



Arkansas Association of Defense Counsel

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SPRINGTIME IN ARKANSAS

The annual attack of tornados, hailstorms and "Public Adjusters"

So, what is a public adjuster?

Simply put, a public adjuster is one who "assists" an insured with the making of a claim to an insurance company. They have no relationship with insurance carriers and hang out a shingle, much like an attorney. They generate fees by charging a percentage of the total claim value though some charge a flat fee. We frequently see them in Arkansas after major storm events as they and other entities (typically roofing companies) descend from out of state, frequently going door-to-door soliciting business.

Public adjusters generally have some training and knowledge in appraising and negotiating property damage claims. Those states permitting public adjuster rationalize that allowing public adjusters is that the property owner is unfamiliar with the insurance claim process and the insurance company is operating in the interest of limiting its payments. The public adjuster acts as a middle man helping the property owner get the most money possible.

INSURANCE INFORMATION INSTITUTE
<http://www.iii.org/article/what-public-adjuster> (last visited May 25, 2017).

ADJUSTERS INTERNATIONAL
<http://adjustersinternational.com/commercial-claims/hiring-a-public-adjuster/public-adjuster/> (last visited May 25, 2017).

A study in Florida looking at claims made with and without public adjusters showed that having a public adjuster generally increases the settlement amount. BANKRATE: HIRING A PUBLIC ADJUSTER
<http://www.bankrate.com/finance/insurance/hiring-a-public-adjuster-1.aspx>

There are also risks associated with hiring a public adjuster. Public adjusters who are paid a percentage of the claim have a motive inflate the claim to increase their cut of the payment. The public adjuster taking a cut of the settlement will often leave insufficient funds to complete the repairs. This can in turn lead to insurance companies cancelling policies due to unrepaired damage. IS THERE ANY RISK IN HIRING A PUBLIC ADJUSTER FOR A CLAIM? (September 22, 2016)

<https://www.fultonagency.com/blog/is-there-any-risk-in-hiring-a-public-adjuster-for-a-claim.aspx>

Can Public Adjuster practice in Arkansas?

No. The Arkansas Supreme Court has the exclusive authority to regulate the practice of law. ARK. CONST. amend. 28; Arkansas Bar Ass'n v. Union Nat. Bank of Little Rock, 224 Ark. 48, 54, 273 S.W.2d 408, 412 (1954) ("The practice of law is regulated by the judiciary"). That authority includes the determination of what constitutes the unauthorized practice of law. Brown v. Kelton, 2011 Ark. 93 at 5, 380 S.W.3d 361, 365. The judiciary has, on

occasion, given approval to legislative enactments regarding the unauthorized practice of law. Id. See “Unauthorized Practice of Law” A.C.A. § 16-22-501. See, generally, Ligon v. Stewart, 369 Ark. 380, 255 S.W.3d 435 (2007).

The Arkansas Supreme Court has held “the practice of law consists in no small part of work performed outside of any court” including free legal advice. Arkansas Bar Ass’n v. Block, 230 Ark. 430, 435, 323 S.W.2d 912, 915 (1959); Undem v. State Bd. of Law Examiners, 266 Ark. 683, 692, 587 S.W.2d 563, 568 (1979).

Ark. Code Ann. § 16-22-501 states that any person who advises a person as to their rights and advisability of making a claim for property damages has committed an offense unless they are currently licensed to practice law in the state. A.C.A. § 16-22-501(a)(2).

In a bulletin issued by Mike Pickens, then Insurance Commissioner, time, he explained the law as “prohibit[ing] activities of public adjusters acting without attorney licenses.” Ark. Ins. Bul. No. 13 (1997).

A public adjuster clearly falls under this statute given that they advise insureds as to their rights and the advisability of making an insurance claim. Even though public adjusters operate outside of the court system and do not charge typical legal fees, they still violate the law. This practice is illegal unless the public adjuster also has a law license.

Arkansas Insurance Department

Current Insurance Commissioner Allen Kerr wrote a bulletin to all insurance carriers doing business in the state with a specific reminder that “unlicensed public adjusting is still illegal in the State of Arkansas. Ark. Ins. Bul. No. 5 (2017B).

What to do if approached by a public adjuster

“In the aftermath of a catastrophic event in the state, insurance companies assign adjusters to process claims.” In a letter informing Arkansas consumers of what to do after a storm, Commissioner Kerr advises consumers to contact their insurance provider then wait for them to send an adjuster. He warns consumers to be wary of public adjusters who offer to appraise damage in exchange for a percentage of the claim. This writer suggests an immediate report to the Arkansas Supreme Court's Committee on the Unauthorized Practice of Law.

<https://courts.arkansas.gov/administration/boards-committees/committee-unauthorized-practice-law>

The AADC wishes to thank Zachary Hill, law clerk at the Barber Law Firm for writing this article.



Zachary Hill is a law student at the University of Arkansas School of Law in Fayetteville. He is set to begin his second year of law school in the fall of 2017. His undergraduate degree is in Mechanical Engineering also from the University of Arkansas. Zachary was born in Little Rock, AR and graduated from Bryant High school. He is currently a law clerk at The Barber Law Firm.

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