

# Hazard Insurance Recovery: A Regulatory Overview

State-level requirements that public insurance adjusters be licensed aren't new, but enforcement of such statutes is.

by **Ronald R. Reitz**

**A**lthough there are several regulatory aspects of the hazard insurance industry of which servicers should be considerate, the biggest change is that regulators in various states are starting to enforce their public adjusting licensing statutes.

Public insurance adjusting - the actions involved in recovering hazard insurance proceeds on behalf of the insured - is regulated at the state level only. This creates a patchwork of different approaches, requirements and exemptions.

As of January, 44 states and the District of Columbia have licensing statutes regulating public insurance adjusters. Two states, Alaska and Arkansas, consider public adjusting an "unauthorized practice of law." It is questionable in Alabama whether public adjusting is permitted. The remaining three states - Virginia, Wisconsin and South Dakota - do not yet have any licensing provisions and, by default, permit public adjusting.

## A primer on adjusters

There are three types of insurance adjusters: company adjusters, independent adjusters and public adjusters. Company adjusters work directly for an insurance company and essentially perform desk-adjusting duties. Company adjusters are only licensed to represent the insurer, and they typically rely on an independent adjuster to perform certain field work, including a claim investigation, the valuation of damages, the

assessment of the loss site, background, etc.

The independent adjuster is also only licensed to represent the insurer. The public insurance adjuster, meanwhile, is the only adjuster licensed to work on behalf of an insured. A public insurance adjuster cannot work for an insurance company due to an obvious conflict of interest.

## Servicing tie-in

Because the mortgagee (typically, the mortgage company or loan servicer) is an insured under the borrower's hazard policy, the mortgagee needs to hire a public insurance adjuster if it desires representation for its insurable interest. Likewise, the mortgagee is the named insured on force-placed, real estate owned and blanket insurance policies.

In 2005, the National Association of Insurance Commissioners (NAIC) concluded several years of work on a Public Adjuster Licensing Model Act. While many states already had their own licensing statutes, other states did not, and those states have adopted the final NAIC Model Licensing Bill as their own.

The NAIC Model Act defines a public adjuster as any person who, for compensation or any other thing of value, on behalf of the insured does any of the following:

- acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on

behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

- advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or



- directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.

In some states, there are exemptions for attorneys. The NAIC addressed this by noting that, notwithstanding subsection A through C of the model act, a

license as a public adjuster shall not be required of an attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney.

In other words, a lawyer licensed and practicing law in the state where the loss occurred would be exempt in certain states.

Some of the states that have not adopted the NAIC model impose different regulations specific only to their state. Examples of such regulations include requiring that very specific language be included in the public adjuster's contract; prohibiting contingency fee structures; prohibiting fee sharing and referral fees; forbidding the conflict of interest whereby the adjuster performs repair work on the damaged property that is the subject of the claim; a requirement to furnish the insured with a disclosure statement; bond requirements that may apply to the individual, the company or both; as well as mandatory fee limitations and the circumstances under which they apply.

What are the penalties for adjusting without proper licensing? Penalties can range from a consent order requiring a

company to become licensed by a certain deadline to a cease-and-desist order accompanied by the levy of a fine that may be as drastic as \$10,000 for every claim filed in that state by the unlicensed entity. The latter penalty can certainly pose a risk to the insured.

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## Some states exempt attorneys from adjuster license requirements.



on state regulation with respect to foreclosures, default servicing, condemned properties and even the registration of vacant properties, there is little doubt that proper licensing of public insurance adjusters will be on regulators' radar. Mortgage servicers should be encouraged to speak with their compliance managers about this topic. In order for servicers to be certain their hazard recovery partners are compliant, they

should expect their outsource companies to fully understand each state's different licensing statutes and maintain a compliance department to track the ever-changing regulations.

As stated above, requirements for a public insurance adjuster to be licensed vary by state, which is certainly not a new concept. What has changed in recent years, however, is the enforcement of those licensing statutes. So far, there have only been a few states, including Ohio and Texas in 2008, that have publicly initiated enforcement activities. It is anticipated, though, that other states will follow their lead, because states' departments of insurance commonly share their best practices and current issues. **SM**



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