

WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code §§33-12B-12, 33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 25

TITLE OF RULE BEING FILED AS AN EMERGENCY: Insurance Adjusters

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

During the 1988 legislative session, article 12B was added to the Insurance Code (Chapter 33). This article requires the Insurance Commissioner to begin licensure and regulation of individuals who adjust property and casualty insurance claims on and after July 1, 1989. The Insurance Commissioner believes that a regulation is necessary to establish standards and procedures for this regulatory responsibility and accordingly proposes this emergency rule. Use of emergency procedures is necessary due to the July 1, 1989, statutory deadline for implementation of the adjusters program.

Use Additional Sheets If Necessary.

Stanley D. Clark

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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

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OFFICE OF WEST VIRGINIA
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CHAPTER 33-12B
SERIES 25

INSURANCE ADJUSTERS

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- Section 2. Definitions
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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CHAPTER 33-12B
SERIES 25

INSURANCE ADJUSTERS

Section 1. General

1.1 Scope - This legislative rule establishes standards for licensing and regulation of insurance adjusters.

1.2 Authority - West Virginia Code § 33-12B-12 and § 33-2-10.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Definitions

2.1 Adjuster - shall mean any individual who, for compensation, fee or commission, investigates and settles claims arising under property, casualty or surety insurance contracts on behalf solely of either the insurer or the insured. As used in this rule, the term 'adjuster' shall include both public adjusters and company adjusters unless specified otherwise.

2.2 Code - shall mean the West Virginia Code.

2.3 Commissioner - shall mean the Insurance Commissioner of the State of West Virginia.

2.4 Company adjuster - shall mean an individual representing the interests of the insurer, including independent contractors with and salaried employees of the insurer.

2.5 Public adjuster - shall mean an independent contractor representing solely the financial interests of the insured named in the policy.

Section 3. License Requirements

3.1 On and after July 1, 1989, no person shall in West Virginia act as or hold himself to be an adjuster unless then so licensed by the commissioner.

Insurance Commissioner
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Series 25, Sec. 3
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3.2 The following activities do not constitute acting as an adjuster so as to require licensure by the commissioner:

(A) An attorney at law who investigates and settles claims incidental to an attorney/client relationship.

(B) A licensed agent who without receiving specific compensation therefore, investigates, negotiates or settles undisputed claims solely for licensed insurers represented by such agent.

(C) Salaried office employee who performs primarily clerical or administrative duties attendant to the disposition of uncontested claims.

(D) Salaried employee of an insurer whose primary duties are not adjusting, investigating or supervising claims.

(E) A person specially employed for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed adjuster, including but not limited to photographers, estimators/appraisers, marine surveyors, private detectives, engineers, handwriting experts and arbitrators.

(F) Person who adjusts life, accident or health claims.

(G) Person who adjusts claims for licensed farmers' mutual fire insurance companies.

(H) Person who engages solely in appraising motor vehicle physical damage and who does not endeavor to determine liability or negotiate the settlement of claims arising under automobile insurance contracts.

3.3 Claims arising out of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence may be adjusted by a non-licensed adjuster upon registration with the commissioner, provided that the work of non-licensed persons working under a catastrophe situation must be supervised by an adjuster licensed in this state or by an insurance company authorized to do business in this state. The authority to work granted as provided herein to unlicensed persons shall be limited to ninety days from the commencement of the catastrophe or emergency with a single ninety day extension granted at the discretion of the commissioner.

Insurance Commissioner
Leg. Rule 33-12B
Series 25, Sec. 3
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3.4 Claims arising out of a particular loss of unique or unusual character may be adjusted by a non-licensed adjuster upon registration with the commissioner, provided that the work of the non-licensed person must be supervised by an adjuster licensed in this state or by an insurance company authorized to do business in this state. The authority to work granted as provided herein to unlicensed persons shall be limited to three losses within any twelve month period.

Section 4. Categories and Types of Licenses

4.1 The types of licenses which may be issued are as follows:

- (A) Company adjuster
- (B) Public adjuster

4.2 An individual may be licensed concurrently under separate licenses as a company adjuster and as a public adjuster but shall not act as a company adjuster and a public adjuster with respect to the same claim.

Section 5. Qualifications

5.1 No individual may hold a license as an adjuster unless that individual

- (A) Is eighteen years of age or more.
- (B) Is a resident of West Virginia, except for nonresident adjusters as provided in Code § 33-12B-9 and § 11 of this rule.
- (C) Satisfies the commissioner that he is trustworthy and competent. The commissioner may, at his discretion, test the competency of an applicant for a license under this section by examination. If such examination is required by the commissioner, each examinee shall pay a twenty-five dollar examination fee for each examination to the commissioner which fees shall be used for the purposes set forth in Code § 33-3-13. The commissioner may, at his discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

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Series 25, Sec. 5
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5.2 An individual licensed as a company adjuster may file with the commissioner an application in such form as he prescribes, and upon payment of the requisite license fee, shall be licensed as a public adjuster without being required to take and pass an examination.

5.3 An individual licensed as a public adjuster may file with the commissioner an application in such form as he prescribes, and upon payment of the requisite license fee, shall be licensed as a company adjuster without being required to take and pass an examination.

Section 6. Waiver of Examination Requirement

6.1 Any individual who is a resident of West Virginia and is employed as an adjuster prior to July 1, 1989, may file with the commissioner on or before November 1, 1989, an application in such form as the commissioner prescribes, and upon payment of the requisite license fee, shall be licensed as a company adjuster and/or public adjuster without being required to take and pass an examination.

Section 7. Records Maintenance

7.1 All adjusters shall maintain a complete record of each of their transactions as an adjuster. The records required by this Section shall include:

- (A) name of the insured;
- (B) date, location and amount of loss;
- (C) copy of the contract between the public adjuster and insured or between the company adjuster and insurer;
- (D) name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
- (E) itemized statement of the insured's and/or third party claimant's recoveries;
- (F) copy of any settlement documents and/or releases executed in relation to the claim;
- (G) statement of any fee, commission or other compensation received or to be received by the adjuster on account of the adjustment.

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Leg. Rule 33-12B
Series 25, Sec. 7
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7.2 Such records shall be maintained by the adjuster for a period of not less than three years after termination of the transaction with an insured and shall be open to examination by the commissioner at any time.

Section 8. Prohibited Practices; Voidable Contracts

8.1 A public adjuster shall not solicit or attempt to solicit a loss during progress of a loss-producing occurrence nor while the fire department or its representatives are engaged at the damaged premises.

8.2 A public adjuster shall not collect or attempt to collect a fee or charge from a repair contractor for obtaining repair work for the contractor.

8.3 A public adjuster shall not advance money or any other valuable thing to an insured pending adjustment of a claim.

8.4 A public adjuster shall not provide his or her services to a client until the adjuster has contracted in writing with the insured or his or her authorized representative. A contract which is executed within forty-eight hours after conclusion of the loss producing occurrence shall be voidable at the option of the insured for ten days after execution of the contract. The written contract shall constitute the entire agreement between the adjuster for the insured and the insured. A copy of the contract shall be given to the insured when the contract is executed.

Section 9. Addresses of Adjusters; Filing

Each adjuster shall file with the commissioner the complete address of his principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. The commissioner may require the filing of other information for the purposes of identifying the principal place of business and the place of residence.

Section 10. Change of Address; Notice

An adjuster shall within thirty days of the change notify the department of any change of his business or residence address. The principal place of business may be at home or at a business address but it shall be the place at which the adjuster maintains a permanent office.

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Leg. Rule 33-12B
Series 25, Sec. 11
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Section 11. Licensing of Nonresident Adjusters

11.1 An individual otherwise complying with the provisions of this rule and chapter 33 of the Code, who is a resident of another state and who is a licensed adjuster of such state, may be licensed as a nonresident adjuster in this state, if the state of residence of such nonresident has established, by law or regulation like requirements for the licensing of a resident of this state as a nonresident adjuster.

11.2 The commissioner may issue an adjuster's license to any applicant who is not a West Virginia resident and who cannot meet the requirements of § 11-1 if the applicant passes a written examination in West Virginia.

Section 12. Application

12.1 Application for an adjuster's license or renewal thereof shall be made to the commissioner upon a form prescribed by the commissioner and shall contain such information and be accompanied by such supporting documents as the commissioner may require, and the commissioner may require such application to be made under the applicant's oath.

12.2 Wilful misrepresentation of any fact in any such application or any documents in support thereof is a violation of chapter 33 of the Code.

Section 13. License Fee

The fee for an adjuster license shall be as provided in § 33-12B-8 of the Code.

Section 14. Expiration of License; Renewal

All licenses of adjusters shall expire at midnight on the May thirty-first next following the date of issuance. The commissioner shall renew annually the license of all such licensees who qualify and make application therefor.

Section 15. Revocation, Suspension or Refusal to Renew License; Penalty in Lieu Thereof

Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this chapter, or is incompetent or untrustworthy, he shall revoke,

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suspend, or, if renewal of license is pending, refuse to renew the license of such adjuster. In addition to revoking, suspending, or refusing to renew such license, the commissioner may in his discretion order such licensee to pay to the state of West Virginia an administrative penalty in a sum not to exceed one thousand dollars.

Section 16. Severability

If any provision of this regulation of the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.