

PUBLIC NOTICE

BANKING AND INSURANCE

DIVISION OF INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

Notice of Action on Petition for Rulemaking

Licensing of Public Adjusters

N.J.A.C. 11:1-37

Petitioner: Michael Kramer.

Take notice that on May 19, 2014, the Department of Banking and Insurance (Department) received a petition for rulemaking from the above petitioner (dated May 15, 2014) requesting that the Department amend its rules regarding the licensure of public adjusters. Specifically, the petitioner requested the Department amend N.J.A.C. 11:1-37.13, which sets forth the requirements that must be contained in any written memorandum or contract between a licensed public adjuster and an insured. The petitioner requested that this rule be amended to require that such memorandum or contract inform insureds that:

1. The insured should consider signing a contract with a public adjuster only after the insured has given the insured's insurance company time to propose an initial settlement, which could be weeks or months;
2. The public adjuster typically has no ability to force the insurance company to move the process any faster and that signing before an initial settlement is received means the insured "just gave away 10% to 25% of their settlement to a Public Adjuster for nothing";

3. The insured has one year to dispute the insurer's initial settlement and at that point in time they can consider signing with a public adjuster or argue on their own behalf with their insurer; and

4. The public adjuster will provide time sheets and a detailed record of communication with the insurer pursuant to N.J.A.C. 11:1-37.13 and Bulletin No. 12-26, and, pursuant to N.J.A.C. 11:1-37.13(b)5ii, statements as to "rights and obligations of the parties once the contract is cancelled at any time."

The petitioner requested these amendments because, according to the petition, he was "scammed" by an out-of-State public adjuster after signing a contract for services related to his insurance claim that "provided no consumer protection." The petitioner successfully defended a lawsuit brought by the public adjuster seeking payment under the contract. In support of the petition, the petitioner asserted that it would be too costly for each New Jersey citizen to defend themselves against such "scammers" in a post-disaster situation.

In accordance with N.J.A.C. 11:1-15.3(b), the Department mailed to the petitioner, and filed with the Office of Administrative Law, a notice of action on the petitioner's request. Notice of the Department's receipt of the petition was published in the July 7, 2014, issue of the New Jersey Register at 46 N.J.R. 1654(c).

The Department published notice of action on the petition in the August 18, 2014, issue of the New Jersey Register at 46 N.J.R. 1826(b) indicating that the Department was still reviewing the merits of the petitioner's suggested amendments.

Take further notice that the Department has conducted a review of the petitioner's suggested amendments pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2. Based upon its review, the Department has determined to deny the petition. While the Department agrees that

that additional information to those who contract with public adjusters may be appropriate, and will consider such amendments for the future, the specific amendments suggested by petitioner would be inappropriate because they could dissuade an individual from using public adjusters, where such professional assistance may be desired by and helpful to an insured. Specifically, advising an insured not to enter into a contract with a public adjuster until a settlement offer is made by the insurer could delay claim settlements and restoration of the property. Insureds may wish to contract with a public adjuster to handle these negotiations. Further, while a public adjuster cannot “force” the insurer to settle the claim in a more timely manner than the insured negotiating with an insurer on his or her own, the suggested amendment fails to recognize that by employing a licensed professional that professional may be able to anticipate the insurer’s requirements and may be in a position to provide requested documentation in a more expeditious manner than the insured alone. Depending upon the nature of the claim, this professional assistance may result in more expeditious settlement offers by an insurer. A copy of this public notice has been mailed to the petitioner.