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BULLETIN No. 22-07

DATE: June 14, 2022
TO: All Public Adjusters and Insurers
RE: 10-409.1 Prohibited Inducements

The purpose of this bulletin is to remind public adjusters of those provisions of subtitle 4, Title 10 of the Insurance Article that regulate: (a) compensation agreements between public adjusters and the insureds who they represent, including the disclosure of compensation received by a public adjuster from contractors and other vendors performing services for which the consumer is seeking coverage under an insurance policy; and (b) the handling of settlement funds received on behalf of an insured. This bulletin is prompted by recent complaints received by the Maryland Insurance Administration (the “Administration”) that have resulted in administrative investigations and, in some cases, enforcement actions.

1. Pertinent Statutory Provisions

Md. Ann. Code, Ins. Art. § 10-409.1(a) (2017 Repl. Vol.)¹, states:

(a) Except as otherwise expressly provided by law, a person may not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, any valuable consideration to an insured as an inducement to use the services of a public adjuster.

Section 10-411 states, in pertinent part:

(a) A contract for public adjuster services shall:
(1) be in writing;
(2) be titled “Public Adjuster Contract”; and
(3) contain the following:

* * *

¹ Unless otherwise indicated, all citations in the Bulletin are to the Insurance Article of the Annotated Code of Maryland.

(x) the full salary, fee, commission, compensation, or other consideration the public adjuster is to receive for services.

(d) (1) A public adjuster shall provide to the insured a written disclosure signed by the public adjuster and the insured concerning any direct or indirect financial interest that the public adjuster or any immediate family member of the public adjuster has with any other party that is involved in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured.

(2) The disclosure shall include any ownership of, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged.

Section 10-412 states:

A public adjuster who receives, accepts, or holds any funds on behalf of an insured toward the settlement of a claim for loss or damage shall deposit the funds in a noninterest-bearing escrow or trust account in a financial institution that is federally insured in the public adjuster's home state or where the loss occurred.

Section 10-414 states:

- (a) A public adjuster is obligated to:
- (1) serve with objectivity and complete loyalty the interest of the client alone;
 - (2) render to the insured the information, counsel, and service that will best serve the insured's insurance claim needs and interests, within the knowledge, understanding, and opinion in good faith of the public adjuster; and
 - (3) disburse insurance settlement payments received on behalf of the insured within 15 business days after the date of the payment from an insurer.

* * *

(c) Unless full written disclosure has been made to the insured in accordance with § 10-411 of this subtitle, a public adjuster may not have a direct or indirect financial interest in any aspect of a claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured.

2. *Potential Violations and Enforcement Issues*

a. *Fee Waivers and Third-Party Compensation*

The Administration is aware of contracts entered into by public adjusters with an insured that purport to waive the public adjusting fee otherwise due under the contract, if the insured uses one or more specifically identified contractors or other vendors recommended by the public adjuster. The Administration is also aware that in some instances where the purported waiver applies, the public adjuster actually receives compensation from the contractor or vendor whose selection by the insured triggered the fee waiver. It is the position of the Administration that in such instances the fee is not actually waived, but rather is paid by the contractor. While receipt of compensation by a public adjuster from a contractor, salvage firm or other vendor is not prohibited, it must be disclosed in writing to the insured and it must be included in the itemized statement of all compensation received by a public adjuster in connection with a loss that is mandated by § 10-413(a)(2)(vi). Failure to fully inform the insured that the public adjuster is being compensated by a recommended contractor or other third-party and to characterize the fee as “waived” may violate, *inter alia*, §§ 10-411 and 10-415(a)(5). Further, such arrangements with a contractor could, even with disclosure, constitute a conflict of interest or a violation of the duties of loyalty set forth in § 10-414(a).

The Administration is also aware of arrangements between construction companies and public adjusters in which the construction company steers an insured to a particular public adjuster who agrees to represent the insured without compensation by the insured and to accept a fee from the contractor. Such arrangements may violate § 10-409.1(a), by offering an inducement to the insured to engage a public adjuster. Further, absent full disclosure of the payment to the public adjuster, such arrangements may violate *inter alia*, §§ 10-411 and 10-415.

b. Escrow of Settlement Funds

The Administration has identified instances where a public adjuster has forwarded the insured’s settlement funds directly to the contractor as opposed to depositing the funds in a noninterest-bearing escrow or trust account in a federally insured financial institution. Evidence of this conduct may be violations of § 10-412 of the Insurance Article.

The information contained in this bulletin does not replace or change any of the information contained in Bulletin #20-23 that was issued on 5/14/2020.

Any questions concerning this bulletin, should be directed to Jeff Gross, Chief Enforcement Officer at jeff.gross@maryland.gov or 410-468-2256.

KATHLEEN A. BIRRANE
INSURANCE COMMISSIONER

Joseph Smith _____

By: Joseph Smith
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