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SENATE BILL NO. 1415

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 38.2-1845.1, 38.2-1845.12, 38.2-1845.13, and 38.2-1846.16 of the Code of Virginia, relating to the regulation of public adjusters.

Patron—Mason

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1845.1, 38.2-1845.12, 38.2-1845.13, and 38.2-1846.16 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1845.1. Definitions.

As used in this article:

"Catastrophic disaster" means an event where the President of the United States or the Governor of the Commonwealth has declared a state of emergency.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which a public adjuster maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident public adjuster.

"License" means a document issued by the Commission authorizing an individual or business entity to act as a public adjuster. The license itself does not create any authority, actual, apparent, or inherent, in the licensee to represent, commit, or bind an insurer.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of public adjusting concerning any of the substantive benefits, terms, or conditions of the contract.

"Proof of compliance" means all documents, forms, and fees specified by the Commission for filing proof of completion of Commission-approved continuing education courses for the appropriate number of hours and for the appropriate content.

"Public adjuster" means an individual or business entity who receives, either directly or indirectly, a salary, fee, commission, or other compensation for engaging in public adjusting.

"Public adjusting" means *soliciting,* investigating, negotiating, adjusting, or providing advice to an insured in relation to first party claims arising under insurance contracts that insure the real or personal property of an insured for the purpose of effecting the settlement of a claim on behalf of the insured. Public adjusting includes advertising or representing oneself as a public adjuster; however, public adjusting does not include acting in any manner in relation to liability claims for personal injury or property damage, other third-party claims, or uninsured or underinsured bodily injury liability claims. A licensed insurance agent who only provides advice to an insured in relation to first party claims arising under insurance contracts sold, solicited, or negotiated by the agent that insure the real or personal property of an insured shall not be deemed to be engaged in public adjusting.

"Received by the Commission" means delivered into the possession of the Commission or its administrator at the business address of the Commission's administrator.

"Soliciting" means attempting to persuade or asking or urging an insured to enter into a public adjusting contract by describing the terms of the contract, including any fees or commissions, and offering to negotiate a claim of loss on behalf of the insured.

§ 38.2-1845.12. Standards of conduct for public adjusters.

A. A public adjuster shall be fair and honest in any and all respects in any communications with an insured and with an insurer or its representatives.

B. No person *except a public adjuster duly licensed under this article* shall ~~accept~~*:*

1. Accept a commission, fee, or other compensation for investigating or settling claims ~~if that person is required to be licensed under this article and is not licensed~~*;*

2. Prepare, complete, or file an insurance claim on behalf of an insured;

3. Aid or act on behalf of an insured in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

4. Advertise for employment as a public adjuster; or

5. Solicit, investigate, or adjust a claim on behalf of a public adjuster or an insured.

C. A public adjuster shall have no financial interest in any aspect of an insured's claim other than the salary, fee, commission, or compensation that may be established in the written contract between the

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insured and the public adjuster.

D. A public adjuster shall not refer or direct an insured needing repairs or other services in connection with a loss to any person in which the public adjuster has an ownership interest nor to any person who will or is reasonably anticipated to provide the public adjuster with any direct or indirect compensation for the referral of any resulting business; however, this subsection shall not be construed to prohibit the execution of a bona fide written repair agreement between an insured and a contractor pursuant to which the contractor undertakes to assume the insured's obligation to compensate a public adjuster pursuant to the terms of a preexisting agreement between the public adjuster and the insured meeting the requirements of this article, including §§ 38.2-1845.13 and 38.2-1845.14.

E. A public adjuster shall not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person regarding the settlement of the insured's claim.

F. The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified.

G. Any choice of counsel to represent the insured shall be made solely by the insured.

H. A public adjuster may not settle a claim unless the terms and conditions of the settlement are approved by the insured in writing.

I. A public adjuster shall not acquire any interest in salvage property except with the express written permission of the insured after settlement with the insurer.

J. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this article.

K. No public adjuster may represent or act as a company adjuster or independent adjuster on the same claim.

L. No public adjuster shall enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

M. A public adjuster shall not solicit or attempt to solicit a client during the progress of a loss producing occurrence as covered by the insurance contract.

N. Public adjusters may not solicit a client for employment from 8:00 p.m. to 8:00 a.m. daily.

O. A public adjuster shall notify, in writing, the insured or claimant in advance of the name and location of any proposed contractor, architect, engineer, or similar professional before any bid or proposal by any of these persons may be used by the public adjuster in estimating the loss. The insured or claimant may exercise veto power of any of these persons, in which case that person shall not be used in estimating costs.

P. A public adjuster shall ensure that any professional used in formulating estimates, the practice of whose profession in the Commonwealth requires a license issued pursuant to Title 54.1, including any architect or engineer as defined in § 54.1-400 and any contractor as defined in § 54.1-1100, holds a current license from the appropriate licensing authority of the Commonwealth.

Q. No person shall advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of the services of a public adjuster. As used in this subsection, the term "promise to pay or rebate" includes (i) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured's premises or (ii) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

§ 38.2-1845.13. Contract between public adjuster and insured.

A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

1. Legible full name of the public adjuster signing the contract, as specified in the records of the Commission;

2. Public adjuster's permanent home state business address and phone number;

3. Public adjuster's license number, as specified in the records of the Commission;

4. Title "Public Adjuster Contract";

5. The insured's full name and street address and the insurance company's name and policy number;

6. A description of the loss and a description of the location of the loss, if applicable;

7. A description of services to be provided to the insured by the public adjuster and all terms and conditions of the engagement;

8. Signatures of the public adjuster and the insured;

9. The date the contract was signed by the public adjuster and the date the contract was signed by the insured;

10. Attestation language stating that the public adjuster is fully bonded pursuant to state law;

11. The full salary, fee, commission, compensation, or other consideration the public adjuster is to

receive for services, subject to the provisions of § 38.2-1845.14; and

12. The right to rescind the contract within three business days after the contract has been signed by the insured or, in the event of a catastrophic disaster, the right to rescind the contract within five business days after the contract has been signed by the insured. Such rescission shall be in writing and mailed or delivered to the public adjuster at the address shown in the contract. Within 15 business days following receipt of the notice to rescind, the public adjuster shall return to the insured anything of value given by the insured under the contract.

B. The public adjuster shall provide a separate disclosure document to the insured stating (i) the insured is not required to hire a public adjuster but has the right to do so; (ii) the public adjuster is not an employee or representative of the insurer; (iii) the salary, fee, commission, or other consideration is the obligation of the insured, not the insurer; (iv) property insurance policies obligate the insured to present a claim to the insurer for consideration; (v) the insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim; and (vi) the insured may contact the Commission for the licensing status of the public adjuster.

C. A public adjuster shall provide the insurer with a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

D. No public adjuster shall enter into a contract that prevents an insured from pursuing any civil remedy after the revocation or cancellation period set forth in subdivision A 12.

E. Any contract for public adjusting services that is entered into by an insured with a person who is in violation of § 38.2-1845.2 may be voided at the option of the insured.

§ 38.2-1845.16. Escrow or trust accounts.

All funds received by, accepted by, or held by a public adjuster on behalf of an insured ~~towards~~ *toward* the settlement of a claim shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate *noninterest-bearing* fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth no later than the close of the second business day from the receipt or acceptance of such funds. *Such funds shall be held separately from any personal or nonbusiness funds, shall not be commingled or combined with other funds, and shall be reasonably ascertainable from the books of accounts and records of the public adjuster. The public adjuster shall maintain an accurate record and itemization of the funds deposited into this account.* Any such funds held by such public adjuster shall be disbursed within 30 calendar days of any invoice received by such public adjuster upon approval of the insured or claimant that the work has been satisfactorily completed.

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