

304.9-433 Contract between public adjuster and insured -- Contents -- Duties of public adjuster.

- (1) A public adjuster shall ensure that all contracts between the public adjuster and the insured for services are in writing and contain the following terms:
 - (a) The legible full name of the adjuster signing the contract, as specified in the Department of Insurance licensing records;
 - (b) The permanent home state business address and phone number;
 - (c) The Department of Insurance license number;
 - (d) A title of "Public Adjuster Contract";
 - (e) The insured's full name, street address, insurer name, and policy number, if known or upon notification;
 - (f) A description of the loss and its location, if applicable;
 - (g) A description of services to be provided to the insured;
 - (h) The signatures of the public adjuster and the insured;
 - (i) The date the contract was signed by the public adjuster and the date the contract was signed by the insured;
 - (j) Attestation language stating that the public adjuster has a letter of credit or a surety bond as required by KRS 304.9-430(3); and
 - (k) The full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services.
- (2) Any contract that specifies that the public adjuster shall be named as a co-payee on an insurer's payment of a claim is permitted provided that:
 - (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, if first approved by the insured; and
 - (c) Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the commissioner. Such a redaction shall constitute an omission of material fact in violation of KRS 304.9-440 and 304.12-230.
- (3) 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 the policy limit of the insurance policy, the public adjuster shall:
 - (a) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
 - (b) Inform the insured that the claim settlement amount may not be increased by the insurer; and
 - (c) 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.

- (4) A public adjuster shall provide the insured with a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. For purposes of this subsection, "firm" includes any corporation, partnership, association, joint-stock company, or person.
- (5) A public adjuster contract may not contain any contract term that:
 - (a) Allows the public adjuster's percentage fee to be collected when money is due from an insurer, but not paid; or allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer;
 - (b) Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;
 - (c) Imposes collection costs or late fees; or
 - (d) Precludes a public adjuster from pursuing civil remedies.
- (6) Prior to the signing of the contract, a public adjuster shall provide the insured with a separate disclosure document regarding the claim process that shall state the following:

"Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. Three (3) types of adjusters may be involved in the claim process as follows:

1. "Staff adjuster" means an insurance adjuster who is an employee of an insurance company who represents the interest of the insurance company and who is paid by the insurance company. A staff adjuster shall not charge a fee to the insured;
2. "Independent adjuster" means an insurance adjuster who is hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claims and who is paid by the insurance company. An independent adjuster shall not charge a fee to the insured; and
3. "Public adjuster" means an insurance adjuster who does not work for any insurance company. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim, and the insured hires a public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement or other method of payment.

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 hire a public adjuster. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim. The public adjuster shall not be a representative or employee of the insurer. The salary, fee, commission, or other consideration paid to the public adjuster is the obligation of the insured, not the insurer."

- (7) The contract between the public adjuster and the insured shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection by the commissioner without notice.
- (8) 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.
- (9) The public adjuster shall give the insured written notice of the insured's rights as provided in this section.
- (10) The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract and postmarked or received within the three (3) business day period.
- (11) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract shall be returned to the insured within fifteen (15) business days following receipt by the public adjuster of the rescission notice.
- (12) A public adjuster who receives, accepts, or holds any funds on behalf of an insured toward the settlement of a claim for loss or damage shall deposit the funds in a noninterest-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.

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Legislative Research Commission Note (7/15/2010). References to the "Office of Insurance" and the "executive director" of insurance in subsections (1) and (7) of this section, as created by 2010 Ky. Acts ch. 83, sec. 12, have been changed in codification to the "Department of Insurance" and the "commissioner" of insurance, respectively, to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2009-535 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. These changes were made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.