Texas Department of Insurance
Commissioner of Insurance, Mail Code 113-1C
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August 8, 2008

COMMISSIONER'S BULLETIN NO. B-0051-08

TO: ALL INSURANCE COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALS, ASSOCIATIONS, LLOYDS, OR OTHER INSURERS WRITING PROPERTY AND CASUALTY INSURANCE IN THE STATE OF TEXAS AND TO AGENTS AND REPRESENTATIVES, ADJUSTERS, AND PUBLIC INSURANCE ADJUSTERS, AND THE PUBLIC GENERALLY

RE: Public Insurance Adjusters

When property is damaged, whether it is real or personal, residential or commercial, owned by an individual, business entity or governmental entity, a public insurance adjuster can act on behalf of the insured in negotiating settlement of a claim under an insurance policy covering the damaged property.

The Texas Department of Insurance (TDI/Department) reminds all persons, including building and repair contractors, that Texas Insurance Code Chapter 4102 requires all persons acting as public insurance adjusters to be licensed by the Department. The Texas Insurance Code provides for both civil and criminal penalties for violating this licensing requirement.

Texas Insurance Code §4102.001(3) defines a public insurance adjuster as:

(A) a person who, for direct, indirect, or any other compensation:

1. acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

2. on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

Pursuant to 28 TEX. ADMIN. CODE §19.713 (b)(1), public insurance adjusters must conduct business with their clients, insurance companies, and the public, in a spirit of fairness and justice. Additionally, under §19.713(b)(1), public insurance adjusters may not employ improper solicitation or use misrepresentation to solicit a contract to adjust a claim. Furthermore, as provided in Texas Insurance Code §4102.152, public insurance adjusters may only solicit business between 9 a.m. and 9 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a Sunday.

Public insurance adjusters must enter into written contracts with the insured or the insured's duly authorized representative. The contracts must comply with Texas Insurance Code §4102.103 and 28 TEX. ADMIN. CODE §19.708. Failure to comply with these provisions gives an insured the option to void the contract without being liable for payment of past and/or future services.

As provided in Texas Insurance Code §4102.104, contracts with public insurance adjusters may provide for compensation for services on an hourly basis, a flat rate or a percentage of the total amount paid by the insurer to resolve a claim. The total amount received may not exceed 10 percent of the amount of the insurance settlement. Under §4102.104(b) if the insurer pays or commits in writing to pay the insured the policy limits within 72 hours of the loss being reported to the insurer, the public insurance adjuster is not entitled to compensation based on a percentage of the insurance settlement. However, the public insurance adjuster can still receive reasonable compensation for time and expenses provided to the insured before the claim was paid or the written commitment to pay was received.

Texas Insurance Code §4102.158 prohibits public insurance adjusters from participating directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder. Additionally, public insurance adjusters may not engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, or having a financial interest in, any salvage firm, repair firm, or other firm that obtains business in connection with any claim the licensee has a contract or agreement to adjust.

Contractors are not listed among the persons exempt from the licensing requirement in Texas Insurance Code §4102.002.

Texas Insurance Code Chapter 4102 does not prohibit contractors from providing estimates or discussing those estimates and other technical information with an insurer or its adjuster. However, contractors may not act on behalf of an insured in negotiating or effecting settlement of claims for loss or damage under any policy of insurance.

You can check the status of a public insurance adjuster's license on the Department's website at: http://www.tdi.state.tx.us/licensing/agent/index.html.

Additional information regarding public insurance adjusters, including the fees public insurance adjusters are allowed to charge for services, is available on the Department's website.

Questions regarding this bulletin may be directed to the Department's Enforcement Division at (512) 305-7625 or the Fraud Unit at (512) 463-6492.

Mike Geeslin
Commissioner of Insurance