

1 Public Protection Cabinet

2 Department of Insurance

3 Licensing Division

4 (New Administrative Regulation)

5 806 KAR 9:400. Public Adjuster Filings.

6 RELATES TO: KRS 304.9-020, KRS 304.9-430, KRS 304.9-433, KRS 304.9-435, KRS 304.9-

7 440

8 STATUTORY AUTHORITY: KRS 304.9 NEW SECTIONS, KRS 304.2-110

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the

10 Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to

11 the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.

12 KRS 304.9-433 requires public adjusters to file a form to be approved by the commissioner prior

13 to executing a contract with an insured. This administrative regulation sets forth the pre-filing

14 requirements for public adjusters prior to executing a contract with an insured.

15 Section 1. Definitions.

16 (1) "Commissioner" is defined by KRS 304.1-050(1)

17 (2) "Catastrophe" is defined by KRS 304.9-020(6)

18 (3) "Department" is defined by KRS 304.1-050(2)

1 (4) The term “emergency circumstance” shall mean:

2 (a) A catastrophe as defined by KRS 304.9-020(6); or

3 (b) A catastrophe as defined by KRS 39A.100;

4 (5) “Public adjuster” is defined by KRS 304.9-020(20)

5 Section 2. Contract Filings.

6 (1) Before a public adjuster may execute a contract or provide services to an insured, the
7 public adjuster shall:

8 (a) File a form with the commissioner for approval that meets the contract
9 standards prescribed by KRS 304.9-433 and included in the Contracting Checklist
10 Form; and

11 (b) Provide the insured with a written disclosure as prescribed by KRS 304.9-433
12 and the contact information for the Department’s Consumer Protection Division
13 provided on the Contracting Checklist Form.

14 (2) The public adjuster shall file this form:

15 (a) On the Department’s secure website,
16 <https://insurance.ky.gov/doiservices/userrole.aspx>; or

17 (b) By electronic mail to doi.licensingmail@ky.gov

18 (3) (a) The commissioner shall have thirty (30) business days to approve or
19 disapprove a contract form filing. The public adjuster shall be prohibited from
20 using a contract form prior to receiving the approval for the contract form filing.

21 (b) If the commissioner disapproves a contract form filing, the public adjuster
22 shall have fifteen (15) business days to amend the original filing for the
23 commissioner’s approval.

1 Section 3. Emergency Circumstance-Intent to Contract.

2 (1) If an emergency circumstance occurs and a public adjuster is unable to reasonably
3 execute a contract before providing services to an insured, a public adjuster shall file an
4 Intent to Contract Form with the insured's insurer.

5 (2) The public adjuster must file this form with the insurer within three (3) business days
6 of providing any services to the insured.

7 (3) If a contract has not been executed within seven (7) business days following the filing
8 of an Intent to Contract Form, the Intent to Contract Form shall be deemed null and void.

9 (4) The public adjuster shall not receive any compensation unless he or she executes a
10 contract with the insured on a general contract form previously approved by the
11 commissioner.

12 Section 4. Amending Filings.

13 (1) A public adjuster may amend a previously approved form with the commissioner
14 only if the public adjuster files the amended form and receives prior approval before
15 utilizing the new contract form.

16 (2) The approval process for any amended contract form filings shall be governed by
17 Section 2 of this administrative regulation.

18 Section 5. Materials Incorporated by Reference. (1) The following materials are incorporated by
19 reference:

20 (a) "Contracting Checklist Form", 7/23; and


21 (b) "Intent to Contract Letter", 7/23.

22 (3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
23 the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, KY,

- 1 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the
- 2 department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

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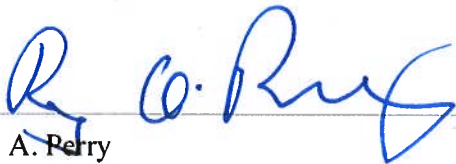
READ AND APPROVED:



Sharon P. Clark
Commissioner, Department of Insurance

7/13/2023

Date



Ray A. Perry
Secretary, Public Protection Cabinet

7-13-23

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on September 21, 2023 at 500 Mero Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall

Title: Executive Advisor

Address: 500 Mero Street, Frankfort, KY 40601

Phone: +1 (502) 564-6026

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Email: abigail.gall@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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Contact Person: Abigail Gall

Phone: 502-782-5260

Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will provide filing guidelines for public adjusters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to aide and effectuate the provisions of HB 232-2023 Reg. Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute allows for the Commissioner to promulgate administrative regulations to set forth requirements for public adjusters.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the calculations for future experience through a generational mortality table for annuities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 460 licensed public adjusters in KY who will all be affected by this administrative regulation

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public adjusters in this state must file their template/general contract form to be approved by the Commissioner. Public adjusters must also file any intent to contract with an insured's insurer should there be an emergency circumstance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The contract between the public adjuster and consumer will meet the standards of Kentucky law.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially: No associated cost
- (b) On a continuing basis: No associated cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, there is no need to increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as the provisions of this administrative regulation apply to all entities equally.

FISCAL NOTE

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Contact Person: Abigail Gall

Phone: 502-782-5260

Email: abigail.gall@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There is no administrative cost associated with this program.

(d) How much will it cost to administer this program for subsequent years? There is no administrative cost associated with this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no expectation of any fiscal impact.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are associated with this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this administrative regulation.

(c) How much will it cost the regulated entities for the first year? There is no cost expected.

(d) How much will it cost the regulated entities for subsequent years? There is no cost expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this administrative regulation and therefore no fiscal impact.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]* No, this administrative regulation will not have a major economic impact.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE
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- (a) "Contracting Checklist Form", 7/23; this form is an instructional worksheet for public adjuster to utilize while forming their own general contracts to be filed with the Commissioner for approval. The checklist includes a list of what the contract must include and what is prohibited;
- (b) "Intent to Contract Letter", 7/23; this form is a template form to be filled out by the public adjuster and filed with the carrier of the damaged property when appropriate. This form notifies the insurance company that their insured intends to contract with the listed public adjuster.