

"Examiner" means any individual or firm authorized by the Commissioner to conduct an examination pursuant to N.J.S.A. 17:23-20 et seq.

"Financial condition examination" means a comprehensive examination of the assets and liabilities, method of conducting business and all other affairs of any company which is the subject matter of the examination report filed pursuant to the procedures set forth in N.J.S.A. 17:23-20 et seq. and this subchapter.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of the Title 17 of the Revised Statutes or Subtitle 3 of the Title 17B of the New Jersey Statutes.

"Joint examination" means the examination of affiliated insurers that have any type of interinsurance, reinsurance, or other business dealings, and of insurers that have, through reinsurance affiliations, provided 35 percent or more of the existing surplus support at the as-of-date of the examination.

"Lead state" means the state where the parent insurer is domiciled or, if there is no insurer parent, the state where the largest (by direct written premium volume as shown by the last filed annual statement) insurer subsidiary is domiciled.

"NAIC" means the National Association of Insurance Commissioners.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2001 d.135, effective May 7, 2001.
See: 32 N.J.R. 4328(a), 33 N.J.R. 1387(a).

In "Examiner" and "Financial condition examination", substituted "N.J.S.A. 17:23-20 et seq." for "P.L. 1993, c.236".

11:1-36.3 Examination; when deemed complete

(a) For purposes of N.J.S.A. 17:23-24b, an examination of the financial condition of a company shall be deemed complete not later than 90 days after the date the examiner leaves the site of the company, or not later than 90 days after the date the company responds to the last written request from the examiner(s) for additional information, but in no event later than 180 days after the date the examiner leaves the site of the company provided that the company has responded to any written request for additional information made 90 days or more prior to that date. For good cause, the Chief Insurance Examiner of the Department may extend these time frames for an additional period of time not to exceed 90 days.

(b) A company shall provide any additional information, documentation or other data requested by an examiner not later than 30 days after such request.

(c) In the case of joint examinations, the time frames set forth in (a) above shall apply where this State is the lead state conducting such joint examination. Where this State is not the lead state, the time frames set forth in (a) above may apply with the agreement of the lead State.

Amended by R.2001 d.135, effective May 7, 2001.

See: 32 N.J.R. 4328(a), 33 N.J.R. 1387(a).

In (a), substituted "N.J.S.A. 17:23-24b" for "P.L. 1993, c.236, section 5b".

11:1-36.4 Foreign and alien insurers; filing of examination reports with this State

(a) A foreign or alien insurer licensed to transact business in this State shall file with the Department a copy of the financial condition examination report prepared by the insurance department or other regulatory agency for the insurer's state of domicile or port-of-entry state.

1. The copy of the examination report shall be filed not later than 180 days after the report is adopted by the insurance department or regulatory agency of the insurer's state of domicile or port-of-entry state, and shall be certified by such department or agency as representing a true and accurate report of the examination conducted by its duly appointed examiner in charge who satisfies the minimum qualifications to be the examiner in charge of such examination as set forth in the Examiners' Handbook adopted by the NAIC as in effect at the time such examination was conducted.

2. After January 1, 1994, in addition to the requirements set forth in (a) and (a)1 above, the insurer shall provide a certification from the insurance department or regulatory agency that:

i. The insurance department or regulatory agency was at the time of the examination accredited under the NAIC's Financial Regulation Standards and Accreditation Program; or

ii. The examination was performed under the supervision of an accredited insurance department or other regulatory agency or with the participation of one or more examiners who are employed by such an accredited state insurance department or other regulatory agency who satisfy the minimum qualifications to be an examiner as set forth in the Examiners' Handbook adopted by the NAIC as in effect at the time the examination was conducted and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department or other regulatory agency.

11:1-36.5 Payment of expenses

(a) Pursuant to N.J.S.A. 17:23-22d, the reasonable expenses of any examination and proceedings conducted under that statute shall be fixed and determined by the Commissioner, and he or she shall collect them from the company examined, which shall pay them on a presentation of an account of expenses. Any and all such receipts shall be appropriated to the Department for use in defraying the expenses of such examination. If any company, after examination, is adjudged insolvent by a court of competent jurisdiction, the expense of the examination, if unpaid, shall be ordered out of the assets of the company.

(b) Pursuant to N.J.S.A. 17:23-23d, the Commissioner may, in making an examination under that statute, retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals as examiners, the cost of which shall be borne by the company being examined. Upon presentation of a detailed invoice for such fees and expenses, and upon review and approval by the Commissioner of the adequacy and reasonableness of such fees and expenses, the Commissioner shall authorize and direct that the company pay such amount directly to the third party retained by the Commissioner to assist in the examination. The company shall make such payment within 30 days of the Commissioner's approval of the adequacy and reasonableness of such fees and expenses.

Amended by R.2001 d.135, effective May 7, 2001.
See: 32 N.J.R. 4328(a), 33 N.J.R. 1387(a).

In (a), substituted "N.J.S.A. 17:23-22d" for "P.L. 1993, c.236, section 3d"; in (b), substituted "N.J.S.A. 17:23-23d" for "P.L. 1993, c.236, section 4d".

11:1-36.6 Confidentiality

(a) Pursuant to N.J.S.A. 17:23-24f, working papers, recorded information, documents and copies thereof produced, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under N.J.S.A. 17:23-20 et seq. shall be confidential, except as otherwise provided in that statute.

(b) The confidentiality provision in N.J.S.A. 17:23-24f shall also apply to any other documents obtained by the Department in exercising the examination power pursuant to N.J.S.A. 17:23-20 et seq., including the Department's ongoing financial analysis of insurers, and including, but not limited to, the following:

1. Actuarial reports;
2. NAIC Analyst System data;
3. NAIC Analyst notes;
4. NAIC Financial Analysis Solvency Tools/Insurance Regulatory Information System data;
5. Strategic business plans and related projections; and
6. Correspondence.

New Rule, R.2001 d.135, effective May 7, 2001.

See: 32 N.J.R. 4328(a), 33 N.J.R. 1387(a).

Former N.J.A.C. 11:1-36.6, Penalties, recodified to N.J.A.C. 11:1-36.7.

11:1-36.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

Recodified from N.J.A.C. 11:1-36.6 by R.2001 d.135, effective May 7, 2001.

See: 32 N.J.R. 4328(a), 33 N.J.R. 1387(a).

SUBCHAPTER 37. LICENSING OF PUBLIC ADJUSTERS
11:1-37.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the examination, licensing and conduct of persons acting as public adjusters in this State.

(b) This subchapter applies to any person, who for money, a commission or anything of value, acts or aids in any manner on behalf of an insured in negotiating for or effecting, the settlement of claims; or for money, a commission or anything of value, solicits or adjusts claims, in whole or in part, on behalf of any public adjuster.

(c) This subchapter shall not apply to:

1. Any employee, agent or other representative of any authorized insurer who acts in that capacity in the adjustment of claims, nor to any licensed insurance producer who is designated by the insurer to act as an adjuster for a client of the producer without any compensation for those services as adjuster. Insurance representatives and licensed insurance producers shall not advertise or publicly solicit the adjustment of claims in a manner likely to mislead the public into believing that he or she is offering services as a public adjuster;

2. Any licensed attorney of this State who acts or aids in adjusting insurance claims as an incident to the practice of his or her profession and who does not advertise him or herself as a public adjuster;

3. Any licensed insurance producer who acts as an adjuster with respect to any loss involving insurance contracts under which he or she was the broker of record in placing the insurance, whether or not designated in writing to act for the insured;

4. Any other duly licensed producer who has been designated to act for the insured in writing before a loss occurs; or

5. An auto body repair facility licensed pursuant to N.J.S.A. 39:13-1 et seq. that acts or aids in adjusting a motor vehicle insurance claim as an incident to the performance of duties for which it is licensed.

11:1-37.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Catastrophic loss occurrence” means an occurrence designated by the President of the United States, the Federal Emergency Management Agency, the Governor of New Jersey, the State Office of Emergency Management in the Division of Law and Public Safety, or any other authorized Federal, State or local agency, as an emergency or a disaster and includes, but is not limited to, a flood, hurricane, storm or earthquake.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Financial institution” means a Federal or State chartered bank, savings bank or savings and loan institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or is otherwise insured by an agency of the Federal government.

“First time applicant” means a person who has not been licensed as a public adjuster within the 12-month period prior to application.

“Person” means any individual, corporation, organization, firm, association, partnership or other legal entity.

“Public adjuster” or “adjuster” means any individual, firm, association or corporation, except as excluded at N.J.A.C. 11:1-37.1(c), who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under a property insurance policy, including but not limited to, a flood, transit, inland marine or ocean marine policy; or who, or which, advertises for, or solicits employment as an adjuster of those claims. It shall also mean any individual, who, for money, commission or any other thing of value, solicits or adjusts those claims, in whole or in part, on behalf of any public adjuster.

“Resident (of New Jersey)” means a person who either resides in New Jersey or maintains an office in New Jersey where business is transacted.

“Statutory trust” means a trust in accordance with the provisions of N.J.S.A. 17:22B-13.

"Sublicensee" means an individual who is licensed as a public adjuster and is an officer or director of a corporation which is a licensed public adjuster or who is a member of a firm, association or partnership which is a licensed public adjuster.

"Temporary sublicensee" means an individual who, as the result of a catastrophic loss occurrence, is acting as a public adjuster and is sponsored by and works directly under the supervision of a licensed public adjuster in accordance with a temporary sublicense issued by the Commissioner pursuant to N.J.A.C. 11:1-37.7.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

11:1-37.3 General licensing requirements

(a) No person shall act as a public adjuster in this State on behalf of an insured unless licensed pursuant to this subchapter.

(b) The Commissioner may issue or renew a public adjuster's license to any individual, firm, association or corporation who complies with the requirements of this subchapter and is competent to act as a public adjuster in a manner so as to safeguard the interests of the people of this State.

(c) A license issued by the Commissioner shall only be valid until the expiration date indicated on the license.

1. For applications filed on or before March 7, 1995, the initial license term shall expire January 31, 1999.

2. For applications filed after March 7, 1995, the standard term of initial and renewal public adjusters licenses shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter before the quarter in which the license was effective.

11:1-37.4 Licensing applications and renewals

(a) A first time applicant for an individual public adjuster license shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; home address; date of birth; business mailing address and location address; home and business telephone numbers; the applicant's State tax identification number; and responses to questions concerning the applicant's character and fitness for licensing. This information together with all requested attachments shall be certified as being accurate by the applicant;

2. Proof that the applicant has taken and passed the State licensing examination within the 12 months preceding the date of application.

i. For applications received on or before March 7, 1995, the licensing examination shall be waived if the applicant provides proof that he or she has been employed or has acted as a public adjuster as his or her principal business for a period of at least five years prior to March 8, 1994. Persons applying for a waiver as provided in this subsection shall submit the information on a form prescribed by the Commissioner together with supporting documentation. The information shall include:

(1) An affidavit which states that the applicant has been employed as or has acted as a public adjuster as his or her principal business for the last five years and shall also include the applicant's:

(A) Educational background;

(B) Information on other related licenses held (certifications of current license status);

(C) Employment record for, at minimum, the past five years;

(D) Membership in associations or other professional organizations and any specific designations held by the applicant; and

(E) State tax identification number;

(2) State tax returns for the past five years; and

(3) Any additional information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(4) Where an applicant is unable to provide copies of State tax returns for the last five years, the applicant shall state the reasons therefore and may submit the following documentation in the form of affidavits or letters, for consideration by the Department:

(A) Verification of employment from prior or current employer(s) of the past five years;

(B) Verification from clients of work performed for the past five years;

(C) Verification from licensed New Jersey insurance agents or brokers of work performed;

(D) Verification of work performed from New Jersey licensed insurance companies; and

(E) Any other information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(5) The information submitted in accordance with (4) above shall be reviewed by the Department for sufficiency on a case-by-case basis.

ii. For applications requesting issuance of a license to an individual who is not a resident, the licensing examination may be waived if the applicant provides

proof that he or she is currently licensed in his or her home state in which the licensing provisions for public adjusters are substantially similar to the laws of this State;

3. Any documents or statements required to verify or explain responses to questions concerning the applicant's character, fitness or financial responsibility;

4. Fingerprint impressions taken on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with the fees required for processing;

5. A bond conforming to the requirements of N.J.A.C. 11:1-37.9, unless the applicant is applying as a sublicensee.

i. If applying as a sublicensee, proof of coverage under the existing bond of the licensed public adjuster for whom the applicant is or shall be a sublicensee;

6. Two passport-size photographs; and

7. A check or money order made payable to State of New Jersey—General Treasury for the license fee, application processing fee and fingerprint form processing fee in accordance with the fees set forth at N.J.A.C. 11:1-37.18.

(b) A first time applicant for a public adjuster license which is a corporation, firm, association or partnership, shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; business mailing address and location address; business telephone number; State tax identification number; and all requested attachments, all of which shall be certified as being accurate;

2. A resident New Jersey corporation, partnership, association or firm shall file with the Commissioner a copy of its Certificate of Incorporation or of the partnership or association documents, stamped "filed" by the Office of the Secretary of State, County Clerk or other applicable authority, confirming that the business name has been properly recorded;

3. A foreign corporation, partnership or association applying for a resident license to open an office in New Jersey shall file with the Commissioner a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. Fingerprint impressions on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with required processing fees for all sublicensees; officers, directors and/or partners which are not sublicensees and all owners of five percent or more of the business;

5. A bond in accordance with N.J.A.C. 11:1-37.9 in an amount sufficient to cover the applicant and all sublicensees; and

6. A check or money order made payable to Treasurer of New Jersey for all licensing, application and processing fees.

(c) The application and applicable fees in accordance with N.J.A.C. 11:1-37.18 shall be sent to:

Attention: Public Adjuster Licensing
License Processing Unit
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 327
Trenton, NJ 08625-0325

(d) A public adjuster license, with an effective date of March 8, 1994, shall be issued to an applicant who was in the business as a public adjuster on March 7, 1994 and:

1. Files an application for a license no later than June 17, 1994; and

2. Complies with the requirements of this subchapter and otherwise qualifies for the issuance of a license.

(e) All licenses shall at all times be the property of the State of New Jersey and upon any suspension, revocation, nonrenewal, expiration or other termination shall no longer be in force and effect.

1. Upon any suspension, revocation or other termination of a license, the licensee or any other person having custody of the license shall immediately deliver it to the Commissioner by personal delivery or by registered or certified mail.

2. Where a license is lost, stolen or destroyed, the Commissioner may accept in lieu of the return of the license, an affidavit of the licensee or other person responsible for the license, setting forth the facts which prevent the return of the license.

3. Failure to pay any requested fee for any reason including, but not limited to, a check being dishonored, shall render a license null and void.

4. A license which was voluntarily cancelled by a licensee may be reinstated for the balance of the license term upon written request of the licensee and payment of the processing fee.

(f) Where a current licensee seeks to renew a license, the licensee shall, at least 15 days before the license expiration date, submit a properly completed renewal application together with a check or money order for the license fee in accordance with N.J.A.C. 11:1-37.18. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer, partner or member of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the Act and this subchapter.

1. Failure to submit the renewal application for receipt by the Department by the date of expiration of the license shall be deemed to establish that the license expired on the date shown on the license and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

2. Any licensee who does not desire renewal shall notify the Department by submitting the renewal application marked "Do Not Renew."

3. An application for renewal may be submitted within 12 months of the date of the expiration of the license.

i. Nothing in this section shall be construed to permit a person to engage in the business of public adjuster without a valid license.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

11:1-37.5 Denial of license

(a) Where it appears from an application, the attached documents or Department records that an applicant has not demonstrated the qualifications prescribed in the Act or this subchapter, the Department shall advise the applicant in writing that the license request is denied; shall specify the reasons for the denial; and shall advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and of the procedures for filing the request.

1. A request for a hearing shall be filed within 20 days of receipt of the letter denying the request for a license.

2. The request for a hearing shall be forwarded to:

Director of Licensing and Insurance Education
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

3. The request for a hearing shall include a statement of the legal and factual basis upon which the applicant disagrees with the denial of a license and all documentation in support thereof.

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, the Department's records and any additional information submitted and shall determine whether the license will be issued or the matter transmitted to the Office of Administrative Law as a contested case.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

11:1-37.6 Sublicensees

(a) Any applicant for a public adjuster license which is a corporation, partnership, firm or association shall have at least one officer, director, partner, or member licensed as a public adjuster.

(b) Only the officers or directors of a corporation or the members of a firm, association or partnership shall be sublicensees.

(c) A licensed public adjuster which is a corporation, firm or association may employ persons as public adjusters who are not sublicensees only where the persons are individually licensed public adjusters or temporary sublicensees and are bonded in accordance with this subchapter.

(d) Each sublicensee shall obtain and maintain an individual public adjuster license in accordance with N.J.A.C. 11:1-37.4.

i. The license document shall indicate that the individual is a sublicensee. The license shall authorize the sublicensee to transact business only for the public adjuster named in the license, that is, the licensee for whom the individual is a sublicensee.

(e) A licensed public adjuster shall file a notice with the Commissioner, which sets forth any change in its sublicensees within 20 days of the change.

1. The notice shall include the name and New Jersey reference number of the sublicensee and the reason for the change, for example, whether an individual was hired, terminated, retired or moved from the State.

i. Where an additional sublicensee is added, the notice shall be signed by an existing sublicensee and the new sublicensee.

ii. Where a sublicensee has been terminated because he or she has violated any of the provisions of this subchapter the reason for the termination shall be described in the notice.

2. The licensed public adjuster shall return a terminated sublicensee's license document together with the notice.

3. The licensed public adjuster shall include a new bond or endorsement whenever the change requires an increase in the principal amount of its bond.

11:1-37.7 Temporary sublicensee

(a) In the event of a catastrophic loss occurrence, a licensed public adjuster may apply to the Commissioner for the issuance of a temporary sublicense for an individual temporarily hired or retained to act as a public adjuster.

1. The licensed public adjuster shall sponsor the temporary sublicensee who shall be its agent and work under its direct supervision.

2. The sponsoring public adjuster shall bear the full responsibility for the actions of its temporary sublicensee undertaken in the course of acting as a public adjuster.

3. The sponsoring public adjuster shall ensure that the temporary sublicensee complies with the Act and this subchapter.

(b) Upon the submission of a properly executed application and the fee required in accordance with N.J.A.C. 11:1-37.18, the Commissioner may issue a temporary sublicense which may be valid for an initial period not to exceed 90 days from the date of the declaration of the catastrophic loss occurrence. In order to evaluate the adequacy and competency of the temporary sublicensee, the following information shall be filed with the Commissioner:

1. Proof of licensing in another state or proof of five years employment experience as a public adjuster in any state; and

2. Evidence that the individual is covered by a bond in accordance with N.J.A.C. 11:1-37.9.

(c) At the discretion of the Commissioner, a temporary sublicense may be renewed for one additional 90-day period upon the submission to the Commissioner of the fee required in accordance with N.J.A.C. 11:1-37.18. The Commissioner shall consider:

1. The nature, duration and/or continuation of the catastrophic loss occurrence;
2. The continued need for temporary sublicensees; and
3. The conduct of the particular temporary sublicensee.

(d) A temporary sublicense shall only be valid for the duration required by the specific catastrophic loss occurrence for which the temporary sublicensee has been issued or as determined by the Commissioner, but in no event for a period longer than that designated in the license.

11:1-37.8 Licensing examination

(a) Except as expressly provided by N.J.A.C. 11:1-37.4(a)2i and ii, all individual applicants, including sublicensee applicants, seeking a public adjuster license shall take and pass the State licensing examination, which may be administered by the Department or by a vendor under contract to the Department.

(b) Examinations shall be administered at such times and places as may be designated by the Commissioner. If a contract vendor is utilized it shall provide the Commissioner with at least 60 days prior notice of the dates and times of the scheduled examinations.

(c) As determined by the Commissioner, at least one examination administration center may be located in the geographical areas comprising North, South and Central New Jersey.

(d) Whenever a contract vendor is utilized it shall:

1. Establish at least one examination administration center within each geographical area designated by the Commissioner;
2. Provide sufficient examination center personnel for the administration of the examination;
3. Collect from applicants taking the examination a fee approved by the Commissioner which covers the costs of developing and administering the examination;
4. Score examinations promptly and provide scored reports to all candidates within 60 days after the test date; and
5. Provide to the Department:

i. Alphabetically arranged lists containing the candidates' names, addresses, identification numbers and scores of passing and failing candidates; and

ii. Summary statistics for each test, indicating the number of candidates registered, tested and absent, and passing or failing.

(e) The Department shall have the sole responsibility for establishing minimum qualification and passing requirements for candidates taking the licensing examination. The qualification and passing requirements shall be on file at the offices of the Department and shall be made available for public inspection.

(f) For good cause shown the Commissioner may, by order, require an applicant for licensure or a licensee to retake the State licensing examination. The order shall specify the factual circumstances upon which it is based. In the case of a licensee, a license shall remain effective pending the results of the new examination unless the license is otherwise subject to revocation or suspension.

1. A licensee or applicant for licensure may appeal the decision of the Commissioner within 10 days of receipt of the order, by filing with the Commissioner a written statement and supporting documentation, if any, disputing with specificity the allegations in the order.

2. Upon a review of the record, the Commissioner shall either rescind the order or require the licensee or applicant for licensure to retake the examination within a prescribed period of time.

i. If a licensee fails to retake the examination within the prescribed period of time, the Commissioner shall issue an Order to Show Cause why the license should not be revoked and shall advise the licensee of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. If an applicant for licensure fails to retake the examination within the prescribed period of time, the Commissioner shall refuse to issue the license for which application is made and shall advise the applicant for licensure of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-37.9 Bond; alternative security

(a) An applicant for a public adjuster's license, renewal license or temporary license shall file with the Commissioner a bond, executed by the applicant and by an A rated insurer approved to transact the business of sureties in New Jersey, in the penal sum of \$10,000 per licensee. The bond shall be filed with the License Processing Unit at the address set forth at N.J.A.C. 11:1-37.4(c). Where a license

names sublicensees, a \$10,000 bond shall be required for the licensee and for each sublicensee.

(b) The bond shall be made to the State of New Jersey for the use and benefit of any person injured by a willful, malicious or wrongful act by a public adjuster in connection with the transaction of its business.

(c) The bond shall be in the form set forth in Appendix A to this subchapter which is incorporated herein by reference.

(d) If a bond is cancelled or withdrawn, the licensee shall immediately return its license to the Commissioner. Upon the filing of a new bond and payment of the required fees in accordance with N.J.A.C. 11:1-37.18, the license shall be returned to the licensee. No person shall engage in the business of a public adjuster in New Jersey after its bond is cancelled or withdrawn, until the person is properly relicensed in accordance with this subchapter.

(e) Where an applicant has been unable to procure a bond after contacting at least three approved sureties, the applicant may deposit with the Commissioner, as alternative security, \$10,000 in the form of either:

1. Cash;
2. Certificates of deposit; or
3. Irrevocable letters of credit.

(f) Any security listed in (e) above shall be deposited in accordance with the provisions of N.J.A.C. 11:2-32.3 and the applicant shall:

1. File evidence of compliance with this provision in accordance with (a) above;
2. File an affidavit that he or she was unable to obtain a bond from at least three approved sureties (which shall be identified in the affidavit) in this State; and
3. Within one year from the effective date of the applicant's license, obtain a replacement bond which conforms to the requirements of this subchapter.

11:1-37.10 Administrative reporting requirements

(a) Licensed public adjusters shall file with the License Processing Unit of the Department:

1. Complete and accurate business and home addresses, and notice of any change thereto within 20 days;
2. Upon a form prescribed by the Commissioner, notice of the opening or closing of any office in this State within 20 days of the action;
3. Notice of a change of business name within 20 days; and
4. Notice of change in ownership of a company or of the officers, directors, partners or sublicensees within 20 days.

(b) An organization licensed as a public adjuster shall maintain copies of all licenses of its sublicensees in at least one office with an address on file with the Department.

11:1-37.11 Escrow or trust accounts

(a) Any public adjuster who receives, accepts or holds any moneys, on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit such moneys in an interest bearing escrow or trust account in a financial institution in this State which is insured by an agency of the Federal government.

(b) Any funds held in an escrow or trust account and interest accruing thereon shall be the property of the insured.

1. Such moneys shall be held pursuant to a written agreement signed by the insured and by the public adjuster which shall clearly specify:

- i. The services rendered or to be rendered; and
- ii. The amount of any services to be paid from the escrowed funds.

(c) In the event of the insolvency and/or bankruptcy of a public adjuster, the claim of an insured for any settlement moneys received, accepted or held by a public adjuster shall constitute a statutory trust as provided at N.J.S.A. 17:22B-13e.

11:1-37.12 Minimum recordkeeping requirements

(a) Each licensee shall maintain accurate files, books and records reflecting all insurance-related transactions in which the licensee or his or her employees take part in accordance with the standards set forth in this subchapter. These records shall be maintained by either separate books of record or by one or more consolidated books of record for a period of five years from the date of the closing of the claim.

1. All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination at any time.

2. Appropriate and required entries shall be made at least once every 30 days.

(b) Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including, but not limited to: fees, transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

1. The name and location of the financial institution in which the funds are deposited;

2. The account number of the trust or escrow account;
3. The date monies are received, deposited, disbursed or withdrawn;
4. The amount of money received, deposited, disbursed or withdrawn;
5. An itemized record of the allocation of the funds;
6. The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received;
7. The claim number;
8. The receipt number, when available; and
9. The method of payment, such as, cash, check, money order or draft.

(c) For each disbursement, the number of the check shall be recorded in the register.

(d) All entries for receipts and disbursements shall be supported by evidential matter as provided in (b) and (c) above. The evidential matter shall be referenced in the entry so that it may be traced for verification.

(e) Each licensee shall prepare and maintain a monthly reconciliation of the trust account.

(f) Each licensee shall maintain a file for each claimant with whom a contractual relationship has been established. The minimum items required to be maintained in the file include:

1. Correspondence received or sent with respect to any insurance or insurance related transaction;
2. All of the client's contracts; and
3. All claim files.

(g) The licensee shall also maintain the following records for a period of five years:

1. Escrow or trust account statements;
2. Names and addresses of all licensees and sublicensees;
3. Copies of all new and renewal applications submitted to the Department by an individual, the company, all sublicensees and temporary sublicensees;
4. All fees received, if not deposited in a trust or escrow account; and
5. All records of transactions with persons or entities owned by the licensee or by one or more of its officers or directors or an owner of 10 percent or more of the licensee that are construction firms, salvage firms or appraisal firms.

(h) Failure to keep, maintain or make available for inspection by the Commissioner, those records which the Commissioner shall require to be maintained in accordance with this subchapter, or any other violations by a licensee, shall result in the imposition of administrative fines comparable to the fines set forth at N.J.A.C. 11:17D-2.4.

11:1-37.13 Right to compensation

(a) No individual, firm, partnership, association or corporation licensed under this subchapter shall have any right to compensation from any insured for or on account of services rendered to an insured as a public adjuster unless the right to compensation is based upon a written contract or memorandum between the adjuster and the insured and specifying or clearly defining the services to be rendered and the amount or extent of the compensation.

(b) The written memorandum or contract between a licensed public adjuster and an insured:

1. Shall be executed in duplicate and a fully executed copy shall be provided to the insured upon execution;
2. Shall be kept on file by the public adjuster, available at all times for inspection without notice by the Commissioner; and
3. Shall contain the following:
 - i. The signatures of the insured and the public adjuster;
 - ii. A list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; and
 - iii. The time and date of execution of the contract (day, month, year) by each party;
4. Shall conform to the requirements of the Consumer Contracts Act at N.J.S.A. 56:12-1 et seq. and, as applicable, the Federal Trade Commission Act as set forth at 15 U.S.C. 41, and 16 C.F.R. subsection 429.1 (1993).
5. Shall prominently include a section which specifies:
 - i. The procedures to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice;
 - ii. The rights and obligations of the parties if the contract is cancelled at any time; and
 - iii. The costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part.

(c) No public adjuster shall enter into any contract or agreement, oral or written, with an insured, to negotiate or settle claims for loss or damage occurring in this State between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after the loss has occurred.

11:1-37.14 Violations and penalties

(a) The Commissioner may deny, suspend, revoke or refuse to renew a public adjuster's license based on any violation of the Act or this subchapter, or for the commission or omission of any act by a public adjuster which demonstrates that the applicant or licensee is not competent or trustworthy to act as a public adjuster, or where the person has:

1. Violated any provision of this State's insurance laws, including any rules promulgated thereunder;
2. Violated any law in the course of acting as a public adjuster;
3. Committed a fraudulent or dishonest act;
4. Demonstrated the licensee's lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as a public adjuster;
5. Aided, abetted or assisted another person in violating any insurance law of this or any other State;
6. Withheld material information or made a material misstatement in the application for the license;
7. Failed to pay any fine or restitution imposed by an order of the Commissioner;
8. Collected from any client any fee other than that agreed to in the employment contract in a form required by N.J.A.C. 11:1-37.13;
9. Misappropriated, converted or illegally withheld, money which was received in the conduct of business that belonged to insurers, clients or others;
10. Failed to notify the Commissioner within 30 days of a conviction for any crime, indictment or the filing of any formal criminal charges, or the suspension or revocation of any insurance license or authority by a state, other than this State, or failed to supply any documentation that the Commissioner may request in connection therewith;
11. Failed to appear in response to any subpoena issued by the Commissioner or his authorized designee; failed to produce any documents or other material requested in a subpoena; or refused or failed to cooperate with an investigation by the Commissioner of the activities of the person or any other licensee;
12. Induced the cancellation of a duly executed written memorandum between an insured and a public adjuster;
13. Made any misrepresentation of facts or advised any person on questions of law in conjunction with the business as a public adjuster;
14. Had any professional license suspended or revoked in this or any other state;
15. Engaged in the business of a public adjuster in New Jersey with an invalid or expired license; or

16. Committed any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State.

(b) Any person which violates any provision of this subchapter shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than \$2,500 for a first offense and not more than \$5,000 for the second and each subsequent offense. Each transaction or statutory violation shall constitute a separate offense.

(c) The procedures for the imposition of administrative penalties shall be governed by N.J.A.C. 11:17D-2.1.

Case Notes

Because a public adjuster was collaterally estopped from refuting the factual findings made in the civil fraud action against the adjuster, there was no question that certain violations alleged in the Order to Show Cause were committed. *Goldman v. Budge*, OAL Dkt. No. BKI 10260-2004S, 2007 N.J. AGEN LEXIS 515, Final Decision (June 28, 2007).

Where a public adjuster filed a deceptive and misleading property damage loss insurance claim, failed to notify the Commissioner within 30 days of having been indicted on a charge of theft by deception, and repeatedly failed to appear at scheduled OAL proceedings, the adjuster's license was revoked and the adjuster was ordered to pay a fine of \$8,500, including \$1,000 for failing to notify the Department of the indictment in violation of N.J.A.C. 11:1-37.14(a) and \$7,500 for violations of N.J.S.A. 17:22B-14. *Goldman v. Budge*, OAL Dkt. No. BKI 10260-2004S, 2007 N.J. AGEN LEXIS 515, Final Decision (June 28, 2007).

Rarely will mitigating factors override license revocation in cases involving direct personal conduct on the part of a licensee that constitutes fraud, and particularly insurance fraud; the insurance industry is strongly affected with the public interest, and a public adjuster who is engaged, on behalf of New Jersey insureds, to settle claims with insurance companies is required to abide by a strict code of conduct prescribed by the applicable law and rules for the protection of New Jersey citizens. *Goldman v. Budge*, OAL Dkt. No. BKI 10260-2004S, 2007 N.J. AGEN LEXIS 515, Final Decision (June 28, 2007).

Where an adjuster admitted to submitting a false receipt in violation of state insurance laws, the licensee's conduct constituted violations of N.J.S.A. 17:22B-14(a) and N.J.A.C. 11:1-37.14(a) and his public adjuster license was revoked. *Goldman v. Nicolo*, OAL Dkt. No. BKI 10722-04, 2006 N.J. AGEN LEXIS 943, Final Decision (October 12, 2006).

When confronted in a disciplinary action with a motion that seeks summary decision both on the issue of liability for the alleged violations and on the quantum of sanctions to be imposed, an opposing party is required to establish the existence of a genuine issue of material disputed fact and, if the opposing party fails to do so, summary decision may be entered without the need for a further hearing on the issue of penalties. *Goldman v. Nicolo*, OAL Dkt. No. BKI 10722-04, 2006 N.J. AGEN LEXIS 943, Final Decision (October 12, 2006).

11:1-37.15 Effect of suspension or revocation of public adjuster license

(a) Upon service of any final order suspending or revoking a public adjuster license, the public adjuster shall immediately return to the Commissioner for cancellation any license in the public adjuster's possession.

(b) No other licensed individual or organization shall advertise, display or conduct any business as a public adjuster

using the legal or business name of any person whose license has been suspended or revoked.

(c) No person whose public adjuster license has been suspended or revoked shall be entitled to any refund of license fees for the unexpired term of any license issued.

11:1-37.16 Reinstatement after suspension or revocation of a public adjuster license

(a) No individual, firm, association or corporation whose license has been revoked and no firm or association of which the individual is an officer or director, shall be entitled to any license or renewal license under this subchapter for a period of one year after the revocation.

(b) A person whose license has been suspended or revoked may, after one year from the effective date of any order

revoking a public adjuster license or upon completion of the period of suspension, apply for reinstatement of the license on the form of application used for initial public adjuster license applicants and shall fulfill all of the requirements set forth therein.

(c) The applicant shall submit with the application a copy of the order of suspension or revocation and an executed affidavit that states:

1. That the period of suspension or revocation has been completed or in the case of a revocation one year has elapsed from the date of the revocation;

2. That all required conditions for reinstatement as described in the order of suspension or revocation have been met;

3. That documents confirming that all conditions have been met, such as receipts for fines or restitution, satisfactions of judgment, etc., are attached to the affidavit;

4. That the applicant has complied with all restrictions imposed by the order of suspension or revocation.

5. The applicant shall also include with the application an affidavit containing the following information concerning the applicant's activities since suspension or revocation:

i. An employment history;

ii. A statement concerning the other business interests, if any, of the applicant;

iii. The manner of disposition of the applicant public adjuster's business upon suspension or revocation of his or her public adjuster license;

iv. Whether restitution has been made as a result of the activities that led to the suspension or revocation, including the names and addresses of the persons or entities to whom restitution was made and amounts of restitution made;

v. Whether the applicant currently holds any other business, professional or occupational licenses in this or any other state;

vi. Whether the applicant, or any business in which he or she owns five percent or more, is or has been a party to any legal or administrative proceedings in this or any other state and, if so, a statement concerning the nature of the proceedings, the parties and the result or current status; and

vii. A written statement by the applicant describing the manner in which he or she has improved, during the period of suspension or revocation, his or her reputation, character, trustworthiness, competency and worthiness to be a public adjuster.

(d) If any license held by a firm, association or corporation is suspended or revoked, no member or partner of the firm, association or partnership and no officer or director of the corporation shall be entitled to a license or to be named as a sublicensee in a license for the same period of time unless it is demonstrated to the Commissioner that the member or officer or director was not personally responsible in the matter for which the license was suspended or revoked.

(e) If the suspension or revocation was based upon the conviction of a crime or if the applicant was convicted of a crime since the suspension or revocation, the applicant shall submit with his or her application for licensing, a certificate in accordance with N.J.S.A. 2A:168A-3, of the Federal or state parole board or of the chief probation officer of a United States district court or a county who has supervised the applicant's probation, certifying that the applicant has achieved a degree of rehabilitation which indicates that the

granting of a license is not incompatible with the welfare of society.

(f) The Commissioner, or his or her designee, shall review the application to determine whether reinstatement is warranted, based on the information provided in (c) through (e) above, and that the applicant has proven that he or she is trustworthy and competent to act as a public adjuster in a manner so as to safeguard the interests of the people in this State. The review of the application may include further investigation or inquiry, may require the applicant to provide additional information, and may further include a conference with Department personnel.

(g) If the Department is satisfied that reinstatement is warranted, the Department shall issue the license. If the Department is not satisfied that reinstatement is warranted, the Department shall deny the license and the applicant shall be given notice and opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-37.17 Public records

(a) The following licensee records maintained by the Department shall be public records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. For an individual licensee, his or her name; license reference number; business mailing and location address; date of birth; license authorities; date first licensed; date last licensed or current license expiration date; names and reference numbers of licensed organizations for which the public adjuster is a sublicensee, date became a sublicensee and date terminated, if any; names and reference numbers of employers, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against the licensee by the Department.

2. For a licensed organization, the legal name of the public adjuster; license reference number; other business name, if any; business mailing and location address; license authorities; date first licensed; date last licensed or current expiration date; names and reference numbers of sublicensees, and reference numbers of employees, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against licensed organization by the Department.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

2. Criminal history records obtained as the result of any fingerprint check;

3. Copies of judgments, orders or pending actions of any civil penalty or fine or order of restitution, pursuant to any unfair trade practice statute, insurance fraud statute, consumer fraud or consumer protection statute, or any similar statute in this or any other state or by the Federal government submitted in connection with a license application;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no administrative action was instituted or taken; and

7. Records concerning the contents of the licensing examination questions.

(c) Upon request by any person, the Department may issue a certification of the license status of any currently licensed public adjuster licensed within the preceding four years. Such certification shall contain the licensee's name, date of birth, license reference number, whether currently licensed or expired, whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

11:1-37.18 Fees

(a) The following nonrefundable fees shall apply:

1. License fee: \$300.00.
2. Temporary sublicense fee: \$150.00.
3. Renewal temporary sublicense fee: \$150.00.
4. Processing fee: \$20.00.

5. Fingerprint processing fees: as currently established by State or Federal jurisdictions.

(b) The examination fee shall be the amount authorized by the Commissioner to be charged by the contract vendor administering the examination on behalf of the Department.

(c) Disabled war veterans of the United States military service may apply to the Commissioner for a waiver of the above licensing and processing fees by submitting proof of a service related disability. Fees for fingerprint processing shall not be waived.

(d) Amendments to the fee schedule set forth in (a) and (b) above may be promulgated subsequent to March 7, 1995.

(e) All checks or money orders shall be made to: State of New Jersey—General Treasury.

11:1-37.19 Requests for disclosure of social security numbers

(a) The Department may request that licensed public adjusters and license applicants submit their social security numbers to the Department. All such requests shall either include or be accompanied by a notice stating:

1. The purpose or purposes for which the Department intends to use the social security numbers;
2. That disclosure made pursuant to the request is either voluntary or mandatory; and
3. That the request is authorized by this section and by such other law as may be applicable.

New Rule, R.1997 d.187, effective May 5, 1997.
Sec: 29 N.J.R. 304(a), 29 N.J.R. 2178(a).

APPENDIX

BOND NO. _____ PUBLIC ADJUSTER BOND

We, _____ [licensee], of _____ [street address], city of _____, State of _____, as principal, and _____, a corporation incorporated under the laws of the State of New Jersey, and duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the State of New Jersey, obligee, in the penal sum of \$_____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

The principal has applied to the Commissioner of Insurance of the State of New Jersey for issuance of a license under the provisions of the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B-1 et seq.), as a public adjuster.

Pursuant to the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B-1 et seq.), every licensee shall file with the Commissioner of Insurance a surety bond in the penal sum of \$_____ applicable to the licensee, and each of the sublicensees named in the license, and any temporary sublicensee sponsored by the licensee, if any, said bond to be issued by an approved surety, conditioned on faithful and honest conduct as a public adjuster, before the license will be issued. The bond must be maintained during the term of the license.