


State of South Carolina
Department of Insurance
Post Office Box 100105
1612 Marion Street
Columbia, South Carolina 29201

BULLETIN NUMBER 2001- 01
(Issued upon January 3, 2001)

To: All Property and Casualty Insurers Authorized to Conduct Insurance Business in the State of South Carolina and Interested Individuals

From: Ernst N. Csiszar
Director 

Re: Departmental Interpretation of Act No. 380 of 2000 (S. 1 163, R.411)
"Public Insurance Adjusters"

On June 14, 2000, Act No. 380 was signed into law, allowing for the first time in the State of South Carolina, the regulation of public insurance adjusters and public adjusting activities. The Act will be codified within the provisions of Chapter 48 of Title 38, of the South Carolina Code of Laws, which will allow interested individuals, conditional upon certain requirements, to become licensed as public insurance adjusters by the South Carolina Department of Insurance (hereinafter the Department). This Act took effect and was enforceable by this Department on September 13, 2000, and the Department began accepting applications for licensure on that same date. Questions concerning the contents of this Bulletin should be addressed to James Byrd, Senior Advisor to the Director, or Nancy Bourgoin, Individual Licensing Supervisor, at telephone number (803) 737-6095, or at E-mail address: AgntMail@doi.state.sc.us.

Purpose:

The purpose of this bulletin is: (1) to inform interested persons of the enactment of 2000 S.C. Act 380 and (2) to provide guidance with respect to various provisions of the Act. This bulletin addresses provisions related only to the new public insurance adjusting law and not the laws pertaining to those adjusters licensed pursuant to the provisions of Chapter 47 of Title 38.

Major Provisions of the Act

A. Definitions

Newly enacted South Carolina Code §38-48-10 provides a definition of the terms "Public Insurance Adjuster" and "Public Adjusting." The definitions provide both the authority granted and limitations confined within each as follows:

Public Insurance Adjuster

South Carolina Code §38-48-10 defines a public insurance adjuster as any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is properly licensed in accordance with the requirements outlined under §38-48-20. The law excludes from this definition attorneys licensed to practice by the South Carolina Supreme Court who adjust insurance losses in the course of the practice of law. In other words, an attorney is eligible to practice law and simultaneously be licensed as a public insurance adjuster. Further, a public insurance adjuster is not an insurance adjuster representing an insurance company licensed in accordance with the provisions of Chapter 47 of Title 38 of the South Carolina Code of Laws.

It is important to note, as stipulated in South Carolina Code §38-48-90, that under no circumstances shall a public insurance adjuster adjust insurance claims on behalf of any person other than an insured in relation to a first party claim arising under insurance contracts that insure the real or personal property, or both, of the insured. Simultaneously, insurance adjusters licensed under Chapter 47 of Title 38 are prohibited from adjusting losses for insureds as a public insurance adjuster. As provided for under South Carolina Code §38-48-130, any person performing public insurance adjusting activities without first becoming properly licensed will be considered guilty of a felony and, upon conviction, must be fined at the discretion of the court or imprisoned not more than two years, or both.

Public Adjusting

South Carolina Code §38-48-10 defines public adjusting as the process of investigating, appraising or evaluating, and reporting to an insured in relation to a first party claim arising under insurance contracts that insure the real or personal property, or both, of the insured. However, individuals licensed as public insurance adjusters are prohibited from performing any of the following activities:

Investigating, appraising or evaluating, and reporting to an insured in relation to the adjustment of third party liability insurance claims.

Investigating, appraising or evaluating, and reporting to an insured in relation to the adjustment of claims for damages to or arising out of the operation of a motor vehicle.

Investigating, appraising or evaluating, and reporting to an insured in relation to any activities which may constitute the unauthorized practice of law.

Nothing in Chapter 48 shall be construed as permitting the unauthorized practice of law.

Please note that public adjusting activities do not include insurance contract interpretations. This type of function is outside the authority of public insurance adjusting and would constitute the unauthorized practice of law. The definition of public adjusting clearly states that the role of public adjusting relates only to investigation, evaluation, appraising, and reporting to an insured. All findings from an investigation, appraisal, or evaluation must be reported to the named insured and be approved by the named insured before communicating with the insurer's adjuster or other authorized insurer representative.

B. Licensing Requirements

South Carolina Code §38-48-20 requires that before an individual is allowed to perform public adjusting activities in the state of South Carolina, that individual must first become licensed by the Department. Each applicant applying for licensure must exhibit good moral character, have sufficient knowledge of the insurance business and duties as a public adjuster, and have not violated the insurance laws of South Carolina or any other state.

Only licensed public insurance adjusters may solicit business from an insured who has sustained an insured first party loss. Individuals engaged in providing public adjusting services without a license will be considered to be engaging in the unauthorized transaction of insurance business and subject to the remedies, as provided under Chapter 25 of Title 38, as well as the surrender of fees or restitution to the insured for any fees paid.

Further, each resident individual seeking to be licensed as a public insurance adjuster must take and pass a written examination administered on behalf of the Department at one of the six (6) technical colleges testing sites located in South Carolina. Upon determination that an applicant has demonstrated good moral character, has sufficient knowledge of the insurance business and duties as a public insurance adjuster, has not violated the insurance laws of this State, or any other state, and is a fit and proper individual for the position of public insurance adjuster, a license will be issued. Therefore, to become licensed as a resident public insurance adjuster in the State of South Carolina, each applicant for licensure must submit to the Department's Individual Licensing Division the following information:

An original properly completed public insurance adjuster application, Form 3518. A copy can be printed from the Department's website at: www.state.se.us/doi/.

A South Carolina Law Enforcement Division (SLED) report (must be less than 90 days old). A copy can be obtained from SLED's website address at: www.state.sc.us/SLED.

An original certificate indicating successful completion of the public insurance adjuster's examination administered by one (1) of the six (6) approved South Carolina technical colleges (the certificate expires 90 days from date of issuance).

A license fee of \$80 (fully earned and nonrefundable when received).

Examination -- *Effective on September 13, 2000, the Department began administering written licensing examinations to individuals seeking licensure as a public insurance adjuster. Successful applicants must earn a minimum passing grade of 70. Resident Individuals licensed as **insurance adjusters** pursuant to the provisions of Chapter 47 of Title 38 who wish to become licensed as a public insurance adjuster, without taking an examination, will be permitted to do so after surrendering their insurance adjuster's license.*

C. Licensing Fees/ Reciprocal Agreement

A public insurance adjuster's license is for an indefinite term, unless revoked or suspended, or the **eighty-dollar biennial** license fee is not paid at the time and in the manner which the Department of Insurance prescribes. The Department will reciprocate the licensing fee for states whose fees are higher than the State of South Carolina. Further, as provided within South Carolina Code §38-48-40, the Department will allow non-resident licensed public insurance adjusters to become licensed in this state without the requirement of examination, provided the following requirements are met:

- A. If a nonresident public insurance adjuster's home state reciprocates with the State of South Carolina and requires a written examination, the non-resident public insurance adjuster must provide certification of a public insurance adjuster license from his home state. To do this, the nonresident public insurance adjuster must:
 1. Submit an original properly completed public insurance adjuster licensing application, Form 3518;
 2. Pay an \$80.00 license fee, which is fully earned and nonrefundable when received (NC \$150, and GA \$100); and
 3. Provide an original home state letter of certification less than 90 days old.

In addition, where the home state does not administer a written examination, the Department will reciprocate in the following manner:

- B. If a non-resident public insurance adjuster's home state does not require a written examination, but that public insurance adjuster can provide certification that he has taken and passed a written examination in any other state where he holds licenses, and that state has a reciprocal agreement with the State of South Carolina, this Department will issue the individual a non-resident public insurance adjuster license. In addition, the nonresident public insurance adjuster must:
 1. Submit a properly completed public insurance adjuster licensing application, Form 3518;
 2. Pay an \$80.00 license fee, which is fully earned when received; (NC \$150 and GA \$100); and
 3. Submit an original letter of certification less than 90 days old from the state where the public insurance adjuster's licensing examination was taken and passed.

C. If a non-resident public insurance adjuster's home state does not require a written examination and that public insurance adjuster cannot provide certification to the Department that a written examination has been taken and passed in any other state, then that public insurance adjuster must take and pass South Carolina's public insurance adjuster's written examination before being licensed. Further, a nonresident public insurance adjuster must:

1. Submit an original properly completed public insurance adjuster licensing application, Form 3518;
2. Submit the original South Carolina technical college certificate; and
3. Pay an \$80.00 fee, which is fully earned and nonrefundable when received (NC \$150 and GA \$100).

D. Agreement Requirements

South Carolina Code §38-48-80 sets forth a list of requirements that must be contained within any agreement entered into by the insured and a licensed public insurance adjuster. Any agreement entered into with an insured by a public insurance adjuster that does not comply with the requirements of this Chapter shall render the public insurance adjuster's claim for compensation unenforceable.

Further, any agreement between the insured and the public insurance adjuster for the services described in §38-48-80 **must be in writing and signed by both parties**. In particular, the agreement must specify, in **bold** and conspicuous language, that the consideration, compensation, commission, fee, percentage, or salary due to the public insurance adjuster shall be paid by the insured from any sums the public insurance adjuster assists the insured in recovering and not paid by the insurer. **Any verifiable loss settlement amount offered by an insurer to the insured before the insured enters into a written agreement with a public insurance adjuster, or his firm, must not be included as part of the base calculation from which the public insurance adjuster determines his/her compensation, commission, fee, percentage, or salary due to public adjusting services as defined under Section 38-48-10.**

Promptly after the agreement of the insured with the public insurance adjuster has been executed, and after the time to rescind has elapsed, the public insurance adjuster shall give written notice to the insurer or its adjuster or representative that the public insurance adjuster has entered into a written contract with the insured. Consequently, the public insurance adjuster is then permitted to engage in written or oral loss settlement discussions with the insured's insurer or its representative.

Rescinding the contract: South Carolina Code §38-48-110 requires that the insured has until the close of business on the **fifth business day after signing the contract to rescind the agreement**. To exercise the right to rescind the agreement, it must be in writing and delivered to the public insurance adjuster at the address shown on the agreement. However, if the insured's property that is the subject of the claim is not the primary residence of the insured or used by the insured primarily for personal, family, or household purposes, the insured may waive the right to rescind the agreement. The waiver must be in writing and signed and dated by the insured.

Note: Agreement forms are not required to be approved by this Department. Therefore, public insurance adjusters **should not send** any agreement forms to the Department for approval.