

The Merlin Guide

For Licensed Public Adjusters

North Carolina Edition ~ 2011

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The Merlin Guide

For Licensed Public Adjusters

North Carolina Edition – August 2011

A Public Adjuster is a person who, for compensation or any other thing of value, does any of the following on behalf of the insured:

- 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.
- 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.
- 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. *N.C. Gen. Stat. §58-33A-5(7)*

LICENSING REQUIREMENTS

N.C. Gen. Stat. §58-33A-1 et seq.

- Public Adjusters must be licensed by the [North Carolina Department of Insurance](#).
- Must submit uniform application.
- Must pass public adjuster examination, unless exempt.
 - Not required to take exam if previously licensed as a public adjuster in another state ***based on a public adjuster examination***. §58-33A-30
- Furnish to the State Bureau of Investigation (SBI) a complete set of fingerprints, electronically captured by a criminal law enforcement agency. *11 N.C. Admin. Code 6A.0906*
- Submit with the application an [Electronic Fingerprint Submission Release of Information Form](#) that has been completed and certified by a law enforcement officer that the fingerprints have been submitted by electronic means to the SBI.
- Submit with the application an [Authority For Release of Information](#) form to the SBI, for a criminal history check, along with payment for the cost of the criminal history record.
- Resident License** - Applicant must:
 - Be at least 18 years old.

- Not have committed any act that is a ground for denial of license under §58-33A-45.
- Be trustworthy reliable, and of good reputation.
- Be financially responsible. (\$20,000 bond as set forth in §58-33A-50)
- Pay fee set forth in §58-33-125.
- Maintain an office in state of residence with public access by appointment or regular business hours.
- Successfully pass the public adjuster examination.

•**Nonresident License Reciprocity** – nonresident shall receive a nonresident license if:

- Currently licensed as a resident public adjuster in his or her home state;
- Has submitted a request for licensure;
- Has submitted a completed application;
- Has paid the fee required by §58-33A-125;
- Has provided proof of financial responsibility;
- Applicant’s home state awards nonresident public adjuster licenses to residents of North Carolina on the same basis;
- Must maintain resident public adjuster license in home state as condition of continuing the North Carolina nonresident license.

REQUIRED CONTRACT TERMS

N.C. Gen. Stat. §58-33A-65

- All contracts for public adjuster services must be in writing, executed in duplicate.
- Contract must be titled “Public Adjuster Contract.”
- Contract must state the name, business name, address, telephone number and license number of the public adjuster.
- Name and address of insured and description of loss and its location.
- Name of the insurer and policy number, if known.
- Signatures of public adjuster and insured.
- Contract must contain the date the contract was signed by the public adjuster and insured.

- A description of services to be provided to the insured.
- The public adjuster's full salary, fee or commission.
- If compensation is based on a share of insurance settlement, the exact percentage must be specified.
- Initial expenses to be reimbursed from the claim payment shall be specified by type, with dollar estimates and with any additional expenses first approved by the insured.
- Compensation provisions may not be redacted in any copy of contract requested to be provided to the Commissioner.
- Statement that public adjuster is fully bonded pursuant to State law.
- Insured has a right to rescind the contract within three (3) business days after the contract is signed.
- Provide client with original contract & written disclosure of any financial interest that the public adjuster has with any other party involved in any aspect of the claim.
- Prior to signing contract, insured must be given a separate printed disclosure document regarding the claim process. (Form is provided in §58-33A-65(f))

Contract may specify that public adjuster shall be named as co-payee on insurer's payment of a claim.

Contract may not (1) allow public adjuster percentage fee to be collected when money is due from insurer but not paid, or allows collection of the entire fee from the first check rather than a percentage of each check; (2) require insured to authorize insurer issue a check only in the name of the public adjuster; (3) impose collection costs or late fees.

IMPORTANT TIME FRAMES IN NORTH CAROLINA

- Notice of loss: Immediate
 - Notice of a claim is a condition precedent to recovery on a policy.
- Proof of loss: Look to policy provision; 30 days, 60 days, upon request.
 - Proof of loss is a condition precedent to recovery on a policy. *Boyd v. Bankers & Shippers Ins. Co.*, 96 S.E.2d 703 (N.C. 1957).
 - Delay in giving notice is not fatal to recovery unless insurer is substantially harmed. *N.C. Gen. Stat. §58-44-50.*
 - Insurer must furnish insured a blank proof of loss form within 15 days after notice of loss, or insured is deemed to have complied with requirement as to proof of loss. *N.C. Gen. Stat. §58-3-40.*

- Statute of Limitations:

- Breach of Contract: 3 years from date of breach. *N.C. Gen. Stat. §1-52; Penley v. Penley*, 332 S.E.2d 51 (N.C. 1985).

- Policy limitation under a fire policy commences on the date of loss. *Smith v. North Carolina Farm Bureau Mut. Ins. Co.*, 361 S.E.2d 571 (1987).

- Bad Faith Claim: 3 years for tort claims. *N.C.G.S.A. §1-52*. Runs from date of violation. *Jones v. Asheville Radiological Group*, 351 S.E.2d 804 (2000).

- Agent Negligence: 3 years. *N.C. Gen. Stat. §1-52*.

- Flood Insurance is different:**

- Must file proof of loss within 60 days of damage.

- Failure to do so is a bar to recovery. *Dawkins v. Witt*, 318 F. 3d 606 (4th Cir. 2004).

- Proof of loss must be delivered, not mailed.

- The only way to waive the proof of loss requirement is with express written consent of the Federal Insurance Administrator or the guidelines allowed by FEMA. *Gowland v. Aetna*, 143 F.3d 951 (5th Cir. 1998).

- Proof of loss should be submitted on the standard form utilized by FEMA, and it must be completely filled out.

- Supplemental Proofs of loss submitted after additional damage is discovered may be disallowed under the flood policy. *Dogwood Grocery v. South Carolina Ins. Co.*, 49 F.Supp.2d 511 (W.D. LA. 1999).

APPRAISAL

- Appraisal is to determine amount of damage, not resolve questions of coverage or interpret provisions of policy. *North Carolina Farm Bureau Mut. Ins. Co. v. Sadler*, 711 S.E.2d 114 (N.C. 2011).

- There is usually not a time frame for invoking appraisal.

- Once invoked, look to policy for time requirement on appraiser appointment.

- Appraisal clauses are enforceable.

- Critical to read appraisal clause in policy for any notice requirements, time frames, number of appraisers and any requirements for the appointment of appraisers.

- Binding.

EXAMINATIONS UNDER OATH

- EUO is a condition precedent, and failure to comply bars recovery as well as the right to bring suit under the policy. *Baker v. Independent Fire Ins. Co.*, 405 S.E.2d 778 (N.C. App. 1991)

- There is no good cause exception like that found in *N.C. Gen. Stat. §58-44-50*, which excuses untimely filing of proof of loss. *Fineberg v. State Farm Fire and Cas. Co.*, 438 S.E.2d 754 (N.C. App. 1994)

- Read the insurance policy because many policies are now expanding the definition of who the policyholder has to provide for EUO.

- Books & Records: Very broad discretion in what can be demanded to be provided by insurer. Practical Tip: Provide everything that the insurance company asks for regarding books and records, or run the risk of having the claim denied.

ETHICAL STANDARDS

N.C. Gen. Stat. §58-33A-1 et seq.

- Shall serve the insured's claim needs and interests with objectivity and complete loyalty. §58-33A-80(a)

- Shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity. §58-33A-10(b)

- Shall provide the insurer a notification letter, signed by the insured, authorizing the public adjuster to represent the insured's interest. §58-33A-65(h)

- Cannot solicit a client for employment during a loss producing occurrence. §58-33A-80(b)

- Cannot solicit a client for employment between 9pm and 9am. §58-33A-80(k)

- Cannot have a financial interest in, any salvage or repair firm in connection with a loss the public adjuster has a contract to adjust, unless full written disclosure has been made to the insured. §58-33A-80(e)-(f)

- Resident public adjuster must complete 24 hours of continuing education courses biennially. (non-resident public adjuster must meet the CE requirements of his state) §58-33A-55

- Shall disclose to insured any interest in or compensation by any firm that performs work on the insured loss. §58-33A-80(g)

- Shall not knowingly make any oral or written material misrepresentations that are false or maliciously critical and intended to injure any person engaged in the business of insurance. §58-33A-80(i)(2)

- Shall not undertake adjustment of a claim if exceeds current expertise. §58-33A-80(i)(1)

- May not agree to any loss settlement without the insured's knowledge and consent. §58-33A-80(j)
- Must maintain a complete record of transactions as public adjuster for at least 5 years after the termination of a transaction with the insured, and they are open to examination by the commissioner. §58-33A-75
 - Record includes name of insured; date, location and amount of loss; copy of contract; name of insurer and policy information; itemized statement of recover; total compensation; itemized statement of disbursements; name of insured's attorney, if applicable; name of claim representative of insurer; evidence of financial responsibility.
- All funds received on behalf of insured must be deposited in a non-interest bearing trust account. §58-33A-70
- A public adjuster's contract with a client shall be revocable or cancellable by the insured within 3 business days of signing it. §58-33A-65(i)
- If, within 72 hours of the loss being reported, the insurer either pays or commits in writing to pay the policy limits, the public adjuster shall:
 - Not receive a fee based on a percentage of the total amount paid;
 - Inform the insured that loss recovery amount might not be increased by insurer;
 - Be entitled only to reasonable compensation for services provided, based on time spent and expenses incurred, until the claim is paid. §58-33A-65(c)
- All contracts for the public adjuster's services must be in writing. §58-33A-65(a)
- Cannot act as a company/independent insurance adjuster and public adjuster on the same claim. §58-33A-1(3)
- Must file \$20,000 surety bond with Insurance Commissioner, or \$20,000 letter of credit to an account to the Commissioner. §58-33A-50
- Must inform Commissioner of any change in address, legal name, or information submitted on license application, within 30 days. §58-33A-40
- Compensation from any source connected to the claim (such as contractor, insurer, vendor), shall be disclosed to the insured in writing. §58-33A-80(h)
- Shall report to the Commissioner any administrative action in another jurisdiction within 30 days of final disposition. §58-33A-90
- Must report any criminal prosecution in any jurisdiction to the Commissioner within 30 days of initial pretrial hearing. §58-2-90
- Department may suspend or revoke license for violating any provision of the rules or impose an administrative fine up to \$1,000. §58-2-70

ETHICAL CONSTRAINTS DURING A DISASTER.

In addition to the above, the following ethical consideration shall apply to public adjusters in the event of a catastrophic incident:

- Cannot require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value before settlement of a claim. §58-33A-60(d)
- Cannot charge a fee or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds.
- “*Catastrophic Incident*” is any natural or man-made incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. *N.C. Gen. Stat. §58-33A-5(2)*



CAUTION

LAW ENFORCEMENT CHECKLIST



1. Check for Photo ID of Applicant

2. Choose “Applicant” Work-Flow on the Live-scan device

3. Follow the Electronic Fingerprint Submission

Release of Information form for the Applicant Work-Flow

4. Fingerprints are automatically

submitted to the SBI after the option to

print a fingerprint card

5. Please contact the Applicant Unit at

919-662-4509 Ext 6330, 6366, 6397 for

any additional assistance

North Carolina
STATE BUREAU OF INVESTIGATION
Department of Justice
SBI

ELECTRONIC FINGERPRINT SUBMISSION RELEASE OF INFORMATION

I authorize the North Carolina Department of Justice through the State Bureau of Investigation, Criminal Investigation and Forensic Services, to submit a subject's criminal history record to the U.S. Department of Justice, Federal Bureau of Investigation, and other law enforcement agencies for their use in the investigation of the subject. I understand that the North Carolina State Bureau of Investigation, Criminal Investigation and Forensic Services, the U.S. Department of Justice, Federal Bureau of Investigation, and other law enforcement agencies may use the information for any and all law enforcement purposes and I hereby authorize and permit the information to be shared with the above named agency and I hereby authorize and permit the information to be shared with the above named agency and I hereby authorize and permit the information to be shared with the above named agency and I hereby authorize and permit the information to be shared with the above named agency.

Agency Address: _____ Date: _____
Agency Phone Number: _____
Agency Fax Number: _____
Agency Email: _____
Agency Website: _____

Signature of Criminal Justice Representative: _____ Date: _____
Agency Identification: _____



**North Carolina Department of Insurance
Fingerprint/Criminal Background Packet
Insurance Public Adjuster**

This packet contains instructions on how to submit Fingerprint/ Criminal Background information to Agent Services Division:

The information on page 1 is needed to assist in troubleshooting any problems with your fingerprint submission from the local law enforcement agency to SBI.

Demographic Information

Demographic Information				
SSN				
Last Name		First Name		Middle Name
Residential Street Address			City	State Zip Code
Residence Phone Number		Business Phone Number		Cell Phone Number
E-Mail Address (Personal)			E-Mail Address Business	
NIPR Transaction Number		Date passed exam at Pearson Vue/surrendered License in previous home state		
License Type(s)				
Law Enforcement Agency used for Live Scan			Date	
Signature of Applicant				Date

Instructions

- After cancelling a resident insurance license another state/Passing an initial North Carolina Insurance Exam
- Make application for insurance license at www.nipr.com
- Complete pages 1-4 of the Fingerprint/Criminal Background Packet
- Use selected local live scan location
 - Submit pages 3-4 (Electronic Fingerprint Submission release of information and Applicant information)
 - Local live scan location will charge a fee for processing forms (fees may vary)
- Submit completed packet (pages 1-4) to the Agent Services Division by e-mail or fax. If e-mail or fax is not an option mail completed packets.

E-mail:
asd@ncdoi.gov

Fax
919-715-3794

Mail
1204 Mail Service Center
Raleigh, NC 27699-1204

AUTHORITY FOR RELEASE OF INFORMATION

I authorize the North Carolina Department of Justice through the STATE BUREAU OF INVESTIGATION, Special Operations Division, to perform a fingerprint search of the State's criminal history record file and a fingerprint search of the FEDERAL BUREAU OF INVESTIGATION'S files for a national criminal history record check in connection with my application for licensing with the NC DEPARTMENT OF INSURANCE – PUBLIC ADJUSTER pursuant to NCGS §§ 58-33A-15.

(Type or Print clearly)

Last Name	First	Middle	Maiden
_____	_____	_____	_____
Social Security Number (Optional*)	Date of Birth	Sex	Race
_____	_____	_____	_____

I understand that the North Carolina State Bureau of Investigation, Special Operations Division, and its officials and employees shall not be held legally accountable in any way for providing this information to the above named agency, and I hereby release said agency and persons from any and all liability which may be incurred as a result of furnishing such information. I further understand that the agency cannot provide a **hard copy** of the results of this criminal history record check to me.

*Disclosure of social security number is entirely voluntary and not required. If disclosed, the social security number will be utilized to assist with accurate identification/exclusion of possible criminal history records.

Applicant's/Employee's Signature

Date

This form must be maintained on file with the above named agency for one year. Do not mail this form or a copy of this form to the State Bureau of Investigation.



ROY COOPER
ATTORNEY GENERAL

NORTH CAROLINA
STATE BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE

3320 GARNER ROAD
PO Box 29500
RALEIGH, NC 27626-0500
(919) 662-4500
FAX: (919) 662-4523



ROBIN P. PENDERGRAFT
DIRECTOR

**ELECTRONIC FINGERPRINT
SUBMISSION RELEASE OF INFORMATION**

I authorize the North Carolina Department of Justice through the State Bureau of Investigation, Criminal Information and Identification Section, to perform a national criminal history record check in connection with my application for license with the Department of Insurance – Agent Services Division pursuant to NCGS 58-33A-15. (Public Adjuster License)

I understand that the North Carolina State Bureau of Investigation, Criminal Information and Identification Section, the Federal Bureau of Investigation, and its officials and employees shall not be held legally accountable in any way for providing this information to the above named agency, and I hereby release said agency and persons from any and all liability which may be incurred as a result of furnishing such information. I understand that the above named agency cannot provide a hard copy of the results of this criminal history record check to me.

Applicant/Licensee's Signature

Date

I authorize the above named subject to be fingerprinted and have the fingerprints submitted to the SBI electronically.

Etta P. Maynard

Agency Authorized Official's Signature

June 30, 2010

Date

Etta P. Maynard

Authorized Official's Printed Name

1204 Mail Services Center, Raleigh, NC 27699
Agency Address

(919) 807-6800

Agency Phone Number

I certify that I have taken the fingerprints of the above named subject and forwarded them electronically to the State Bureau of Investigation.

Signature of Official Taking Fingerprints

Date

Agency Seal/Certification _____



A Nationally Accredited State Agency

An ASCLD/LAB Accredited Laboratory Since 1988



APPLICANT INFORMATION

Last Name: _____

Date of Birth: _____

First Name: _____

Place of Birth: _____

Middle Name: _____

Residence: _____

Maiden Name: _____

Aliases: _____

Employer and Address: DOI – Agent Services
Division 1204 Mail Service Center, Raleigh NC
27699

Sex: Male _____ Female _____

Reason Fingerprinted:
Public Adjuster License
State and Fed Search,
§NCGS 58-33A-15

Race: _____
(write the appropriate letter in the space provided)

Social Security Number: _____
(*Optional)

W – White, B – Black, I – American Indian,
A – Asian or Pacific Islander, U -Unknown

Your Case No. (OCA): INSADJ000

Height: _____

Type of Transaction: NFUF

Weight: _____

Eye Color: _____
(write the appropriate letters in the space provided)

NC FP Card Type: OTH

BLK – Black GRY – Gray MAR – Maroon
BLU – Blue BRO – Brown GRN – Green
HAZ – Hazel PNK – Pink XXX – Unknown

Hair Color: _____
(write the appropriate letters in the space provided)

BAL – Bald BLK – Black BLN – Blonde or Strawberry
BRO – Brown GRY – Gray or partially
RED – Red or Auburn SDY -Sandy

*Disclosure of social security number is entirely voluntary and not required. If disclosed, the social security number will be utilized to assist with accurate identification/exclusion of possible criminal history records.