

CHAPTER 115. PUBLIC ADJUSTER CONTRACTS**GENERAL**

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Authority

The provisions of this Chapter 115 issued under act of April 25, 1921 (P. L. 276, No. 136) (40 P. S. §§ 301—308) (Repealed); The Insurance Company Law of 1921 (40 P. S. §§ 341—991); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15), unless otherwise noted.

Source

The provisions of this Chapter 115 adopted May 16, 1980, effective August 15, 1980, 10 Pa.B. 1973, unless otherwise noted.

Notes of Decisions*Jurisdiction*

The insurance commission could not promulgate 31 Pa. Code § 115.1 in conflict with the Consumer Protection Law and a public adjuster's business was within the Consumer Protection Law's definition of trade and commerce, and could not be excluded therefrom. *Culbreth v. Lawrence J. Miller, Inc.*, 477 A.2d 491 (Pa. Super. 374).

GENERAL**§ 115.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Active officer—An individual designated by the corporation as an officer of record for the public adjuster agency license.

Active partner—An individual designated by the partnership as a partner of record for the public adjuster agency license.

Business day—A day other than a Saturday, Sunday or holiday.

Commissioner—The Insurance Commissioner of the Commonwealth.

Execution date—The date that a public adjuster contract has been signed by all parties.

Insurance company—An insurance company, association or exchange authorized to transact insurance business in this Commonwealth.

Resident—A person whose business address or legal residence is located in this Commonwealth.

Authority

The provisions of this § 115.1 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.1 amended January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial page (281725).

Cross References

This section cited in 31 Pa. Code § 146a.2 (relating to definitions).

§ 115.2. Contents of public adjuster contracts, minimum standards.

(a) A public adjuster contract shall contain, at a minimum, the following information:

- (1) The title of the contract to read: Public Adjuster Contract.
- (2) The name, business name, address and telephone number of the public adjuster.
- (3) The name and address of the insured.
- (4) The consideration expressed as a percentage of any payments to be received on the negotiated claim, or as a maximum dollar amount.
- (5) A space provided for the execution date (month, day, year) of the contract.

(6) A space provided for the signature of the insured and the public adjuster.

(7) A provision setting forth the insured's right to cancel, which shall be printed in prominent type on the first page of the public adjuster contract in substantially the following form:

Notice of Right to Cancel

You, the insured, may cancel this contract at any time prior to midnight of the fourth calendar day after the execution date of this contract. If you exercise your right to cancel this contract, you will be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster to protect the interests of the insured during the period preceding cancellation.

If you cancel this contract, anything of value given by you under the contract will be returned to you within 15 business days following the receipt by the public adjuster of your cancellation notice, and any security interest arising out of the contract will be cancelled. To cancel this contract, mail, fax or deliver in person a signed and dated copy of this notice or any other written notice, indicating your intent to cancel and the date thereof to (name of public adjuster) at (business address of public adjuster) not later than midnight of (date). I hereby cancel this contract.

(Date)

(Insured's signature)

(b) A public adjuster contract may not contain any contract term that:

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

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

(3) Imposes late fees or collection costs on the insured.

Authority

The provisions of this § 115.2 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.2 amended January 17, 2003, effective January 18, 2003, 33 Pa.B. 346; amended December 3, 2004, effective December 4, 2004, 34 Pa.B. 6404. Immediately preceding text appears at serial pages (295796) to (295797).

§ 115.3. Additional procedures.

- (a) Each insured shall be:
- (1) Verbally informed by the public adjuster at the time of signing the contract of the right to cancel.
 - (2) Furnished with a copy of the executed public adjuster contract.
- (b) Before furnishing the approved notice to the insured setting forth the insured's right to cancel the contract, the notice shall be completed by entering the name of the public adjuster; the address of the public adjuster's place of business; the execution date of the contract; and the date, not earlier than the fourth business day following the execution date of the contract, by which the insured may give notice of cancellation.
- (c) The cancellation period provided for in this chapter may not begin until the insured has been informed of the insured's right to cancel and has been provided with the approved notice setting forth the insured's right to cancel.
- (d) Within 15 business days after the receipt of the cancellation notice, the public adjuster shall:
- (1) Refund payments made under the contract.
 - (2) Cancel and return negotiable instruments executed by the insured in connection with the contract.
 - (3) Take action necessary or appropriate to promptly terminate any security interest created under the contract.
- (e) A contract may not be negotiated, transferred, sold or assigned by the public adjuster to a finance company or other third party prior to midnight of the fifth business day following the execution date of the contract.
- (f) If an insured exercises the insured's right to cancel the contract, the insured shall be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster during the period preceding cancellation.

Authority

The provisions of this § 115.3 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.3 amended January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial pages (281726) and (256121).

§ 115.4. Inducing cancellation of contract prohibited.

No insurance company, its employes, officers or agents or a public adjuster or an employe, officer or agent thereof, may induce or attempt to induce an insured to cancel an existing contract with a public adjuster.

§ 115.5. [Reserved].**Source**

The provisions of this § 115.5 reserved January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial page (256121).

§ 115.6. [Reserved].**Source**

The provisions of this § 115.6 reserved January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial page (256121).

§ 115.7. Penalties.

A violation of this chapter will be subject to penalties set forth in:

- (1) Section 6 of the act (40 P. S. § 1606), regarding revocation, and the like, of license.
- (2) Section 7 of the act (40 P. S. § 1607), regarding violations.
- (3) Section 8 of the act (40 P. S. § 1608), regarding administration and enforcement.
- (4) The Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15), if the public adjuster:
 - (i) Demonstrates a pattern or practice of violating this chapter.
 - (ii) Commits a single violation of this chapter, that is so flagrant in nature as to warrant sanctions.

Authority

The provisions of this § 115.7 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.7 amended January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial page (256121).

§ 115.8. Filing and approval of contracts.

Applications for licensure and contract forms shall be submitted to the Insurance Department, Bureau of Producer Services, for filing and approval by the Commissioner.

Authority

The provisions of this § 115.8 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.8 amended January 17, 2003, effective January 18, 2003, 33 Pa.B. 346. Immediately preceding text appears at serial page (256122).

§ 115.9. Additional consumer protections.

A public adjuster shall:

(1) Notify the insurer, within 5 business days of the execution date of the contract, of the public adjuster's representation to facilitate the processing of claims.

(2) Communicate in writing, to the insured, within 5 business days, all settlement offers from an insurer so that the insured is made aware of all the options.

(3) Reply to written communications from an insurer, with respect to a claim, in writing within 5 business days, only if the communication from the insurer requires a response.

Authority

The provisions of this § 115.9 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.9 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

Cross References

This section cited in 31 Pa. Code § 115.11 (relating to examination requirement; and 31 Pa. Code § 115.16 (relating to general application requirements).

LICENSING REQUIREMENTS**§ 115.11. Examination requirement.**

Applicants for public adjuster and public adjuster solicitor licenses shall be required to successfully complete an examination, except as provided for in § 115.12 (relating to examination requirements for nonresident applicants). Applicants seeking a license shall apply for examination directly to the testing facility. See § 115.14 (relating to administration of examination).

Authority

The provisions of this § 115.11 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.11 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.12. Examination requirements for nonresident applicants.

A nonresident applicant for a license shall:

(1) Submit, along with the application, a letter or other official document from the regulatory authority of the jurisdiction where the applicant holds a license, confirming the applicant's licensure in good standing for the same type of license for which application is being made with the Department, whether qualification is under a written examination or whether licensure preceded the requirement of a written examination.

(2) Be subject to reciprocal agreements between the Department and the regulatory authority of the confirming jurisdiction.

(3) Be required to pass the appropriate examination if unable to produce a license or letter of certification of licensure from the confirming regulatory authority which is satisfactory to the Department.

Authority

The provisions of this § 115.12 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this 115.12 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

Cross References

This section cited in 31 Pa. Code § 115.11 (relating to examination requirement); and 31 Pa. Code § 115.16 (relating to general application requirements).

§ 115.13. Qualifications for examination.

An individual, or officer of a corporation, partner in a partnership or member of an association, who is 18 years of age or older, who can read and write in the English language and, for a resident applicant, who maintains a bona fide business office or legal residence in this Commonwealth, may take a public adjuster/public adjuster solicitor examination upon payment of the applicable fee and submission of an application form.

Authority

The provisions of this § 115.13 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.13 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.14. Administration of examination.

The Commissioner may delegate to a person or corporation, by contract, the authority for administering and scoring examinations. An eligible delegatee shall guarantee to adhere to the following standards:

- (1) Examinations shall be offered at regular intervals at least 12 times each year.
- (2) Testing shall be conducted in locations throughout this Commonwealth and other designated locations. Examples of other designated locations include testing facilities that the administrator of testing may have in other states, or Internet testing offered by the administrator.
- (3) Test security shall be strictly maintained, and a set of security rules shall be developed by the testing facility, which shall be approved by the Commissioner.
- (4) Bias or favoritism towards an applicant will not be permitted by the testing facility.
- (5) The testing facility shall develop a comprehensive brochure describing, at a minimum, applicable fees, the nature of examination questions and providing sample questions. The brochure shall be distributed to an applicant at the time of registration for examination or, upon request, at any other reasonable time.
- (6) The location of the testing facilities is available on the Department's website at www.insurance.state.pa.us or upon request from the Department.

Authority

The provisions of this § 115.14 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.14 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

Cross References

This section cited in 31 Pa. Code § 115.11 (relating to examination requirement).

§ 115.15. Scope of examination.

Examinations shall be designed by the testing facility to test the adequacy of an applicant's knowledge of general principles of insurance, insurance laws of the Commonwealth and the business of adjusting losses.

Authority

The provisions of this § 115.15 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.15 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.16. General application requirements.

Applicants for a license shall follow the following procedures:

(1) An active officer of a corporation, active partner in a partnership or member of an association shall be required to take a written examination unless the requirement is waived under § 115.12 (relating to examination requirements for nonresident applicants) or unless the active officer, active partner or member is a currently licensed public adjuster.

(2) Persons who have passed the examination may apply to the Department for a license. The applicant shall attach a certification from the testing facility attesting that the applicant passed the examination. The certification from the testing facility is not required if the testing facility reports test scores directly to the Department.

(3) Test scores and results remain valid for 1 year from the date of the examination. Applications received with test results in excess of 1 year will be denied.

Authority

The provisions of this § 115.16 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.16 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.17. Completion of application and renewal application forms.

Public adjusters and public adjuster solicitors shall complete application and renewal forms fully and accurately, and shall submit the required fees. Those applications and renewal forms submitted to the Department which are not complete and accurate or accompanied by required fees, will be returned for correction together with written notice of the reason for the return of the applications or renewal forms.

Authority

The provisions of this § 115.17 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.17 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.18. Application procedures for individual persons.

(a) An individual shall complete the application for an initial license. Accompanying the application shall be:

- (1) The appropriate application fee.
- (2) A bond as required by statute.
- (3) A receipt from the surety stating that the premium has been paid in full on the bond.
- (4) A copy of the contract to be used in this Commonwealth.

(b) An applicant for a public adjuster solicitor license shall also obtain and present with the application a letter of intent from a licensed public adjuster to employ the applicant as a public adjuster solicitor.

(c) Applications shall be subscribed and sworn to before a notary public.

(d) Applications executed more than 3 months prior to the date of filing with the Department will not be accepted.

(e) Making a false statement in an application may constitute a ground for license denial or revocation.

(f) Initial licenses will be valid as of the date issued by the Department until the expiration date stated on the license, unless earlier revoked by the Commissioner.

(g) Before a license is granted, the applicant shall first answer and submit, in writing and under oath, interrogatories on forms prepared by the Department.

(h) When the Commissioner is satisfied that the applicant is worthy of a license, and that the applicant has passed the examination or qualified for a waiver, and has paid any appropriate fees, the Commissioner will issue a license stating that the licensee has been authorized by the Department to transact business as a public adjuster or public adjuster solicitor within this Commonwealth.

Authority

The provisions of this § 115.18 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.18 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.19. Denial of application.

The applicant may be denied a license for any of the following reasons. The applicant:

- (1) Has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to applying for a license.
- (2) Has been denied a license or has had an existing license revoked, suspended or not renewed by the Department or a regulatory authority in another

state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.

(3) Does not possess the professional competence and trustworthiness required to engage in the business of being a public adjuster or public adjuster solicitor.

(4) Has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor.

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor including unlawful practices as set forth in sections 6(a)(1)—(3), (5)—(7) and (12) of the act (63 P. S. § 1606(a)(1)—(3), (5)—(7) and (12)), embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor are all summary offenses, records of arrests if there is no conviction or a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.

(5) Fails to comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034), if applicable.

(6) Has unpaid and overdue amounts, including fees and civil penalties, owing to the Department.

Authority

The provisions of this § 115.19 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.19 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.20. Partnership or corporation application procedures.

Procedures for partnerships or corporations are as follows:

(1) Partnerships or corporations shall apply for licensure using the appropriate licensing application form. The form shall be signed in the name of the partnership or corporation by each active partner or active officer, and be

accompanied by the appropriate licensing application form for each active partner or active officer who is not currently licensed. Accompanying the licensing application shall be:

- (i) The appropriate application fee.
 - (ii) A bond as required by statute.
 - (iii) A receipt from the surety stating the premium has been paid in full on the bond.
 - (iv) A copy of the contract to be used in this Commonwealth.
 - (v) A copy of the articles of incorporation as filed with the Department of State, Corporation Bureau.
 - (vi) A copy of the public adjuster license of each active partner or active officer, if applicable.
- (2) Employees of partnerships and corporations who apply for a license shall apply in their individual capacity.
- (3) The worthiness of a partnership or corporation is determined by the worthiness of the active partner or the active officer.
- (4) The application shall be subscribed and sworn to before a notary public.
- (5) Applications executed more than 3 months prior to the date of filing with the Department will not be accepted.
- (6) Making a false statement in an application may constitute a ground for license denial or revocation.
- (7) Initial licenses will be valid as of the date issued by the Department until the expiration date stated on the license, unless earlier revoked by the Commissioner.
- (8) Before a license is granted, the applicant shall first answer and submit, in writing and under oath, interrogatories on forms prepared by the Department. When the Commissioner is satisfied that the applicant is worthy of a license and has paid any appropriate fees, the Commissioner will issue a license stating that the licensee has been authorized by the Department to transact business as a public adjuster or public adjuster solicitor within this Commonwealth.

Authority

The provisions of this § 115.20 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.20 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

§ 115.21. Renewal of license.

License renewal procedures are as follows:

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(1) Mailing of a license renewal form to the last known address of the licensee will satisfy the Department's obligation to provide the appropriate forms and notices.

(2) A license can be renewed only upon submission, electronic or otherwise, of a completed renewal form, payment of the required fees and an attestation or a receipt from a surety stating the premium on the bond, as required, has been paid in full.

(3) Licenses shall be renewed annually on the anniversary of the effective date of the initial license.

(4) Corporations shall provide to the Department the names of each active officer with the renewal form to be eligible for license renewal. Partnerships shall provide to the Department the names of each active partner with the renewal form to be eligible for license renewal.

(5) Failure to complete and submit the renewal form and required fee by the expiration date shall be deemed voluntary termination by the public adjuster or public adjuster solicitor. Failure to correct and resubmit application renewal forms returned by the Department under this section, prior to the expiration date of the license, or within 15 days of the date the forms were mailed by the Department, whichever is greater, will be deemed voluntary termination by the public adjuster or public adjuster solicitor. Renewal forms received by the Department after expiration will be denied; except that renewal forms returned by the Department under this section and resubmitted as instructed by the Department after expiration but within 15 days of the date the incomplete forms were mailed by the Department to the applicant will be accepted.

Authority

The provisions of this § 115.21 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

Source

The provisions of this § 115.21 adopted January 17, 2003, effective January 18, 2003, 33 Pa.B. 346.

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