

R590. Insurance, Administration.

R590-274. Submission and Required Disclosures of Public Adjuster Contracts.

R590-274-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-26-401 and 31A-26-403.

R590-274-2. Purpose and Scope.

- (1) The purpose of this rule is to:
 - (a) Set forth procedures on how public adjusters must submit required form filings to the commissioner pursuant to Section 31A-26-401; and
 - (b) provide notice requirements, information and disclosures that must be included in the adjuster contracts.
- (2) This rule applies to resident and nonresident public adjusters.

R590-274-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

- (1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.
- (2) "Electronic Filing" means a filing submitted via an email system.
- (3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.
- (4) "Filer" means a person who submits a filing.
- (5) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.
- (6) "Form" for the purposes of this rule form shall also include contracts.
- (7) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.
- (8) "Rejected" means a filing is:
 - (a) not submitted in accordance with applicable laws and rules;
 - (b) returned to the filer by the department with the reasons for rejection; and
 - (c) not considered filed with the department.
- (9) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-274-4. General Filing Information.

- (1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.
- (2) The filer is responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.
- (3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:
 - (a) is not considered filed with the department and may not be used;
 - (b) will not be reopened for purposes of resubmission, a new filing is required.
- (4) A prior filing will not be researched to determine the purpose of the current filing. The submitted filing must be complete.
- (5) The department does not review or proofread every filing.
 - (a) A filing may be reviewed:
 - (i) when submitted;
 - (ii) as a result of a complaint;
 - (iii) during a regulatory examination or investigation; or
 - (iv) at any other time the commissioner deems necessary.
 - (b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms to affected consumers.
- (6) Filing correction:
 - (a) If the filing is in a review status corrections can be made at any time.
 - (b) If the filing has been closed a new filing is required. The filer must reference the original filing in the filing description.
- (7) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:
 - (a) provide an explanation identifying all changes made;
 - (b) include an underline and strikeout version for each revised document;
 - (c) a final version of revised documents that incorporates all changes.
- (8) Response to an Order to Prohibit Use.
 - (a) An Order to Prohibit Use becomes final 15 days after the date of the order.
 - (b) Use of the filing must be discontinued no later than the date specified in the Order.
 - (c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form.

R590-274-5. Filing Requirements.

(1) All filings must be submitted as an electronic filing via email at pforms@utah.gov.

(2) A complete filing consists of the following:

(a) the title of the email must display the company name only;

(b) the filer must certify that a filing has been properly completed and is in compliance with Utah laws and rules;

(i) To certify the following statement must be included in the email: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-274 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(ii) A filing will be rejected if the certification is false, missing, or incomplete.

(iii) A certification that is false may subject the licensee to administrative action.

(c) provide a description of the filing including:

(i) the intent of the filing; and

(ii) the purpose of each document within the filing.

(d) indicate if the filing:

(i) is new;

(ii) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date; and

(e) identify if any of the provisions are unusual, controversial, have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(3) Forms being submitted for filing:

(a) must be in PDF format;

(b) are considered "File And Use" filings;

(c) each form must be identified by a unique form number. The form number may not be a variable; and

(d) must be in final printed form. A draft may not be submitted.

R590-274-6. Contract Requirements.

(1) The contract must contain the following:

(a) the name of the company that employs the public adjuster;

(b) the mailing and physical address of the public adjuster's principal place of business;

(c) the public adjuster's telephone and fax number;

(d) the license number of the public adjuster and the Employer;

(e) the public adjuster's email address;

(f) the public adjuster's website, if applicable;

(g) the date and time the contract was signed and, if applicable, the service of process address for nonresident public adjusters;

(h) a general description of services the public adjuster will provide under the contract;

(i) a description of the claim, property damage, location, and event;

(j) if based on an hourly rate, a provision that the public adjuster will provide an invoice for services that includes a detailed listing of service provided and separate costs payable to the public adjuster as part of any commission based on the claim settlement, including expenses, direct costs, and any other accrued costs; and

(k) all terms or conditions that apply to the contract.

(2) The contract may not contain any terms or conditions that have the effect of limiting or nullifying any requirements of the law.

(3) A signed copy of the contract must be provided to the insured at the time of signing.

R590-274-7. Required Disclosures.

(1) The following separate disclosures are required in no smaller than 12 point boldface type to be located on the signature page of the contract:

(a) "WE REPRESENT THE INSURED ONLY";

(b) "THIS CONTRACT MAY BE RESCINDED IN WRITING WITHIN 10 DAYS OF ENTERING INTO THE CONTRACT"; and

(c) "YOU ARE ENTERING INTO A CONTRACT OF SERVICE. YOU ARE BEING CHARGED A FEE FOR THIS SERVICE. YOU DO NOT HAVE TO ENTER INTO THIS CONTRACT TO MAKE A CLAIM FOR LOSS OR DAMAGE ON A POLICY OF INSURANCE".

(2) A contract must contain the following statements in substantially the following form:

(a) A public adjuster may not participate directly or indirectly in the reconstruction, repair, or restoration of damaged property, or engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or

accepting any remuneration from, or having a financial interest in, any salvage firm, construction firm, repair firm, or other firm that obtains business in connection with any claim the public insurance adjuster has a contract or agreement to adjust.

(b) A public adjuster may not act on behalf of an attorney by having you sign an attorney representation agreement.

(c) A public adjuster cannot require you to sign a power of attorney.

(d) A public adjuster cannot require you to refuse to work with your insurer.

(e) Your insurance policy requires you to cooperate with your insurer to settle your claim

(f) **IMPORTANT NOTICE:** You may contact the Utah Insurance Department to verify that the public adjuster is licensed to do business in Utah, what your rights are as a consumer, or for information about filing a complaint, by calling 801-957-9305 or toll free at 800-439-3805, or by visiting the department's website at www.insurance.utah.gov.

(g) A public adjuster may not enter into a contract with an insured and collect compensation as provided in the contract without actually performing the service customarily provided by a licensed public adjuster for the insured.

(3)(a) A public adjuster contract must contain the following compensation disclosures in a clear and prominent statement:

(i) if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public adjuster to calculate the amount payable;

(ii) if a flat fee, the contract must state the amount that will be payable to the public adjuster;

(iii) if a percentage, the contract must state the exact percentage that will be applied to the settlement of the claim to calculate the amount payable to the public insurance adjuster; or

(iv) if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on service provided by the public adjuster.

(b) A public adjuster may not receive compensation in return for referring the insured to a particular attorney, appraiser, umpire, construction company, contractor, repair firm or salvage company.

(c) A public adjuster may not receive compensation for a claim if the insurer commits in writing to pay or pays the policy limits within 72 hours of the loss report.

(d) Except for direct payment of compensation by the insured, all drafts or checks must include the insured as a payee and require their written signature and endorsement. Public adjusters may not sign or endorse any payment draft or check on behalf of the insured.

(e) A public adjuster may not enter into a contract with an insured and collect compensation as provided in the contract without actually performing the service customarily provided by a licensed public adjuster for the insured.

R590-274-8. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-274-9. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-274-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, public adjusters

Date of Enactment or Last Substantive Amendment: August 23, 2017

Authorizing, and Implemented or Interpreted Law: 31A-26-401; 31A-26-403