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Bulletin 433

Public Adjusters

(Supersedes Bulletin 373)

This Bulletin replaces Bulletin 373 and provides guidance regarding what activities public adjusters may engage in while remaining in compliance with the Maine Insurance Code. A recent Federal District Court decision found a portion of the Maine Insurance Code regarding the activities of public adjusters to be unconstitutional.¹ This Bulletin is issued to clarify the current state of the law applicable to public adjusters.

“Public adjusters” are adjusters who represent the interests of insureds as opposed to those of the insurer. Maine also licenses “independent adjusters,” who represent the interests of insurance companies, but are not employees of the insurer. All adjusters must comply with Maine’s insurance laws. This Bulletin addresses some provisions specific to public adjusters.

36-Hour Rule

The Insurance Code currently states: “An adjuster seeking to provide adjusting services to an insured for a fee to be paid by the insured [*i.e.*, a public adjuster] may not solicit or offer an adjustment services contract to any person for at least 36 hours after an accident or occurrence as a result of which the person might have a potential claim.”² However, in January 2019, the Maine U.S. District Court ruled that the prohibition on solicitation within the 36-hour period was unconstitutional. Therefore, public adjusters are permitted to contact and explain their services to insureds following a loss, without regard to the 36-hour time limit. Adjusters must still wait at least 36 hours before offering an adjustment services contract.

¹ *National Fire Adjustment Co., Inc. v. Cioppa*, No. 1:18-cv-00008, 2019 U.S. Dist. LEXIS 4857 (D. Me. Jan. 8, 2019).

² 24-A M.R.S. § 1476(1). The Bureau is introducing legislation to change the phrase “may not solicit or offer” to “may not offer,” consistent with the court’s decision, but this Bulletin is being issued in advance of any legislative action.



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Right to Rescind

As mentioned above, the court's ruling only struck down the 36-hour ban on solicitation. The other requirements of Section 1476 remain in full force and effect. This includes the requirement that any adjusting contract to be executed by the client must contain a provision prominently printed on the first page of the contract, stating that the client has the option to rescind the contract within 2 business days after the contract is signed. Failure to include this provision violates Section 1476(2). An adjuster who attempts to discourage a consumer from exercising this right to rescind may be subject to enforcement action under 24-A M.R.S. §§ 1417 & 1420(K)(1)(H) for using coercive practices.

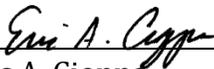
Fees and Services Rendered

Although the Insurance Code does not contain a specific limitation as to the fee amount, any fee arrangement must be reasonable under the circumstances. In addition, under section 1472, adjusters must be "competent, trustworthy, financially responsible, and of good personal and business reputation." Adjusters should take special care when dealing with total losses in circumstances indicating that there will likely be little controversy concerning the insurer's need to pay the policy limits. While the client may still decide to use a public adjuster in such a case to represent his or her interests, the adjuster's fee effectively reduces the insured's settlement, and the adjuster should be mindful that there must be a reasonable correlation between the fee and the value of the adjuster's services to the client.

Records

Under 24-A M.R.S. § 1474, every adjuster, both public and independent, must keep a record of all transactions under the license, at the adjuster's business address. The record must include a copy of all investigations or adjustments undertaken or consummated, and a statement of any fee, commission or other compensation received or requested. Records must be available for examination by the Bureau of Insurance at all times, and the adjuster must retain the records for at least three years.

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NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.