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Duties and Liabilities of Public Adjusters

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DUTIES AND LIABILITIES OF PUBLIC ADJUSTERS

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Adjusters for insurance companies have been regulated for many years, but prior to 2005, “public adjusters” had no official status in Texas. They were not licensed or regulated. In fact, some people argued that prior to 2005, there was no such thing as a public adjuster, since there was no definition of such an entity. However, other states have been licensing public adjusters for decades, and for decades these companies and Texans who identified themselves as public adjusters have done business in this state. The general idea is that a public adjuster is an insurance adjuster who works for the insured instead of the insurer. The section of the Texas Insurance Code was added in 2005 to deal with “public adjusters,” and it defines such an entity subject to licensure as:

(A) a person who, for direct, indirect, or any other compensation: (i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or (ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or (B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property. Tex. Ins. Code § 4102.001 – Definitions.

Attorneys engaged in the practice of law, clerical personnel, appraisers, arbitrators, engineers, and various other professional consultants are exempted from such definition and are not subject to public adjuster regulations or licensing as long as they confine themselves to their professions or lines of work and do not hold themselves out as public adjusters. Tex. Ins. Code § 4102.002.

The remaining provisions of the insurance code governing public adjusters prohibit them from practicing law and enact rules and a code of ethics that are applicable to public adjusters, including certain regulations and requirements concerning their contracts and behavior. Tex. Ins. Code § 4102.003-006; 4102.151-164. For example, PA's may not "solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy." Tex. Ins. Code § 4102.157. Practically speaking, this limits PA activity to first party property claims. And the insurance commissioner is specifically authorized to promulgate additional rules regulating PA's. Tex. Ins. Code § 4102.003.

This paper describes common violations (or torts and breaches of contract) committed by public adjusters and how these impact their right to recover fees and how they subject the adjuster to liability to his principal and/or employing owner.

1. A provision of any contract between the owner and PA calling for a percentage contingent fee based on a settlement or recovery on a claim against an insurer after litigation has ensued is void, or in the alternative voidable at the owners' option. Most PA's contracts provide for percentage fees based upon the recovery

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