

---

# Wisconsin Legislative Council

## ACT MEMO

---



**Prepared by:** Margit Kelley, Senior Staff Attorney

March 27, 2020

**2019 Wisconsin Act 129**  
[2019 Assembly Bill 357]

**Public Adjusters**

### **PUBLIC ADJUSTER CREDENTIALING PROCESS**

2019 Wisconsin Act 129 creates a credentialing process for public adjusters operating in Wisconsin. The act defines a “public adjuster” as an individual who acts on behalf of a policyholder, for compensation, in filing and negotiating a property insurance claim.

The act creates two types of registration for public adjusters: (1) optional registration for public adjusters who are Wisconsin residents; and (2) mandatory registration for nonresident public adjusters. The Office of the Commissioner of Insurance (OCI) is responsible for maintaining the registry and overseeing all public adjusters.

A single registration process is used for both a nonresident who is required to register and for a resident who chooses to register. In both cases, the registration process requires completion of an application form, passage of a written examination, and payment of \$50 for the initial licensing fee.

Once registered, a public adjuster must complete a minimum of 15 credits of continuing education, including three ethics credits, every two years. The biennial renewal fee is \$50.

The registration provisions do not apply to an attorney, an insurance agent or broker, an individual who settles subrogation claims between insurers, or persons providing technical assistance to a public adjuster, such as a photographer, engineer, or estimator.

### **REGULATION OF PROFESSIONAL CONDUCT**

The act also provides certain practice standards that govern contract formation, compensation arrangements, and other aspects of a public adjuster’s professional conduct. The standards apply to all public adjusters providing services in Wisconsin, including a resident of the state who has chosen not to register with OCI.

#### **Contracts**

A public adjuster is required to have a written contract with a client before performing any services. The contract must include all of the following:

- The public adjuster’s full name, state of residence, principal place of business address, telephone number, and, if registered with OCI, the public adjuster’s registration number.
- The client’s full name and address.
- The name of the client’s insurance carrier and the policy number.
- A description of the loss and its location.

- A clear disclosure of the compensation to be paid and whether the insurance company's payment on the claim may be issued in the names of both the client and the public adjuster.
- The public adjuster's attestation to being fully bonded.
- A notice of the client's right to void the contract within five business days of signing the contract.
- A notice of the client's right to file a complaint with OCI.
- A statement that the client may choose any contractor or vendor to perform the work on the claim.
- A statement that the contract is the entire agreement between the public adjuster and the client.
- The signatures of the public adjuster and the client and a notation for the date and time the contract was signed.

A contract may not limit the client's right to pursue any civil remedy against the public adjuster.

The form used for the contract must be on file with OCI, certified for its compliance with all statutory requirements, before it may be used.

## **Compensation**

The act specifies certain boundaries on compensation arrangements, including:

- Requiring payment of a reasonable hourly rate for the time spent on the claim, with no additional compensation, if the insurance company agrees to pay the policy limit on the claim within five business days of the claim being reported.
- Prohibiting a public adjuster from demanding compensation prior to the client receiving payment from the insurance company.
- Requiring prorated payments in equal amounts if the insurance company pays a claim in installments, and prohibiting a demand for full compensation from the first installment.
- Prohibiting an agreement that payment from the insurance company be issued only in the name of the public adjuster, and prohibiting an assignment of policy proceeds to the public adjuster.
- Prohibiting the imposition of collection costs or late fees on the client.

In the case of a claim due to a catastrophic disaster for which the president or the governor has declared a state of emergency, compensation is limited to 10 percent of the client's actual recovery on the claim.

In addition, the act requires a public adjuster to maintain an escrow account to hold any funds received in settlement of a claim on behalf of a client. The financial institution must be located in the state where the loss occurred or where the client resides, and the account must be noninterest bearing.

## **Unprofessional Conduct**

A public adjuster may not undertake an adjusting service without being competent and knowledgeable about the terms and conditions of the client's insurance coverage, and may not undertake a claim if the loss or coverage exceeds the public adjuster's experience.

In addition, the act prohibits certain specific conduct by a public adjuster, including:

- Soliciting during the progress of a loss-producing event.
- Soliciting outside the hours of 9 a.m. and 8 p.m. during the first 24 hours after a loss.
- Agreeing to a settlement without the client's knowledge and written consent.

- Taking any action that vests effective authority with the public adjuster to choose a contractor or vendor to perform the work on a claim.
- Knowingly making a false material statement regarding any person engaged in the insurance business.

Conflicts of interest are also prohibited, including:

- Directly or indirectly accepting compensation or anything of value from a contractor or vendor who provides an estimate or performs work on a claim.
- Referring the client to a person with whom the public adjuster has a direct or indirect financial interest or may receive anything of value.
- Owning a direct or indirect financial interest in any aspect of a claim.
- Acquiring an interest in salvage of the client's property, unless written permission is given by the client after settlement of the claim.
- Acting as an insurance company's adjuster.

More general actions of misconduct include:

- Providing false, misleading, or incomplete information in the application for registration, cheating on the public adjuster examination, or otherwise attempting to obtain a registration through misrepresentation or fraud.
- Failing to comply with or violating any law, rule, or order relating to public adjusters or insurance.
- Misappropriating or mishandling money or property in the course of business.
- Intentionally misrepresenting the terms of an insurance policy.
- Being convicted of a felony related to the duties and obligations of a public adjuster or to the business of insurance.
- Committing an insurance unfair trade practice or insurance fraud.
- Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence or untrustworthiness in conducting business.
- Having a public adjuster or insurance agent or broker credential denied, suspended, or revoked in any jurisdiction.
- Misrepresenting that the person is acting as an insurance company's adjuster or is employed by an insurance company.

A public adjuster must report any administrative action relating to the business of insurance or any criminal action taken against the public adjuster, in any jurisdiction. An administrative action must be reported to OCI within 30 days after final disposition of the matter, and a criminal action must be reported within 30 days of the initial pretrial hearing.

## **Bonding**

A public adjuster must be bonded, under specifications to be established by OCI, in order to guarantee faithful performance of all the duties and obligations of a public adjuster.

## **Penalties**

A violation of these provisions, or any insurance law, administrative rule, or other order from OCI or insurance regulatory body may cause public notice of the misconduct, a civil penalty, or suspension or revocation of the public adjuster's registration.

**Effective date:** July 1, 2020

MSK:mca;ty