Notice of Rulemaking Hearing
Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 17th day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Dakasha Winton, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-91
Public Adjusters

New Rules

Table of Contents

0780-1-91-.01 Purpose
0780-1-91-.02 Scope
0780-1-91-.03 Authority
0780-1-91-.04 Definitions
0780-1-91-.05 Initial License Requirements
0780-1-91-.06 Examinations
0780-1-91-.07 Renewal Requirements
0780-1-91-.08 Procedures for Public Complaints

0780-1-91-.01 Purpose.

The purpose of this Chapter is to provide rules to assist the commissioner in administering the laws relating to the licensure and regulation of public adjusters, as provided for in T.C.A. §§ 56-6-901, *et seq*.

Authority: T.C.A. § 56-6-920.

0780-1-91-.02 Scope.

This Chapter applies to all persons acting as public adjuster in this state. This Chapter does not apply to:

(1) An attorney at law admitted to practice in this state or an employee of such attorney acting under such attorney's supervision;

(2) A person who negotiates or settles claims arising under a life or health insurance policy or annuity contract;

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including without limitation photographers, contractors, appraisers of value, private investigators, engineers and handwriting experts;

(4) A licensed health care provider, employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient;

(5) A person who settles subrogation claims between insurers; or

(6) A person who is employed by, or under contract to, an insurance company acting under such company's employment or contract.

Authority: T.C.A. §§ 56-6-903 and 56-6-920.

0780-1-91-.03 Authority.

This Chapter is issued pursuant to the authority vested in the commissioner pursuant to T.C.A. § 56-6-920.

Authority: T.C.A. § 56-9-920.

0780-1-91-.04 Definitions.

(1) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance;

(2) "Department" means the Tennessee Department of Commerce and Insurance;

(3) "NAIC" means the National Association of Insurance Commissioners; and

(4) "Public adjuster" means any person, other than someone who is employed by an insurance carrier, who, for compensation or any other thing of value, on behalf of the insured:

(a) 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 investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and effectuating the resolution of a claim for loss or damage covered by an insurance contract;

(b) Advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public to be 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

(c) 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.

Authority: T.C.A. §§ 56-6-902 and 920.

0780-1-91-.05 Initial License Requirements.

(1) A public adjuster shall apply for and receive from the commissioner a public adjuster license to operate as a public adjuster in this State. All applications for licensure shall contain the following:

(a) A completed application form adopted by the commissioner manually signed by the applicant or an officer or director of the business entity;

(b) Unless exempt pursuant to T.C.A. § 56-6-907, proof of the completion and passing of an examination required by Rule 0780-1-91-.06; and

(c) A non-refundable filing fee of one hundred dollars ($100.00).

(2) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Ninth Floor, Nashville, Tennessee 37243, Attention: Agent Licensing Section.

(3) Applicants should allow thirty (30) days for the Department's review and granting of the application upon receipt of all required information.

Authority: T.C.A. § 56-6-920.

0780-1-91-.06 Examination Requirements.

(1) All individuals applying for a public adjuster license, unless otherwise exempted by law, are required to pass a written examination in order to test the applicant's knowledge as to the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state.

(2) Each examination for a license shall be approved for use by the commissioner. Examinations for licensing shall be at such reasonable times and places accessible to the applicants as are designated by the commissioner.

(3) An individual taking an examination pursuant to this Rule shall pay a non-refundable fee of fifty dollars ($50.00) in order to take such examination. An individual who takes an examination more than once shall pay the examination fee for each subsequent taking of the examination, regardless of the reason for the subsequent examinations.

(4) The minimum score that will be considered as a passing score for any examination given hereunder is seventy percent (70%). Any score on an exam below seventy percent (70%) shall be considered a failing score.

(a) An individual who has failed to pass an examination for a license applied for may take another examination following the expiration of thirty (30) days from the date of the applicant's last unsuccessful examination upon submission of the examination fee.

(b) An individual who has received a failing score on three (3) successive attempts of taking an examination for a license applied for will not be permitted to take a subsequent examination until the expiration of one (1) year from the date of the taking of the individual's last unsuccessful examination. After the one (1) year period, the individual may retake the examination. The individual shall also be required to file a new application accompanied by the appropriate filing and examination fees.

(5) The commissioner may enter into a contract with a testing organization for the examination of applicants for license as a public adjuster. Notwithstanding any other provisions of this Chapter, such contract may provide that the testing organization shall:

(a) Assume responsibility for the administration and grading of the examination; and

(b) Charge and collect from each applicant a reasonable non-refundable examination fee in an amount subject to the approval of the commissioner.

(6) No individual taking an examination for a public adjuster license shall possess or examine the examination questions and/or answers prior to the time of examination, nor shall any such individual use improper notes or other reference materials during the examination. Furthermore, no person shall have such questions or answers reproduced and/or disseminated for the purposes of assisting an applicant in passing an examination.

(7) All individuals desiring to take a test under this Rule shall submit fingerprints to the commissioner with a fee representing the cost of having criminal history record checks performed.

Authority: T.C.A. §§ 56-6-906 and 56-6-920.

0780-1-91-.07 Renewal Requirements.

(1) A public adjuster shall renew its license every other year prior to the anniversary date of the initial granting of the license in order to continue to operate in this State. All applications for renewal shall contain the following:

(a) A completed renewal form adopted by the commissioner signed by the applicant or an officer or director of the business entity in a manner acceptable to the commissioner;

(b) Proof of either:

1. Completion of no less than twenty-four (24) hours of continuing education courses approved by the commissioner; or

2. Completion of the applicant's resident state's continuing education requirements; and

(c) A non-refundable renewal fee of one hundred dollars ($100.00).

(2) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Ninth Floor, Nashville, Tennessee 37243, Attention: Agent Licensing Section.

(3) In order to ensure the prompt review and granting of a renewal application, applicants should file all information required under Paragraph (1) of this Rule within thirty (30) days of the anniversary date of granting of the initial license.

Authority: T.C.A. § 56-6-920.

0780-1-91-.08 Procedures for Public Complaints.

(1) Complaints concerning public adjusters shall be handled by the Consumer Insurance Services Section (or successor organizational unit) of the Department's Insurance Division.

(2) The Consumer Insurance Services Section (or successor organizational unit) shall record and review all complaints received under this Rule, and the process for such review and disposition shall be the same as that for all other complaints submitted to the Consumer Insurance Services Section.

(3) Upon receiving notice of a complaint from the Consumer Insurance Services Section, a public adjuster shall send a written response to the Consumer Insurance Services Section within thirty (30) days thereafter.

Authority: T.C.A. § 56-6-920.

Legal Contact and/ or party who will approve final copy for publication:
Dakasha Winton, Staff Attorney
Office of Legal Counsel
Department of Commerce and Insurance
Davy Crockett Tower, Twelfth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243
615-741-2199

Contact for disk acquisition:
Dakasha Winton, Staff Attorney
Office of Legal Counsel
Department of Commerce and Insurance
Davy Crockett Tower, Twelfth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243
615-741-2199

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.

Tracey Gentry Harney
Chief Counsel for Insurance Division

Subscribed and sworn to before me this the 30th day of November 2006.

W. C. Henderson
Notary Public

W. C. HENDERSON STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY

My commission expires on the 8th day of September 2009.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of Nov, 2006.

Riley C. Darnell
Secretary of State

By: _____