

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.

Amended by R.2012 d.136, effective July 16, 2012.

See: 44 N.J.R. 32(a), 44 N.J.R. 1979(a).

In (a)1, inserted "including e-mail addresses".

### 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(b) Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including, but not limited to: fees, transfers and disbursements from a trust account; and all transactions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 solicit the adjustment of a loss or damage occurring in this State from an insured, whether by personal interview, by telephone, or by any other method, between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after the loss has occurred.

(d) 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.

Amended by R.2012 d.136, effective July 16, 2012.

See: 44 N.J.R. 32(a), 44 N.J.R. 1979(a).

Added new (c); and recodified former (c) as (d).

Petition for Rulemaking.

See: 46 N.J.R. 1654(c).

### 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 applicant's or 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