

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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 NEW RULE BEING PROPOSED: 25

TITLE OF RULE BEING PROPOSED: Insurance Adjusters

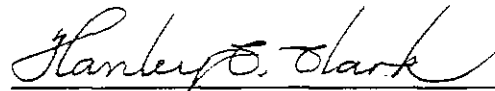
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 243

SECTION 64-7-2 (g), PASSED ON March 10, 1990

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 19, 1990



Hanley C. Clark
Insurance Commissioner

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-12B
SERIES 25

INSURANCE ADJUSTERS

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- Section 2. Definitions
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- Section 5. Qualifications
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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

FILED

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CHAPTER 33-12B
SERIES 25

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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~~ means 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~~ means the West Virginia Code.

2.3 Commissioner - ~~shall~~ means the Insurance Commissioner of the State of West Virginia.

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

2.5 Public adjuster - ~~shall~~ means 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.

3.2 ~~The Persons performing the following activities do not constitute will not be deemed to be 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) ~~Salariied~~ A salaried office employee who performs primarily clerical or administrative duties attendant to the disposition of uncontested claims.

(D) ~~Salariied~~ A salaried employee of an insurer whose primary duties are other than adjusting, or investigating claims.

(E) A person specially employed for the purpose of obtaining the 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~~ A person who adjusts life, accident or health claims.

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

(H) ~~Person~~ A 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.

(I) A nonresident salaried employee of an insurer whose primary duty is supervision of adjusters licensed by the commissioner.

(J) A person located in a central office of the insurer outside the state of West Virginia who adjusts claims by telephone only and does not enter the state of West Virginia in the course of adjusting such claims.

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 or emergency situation ~~must be~~ are supervised by an adjuster licensed in this state or by an insurance company authorized to do business in this state. Registration shall be by letter to the commissioner by the supervising adjuster or insurance company within twenty days of the date on which the non-licensed person begins adjusting activity in connection with the catastrophic or emergency situation. ~~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.~~ Such registration is valid for ninety days from the date of the registration letter. The commissioner may grant such ninety day extensions as he deems appropriate upon written request by the supervising adjuster or insurance company.

~~The registration shall be is valid for ninety days from the date of the registration letter. The commissioner may grant such ninety-day extensions as he deems appropriate upon written request by the supervising adjuster or insurance company.~~

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~~ is 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 older.

(B) Is a resident of West Virginia, except for nonresident adjusters as provided in West Virginia Code § 33-12B-9 and ~~§-11~~ Section 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 all applicants 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 West Virginia 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.

5.2 An individual licensed as a company adjuster may file with the commissioner an application in such form as he the commissioner 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 the commissioner 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 public adjusters shall maintain for three years after the termination of transactions with insureds a complete record of each of their transactions as an adjuster. The records required to be maintained by this Section shall include, include but are not limited to:

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

7.2 All company adjusters shall maintain in their claim files the information required in Section 7.1(A), (B), (D), (E), and (F). These files must be maintained by the company for three years after the termination of transactions with insureds 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 employment a-ess 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 and shall disclose all fees to be charged the insured by the public adjuster. 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.~~

Within thirty days of a change of business or residence address by an adjuster the adjuster must file with the commissioner the current version of such information as is required by Section 9 of this rule. An adjuster's principal place of business may be either a home or a business address, but in either event, the adjuster must maintain such address as a permanent office.

Section 11. Licensing of Nonresident Adjusters

11.1 An individual otherwise complying with the provisions of this rule and ~~chapter~~ Chapter 33 of the West Virginia 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 ~~§-11-3~~ Section 11-1 of this rule if the applicant passes a written examination in West Virginia.

11.3 Any individual who is a nonresident 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 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~~ Chapter 33 of the West Virginia Code.

Section 13. License Fee

The fee for an adjuster license shall be as provided in § 33-12B-8 of the West Virginia 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 or Issue License; Penalty in Lieu Thereof

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

For the purposes of this regulation, it is considered to demonstrate lack of trustworthiness or competency if after notice and hearing, the commissioner determines such adjuster has:

(A) Violated any insurance law or any lawful rule, regulation, or order of the commissioner;

(B) Improperly withheld, misappropriated, or converted to his own use any money received in the course of business and belonging to policyholders, insurers, beneficiaries, or others;

(C) Misrepresented the terms of any existing or proposed insurance contract to the detriment of the applicant or insured;

(D) Engaged in any pattern of unfair methods of competition or unfair or deceptive acts or practices in the business of insurance as defined in West Virginia Code § 33-11-1 et seq;

(E) Forged another person's name to any document or fraudulently procured a forged signature to any document, knowing such signature to be forged;

(F) Knowingly and willfully made or permitted a false or fraudulent statement or misrepresentation in or relative to the adjustment of any claim;

(G) Been convicted of or pleaded nolo contendere to any felony;

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(H) Been convicted of or pleaded nolo contendere to a misdemeanor in connection with his activities as an adjuster.

(I) Had an agent's, broker's, or adjuster's license suspended or revoked in any other state, district, or territory of the United States or any province of Canada;

(J) Obtained a license as an agent, broker, or adjuster through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the commissioner at the time of issuance.

(K) Committed any other act which inherently demonstrates untrustworthiness or lack of competence.

Section 16. Severability

If any provision of this regulation ~~of rule~~ or 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Keith Huffman

AGENCY: Insurance Adjusters

FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION

DATE: March 22, 1991

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 25 TITLE Insurance Adjusters

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED. (Page 4)

SIGNED: B. Keith Huffman

TITLE OF PERSON SIGNING: General Counsel

DATE: 3/26/91