

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

- (1)
 - (a) Except as provided in paragraph (b) of this subsection, a public adjuster shall not provide services to an insured until a written contract with the insured has been executed on a form that has been prefiled with and approved by the commissioner.
 - (b) The commissioner may approve a form that allows a public adjuster to be compensated for services provided to an insured prior to the execution of a written contract in emergency circumstances.
 - (c) A contract between a public adjuster and an insured in violation of paragraph (a) of this subsection shall not be enforceable in this state.
 - (d) A form prefiled with the commissioner by a public adjuster for approval under paragraph (a) of this subsection shall be subject to disapproval by the commissioner at any time if the form is found to:
 1. Violate any provision of this chapter;
 2. Contain or incorporate by reference any inconsistent, ambiguous, or misleading clauses; or
 3. Contain any title, heading, or other indication of its provisions which is:
 - a. Misleading; or
 - b. Printed in a size of typeface or manner of reproduction so as to be substantially illegible.
 - (e) A contract between a public adjuster and an insured that was executed on a form that was prefiled with and approved by the commissioner under paragraph (a) of this subsection prior to a disapproval of the form under paragraph (d) of this subsection shall be enforceable to the extent allowed by:
 1. Ordinary principles of contract; and
 2. Any applicable state or federal laws implicated by the contract.
- (2) 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's licensing records;
 - (b) The adjuster's permanent home state business address and phone number;
 - (c) The license number issued to the adjuster by the department;
 - (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 or damage and its location, if applicable;
 - (g) A description of services to be provided to the insured;
 - (h) The signatures of the adjuster and the insured;
 - (i) The date the contract was signed by:
 1. The adjuster; and

2. The insured;
- (j) Attestation language stating that the adjuster has a letter of credit or a surety bond as required by KRS 304.9-430(3);
- (k) The full salary, fee, commission, compensation, or other consideration the adjuster is to receive for services, including but not limited to:
 1. If the compensation is based on a percentage of the insurance settlement, the exact percentage, which shall be in accordance with KRS 304.9-4333;
 2. The initial expenses to be reimbursed to the adjuster from the proceeds of the claim payment, specified by type, with dollar estimates; and
 3. Any additional expenses, if first approved by the insured;
- (l) A statement that the adjuster shall not give legal advice or act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages;
- (m) The process for rescinding the contract, including the date by which rescission of the contract by the adjuster or the insured may occur; and
- (n) A statement that clearly states in substance the following: "Complaints regarding this contract or regarding the public adjuster may be filed with the consumer protection division of the Kentucky Department of Insurance."
- (3) (a) Compensation provisions in a contract between a public adjuster and an insured shall not be redacted in any copy of the contract provided to the commissioner.
- (b) A redaction prohibited under paragraph (a) of this subsection shall constitute an omission of material fact in violation of KRS 304.9-440 and 304.12-230.
- (4) A contract between a public adjuster and an insured shall not contain any contract term that:
 - (a) Allows the adjuster's percentage fee to be collected when money is due from an insurer, but not paid;
 - (b) Allows the 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;
 - (c) Requires an insured to authorize an insurer to issue a check only in the name of the adjuster;
 - (d) Imposes collection costs or late fees;
 - (e) Allows the adjuster's rate of compensation to be increased based on the fact that a claim is litigated; or
 - (f) Precludes the adjuster from pursuing civil remedies.
- (5) Prior to the signing of a contract with an insured, a public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states 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 another 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."

- (6) (a) A contract between a public adjuster and an insured shall be executed in duplicate to provide an original contract to:
 1. The public adjuster; and
 2. The insured.(b) A public adjuster's original contract shall be available at all times for inspection by the commissioner without notice.
- (7) Within seventy-two (72) hours of entering into a contract with an insured, a public adjuster shall provide the insurer:
 - (a) A notification letter that:
 1. Has been signed by the insured; and
 2. Authorizes the public adjuster to represent the insured's interest; and
 - (b) A copy of the contract.
- (8) (a) The insured shall have the right to rescind a contract with a public adjuster within three (3) business days after the date the contract was signed.
 - (b) A rescission of a public adjuster contract shall be:
 1. In writing;
 2. Mailed or delivered to the public adjuster at the address in the contract; and
 3. Postmarked or received within the three (3) business day period.
- (9) If an insured exercises the right to rescind a contract under subsection (8) of this

section, anything of value given by the insured under the contract to the public adjuster shall be returned to the insured within fifteen (15) business days following receipt by the public adjuster of the rescission notice.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 11, sec. 2, effective June 29, 2023. -- Created 2010 Ky. Acts ch. 83, sec. 12, effective July 15, 2010.

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.