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Sharon P. Clark
Commissioner

ADVISORY OPINION
2023-07

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("Department"), on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL LICENSEES AUTHORIZED TO OPERATE AS PUBLIC ADJUSTERS IN KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: DEPARTMENT INTERPRETATION OF KRS 304.9-433 AND KRS 304.9-4333

DATE: August 31, 2023

Effective Date

This advisory opinion shall take immediate effect.

Opinion

The purpose of this Advisory Opinion is to clarify the Department of Insurance's ("Department") interpretation of KRS 304.9-433 and KRS 304.9-4333. This matter has come to the Department's attention after 23 RS HB 232's implementation on June 28, 2023. Several public adjusters have submitted contracts for Department approval that include language that would allow them to collect a percentage of claims money negotiated and paid prior to execution of the contract with the insured. The collection of fees based on claims payments negotiated or adjusted prior to the execution of a written contract is only permitted in emergency circumstances at the Commissioner's discretion, pursuant to KRS 304.9-433(1)(b). Furthermore, the restriction on fees of 15% for non-catastrophic claims or 10% for catastrophic claims applies to all commissions and fees collected by adjusters, including, but not limited to, contingency fees, hourly fees, and flat fees.

Interpretation

Except in emergency circumstances, public adjusters may only charge for work that occurs after the execution of the public adjuster contract, pursuant to KRS 304.9-433(1)(b) and KRS 304.9-4333(1)(a). Accordingly, the Department interprets the phrase “total insurance recovery” as used in KRS 304.9-4333(1)(c) to mean all claims money received by an insured after the execution of a contract with a public adjuster. All contracts which charge a percentage of claim funds received by the insured prior to the execution of the contract are disallowed, unless approved by the Commissioner in an emergency circumstance.

Additionally, KRS 304.9-4333(1)(c)(2) allows a public adjuster to charge a reasonable fee that does not exceed fifteen percent (15%) of the total insurance recovery of the insured for non-catastrophic claims, and ten percent (10%) of the total insurance recovery of the insured for catastrophic claims. This provision does not distinguish between contingency fees, hourly fees, and flat fees, and it is therefore applicable to all fee types, including but not limited to those referenced above.

This Advisory Opinion is intended to serve as notice of the Department’s interpretation of KRS 304.9-433 and 304.9-4333 to all licensees authorized to act as public adjusters in Kentucky. The Department does not provide legal advice to licensees. The position provided herein has been offered to clarify the Department’s regulatory authority pursuant to KRS 304.2-100.

Questions regarding this advisory opinion should be directed to the Agent Licensing Division by: Phone-(502) 564-6004; Fax-(502) 564-6030; or Email-DOI.LicensingMail@ky.gov.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 31 day of August 2023