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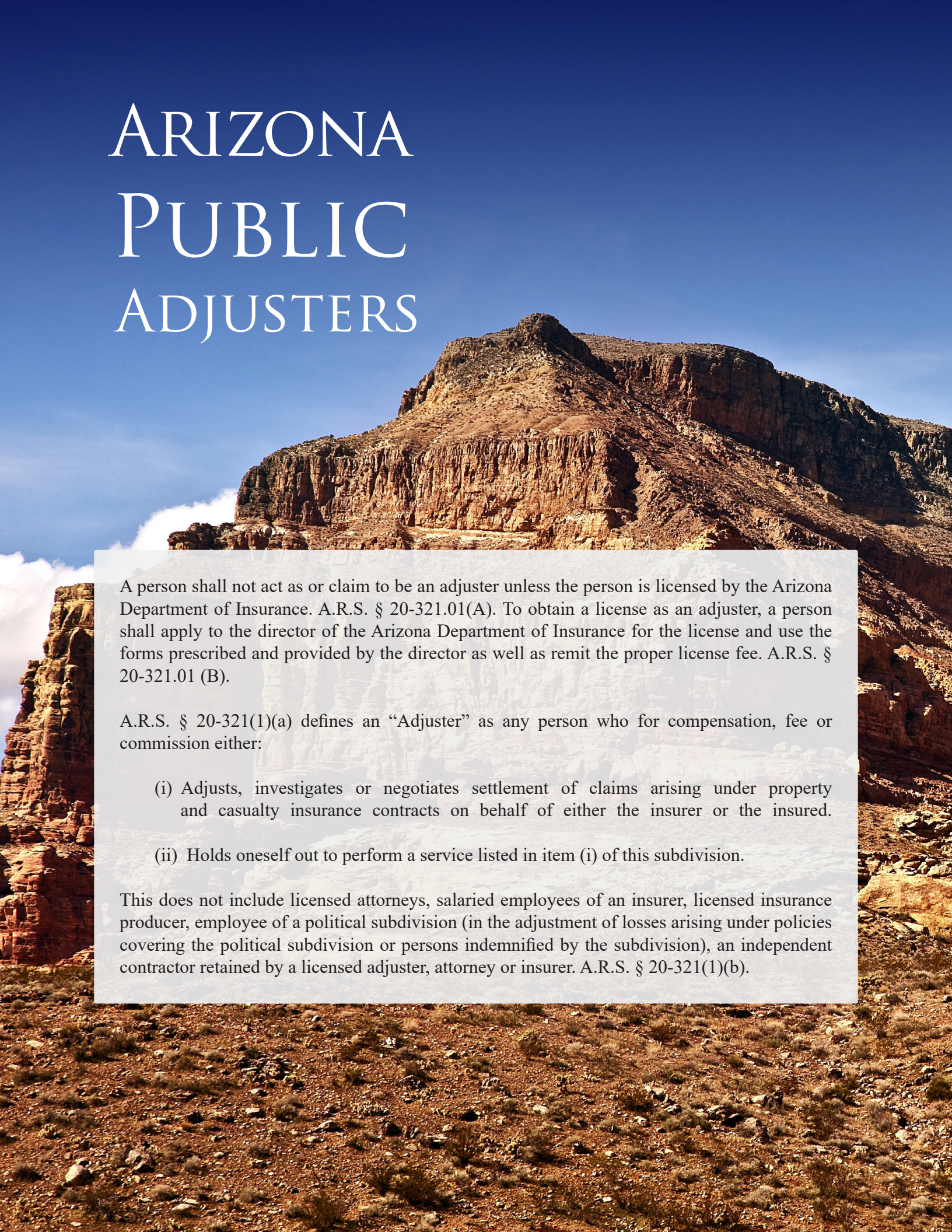


Arizona Public Adjusters

A person shall not act as or claim to be an adjuster unless the person is licensed by the Arizona Department of Insurance. A.R.S. § 20-321.01(A). To obtain a license as an adjuster, a person shall apply to the director of the Arizona Department of Insurance for the license and use the forms prescribed and provided by the director as well as remit the proper license fee. A.R.S. § 20-321.01 (B).

A.R.S. § 20-321(1)(a) defines an "Adjuster" as any person who for compensation, fee or commission either:

(i) Adjusts, investigates or negotiates settlement of claims arising under property and casualty insurance contracts on behalf of either the insurer or the insured.

(ii) Holds oneself out to perform a service listed in item (i) of this subdivision.

This does not include licensed attorneys, salaried employees of an insurer, licensed insurance producer, employee of a political subdivision (in the adjustment of losses arising under policies covering the political subdivision or persons indemnified by the subdivision), an independent contractor retained by a licensed adjuster, attorney or insurer. A.R.S. § 20-321(1)(b).

Licensing Requirements

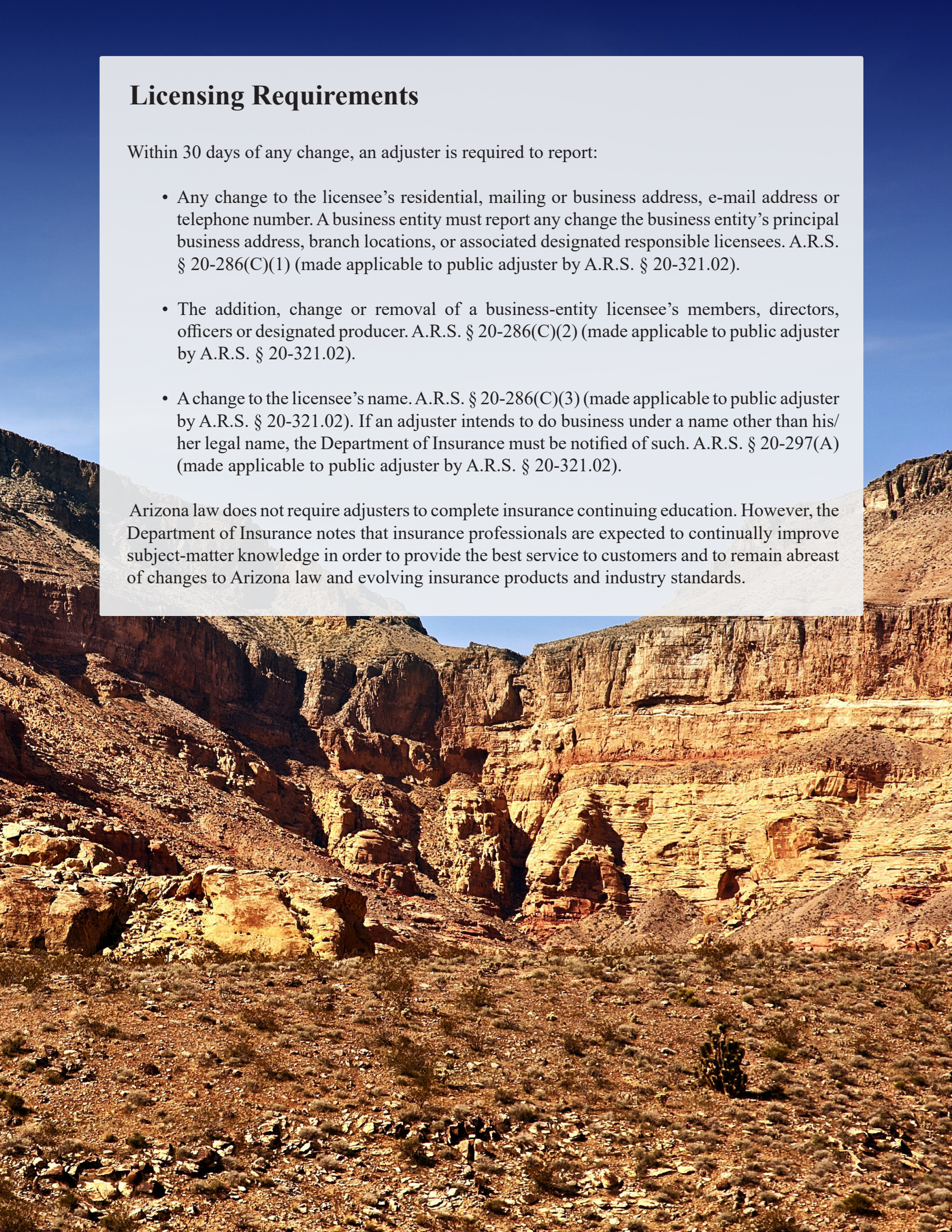
Within 30 days of any change, an adjuster is required to report:

- Any change to the licensee's residential, mailing or business address, e-mail address or telephone number. A business entity must report any change the business entity's principal business address, branch locations, or associated designated responsible licensees. A.R.S. § 20-286(C)(1) (made applicable to public adjuster by A.R.S. § 20-321.02).

- The addition, change or removal of a business-entity licensee's members, directors, officers or designated producer. A.R.S. § 20-286(C)(2) (made applicable to public adjuster by A.R.S. § 20-321.02).

- A change to the licensee's name. A.R.S. § 20-286(C)(3) (made applicable to public adjuster by A.R.S. § 20-321.02). If an adjuster intends to do business under a name other than his/her legal name, the Department of Insurance must be notified of such. A.R.S. § 20-297(A) (made applicable to public adjuster by A.R.S. § 20-321.02).

Arizona law does not require adjusters to complete insurance continuing education. However, the Department of Insurance notes that insurance professionals are expected to continually improve subject-matter knowledge in order to provide the best service to customers and to remain abreast of changes to Arizona law and evolving insurance products and industry standards.



Important Laws and Time Frames in Arizona

Notice of Loss:

- If the failure to give notice as provided for in the policy is expressly made a ground of forfeiture, the plain language of the contract governs, and generally, there can be no recovery when giving of the notice, in time and manner as specified in the policy, is made a condition precedent to liability. But where there is no such express provision in the policy, the failure to make proof in the time required merely postpones the time of bringing suit, and, if notice and proof are subsequently served, the insured may recover, provided, of course, the time specified in the policy within which the action may be brought has not expired. *Watson v. Ocean Acc. & Guarantee Corp.*, 238 P. 338, 340-41, 28 Ariz. 573, 579-80 (1925).

- "Notification of claim" means any notification, whether in writing or other means, acceptable under the terms of any insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim. Ariz. Admin. Code R20-6-801(B)(8).

- In the absence of prejudice, policy conditions which require the giving of "notice of loss" or the filing of "proof of loss" within a specified time cannot be applied to work a forfeiture of the insured's claim. *Zuckerman v. Transamerica Ins. Co.*, 650 P.2d 441, 445, 133 Ariz. 139, 143(1982).

Proof of Loss:

- Look to the wording of the policy. Most policies require submission of a proof of loss within 60 days of the insurer's request.

- An insurance company is not relieved of its contractual liability because an insured fails to submit a proof of loss, unless the insurance company can show that it has been prejudiced by that failure. *Lindus v. Northern Ins. Co. of New York*, 438 P.2d 311, 315, 103 Ariz. 160, 164 (1968); *Arizona Title Ins. & Trust Co. v. Pace,* 445 P.2d 471, 473, 8 Ariz. App. 269, 271 (1968).

    - The mere fact of delay is not a sufficient showing of prejudice. *Globe Indem. Co. v. Blomfield*, 562 P.2d 1372, 1374, 115 Ariz. 5, 7 (App. 1977).

- The proof-of-loss requirement is strongly construed against the carrier and, as a matter of law, substantial compliance is sufficient. *Truck Ins. Exchange v. Hale*, 386 P.2d 846, 849-850, 95 Ariz. 76, 81-83 (1963).

- When there are no policy provisions requiring that any specific "proof of loss" forms be utilized, the only requirement being that there be filed "detailed proof of loss, duly sworn to," there is no legal requirement that the insured use proof of loss forms supplied by the insurer. *Maryland Cas. Co. v. Clements*, 487 P.2d 437, 442, 15 Ariz. App. 216, 221 (1971).

Suit Limitations:

- Breach of Contract:
  - Contract claims based on a written contract are generally subject to a six-year statute of limitations. A.R.S. § 12-548.
  - The cause of action accrues from the date of breach. However, a carrier may provide for a one-year statute of limitations in its policy. A.R.S. § 20-1115.
  - Although a contractual policy condition shortening the applicable statute is valid pursuant to A.R.S. § 20-1115(A)(3), the insurer may be estopped from raising a defense based upon such an adhesive clause where the enforcement of the clause would work an unjust forfeiture. *Zuckerman v. Transamerica Ins. Co*., 650 P.2d 441, 448, 133 Ariz. 139, 146 (1982).

- Bad Faith Claim:
  - Bad faith clams are governed by the statute of limitations for tort claims. A.R.S. § 12-542 provides that the limitation period for tort claims is within two years after the cause of action accrues.
  - A first-party bad faith claim accrues when the insurance company intentionally denies, fails to process or pay a claim without a reasonable basis for such action. *Uyleman v. D.S. Rentco*, 981 P.2d 1081, 1084, 194 Ariz. 300, 303 (1999).
  - If insurer acts unreasonable when processing a claim, it will be held liable for bad faith despite the claim's merits. *Zilisch v. State Farm Mut. Auto. Ins. Co*., 995 P.2d 276, 196 Ariz. 234 (2000).

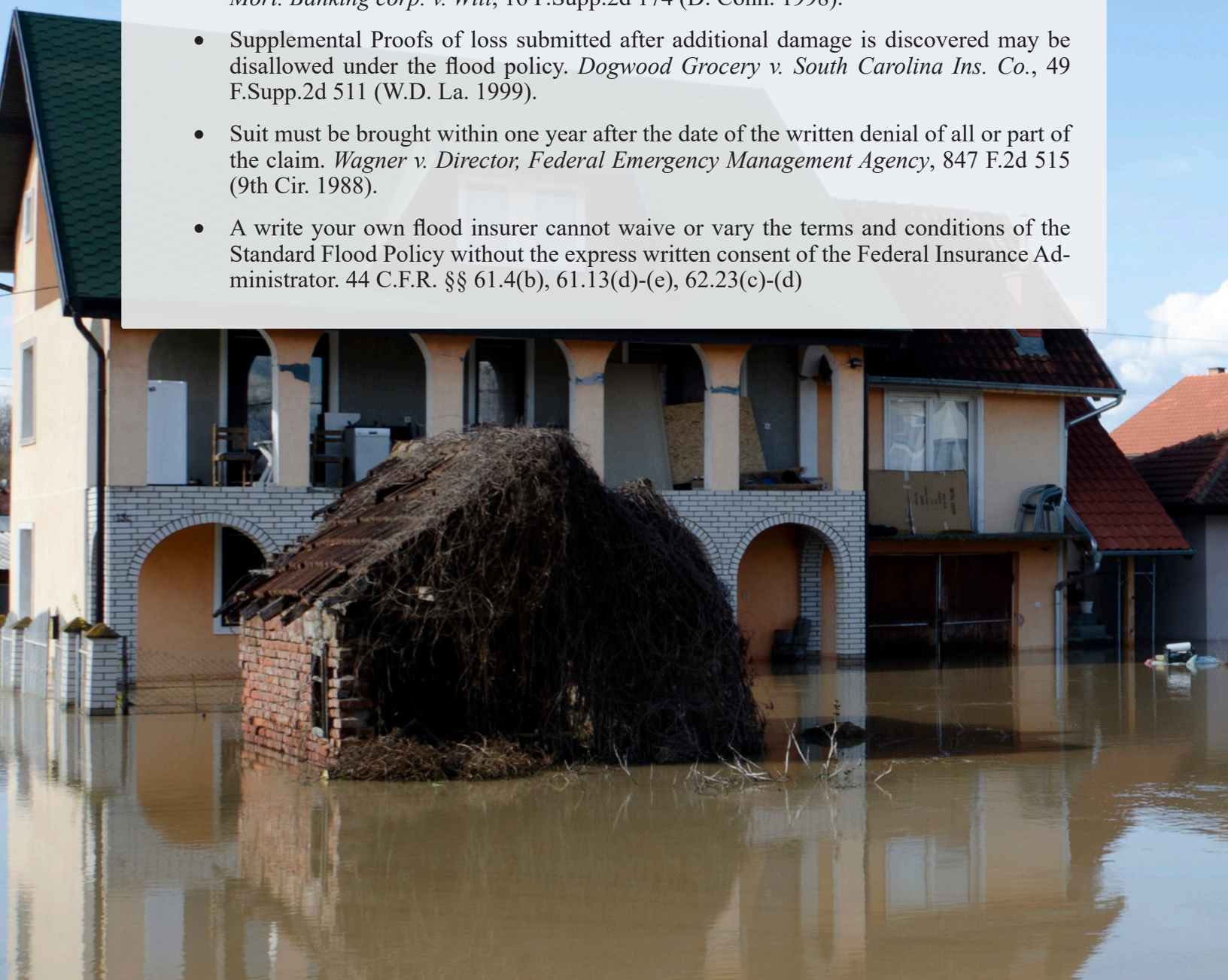
- Agent Negligence:
  - Although they generally are not fiduciaries, insurance agents owe only a duty of reasonable care, skill, and diligence in dealing with clients.
  - Under Arizona's common law, insurance agents owe a duty of reasonable care when obtaining insurance on behalf of their clients. That duty is founded on an agent's status as one with "special knowledge," who "undertakes to act as an advisor" to a client. *Webb v. Gittlen*, 174 P.3d 275, 279, 217 Ariz. 363, 367, (2008); *Darner Motor Sales, Inc. v. Universal Underwriters Insurance Co*., 682 P.2d 388, 402, 140 Ariz. 383, 397 (1984).
  - Breach of that duty can constitute negligence. Negligence claims are subject to a two-year statute of limitations, which generally runs from the date of injury. A.R.S. § 12-542.

Prompt Payment of Claims:

- Generally, payment should be made 30 days after the receipt of a proper proof of loss or interest begins to accrue.
  - "When handling claims, insurers are required to: . . . Properly calculate interest payments due on claims not paid within 30 days after receipt of sufficient proofs of loss." Arizona Department of Insurance, Circular Letter No. 2000-4; see also A.R.S. § 20-462.

Flood Insurance is Different

- Must file a proof of loss within 60 days of loss.
    - o Failure to do so is a bar to recovery. *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386 (9th Cir. 2000); *Moyer v. Director of the Federal Emergency Management Agency*, 721 F.Supp. 235 (D. Ariz. 1989).
- 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). But see *Pecarovich v. Allstate Ins. Co*., 309 F.3d 652 (9th Cir. 2002) (Court held Allstate had the authority to release insured from the proof of loss requirement and permit him to submit an adjuster's report under Article 9(J)(7) of the SFIP; Write-Your-Own ("WYO") flood carrier did not waive requirement, merely allowed an alternate method).
- Proof of loss should be submitted on the standard form utilized by FEMA and it must be completely filled out and notarized.
- Proof of loss that does not provide the amount of money claimed is insufficient. *Exim Mort. Banking corp. v. Witt*, 16 F.Supp.2d 174 (D. Conn. 1998).
- 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).
- Suit must be brought within one year after the date of the written denial of all or part of the claim. *Wagner v. Director, Federal Emergency Management Agency*, 847 F.2d 515 (9th Cir. 1988).
- A write your own flood insurer cannot waive or vary the terms and conditions of the Standard Flood Policy without the express written consent of the Federal Insurance Administrator. 44 C.F.R. §§ 61.4(b), 61.13(d)-(e), 62.23(c)-(d)



Appraisal

- The function of appraisers is to determine the amount of damage resulting to various items submitted for their consideration.
- An appraisal is limited to determining the actual amount of the loss.
- It is not the function of the appraisal panel to resolve questions of coverage and interpret provisions of the policy. *Hanson v. Commercial Union Ins. Co.*, 723 P.2d 101, 104, 150 Ariz. 283, 286 (App. 1986); *Home Indem. Co. v. Bush*, 513 P.2d 145, 148-149, 20 Ariz. App. 355, 358-359 (1973).
- A party waives its right to appraisal by (a) expressly waiving it, (b) acquiescing in another party's repudiation, or (c) acting in a manner inconsistent with appraisal, disregarding appraisal, or unreasonably delaying appraisal.
- Generally, the right to request an appraisal is waived if not requested within a year after the loss. *Meineke v. Twin City Fire Ins. Co*., 892 P.2d 1365, 1371, 181 Ariz. 576, 582 (App. 1994).

Assignment of Claim

- An insured can assign a claim under the policy after a loss. *Damron v. Sledge*, 460 P.2d 997, 105 Ariz. 151(1969).

Examinations Under Oath and Request for Documents

- Read the policy, as it will control who must appear for an EUO and whether, in a multiple insured situation, each must appear outside the presence of any other insured for their EUO.
- Books and Records: Very broad discretion in what can be demanded to be provided by insurer. *Practical Tip:* Provide everything the insurance company asks for regarding books and records, or run the risk of having the claim denied.
- Failure or refusal of the insured to comply with his obligation of cooperation with EUO provision will constitute a bar to any recovery against the insurance company. See *Home Insurance Co. v. Balfour-Guthrie Insurance Co*., 476 P.2d 533, 13 Ariz. App. 327 (1970); *Warrilow v. Superior Court of State of Ariz. In and For Pima County*, 689 P.2d 193, 196, 142 Ariz. 250, 253 (App. 1984).
- If requested by the insured, the carrier must explain the relevancy and materiality of its questions. If the carrier fails to do so and the relevancy and materiality are not patently obvious, the failure or refusal will not constitute a bar to recovery. *Twin City Fire Ins. Co. v. Harvey*, 662 F.Supp. 216, 219 (D. Ariz.1987).

Standards of Conduct of Public Adjusters:

An adjuster cannot engage in the practice of law. In *re Creasy*, 12 P.3d 214, 194 Ariz. 539 (2000).

A licensed adjuster is authorized to engage in the following general activities on behalf of an insured:

- Gathering all facts relevant to the claim, documenting and measuring damages, determining repair and replacement costs
- Evaluating coverage and valuation issues, and advising the insured with respect thereto
- Preparing a proof of loss
- Submitting a claim to the insurer
- Engaging in settlement negotiations with an authorized representative of the insurer with respect to coverage and the measurement and documentation of damages
- Advising the insured whether to accept the insurer's offer of settlement
- Assisting the insured in completing ordinary settlement documentation prepared by the insurer

While a licensed adjuster may, therefore, assist the insured in documenting and submitting the claim, including completion of ordinary settlement documentation used by the insurer, the adjuster is not authorized to render legal advice nor to prepare contracts, releases, instruments or other formal legal documentation that serves to create or settle legal rights between the parties.

Specifically, a licensed adjuster is not authorized to engage in the following activities in the context of such proceedings, without limitation:

- Initiating or defending such proceedings
- Preparing and submitting pleadings or motions
- Propounding discovery requests
- Taking or defending depositions or examinations under oath
- Examining or cross-examining witnesses
- Presenting evidence or legal arguments, orally or in writing

An adjuster's lack of authority to act in a representative capacity in the context of a legal proceeding does not, in any way, preclude an adjuster from serving as an expert witness or consultant on issues of coverage and valuation of damages. In connection therewith, an adjuster is not exceeding its authority when representing an insured in the context of an informal, "umpired" appraisal proceeding conducted pursuant to the insurance contract and wherein the sole issue is the documentation and valuation of loss.

[From Arizona Department of Insurance, Circular Letter 2000-11 (September 20, 2000)]


PRIVATE
PROPERTY

Unfair Claim Settlement Practices:

Arizona has adopted unfair claims settlement practices statutes and regulations. A.R.S. § 20-461; Ariz. Admin. Code R20-6-801. Insurers transacting business in this state are required to act reasonably and promptly with respect to the investigation and resolution of claims, including communications relating to claims. A.R.S. §§ 20-461 and 20-462. In some cases, insurers are subject to specific, mandatory time frames in their dealings with insureds, claimants and the Department. Ariz. Admin. Code R20-6-801.

Under Arizona law, a carrier cannot commit or perform with such a frequency to indicate as a general business practice any of the following:

- Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue. A.R.S. § 20-461(A)(1)

- Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under an insurance policy. A.R.S. § 20-461(A)(2)

    - Every insurer, upon receiving notification of a claim shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. Ariz. Admin. Code R20-6-801(E)(1).

    - An appropriate reply shall be made within 10 working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected. Ariz. Admin. Code R20-6-801(E)(3).

    - Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within 10 working days of notification of a claim shall constitute compliance with paragraph (1) of this subsection. Ariz. Admin. Code R20-6-801(E)(4).

- Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under an insurance policy. A.R.S. § 20-461(A)(3)

    - Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless such investigation cannot reasonably be completed within such time. Ariz. Admin. Code R20-6-801(F).

- Refusing to pay claims without conducting a reasonable investigation based upon all available information. A.R.S. § 20-461(A)(4)

- Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed. A.R.S. § 20-461(A)(5).

    - Within fifteen working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial. Ariz. Admin. Code R20-6-801(G)(1)(a).

- If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall also notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 45 days from the date of the initial notification and every 45 days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation. Ariz. Admin. Code R20-6-801(G)(1)(b).

- Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. A.R.S. § 20-461(A)(6)

- As a property or casualty insurer, failing to recognize a valid assignment of a claim. The property or casualty insurer shall have the rights consistent with the provisions of its insurance policy to receive notice of loss or claim and to all defenses it may have to the loss or claim, but not otherwise to restrict an assignment of a loss or claim after a loss has occurred. A.R.S. § 20-461(A)(7)

- Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds. A.R.S. § 20-461(A)(8)

- Attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application. A.R.S. § 20-461(A)(9)

- Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured. A.R.S. § 20-461(A)(10)

- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made. A.R.S. § 20-461(A)(11)

- Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration. A.R.S. § 20-461(A)(12)

- Delaying the investigation or payment of claims by requiring an insured to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information. A.R.S. § 20-461(A)(13)

- Failing to promptly settle claims if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage. A.R.S. § 20-461(A)(14)

However, the Unfair Claim Settlement Practices Act is not intended to provide any private right or cause of action to or on behalf of any insured or uninsured resident or nonresident of this state. A.R.S. § 20-461(D).

Examples of Bad Faith Conduct

- In Arizona, all insurance contracts include an implied covenant of good faith and fair dealing, whereby each party is bound to refrain from any action which would impair the benefits which the other had the right to expect from the contract or the contractual relationship. *Voland v. Farmers Ins. Co*., 943 P.2d 808, 811, 189 Ariz. 448, 451 (App. 1997); *Rawlings v. Apodaca,* 726 P.2d 565, 570, 151 Ariz. 149, 154 (1986). Similarly, there is a legal duty implied in an insurance contract that the insurance company must act in good faith in dealing with its insured on a claim, and a violation of that duty of good faith is a tort. *Noble v. Nat'l Am. Life Ins. Co*., 624 P.2d 866, 868, 128 Ariz. 188, 190 (1981).

- An insurance company must conduct an adequate investigation into an insured's claim for benefits. Indifference to facts or failure to investigate are sufficient to establish the tort of bad faith. *Rawlings v. Apodaca*, 726 P.2d 565, 578, 151 Ariz. 149, 162 (1986)

- Where coverage is not contested but the amount of the loss is disputed, the insurer is under a duty to pay any undisputed portion of the claim promptly. Failure to do so amounts to bad faith. *Borland v. Safeco Ins. Co*. of America, 709 P.2d 552, 557, 147 Ariz. 195, 200 (App. 1985); *Filasky v. Preferred Risk Mut. Ins. Co*., 734 P.2d 76, 82 83, 152 Ariz. 591, 597 98 (1987).

- An "insurer has 'some duties of a fiduciary nature,' including '[e]qual consideration, fairness and honesty." "The carrier has an obligation to immediately conduct an adequate investigation, act reasonably in evaluating the claim, and act promptly in paying a legitimate claim. It should do nothing that jeopardizes the insured's security under the policy. It should not force an insured to go through needless adversarial hoops to achieve its rights under the policy. It cannot lowball claims or delay claims hoping that the insured will settle for less. Equal consideration of the insured requires more than that." *Zilisch v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 276, 279-280, 196 Ariz. 234, 237-238 (2000)

- The core of the duty of good faith and fair dealing is that the insurance company act reasonably toward its insureds, giving equal consideration in all matters to the insured's interest and a carrier is liable for bad faith if it unreasonably seeks to take financial advantage of its insureds through conduct that invades the insureds' right to honest and fair treatment. *Rowland v. Great States Ins. Co.*, 20 P.3d 1158, 1163-64, 199 Ariz. 577, 582-83, (App. 2001); *Voland v. Farmers Ins. Co*., 943 P.2d 808, 811, 189 Ariz. 448, 451 (App. 1997).

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