

INSURANCE DIVISION[191]

Notice of Intended Action

**Proposing rule making related to licensing of public adjusters
and providing an opportunity for public comment**

The Insurance Division hereby proposes to amend Chapter 55, “Licensing of Public Adjusters,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 522C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 522C.

Purpose and Summary

This proposed rule making updates the chapter by correcting cross-references, clarifying procedures and public adjuster duties, and updating language. Consumer protections are enhanced by ensuring a public adjuster operates without any conflicts of interest and serves with objectivity and complete loyalty in the interests of the consumer. This rule making also further clarifies acceptable contract terms, fee schedules, and processing of claim payments.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Commissioner no later than 12 noon on December 1, 2021. Comments should be directed to:

Tracy Swalwell
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6549
Email: tracy.swalwell@iid.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 1, 2021
10 a.m.

Via conference call

A conference call number will be available prior to the hearing on the Division's web page at iid.iowa.gov/hearings. Persons wishing to attend the hearing may also contact Tracy Swalwell for hearing information. Persons who wish to make oral comments at the public hearing must submit a request to Tracy Swalwell prior to the public hearing to facilitate an orderly hearing. Persons will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy Swalwell and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 191—55.5(522C) as follows:

191—55.5(522C) Issuance of resident license.

55.5(1) License of individual. Before approving an individual's application, the division shall find that the applicant:

- a. No change.
- b. Has not committed any act that ~~is a ground for~~ could result in denial, suspension or revocation of a license as set forth in rule ~~191—55.17(522C)~~ 191—55.12(522C);
- c. to f. No change.
- g. Is at least 18 years of age; ~~and~~
- h. Has successfully passed the public adjuster examination pursuant to rule 191—55.6(522C);
and
- i. Has submitted to the division the contract the applicant intends to use pursuant to rule 191—55.14(522C).

55.5(2) License of business entity. Before approving a business entity's application, the division shall find that the business entity has:

- a. Paid the fees set forth in rule 191—55.20(522C);
- b. Designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state; ~~and~~
- c. Designated a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; ~~and~~
- d. Submitted to the division the contract the applicant intends to use pursuant to rule 191—55.14(522C).

55.5(3) Supplemental documentation. The division may require the applicant for either type of license to supply any documents reasonably necessary to ~~verify the information contained in the application~~ aid the division in making its determination.

ITEM 2. Amend rule 191—55.8(522C) as follows:

191—55.8(522C) Nonresident license reciprocity.

55.8(1) Unless denied licensure pursuant to rule 191—55.12(522C), an individual or business entity for whom Iowa is not the individual's or business entity's home state, but whose home state awards

nonresident public adjuster licenses to residents of Iowa on the same basis, must satisfy the following requirements to obtain an Iowa nonresident public adjuster license:

- a. Be licensed as a resident public adjuster and in good standing in the individual's home state;
- b. Submit a proper request for licensure to the division through the NIPR Gateway; ~~and~~
- c. Pay the appropriate fees required, as set forth in rule 191—55.20(522C);₂
- d. Be trustworthy, reliable, and of good reputation, evidence of which may be determined by the division; and
- e. Submit to the division the contract the applicant intends to use pursuant to rule 191—55.14(522C).

55.8(2) and **55.8(3)** No change.

55.8(4) If an individual's or business entity's home state does not license public adjusters or business entity public adjusters or does not award nonresident public adjuster licenses to residents of Iowa on the same basis, the nonresident individual or business entity shall follow the procedures for obtaining a license set out in rule 191—55.5(522C).

55.8(5) The division may require an applicant to supply any documents reasonably necessary to aid the division in making its determination.

ITEM 3. Adopt the following **new** paragraph **55.9(7)“g”**:

g. A public adjuster applying for renewal of a license shall submit to the division a copy of the contract the applicant intends to use pursuant to rule 191—55.14(522C).

ITEM 4. Amend subrule 55.12(1) as follows:

55.12(1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license; may levy a civil penalty in accordance with Iowa Code section 505.7A; or may take corrective action pursuant to Iowa Code section 505.8, or any combination of actions, for any one or more of the following causes:

- a. to p. No change.
- q. Failing to report to the division any notifications or actions required to be reported pursuant to rule 191—55.9(522C); ~~or~~
- r. Failing to file reports required by this chapter; ~~or~~
- s. Failing or refusing to cooperate in an investigation by the division.

ITEM 5. Amend subrule 55.14(1) as follows:

55.14(1) Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

- a. Legible full name of the adjuster signing the contract, as specified in division records; Name and address of the public adjuster negotiating the contract and, if applicable, the name, address, and license number of the business entity with which the public adjuster is associated;
- b. to i. No change.
- j. Attestation language stating that the public adjuster is fully bonded pursuant to state law; ~~and~~
- k. Full salary, fee commission, compensation or other considerations Compensation the public adjuster is to receive for services, whether it be an hourly rate, flat fee, percentage of settlement, or some other method of compensation, and a detailed explanation of how the amount is to be specifically calculated based on the services provided by the public adjuster; and
- l. Statement that the total compensation amount payable to the public adjuster shall not exceed 10 percent of the claim settlement pursuant to subrule 55.18(3).

ITEM 6. Amend subrule 55.14(3), introductory paragraph, as follows:

55.14(3) If the insurer, not later than ~~72 hours~~ five days after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

ITEM 7. Rescind and reserve subrule **55.14(4)**.

ITEM 8. Amend subrule 55.14(5) as follows:

55.14(5) A public adjuster contract may not contain any contract term that:

- a. and b. No change.
- c. Imposes collection costs or late fees; ~~or~~
- d. Precludes a public adjuster from pursuing civil remedies; or
- e. Restricts an insured's right to initiate and maintain direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other person regarding settlement of the insured's claim.

ITEM 9. Amend rule 191—55.15(522C) as follows:

191—55.15(522C) Escrow accounts. A public adjuster who receives, accepts or holds, on behalf of an insured, any funds toward the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

ITEM 10. Amend subrule 55.16(1) as follows:

55.16(1) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this rule shall include the following:

- a. to h. No change.
- i. The name of the attorney representing the insured, if applicable, and the name of the claims representative of the insurance company; ~~and~~
- j. Evidence of financial responsibility in a format prescribed by the insurance division; and
- k. All records related to the authorization and notice requirements of subrule 55.17(15).

ITEM 11. Amend subrule 55.17(1) as follows:

55.17(1) A public adjuster shall serve with objectivity and complete loyalty the interest of the ~~public adjuster's client~~ insured and shall render to the insured in good faith such information, counsel and service, as within the knowledge, understanding and opinion of the licensed public adjuster, as will best serve the insured's insurance claim needs and interest.

ITEM 12. Amend subrules 55.17(4) and 55.17(5) as follows:

55.17(4) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured; ~~unless full written disclosure has been made to the insured as set forth in subrule 55.14(4).~~

55.17(5) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim ~~with the insurer as set forth in subrule 55.14(4).~~

ITEM 13. Rescind and reserve subrule **55.17(6)**.

ITEM 14. Amend subrule 55.17(7) as follows:

55.17(7) Licensed public adjusters may not solicit a ~~client~~ an insured for employment between the hours of 8 p.m. and 9 a.m.

ITEM 15. Amend subrule 55.17(10) as follows:

55.17(10) A public adjuster shall not knowingly make any false oral or written material statements regarding any person engaged in the business of insurance to any insured ~~client~~ or potential insured ~~client~~.

ITEM 16. Adopt the following new subrules 55.17(14) and 55.17(15):

55.17(14) A public adjuster shall not engage in any act or practice that may be reasonably construed as a conflict of interest. A conflict of interest includes, but is not limited to, the following:

- a. Having a direct or indirect financial interest with a person responsible for the reconstruction, repair, or restoration of the damaged property that is the subject of a claim; and
- b. Being an owner, employee, agent or investor in a business entity responsible for the reconstruction, repair or restoration of the damaged property that is the subject of a claim.

55.17(15) Authorization and notice of claim payments.

a. If the public adjuster and the insured contract for the public adjuster to be named as a co-payee on any claim payments issued by the insurance company, the public adjuster shall obtain written authorization from the insured in order for the public adjuster to sign or endorse a payment, draft, or check on behalf of an insured.

b. The authorization can be withdrawn by the insured at any time upon written notice to the public adjuster. Authorization and notice may be given and received through electronic means in compliance with Iowa Code section 554D.110. All records of authorization and notice must be maintained by the public adjuster in compliance with rule 191—55.16(522C).

c. If the public adjuster is granted authorization and receives a check, the public adjuster must do the following:

(1) Endorse the check or payment for deposit only into the public adjuster's non-interest-bearing escrow or trust account; and

(2) Notify the insured of the deposit of funds no later than five business days after receipt by the public adjuster.

ITEM 17. Amend subrule 55.18(3) as follows:

55.18(3) ~~In the event of a catastrophic disaster, there shall be limits on catastrophic fees.~~ No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to or more than 10 percent of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim, ~~unless the loss is being handled by the public adjuster on a time plus expense basis.~~

ITEM 18. Adopt the following **new** subrule 55.18(4):

55.18(4) If a public adjuster enters into a contract with an insured to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster shall not charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured. Compensation for the reopened or supplemental claim may not exceed the limitations set forth in subrule 55.18(3).