

**I MINA' TRENTA NA LIHESLATURAN GUÅHAN**  
**2009 (FIRST) Regular Session**

Bill No. 5 (LS)

Introduced by:

Ray Tenorio

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**AN ACT TO ADD A NEW ARTICLE 9 TO CHAPTER 15 OF  
22GCA RELATIVE TO PUBLIC ADJUSTERS.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** A new Article 9 is hereby *added* to Chapter 15 of 22GCA to read:

**Article 9**

**LICENSING OF PUBLIC ADJUSTERS**

**§15900. Definitions.**

For the purposes of this Article of this title, the following terms have the meanings indicated.

(4) "Adjuster" means an adjuster as defined in §15710 of this Chapter.

(2) "License" means a license issued by the Commissioner to act as a insurance adjuster.

(3) "Licensee" means any person licensed on Guam to do business as a insurance adjuster.

1 (4) "Public Adjuster" shall include any person who, for compensation or  
2 any other thing of value:

3 a. Acts or aids, solely in relation to first party claims arising under  
4 insurance contracts that insure the real or personal property of the insured, on  
5 behalf of an insured individual in negotiating for, or effecting the settlement of, a  
6 claim for loss or damage covered by an insurance contract;

7 b. Advertises for employment as an adjuster of insurance claims or  
8 solicits business or represents oneself to the public as an adjuster of first party  
9 insurance claims for losses or damages arising out of policies of insurance that  
10 insure real or personal property; or

11 c. Directly or indirectly solicits business, investigates or adjusts  
12 losses or advises an insured about 1st-party claims for losses or damages arising  
13 out of policies of insurance that insure real or personal property for another person  
14 engaged in the business of adjusting losses or damages covered by an insurance  
15 policy.

16 (5) "Commissioner" means the Banking and Insurance Commissioner.  
17 (11GCA Chapter 103: §103102)

18 (6) "Commission" means the Office of Commissioner Of Insurance and  
19 Banking (11GCA Chapter 103).

20 **§15901. License requirement.**

21 (a) No person shall, directly or indirectly, act as a public adjuster without first  
22 procuring a license from the Commissioner to act as a public insurance adjuster.

1 (b) The Commissioner shall issue a license to an applicant for a public adjuster's  
2 license who:

3 (1) Has paid the applicable fee, which shall be the same as that for an  
4 adjuster's license;

5 (2) Passes a written examination for which a fee may be charged, in  
6 accordance with regulations issued pursuant to this Chapter; and

7 (3) Has sufficient experience, training, and instruction concerning the  
8 adjusting of first party claims for damages or losses under insurance contracts that  
9 insure the real or personal property of the insured, as determined by the  
10 Commissioner in accordance with regulations issued pursuant to this Chapter.

11 (c) The Commissioner may issue a license to any applicant without an  
12 examination if:

13 (1) The applicant holds a like license in good standing from another state  
14 and the public official having supervision of public insurance adjusters in the  
15 other state certifies that the applicant has passed a written examination; and

16 (2) The other state recognizes public insurance adjusters with public  
17 insurance adjuster licenses issued by the Government of Guam for the purpose of  
18 licensing the applicant without the requirement of an examination.

19 (d) A license issued pursuant to this section shall continue in force provided the  
20 licensee paid renewal fees as established for adjusters under this title, unless  
21 suspended, revoked or otherwise terminated prior thereto. Requests for renewal of  
22 the license shall be made to the Commissioner and accompanied by the license fee  
23 of Fifty Dollars (\$50.00).

1    **§15902. Bond requirement.**

2       (a) At the time of the application for license as a public adjuster, the applicant  
3   shall file with the Commissioner a bond executed and issued by a surety insurer  
4   authorized to transact business on Guam in the amount of Twenty Thousand  
5   Dollars (\$20,000), which bond shall serve the faithful performance of his or her  
6   duties as a public insurance adjuster. A public adjuster license shall automatically  
7   terminate when the bond is not in force.

8       (b) The bond shall have the following characteristics:

9           (1) The bond shall be in favor of the Government of Guam and shall  
10   specifically authorize recovery by the Commissioner of the damages sustained if  
11   the licensee is convicted of fraud or unfair practices in connection with his or her  
12   business as a public adjuster.

13          (2) The aggregate liability of the surety for all damages shall not exceed  
14   the amount of the bond.

15          (3) The bond shall not be terminated unless at least Thirty (30) days  
16   written notice is given to the licensee and filed with the Commissioner.

17    **§15903. Ownership of other entities.**

18       (a) An applicant for a public adjuster's license shall disclose to the  
19   Commissioner the full name and address of the business or other entity who  
20   directly or indirectly employs or controls the applicant/licensee or holds with  
21   power to vote or holds proxies with the power to vote, ten percent (10%) or more  
22   of the voting securities of the applicant's/licensee's employer.

1 (b) The Commissioner may deny an application or suspend or revoke the  
2 license of a public adjuster if any entity who directly or indirectly employs the  
3 applicant/licensee, or holds with power to vote or holds proxies with the power to  
4 vote, ten percent (10%) or more of the voting securities of the licensee does not  
5 meet the qualifications for licensure under this Chapter.

6 (c) Every applicant for an initial or renewal public adjuster's license shall file  
7 with the Commissioner a list of the full names of all employees and co-workers  
8 who are authorized to negotiate claims settlements.

9 **§15904. Maintenance of records.**

10 (a) A public adjuster shall maintain a complete record of each transaction as a  
11 public insurance adjuster. The records required by this section shall include at  
12 least the:

13 (1) Name of the insured;

14 (2) Date, location and amount of the loss;

15 (3) Copy of the contract between the insurance public adjuster and insured;

16 (4) Name of the insurer, amount, expiration date and number of each  
17 policy carried with respect to the loss;

18 (5) Itemized statement of the insured's recoveries; and

19 (6) Itemized statement of all compensation received by the public  
20 insurance adjuster, from any source whatsoever, in connection with a particular  
21 claim.

1 (b) Records shall be maintained for at least Five (5) years after the termination  
2 of the transaction with an insured and shall be open to examination by the  
3 Commissioner at all times.

4 (c) Records submitted in accordance with this section that contain proprietary  
5 information, identified in writing as such by the public insurance adjuster, shall be  
6 treated as confidential by the Commissioner

7 **§15905. License denial, suspension, revocation and refusal to renew; civil**  
8 **penalties.**

9 (a) The Commissioner may deny a license to an applicant or suspend, revoke or  
10 refuse to renew a license if the applicant or licensee:

11 (1) Violates the provisions of this Chapter or any standard of conduct  
12 prescribed by the Commissioner in regulations;

13 (2) Makes a material misstatement in the application for the license;

14 (3) Engages in fraudulent or dishonest practices; or

15 (4) Demonstrates incompetence or untrustworthiness to act as a public  
16 insurance adjuster.

17  
18  
19 (b) Upon a finding by the Commissioner of a violation of subsection (a) of this  
20 section, the Commissioner may impose a civil penalty not to exceed One  
21 Thousand Dollars (\$1,000) for each violation.

(c) This Chapter shall not be applied or interpreted to bar any person from bringing an action pursuant to any Guam or federal law for damages, injunctive relief or any other relief.

**§15906. Contracts and solicitation of contracts.**

(a) No licensee shall, directly or indirectly, act within Guam as a public adjuster without having first entered into a contract, in writing, on a form approved by the Commissioner and executed in duplicate by the insurance public adjuster and the insured or a duly authorized representative. One copy of the contract shall be kept on file by the licensee and be available at all times for inspection without notice by the Commissioner.

(b)(1) An insured who contracts for the services of a public adjuster shall have the right to cancel the contract until midnight on the Third (3<sup>rd</sup>) business day after the day on which the insured signs the contract. Contracts that do not substantially conform to the requirements contained in this section shall be void. Cancellation of the contract shall be effective when mailed if the following conditions are met:

a. The cancellation shall be in writing, but need not take a particular form, and shall be sufficient if it indicates the intent of the person not to go forward with the representation.

b. The right to cancel shall be contained in the approved contract in a format designated by the Commissioner.

(2) The right of cancellation contained in this subsection shall be in addition to, and not in limitation of, any other rights of the insured.

1           (3) In a commercial loss, if a contract is cancelled in accordance with this  
2 subsection, the public adjuster shall be entitled to reasonable compensation for  
3 actual services rendered and costs incurred between the time the contract was  
4 entered into and the time it was cancelled.

5       (c) A licensee shall not solicit, or attempt to solicit, a client for employment  
6 during the progress of a loss-producing occurrence covered by the client's  
7 insurance contract.

8       (d) A licensee shall not permit an unlicensed employee or agent in the  
9 unlicensed employee's or agent's own name to advertise, engage clients, furnish  
10 reports or present bills to clients, or in any manner whatsoever to conduct business  
11 for which a license is required under this Chapter.

12       (e) A licensee shall not charge the client a fee that exceeds Two and one-half  
13 percent (2.5%) of the first Twenty Five Thousand Dollars (\$25,000) of the total  
14 insurance recovery of the client. A licensee may charge the client a fee of up to  
15 twelve percent (12%) of the amount of the total insurance recovery of the client  
16 that exceeds Twenty Five Thousand Dollars (\$25,000).

17       (f) A licensed public adjuster may not prevent or attempt to dissuade an insured  
18 from communicating with an insurer, the insurer's adjuster, an independent  
19 adjuster representing the insurer, an attorney, or any other person regarding the  
20 settlement of the insured's claim.

21  
22   **§15907. Adjustments to comply with insurance contract and law.**



1 A public insurance adjuster shall adjust or investigate every claim, damage or  
2 loss made or occurring under an insurance contract for which the public insurance  
3 adjuster has been employed in accordance with the terms and conditions of the  
4 public insurance adjuster's contract with the insured and the applicable laws and  
5 regulations of Guam.

6 **§15908. Prohibited acts.**

7 (a) Notwithstanding any other grounds for disciplinary action provided for in  
8 this Chapter, the Commissioner may deny, revoke, suspend, refuse to renew or  
9 impose a penalty on an applicant or licensee for violation of the prohibited acts set  
10 out in this section.

11 (b) A licensed public adjuster is prohibited from:

12 (1) Paying any money or giving anything of value to any person in  
13 consideration of a direct or indirect referral of a client or potential client;

14 (2) Paying any money or giving anything of value to any person in  
15 consideration as an inducement to refer business or clients;

16 (3) Charging, collecting, or receiving any money or anything of value from  
17 any person providing services to an insured, either directly or on behalf of the  
18 public adjuster, in connection with the business of adjusting insurance claims,  
19 without the prior written disclosure of the fee or benefit to the insured;

20 (4) Rebating to any client any part of a fee specified in the employment  
21 contract;

1 (5) Splitting the licensed adjuster's fees or paying any money to any person  
2 for services rendered to a client unless such other person is also licensed as a  
3 public adjuster;

4 (6) Having any interest directly or indirectly in any home improvement,  
5 restoration, construction, salvage, appraisal, loss mitigation, cleaning or  
6 environmental restoration business that conducts business on Guam;

7 (7) In connection with the licensee's conduct of business as a public  
8 adjuster, making any misrepresentation of facts or advising any person on any  
9 question of law;

10 (8) Making false statements about any insurance company or its  
11 employees, agents or representatives;

12 (9) Soliciting the employment by a client in connection with any loss  
13 which is the subject of an employment contract involving the client and another  
14 public adjuster;

15 (10) Representing both the insurer and the insured; or

16 (11) Advancing any money to a client pending the settlement of a loss  
17 where such amount would be included in the final settlement.

18 **§15909. Regulations and scope.**

19 (a) The Commissioner shall promulgate rules and regulations as are necessary to  
20 carry out this Chapter.

21 (b) This Chapter shall not apply to:

1 (1) An adjuster for or an agent or employee of an insurer or group of  
2 insurers under common control or ownership that, as a representative of the  
3 insurer or group, adjusts losses or damages under policies issued by the insurer or  
4 group of insurers;

5 (2) An agent or broker that acts as an adjuster without compensation for an  
6 insured for whom the agent or broker is acting as an agent or broker;

7 (3) An attorney at law who does not:

8 a. Regularly act as a public insurance adjuster; or

9 b. Represent to the public by sign, advertisement or other written or  
10 oral communication indicating that the attorney at law acts as a public insurance  
11 adjuster; or

12 (4) A licensed health care provider, or employee of a licensed health care  
13 provider, who prepares or files a health insurance claim form on behalf of a  
14 patient;

15 (5) Persons employed only for the purpose of obtaining facts surrounding a  
16 loss or furnishing technical assistance to a licensed adjuster, including but not  
17 limited to photographers, private investigators, engineers and handwriting experts;

18 (6) Any agent or other person who negotiates and/or settles claims arising  
19 under life and health insurance policies;

20 (7) A person who performs clerical duties for or as an employee of an  
21 insurance company, but who does not participate in negotiations with parties on  
22 disputed and/or contested claims; or

1           (8) Any person who settles subrogation claims between authorized  
2 insurers.

3   **§15910. Basis for Compensation of a Public Adjuster.**

4       The basis for compensation for a Public Insurance Adjuster shall be limited to  
5 the disputed amount of the claim using the formulas contained in §15906 of this  
6 Article. No Public insurance adjuster may include in his contract, compensation  
7 related to undisputed claim. For purposes of this Section, undisputed claims are  
8 those that have been agreed to by the insured and the insured's insurance  
9 company.

10   **§15911. Immunity.**

11       There shall be no liability on the part of and no cause of action shall arise  
12 against, the Commissioner or the Commission or its employees for any action  
13 taken by them in the performance of their powers and duties under this Chapter

14   **§15912. Severability clause.**

15       If any provision of this Article, or its application to any person or circumstance,  
16 is held invalid, that determination shall not affect the provisions or applications of  
17 this Article that can be given effect without the invalid provision or application,  
18 and to that end the provisions of this Article are severable.

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20   **Section 2. Effective Date.** This Act shall be upon enactment.