

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
SEVENTH AMENDMENT TO 11 NYCRR 25
(INSURANCE REGULATION 10)**

PUBLIC ADJUSTERS

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2101(g)(2), 2108, 2110(a), and 2134 of the Insurance Law, do hereby promulgate the following Seventh Amendment to Part 25 of Title 11 of the Official Compilation of Codes, Rules, and Regulations (Insurance Regulation 10), to take effect 60 days after publication of the Notice of Adoption in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Section 25.1 is amended as follows:

Section 25.1 Original [applications] application and relicensing application.

The [forms] form of [applications for] an original [licenses] license application and a relicensing application to act as a public adjuster pursuant to [section 2108 of the] Insurance Law section 2108 [are] is hereby prescribed as follows: [individuals; partnerships; corporations; limited liability companies] individual or business entity. [These forms may be obtained] An individual or business entity may apply on the department's website or obtain an application form upon request to the [Department of Financial Services, Albany, NY] department. [The term original application, as used in this Part, means an application for a public adjuster's initial license.]

Section 25.2 is amended as follows:

Section 25.2 Renewal [applications] application.

The [forms] form of [applications] application for a renewal [licenses] license to act as a public adjuster pursuant to [section 2108 of the] Insurance Law section 2108 [are] is hereby prescribed as follows: [individuals; partnerships; corporations; limited liability companies] individual or business entity. [These forms of applications are furnished to present licensees prior to the expiration of each existing license] An individual or business entity may apply on the department's website or obtain an application form upon request to the department.

Section 25.3 is amended as follows:

(a) No [person] individual or entity licensed to act as a public adjuster[,] or named as a sublicensee in any public adjuster's license shall, between the hours of [6] 6:00 p.m. and [8] 8:00 a.m., directly or indirectly, including through a contractor or any other individual or entity, solicit the adjustment of a loss from an insured or from any insurance broker or other [person] individual or entity, whether by personal interview, [by] telephone, or [by] any other method[, nor shall]; accept any order, commission or contract for the adjustment of

any loss [which] that is within the scope of [section 2108 of the] Insurance Law section 2108[, nor shall]; or permit [his or its] an agent, representative or employee to do so.

(b) No such licensee or sublicensee shall divide any fee or give any fee, commission, or other compensation to any [person, firm] individual or [corporation] entity for procuring, or assisting in procuring, the adjustment of any such loss for any such licensee or sublicensee, unless the [person, firm] individual or [corporation] entity to whom such fee, commission, or other compensation is given or paid had at the time when the loss occurred:

(1) a public adjuster's license issued and in force pursuant to [section 123 of the] Insurance Law section 2101(g)(2); or

(2) an insurance broker's license issued and in force and such licensee either was the broker of record in placing the insurance [which] that was involved in the adjustment of the loss, whether or not designated in writing to act for the insured, or was designated to act for the insured in writing before a loss occurred.

(c) No such licensee or sublicensee shall be employed, or associated with, any [person, partnership, corporation, member, officer, director] individual or [stockholder] entity, whose license as a public adjuster has been revoked by the [Superintendent of Financial Services of New York] superintendent. Any violation of this Part shall be deemed a ground for refusal to issue or renew, or for revocation or suspension of, a public adjuster's license.

Section 25.4 is amended as follows:

Each licensee shall notify the [Department of Financial Services, Albany, NY] department of any change of business or residence address, telephone number, fax number, or email address within 30 days of the change.

Section 25.5 is amended as follows:

(a) *Business day* [shall mean] means any calendar day except Sunday, or the following business holidays: New Year's Day, Martin Luther King Day, [Washington's Birthday] President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

(b) *Business entity* means a partnership, corporation, including a not-for-profit corporation, association, or limited liability company.

(c) *Insured* [shall mean] means a person insured under the policy who is making a claim against an insurer for loss or damage to property in this State, and who is represented by a public adjuster in the adjusting of such loss.

(d) *Within the second degree of consanguinity* means a relationship in which one individual is another individual's parent, grandparent, child, grandchild, sibling, or spouse thereof.

(e) *Supplemental claim* means a claim made to an insurer in a situation in which an insured did not retain a public adjuster when the insured made an initial claim, the insurer made a payment to the insured, and then the insured retained a public adjuster to prove the amount and extent of the loss and not the cause of the loss.

Section 25.6 is amended as follows:

(a) A public adjuster may be compensated by an insured for or on account of services rendered to [such] the insured by the public adjuster solely as provided for by a written compensation agreement obtained by the public adjuster [which shall consist of substantively the same information and statements contained in] consistent with Form 1 in section 25.13(a) of this Part.

(b) Every such compensation agreement shall contain the names and addresses of the public adjuster and the insured. If the public adjuster is a [corporation] business entity, then a sublicensee of the public adjuster shall also be named. [If the public adjuster is a partnership, a partner shall also be named.]

(c) Every such compensation agreement shall be signed by the public adjuster or, if a [corporation or partnership] business entity, then by a sublicensee [or partner], or by the duly authorized licensed employee who entered into the agreement; and by the insured, or other party to be charged.

(d) Every such compensation agreement shall be in the same language as that principally used in the oral negotiations and presentation.

(e)(1) Pursuant to Insurance Law section 2108(s)(2)(A), a public adjuster shall not receive any compensation, either directly or indirectly, for a referral of the insured to an individual or entity for services, work, or repairs relating to any insurance claim for which the public adjuster represents the insured or has negotiated or effected a settlement, unless the compensation is prominently and clearly disclosed to the insured in the written compensation agreement.

(2) Pursuant to Insurance Law section 2108(s)(2)(B), a public adjuster who has a financial or ownership interest, directly or indirectly, in an individual or entity that performs services, work, or repairs, or is the spouse of the individual having such an interest, shall not refer the insured to the individual or entity unless the financial or ownership interest is prominently and clearly disclosed to the insured in the written compensation agreement. If a public adjuster refers an insured to such an individual or entity, then the written compensation agreement required by this section shall be a separate document from any agreement or contract entered into to perform services, work, or repairs. Every such agreement or contract shall itemize all fees in writing and shall not be used as a means to circumvent or in any way increase the amount that the public adjuster may charge pursuant to section 25.7 of this Part.

(3) Pursuant to Insurance Law section 2108(s)(2)(B), if a public adjuster refers an insured to an individual who is related to the public adjuster by blood or affinity within the second degree of consanguinity, or to an entity owned or controlled by such an individual, for services, work, or repairs relating to any insurance claim for which the public adjuster represents the insured or has negotiated or effected a settlement, then the public adjuster shall disclose the relationship to the insured in the written compensation agreement.

(4) If a public adjuster refers an insured to an individual or entity described in this subdivision subsequent to the written compensation agreement being signed by the party to be charged, then the public adjuster shall not receive any compensation for the referral unless the public adjuster obtains an acknowledged disclosure statement consistent with Form 2 in section 25.13(b) of this Part. The disclosure statement shall be limited to the disclosure of the referral fees, and the party to be charged who signed the original compensation

agreement shall acknowledge by signature the disclosure statement. The public adjuster shall provide a copy of the signed disclosure statement to the insurer.

(5) A public adjuster shall not require an insured to use any individual or entity for services, work, or repairs relating to any insurance claim for which the public adjuster represents or represented the insured or has negotiated or effected a settlement.

(f) If services rendered by an outside expert or consultant retained or employed by the public adjuster directly relate to the adjusting function of a public adjuster, then the public adjuster shall include the fees for those services in the compensation agreement and shall be subject to the maximum compensation set forth in Section 25.7 of this Part.

Section 25.7 is amended as follows:

(a) No public adjuster shall charge [any insured] a fee in excess of 12.5 percent of the recovery for services rendered by the adjuster, with respect to a claim, except a public adjuster may charge a fee of up to 20 percent on a supplemental claim if the aggregate fee charged is less than or equal to 12.5 percent of the full claim payment. The public adjuster shall compute the fee based upon any monies paid by the insurer for any insurance claim for which the public adjuster represents the insured or has negotiated or effected a settlement, after the insured has retained the services of the public adjuster.

(b) Any compensation received by a public adjuster, either directly or indirectly, for a referral of an insured to an individual or entity for services, work, or repairs relating to any insurance claim for which the public adjuster represents or represented the insured or has negotiated or effected a settlement, shall be deemed to be compensation from the insured and, in combination with any other compensation received from the insured, shall not exceed the maximum amount that the public adjuster may charge in accordance with this section.

(c) Notwithstanding subdivisions (a) and (b) of this section or section 25.6(e)(4) of this Part, a public adjuster shall not receive any compensation, either directly or indirectly, for a referral described in section 25.6(e)(2) of this Part.

Section 25.9 is amended as follows:

(a) Every compensation agreement entered into by a public adjuster to adjust losses is subject to the provisions of the Door-to-Door Sales Protection Act (sections 426-431 of the Personal Property Law), pursuant to Insurance Law section 2108(p) [of the Insurance Law].

(b) At the time the insured signs the compensation agreement, a completed form, in duplicate, captioned "NOTICE OF CANCELLATION," shall be attached to the compensation agreement and easily detachable. Such form shall consist of, in not less than [10-point boldface] 12-point type, [substantively the information and statements contained in] consistent with Form [2] 3 in section [25.13(b)] 25.13(c) of this Part. [(c)] Said form shall be in the same language as that used in the compensation agreement.

[(d)] (c) The public adjuster shall complete both copies by entering the name of the adjuster, the address of the adjuster's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the insured may give notice of cancellation.

[(e)] (d) The public adjuster shall inform each insured orally, at the time the insured signs the compensation agreement, of his or her right to cancel. Until the public adjuster has complied with this section, the insured may cancel the agreement by notifying the public adjuster in any manner and by any means of [his] the insured's intention to cancel. The period prescribed by section 25.8(a) of this Part shall begin to run from the time the public adjuster complies with this section.

[(f)] (e) A compensation agreement shall not include any confession of judgment or any waiver of any of the rights to which the insured is entitled under this Part, including specifically the right to cancel the agreement in accordance with the provisions of this Part.

Section 25.10(b) is amended as follows:

(b) If a public adjuster performs no valuable services, and another public adjuster, insurance broker (in accordance with Insurance Law section 2101(g)(2) [of the Insurance Law]) or attorney subsequently successfully adjusts such loss, then the first public adjuster shall not be entitled to any compensation whatsoever.

Section 25.11 is amended as follows:

Section 25.11. Books, files, and records; communications.

(a) Every public adjuster shall retain [his] books, files, and records for at least three years from the completion of the services rendered, and [said] the books, files, and records shall be readily available for department inspection. Every book, file, or record where services were rendered in which a fee has been paid or shall be paid shall contain a written compensation agreement in accordance with section 25.6 of this Part.

(b) When an insured is represented by a public adjuster, an insurer shall include the public adjuster in any written or oral communications the insurer initiates with the insured unless the insured instructs the insurer otherwise in writing.

Section 25.12 is amended as follows:

(a)(1) When a claim is settled where the insured is represented by a public adjuster, [upon the request of] the [insured, the insurer's] insurer shall follow the direction of the insured, subject to the interests of any loss payee or mortgagee, as to who shall be named on the insurer's check or checks by following the instructions in a direction to pay letter signed by the insured and filed with the insurer. The insurer shall not accept the direction to pay letter unless the letter is signed by the first named insured with regard to commercial claims and by all named insureds with regard to non-commercial claims, and the letter is consistent with Form 4 in section 25.13(d) of this Part.

(2) Upon the written direction of the insured, the insurer shall make its check [may be made] payable to both the public adjuster and the insured, or to the public adjuster named as a payee, but not in excess of the

amount of the public adjuster's fee, as indicated in the written compensation agreement signed by the [insured] party to be charged and filed with the insurer, less any referral fee set forth in a disclosure statement made pursuant to section 25.6(e)(4) of this Part. The balance of the proceeds shall be made payable to the insured or any loss payee or mortgagee, or both, whichever is appropriate. If an insured does not submit a direction to pay letter to the insurer, then the insurer shall not make any check payable to the public adjuster.

(3) Any payment made to a public adjuster shall be only for those elements of the claim for which the public adjuster represents the insured.

(4) A direction to pay letter shall be valid for any payment made pursuant to a claim unless revoked by the insured. A direction to pay letter shall be revocable by any named insured at any time prior to the insurer issuing a check. If an insured revokes a direction to pay letter, then the revocation shall be in writing and signed by the insured. The insured shall submit the revocation to the insurer and provide the public adjuster with a copy.

(5) A public adjuster shall not condition doing business with an insured on the insured signing a direction to pay letter that directs the insurer to name the public adjuster on the check.

(b) Any mediation, arbitration, or litigation proceeding involving a dispute regarding a loss in this State between an insured and a public adjuster initiated by a public adjuster shall be filed and held in this State and shall be subject to the laws of this State.

Section 25.13 is repealed and a new section 25.13 is added as follows:

Section 25.13. Exhibits.

The following forms are hereby approved for use as specified in this Part:

(a) Form 1.

PUBLIC ADJUSTER
COMPENSATION AGREEMENT

[Name and Address of Public Adjuster]

Name of sublicensee

Date of initial contact: _____

Time of initial contact: _____

(Name of Named Insured(s)) (the "Insured"), residing at (Address), hereby retains (Public Adjuster's Name) (the "Adjuster") to act or aid in the preparation, presentation, adjustment, and negotiation, or effecting the settlement, of the claim for the loss or damage by a covered peril or perils sustained at (Loss Location) on (Date of Loss), and agrees to pay the Adjuster for such service a fee of (Number) percent of the amount of the loss, including salvage, when adjusted or otherwise recovered from the insurance companies.

(Number) disclosure statements are attached hereto.

NOTICE TO INSURED

1. The Adjuster may not receive any compensation unless the Adjuster discloses the compensation to you.
2. The Adjuster may not charge you any fees that total more than 12.5% of the recovery for services rendered by the Adjuster, except that the Adjuster may charge a fee of up to 20% on a supplemental claim if the aggregate fee charged is less than or equal to 12.5% of the full claim payment. A supplemental claim is a claim made to an insurer in a situation in which you did not retain a public adjuster when you made an initial claim, the insurer made a payment to you, and then you retained a public adjuster to prove the amount of the loss and extent of the loss and not the cause of the loss.
 - A. The limit on the total fees that may be charged includes services rendered by an outside expert or consultant retained or employed by the Adjuster that directly relate to the adjusting function of the Adjuster.
 - B. The limit on total fees also includes any referral of an individual or entity for services, work, or repairs relating to any insurance claim for which the Adjuster represents or represented you or has negotiated or effected a settlement.
 - C. If the Adjuster refers you to an individual or entity, including after you sign this compensation agreement, then the Adjuster must obtain an acknowledged disclosure statement from you at the time of the referral.

D. YOU ARE NOT REQUIRED TO USE ANY INDIVIDUAL OR ENTITY TO WHOM OR WHICH THE ADJUSTER REFERS YOU.

3. The Adjuster must compute the fee based upon any monies paid by the insurer for any insurance claim for which the public adjuster represents or represented you or has negotiated or effected a settlement, after you have retained the Adjuster's services.
4. The fee to be charged under this compensation agreement may be negotiated between the parties for less than 12.5%, or with regard to a supplemental claim, for less than 20%. You should discuss the amount of the fee with the Adjuster before signing any compensation agreement. You must initial the amount upon which you have agreed.
5. This compensation agreement is valid only if both this agreement and the attached notice of cancellation are written in the same language as that principally used in the oral negotiations and presentation.
6. You may cancel this compensation agreement at any time prior to midnight of the third business day after you signed this compensation agreement. Please read the attached "Notice of Cancellation" form for an explanation of this right.

Signature of Public Adjuster
or Licensed Representative Thereof

Signature of Named Insured(s)

Date: _____

Time: _____

(b) Form 2.

DISCLOSURE STATEMENT

[Name and Address of Public Adjuster]

Name of sublicensee

(Public Adjuster's Name) (the "Adjuster") referred (Name of Named Insured(s)) (the "Insured"), residing at (Address), to (Name and Address of Individual or Entity) for services, work, or repairs, relating to an insurance claim for which the Adjuster represents or represented the Insured or has negotiated or effected a settlement.

The Adjuster shall check off any and all applicable boxes:

The Adjuster has received or will receive the following compensation for the referral:

(Specify the dollar amount or percentage. If compensation is in the form of anything other than money, then state the nature of the compensation and its approximate fair market value.)

The Adjuster and/or his or her spouse has a financial or ownership interest, directly or indirectly, in the individual or entity listed above.

The Adjuster is related to the individual listed above by blood or affinity within the second degree of consanguinity (which includes an individual's parents, grandparents, children, grandchildren, siblings, and any spouse thereof).

The entity listed above is owned or controlled by an individual who is related to the Adjuster by blood or affinity within the second degree of consanguinity (which includes an individual's parents, grandparents, children, grandchildren, siblings, and any spouse thereof).

NOTICE TO INSURED: YOU ARE NOT REQUIRED TO USE ANY INDIVIDUAL OR ENTITY TO WHOM OR WHICH THE PUBLIC ADJUSTER REFERS YOU.

This disclosure statement must be written in the same language as that principally used in the oral negotiations and presentation.

Signature of Public Adjuster

Signature of Named Insured(s)

or Licensed Representative

Date: _____

Time: _____

(c) Form 3.

NOTICE OF CANCELLATION

You may cancel the written compensation agreement, without any penalty or obligation, until midnight of the third business day after the date on which you signed the compensation agreement.

If you cancel, then any payments made by you under the compensation agreement, and any negotiable instrument executed by you, will be returned within ten business days following receipt by the public adjuster of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (Name and Address of Public Adjuster) no later than midnight of (Date).

I hereby cancel this transaction.

Signature(s) of Named Insured(s)

Date

(d) Form 4.

DIRECTION TO PAY LETTER

Name(s) of Named Insured(s): _____

Policy No.: _____

Claim No.: _____

Public Adjuster's Name: _____

I hereby direct (Name of Insurer) to issue a check or checks as follows:

one check payable to the public adjuster for the public adjuster's fee indicated in the written compensation agreement signed by the named insured(s) and filed with the insurer, less any referral fee set forth in a disclosure statement, if applicable, and a separate check payable to the named insured(s) or any loss payee or mortgagee, or both, whichever is appropriate, for the balance.

one check payable to both the public adjuster and named insured(s) for the public adjuster's fee indicated in the written compensation agreement signed by the named insured(s) and filed with the insurer, less any referral

fee set forth in a disclosure statement, if applicable, and a separate check payable to the named insured(s) or any loss payee or mortgagee, or both, whichever is appropriate, for the balance.

NOTICE TO NAMED INSURED(S): You may revoke this direction to pay letter at any time prior to the insurer issuing a check. Your revocation must be in writing and signed by you. You must submit the revocation to the insurer and provide the public adjuster with a copy.

Signature(s) of Named Insured(s)

Date



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Seventh Amendment to Part 25 of Title 11 (Insurance Regulation 10) of the Official Compilation of Codes, Rules and Regulations of the State of New York, signed by me on July 27, 2021, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2101(g)(2), 2108, 2110(a), and 2134 of the Insurance Law, to take effect 60 days after publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the New York State Register on April 7, 2021. No other publication or prior notice is required by statute.

A handwritten signature in black ink that reads "Linda A Lacewell".

Linda A. Lacewell
Superintendent of Financial Services

Dated: July 27, 2021