

COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE
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Approved: Hon. David E. Bernier Rivera
Secretary of State

(Signed)

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Rule No. 4 (IV) of the Regulations of the Puerto Rico Insurance Code

INSURANCE ADJUSTERS

Commonwealth Of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
Guaynabo, Puerto Rico

RULE NUM. 4 (IV) OF THE REGULATIONS
OF THE PUERTO RICO INSURANCE CODE

INSURANCE ADJUSTERS

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RULE NO. 4 (IV) INSURANCE ADJUSTERS

SECTION 1. AUTHORITY

The Office of the Commissioner of Insurance of Puerto Rico (OCI) hereby amends Department of State Regulation No. 1053 to repeal Rule 4 of the Regulations of the Puerto Rico Insurance Code, titled *Adjusters* and in its stead adopts a new Rule No. 4 (IV) of said regulations titled *Insurance Adjusters*, according to the powers and faculties vested in the Commissioner of Insurance in Sections 9.332 and 2.030 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code, 26 L.P.R.A. sec. 101, *et seq.* and according to the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of Puerto Rico, 3 L.P.R.A. sec. 2101, *et seq.*

SECTION 2. PURPOSE AND SCOPE

The Commissioner of Insurance adopts Rule No. 4 for the purpose of establishing the applicable licensing requirements for insurance adjusters as well as the duties, responsibilities, and standards of conduct that all persons that hold an adjuster's license, whether as public adjusters or independent adjusters, should observe and comply with in the adjustment of insurance claims, for the purpose of guaranteeing an

adequate management of activities related to claims

adjustment under the insurance coverage. Likewise, requirements are established for the contracting process that will govern claims adjustment activities by public adjusters, with a view to protecting the insureds or claimants and for the good of the general public interest; the circumstances in which the Commissioner may grant special permission to act as an emergency adjuster; the ethical standards of conduct expected of an adjuster in the exercise of the profession; the records, accounts, and books that shall be maintained by insurance adjusters related to claims management; and the penalties to be imposed in the event of a violation of the provisions of this Rule.

The regulatory criteria established in this Rule are consistent with the regulatory standards and parameters promulgated by the National Association of Insurance Commissioners (NAIC), under the Public Adjuster Licensing Model Act and the Independent Adjuster Licensing Guideline.

This Rule will be applicable to all persons who hold a license issued by the Commissioner of Insurance to act as a public or independent adjuster in Puerto Rico.

SECTION 3. STATEMENT OF NEED AND OBJECTIVE

The adoption of this Rule No. 4 is a regulatory measure of the OCI pursuant to the approval of Public Law No. 45-2014, which amended the Puerto Rico Insurance Code, among other things, to add a new Section 9.332 to this Code. Section 9.332 vests the Commissioner of Insurance with the power to adopt the necessary regulations to establish the criteria that will govern the relationship between adjusters and insurers,

insureds or claimants, as well as establishing their obligations and responsibilities, given the lack of standards in the Code or its Regulations which is to be observed and complied with by adjusters during the insurance claims adjustment process.

The regulatory scheme established in this Rule, therefore, contains the duties of conduct applicable to insurance adjusters and the requirements for contracting adjusters, with a view to fostering a more effective monitoring of the claims adjustment process according to the insurance coverage. The necessary licensing requirements are also established to make it possible for the Commissioner of Insurance to evaluate the fitness and competence of the applicants for an adjuster's license for the greater benefit and protection of the interests of the insureds or claimants and other stakeholders in the insurance claims adjustment process. The licensing power of the Commissioner of Insurance is predicated on the interest of providing an adequate mechanism so that more people may become interested and continue a professional career in the insurance industry, a sector that is of singular importance for the economic activity of Puerto Rico. Likewise, the implementation of the regulatory standards and parameters promulgated under the Public Adjuster Licensing Model Act and the Independent Adjuster Licensing Guideline, whose adoption is established this Rule, are categorized as regulatory best practices in the insurance industry by the Association Nacional of Commissioners of Insurance ("NAIC").

SECTION 4. DEFINITIONS

The following terms shall have the meaning set forth below, except when in the text of any other provision of this Rule another meaning is provided:

A. Emergency Adjuster - means the special permit granted by the Commissioner to a qualified person to adjust losses in a general catastrophe, further to the submission of an application for a special permit as provided by the Commissioner. This permit will be subject to compliance with the requirements and conditions that may be established by the Commissioner and the payment of the required fees.

B. General catastrophe - for the purposes of the special permit for an emergency adjuster, it shall be deemed that a general catastrophe exists only when due to a sudden disaster or extreme event, losses occur in Puerto Rico that are covered by insurance and that such losses are so numerous and severe that the investigation, adjustment, and resolution of the claims may not be carried out within the parameters provided in Section 27.162 of the Puerto Rico Insurance Code, without emergency adjusters. A catastrophe must be have been declared by the Governor of Puerto Rico.

To demonstrate that given the general catastrophe there is a need to appoint emergency adjusters, the Insurer shall:

1. State the approximate number of emergency Independent Adjusters that the insurer will need to manager the general catastrophe and certify one of the following;
 - a. That the insurer expects to have at least 500 claims directly related to the general catastrophe; or
 - b. Given the magnitude of the catastrophe, it is expected that twice or more the number of claims will be generated than are ordinarily received in a month.

The remaining terms used in this Rule shall have the same meaning and scope as

provided in the Puerto Rico Insurance Code (the Insurance Code) and the Puerto Rico Health Insurance Code (the Health Insurance Code).

SECTION 5. LICENSE REQUIRED

- A. No person may act as an adjuster in Puerto Rico or exercise the profession of adjuster unless he or she holds an adjuster's license according to the provisions of Section 9.290 of the Insurance Code and this Rule. Claims managers will be considered Adjusters and shall hold a license as such.
- B. No partnership or corporation may exercise as claims adjusters or operate a claims adjustment business unless the partnership or corporation holds an adjuster's license subject to the requirements provided in Section 9.160 of the Insurance Code.
- C. An adjuster's license will not be required for:
 - (1) An attorney who is authorized to exercise the profession of attorney in Puerto Rico who adjusts insurance losses from time to time, in an incidental manner in the exercise of his or her profession. It is further provided, pursuant to the provisions of Section 9.050 of the Insurance Code, that an attorney who adjusts losses representing an insurer must hold an independent adjuster's license.
 - (2) An authorized producer may assist insured persons in procedures leading to the liquidation and adjustment of insured losses without being an authorized adjuster.
 - (3) Any producer that is contracted by an insurer to act as an authorized representative, on behalf of the insurer, and by virtue of the authority conferred by the contract with the insurer, may act sporadically as an adjuster and investigate, report on, and liquidate claims, without having to have an adjuster's license. It is further provided that the producer may

not act as an adjuster, nor investigate, report on or liquidate claims related to any policy, contract or insurance coverage that was transacted in his or her capacity as a producer.

- (4) A person who is employed for the sole purpose of obtaining data and information related to a loss or as a technical assistant of an adjuster, including photographers, estimators, private investigators, engineers, and calligraphers.
- (5) A person who only performs administrative or clerical work and does not investigate, settle or resolve claims.
- (6) A health care provider or an employee thereof that prepares or submits a claim form on behalf of a patient, provided that the services do not include determining compensation.
- (7) Any person used by an insurer, general agent, manager, authorized representative or adjuster exclusively for appraisal or evaluating damages shall not be required to be authorized adjuster.

SECTION 6. LICENSE APPLICATIONS

A. The application for an adjuster's license shall be completed and processed by the applicant online through the National Insurer Producer Registry and the State-Based System (NIPR/SBS) available through the OCI website, in compliance with the requirements established the Commissioner.

Before issuing an adjuster's license, the Commissioner will verify that the applicant meets the following requirements:

- (1) Be at least 18 years old and have completed high school or the equivalent;
- (2) Be and have been a bona fide resident of Puerto Rico for one year immediately preceding the date of the license application;

- (3) Take and pass to the satisfaction of the Commissioner, the licensing examination as proof of the person's qualifications and competence, as provided in to Section 9.110 of the Insurance Code;
- (4) Be reliable and of good repute, evidence of which may be determined by the Commissioner;
- (5) Not having incurred any action or conduct that would motivate a denial, suspension or revocation of the license;
- (6) Submit to the Commissioner, in the case of a license application as a public adjuster, the bond required in Section 9.320 of the Insurance Code and Section 7 of this Rule;
- (7) Pay the amount of one hundred and fifty dollars (\$150) for the application for the examination and fees for issuing a license to a:
 - (a) Natural Person:
 - (i) Resident or Non-Resident of Puerto Rico: \$420 for the two (2) year term, prorated for any term in excess of two (2) years;
 - (b) Partnership or Corporation:
 - (i) Resident or Non-Resident of Puerto Rico: \$420 for a two (2) year term, prorated for a term in excess of two (2) years, to be collected for each person that is designated in the partnership's corporation's or license;
- (8) Not be a shareholder, member, partner, director, officer representative or employee of any producer who is authorized to do business or is doing business in Puerto Rico, or who has an economic or financial interest or

contractual relationship in the field of insurance with a producer that is authorized to do business or is doing business in Puerto Rico;

- (9) Not be a shareholder, member, partner, director, officer, representative or employee of any other adjuster who is authorized to do business or is doing business in Puerto Rico, or who has an economic or financial interest, or a contractual relationship in the insurance field with an adjuster who is authorized to do business or who is doing business in Puerto Rico;
- (10) Maintain a place of business that is accessible to the public, that subject to the provisions of Section 9.340(2) of the Insurance Code may be the residence of the applicant, in which claims are processed as provided in the license;
- (11) In the case of a partnership or corporation, designate a natural person that has an adjuster's license as the person who is responsible for ensuring compliance by the partnership or corporation with the provisions of the Insurance Code, and the regulations and standards adopted under the code, as well as with the laws of Puerto Rico. Evidence should be provided that the partnership or corporation has been duly registered and authorized under the laws of Puerto Rico to do business in Puerto Rico;
- (12) A partnership or corporation should also comply with the requirements provided in Sections 9.160 and 9.090 of the Insurance Code.

- B. The Commissioner may require the applicant to provide any other document and information that the Commissioner may deem reasonably necessary to corroborate the veracity of the information contained in the license application. Misrepresentation of any information required in the application shall be sufficient cause for revoking, suspending or denying the license.
- C. The Commissioner may verify the status of any adjuster's license that is applied for or issued through the NIPR/SBS licenses database maintained by the NAIC, its affiliates and subsidiaries.
- D. The applicant will authorize the Commissioner to use the email address provided by the applicant as the official means to send any OCI communication that may be deemed relevant to the license application.

SECTION 7. EMERGENCY ADJUSTER

The Commissioner may grant a special emergency adjuster permit to any qualified person for the adjustment of losses due to a declared general catastrophe, as defined in this Rule, further to submission of an Application for a Special Permit as an Emergency Adjuster, and the information and documents that are required in Section 9.310 of the Insurance Code.

SECTION 8. BOND

- A. Instead of a bond as provided in Section 9.320 of the Code, applicants for an emergency public adjuster license may submit a professional liability policy from an authorized insurer, with coverage limits equal to or over \$100,000.
- B. The authority to act as a public adjuster or as an emergency adjuster will be

automatically voided if the bond or the liability policy terminate or become ineffective.

SECTION 9. CONTRACT BETWEEN THE PUBLIC ADJUSTER AND THE INSURED OR CLAIMANT

- A. All services provided by a public adjuster to an insured or claimant related to the adjustment of claims arising under the coverage of an insurance policy or contract shall be agreed on in a written contract and contain, in addition to the clauses provided in Section 9.331, the following terms:
1. A statement that the insurer has a bond or policy under Section 9.320 of the Puerto Rico Insurance Code.
 2. A clause that specifies that the insured or claimant has the right to terminate the contract by prior written notice mailed to the address in the contract or delivered to the public adjuster, within three (3) business days to be counted from the date the contract was signed. If the contract is terminated, any thing of value delivered by the insured or claimant under the contract entered into with the public adjuster will be returned by the adjuster to the insured with the proper acknowledgment of the termination of the contract.
 3. In addition to the clause that specifies the kind of economic compensation to be received by the public adjuster, the contract shall specify whether the public adjuster may be named along with the insured in the check that is drawn for payment of the claim, provided that the following is also complied with:

- a) If compensation is based on a percentage of the payment of the claim, and the contract specifies the exact percentage to be received by the public adjuster
 - b) The reimbursement of initial expenses related to the adjustment of the claim, where expenses are specified in the contract by category or kind, with their respective estimates in dollars and listing any additional expense that was previously approved by the insured or claimant.
4. No clause may include any of the following provisions:
- (a) Allowing the public adjuster's compensation to be charged in full, even when the insurer owes part of the compensation, or that allows a public adjuster to charge the full amount of the compensation from the first check issued by the insurer, instead of a proportional percentage of each check issued by the insurer;
 - (b) Requiring that the insured or claimant authorize the insurer to issue a check made out only to the public adjuster;
 - (c) Imposing costs for collection action for the adjuster's compensation or late payment;
 - (d) Preventing the public adjuster from bringing civil collection action;
 - (e) Providing for the payment of a commission, fees or other consideration of value to a person for the investigation or adjustment of a claim for which that person must have a public

adjuster's license and the person does not have such;

(f) Allowing a person to accept a commission, fees or other consideration of value for the investigation or adjustment of a claim for which that person must have a public adjuster's license and the person does not have such; or

(g) Establishing the payment of a commission, fees or other consideration of value base of discounts and incentives in violation of Section 27.100 of the Insurance Code.

B. Before the contract is signed, the public adjuster shall provide written disclosure of the claims process in which the following is stated to the insured or claimant:

1) The property insurance policies obligate the insured or claimant to file a claim with the insurer for the insurer's consideration, a process in which independent adjusters and public adjusters could be involved.

(2) Independent adjusters are defined as they are defined in the Insurance Code and it is specified that they are paid by the insurer and the insurer will not charge the insured or claimant any fee whatsoever;

(3) Public adjusters are defined as they are defined in the Insurance Code and it is specified that they are retained by the insured or claimant by written contract in which compensation is agreed to be paid based on a fixed fee, by the hour, according to action taken, or commission as a percentage of the compensation.

- (4) The insured or claimant has the right, but not the obligation, to retain a public adjuster to assist in a claim for losses or damages that arise under the insurance policy or contract;
 - (5) The insured or claimant has the right to make direct contact with his or her attorney, with the insurer, with the independent adjusters, with the attorney of the insurer, or with any other person regarding the resolution of the claim;
 - (6) The public adjuster is not a representative or employee of the insurer;
 - (7) The salary, fees, commission or compensation of any other kind for the public adjuster is the obligation of the insured or claimant, not of the insurer;
- C. The contracts shall be executed in counterparts to provide an original for the public adjuster and an original for the insured or claimant. The original of the public adjuster's contract shall be available at all times for inspection, without prior notice, by the Commissioner.
- D. The public adjuster shall notify the insurer that by contract he or she has been authorized to represent the interests of the insured or claimant. Notice shall be made by a letter signed by the insured or claimant.

SECTION 10. OBLIGATIONS AND RESPONSIBILITIES OF ADJUSTERS IN MANAGING CLAIMS

- I. All public adjusters shall perform their functions for the insured or claimant observing conduct according to the provisions of Section 9.300 and in compliance with the following duties and responsibilities:
 - (a) Observing professional conduct, honesty, and fairness in all of his or her communications with the insured, the insurer, and the public;
 - (b) Deploying all of his or her expertise for the benefit of the insured or claimant and acting in a reasonable manner and in good faith for the prompt, fair, and equitable adjustment of the claim;
 - (c) Adopting or implementing reasonable methods for the rapid investigation of the claims that may arise under the terms of the policy of the insured or claimant represented by the adjuster;
 - (d) Observing and complying with federal and Puerto Rico laws and regulations thereof regarding the protection of the privacy and confidentiality of the insured's or the claimant's information and documents obtained, as well as maintaining adequate security controls and standards for the protection from disclosure of such.

- II. All independent adjusters in acting in representation of an insurer shall exercise conduct in the performance of their functions as provided in Section 9.300 of the Insurance Code and shall also have the duty to observe and comply with state and

federal legislation, and the regulations thereof, regarding the protection of the privacy and confidentiality of the insured's or the claimant's information and documents obtained, as well as maintaining adequate security controls and standards for the protection from disclosure of such.

SECTION 11. ETHICAL STANDARDS

- I. All public and independent adjusters must make every effort in the performance of their functions to provide a responsible, competent, and honest service, which require them in the exercise of the profession to exert the care and prudence of not incurring any of the following behaviors or practices:
 - (a) Committing fraud or acts of dishonesty that will have a negative impact on their professional integrity;
 - (b) Making a misrepresentation of information to an insured or claimant, lying or providing documents or material that knowingly contain false statements or misrepresentations regarding the claim;
 - (c) Taking undue benefit or advantage of the inexperience, lack of education, complexity of the transaction, minority or legal incapacity of the insured or claimant;
 - (d) Dissuading the insured from submitting a legitimate claim under the insurance policy or inducing the claim to be submitted in prejudice of the best interests of the client;
 - (e) Knowingly concealing relevant information or evidence on the claim or altering the terms and conditions of the policy that could affect the claim;

- (f) Failing to meet the established deadlines for transactions related to the claim or failing to act with due diligence with an adverse effect on the interests of the insured or claimant;
- (g) Retaining or maintaining without authorization any amount of money or property received during the processing of a claim;
- (h) Displaying a hostile and defiant attitude in his or her work with regard to other adjusters, insureds, claimants, employees of the insurer or public employees at executive agencies and any other person, or employing oral or written communication in an inappropriate tone of voice, using foul or insulting language, assuming a defiant, aggressive, and threatening posture or acting in an indecorous manner or displaying conduct that in any other manner alters the operations of the place where the adjuster has visited to perform his or her functions;
- (i) No public adjuster in the performance of his or her functions may request non-public personal information, financial information, consumer listings, descriptions or groups that are not publicly available, except that it is the client's information, and provided that the client has given express consent and such information is requested in the ordinary course of the adjuster's efforts related to the adjustment of the claim under contract. In that case, the adjuster shall complete an application on behalf of the client and the adjuster will be responsible for protecting the confidentiality of the information that is acquired;

- (j) No public adjuster may advance any payment or value to a claimant represented by the adjuster in expectation of the liquidation of a loss by an insurer.

SECTION 12. REQUIRED RECORDS AND REPORTS

A. All public adjusters will keep, at the place of business indicated on the license, a full record of all transactions that are carried out under the license. These records shall include:

- (1) Name of the insured or claimant;
- (2) Date, place, and amount of the loss;
- (3) Copy of the contract between the public adjuster and the insured or claimant;
- (4) Name of the insurer;
- (5) Amount, expiration date, and number of each policy related to the loss;
- (6) Detailed statement of the amounts recovered by the insured or claimant;
- (7) Detailed statement of all compensation received by the public adjuster, from any source, with regard to the loss;
- (8) A record of all money received, deposited, distributed or disbursed related to any transaction with the insured or claimant;
- (9) Name of the public adjuster that executed the contract;
- (10) Name of the legal representative of the insured or claimant, if any, and the name of the claims representatives of the insurer; and

(11) Evidence of the bond required in Section 9.320 of the Insurance Code and Section 7 of this Rule.

- B. All independent adjusters shall keep at the place of business indicated in the license, current books on the transactions effected under the license, along with the documentation related to such and a copy of each contract entered into with the insurer, as provided in Section 9.330 of the Insurance Code. Likewise, all independent adjusters shall submit, at the request of the Commissioner, a report regarding any claim that the adjuster has processed or been involved in, as provided in Section 9.370 of the Insurance Code.
- C. All records and documents related to any transaction regarding a particular claim involving a public adjuster or independent adjuster shall be available and accessible for inspection by the Commissioner at any time during the business day for five (5) years following the date of the completion of such transaction.

SECTION 13. CONTINUING EDUCATION

- A. All persons who hold an adjuster's license shall satisfactorily complete a minimum of continuing education credits as provided in Rule 52 of the Regulations of the Insurance Code, Continuing Education Requirements, hereinafter, Rule No. 52.
- B. A person will not be subject to the continuing education requirements provided in this Section, under any of the following circumstances:
 - (1) The adjuster has not held the license for one (1) full year before finalizing the compliance period as defined in Rule No. 52.
 - (2) The adjuster is sixty (60) years old or older and has held a license for at

least twenty-five (25) years.

- (3) Adjusters that are not residents of Puerto Rico, in whose state or jurisdiction of residence in the United States there are continuing education requirements that are similar to those required herein, and where the Puerto Rico adjusters are accredited a minimum of continuing education credits with the same criteria, provided that the applicant shows at the time of issuing or renewal of the license, that he or she has met the continuing education requirements in his or state or jurisdiction of origin.
- (4) An adjuster that is not a resident of Puerto Rico, whose jurisdiction of domicile has reciprocity with Puerto Rico and recognizes and extends to adjusters that are residents of Puerto Rico the same privileges.

SECTION 14. PENALTIES

Any insurance adjuster who violates any provision of this Rule may be subject to the imposition of penalties that could entail denial, suspension, or revocation of the license, in addition to any other sanctions and administrative fines, as established under Section 9.480 of the Insurance Code.

SECTION 15. SEVERABILITY

If any word, sentence, paragraph, subparagraph, section or part of this Rule were to be found null and void by a court of competent jurisdiction, the order that may be issued shall not affect or invalidate the remaining provisions of this Rule and the effect thereof will be limited to the word, sentence, paragraph, subparagraph, section or part of this Rule that was so found to be null and void.

SECTION 16. EFFECT

This Rule will enter into effect thirty (30) days after being filed with the Department of State of Puerto Rico, according to the Provisions of Public Law No. 170, *supra*.

SIGNED

ANGELA WEYNE-ROIG
COMMISSIONER OF INSURANCE

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