 439 By: Quinn of the Senate

and

Grau of the House

[adjusters - application for license adjuster - requirements - contents of certain memorandum - maximum fee - recordkeeping - catastrophes - duration and applicability of license - codification - effective date]

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"An Act relating to insurance adjusters; amending 36 O.S. 2011, Sections 6205, 6214, 6216.2, 6218, 6220 and 6220.1, which relate to the Insurance Adjusters Licensing Act; modifying nonresident applicant eligibility; increasing amount of certain surety bond; updating references; requiring return of certain things of value after cancellation notice; modifying statement required in contract for services; modifying contents of contract for services; requiring certain information be included in contract for services; providing certain requirements upon adjuster when an insurer pays certain policy coverage limits; prohibiting certain terms in a public adjuster contract; requiring delivery of a copy of the original executed contract to the insured; authorizing adjuster be named as a joint payee; expanding authority of the Insurance Commissioner to approve nonconforming contracts; authorizing certain declaration of emergency; modifying duration of emergency adjuster license; limiting claims emergency adjuster may adjust;

limiting certain compensation public adjuster may receive; providing applicability; adding instances the Insurance Commissioner may suspend, revoke, fail to issue or renew license; authorizing the Insurance Department to impose certain penalties and remedies; prohibiting certain acts; providing penalty; modifying applicability; providing public adjuster requirements; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6205, is amended to read as follows:

Section 6205. A. Application for a license as an adjuster shall be made to the Insurance Commissioner upon forms prescribed and furnished by the Commissioner. As a part of and in connection with the application, the applicant shall furnish such information concerning the applicant's identity, personal history, business experience, business record and such other pertinent information which the Commissioner shall reasonably require.

B. Unless denied licensure pursuant to Section 6220 of this title, a nonresident applicant shall receive a nonresident adjuster license if:

1. The applicant has passed an examination in the applicant's home state <u>or in another state in which the applicant is currently licensed and in good standing</u>;

2. The applicant is currently licensed and in good standing in the home state of the applicant;

3. The applicant has submitted the proper request for licensure and has paid the fees required by Section 6212 of this title; and

4. The applicant’s home state awards nonresident adjuster licenses to residents of this state on the same basis.

C. If a nonresident applicant’s home state does not license or require an examination for an adjuster license, the adjuster may declare another state which has an examination requirement and in which the adjuster is licensed to be the home state. Should the applicant not hold an active adjuster license in his or her home state or declared home state, the applicant shall pass the adjuster examination of this state prior to receiving a nonresident adjuster license.

D. An individual who is a resident of Canada shall not be licensed pursuant to the Insurance Adjusters Licensing Act nor designate this state as the individual's home state, unless the individual has successfully passed the adjuster examination and has complied with all applicable requirements of the Insurance Adjusters Licensing Act; except that any such applicant shall not be required to comply with paragraph 2 of subsection A of Section 6206 of this title or Section 6215 of this title.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 6214, is amended to read as follows:

Section 6214. A. Prior to the issuance of a license as a public adjuster or any renewal of the license, the applicant shall

file with the Commissioner a surety bond in favor of the people of the State of Oklahoma, executed by a surety company authorized to do business in the state, in the amount of ~~Ten Thousand Dollars ($10,000.00)~~ Twenty-five Thousand Dollars ($25,000.00). The total aggregate liability on the bond may be limited to the payment of ~~Ten Thousand Dollars ($10,000.00)~~ Twenty-five Thousand Dollars ($25,000.00). The bond shall be conditioned on the accounting by the adjuster to any insured whose claim the adjuster is handling for monies or any other settlement received in connection with the claim.

B. Any bond shall remain in force concurrently with the license or until the surety is released from liability by the Commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to the cancellation, the surety may cancel a bond upon thirty (30) days' advance notice in writing filed with the Commissioner.

C. Effective December 1, 1983, such bond shall be required of all public adjusters.

SECTION 3. AMENDATORY 36 O.S. 2011, Section 6216.2, is amended to read as follows:

Section 6216.2 A. The ~~owner of damaged property~~ insured has the right to cancel any compensation agreement entered into with a licensed public adjuster until midnight of the third business day

after the day on which the signed agreement was ~~signed~~ provided to the insured.

B. Cancellation occurs when the ~~buyer~~ insured gives written notice of cancellation to the licensed public adjuster at the address stated in the agreement between the parties. Notice of cancellation may be given by mail and is given when deposited in a United States mailbox properly addressed and postage prepaid. Notice of cancellation must contain the written intention of the ~~owner~~ insured to cancel the agreement. No liability accrues to the ~~owner~~ insured when the agreement is canceled within said period, except for reasonable expense incurred by the public adjuster in preserving the damaged premises during the said three-day period. Anything of value given by the insured under the contract shall be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.

C. Every contract for services to be rendered by a public adjuster shall contain the following statement. It shall be in boldface ten-point or larger type and located conspicuously on the front face of the contract. "THIS CONTRACT MAY BE CANCELED WITHIN THREE (3) DAYS AFTER THE ~~OWNER OF THE DAMAGED PROPERTY~~ INSURED PARTY HAS ~~SIGNED~~ RECEIVED AN ORIGINAL SIGNED COPY OF THIS AGREEMENT".

D. Every contract for services to be rendered by a public adjuster shall ~~clearly indicate the time, date, and place of execution of the contract. This information shall be part of the~~

~~contract and shall be placed thereon before execution~~ be in writing and contain the following information:

1. Legible full name of the public adjuster signing the contract, as specified in Insurance Department records;

2. Permanent home state business address and phone number;

3. Department license number;

4. Title of "Public Adjuster Contract";

5. The insured's full name, street address, 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 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; and

10. Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services pursuant to the following guidelines:

a. if the compensation is based on a share of the insurance settlement, the exact percentage shall be specified,

b. 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 first approved by the insured,

c. compensation provisions in a public adjusting contract shall not be redacted in any copy of a contract provided to the Department upon request. Such a redaction shall constitute an omission of material fact, and

d. the public adjuster and the insured shall both indicate their agreement to the compensation provision(s) of the contract by initialing next to the provision(s) in the contract.

E. If the insurer, not later than 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 a policy coverage limit(s), the public adjuster shall, with respect to that coverage:

1. Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

2. Inform the insured that loss recovery amount might not be increased by insurer; and

3. Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

F. A public adjuster contract may not contain any contract term 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 party from pursuing civil remedies.

G. At the time of signing, a public adjuster shall deliver to the insured, in any manner acceptable to the insured and approved by the Insurance Commissioner, a copy of the original executed contract.

H. A public adjuster contract may specify that the public adjuster shall be named as a joint payee on an insurer's payment of a claim.

I. The Insurance Commissioner reserves the right to approve forms of contracts containing language other than that specified in ~~subsection A of~~ this section if ~~such~~:

1. Such language reasonably discloses to the insured the statutory rights under this section and is otherwise consistent with all other provisions of law and regulations promulgated; or

2. The Commissioner finds that the requirements of this section are, in the Commissioner's opinion, unnecessary due to the nature and scope of the business of the insured party to which the contract will apply.

SECTION 4. AMENDATORY 36 O.S. 2011, Section 6218, is amended to read as follows:

Section 6218. A. In the event of a catastrophe, the Insurance Commission may declare an emergency to exist, and in the event of such a declaration, the Commissioner may issue a license as an emergency adjuster to any resident or nonresident applicant. Such declaration of emergency may be made per zip code or on a county-by-county basis, or any combination thereof. An individual licensed as an emergency adjuster pursuant to this section may only adjust claims related to the catastrophe. ~~Said~~ The applicant shall not have to be a licensed adjuster. An applicant for this license shall be certified in the manner prescribed by the Commissioner by an adjuster licensed in this state or by an insurer who maintains an office in this state and is licensed to do business in this state. A licensed adjuster or insurer who certifies an applicant for this license shall be responsible for any losses caused by the applicant or for any improper claim handling practices committed by the applicant. The employer of this applicant shall certify the application for license as an emergency adjuster to the Commissioner within five (5) days after the applicant begins working as an

emergency adjuster for ~~said~~ the employer. The license as an emergency adjuster shall remain in force for not more than ninety (90) days from the date ~~of issue, unless extended for an additional ninety (90) days by~~ the Commissioner issues an emergency declaration order. The emergency declaration order may be extended an additional ninety (90) days at the Commissioner's discretion. An emergency adjuster may only adjust claims resulting from the particular catastrophe for which the emergency declaration order is issued.

B. The Commissioner may suspend or revoke the right of any person acting as an adjuster or an emergency adjuster in this state pursuant to the authority derived from the provisions of the Insurance Adjusters Licensing Act to continue to adjust claims in this state after a hearing on the suspension or revocation if the Commissioner finds that said person has engaged in any of the practices forbidden to a licensed adjuster. Notice of the hearing on said suspension or revocation shall be given personally or shall be sent by mail to the address stated in the registration. A duplicate copy of the notice shall be given to the insurer.

C. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee or other thing of value equal to more than ten percent (10%) of the amount of the insurance settlement claim paid by the insurer on any claim resulting from a catastrophe declared by the Commissioner to be an

emergency pursuant to subsection A of this section. The provisions of this subsection shall not apply to a public adjuster providing public adjuster services on behalf of a for-profit commercial entity.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 6220, is amended to read as follows:

Section 6220. A. The Commissioner may censure, suspend, revoke, or refuse to issue ~~a renewal~~ or renew a license after hearing for any of the following causes:

1. Material misrepresentation or fraud in obtaining an adjuster's license; ~~or~~

2. Any cause for which original issuance of a license could have been refused; ~~or~~

3. Misappropriation, conversion to the personal use of the licensee, or illegal withholding of monies required to be held by the licensee in a fiduciary capacity; ~~or~~

4. Material misrepresentation of the terms and effect of any insurance contract, with intent to deceive, or engaging in, or attempting to engage in, any fraudulent transaction with respect to a claim or loss that the licensee or the trainee is adjusting and, in the case of a public adjuster, misrepresentation of the services offered or the fees or commission to be charged; ~~or~~

5. Conviction of or pleading guilty or nolo contendere to a felony pursuant to the laws of this state, any other state, the United States, or any foreign country; ~~or~~

6. If in the conduct of business affairs, the licensee or trainee has shown himself to be, and is so deemed by the Commissioner, incompetent, untrustworthy or a source of injury to the public; ~~or~~

7. Refusal to comply with any lawful order of the Commissioner; ~~or~~

8. Violation of any provision of the Insurance Adjusters Licensing Act; ~~or~~

9. Adjusting losses or negotiating claim settlements arising pursuant to provisions of insurance contracts on behalf of an insurer without proper licensing or authority from the licensed insurer;

10. Failing to respond to any inquiry (including electronic communications) from the Department within thirty (30) calendar days of receipt of such inquiry;

11. Forging another's name to any document;

12. Obtaining or attempting to obtain a license through misrepresentation or fraud;

13. Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;

14. Having an insurance adjuster license or its equivalent denied, suspended, censured, placed on probation or revoked in any other state, province, district or territory;

15. Failing to inform the Department, by any means acceptable to the Department, of a change of address, change of legal name or change of information submitted on the application within thirty (30) days of the change; or

16. Providing services as a public adjuster, company adjuster or independent adjuster on the same claim.

B. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the provisions of ~~this section~~ the Insurance Adjusters Licensing Act may be subject to a civil fine of not more than One Thousand Dollars ($1,000.00) for each violation. This fine may be enforced in the same manner in which civil judgment may be enforced.

C. If the license of an adjuster is suspended, revoked, or not renewed, the licensee shall surrender said license to the Commissioner.

D. The Commissioner shall not reinstate a license to any person whose license has been suspended, revoked, or refused renewal until the Commissioner determines that the cause or causes for the suspension, revocation, or nonrenewal of said license no longer exist.

E. The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

F. It shall be unlawful for any person, firm, association, company or corporation to act as an adjuster without first obtaining a license pursuant to the Insurance Adjusters Licensing Act. Any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and shall be punished as set forth in Section 10 of Title 21 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 6220.1, is amended to read as follows:

Section 6220.1 A. No adjuster may, directly or indirectly, own or have a pecuniary interest in any business entity which provides construction or reconstruction related services on behalf of an insurance claimant or insured for which the adjuster is providing services, nor may the adjuster, directly or indirectly, own or have a pecuniary interest in any other business entity which furnishes any supplies, material, services, or equipment purchased by or on behalf of the claimant or insured in settlement of the claim, other than usual and customary supplies, materials, services, or equipment utilized in the adjusting process.

B. Any person who violates the provisions of this section shall be subject to disciplinary action or a civil fine, or both, as set forth in Section 6220 of ~~Title 36 of the Oklahoma Statutes~~ this title.

C. This section shall not apply to an adjuster providing services on a claim which is located ~~in the county in which the adjuster maintains their principal place of business, or~~ in a municipality having a population of less than six thousand (6,000) persons; provided, however, the adjuster shall give written disclosure of the potential conflict of interest to both the insured and insurer prior to the performance of any adjuster services.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6223 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A public adjuster shall not misrepresent to a claimant that the public adjuster is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster.

B. No public adjuster shall split any commission, service fee or other valuable consideration for performing adjusting services with any person or entity unless that person or entity is required to be licensed as a public adjuster under this title and is so licensed.

C. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

1. Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three 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 to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee, and

c. "public adjuster" means the insurance adjusters who do not work for any insurance company. They work for 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 public adjuster is not a representative or employee of the insured; and

4. The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

D. 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.

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

F. A public adjuster shall maintain a complete record of each transaction as a public adjuster for at least five (5) years after the termination of the transaction and the record shall be open to examination by the Department at all times. The records required by this subsection shall include the following:

1. Name of the insured;

2. Date, location and amount of the loss;

3. Copy of the signed 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 the public adjuster who executed the contract; and

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

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

H. A public adjuster shall not solicit or attempt to solicit an insured during the progress of a loss-producing occurrence.

I. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required.

J. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer.

K. The public adjuster shall not refer or direct the insured to obtain needed repairs or services in connection with a loss from any person or entity with whom the public adjuster has a financial interest or from whom the public adjuster may receive direct or indirect compensation for the referral.

L. Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster from any third party shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

M. A public adjuster shall 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.

N. A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

O. On a percentage fee contract, a public adjuster may not require, demand or accept any fee, retainer, compensation, deposit or other thing of value prior to payment of any claim proceeds, whether such payment is partial in nature or payment in full.

SECTION 8. This act shall become effective November 1, 2015."

Passed the House of Representatives the 20th day of April, 2015.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2015.

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Presiding Officer of the Senate