MISSISSIPPI DEPARTMENT OF INSURANCE
REGULATION 2007-4

LICENSURE AND REGULATION OF PUBLIC ADJUSTERS

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Section 1. Purpose

The purpose of this Regulation is to set forth the rules and regulations for the licensure and regulation of public adjusters in the State of Mississippi.

Section 2. Authority

This Regulation is promulgated by the Commissioner of Insurance as required pursuant to the provisions of the Licensure and Regulation of Public Adjusters Act ("Act") House Bill 1524, 2007 Regular Session, as approved by the Governor of Mississippi, as well as the provisions of Mississippi Department of Insurance Regulation No. 88-101, said regulation being the Rules of Practice and Procedure before the Mississippi Insurance Department.

Section 3. Scope

This Regulation shall apply to individuals who act as a public adjuster in the State of Mississippi as defined in said Act and Section 4(E) of this Regulation.

Section 4. Definitions

As used in this Regulation, the following terms shall be defined as follows:

A. Commissioner - Commissioner of Insurance.

B. Department - Mississippi Insurance Department.

C. Insured - person or business entity who is the policyholder under a real or personal property insurance claim.

D. Insurer - any insurance company or self-insured person or entity, including surplus lines companies.

E. Public Adjuster - any person who, for compensation or any other thing of value on behalf of the insured and subject to the prohibition provided in Section 73-3-55:

1. 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;

2. 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,

3. Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of polices 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.

A public adjuster shall not include an attorney at law.

Section 5. Licensing Requirements

The Department shall issue licenses to public adjusters and emergency public adjusters in the State of Mississippi. The licensing procedure and requirements are as follows:

A. Individual Public Adjuster License - To apply for this license, an applicant must provide the following information and meet the following conditions.

1. Licensing Requirements:

a. Applicant is at least twenty-one (21) years of age;

b Applicant is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as a public adjuster in such other state;

c. Applicant is a trustworthy person;

d. Applicant has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of a public adjuster, as will be discussed further in this Regulation;

e. Applicant has successfully passed an examination as required by the Commissioner or has been exempted according to the provisions of the Act and this Regulation;

f. Applicant submits documentation that he has either a bond or an errors or omissions policy in force in the amount of Fifty Thousand Dollars ($50,000) to cover any loss or claims practice of the public adjuster, or any holder of an emergency license certified by him, a copy of the Bond form is attached hereto as Exhibit "A"; and,

g. Submission of the license and application fee in the amount of Fifty Dollars ($50.00) as set forth in Miss. Code Ann. § 27-15-97.

2. This license shall be valid for a period of one (1) year from June 1st to May 31st of the following year and shall be renewed annually

B. Business Entity Public Adjuster License- A business entity acting as a public adjuster is required to obtain a public adjuster license. This license shall be subject to the same conditions and terms as the Individual Public Adjuster License.

1. Application shall include:

a. Application form;

b. The name of the licensed individual public adjuster that shall be responsible for the business entity's compliance with the insurance laws, rules and regulations of this state;

c. Payment of license fee in the amount of Two Hundred Dollars ($200.00) as set forth in Miss. Code Ann. § 27-15-97.

2. Each public adjuster employed or connected to the business entity adjusting claims in Mississippi must also hold an individual public adjuster license.

C. Emergency License - The Commissioner may issue Emergency Licenses in the event of a catastrophe or emergency which arises out of a disaster, Act of God, riot, civil commotion, conflagration or other similar occurrence to persons who are residents or nonresidents of this state and who may or may not be licensed as public adjusters.

1. To apply for this emergency license, an applicant must provide the following information and meet the following conditions :

a. An applicant must be certified by either a person licensed under the provisions of the Act, or by any other person as approved by the Commissioner. Certification shall mean any written representations addressed to the Commissioner concerning the integrity, competence and qualification of a person, in form and content satisfactory to the Commissioner. Any person who certifies an applicant shall be responsible for the loss or claims practices of the emergency license holder;

b. The application and certification must be filed with the Department within five (5) days of the applicant beginning work as a public adjuster; and,

c. Submission of the license and application fee in the amount of Fifty Dollars ($50.00), submitted to the Commissioner within thirty (30) days of the issuance of the emergency license.

2. Emergency licenses shall be in force for ninety (90) days and may be extended for an additional ninety (90) day period by the Commissioner.

3. Should the public adjuster who certifies the emergency public adjuster either forfeit, surrender, or has his license revoked by the Commissioner, that shall also serve to revoke the emergency license of the emergency public adjuster immediately and without notice or hearing.

D. Public Adjuster Trainee Registration - An individual, who is undergoing education and training as a public adjuster under the direction and supervision of a licensed public adjuster for a period not exceeding twelve (12) months may act as a public adjuster without having a public adjuster's license, upon the following conditions:

1. At the beginning of such training period, the name of such trainee shall be registered as such with the Commissioner along with the information

regarding the licensed public adjuster who is training the public adjuster trainee; and,

2. Submission of a registration fee in the amount of Fifty Dollars ($50.00), as set forth in Miss. Code Ann. § 27-15-97, shall be submitted to the Commissioner at the time of registration.

Section 6. Reciprocity

The Commissioner may enter into reciprocal agreements with other states for mutual recognition of individual license holders, education or continuing education courses, provided that the other state will award licenses or recognize education or continuing education courses to residents of this state and as long as that state's requirements are substantially equivalent to those set forth under the Act or this Regulation.

Section 7. Continuing Education Requirements

Every individual seeking to receive a renewal license under the Act or this Regulation shall satisfactorily complete twelve (12) hours of study in approved courses during each twelve -month period.

A. Renewal Period - Continuing education requirements are good for one year. It shall be the responsibility of each individual to maintain records documenting continuing education activity and to submit this documentation upon completion of the course.

B. Approved Courses - Only those courses approved by the Department for individual adjusters or public adjusters shall fulfill the requirements of the Act and this Regulation.

1. Department Approved Courses - To be approved by the Department, the course or program must be one that educates on the aspects of adjusting real or personal property. For any course to be approved as a continuing education class must be submitted to the Department pursuant to Miss. Code Ann. § 83-17-253 and the Continuing Education Guidelines set forth by the Commissioner with a course outline and receive approval prior to the actual class being held.

2. Other Credits - The Commissioner may, at his discretion, approve continuing education credits for teaching of classes or for any other class, work or activity performed that the Commissioner approves as satisfaction of the continuing education requirements. It is the responsibility of the individual person to receive such approval from the Commissioner.

C. Failure to Complete Requirements - The failure of any individual to timely complete or submit their continuing education requirements shall result in denial of their renewal license until said continuing education requirements are met. Failure to satisfy the requirements within twelve (12) months of renewal will result in the public adjuster having to reapply for a license and take the pre-licensing examination.

D. Continuing Education Reciprocity - An individual's satisfaction of his or her home state's continuing education requirements for licensure shall constitute satisfaction of this state's continuing education requirements if the individual's home state recognizes the satisfaction of its continuing education requirements imposed upon individuals from this state on the same basis.

Section 8. Pre-Licensing Examination

Each initial applicant shall take and pass an examination given by the Commissioner, or any entity he designates, to verify the applicant's knowledge, qualifications and competency. The failure of an applicant to pass the examination shall constitute denial of their license application. However, an initial applicant who is licensed as a public adjuster in another state with whom the Department has a reciprocity agreement as defined in Section 6 of this Regulation may be exempt from this requirement upon verification of the applicant's completion of the reciprocal state's pre-licensing requirements.

Section 9. Violations and Penalties

The Commissioner shall have the ability to issue penalties due to violations of the Act or Regulation, as more specifically stated in this Section.

A. Violations: The following are violations that will result in administrative actions by the Commissioner:

1. Intentionally making a material misstatement in the application for an initial or renewal license;

2. Obtaining, or attempting to obtain, a license by fraud or misrepresentation;

3. Misappropriating, converting, or withholding money belonging to another person or entity;

4. Demonstrating a lack of trustworthiness or competence to act as a public adjuster, including ethical violations as set forth in this Regulation;

5. Convicted of fraudulent or dishonest practices or a felony;

6. Materially misrepresented the terms and conditions of insurance policies or contracts or failed to identify himself as a public adjuster;

7. Obtaining or attempting to obtain a license for a purpose other than holding himself out to the general public as a public adjuster;

8. Violating any insurance law, regulation, subpoena, or order of the Commissioner of any other state's commissioner of insurance

9. Failure to notify the Commissioner in writing within thirty (30) days of final disposition of any administrative action or of any criminal action taken against the public adjuster in any jurisdiction; or,

10. Failure to timely respond to any inquiry by the Commissioner.

The Department reserves the right to forward any information concerning a violation to the proper law enforcement entity or the Office of the Attorney General for further investigation or action.

B. Notice and Hearing.

1. Before any license shall be denied, refused, suspended, or revoked, or an administrative penalty of not more than Five Thousand Dollars ($5000.00) be issued, the Commissioner shall give the applicant or licensee at least twenty (20) days written notice of his intention to hold a hearing on this matter. Service may be by certified mail, return receipt, or by personal service.

2. Once notice is received by a licensee, that shall constitute immediate suspension of their license.

3. The hearing shall be conducted pursuant to the Department's Rules of Practice and Procedure before the Mississippi Insurance Department, Regulation 88-101.

4. No licensee whose license was revoked pursuant to this Act or Regulation shall be entitled to file another application for a license within one (1) year from the effective date of final order of revocation.

Section 10: Written Contracts and Ethical Requirements

A. Written Contracts - all contracts shall be in writing, signed by the insured and the public adjuster who solicits the contract, and a copy of the contract shall be provided

to the insured upon execution. Furthermore, all contracts must meet the following requirements:

1. A public adjuster may only receive compensation, payment, commission, fee or other thing of value of no more than ten percent (10%) of any insurance settlement or the proceeds of any claim investigated. The contract must expressly state that this may include monies from any previously proposed or received offers of settlement.

2. No public adjuster may require, demand or accept any fee, retainer, compensation, deposit of other thing of value, prior to partial or full settlement of the claim.

3. Any additional costs to be reimbursed to the public adjuster shall be out of the proceeds of a settlement and shall be specified by kind and estimated amounts.

4. The insured shall have the right to revoke the contract within five (5) business days after execution. The insured may also pursue any civil legal remedy to revoke or cancel the contract after the expiration of the cancellation period.

5. A copy of the written contract shall be kept for at least five (5) years after the termination of the transaction and shall be open to the examination by the Commissioner at all times.

6. Exhibit "B" is attached hereto containing all required provisions for use by public adjusters in their contracts.

B. Ethical Requirements - A violation of the following may result in administrative action being taken by the Department against the public adjuster pursuant to the Act and Section 9 of this Regulation:

1. No public adjuster shall undertake to adjust a claim for which he is not competent and knowledgeable to the terms and conditions of the insurance coverage or which otherwise exceeds the public adjuster's current expertise.

2. No public adjuster may represent a person or entity for which the public adjuster previously adjusted a claim as an independent adjuster, either directly or indirectly.

3. No public adjuster shall knowingly make any oral or written misrepresentations or statements to any insured or potential insured which are

false and intended to injure any person engaged in the business of insurance.

4. No public adjuster shall knowingly enter into a contract to adjust a residential property claim subsequent to a declaration of total loss by an insurer, unless the services to be provided by the public adjuster can reasonably be expected to result in the insured obtaining an insurance settlement, net of the public adjuster's compensation, in excess of the amount the insured would have obtained without the services of the public adjuster.

5. At the time of entering into the contract, the public adjuster shall advise the insured that the insured has the right to retain an attorney at law of his choice at any time throughout the public adjuster's investigation and adjustment of the claim.

6. If the claim is not settled by the public adjuster, the public adjuster shall advise the insured that the insured has the right to retain an attorney at law of the insured's choice.

7. No public adjuster shall contract for, agree to, or receive anything of value from any attorney at law or other person acting in concert with an attorney at law for referring claims to the attorney, or in connection with any claim for which the public adjuster has performed or intends to perform services.

8. No public adjuster shall split any attorney's fee with any attorney at law.

9. No public adjuster shall testify as an expert witness in any judicial or administrative action while maintaining a pecuniary interest in the outcome of the proceeding. A public adjuster may testify as an expert witness if:

    a. His contract is converted to a specific hourly rate which constitutes reasonable, fair market value for the services provided as agreed upon by the parties; and,

    b. His contract is not subject to any contingency arrangement.

Furthermore, the prior fee agreement between the insured and the public adjuster shall be inadmissible at trial.

Section 11. Severability

If any section or portion of a section of this Regulation or the application thereof is held by a court to be invalid, such invalidity shall not affect any other provision of that section or application of the Regulation which can be given effect without the invalid provision or application, and to this

end the provisions of the Regulation are declared to be severable.

Section 12. Effective Date

The Effective Date of this Regulation shall be July 1, 2007.

GEORGE DALE
COMMISSIONER OF INSURANCE

EXHIBIT "A"

SURETY BOND FOR PUBLIC ADJUSTER FILED WITH THE MISSISSIPPI INSURANCE DEPARTMENT

STATE OF _____
COUNTY OF _____

This form shall not be altered in any way.

Part 1: Bond, Surety and Principal.

Bond #:	Original Bond Date of Issuance:	If a Continuation Bond, Effective Date:
Name of the Surety Company:	NAIC # of Surety Company:	MID License Number of Surety Company:
Name of Principal (Public Adjuster)	MID License Number of Public Adjuster:	Amount of Bond: $50,000.00

Part 2: Type and Bond Amount.

The type and amount of the bond for one year commencing on the original date of issuance or continuation stated hereinabove at Part 1 is as follows:

Public Adjuster, Bond Equal to Fifty Thousand current U.S. Dollars ($50,000.00)

Part 3. KNOW ALL MEN BY THESE PRESENTS THAT, the Principal and Surety, who, after being duly sworn, deposed and said:

THAT they are firmly bound unto the Commissioner of Insurance , State of Mississippi, or his successor in office, under the surety bond, delivered in lieu of errors and omissions liability insurance coverage, conditioned only for and dedicated exclusively to the prompt payment of all claims arising and accruing to any persons who sustained damages as a result of the Principals erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his capacity as a public adjuster for which the Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, by this agreement;

THAT the Commissioner of Insurance shall be authorized to recover on behalf of any person in the State of Mississippi who sustained damages described herein;

THAT the condition of this obligation is such that if the above named Principal shall well and faithfully discharge and perform the duties incumbent on him under the provisions of all applicable laws, including but not limited to Title 83 of the Mississippi Code and Mississippi Insurance Department Regulation 2007-4, then in such case the above obligation is to become null and void, else to remain in full force, effect and virtue;

THAT the provisions of all applicable laws, including but not limited to Title 83 of the Mississippi Code and Mississippi Insurance Department Regulation 2007-4, for principals and sureties are applicable;

THAT this surety bond shall not be terminated unless at least thirty days' prior written notice will have been filed with the Commissioner of Insurance, State of Mississippi, and given to the principal;

THAT this obligation may be continued for any subsequent year by a continuation certificate duly signed and sealed by the Principal and Surety, subject to the terms and conditions of the original bond, and filed with the Commissioner of Insurance, State of Mississippi;

IN WITNESS THEREOF, Principal and Surety have executed this bond on the dates stated hereinbelow.

Part 4. Signatures and Notary. Complete all information

BY:

_____ _____ _____ _____

Principal Date Surety's Authorized Representative Date

_____ _____

Print Name Print Name/Title of Surety's Authorized Representative

_____ _____

Physical Address of Principal Physical Address of Surety

Subscribed and sworn to before me this the _____ day of _____, 20__

{Seal of Notary Public}

_____

Notary Public

If a power of attorney used, a copy of the power of attorney or the authorized agent of the surety company must accompany the bond.

Exhibit "B"

PUBLIC ADJUSTER CONTRACT

The contract must be in writing and contain the following:

- Name and address of the adjuster and the insured;
- The home state of the adjuster;
- MS Department of Insurance license number;
- Insured's insurance company and policy number;
- Description of the loss and services to be provided to the insured;
- Signatures of the public adjuster and the insured;
- If public adjuster is a business entity, the designated licensed public adjuster must sign the contract;
- Date the contract was signed;
- Notice to the insured that they may cancel the contract within five (5) business days. The following language should be used:

  > "You may cancel this contract at any time prior to midnight of the fifth business days after the date this contract was signed. If you decide to cancel this contract, you will be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for in incurred by the public adjuster to protect the interest of the insured during the period preceding cancellation.
  >
  > If you cancel this contract, anything of value given by you under this contract shall be returned to you within fifteen (15) business days following the receipt by the public adjuster of your cancellation notice, and any security interest arising out of the contract will be cancelled. To cancel this contract, mail, fax or deliver in person a signed and dated written notice indicating your intent to cancel this contract to (name of public adjuster) at (business address)."

- An attestation the public adjuster is fully bonded or insured, along with a copy of the bond or errors and omissions coverage policy;
- Specify the amount of the public adjuster's contingency fee, not to exceed 10% of monies recovered under claim. The contract must clearly state if the contingency fee shall be based upon amounts the insured previously received from the insurer for the particular claim and, if so, that provision must be initialed by the insured; and,
- State in contract if what type of out-of-pocket expenses public adjuster would be entitled to, if any, and dollar estimates.

A copy of the executed contract must be given to the insured.