

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1313
Committee Substitute Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1313-PCS80467-RCf-34

Short Title: Regulate Public Adjusters.-AB

(Public)

Sponsors:

Referred to:

April 9, 2009

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



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1 another state in which it becomes licensed and acts as a public adjuster to be
2 the home state.

3 (5) Individual. – A natural person.

4 (6) Person. – An individual or a business entity.

5 (7) Public adjuster. – Any person who, for compensation or any other thing of
6 value on behalf of the insured, does any of the following:

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

12 b. Advertises for employment as a public adjuster of insurance claims
13 or solicits business or represents himself or herself to the public as a
14 public adjuster of first-party insurance claims for losses or damages
15 arising out of policies of insurance that insure real or personal
16 property.

17 c. Directly or indirectly solicits business, investigates or adjusts losses,
18 or advises an insured about first-party claims for losses or damages
19 arising out of policies of insurance that insure real or personal
20 property for another person engaged in the business of adjusting
21 losses or damages covered by an insurance policy for the insured.

22 (8) Uniform individual application. – The current version of the NAIC Uniform
23 Individual Application for resident and nonresident individuals.

24 (9) Uniform business entity application. – The current version of the NAIC
25 Uniform Business Entity Application for resident and nonresident business
26 entities.

27 **"§ 58-33A-10. License required.**

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

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

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

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

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

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

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

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

49 (3) A person employed only for the purpose of obtaining facts surrounding a
50 loss or furnishing technical assistance to a licensed public adjuster, including

1 photographers, estimators, private investigators, engineers, and handwriting
2 experts.

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

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

6 **"§ 58-33A-15. Application for license.**

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

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

12 (c) An applicant for a license under this Article shall furnish the Commissioner with a
13 complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a
14 recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be
15 certified by an authorized law enforcement officer. The fingerprints of every applicant shall be
16 forwarded to the State Bureau of Investigation for a search of the applicant's criminal history
17 record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the
18 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
19 An applicant shall pay the cost of the State and any national criminal history record check of
20 the applicant. This subsection does not apply to a person applying for renewal or continuation
21 of a home state public adjuster license or a nonresident public adjuster license.

22 (d) In addition, if an applicant described in subsection (b) of this section is a business
23 entity, each key person must furnish the Commissioner a complete set of the key person's
24 fingerprints and a recent passport size full-face photograph of the applicant. The key person's
25 fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of
26 every key person shall be forwarded to the State Bureau of Investigation for a search of the
27 applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation
28 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
29 criminal history record check. Each key person shall pay the cost of the State and any national
30 criminal history record check of the key person. As used in this subsection, 'key person' means
31 a proposed officer, director, or any other individual who will be in a position to influence the
32 operating decisions of the business entity. This subsection does not apply to a person applying
33 for renewal or continuation of a home state public adjuster license or a nonresident public
34 adjuster license.

35 (e) The Commissioner shall keep all information received pursuant to subsections (c)
36 and (d) of this section privileged, in accordance with applicable State and federal law, and the
37 information shall be confidential and shall not be a public record under Chapter 132 of the
38 General Statutes.

39 **"§ 58-33A-20. Resident license.**

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

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

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

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

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

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

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

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

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

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

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

10 **"§ 58-33A-25. Examination.**

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

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

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

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

24 **"§ 58-33A-30. Exemptions from examination.**

25 (a) An individual who applies for a public adjuster license in this State who was
26 previously licensed as a public adjuster in another state based on a public adjuster examination
27 shall not be required to complete any prelicensing examination. This exemption is only
28 available if the person is currently licensed in that state or if the application is received within
29 12 months of the cancellation of the applicant's previous license and if the prior state issues a
30 certification that, at the time of cancellation, the applicant was in good standing in that state or
31 the state's producer database records or records maintained by the NAIC, its affiliates, or
32 subsidiaries indicate that the public adjuster is or was licensed in good standing.

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

37 (c) An individual who applies for a public adjuster license in this State who was
38 previously licensed as a public adjuster in this State shall not be required to complete any
39 prelicensing examination. This exemption is only available if the application is received within
40 12 months after the cancellation of the applicant's previous license in this State and if, at the
41 time of cancellation, the applicant was in good standing in this State.

42 **"§ 58-33A-35. Nonresident license reciprocity.**

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

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

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

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

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

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

5 (c) As a condition to continuation of a public adjuster license issued under this section,
6 the licensee shall maintain a resident public adjuster license in his or her home state. The
7 nonresident public adjuster license issued under this section shall terminate and be surrendered
8 immediately to the Commissioner if the home state public adjuster license terminates for any
9 reason, unless the public adjuster has been issued a license as a resident public adjuster in his or
10 her new home state. Notification to the state or states where nonresident license is issued must
11 be made as soon as possible, yet no later than 30 days after change in new state resident license.
12 Licensee shall include new and old address. A new state resident license is required for
13 nonresident licenses to remain valid. The new state resident license must have reciprocity with
14 the licensing nonresident state(s) for the nonresident license not to terminate.

15 **"§ 58-33A-40. License.**

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

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

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

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

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

31 (f) Any public adjuster licensee that fails to apply for renewal of a license before
32 expiration of the current license shall pay a lapsed license fee of twice the license fee and be
33 subject to other penalties as provided by law before the license will be renewed. If the
34 Department receives the request for reinstatement and the required lapsed license fee within 60
35 days after the date the license lapsed, the Department shall reinstate the license retroactively to
36 the date the license lapsed. If the Department receives the request for reinstatement and the
37 required lapsed license fee after 60 days but within one year of the date the license lapsed, the
38 Department shall reinstate the license prospectively with the date the license is reinstated. If the
39 person applies for reinstatement more than one year from the date of lapse, the person shall
40 reapply for the license under this Article.

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

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

49 (i) In order to assist in the performance of the Commissioner's duties, the
50 Commissioner may contract with nongovernmental entities, including the NAIC or any
51 affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to

1 licensing, including the collection of fees and data, that the Commissioner may deem
2 appropriate.

3 **"§ 58-33A-45. License denial, nonrenewal, or revocation.**

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

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

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

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

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

50 (e) The Commissioner shall retain the authority to enforce the provisions of and impose
51 any penalty or remedy authorized by this Chapter against any person who is under investigation

1 for or charged with a violation of this Chapter, even if the person's license or registration has
2 been surrendered or has lapsed by operation of law.

3 **"§ 58-33A-50. Bond or letter of credit.**

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

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

9 a. It shall be in the minimum amount of twenty thousand dollars
10 (\$20,000).

11 b. It shall be in favor of this State and shall specifically authorize
12 recovery by the Commissioner on behalf of any person in this State
13 who sustained damages as the result of erroneous acts, failure to act,
14 conviction of fraud, or conviction of unfair practices in his or her
15 capacity as a public adjuster.

16 c. It shall not be terminated unless at least 30 days' prior written notice
17 will have been filed with the Commissioner and given to the licensee.

18 (2) An irrevocable letter of credit issued by a qualified financial institution,
19 which meets all of the following requirements:

20 a. It shall be in the minimum amount of twenty thousand dollars
21 (\$20,000).

22 b. It shall be to an account to the Commissioner and subject to lawful
23 levy of execution on behalf of any person to whom the public
24 adjuster has been found to be legally liable as the result of erroneous
25 acts, failure to act, fraudulent acts, or unfair practices in his or her
26 capacity as a public adjuster.

27 c. It shall not be terminated unless at least 30 days' prior written notice
28 will have been filed with the Commissioner and given to the licensee.

29 (b) The issuer of the evidence of financial responsibility shall notify the Commissioner
30 upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.

31 (c) The Commissioner may ask for the evidence of financial responsibility at any time
32 he or she deems relevant.

33 (d) The authority to act as a public adjuster shall automatically terminate if the evidence
34 of financial responsibility terminates or becomes impaired.

35 **"§ 58-33A-55. Continuing education.**

36 (a) An individual who holds a public adjuster license and who is not exempt under
37 subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing
38 education courses, including ethics, reported on a biennial basis in conjunction with the license
39 renewal cycle.

40 (b) This section shall not apply to any of the following:

41 (1) Licensees not licensed for one full year before the end of the applicable
42 continuing education biennium.

43 (2) Licensees holding nonresident public adjuster licenses who have met the
44 continuing education requirements of their home state and whose home state
45 gives credit to residents of this State on the same basis.

46 (c) Only continuing education courses approved by the Commissioner shall be used to
47 satisfy the continuing education requirement of subsection (a) of this section.

48 **"§ 58-33A-60. Public adjuster fees.**

49 (a) A public adjuster shall not pay a commission, service fee, or other valuable
50 consideration to a person for investigating or settling claims in this State if that person is
51 required to be licensed under this Article and is not so licensed.

1 **(b)** A person shall not accept a commission, service fee, or other valuable consideration
2 for investigating or settling claims in this State if that person is required to be licensed under
3 this Article and is not so licensed.

4 **(c)** A public adjuster may pay or assign commission, service fees, or other valuable
5 consideration to persons who do not investigate or settle claims in this State, unless the
6 payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).

7 **(d)** In the event of a catastrophic incident, there shall be limits on catastrophic fees. No
8 public adjuster shall charge, agree to, or accept as compensation or reimbursement any
9 payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any
10 insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee,
11 retainer, compensation, deposit, or other thing of value before settlement of a claim.

12 **"§ 58-33A-65. Contract between public adjuster and insured.**

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

15 **(1)** Legible full name of the adjuster signing the contract, as specified in
16 Department records.

17 **(2)** Permanent home state business address and phone number.

18 **(3)** Department license number.

19 **(4)** Title of "Public Adjuster Contract."

20 **(5)** The insured's full name, street address, insurance company name and policy
21 number, if known or upon notification.

22 **(6)** A description of the loss and its location, if applicable.

23 **(7)** Description of services to be provided to the insured.

24 **(8)** Signatures of the public adjuster and the insured.

25 **(9)** Date contract was signed by the public adjuster and date the contract was
26 signed by the insured.

27 **(10)** Attestation language stating that the public adjuster is fully bonded pursuant
28 to state law.

29 **(11)** Full salary, fee, commission, compensation, or other considerations the
30 public adjuster is to receive for services.

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

33 **(1)** If the compensation is based on a share of the insurance settlement, the exact
34 percentage shall be specified.

35 **(2)** Initial expenses to be reimbursed to the public adjuster from the proceeds of
36 the claim payment shall be specified by type, with dollar estimates set forth
37 in the contract and with any additional expenses first approved by the
38 insured.

39 **(3)** Compensation provisions in a public adjusting contract shall not be redacted
40 in any copy of the contract provided to the Commissioner. Such a redaction
41 shall constitute an omission of material fact in violation of Article 63 of this
42 Chapter.

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

46 **(1)** Not receive a commission consisting of a percentage of the total amount paid
47 by an insurer to resolve a claim.

48 **(2)** Inform the insured that loss recovery amount might not be increased by
49 insurer.

50 **(3)** Be entitled only to reasonable compensation from the insured for services
51 provided by the public adjuster on behalf of the insured, based on the time

1 spent on a claim and expenses incurred by the public adjuster, until the claim
2 is paid or the insured receives a written commitment to pay from the insurer.

3 (d) A public adjuster shall provide the insured a written disclosure concerning any
4 direct or indirect financial interest that the public adjuster has with any other party who is
5 involved in any aspect of the claim, other than the salary, fee, commission, or other
6 consideration established in the written contract with the insured, including, but not limited to,
7 any ownership of, other than as a minority stockholder, or any compensation expected to be
8 received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair
9 shop, or any other firm that provides estimates for work, or that performs any work, in
10 conjunction with damages caused by the insured loss on which the public adjuster is engaged.
11 The word "firm" shall include any corporation, partnership, association, joint-stock company,
12 or person.

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

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

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

21 (3) Imposes collection costs or late fees.

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

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

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

29 a. "Company adjuster" means the insurance adjusters who are
30 employees of an insurance company. They represent the interest of
31 the insurance company and are paid by the insurance company. They
32 will not charge you a fee.

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

37 c. "Public adjuster" means the insurance adjusters who do not work for
38 any insurance company. They work for the insured to assist in the
39 preparation, presentation, and settlement of the claim. The insured
40 hires them by signing a contract agreeing to pay them a fee or
41 commission based on a percentage of the settlement or other method
42 of compensation.

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

45 (3) The insured has the right to initiate direct communications with the insured's
46 attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any
47 other person regarding the settlement of the insured's claim. Once a public
48 adjuster has been retained, the company adjuster or other insurance
49 representative may not communicate directly with the insured without the
50 permission or consent of the public adjuster or the insured's legal counsel.

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

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

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

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

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

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

14 **"§ 58-33A-70. Escrow or trust accounts.**

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

19 **"§ 58-33A-75. Record retention.**

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

22 (1) Name of the insured.

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

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

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

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

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

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

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

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

37 (10) Evidence of financial responsibility in a format prescribed by the
38 Commissioner.

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

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

45 **"§ 58-33A-80. Standards of conduct of public adjusters.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 **"§ 58-33A-90. Reporting of actions.**

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

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

5 **"§ 58-33A-95. Rules.**

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

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