

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to licensing of public adjusters

The Insurance Division hereby amends Chapter 55, "Licensing of Public Adjusters," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted 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 rule making updates the chapter by correcting cross-references, clarifying procedures and public adjuster duties, and updating language. This rule making also further clarifies acceptable contract terms and processing of claim payments.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 3, 2021, as **ARC 6010C**. A public hearing was held on December 1, 2021, at 10 a.m. via conference call.

Ten oral comments were received from individuals, public adjusters, and national associations. Many of these commenters were concerned with the proposed fee cap of 10 percent, the limitation of the financial interest with a contractor, and conflict of interest changes.

The Division received seven written comments, which are summarized as follows:

1. The National Association of Public Insurance Adjusters supported many of the proposed changes but was concerned with the fee cap and payments on supplemental claims.
2. The American Policyholder Association was concerned with the potential limiting of consumer access to public adjusters.
3. The American Association of Public Insurance Adjusters was concerned with the fee cap and financial interest changes.
4. A public adjuster was concerned with the fee cap.
5. A public adjuster was concerned with the fee cap, time period of claim payment, escrow accounts, financial interest, and supplemental claim payments.
6. The Mutual Insurance Association of Iowa was supportive of the rule making and would like to see additional language to curb unethical behavior.
7. An individual was supportive of the rule making and would like to see additional language to curb bad behavior by some public adjusters.

The Division is not adopting the following amendments at this time:

- New paragraph 55.14(1)"1" regarding a fee limit.
- Amendments to subrule 55.14(3) regarding a time period for an insurer to offer a policy limit.
- Amendments to subrule 55.14(4) regarding a financial interest written disclosure.
- Amendments to subrule 55.17(4) to 55.17(6) regarding financial interests.
- New subrule 55.17(14) regarding conflict of interest. Proposed subrule 55.17(15) has been renumbered as 55.17(14) herein.
- Amendments to subrule 55.18(3) regarding a fee limit.
- Amendments to subrule 55.18(4) regarding supplemental claim payments.

The Division intends to engage in further discussions with the interested parties regarding proposals related to fees, conflicts of interest, and timing of payments in order to collect more data and research as well as soliciting suggestions for alternative language. The Division invites interested parties to submit further comments and suggestions regarding these items.

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on December 8, 2021.

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 Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

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).

Effective Date

This rule making will become effective on February 2, 2022.

The following rule-making actions are adopted:

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);
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 j. No change.

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.

ITEM 6. 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 7. 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 8. 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(14).

ITEM 9. 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 10. 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 11. 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 12. Adopt the following new subrule 55.17(14):

55.17(14) 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.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/21.