

Adjuster Licensing

Do You or Your Insurance Agency Need an Adjuster License?

BACKGROUND

Insurance brokers and their agencies provide many services to their clients. However, if some of the services you provide relate to investigating, negotiating or settling your client's claims, you and your agency may need to obtain an adjuster's license, which is a license separate from your producer license. Failure to be appropriately licensed can lead to fines and/or a suspension or loss of your producer license so keep reading to learn when an adjuster license is needed.

ADJUSTERS AND ADJUSTER LICENSING

A person or entity that "investigates, negotiates or settles" property and casualty claims for insurers is referred to as an independent adjuster. Conversely, a person or entity that helps (or holds him/herself out to the public as one who can help) an insured in investigating, negotiating or settling a claim for property loss or damage covered by the insured's insurance contract is referred to as a public adjuster. Approximately 34 states license independent adjusters but almost all states license public adjusters, primarily because public adjusters hold themselves out to the general public (as opposed to sophisticated insurers) as being knowledgeable and capable in adjusting claims.

The process to become licensed as an adjuster (both public and independent) is similar to the producer licensing process. Applicants must first obtain an adjuster license in a "resident state", and then apply for non-resident licenses. To obtain an individual adjuster license, most states require a background check, an initial examination and continuing educational requirements. In addition to individual licensing, some states will also license an entity as an adjuster. Again, similar to the producer licensing process, an entity seeking to obtain an adjuster license must designate a licensed individual adjuster responsible for the business entity's compliance with the state's adjuster rules and regulations.

PLEASE NOTE

The contents of this white paper are provided for informational purposes only, should not be construed as legal advice, may not reflect the most current legal and regulatory developments and should not be considered an indication of future results.

The licensing process for public adjusters is generally more burdensome than independent adjusters because (again) public adjusters service insureds rather than insurers. For example, many states, including California, require a public adjuster entity to purchase a surety bond in favor of the state in which the entity is licensed, and will also require an individual public adjuster to be so bonded if he/she is not associated with a bonded public adjuster entity.

PUBLIC ADJUSTER CONTRACTING

Most states require a public adjuster's template customer contract to be filed with, and approved by, the state's department of insurance (DOI). The DOIs will typically reject any public adjuster contract that (1) allows the public adjuster's fee (typically a percentage of the settled claim) to be collected when money is due from an insurance company but not yet 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 (i.e., disproportionate compensation); (2) requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster; or (3) imposes collection costs or late fees.

In addition to these contractual restrictions, a public adjuster must provide the insured with certain written disclosures, including: (a) any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim; (b) 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 do so; (c) the insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim; (d) the public adjuster is not a representative or employee of the insurer; and (e) the public adjuster's salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

Also, most state regulations require that a public adjuster who holds any funds on behalf of an insured for the settlement of a claim must deposit those funds in an escrow or trust account in the public adjuster's home state or the state where the loss occurred.

BROKER EXCEPTIONS TO THE PUBLIC ADJUSTER REQUIREMENTS

As stated above, an adjuster license and specific contract provisions are generally required if a person/entity "investigates, negotiates or settles" a claim. The term "investigating" includes collecting facts on behalf of the insured, such as interviewing witnesses or visiting the site of an accident to collect information about the loss, but does not include collecting information directly from the insured just to answer questions or provide advice (activities typically performed

by a broker¹ or consultant). “Negotiating” involves any direct communication with an insurance company that involves bargaining or debating on behalf of an insured to obtain a more favorable outcome. Finally, “settling” is similar to “negotiating” in that it requires direct communication with the insurance company.

You may have noticed that it is not unusual for a broker to engage in some of these defined adjusting activities. In these situations, must a broker also obtain a public adjuster’s license? As with most insurance questions, the answer varies by state. In some jurisdictions, a broker may provide limited adjustment of claims if he/she is the broker of record for the insured’s policy in question (although certain of these states further limit this exception to only the actual individual listed as the broker of record and not other producers associated with that broker of record’s insurance agency). In other jurisdictions, a licensed broker is exempt from the adjuster licensing requirements either when the broker is the broker of record or when the broker “has been designated to act for the insured in writing before a loss occurs” (e.g., New York and New Jersey). Other states expressly permit a licensed producer to act as an adjuster, provided that such activity is not for additional compensation (e.g., Pennsylvania). The statutes in these jurisdictions acknowledge that producers are regulated professionals and that their knowledge and existing relationships can benefit insured parties in times of loss. Nevertheless, in all instances, typical broker activity relating to a claim, such as providing first loss of notice, and assisting an insured in gathering facts for a claim, will not result in the need for an adjuster license.

CONCLUSION

As you can see, the rules regarding when a broker needs a public adjuster license varies by state, and failure to obtain a required adjuster license (or your decision to provide services beyond that which is permitted by your existing producer license) can adversely impact your producer license. ACCEL Law Group has experience with independent and public adjuster licensing and activity issues in all U.S. states and territories and can guide you as you seek to expand the services your business provides.

If you would like to learn more, please contact Dan Kalosieh at ACCEL at (860) 726-4208 or your regular ACCEL contact.

¹ As used in this white paper, the term “broker” refers to a licensed producer engaged to represent the insured and does not include appointed agents representing insurance companies

ABOUT ACCEL Compliance

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