

Document: O.C.G.A. § 33-23-43.2

O.C.G.A. § 33-23-43.2**Copy Citation**

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Official Code of Georgia Annotated TITLE 33 Insurance (Chs. 1 – 65) CHAPTER 23 Licensing (Arts. 1 – 3) Article 1 Agents, Agencies, Subagents, Counselors, and Adjusters (§§ 33-23-1 – 33-23-46)

33-23-43.2. Requirements for public adjuster contracts.

(a) No person may, directly or indirectly, act within this state as a public adjuster without, among other requirements, having first entered into a contract, in writing, on a form approved by the Commissioner, executed in duplicate by such person and the insured or the insured's duly authorized representative. A public adjuster shall not use any form of contract that is not approved by the Commissioner.

(b) Public adjusters shall ensure that all contracts for their services are in writing, prominently captioned and titled "Public Adjuster Contract," and contain the following:

- (1)** Legible full name of the public adjuster signing the contract, as specified on the license issued by the department and attestation language that the public adjuster is fully bonded pursuant to state law;
 - (2)** Permanent home state business address and contact information of the public adjuster, including email address;
 - (3)** The public adjuster's department license number and a statement that the license is valid and in full force and effect as of the date the contract is signed;
 - (4)** The insured's full name and street address;
 - (5)** A description of the loss and its location, if applicable;
 - (6)** A description of services to be provided to the insured;
 - (7)** Signatures of the public adjuster and the insured;
 - (8)** The date the contract was signed by the public adjuster, and the date the contract was signed by the insured;
 - (9)** A statement of the fee, compensation, or other considerations that the public adjuster is to receive for services, including a listing of typical costs and expenses for which the public adjuster is to be reimbursed;
 - (10)** A statement prominently captioned in a minimum 12 point font indicating that the public adjuster has no direct or indirect interest, including participation in activities that may be reasonably construed as a conflict of interest or as compensation by or interest in, any firm that performs any work in conjunction with the damages incident to any loss the public adjuster has been contracted to adjust, except for the compensation or fee from the insured for such public adjuster's services; and
 - (11)** A prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY."
- (c)** Public adjuster contracts may not contain a contract term that:
- (1)** Restricts an insured's right to initiate and maintain direct communications with his or her attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other person regarding settlement of the insured's claim;
 - (2)** Vests the public adjuster with the right to initiate direct communications with the insured's insurer, the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim without specific written authorization from the insured;
 - (3)** Allows the public adjuster's percentage fee to be collected when money is due from an insurance company but not paid or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company rather than as a percentage of each check issued by an insurance company;
 - (4)** Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
 - (5)** Precludes or restricts an insured from pursuing any civil remedies relating to his or her claim;
 - (6)** Purports to allow the public adjuster to act in multiple capacities; or
 - (7)** Identifies the public adjuster as also being a contractor, appraiser, or other position.
- (d)** All public adjuster contracts shall be construed to contain, by operation of law:
- (1)** A provision granting the insured a right to rescind the contract within three business days after the date the contract was signed, so long as the rescission is in writing and mailed or delivered to the public adjuster at the address stated in the contract within three business days. For purposes of this subsection, rescission of the contract shall be considered delivered or mailed if it is delivered by electronic transmittal to the email address or facsimile specified in the contract for such communications;
 - (2)** A provision that if the insured exercises the right to rescind the contract, anything of value given by the insured under the contract shall be returned to the insured within 15 business days following the receipt by the public adjuster of the rescission notice; and

- (3) A provision requiring that, prior to initiating any contact with the insured's insurer, the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim, a public adjuster must provide the insurer a notification letter signed by the insured confirming that the insured has authorized the public adjuster to communicate directly with the insurer, the insurer's adjuster, or the insurer's attorney on behalf of the insured.
- (e) All public adjuster contracts shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the department.
- (f) No public adjuster shall enter into a contract with an insured and collect a commission as provided by Code Section 33-23-43.3, without having the intent to actually perform services customarily provided by a public adjuster for the insured.

History

Code 1981, § 33-23-43.1, enacted by Ga. L. 2014, p. 181, § 5/HB 610; Ga. L. 2015, p. 5, § 33/HB 90; Ga. L. 2019, p. 386, § 20/SB 133; Ga. L. 2020, p. 493, § 33/SB 429; Code 1981, § 33-23-43.2, as redesignated by Ga. L. 2021, p. 365, § 3/HB 254; Ga. L. 2023, p. 542, § 4/HB 222, effective May 3, 2023.

Annotations

Notes

The 2019 amendment, effective July 1, 2019, in paragraph (c)(2), substituted "contract shall" for "contract will" in the middle, and substituted "rescission" for "cancellation" near the end.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in paragraph (a)(2).

The 2021 amendment, effective July 1, 2021, redesignated former Code Section 33-23-43.1 as this Code section; added subsection (a); redesignated former subsections (a) through (d) as present subsections (b) through (e), respectively; in subsection (b), substituted "department" for "Department of Insurance," in paragraph (b)(1) and substituted "department" for "Department of Insurance" in paragraph (b)(3), deleted "and" at the end of paragraph (b)(9), substituted "adjuster, as explicitly permitted by subsection (d) of Code Section 33-23-43.7; and" for "adjuster." at the end of subparagraph (b)(10)(C), and added paragraph (b)(11); in subsection (c), deleted "or" at the end of paragraph (c)(4), substituted a semicolon for a period at the end of paragraph (c)(5), and added paragraphs (c)(6) and (c)(7); in subsection (d), substituted "email address" for "e-mail address" near the end of paragraph (d)(1); in subsection (e), substituted "department" for "Commissioner of Insurance" at the end; and added subsection (f).

The 2023 amendment, effective May 3, 2023, rewrote paragraph (b)(10), which read: "A statement prominently captioned in a minimum 12 point font that contains the following:

"(A) Any direct or indirect interest in or compensation by any construction firm, salvage firm, building appraisal firm, storage company, or any other firm or business entity that performs any work in conjunction with damages incident to any loss which the adjuster has been contracted to adjust;

"(B) Any direct or indirect participation in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the adjuster or disclosure of any other activities that may be reasonably construed as a conflict of interest, including a financial interest in any salvage, repair, construction, or restoration of any business entity that obtains business in connection with any claims that the public adjuster has a contract or agreement to adjust; and

"(C) Any direct or indirect compensation of value in connection with an insured's specific loss other than compensation from the insured for service as a public adjuster, as explicitly permitted by subsection (d) of Code Section 33-23-43.7; and".

Editor's notes.

Ga. L. 2021, p. 365, § 5/HB 254, effective July 1, 2021, redesignated former Code Section 33-23-43.2, relating to standard of conduct for public adjusters, as present Code Section 33-23-43.9.

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 33

O.C.G.A. Title 33, Ch. 23

O.C.G.A. Title 33, Ch. 23, Art. 1

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