

1 SENATE BILL 88

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Carroll H. Leavell

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9
10 AN ACT

11 RELATING TO INSURANCE; DEFINING "PUBLIC ADJUSTER" AND CERTAIN
12 OTHER TERMS; REQUIRING ADJUSTERS TO PASS AN EXAMINATION PRIOR
13 TO OBTAINING A LICENSE; REQUIRING PUBLIC ADJUSTERS TO OBTAIN A
14 SURETY BOND; ELIMINATING THE ISSUANCE OF TEMPORARY ADJUSTER
15 LICENSES; ALLOWING INSURERS AND PUBLIC ADJUSTERS TO REQUEST
16 PERMISSION IN AN EMERGENCY TO USE ADJUSTERS LICENSED IN ANOTHER
17 STATE; PERMITTING THE SUPERINTENDENT OF INSURANCE TO ALLOW
18 ADJUSTERS TO OBTAIN CONTINUING EDUCATION THROUGH INSTRUCTION
19 PROVIDED ONLINE OR THROUGH THE MAIL REGARDLESS OF WHERE THE
20 ADJUSTER IS LOCATED; PROHIBITING ADJUSTERS WHO ARE CONTRACTORS
21 FROM ADJUSTING CLAIMS; PROVIDING STANDARDS OF CONDUCT FOR
22 PUBLIC ADJUSTERS; IMPOSING REQUIREMENTS ON CONTRACTS BETWEEN
23 PUBLIC ADJUSTERS AND INSURED; REQUIRING PUBLIC ADJUSTERS TO
24 DEPOSIT FUNDS RECEIVED FROM INSURED IN ESCROW OR TRUST
25 ACCOUNTS; IMPOSING REQUIREMENTS ON THE RECORDS THAT PUBLIC

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1 ADJUSTERS MUST MAINTAIN; ALLOWING THE SUPERINTENDENT OF
2 INSURANCE TO REVIEW REPORTS OF INSURANCE FRAUD SUBMITTED BY
3 PUBLIC ADJUSTERS.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. Section 59A-13-2 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 230, as amended) is amended to read:

8 "59A-13-2. DEFINITIONS.--

9 A. For the purposes of the Insurance Code:

10 (1) "adjuster" means a person that:

11 (a) investigates, negotiates, settles or
12 adjusts a loss or claim arising under an insurance contract on
13 behalf of an insurer, insured or self-insurer, for a fee,
14 commission or other compensation; however, an adjuster acting
15 on behalf of an insured shall not investigate, negotiate,
16 settle or adjust a claim involving personal injury to the
17 insured; and

18 (b) advises the insured of the insured's
19 rights to settlement and the insured's rights to settle,
20 arbitrate and litigate the dispute;

21 (2) "automated claims adjudication system"
22 means a preprogrammed computer system designed for the
23 collection, data entry, calculation and final resolution of
24 portable electronics insurance claims that shall:

25 (a) only be used by a licensed

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1 independent adjuster, licensed agent or supervised individuals
2 operating pursuant to Subsection C of Section 59A-13-3 NMSA
3 1978;

4 (b) comply with all claims payment
5 requirements of the Insurance Code; and

6 (c) be certified as compliant with the
7 Portable Electronics Insurance Act by a licensed independent
8 adjuster who is an officer of a licensed business entity
9 pursuant to the Insurance Code;

10 [~~(3) "staff adjuster" means an adjuster~~
11 ~~individual who is a salaried employee of an insurer or~~
12 ~~affiliates of the employer insurer, representing and adjusting~~
13 ~~claims solely under policies of the employer insurer;]~~

14 (3) "business entity" means a corporation,
15 association, partnership, limited liability company, limited
16 liability partnership or other legal entity;

17 (4) "home state" means the District of
18 Columbia and any state or territory of the United States in
19 which the adjuster's principal place of residence or principal
20 place of business is located. If neither the state in which
21 the adjuster maintains the principal place of residence nor the
22 state in which the adjuster maintains the principal place of
23 business has substantially similar laws governing adjusters,
24 the adjuster may declare another state in which it becomes
25 licensed and acts as an adjuster to be the home state;

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1 [~~(4)~~] (5) "independent adjuster" means an
2 adjuster who is not a staff adjuster and includes a
3 representative and an employee of an independent adjuster;
4 [~~and~~]

5 (6) "public adjuster" means an adjuster who,
6 for compensation or anything of value on behalf of an insured:

7 (a) acts or aids, solely in relation to
8 first-party claims arising under insurance contracts that
9 insure the real or personal property of the insured, on behalf
10 of an insured in negotiating for, or effecting the settlement
11 of, a claim for loss or damage covered by an insurance
12 contract;

13 (b) advertises for employment as a
14 public adjuster of insurance claims or solicits business or
15 makes a representation to the public as being as a public
16 adjuster of first party insurance claims for losses or damages
17 arising from policies of insurance that insure real or personal
18 property; or

19 (c) directly or indirectly solicits
20 business, investigates or adjusts losses, or advises an insured
21 about first-party claims for losses or damages arising out of
22 policies of insurance that insure real or personal property for
23 another person engaged in the business of adjusting losses or
24 damages covered by an insurance policy, for the insured;

25 [~~(5)~~] (7) "resident adjuster" means an

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1 adjuster who resides principally in New Mexico and who conducts
2 business primarily in New Mexico; and

3 (8) "staff adjuster" means an adjuster
4 individual who is a salaried employee of an insurer or
5 affiliate of the employer insurer, representing and adjusting
6 claims solely under the authority of the employer insurer.

7 B. Except as otherwise provided, "adjuster" does
8 not include:

9 (1) an attorney-at-law who adjusts insurance
10 losses or claims from time to time incidental to practice of
11 law and who does not advertise or represent as an adjuster;

12 (2) a licensed agent or general agent of an
13 authorized insurer or an employee of an agent or general agent
14 who adjusts claims or losses under specific authority from the
15 insurer and solely under policies issued by the insurer;

16 (3) an agent or employee of a life or health
17 insurer who adjusts claims or losses under the insurer's
18 policies or contracts to administer policies or benefits of
19 that type;

20 (4) a salaried or part-time claims agent or
21 investigator employed by a self-insured person; ~~[or]~~

22 (5) an individual who, for purposes of
23 portable electronics insurance claims, collects claim
24 information from, or furnishes claim information to, insureds
25 or claimants, and who conducts data entry, including entering

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1 data into an automated claims adjudication system; provided
2 that the individual is an employee of a licensed independent
3 adjuster or its affiliate where no more than twenty-five such
4 persons are under the supervision of one licensed independent
5 adjuster or licensed agent who is exempt from licensure
6 pursuant to Paragraph (2) of this subsection;

7 (6) a property damage appraiser or other
8 individual who is employed by an insurer, third-party
9 administrator, independent adjuster or self-insurer who
10 inspects and provides monetary estimates of damages sustained
11 by an insured or third party and does not investigate,
12 negotiate, settle or adjust claims;

13 (7) a person who is employed solely for the
14 purpose of obtaining facts surrounding a loss or furnishing
15 technical assistance to an adjuster, such as a photographer,
16 estimator, private investigator, engineer or handwriting
17 expert;

18 (8) a licensed health care provider or
19 employee of a licensed health care provider who prepares or
20 files a health claim on behalf of a patient;

21 (9) a person who settles subrogation claims
22 between insurers;

23 (10) a person who is employed to investigate
24 suspected fraudulent insurance claims but does not adjust
25 losses or determine claim payments; or

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1 (11) an employee of an insurer who receives
2 loss reports from insureds and who may advise an insured
3 regarding the claim process or coverage available to the
4 insured but who does not act as an adjuster on the claim."

5 SECTION 2. Section 59A-13-3.1 NMSA 1978 (being Laws 2016,
6 Chapter 89, Section 55) is amended to read:

7 "59A-13-3.1. EXAMINATION FOR LICENSE.--

8 A. [~~A resident~~] An individual applying for a
9 license as an adjuster shall, prior to issuance of a license,
10 personally take and pass a written examination. The
11 examination shall test the knowledge of the individual
12 concerning the duties and responsibilities of an adjuster and
13 the insurance laws and rules of this state. Examinations
14 required by this section shall be developed and conducted under
15 rules prescribed by the superintendent.

16 B. The superintendent may contract with an outside
17 testing service for administering examinations and collecting
18 the nonrefundable fee set forth in Section 59A-6-1 NMSA 1978.

19 C. Each individual applying for an examination shall
20 remit a nonrefundable fee as prescribed by the superintendent as
21 set forth in Section 59A-6-1 NMSA 1978.

22 D. An individual who fails to appear for an
23 examination as scheduled or fails to pass the examination shall
24 reapply for an examination and remit all required fees and forms
25 before being rescheduled for another examination.

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1 E. No examination shall be required:
2 (1) for renewal or continuation of an existing
3 license, except as provided in Subsection D of Section 59A-11-10
4 NMSA 1978; or
5 ~~[(2) of applicants for a temporary license as~~
6 ~~provided in Section 59A-13-6 NMSA 1978; or~~
7 ~~(3)]~~ (2) if the applicant took and passed a
8 similar examination in a state in which the applicant is already
9 licensed, subject to Section 59A-5-33 NMSA 1978."

10 **SECTION 3.** Section 59A-13-4 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 232, as amended) is amended to read:

12 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

13 A. The superintendent shall license as an adjuster
14 only an individual who is otherwise in compliance with Chapter
15 59A, Articles 11 and 13 NMSA 1978 and who has furnished evidence
16 satisfactory to the superintendent that the applicant for
17 license:

18 (1) is not less than eighteen years of age;

19 (2) is a bona fide resident of this state, or
20 of a state or country that permits residents of this state to
21 act as adjusters therein, except that under circumstances of
22 necessity the superintendent may waive the requirement of
23 reciprocity;

24 (3) can demonstrate a good business
25 reputation, and intends to engage in a bona fide manner in the

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1 business of adjusting insurance claims;

2 [~~(4)~~] ~~except as to temporary license provided~~
3 ~~for under Section 59A-13-6 NMSA 1978, has had at least one~~
4 ~~year's experience or special education or training in handling~~
5 ~~of losses or claims under insurance contracts, such experience,~~
6 ~~education and training to be of such nature and extent as to~~
7 ~~demonstrate the applicant's competence to fulfill the~~
8 ~~responsibilities of an adjuster;~~

9 ~~(5)]~~ (4) has passed any examination required
10 for licensing; and

11 [~~(6)]~~ (5) has filed the bond required under
12 Section 59A-13-5 NMSA 1978.

13 B. Paragraphs (2) and [~~(6)]~~ (5) of Subsection A of
14 this section shall not apply as to staff adjusters.

15 C. Individuals holding licenses as adjusters on the
16 effective date of the Insurance Code shall be deemed to meet the
17 qualifications for the license except as provided in Chapter
18 59A, Articles 11 and 13 NMSA 1978.

19 D. A business entity applying for an independent
20 adjuster license for the purposes of portable electronics
21 insurance in New Mexico shall submit the names, addresses,
22 social security numbers, criminal and administrative histories,
23 background checks, biographical statements and fingerprints of
24 all executive officers and directors of the applicant and of all
25 executive officers and directors of entities owning and any

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1 individuals owning, directly or indirectly, fifty-one percent or
2 more of the outstanding voting securities of the applicant. Any
3 nonresident business entity applicant whose resident state has
4 enacted into law provisions that are substantively duplicative
5 of the provisions of this subsection shall not be required to
6 submit criminal histories, background checks, biographical
7 statements and fingerprints for its executive officers,
8 directors and owners of outstanding voting securities."

9 SECTION 4. Section 59A-13-5 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 233) is amended to read:

11 "59A-13-5. BOND.--

12 A. With application for license, temporary or
13 otherwise, as an adjuster other than as staff adjuster, the
14 applicant shall file with the superintendent a surety bond in
15 favor of the superintendent in aggregate amount of not less than
16 ten thousand dollars (\$10,000) for an independent adjuster
17 license and of not less than fifty thousand dollars (\$50,000)
18 for a public adjuster license, conditioned to pay actual damages
19 resulting to the state of New Mexico or any member of the public
20 in New Mexico from violation of law by the licensee while acting
21 as an adjuster. The bond shall be one executed by an authorized
22 surety insurer.

23 B. The bond shall remain in effect for the duration
24 of the license, or until the surety is released from liability
25 by the superintendent, or until [~~cancelled~~] canceled by the

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1 surety. Without prejudice to any liability accrued prior to
2 cancellation, the surety may cancel a bond by giving written
3 notice to the superintendent at least thirty [~~(30)~~] days prior
4 to effective date of cancellation.

5 C. The applicant or licensee may file with the
6 superintendent a cash bond in like amount, in lieu of surety
7 bond."

8 SECTION 5. Section 59A-13-6 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 234) is amended to read:

10 "59A-13-6. [~~TEMPORARY LICENSE~~] EMERGENCY ADJUSTERS.--

11 [~~A. Upon application by an applicant meeting all~~
12 ~~qualifications for license except as to experience, education or~~
13 ~~training referred to in Section 232 of this article, the~~
14 ~~superintendent may issue a temporary license as adjuster under~~
15 ~~which an individual employed by a licensed adjuster and~~
16 ~~undergoing education or training as an adjuster under direction~~
17 ~~and supervision of such licensed adjuster, may act as an~~
18 ~~adjuster. Application for the license must be made, and the~~
19 ~~applicant registered with the superintendent, at beginning of~~
20 ~~the training period, and the license may be in force for a~~
21 ~~period not to exceed twelve (12) months, without right of~~
22 ~~renewal or continuation.~~

23 B. ~~The superintendent may issue a temporary license~~
24 ~~as adjuster to an individual employed by a licensed adjuster or~~
25 ~~an authorized insurer due to a catastrophe or emergency~~

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1 ~~requiring immediate expansion of adjuster services in this~~
2 ~~state. Application for the license must be made through such~~
3 ~~licensed adjuster or insurer. Responsibility for the conduct of~~
4 ~~a temporary licensee rests jointly on the licensee and the~~
5 ~~employer adjuster or insurer. The temporary license may be in~~
6 ~~force for a period not to exceed three (3) months, without right~~
7 ~~of renewal or continuation. In considering the application for~~
8 ~~temporary license the superintendent may waive such of the~~
9 ~~qualifications for license stated in Section 232 of this article~~
10 ~~as the superintendent deems advisable.]~~

11 A. In the event of an emergency requiring the
12 immediate expansion of adjuster services in New Mexico, an
13 insurer or a public adjuster licensed in New Mexico may request
14 authority from the superintendent to employ adjusters to assist
15 with the emergency who are not licensed in New Mexico but who
16 are currently licensed and in good standing in their home state.
17 An insurer or public adjuster requesting such authority shall
18 provide the superintendent with the following information:

19 (1) the nature of the emergency and the
20 affected region of the state;

21 (2) a list of the adjusters that the insurer
22 or public adjuster shall use that are not licensed in New
23 Mexico. This list shall include each adjuster's name, home
24 address, last four digits of social security number, national
25 producer number, home state and the effective date of the

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1 contract between the adjuster and the insurer or public
2 adjuster;

3 (3) the name, contact information, national
4 producer number and New Mexico license number for the individual
5 designated by the insurer or public adjuster who will be
6 responsible for the conduct of these adjusters; and

7 (4) any other information that the
8 superintendent may require.

9 B. The adjustment of claims by the adjusters listed
10 in Paragraph (2) of Subsection A of this section shall be
11 limited to claims arising from the emergency.

12 C. Use of the listed adjusters shall be limited to
13 the ninety days immediately following the emergency, unless an
14 extension of time is requested by the insurer or public adjuster
15 and granted by the superintendent.

16 D. A request by an insurer or public adjuster to
17 employ adjusters to assist with an emergency who are not
18 licensed in New Mexico but who are currently licensed and in
19 good standing in their home state shall be deemed approved if
20 such a request is not disapproved by the superintendent within
21 three business days of its submission to the superintendent.

22 E. An insurer or public adjuster that requests
23 authorization pursuant to this section may commence employing
24 the adjusters listed in Paragraph (2) of Subsection A of this
25 section while awaiting the superintendent's decision on their

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1 request."

2 SECTION 6. Section 59A-13-12 NMSA 1978 (being Laws 2016,
3 Chapter 89, Section 56) is amended to read:

4 "59A-13-12. CONTINUING EDUCATION.--

5 A. The superintendent shall require as a condition
6 to continuation of an adjuster license that during the
7 twenty-four months next preceding expiration of the current
8 license period, the licensee has attended the minimum number of
9 hours of formal class instruction, lectures or seminars required
10 and approved by the superintendent.

11 B. Instruction shall be designed to refresh the
12 licensee's understanding of basic principles and coverages
13 involved, recent and prospective changes, applicable laws and
14 rules of the superintendent, proper conduct of the licensee's
15 business and duties and responsibilities of the licensee.

16 C. The superintendent may permit licensees [~~who,~~
17 ~~because of remoteness of residence or business, cannot with~~
18 ~~reasonable convenience attend formal instruction sessions]~~ to
19 successfully complete an equivalent course of study and
20 instruction online or by mail.

21 D. The superintendent may impose a penalty not to
22 exceed fifty dollars (\$50.00) for a licensee's failure to timely
23 report continuing education credits.

24 E. The superintendent shall charge, at the time of
25 certifying each licensee's continuing education credits as a

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1 condition of continuation of license, a fee of one dollar
2 (\$1.00) per credit hour of continuing education; provided that
3 the superintendent may contract with an independent agency to
4 receive and review a continuing education compliance report, and
5 in such a case, the fee shall be a reasonable amount fixed by
6 the superintendent and payable to the contracting agency."

7 SECTION 7. A new section of Chapter 59A, Article 13 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] PROHIBITED CONDUCT REGARDING THE
10 ADJUSTMENT AND REPAIR OF PROPERTY DAMAGE.--

11 A. An adjuster may not adjust a loss related to
12 physical damage of a property on which the adjuster is also a
13 contractor, acts as a contractor or is employed as a contractor,
14 including a roofing contractor, building contractor or plumbing
15 contractor, or otherwise provides building repairs or products,
16 including building or plumbing repairs or products, for
17 compensation or is a controlling person in a business relating
18 to such contracting.

19 B. A contractor or a roofing contractor may not act
20 as an adjuster or advertise to adjust claims for any property
21 for which the contractor is providing or may provide roofing,
22 building, plumbing or other contractor services, regardless of
23 whether the contractor is a licensed adjuster.

24 C. In those instances in which an adjuster who is
25 also a contractor is performing either as an adjuster or as a

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1 contractor on behalf of an insured, the adjuster shall provide
2 the insured with a disclaimer, on a form promulgated by the
3 superintendent and signed by the adjuster, indicating in which
4 of these two capacities the adjuster is serving the insured and
5 affirming that the adjuster is not serving the insured in the
6 other capacity. The adjuster shall retain copies of such signed
7 disclaimers and make them available to the superintendent upon
8 the superintendent's request."

9 SECTION 8. A new section of Chapter 59A, Article 13 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] STANDARDS OF CONDUCT OF PUBLIC ADJUSTER.--

12 A. A public adjuster is obligated, under the public
13 adjuster's license, to serve with objectivity and complete
14 loyalty in the interest of the public adjuster's client alone
15 and to render to the insured such information, counsel and
16 service, as within the knowledge, understanding and opinion in
17 good faith of the public adjuster, as will best serve the
18 insured's insurance claim needs and interest.

19 B. A public adjuster shall not solicit, or attempt
20 to solicit, an insured during the progress of a loss-producing
21 occurrence, as defined in the insured's insurance contract.

22 C. A public adjuster shall not permit an unlicensed
23 employee or representative of the public adjuster to conduct
24 business for which a license is required under the Insurance
25 Code.

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1 D. A public adjuster shall not pay a commission,
2 service fee or other valuable consideration to a person for
3 investigating or settling claims in New Mexico if that person is
4 required to be licensed under the Insurance Code and is not so
5 licensed.

6 E. A person shall not accept a commission, service
7 fee or other valuable consideration for investigating or
8 settling claims in New Mexico if that person is required to be
9 licensed under the Insurance Code and is not so licensed.

10 F. A public adjuster shall not have a direct or
11 indirect financial interest in any aspect of the claim, other
12 than the salary, fee, commission or other consideration
13 established in the written contract with the insured, unless
14 full written disclosure has been made to the insured as set
15 forth in Subsection G of Section 9 of this 2017 act.

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

20 H. The public adjuster shall abstain from referring
21 or directing the insured to get needed repairs or services in
22 connection with a loss from any person, unless disclosed to the
23 insured:

24 (1) with whom the public adjuster has a
25 financial interest; or

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1 (2) from whom the public adjuster may receive
2 direct or indirect compensation for the referral.

3 I. The public adjuster shall disclose to an insured
4 if the public adjuster has any interest or will be compensated
5 by any construction firm, salvage firm, building appraisal firm,
6 motor vehicle repair shop or any other business entity that
7 performs any work in conjunction with damages caused by the
8 insured loss.

9 J. Any compensation or anything of value in
10 connection with an insured's specific loss that will be received
11 by a public adjuster shall be disclosed by the public adjuster
12 to the insured in writing, including the source and amount of
13 any such compensation.

14 K. A public adjuster may not agree to any settlement
15 without the insured's knowledge and consent.

16 L. Public adjusters shall adhere to the following
17 general ethical requirements:

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

23 (2) a public adjuster shall not knowingly make
24 any oral or written material misrepresentations or statements to
25 any insured client or potential insured client that are false or

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1 maliciously critical and intend to injure any person engaged in
2 the business of insurance;

3 (3) no public adjuster, while so licensed by
4 the superintendent, may represent or act as a staff adjuster or
5 an independent adjuster;

6 (4) the contract shall not be construed to
7 prevent an insured from pursuing any civil remedy after the
8 three-business day revocation or cancellation period;

9 (5) a public adjuster shall not enter into a
10 contract or accept a power of attorney that vests in the public
11 adjuster the effective authority to choose the persons who shall
12 perform repair work; and

13 (6) a public adjuster shall ensure that all
14 contracts for the public adjuster's services are in writing and
15 set forth all terms and conditions of the engagement."

16 **SECTION 9.** A new section of Chapter 59A, Article 13 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] CONTRACT BETWEEN PUBLIC ADJUSTER AND
19 INSURED.--

20 A. Public adjusters shall ensure that all contracts
21 for their service are in writing and contain the following
22 terms:

23 (1) legible full name of the adjuster signing
24 the contract, as specified in the office of superintendent of
25 insurance records;

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1 (2) permanent home state business name and
2 phone number;

3 (3) office of superintendent of insurance
4 license number;

5 (4) title of "Public Adjuster Contract";

6 (5) the insured's full name, street address,
7 insurance company name and policy number, if known or upon
8 notification;

9 (6) description of the loss and its location,
10 if applicable;

11 (7) description of services to be provided to
12 the insured;

13 (8) signatures of the public adjuster and the
14 insured;

15 (9) date the contract was signed by the public
16 adjuster and date the contract was signed by the insured;

17 (10) attestation language stating that the
18 public adjuster is fully bonded; and

19 (11) full salary, fee, commission,
20 compensation or other considerations the public adjuster is to
21 receive for services.

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

24 C. If the compensation is based on a share of the
25 insurance settlement, the exact percentage shall be specified.

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1 D. Initial expenses to be reimbursed to the public
2 adjuster from the proceeds of the claim payment shall be
3 specified by type, with dollar estimates set forth in the
4 contract and with any additional expenses first approved by the
5 insured.

6 E. Compensation provisions in the public adjusting
7 contract shall not be redacted in any copy of the contract
8 provided to the superintendent.

9 F. If the insurer, not later than seventy-two hours
10 after the date on which the loss is reported to the insurer,
11 either pays or commits in writing to pay to the insured the
12 policy limit of the insurance policy, the public adjuster shall:

13 (1) inform the insured that, due to the
14 insurer's payment or commitment to pay the policy limit, the
15 loss recovery amount might not be increased by the insurer;

16 (2) not receive a commission consisting of a
17 percentage of the total amount paid by an insurer to resolve the
18 claim; and

19 (3) be entitled only to reasonable
20 compensation from the insured for the time spent and expenses
21 incurred on the claim by the public adjuster, until the claim is
22 paid or the insured receives a written commitment to pay from
23 the insurer.

24 G. A public adjuster shall provide the insured a
25 written disclosure concerning any direct or indirect financial

1 interest that the public adjuster has with any party that is
2 involved in any aspect of the claim, other than the salary, fee,
3 commission or other consideration established in the written
4 contract with the insured, including any ownership of, other
5 than as a minority stockholder, or any compensation expected to
6 be received from, any construction firm, salvage firm, building
7 appraisal firm, motor vehicle repair shop or any other business
8 entity that provides estimates for work, or that performs any
9 work, in conjunction with damages caused by the insured loss on
10 which the public adjuster is engaged.

11 H. A public adjuster contract may not contain any
12 contract term that:

13 (1) allows the public adjuster's percentage
14 fee to be collected when money is due from but not yet paid by
15 an insurance company;

16 (2) allows a public adjuster to collect the
17 entire fee from the first check issued by an insurance company,
18 rather than as percentage of each check issued by an insurance
19 company;

20 (3) requires the insured to authorize an
21 insurance company to issue a check only in the name of the
22 public adjuster;

23 (4) imposes collection costs or late fees; or

24 (5) precludes a public adjuster from pursuing
25 civil remedies.

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1 I. Prior to the signing of the contract, the public
2 adjuster shall provide the insured with a separate disclosure
3 document regarding the claim process that states the following:

4 "(1) Your public adjuster is forbidden by law
5 from acting as your contractor on this claim.

6 (2) You must notify your insurance company of
7 your loss and submit a claim. The insurance company will assign
8 an adjuster to handle your claim. You may allow their adjuster
9 to handle your claim or you may hire a public adjuster at your
10 own expense.

11 (3) Public adjusters do not work for insurance
12 companies. They work for you to assist you in the preparation,
13 presentation and settlement of your claim. You hire them by
14 signing a contract agreeing to pay them a fee or commission.
15 Their compensation is often based on a percentage of the
16 settlement.

17 (4) You are not required to hire a public
18 adjuster, but you have the right to do so.

19 (5) You have the right to contact your
20 attorney, your insurance company, your insurance company's
21 adjuster or attorney, or any other person regarding the
22 settlement of your claim.

23 (6) The public adjuster does not work for your
24 insurance company and is not paid by your insurance company.
25 You are solely responsible for paying the public adjuster."

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underscoring material = new
~~[bracketed material] = delete~~

1 J. Subsection I of this section shall not apply to a
2 public adjuster providing public adjuster services on behalf of
3 a financial institution, a mortgage company or other default
4 servicer.

5 K. The contract shall be executed in duplicate to
6 provide an original contract to the public adjuster and an
7 original contract to the insured. The public adjuster's
8 original contract shall be available at all times for inspection
9 without notice by the superintendent.

10 L. The public adjuster shall provide the insurer
11 with a notification letter, which has been signed by the
12 insured, authorizing the public adjuster to represent the
13 insured's interest.

14 M. The insured has the right to rescind the contract
15 within three business days after the date the contract was
16 signed. The recession shall be in writing and mailed or
17 delivered to the public adjuster at the address in the contract
18 within the three-business-day period.

19 N. If the insured exercises the right to rescind the
20 contract, anything of value given by the insured under the
21 contract will be returned to the insured within fifteen business
22 days following the receipt by the public adjuster of the
23 cancellation notice."

24 **SECTION 10.** A new section of Chapter 59A, Article 13 NMSA
25 1978 is enacted to read:

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underscoring material = new
[bracketed material] = delete

1 "[NEW MATERIAL] ESCROW OR TRUST ACCOUNTS.--A public
2 adjuster who receives, accepts or holds any funds on behalf of
3 an insured toward the settlement of a claim for loss or damage
4 shall deposit the funds in a non-interest-bearing escrow or
5 trust account in a financial institution that is insured by an
6 agency of the federal government in the public adjuster's home
7 state or where the loss occurred."

8 SECTION 11. A new section of Chapter 59A, Article 13 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] RECORDS OF PUBLIC ADJUSTER.--

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

- 14 (1) the name of the insured;
- 15 (2) the date, location and amount of the loss;
- 16 (3) a copy of the contract between the public
17 adjuster and the insured;
- 18 (4) the name of the insurer, amount,
19 expiration date and number of each policy carried with respect
20 to the loss;
- 21 (5) an itemized statement of the insured's
22 recoveries;
- 23 (6) an itemized statement of all of the
24 compensation received by the public adjuster, from any source
25 whatsoever, in connection with the loss;

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underscored material = new
[bracketed material] = delete

1 (7) a register of all of the money received,
2 deposited, disbursed or withdrawn in connection with a
3 transaction with an insured, including fees, transfers and
4 disbursements from a trust account and all transactions
5 concerning all interest-bearing accounts;

6 (8) the name of the public adjuster who
7 executed the contract; and

8 (9) the name of the attorney representing the
9 insured, if applicable, and the name of the claims
10 representatives of the insurance company.

11 B. Records shall be maintained for at least five
12 years after the termination of the transaction with an insured
13 and shall be open to examination by the superintendent at all
14 times.

15 C. Records submitted to the superintendent pursuant
16 to this section that contain information identified in writing
17 as proprietary by the public adjuster and accepted as
18 confidential by the superintendent shall be treated as
19 confidential by the superintendent, shall not be subject to the
20 Inspection of Public Records Act, shall not be subject to
21 subpoena and shall not be subject to discovery or admissible as
22 evidence in any private civil action."

23 **SECTION 12.** Section 59A-16C-4 NMSA 1978 (being Laws 1998,
24 Chapter 115, Section 4) is amended to read:

25 "59A-16C-4. SUPERINTENDENT'S DUTIES.--The superintendent
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1 shall:

2 A. initiate inquiries and conduct investigations
3 when the superintendent has reason to believe that insurance
4 fraud may have been or is being committed;

5 B. respond to notifications or complaints of
6 suspected insurance fraud generated by state and local police or
7 other law enforcement authorities and governmental units,
8 including the federal government and any other person;

9 C. review notices and reports of insurance fraud
10 submitted by authorized insurers, their employees, agents or
11 producers or by public adjusters and select those incidents of
12 alleged fraud that, in [~~his~~] the superintendent's judgment,
13 require further investigation and conduct the investigations;

14 D. conduct independent investigations and
15 examinations of insurance transactions and alleged insurance
16 fraud, conduct studies to determine the extent of insurance
17 fraud, deceit or intentional misrepresentation of any kind in
18 the insurance process and publish information and reports on
19 [~~its~~] the office of superintendent of insurance's examinations
20 and studies;

21 E. report incidents of alleged insurance fraud
22 supported by investigations and examinations to the appropriate
23 district attorney and any other appropriate law enforcement,
24 administrative, regulatory or licensing agency and assemble
25 evidence, prepare charges and otherwise assist any prosecutorial

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1 authority having jurisdiction over insurance fraud enforcement;

2 F. assist any official or agency of this state, any
3 other state or the federal government that requests assistance
4 in investigating insurance fraud;

5 G. maintain records and information in order to
6 produce an annual report of [~~his~~] the superintendent's
7 activities undertaken in connection with carrying out the
8 provisions of the Insurance Fraud Act; and

9 H. conduct, in cooperation with the attorney general
10 and the department of public safety, public outreach and
11 awareness programs on the costs of insurance fraud to the public
12 and how members of the public can assist themselves, the
13 superintendent and law enforcement officials in preventing and
14 prosecuting insurance fraud."