

1 AN ACT relating to insurance adjusters.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 304.9-430 is amended to read as follows:

4 (1) Except as provided in this section and KRS 304.52-060, no person shall in this state
5 act as or hold himself, herself, or itself out to be an independent, staff, or public
6 adjuster unless then licensed by the department as an independent, staff, or public
7 adjuster.

8 (2) (a) An individual applying for a resident independent, staff, or public adjuster
9 license shall make an application to the commissioner on the appropriate
10 uniform individual application and in a format prescribed by the
11 commissioner.

12 (b) ~~An~~~~The~~ applicant under paragraph (a) of this subsection shall declare under
13 penalty of suspension, revocation, or refusal of the license that the statements
14 made in the application are true, correct, and complete to the best of the
15 individual's knowledge and belief.

16 (c) Before approving ~~an~~~~the~~ application submitted under paragraph (a) of this
17 subsection, the commissioner shall find that the individual to be licensed:

18 1.~~(a)~~ Is at least eighteen (18) years of age;

19 2.~~(b)~~ Is eligible to designate Kentucky as the individual's~~this or her~~
20 home state;

21 3.~~(c)~~ Is trustworthy, reliable, and of good reputation, evidence of which
22 shall be determined through an investigation by the commissioner;

23 4.~~(d)~~ Has not committed any act that is a ground for probation, ~~or~~
24 suspension, revocation, or refusal of a license as set forth in KRS 304.9-
25 440;

26 5.~~(e)~~ Has successfully passed the examination for the adjuster license
27 and the applicable line of authority for which the individual has applied;

1 ~~6.(f)~~ Has paid the fees established by the commissioner pursuant to
2 KRS 304.4-010; and

3 ~~7.(g)~~ Is financially responsible to exercise the license.

4 (3) (a) To demonstrate financial responsibility, a person applying for a public
5 adjuster license shall obtain a bond or irrevocable letter of credit prior to
6 issuance of a license and shall maintain the bond or letter of credit for the
7 duration of the license with the following limits:

8 1. A surety bond executed and issued by an insurer authorized to issue
9 surety bonds in Kentucky, which bond shall:

10 a. Be in the minimum amount of ~~fifty~~~~twenty~~ thousand dollars
11 (\$50,000)~~(\$20,000)~~;

12 b. Be in favor of the state of Kentucky;~~and shall~~

13 ~~c.~~ Specifically authorize recovery of any person in Kentucky who
14 sustained damages as the result of the public adjuster's erroneous
15 acts, failure to act, conviction of fraud, or conviction for unfair
16 trade practices in his or her capacity as a public adjuster; and

17 ~~d.(e.)~~ Not be terminated unless written notice is given to the licensee at
18 least thirty (30) days prior to the termination; or

19 2. An irrevocable letter of credit issued by a qualified financial institution,
20 which letter of credit shall:

21 a. Be in the minimum amount of ~~fifty~~~~twenty~~ thousand dollars
22 (\$50,000)~~(\$20,000)~~;

23 b. Be subject to lawful levy of execution on behalf of any person to
24 whom the public adjuster has been found to be legally liable as the
25 result of erroneous acts, failure to act, conviction of fraud, or
26 conviction for unfair practices in his or her capacity as a public
27 adjuster; and

- 1 c. Not be terminated unless written notice is given to the licensee at
2 least thirty (30) days prior to the termination.
- 3 (b) The commissioner may ask for evidence of financial responsibility at any time
4 the commissioner~~[he or she]~~ deems relevant.
- 5 (c) ~~[The public adjuster license shall automatically terminate.]~~If the evidence of
6 financial responsibility terminates or becomes impaired, the public adjuster
7 license shall:
- 8 1. Automatically terminate; and~~[shall]~~
- 9 2. Be promptly surrendered to the commissioner without demand.
- 10 (4) (a) A business entity applying for a resident independent or public adjuster
11 license shall make an application to the commissioner on the appropriate
12 uniform business entity application and in a format prescribed by the
13 commissioner.
- 14 (b) An~~[The]~~ applicant under paragraph (a) of this subsection shall declare under
15 penalty of suspension, revocation, or refusal of the license that the statements
16 made in the application are true, correct, and complete to the best of the
17 business entity's knowledge and belief.
- 18 (c) Before approving an~~[the]~~ application submitted under paragraph (a) of this
19 subsection, the commissioner shall find that the business entity:
- 20 1.~~[(a)]~~ Is eligible to designate Kentucky as its home state;
- 21 2.~~[(b)]~~ Has designated a licensed independent or public adjuster
22 responsible for the business entity's compliance with the insurance laws
23 and regulations of Kentucky;
- 24 3.~~[(c)]~~ Has not committed an act that is a ground for probation, ~~[or]~~
25 suspension, revocation, or refusal of an independent or public adjuster's
26 license as set forth in KRS 304.9-440; and
- 27 4.~~[(d)]~~ Has paid the fees established by the commissioner pursuant to

1 KRS 304.4-010.

2 (5) *For applications made under this section,* the commissioner may:

3 (a) Require additional information or submissions from applicants; and ~~may~~

4 (b) Obtain any documents or information reasonably necessary to verify the
5 information contained in an application.

6 (6) Unless denied licensure pursuant to KRS 304.9-440, a person or business entity
7 who has met the requirements of subsections (2) to (5) of this section shall be
8 issued an independent, staff, or public adjuster license.

9 (7) An independent or staff adjuster may qualify for a license in one (1) or more of the
10 following lines of authority:

11 (a) Property and casualty;

12 (b) Workers' compensation; or

13 (c) Crop.

14 (8) Notwithstanding any other provision of this subtitle, an individual who is employed
15 by an insurer to investigate suspected fraudulent insurance claims, but who does not
16 adjust losses or determine claims payments, shall not be required to be licensed as a
17 staff adjuster.

18 (9) A public adjuster may qualify for a license in one (1) or more of the following lines
19 of authority:

20 (a) Property and casualty; or

21 (b) Crop.

22 (10) Notwithstanding any other provision of this subtitle, a license as an independent
23 adjuster shall not be required of the following:

24 (a) An individual who is sent into Kentucky on behalf of an insurer for the sole
25 purpose of investigating or making adjustment of a particular loss resulting
26 from a catastrophe, or for the adjustment of a series of losses resulting from a
27 catastrophe common to all losses;

- 1 (b) An attorney licensed to practice law in Kentucky, when acting in his or her
2 professional capacity as an attorney;
- 3 (c) A person employed solely to obtain facts surrounding a claim or to furnish
4 technical assistance to a licensed independent adjuster;
- 5 (d) An individual who is employed to investigate suspected fraudulent insurance
6 claims, but who does not adjust losses or determine claims payments;
- 7 (e) A person who:
- 8 1. Solely performs executive, administrative, managerial, or clerical duties,
9 or any combination thereof; ~~and~~ ~~who~~
- 10 2. Does not investigate, negotiate, or settle claims with policyholders,
11 claimants, or their legal representatives;
- 12 (f) A licensed health care provider or its employee who provides managed care
13 services ~~if~~ ~~as long as~~ the services do not include the determination of
14 compensability;
- 15 (g) A health maintenance organization or any of its employees or an employee of
16 any organization providing managed care services ~~if~~ ~~as long as~~ the services
17 do not include the determination of compensability;
- 18 (h) A person who settles only reinsurance or subrogation claims;
- 19 (i) An officer, director, manager, or employee of an authorized insurer, surplus
20 lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal
21 insurer;
- 22 (j) A United States manager of the United States branch of an alien insurer;
- 23 (k) A person who investigates, negotiates, or settles claims arising under a life,
24 accident and health, or disability insurance policy or annuity contract;
- 25 (l) An individual employee, under a self-insured arrangement, who adjusts
26 claims on behalf of the individual's ~~his or her~~ employer;
- 27 (m) A licensed agent, attorney-in-fact of a reciprocal insurer, or managing general

1 agent of the insurer, to whom claim authority has been granted by an~~the~~
 2 insurer; or

3 (n) 1. A person who:

4 a.~~1.~~ Is an employee of a licensed independent adjuster, is~~or~~ an
 5 employee of an affiliate that is a licensed independent adjuster, or
 6 is supervised by a licensed independent adjuster, if there are no
 7 more than twenty-five (25) persons under the supervision of one
 8 (1) licensed individual independent adjuster or licensed agent who
 9 is exempt from licensure pursuant to paragraph (m) of this
 10 subsection;

11 b.~~2.~~ Collects claim information from insureds or claimants;

12 c.~~3.~~ Enters data into an automated claims adjudication system; and

13 d.~~4.~~ Furnishes claim information to insureds or claimants from the
 14 results of the automated claims adjudication system.

15 2. For purposes of this paragraph, "automated claims adjudication system"
 16 means a preprogrammed computer system designed for the collection,
 17 data entry, calculation, and system-generated final resolution of
 18 consumer electronic products insurance claims that complies with claim
 19 settlement practices pursuant to Subtitle 12 of KRS Chapter 304.

20 (11) Notwithstanding any other provision of this subtitle, a license as a public adjuster
 21 shall not be required of the following:

22 (a) An attorney licensed to practice law in Kentucky, when acting in his or her
 23 professional capacity as an attorney;

24 (b) A person who negotiates or settles claims arising under a life or health
 25 insurance policy or an annuity contract;

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

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

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

5 (e) An employee or agent of an insurer adjusting claims relating to food spoilage
6 with respect to residential property insurance in which the amount of coverage
7 for the applicable type of loss is contractually limited to one thousand dollars
8 (\$1,000) or less.

9 (12) Notwithstanding any other provision of this subtitle, a license as a staff adjuster
10 shall not be required of an employee or agent of an insurer adjusting claims relating
11 to food spoilage with respect to residential property insurance in which the amount
12 of coverage for the applicable type of loss is contractually limited to one thousand
13 dollars (\$1,000) or less.

14 (13) For purposes of this section, **except as otherwise provided in subsection (15) of this**
15 **section**, "home state" means any state or territory of the United States or the District
16 of Columbia in which an independent, staff, or public adjuster;

17 **(a)** Maintains his, her, or its principal place of residence or business; and

18 **(b)** Is licensed to act as a resident independent, staff, or public adjuster. ~~If the~~
19 ~~state of the principal place of residence does not license an independent, staff,~~
20 ~~or public adjuster for the line of authority sought, the independent, staff, or~~
21 ~~public adjuster shall designate as his, her, or its home state, any state in which~~
22 ~~the independent or public adjuster is licensed and in good standing.]~~

23 (14) Temporary registration for emergency independent or staff adjusters shall be issued
24 by the commissioner in the event of a catastrophe declared in Kentucky in the
25 following manner:

26 (a) An insurer shall notify the commissioner by submitting an application for
27 temporary emergency registration of each individual not already licensed in

1 the state where the catastrophe has been declared, who will act as an
2 emergency independent adjuster on behalf of the insurer;

3 (b) A person who is otherwise qualified to adjust claims, but who is not already
4 licensed in the state, may act as an emergency independent or staff adjuster
5 and adjust claims if, within five (5) days of deployment to adjust claims
6 arising from the catastrophe, the insurer notifies the commissioner by
7 providing the following information, in a format prescribed by the
8 commissioner:

- 9 1. The name of the individual;
- 10 2. The Social Security number of the individual;
- 11 3. The name of the insurer that the independent or staff adjuster will
12 represent;
- 13 4. The catastrophe or loss control number;
- 14 5. The catastrophe event name and date; and
- 15 6. Any other information the commissioner deems necessary; and

16 (c) An emergency independent or staff adjuster's registration shall remain in force
17 for a period not to exceed ninety (90) days, unless extended by the
18 commissioner.

19 (15) (a) As used in this subsection, "home state" has the same meaning as in
20 subsection (13) of this section, except that for purposes of this subsection
21 the term includes any state or territory of the United States or the District of
22 Columbia in which an applicant under this subsection is licensed to act as a
23 resident independent, staff, or public adjuster if the state or territory of the
24 applicant's principal place of residence does not issue an independent, staff,
25 or public adjuster license.

26 (b) Unless refused licensure in accordance with KRS 304.9-440, a nonresident
27 person shall receive a nonresident independent, staff, or public adjuster

1 license if:

- 2 1. The person is currently licensed in good standing as an independent,
3 staff, or public adjuster in his, her, or its home state;
- 4 2. The person has submitted the proper request for licensure~~[,]~~ and has paid
5 the fees required by KRS 304.4-010;
- 6 3. The person has submitted, in a form or format prescribed by the
7 commissioner, the uniform individual application; and
- 8 4. The person's designated home state issues nonresident independent,
9 staff, or public adjuster licenses to persons of Kentucky on the same
10 basis.

11 ~~(c)~~~~(b)~~ The commissioner may:

- 12 1. Verify an applicant's~~[the independent, staff, or public adjuster's]~~
13 licensing status through any appropriate database, including the
14 database maintained by the National Association of Insurance
15 Commissioners, its affiliates, or subsidiaries; ~~or [may]~~
- 16 2. Request certification of an applicant's good standing.

17 ~~(d)~~~~(e)~~ As a condition to the continuation of a nonresident adjuster license, the
18 licensee shall maintain a resident adjuster license in his, her, or its home state.

19 ~~(e)~~~~(d)~~ A~~[The]~~ nonresident adjuster license issued under this
20 subsection~~[section]~~ shall terminate and be surrendered immediately to the
21 commissioner if the licensee's resident adjuster license terminates for any
22 reason, unless:

- 23 1. The termination is due to the licensee~~[adjuster]~~ being issued a new
24 resident independent, staff, or public adjuster license in his, her, or its
25 new home state; and~~[. If]~~
- 26 2. The new resident state or territory has~~[does not have]~~ reciprocity with
27 Kentucky~~[, the nonresident adjuster license shall terminate].~~

1 → Section 2. KRS 304.9-433 is amended to read as follows:

2 (1) (a) A public adjuster shall not provide services to an insured until a written
 3 contract with the insured has been executed on a form that has been
 4 prefiled with and approved by the commissioner.

5 (b) A contract between a public adjuster and an insured in violation of
 6 paragraph (a) of this subsection shall not be enforceable in this state.

7 (c) A form prefiled with the commissioner by a public adjuster for approval
 8 under paragraph (a) of this subsection shall be subject to disapproval by the
 9 commissioner at any time if the form is found to:

10 1. Violate any provision of this chapter;

11 2. Contain or incorporate by reference any inconsistent, ambiguous, or
 12 misleading clauses; or

13 3. Contain any title, heading, or other indication of its provisions which
 14 is:

15 a. Misleading; or

16 b. Printed in a size of typeface or manner of reproduction so as to
 17 be substantially illegible.

18 (d) A contract between a public adjuster and an insured that was executed on a
 19 form that was prefiled with and approved by the commissioner under
 20 paragraph (a) of this subsection prior to a disapproval of the form under
 21 paragraph (c) of this subsection shall be enforceable to the extent allowed
 22 by:

23 1. Ordinary principles of contract; and

24 2. Any applicable state or federal laws implicated by the contract.

25 (2) A public adjuster shall ensure that all contracts between the public adjuster and the
 26 insured for services are in writing and contain the following terms:

27 (a) The legible full name of the adjuster signing the contract, as specified in the

- 1 department's~~{Department of Insurance}~~ licensing records;
- 2 (b) The adjuster's permanent home state business address and phone number;
- 3 (c) The ~~{Department of Insurance}~~ license number issued to the adjuster by the
- 4 department;
- 5 (d) A title of "Public Adjuster Contract";
- 6 (e) The insured's full name, street address, insurer name, and policy number, if
- 7 known or upon notification;
- 8 (f) A description of the loss or damage and its location, if applicable;
- 9 (g) A description of services to be provided to the insured;
- 10 (h) The signatures of the ~~{public}~~ adjuster and the insured;
- 11 (i) The date the contract was signed by:
- 12 1. The ~~{public}~~ adjuster; and ~~{the date the contract was signed by}~~
- 13 2. The insured;
- 14 (j) Attestation language stating that the ~~{public}~~ adjuster has a letter of credit or a
- 15 surety bond as required by KRS 304.9-430(3);~~{and}~~
- 16 (k) The full salary, fee, commission, compensation, or other
- 17 consideration~~{considerations}~~ the ~~{public}~~ adjuster is to receive for services,
- 18 including but not limited to:~~{-~~
- 19 ~~(2) Any contract that specifies that the public adjuster shall be named as a co-payee on~~
- 20 ~~an insurer's payment of a claim is permitted provided that:}~~
- 21 1.~~{(a)}~~ If the compensation is based on a percentage~~{share}~~ of the
- 22 insurance settlement, the exact percentage, which shall be in
- 23 accordance with Section 5 of this Act~~{shall be specified}~~;
- 24 2.~~{(b)}~~ The initial expenses to be reimbursed to the ~~{public}~~ adjuster from
- 25 the proceeds of the claim payment, ~~{shall be}~~ specified by type, with
- 26 dollar estimates;~~{set forth in the contract}~~ and~~{with}~~
- 27 3. Any additional expenses, if first approved by the insured;~~{and}~~

1 (l) A statement that the adjuster shall not give legal advice or act on behalf of
 2 or aid any person in negotiating or settling a claim relating to bodily injury,
 3 death, or noneconomic damages;

4 (m) The process for rescinding the contract, including the date by which
 5 rescission of the contract by the adjuster or the insured may occur; and

6 (n) A statement that clearly states in substance the following: "Complaints
 7 regarding this contract or regarding the public adjuster may be filed with
 8 the consumer protection division of the Kentucky Department of
 9 Insurance."

10 ~~(3)(e)~~ (a) Compensation provisions in a ~~{public adjuster}~~ contract between a
 11 public adjuster and an insured shall not be redacted in any copy of the
 12 contract provided to the commissioner.

13 (b) ~~{Such}~~ A redaction prohibited under paragraph (a) of this subsection shall
 14 constitute an omission of material fact in violation of KRS 304.9-440 and
 15 304.12-230.

16 ~~{(3) If the insurer, not later than seventy two (72) hours after the date on which the loss~~
 17 ~~is reported to the insurer, either pays or commits in writing to pay to the insured the~~
 18 ~~policy limit of the insurance policy, the public adjuster shall:~~

19 ~~(a) Not receive a commission consisting of a percentage of the total amount paid by an~~
 20 ~~insurer to resolve a claim;~~

21 ~~(b) Inform the insured that the claim settlement amount may not be increased by the~~
 22 ~~insurer; and~~

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

27 ~~(4) A public adjuster shall provide the insured with a written disclosure concerning any~~

1 ~~direct or indirect financial interest that the public adjuster has with any other party~~
 2 ~~who is involved in any aspect of the claim, other than the salary, fee, commission,~~
 3 ~~or other consideration established in the written contract with the insured, including~~
 4 ~~but not limited to any ownership of, other than as a minority stockholder, or any~~
 5 ~~compensation expected to be received from, any construction firm, salvage firm,~~
 6 ~~building appraisal firm, motor vehicle repair shop, or any other firm that provides~~
 7 ~~estimates for work, or that performs any work, in conjunction with damages caused~~
 8 ~~by the insured loss on which the public adjuster is engaged.~~

9 ~~For purposes of this subsection, "firm" includes any corporation, partnership,~~
 10 ~~association, joint stock company, or person.]~~

11 ~~(4)~~~~(5)~~ A ~~public adjuster~~ contract **between a public adjuster and an insured**
 12 **shall**~~may~~ not contain any contract term that:

13 (a) Allows the ~~public~~ adjuster's percentage fee to be collected when money is
 14 due from an insurer, but not paid; ~~or~~

15 (b) Allows **the**~~a public~~ adjuster to collect the entire fee from the first check
 16 issued by an insurer, rather than as a percentage of each check issued by an
 17 insurer;

18 (c)~~(b)~~ Requires **an**~~the~~ insured to authorize an insurer to issue a check only in
 19 the name of the ~~public~~ adjuster;

20 (d)~~(c)~~ Imposes collection costs or late fees; ~~or~~

21 (e)~~(d)~~ **Allows the adjuster's rate of compensation to be increased based on**
 22 **the fact that a claim is litigated; or**

23 (f) Precludes **the**~~a public~~ adjuster from pursuing civil remedies.

24 (5)~~(6)~~ Prior to the signing of ~~a~~~~the~~ contract **with an insured**, a public adjuster shall
 25 provide the insured with a separate disclosure document regarding the claim
 26 process that **states**~~shall state~~ the following:

27 "Property insurance policies obligate the insured to present a claim to his or her

1 insurance company for consideration. Three (3) types of adjusters may be involved
2 in the claim process as follows:

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

18 The insured is not required to hire a public adjuster to help the insured meet his or
19 her obligations under the policy, but has the right to hire a public adjuster. The
20 insured has the right to initiate direct communications with the insured's attorney,
21 the insurer, the insurer's adjuster, the insurer's attorney, and any other person
22 regarding the settlement of the insured's claim. The public adjuster shall not be a
23 representative or employee of the insurer. The salary, fee, commission, or other
24 consideration paid to the public adjuster is the obligation of the insured, not the
25 insurer."

26 ~~(6)~~~~(7)~~ (a) ~~A~~~~The~~ contract between a~~the~~ public adjuster and an~~the~~ insured shall
27 be executed in duplicate to provide an original contract to:

1 1. The public adjuster; and~~[- an original contract to -]~~

2 2. The insured.

3 **(b)** ~~A~~~~[The]~~ public adjuster's original contract shall be available at all times for
4 inspection by the commissioner without notice.

5 ~~(7)~~~~[(8)]~~ **Within seventy-two (72) hours of entering into a contract with an insured, a**
6 ~~the~~ public adjuster shall provide the insurer:

7 **(a)** A notification letter **that:**~~[- which -]~~

8 1. Has been signed by the insured; **and**~~[- authorizing -]~~

9 2. **Authorizes** the public adjuster to represent the insured's interest; **and**

10 **(b)** **A copy of the contract.**

11 ~~[(9)]~~ ~~The public adjuster shall give the insured written notice of the insured's rights as~~
12 ~~provided in this section.~~

13 ~~(8)~~~~[(10)]~~ **(a)** The insured **shall have**~~[has]~~ the right to rescind ~~a~~~~[the]~~ contract **with a**
14 **public adjuster** within three (3) business days after the date the contract was
15 signed.

16 **(b)** ~~A~~~~[The]~~ rescission **of a public adjuster contract** shall be:

17 1. In writing;~~[- and]~~

18 2. Mailed or delivered to the public adjuster at the address in the contract;
19 and

20 3. Postmarked or received within the three (3) business day period.

21 ~~(9)~~~~[(11)]~~ If ~~an~~~~[the]~~ insured exercises the right to rescind ~~a~~~~[the]~~ contract **under**
22 **subsection (8) of this section,** anything of value given by the insured under the
23 contract **to the public adjuster** shall be returned to the insured within fifteen (15)
24 business days following receipt by the public adjuster of the rescission notice.

25 ~~[(12)]~~ ~~A public adjuster who receives, accepts, or holds any funds on behalf of an insured~~
26 ~~toward the settlement of a claim for loss or damage shall deposit the funds in a~~
27 ~~noninterest bearing escrow or trust account in a financial institution that is insured~~

1 ~~by an agency of the federal government in the public adjuster's home state or where~~
 2 ~~the loss occurred.]~~

3 ➔SECTION 3. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS
 4 CREATED TO READ AS FOLLOWS:

5 *(1) A public adjuster shall give an insured written notice of the insured's rights*
 6 *under this section and Sections 2 and 4 of this Act.*

7 *(2) A public adjuster shall ensure that:*

8 *(a) Prompt notice of a claim is provided to the insurer;*

9 *(b) The property that is subject to a claim is available for inspection of the loss*
 10 *or damage by the insurer; and*

11 *(c) The insurer is given the opportunity to interview the insured directly about*
 12 *the loss or damage and claim.*

13 *(3) A public adjuster shall not restrict or prevent an insurer or its adjuster, or an*
 14 *attorney, investigator, or other person acting on behalf of the insurer, from:*

15 *(a) Having reasonable access, at reasonable times, to:*

16 *1. The insured or claimant; or*

17 *2. The insured property that is the subject of a claim;*

18 *(b) Obtaining necessary information to investigate and respond to a claim; or*

19 *(c) 1. Corresponding directly with the insured regarding the claim.*

20 *2. Nothing in subparagraph 1. of this paragraph shall be construed to*
 21 *prohibit a public adjuster from being copied on direct correspondence.*

22 *(4) (a) A public adjuster shall not act or fail to reasonably act in any manner that*
 23 *obstructs or prevents the insurer or its adjuster from timely conducting an*
 24 *inspection of any part of the insured property for which there is a claim for*
 25 *loss or damage.*

26 *(b) Except as provided in paragraph (c) of this subsection, a public adjuster*
 27 *representing an insured may be present for the insurer's inspection.*

1 (c) If the unavailability of a public adjuster, after a reasonable request by the
2 insurer, otherwise delays the insurer's timely inspection of the property, the
3 public adjuster or the insured shall allow the insurer to have access to the
4 property without the participation or presence of the public adjuster or
5 insured in order to facilitate the insurer's prompt inspection of the loss or
6 damage.

7 (5) A public adjuster shall provide the insured, the insurer, and the commissioner
8 with a written disclosure concerning any direct or indirect financial interest that
9 the adjuster has with any other party who is involved in any aspect of the claim.

10 (6) A public adjuster shall not:

11 (a) Participate, directly or indirectly, in the reconstruction, repair, or
12 restoration of damaged property that is the subject of a claim adjusted by
13 the adjuster;

14 (b) Engage in any activities that may be reasonably construed as a conflict of
15 interest, including, directly or indirectly, soliciting or accepting any
16 remuneration of any kind or nature;

17 (c) Have a financial interest in any salvage, repair, or any other business entity
18 that obtains business in connection with any claim that the public adjuster
19 has a contract to adjust; or

20 (d) 1. Use claim information obtained in the course of any claim
21 investigation for commercial purposes.

22 2. As used in subparagraph 1. of this paragraph, "commercial purposes"
23 includes marketing or advertising used for the benefit of the public
24 adjuster.

25 ➔SECTION 4. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS
26 CREATED TO READ AS FOLLOWS:

27 (1) All funds received or held by a public adjuster on behalf of an insured toward the

1 settlement of a claim shall be:

2 (a) Handled in a fiduciary capacity; and

3 (b) Deposited into one (1) or more separate noninterest-bearing fiduciary trust
 4 accounts in a financial institution licensed to do business in this state no
 5 later than the close of the second business day from the receipt of the funds.

6 (2) The funds referenced in subsection (1) of this section shall:

7 (a) Be held separately from any personal or nonbusiness funds;

8 (b) Not be commingled or combined with other funds;

9 (c) Be reasonably ascertainable from the books of accounts and records of the
 10 public adjuster; and

11 (d) Be disbursed within thirty (30) calendar days of any invoice received by the
 12 public adjuster upon approval of the insured or the claimant that the work
 13 has been satisfactorily completed.

14 (3) A public adjuster shall maintain an accurate record and itemization of any funds
 15 deposited into an account under subsection (1) of this section in accordance with
 16 KRS 304.9-435.

17 ➔SECTION 5. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS
 18 CREATED TO READ AS FOLLOWS:

19 (1) Except as provided in subsection (2) of this section:

20 (a) Any fee charged to an insured by a public adjuster shall be:

21 1. Based only on the amount of the insurance settlement proceeds
 22 actually received by the insured; and

23 2. Collected by the public adjuster after the insured has received the
 24 insurance settlement proceeds from the insurer;

25 (b) A public adjuster may receive a commission for services provided under this
 26 subtitle consisting of:

27 1. An hourly fee;

- 1 2. A flat rate;
- 2 3. A percentage of the total amount paid by the insurer to resolve a
- 3 claim; or
- 4 4. Another method of compensation; and
- 5 (c) A public adjuster:
- 6 1. Shall not charge an unreasonable fee; and
- 7 2. May charge a reasonable fee that does not exceed:
- 8 a. For noncatastrophic claims, fifteen percent (15%) of the total
- 9 insurance recovery of the insured; and
- 10 b. For catastrophic claims, ten percent (10%) of the total insurance
- 11 recovery of the insured.
- 12 (2) If an insurer, not later than seventy-two (72) hours after the date on which a loss
- 13 or damage is reported to the insurer, either pays or commits in writing to pay the
- 14 policy limit of the insurance policy to the insured, a public adjuster shall:
- 15 (a) Not receive a commission consisting of a percentage of the total amount
- 16 paid by the insurer to resolve a claim;
- 17 (b) Inform the insured that the claim settlement amount may not be increased
- 18 by the insurer; and
- 19 (c) Be entitled only to reasonable compensation from the insured for services
- 20 provided by the adjuster on behalf of the insured, based on the time spent on
- 21 the claim and expenses incurred by the adjuster prior to when the claim was
- 22 paid or the insured received a written commitment to pay from the insurer.

23 ➔Section 6. KRS 304.9-440 is amended to read as follows:

- 24 (1) The commissioner may place on probation, suspend, or may impose conditions
- 25 upon the continuance of a license for not more than twenty-four (24) months,
- 26 revoke, or refuse to issue or renew any license issued under this subtitle or any
- 27 surplus lines broker, life settlement broker, or life settlement provider license, or

1 may levy a civil penalty in accordance with KRS 304.99-020, or any combination
2 of actions for any one (1) or more of the following causes:

- 3 (a) Providing incorrect, misleading, incomplete, or materially untrue information
4 in ~~a~~the license application;
- 5 (b) Violating any insurance laws, or violating any administrative regulations,
6 subpoena, or order of the commissioner or of another state's insurance
7 commissioner;
- 8 (c) Obtaining or attempting to obtain a license through misrepresentation or
9 fraud;
- 10 (d) Improperly withholding, misappropriating, or converting any moneys or
11 properties received in the course of doing insurance or the business of life
12 settlements;
- 13 (e) Intentionally misrepresenting the terms of an actual or proposed insurance
14 contract, life settlement contract, or application for insurance;
- 15 (f) Having been convicted of or having pled guilty or nolo contendere to any
16 felony;
- 17 (g) Having admitted or been found to have committed any unfair insurance trade
18 practice, insurance fraud, or fraudulent life settlement act;
- 19 (h) Using fraudulent, coercive, or dishonest practices; or demonstrating
20 incompetence, untrustworthiness, or financial irresponsibility; or being a
21 source of injury or loss to the public in the conduct of business in this state or
22 elsewhere;
- 23 (i) Having an insurance license, life settlement license, or its equivalent, denied,
24 suspended, or revoked in any other state, province, district, or territory;
- 25 (j) Surrendering or otherwise terminating any license issued by this state or by
26 any other jurisdiction, under threat of disciplinary action, denial, or refusal of
27 the issuance of or renewal of any other license issued by this state or by any

- 1 other jurisdiction; or revocation or suspension of any other license held by the
2 licensee issued by this state or by any other jurisdiction;
- 3 (k) Forging another's name to an application for insurance, to any other document
4 related to an insurance transaction, or to any document related to the business
5 of life settlements;
- 6 (l) Cheating, including improperly using notes or any other reference material to
7 complete an examination for license;
- 8 (m) Knowingly accepting insurance or life settlement business from an individual
9 or business entity who is not licensed, but who is required to be licensed
10 under this subtitle;
- 11 (n) Failing to comply with an administrative or court order imposing a child
12 support obligation;
- 13 (o) Failing to pay state income tax or to comply with any administrative or court
14 order directing payment of state income tax;
- 15 (p) Having been convicted of a misdemeanor for which restitution is ordered in
16 excess of three hundred dollars (\$300), or of any misdemeanor involving
17 dishonesty, breach of trust, or moral turpitude;
- 18 (q) Failing to no longer meet the requirements for initial licensure;
- 19 (r) If a life settlement provider, demonstrating a pattern of unreasonable
20 payments to owners or failing to honor contractual obligations set out in a life
21 settlement contract;
- 22 (s) Entering into any life settlement contract or using any form that has not been
23 approved pursuant to Subtitle 15 of this chapter;
- 24 (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life
25 settlement contract to a person other than a life settlement provider licensed in
26 this state, an accredited investor or qualified institutional buyer as defined,
27 respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities

1 Act of 1933, as amended, a financing entity, a special purpose entity, or a
2 related provider trust; or

3 (u) Any other cause for which issuance of the license could have been refused,
4 had it then existed and been known to the commissioner.

5 (2) (a) For any public adjuster or apprentice adjuster supervised by a public
6 adjuster under KRS 304.9-432, the commissioner may deny, suspend, or
7 revoke the adjuster's license or impose a fine not to exceed five thousand
8 dollars (\$5,000) per act against the adjuster, or both, for any of the
9 following causes:

10 1. Violating any provision of this chapter;

11 2. Violating any administrative regulation or order of the commissioner;

12 3. Receiving payment or anything of value as a result of an unfair or
13 deceptive practice;

14 4. Receiving or accepting any fee, kickback, or other thing of value
15 pursuant to any agreement or understanding, oral or otherwise, from
16 anyone other than an insured;

17 5. Entering into a split-fee arrangement with another person who is not a
18 public adjuster; or

19 6. Being otherwise paid or accepting payment for public adjuster services
20 that have not been performed.

21 (b) The sanctions and penalties under this subsection shall be in addition to
22 any other remedies, penalties, or sanctions available to the commissioner
23 against a public adjuster or an apprentice adjuster supervised by a public
24 adjuster under KRS 304.9-432 under this section or any other law.

25 (3) The license of a business entity may be suspended, revoked, or refused for any
26 cause relating to an individual designated in or registered under the license if the
27 commissioner finds that:

1 (a) An individual licensee's violation was known or should have been known by
2 one (1) or more of the partners, officers, or managers acting on behalf of the
3 business entity; and

4 (b) The violation was not reported to the department~~[of Insurance]~~ nor corrective
5 action taken.

6 ~~(4)~~~~(3)~~ (a) The license of a pharmacy benefit manager may, in the discretion of the
7 commissioner, be suspended, revoked, or refused for any cause enumerated in
8 subsection (1) of this section, and for violations of KRS 205.647, 304.9-053,
9 304.9-054, 304.9-055, and 304.17A-162.

10 (b) The pharmacy benefit manager shall also be subject to the same civil penalties
11 under KRS 304.99-020 as an insurer.

12 ~~(5)~~~~(4)~~ The applicant or licensee may make written request for a hearing in
13 accordance with KRS 304.2-310.

14 ~~(6)~~~~(5)~~ The commissioner shall retain the authority to enforce the provisions and
15 penalties of this chapter against any individual or business entity who is under
16 investigation for or charged with a violation of this chapter, even if the individual's
17 or business entity's license has been surrendered or has lapsed by operation of law.

18 ~~(7)~~~~(6)~~ The commissioner may suspend, revoke, or refuse to renew the license of a
19 licensed insurance agent operating as a life settlement broker, pursuant to KRS
20 304.15-700, if the commissioner finds that such insurance agent has violated the
21 provisions of KRS 304.15-700 to 304.15-725.

22 ~~(8)~~~~(7)~~ If the commissioner denies a license application or suspends, revokes, or
23 refuses to renew the license of a life settlement provider or life settlement broker, or
24 suspends, revokes, or refuses to renew the license of a licensed life insurance agent
25 operating as a life settlement broker pursuant to KRS 304.15-700, the commissioner
26 shall comply with the provisions of this section and KRS Chapter 13B.

27 ~~(9)~~~~(8)~~ The sanctions and penalties applicable to licenses and licensees under

1 subsection (1) of this section shall also be applicable to registrations and registrants
2 under KRS 304.52-030(3).

3 ➔Section 7. Pursuant to KRS 304.2-110, the commissioner may promulgate
4 administrative regulations necessary for or as an aid to the effectuation of any provision
5 of this Act.