



Property Insurance Law

James P. DuChateau and Joseph A. Fay
HeplerBroom LLC, Chicago

Recent Updates to Illinois Public Adjuster Regulations

In January 2024, the Illinois legislature implemented changes to the Public Adjuster Law (215 ILCS 5/1501), and in August 2024, the Illinois Department of Insurance issued Company Bulletin No. 2024-16 notifying all Illinois public adjusters and carriers of the changes contained within the Public Adjuster Law. These changes allow for more transparency between public adjusters, insurers, and insureds while also instilling additional contractual rights for insureds working with public adjusters, generally. The overarching theme of this new legislation, and Bulletin No. 2024-16, aims to protect consumers from specious public adjuster practices.

Contractual Rights of the Policyholder

Turning to the contractual relationship between a policyholder and their public adjuster, the Illinois Department of Insurance now requires that every contract for public adjuster services specifically state that the public adjuster's compensation is subject to a 10% cap for those claims arising from either: (a) damages to a personal residence; or (b) those damages from a catastrophic event. Illinois law previously capped public adjuster fees at 10% only in the event there was a disaster proclamation issued by the governor, and the locus and subject matter of the public adjusting contract coalesced with that disaster proclamation. The expansion of 10% fee caps for public adjusters to include residential claims represents a welcome and consumer-friendly change in Illinois law, which brings the state's fee caps more in line with the national averages. For years, Illinois public adjusters commonly charged 25%, 33% and even 40% contingency fees; percentages that were downright illegal under most other states' regulatory schemes. In addition to this 10% cap on public adjuster contingency fees, the Illinois Department of Insurance also clarifies the new cancellation process put in place by the changes to the Public Adjuster Law.

Previously, cancellation of a public adjuster contract between a policyholder and his or her public adjuster was allowed within five (5) business days of execution of the public adjuster contract. Now, and as clarified by the Illinois Department of Insurance, cancellation of a public adjuster contract between a policyholder and his or her public adjuster may occur within five (5) business days after the policyholder's carrier obtains a copy of the public adjuster contract. This new method of cancellation applies to all public adjuster contracts regardless of the type of loss. The now-repealed Representation Agreement Act also previously provided for a special cancellation process for those public adjuster contracts involving a fire loss. The Illinois Department of Insurance, however, will no longer make this distinction. Overall, these changes liberalize the process in which a policyholder may cancel a public adjuster contract.

In addition to the option to cancel through registered mail, certified mail, or personal service, policyholders may also cancel the public adjuster contract by way of email. By accepting email as a valid means to cancel a public adjuster contract, the Illinois Department of Insurance and the Illinois legislature are aligning with the overall push to modernize mechanisms of service and notice. Recall that in April of 2023, the Illinois Supreme Court amended Rule 102 to officially



permit parties to utilize electronic service via electronic means. Seemingly then, Illinois will continue this trend of expanding the utilization of notice or service through electronic means.

Preferred Contractor Changes

The Illinois Department of Insurance also repealed rules concerning recommended or preferred contractors. Prior to April 30, 2024, public adjusters who recommended clients to a contractor, vendor, or service provider had to provide policyholders with either a minimum of two good faith competitive bids for services or warrant that all work will be performed in a workmanlike manner in conformity with all applicable statutes, ordinances, and codes. This practice was almost never adhered to by Illinois public adjusters. Illinois public adjusters routinely maintained common ownership with a related construction firm, a practice that is statutorily forbidden in many other states. Now, public adjusters shall not recommend any contractor unless the public adjuster first receives confirmation from the contractor that the contractor has liability insurance, a performance bond, any necessary licensure to perform the particular work, and a written warranty of workmanship contained within the contractor's contract. In addition to these contractor guarantees, a public adjuster must also document the same as required by Section 1585 of the Public Adjuster Law.

Public adjusters must charge, and an insured must pay, the same amount for public adjuster services regardless of who the insured chooses to make the repairs. Public adjusters cannot waive their fees or charge less because an insured used a particular contractor or service provider. Public adjusters cannot promise that a preferred contractor will pay the public adjuster fee that the insured would otherwise be responsible to pay under the public adjuster contract. The contractor is not a party to the public adjuster contract, and the public adjuster and insured cannot have any agreements outside of the public adjuster contract.

Additionally, the Illinois Department of Insurance makes clear that price variations for public adjuster services based on an insured's use of a particular contractor, or service provider, are prohibited by Rule 3118.90(a). Rule 3118.90(a) states a public adjuster client shall not be required by the licensed public adjuster, or its agent, to pay higher fees to the public adjuster if the client does not elect to work with the contractor or vendor preferred or primarily recommended by the public adjuster. Additionally, the Illinois Department of Insurance clarified that a public adjuster cannot include in their financial disclosures to the insured a promise that a contractor will pay the public adjuster's fee if the insured chooses to use the contractor's services. The Illinois Department of Insurance interprets this fee-waiver scheme as violative of Rule 3118.90 and also as an inappropriate use of a financial disclosure.

Bulletin No. 2024-16 informs Public Adjusters that the department will not approve a contract that contains variations in the amount an insured pays the public adjuster based on contractor choice as prohibited by Rule 3118.90.

Expansion of Financial Interest Disclosures

The purpose of the financial interest disclosure is to require public adjusters to be completely transparent with insureds about any direct or indirect financial interest a public adjuster has. These interests encompass a public adjuster's employees, agents, assignees, immediate family members, or any other party who is involved with any aspect of a claim. The financial interest may be as explicit as a public adjuster-owned contracting company, or this interest may be as distanced as a referral fee. Per the Illinois Department of Insurance Bulletin No. 2024-16, the exact nature and amount of that financial interest, whatever it is, must be disclosed to the insured in writing, and this must be disclosed before the



insured signs the public adjuster contract per Sections 1575(d) and 1590(d), (g), and (h) of the Public Adjuster Law and Rule 3118.85.

The 10% Cap on Commission

Under the new law, public adjusters cannot charge a 10% commission plus expenses on personal residence claims unless the expense is for emergency mitigation services or other costs covered by the insurance policy. 215 ILCS 5/(e). Section 1570(e) of the Public Adjuster Law states:

If the loss giving rise to the claim for which the public adjuster was retained arises from damage to a personal residence, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other valuable consideration in excess of 10% of the amount of the insurance settlement claim paid by the insurer on any claim.

Sections 1570(e) and 1590(i) utilize but do not define the term “personal residence.” However, the Illinois Department of Insurance Bulletin No. 2024-16 applies the definition of “personal residence” as used in the Public Adjuster Law to mean any property that is insured by a “policy of fire and extended coverage insurance” as defined in 215 ILCS 5/143.13(b). This covers real property used principally for, “residential purposes up to and including a 4-family dwelling or any household or personal property that is usual or incidental to the occupancy of any premises used for residential purposes.” See 215 ILCS 5/143.13(b).

The Public Adjuster Law and the Illinois Department of Insurance Bulletin No. 2024-16 clarify the distinction between public adjuster compensation versus emergency services reimbursement in the context of this 10% cap on commission. Section 1575(b)(2) of the Public Adjuster Law allows public adjusters to collect on expenses reimbursed from the proceeds of the claim in addition to the full salary, fee, commission, compensation, or other considerations as required to be specified in the contract pursuant to Section 1575(a)(11). See 215 ILCS 5/1575(b)(2). Bulletin No. 2024-16 clarifies that an expense is only reimbursed from the proceeds of a claim if it is covered by the insurance policy—i.e., the cost of removing debris and the cost of performing reasonable and necessary repairs that prevent further damage to the property.

A Crackdown on Public Adjuster Expenses

The Illinois Department of Insurance also does not consider travel, lodging, meals, and the employment of third parties for technical assistance in support of a public adjuster’s services as Section 1575(b)(2) expenses. This is because, as clarified by The Department, these expenses are not reimbursed from the proceeds of the claim. The Department supports this position by citing Section 1590(j)(1), which provides that public adjusters have an ethical requirement to not take on the adjustment of a claim that exceeds their current expertise. See 215 ILCS 5/1590(j)(1). This, of course, does not prevent a public adjuster from hiring or retaining an expert or consultant during his or her handling of a claim. Rather, the public adjuster, not the insured, must pay for the third parties. If the insured is required to pay outside experts or consultants or other third parties in addition to the 10% fee in order for the public adjuster to provide competent services, then the public adjuster is in violation of the prohibition on taking on claims that exceed the public adjuster’s current expertise and violating the 10% cap as prescribed in Section 1590(j)(1).



In sum, if a public adjuster has an additional expense provision in their contract form, the only types of expenses that can be included in that provision are those that are covered by the insurance policy. *See*, 215 ILCS 5/1590(j)(1). If a public adjuster provides emergency mitigation services as part of his or her business model, the contract may provide that emergency mitigation services: (1) can be reimbursed to the public adjuster in addition to the amount an insured must pay for the public adjusting services; and (2) are not included in any applicable 10% cap.

The Department reiterates in Bulletin No. 2024-16 that it will take regulatory action against any public adjuster who attempts to collect “reimbursement for expenses” that are not covered by the insurance policy and paid out by the insurance company. The Department also reminds public adjusters to maintain adequate record-keeping practices by obtaining an itemized claim payment issued by the carrier for the cost of emergency mitigation services provided to an insured. This documentation is required in order to demonstrate compliance with this regulation and the limited exception described above.

Conclusion

Illinois Department of Insurance Bulletin No. 2024-16 provides clear guidance on the recent consumer protection amendments to Illinois’ Public Adjuster Law, namely contractual transparency and a limit on the types of recoverable public adjuster fees and expenses. Forty-six states already have professional standards for public adjusters, and Illinois has expanded those standards in hopes of more consumer-friendly practices. Be on the lookout for public adjuster contracts in violation of the Public Adjuster Law. Courts and the Department of Insurance are likely to crack down on any public adjuster practices that run afoul of the new law or that otherwise harm consumers.

About the Authors

James P. DuChateau is a partner in the Chicago office of *HeplerBroom LLC*, where he concentrates his practice in the areas of insurance coverage and commercial law in State and Federal Courts throughout the Midwest and Mountain West, including the investigation and litigation of first-party property claims, commercial general liability defense, prosecution of declaratory matters for non-coverage under personal and commercial policies and the defense of bad faith and extra contractual liability matters. Mr. DuChateau counsels both property and casualty carriers during the claim process, and also regularly represents Illinois financial institution clients in both UCC and REO matters, as well as trade secret and restrictive covenant litigation.

Joseph A. Fay concentrates his practice in the areas of insurance coverage, fraud, bad faith, commercial and general liability, as well as catastrophic injury. Early in his practice, Mr. Fay played an integral role in all phases of litigation, from pre-suit resolution to trial and appeals. He embraces a holistic approach to the law, which has resulted in favorable outcomes for his clients at summary judgment and trial. During his off time, he coaches trial advocacy at his alma mater, where he encourages students to formulate a persuasive case through humility, determination, and attention to detail.



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