



# JOHN BALES

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# INTRODUCTION

# OBJECTIVE

- ▶ Provide a broad summary of provisions concerning a Public Insurance Adjuster Services Agreement that may be used by a Public Adjuster.
- ▶ Help create “issue recognition” so that a Public Adjuster will seek appropriate legal advice when necessary.

# PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT

***“Prior preparation prevents poor performance.”***

**–James Baker**

# Public Adjuster Service Agreement

- ▶ John Bales Attorneys and several outstanding Public Adjusters have prepared a sample Public Insurance Adjuster Service Agreement.
- ▶ A copy of this agreement is included in our Booklet titled:

## DON'T DROP THE BALL ON CONTRACT REQUIREMENTS AND PERFORMANCE

- ▶ This PowerPoint and our Booklet, which explains each section and outlines the statutory requirements (with hyperlinks), are available on our website: [www.JohnBales.com](http://www.JohnBales.com)



# Public Adjuster Service Agreement

## Contracts – What Are They?

1. Agreement
  - a. The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations.
2. Offer and Acceptance
  - a. Offer: To present for acceptance or rejection.
  - b. Acceptance: Two parties agreement to the terms of a contract.
3. Insurance Policies are Contracts of Adhesion
  - a. Contracts of Adhesion are “a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to *adhere* to the contract or *reject* it.” *Seaboard Finance Co. v. Mutual Bankers Corp.*, 223 So. 2d 778, 782 (Fla. Dist. Ct. App. 1969).
4. Performance –
  - a. The fulfillment or accomplishment of a promise, contract, or other obligations according to its terms.



# Public Adjuster Service Agreement

## Public Adjuster Contracts

### 1. NOT Contracts of adhesion.

- a. Public Adjuster Contracts are not Contracts of Adhesion because of the parity of bargaining strength, and many provide an opportunity to bargain over the terms of the contract.

### 2. Create understanding and trust – listen to and explain the contract to your policyholder. Tell them that the reason your contract is 3 pages is that you want them to have a good understanding of what you will do.

### 1. Public adjuster's fiduciary duty to the policyholder.

- a. Fiduciary: A person holding the character of a trustee.
- b. Fiduciary Relationship: The trust between the agent and the principle. Care and responsibility must be taken for the best interest of the principle.
- c. Fiduciary Duty: Where a fiduciary relationship exists the principle possesses rights. Those rights create a corresponding duty owed by the fiduciary to the principle.



# Public Adjuster Service Agreement

## Benefits Of Service Contract Standardization

1. Contract that has been used and approved over a period of time will more likely be acceptable to DFS or the Courts. For example, the real estate brokers' contract is widely accepted because of its uniformity and longtime use.
2. If revisions are necessary, such as changes in the law, the contract can be revised on an industry wide scale.
3. The great debate – the “short” contract vs. the “long” contract
  - ▶ “Short” contracts are sometimes referred to as one page or less contract. With today’s statutory and regulatory requirements, it is difficult to have a one page contract that has a reasonably sized font.
  - ▶ “Long” contracts are sometimes referred to as two pages or more, and provide additional provision that explain the services provided and protect the Public Adjuster.

# Public Adjuster Service Agreement

## How To Handle Uncertainties

### 1. Date of loss

- a. An example is with a sinkhole loss. If a policyholder notices cracking but does not realize that it relates to a sinkhole until a year later after a different insurance company covered the property at different times, consider placing both on notice.

### 2. Named insureds and contract execution.

- a. Section [626.8796](#) requires that an agreement with a public adjuster must be signed by all named insureds.
- b. Section 626.8796 also states in part that “[i]f all named insureds’ signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds.”
- c. See Appendix B in Booklet. Authority to Sign for Unavailable Claimant

# Public Adjuster Service Agreement

## Legal Requirements for Public Adjuster Contracts

Public Adjuster Must Provide a Copy of the Contract to the Insurer.

Section [626.8796\(2\)](#), Florida Statute now require that “an unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution.” This means the Public Adjuster must provide the insurance company with an unaltered copy of the public adjuster services contract within 30 days of entering into the agreement with the insured.

The Contract Must Contain the “Fraud Statement” from Section [626.8796\(1\)](#), Florida Statutes which states the following:

“Pursuant to s. [817.234](#), Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#), Florida Statutes.”

# Public Adjuster Service Agreement

## Naming Parties

- a. This section identifies the contracting parties, Policyholder and Public Adjuster, and the agreed upon services the Public Adjuster will provide to Policyholder.
- b. Most of the information found in this section is required by statute and administrative code 69B-220.051.

PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT				
<b>POLICYHOLDER</b>				
Full Name(s):		Email:	Website:	
Address:	City:	County:	State:	Zip:
Phone: (    )	Fax: (    )		Cell: (    )	
<b>PUBLIC INSURANCE ADJUSTER</b>				
Full Name:			License No.	
Permanent Business Address:	City:	County:	State:	Zip:
Phone: (    )	Fax: (    )	Email:	Website:	
Public Adjuster Firm Name		Claim Type (Emergency, Non-Emergency, Supplemental)		
<b>LOSS</b>				
Loss Address:	City:	County:	State:	Zip:
Date of Loss:	Description of Loss:			
<b>INSURANCE COMPANY</b>				
Name # 1:			Policy/Claim No.	
Name # 2:			Policy/Claim No.	

# Public Adjuster Service Agreement

## Legal Requirements for Public Adjuster Contracts. Cont.

Section [626.8796\(2\)](#), Florida Statutes requires the contract must be in writing and must contain the following terms:

- a. Information about the Insured
  - i. Full Name, Street Address, etc.
- b. Information about Public Adjuster
  - a. Full Name, Permanent Business Address, License Number
- c. Claim Type
  - i. Either: Emergency, Non-Emergency, or Supplemental
- d. Brief Description of Losses
- e. Compensation Percentage for Public Adjuster's Services
- f. Date and Signature of the Public Adjuster and All Named Insureds
  - i. If all insured parties are not available, the public adjuster must submit an affidavit signed by all available named insureds attesting that they have the authority to enter into the contract and settle all claims on behalf of the named insureds.

# Public Adjuster Service Agreements

## Legal Requirements for Public Adjuster Contracts. Cont.

According to Florida Administrative Code [69B-220.051](#) – Conduct of Public Adjusters, Public Adjusters shall ensure that all contracts for their services are written and contain the following terms:

- a. Full name as specified in Department of Financial Services records for the Public Adjuster signing the contract;
- b. Permanent business address (No PO Box);
- c. Permanent business phone number;
- d. Florida DFS license number;
- e. Insured's full name, address, and phone number;
- f. Address of loss;
- g. A brief description of the loss;
- h. Insured's insurance company name;
- i. Insured's insurance policy number;
- j. Date contract with Public Adjuster was signed by the insured;
- k. Full compensation to the Public Adjuster;
- l. If the compensation is based on a share of the insurance settlement, the exact percentage must be specified;
- m. Any costs to be reimbursed to the Public Adjuster out of the proceeds must be specified in an addendum to the contract;
- n. Contract must be signed by the Public Adjuster who solicited the contract;
- o. No Public Adjuster may settle a claim unless the terms and conditions of settlement are approved by the Insured.

# Public Adjuster Service Agreement

## Services Agreement Provision

### 1. Services

- a. This provision describes the services that will be provided.
- b. Florida Law: requires a written agreement that describes the services

**1. SERVICES:** PUBLIC ADJUSTER will act as a public insurance adjuster on behalf of POLICYHOLDER for the services provided and fees will be paid upon the preparation and/or presentment of the claim for loss, damage, and recovery for the LOSS under any insurance policies including those listed above relating to the following insurance coverage provided in the policy(ies). This does not include assisting in any appraisal/mediation/arbitration or legal proceedings whether contractual or extra contractual. Other:

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# Public Adjuster Service Agreement

## Services Agreement Provisions

### 2. Notice of Services and Assignment

- a. Pro: This section discusses (1) the Policyholder's assignment of interest to the PA which allows the insurance company to communicate directly with the PA and makes the PA a co-payee on any benefits check, and (2) provides a request to the insurance company for certain documents which the PA will want to provide services.
- b. Con: The Policyholder may object to the requirement that the Policyholder assign interest. In such a situation, the PA may not wish to provide services to the Policyholder.
- c. Florida Law: Section 626.8796, Florida Statute now requires that "an unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution." As a result, the reasons for a separate notice document no longer exist and the notices are not included in the main contract.

**2. NOTICE OF PUBLIC INSURANCE ADJUSTER SERVICES AND OF ASSIGNMENT:** POLICYHOLDER further agrees and confirms that a portion of the recovery from any insurance company has been assigned by POLICYHOLDER to ADJUSTER. Accordingly, POLICYHOLDER has and will direct and authorizes PUBLIC ADJUSTER to direct all insurance companies to make POLICYHOLDER and PUBLIC ADJUSTER co-payees on any payments, checks, or drafts made by insurance company. POLICYHOLDER also directs and authorizes PUBLIC ADJUSTER to direct that all communications, correspondence, checks, and/or drafts be addressed and sent to PUBLIC ADJUSTER with a copy of all communications, correspondence, drafts, and checks sent to the POLICYHOLDER. All risk and/or damage inspections are to be coordinated with and through PUBLIC ADJUSTER. POLICYHOLDER has and will direct and authorizes PUBLIC ADJUSTER to direct all insurance companies to provide PUBLIC ADJUSTER/POLICYHOLDER with the following within ten (10) days from notice for each policy of insurance (including, but not limited to, coverage forms, amendatory endorsements, and/or exclusions) that may in any way provide coverage for the LOSS: (1) a certified copy of each of the policy(ies), including declaration page and any applicable exclusions, endorsements, etc.; (2) the type and limits of the coverages afforded by each policy; and (3) a statement of any policy or coverage defense that insurer reasonably believes is available to such insurer at the time of filing such statement for each policy. It is requested that the insurance company assure that all policy provisions are complied with in processing POLICYHOLDER's claim. Please note that it is POLICYHOLDER's intention to make a claim for loss and/or damage relating to any replacement cost provisions of the policy of insurance. Further, the insurance company must immediately send to PUBLIC ADJUSTER and POLICYHOLDER any additional or supplemental documentation or information that may be discovered in the future relating to this request.

# Public Adjuster Service Agreement

## Cancellation of Agreement

### This provision is required by Florida law.

**Florida Law:** Section 626.854(7), Florida Statutes provides that an insured or claimant may cancel a Public Insurance Adjuster contract to adjust a claim without penalty or obligation within three (3) business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The Public Adjuster's contract shall disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing which provides proof thereof, to the Public Adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for a period of one (1) year after the date of loss, the insured or claimant shall have five (5) business days after the date on which the contract is executed to cancel Public Adjuster's contract

**3. CANCELLATION OF AGREEMENT:** POLICYHOLDER may cancel this Agreement without penalty or obligation within three (3) business days after the date on which this Agreement is executed, as shown below, or within three (3) business days after the date on which POLICYHOLDER or PUBLIC ADJUSTER has notified any insurance company of the claim, by phone or in writing, whichever is later. The notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof of mailing thereof to the PUBLIC ADJUSTER at the address specified above. During any state of emergency, as declared by the Governor and for a period of one (1) year after the date of loss, POLICYHOLDER shall have five (5) business days after the date on which this Agreement is executed to cancel this Agreement. If during the pendency of this Agreement PUBLIC ADJUSTER determines within its sole discretion that POLICYHOLDER can no longer be represented for any reason, PUBLIC ADJUSTER may withdraw from further representation

# Public Adjuster Service Agreement

## Cancellation of Agreement

**What this means:** In cases where there is NO state of emergency declared by the governor, a policyholder has three (3) business days to cancel the agreement; the notice must be in writing and sent by some form that can verify delivery (e.g. certified mail, federal express). This is completely without penalty or obligation, meaning if within that time period a recovery is received or any costs are incurred, if the contract is cancelled, the Public Adjuster receives nothing. In cases where a state of emergency is declared by the Governor, a policyholder has five (5) business days to cancel the agreement; the notice must be in writing and sent by some form that can verify delivery.

**Example:** The following provision is in the Agreement and addresses cancellation by both parties and the new statutory requirements.

**3. CANCELLATION OF AGREEMENT:** POLICYHOLDER may cancel this Agreement without penalty or obligation within three (3) business days after the date on which this Agreement is executed, as shown below, or within three (3) business days after the date on which POLICYHOLDER or PUBLIC ADJUSTER has notified any insurance company of the claim, by phone or in writing, whichever is later. The notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof of mailing thereof to the PUBLIC ADJUSTER at the address specified above. During any state of emergency, as declared by the Governor and for a period of one (1) year after the date of loss, POLICYHOLDER shall have five (5) business days after the date on which this Agreement is executed to cancel this Agreement. If during the pendency of this Agreement PUBLIC ADJUSTER determines within its sole discretion that POLICYHOLDER can no longer be represented for any reason, PUBLIC ADJUSTER may withdraw from further representation



# Public Adjuster Service Agreement

## Fees for Services

This is the fees for services provision in the Agreement. It attempts to cover a fairly wide area to protect the Public Adjuster from a claim that it should not be paid if certain events occur. Be aware of the maximum percentage permitted by law. Of course, a Public Adjuster can reduce the percentage.

**Florida Law:** Section 626.854(11)(b)(1-2), Florida Statutes – A **Public Adjuster may not charge**, agree to, or accept any compensation, payment, commission, fee, or other thing of value **in excess of 20%** of the amount of the insurance claim payment by the insurer for claims based on events that are **NOT** the subject of a declaration of a **state of emergency** by the Governor.

A **Public Adjuster may not charge**, agree to, or accept any compensation, payment, commission, fee, or other thing of value **in excess of 10%** of the amount of the insurance claim payment by the insurer for claims based on **events** that are the subject of a **declaration of a state of emergency by the Governor**. This provision applies to claims made during the period of 1 year after the declaration of emergency. Also, Administrative Code 69B-220.201 applies.

**What this means:** The maximum amount a Public Adjuster can charge for Public Insurance Adjuster services is controlled by Florida Statutes. If there is no declared emergency, the cap is 20%; if there is a declared state of emergency, the cap is 10%.

**4. FEES FOR SERVICES:** POLICYHOLDER understands and agrees that PUBLIC ADJUSTER shall recover its fees based on the amount recovered from an insurance company for the LOSS including, but not limited to, compromise, confession of liability, appraisal awards, judgments, awards and/or settlements of damages, costs, interest, fees, and/or payments of POLICYHOLDER's liens, bills, or claims. PUBLIC ADJUSTER's fee shall be immediately due and payable upon insurance company making any payment. The fee calculation shall be computed before costs are subtracted from the total amount recovered. The amount of the PUBLIC ADJUSTER's fees shall be computed as follows: \_\_\_\_\_ percent of the amount of claim payments by any insurance company for the LOSS or \_\_\_\_\_ percent of the amount of any new claim payments in excess of \$ \_\_\_\_\_ considered as sums due/paid for damages determined by any insurance company for the LOSS. Ten percent of the amount of claim payments by any insurance company for the LOSS, if the claim is based on events that are the subject of a declaration of a state of emergency by the Governor and the claims are made during the period of 1 year after the declaration of emergency. POLICYHOLDER and PUBLIC ADJUSTER understand and agree that the percentages provided in this Agreement comply with Florida law in effect as of the date of this Agreement. If the provision of any state or federal rule or statute requires payment of fees in a lesser amount than those set forth above, then POLICYHOLDER and PUBLIC ADJUSTER understand that POLICYHOLDER will be charged only the lesser amount provided for in said rule or statute. Other: \_\_\_\_\_

# Public Adjuster Service Agreement

## Expenses and Costs

**This is the expense/cost provision in the Agreement.** It is an attempt to clarify that the Policyholder is responsible for costs in addition to fees. It also attempts to clarify that the Policyholder must pay the costs, unless the Public Adjuster decided to do so. Of course, with every provision, it is subject to interpretation. However, considering the limited space, it provides a good argument in favor of the Public Adjuster.

**Pro:** This provision defines the costs that the public insurance Adjuster will pay for that must be reimbursed, either at the resolution or if the Policyholder dismisses the Public Adjuster. It also includes an interest charge. Of course, the costs that will be incurred can be limited.

**Con:** The Public Adjuster does not want to incur any costs. Accordingly, this provision can be eliminated or revised. Additionally, the provision providing for interest may be objectionable to the Policyholder.

**Florida Law:** Administrative Code Rule 69B-220.201 provides that any expenses that are to be repaid, and the terms of repayment, need to be in writing.

**5. EXPENSES/COSTS:** POLICYHOLDER understands and agrees that POLICYHOLDER is responsible for all costs and expenses incurred for the preparation and/or presentation of the claim for loss, damage, and recovery for the LOSS. If POLICYHOLDER authorizes in writing PUBLIC ADJUSTER to pay on POLICYHOLDER's behalf such costs and expenses the PUBLIC ADJUSTER deems necessary from time to time to investigate, prepare a claim, settle a claim, and/or take other action the ADJUSTER deems necessary to pursue POLICYHOLDER's claim, POLICYHOLDER understands such costs and expenses advanced by PUBLIC ADJUSTER on POLICYHOLDER's behalf are payable to PUBLIC ADJUSTER and shall be deducted from any recovery after fees for services are computed and paid to PUBLIC ADJUSTER. If there is any recovery, whether during the time of service by PUBLIC ADJUSTER, service by another public insurance adjuster, representation by an attorney, or without services provided by an adjuster or attorney, PUBLIC ADJUSTER will be entitled to recovery of all reasonable fees and expenses/costs expended in the processing of POLICYHOLDER's claim. POLICYHOLDER understands that if POLICYHOLDER elects to terminate PUBLIC ADJUSTER, POLICYHOLDER shall immediately pay PUBLIC ADJUSTER all costs and expenses of PUBLIC ADJUSTER and shall remain responsible for all fees for services rendered pursuant to this Agreement and PUBLIC ADJUSTER may have a lien or a claim for quantum meruit on any recovery from this claim.

# Public Adjuster Service Agreement

## Letters of Protection

**This is the letter of protection provision in the Agreement.** Letters of protection are a valuable tool for a Public Adjuster to use to protect his/her interest. Unfortunately, they are often misunderstood and misapplied by Public Adjusters and attorneys. However, it is better to have some argument instead of none.

**Pro:** This provision is an attempt to protect the Public Insurance Adjuster when an attorney is retained by stating that the Policyholder has agreed to enter into a letter of protection. **BE AWARE THAT THIS PROVISION IS NOT A LETTER OF PROTECTION. IT JUST STATES THAT THE POLICYHOLDER WILL ENTER INTO ONE.** In essence, a Public Adjuster still has to have the Policyholder, the attorney, and the Public Adjuster enter into (and execute) a letter of protection. A properly written and executed letter of protection provides that the Public Adjuster will recover some of or all of his or her fees and costs in the event that the Policyholder obtains a reasonable recovery. The letter “protects” the Public Adjuster’s claim for payment under its agreement. There are other issues regarding letters of protection that are beyond the scope of this booklet.

**Con:** This provision may be too detailed for the claimant. The Public Adjuster may need to retain his or her own attorney to review the letter of protection to ensure that all of the Public Adjuster’s rights are protected. It also may place the Public Adjuster and Policyholder against each other if the Policyholder fails to comply with this provision.

**Florida Law:** Florida courts generally recognize letters of protection as valid and enforceable contracts. *Winans v. Weber*, 979 So.2d 269 (Fla. 2d DCA 2007); *Koenig v. Theofilos*, 933 So.2d 1293 (Fla. 4th DCA 2006). A contract that is entered into by the Public Adjuster, Policyholder, and the Policyholder’s attorney creates a legal obligation of that attorney to the Public Adjuster. Fla. Bar Ethics Opinion [02-4](#) (2002).

**6. LETTER OF PROTECTION:** POLICYHOLDER understands and agrees that if it becomes necessary to retain an attorney, POLICYHOLDER authorizes and agrees to a Letter of Protection for the PUBLIC ADJUSTER. POLICYHOLDER shall direct POLICYHOLDER’S attorney to prepare a Letter of Protection, which is a legally binding document signed by the PARTIES and the attorney, that directs POLICYHOLDER’s attorney to pay the fees and costs due under this Agreement from any recovery by POLICYHOLDER for the LOSS.

# Public Adjuster Service Agreement

## Letters of Protection

**6. LETTER OF PROTECTION:** POLICYHOLDER understands and agrees that if it becomes necessary to retain an attorney, POLICYHOLDER authorizes and agrees to a Letter of Protection for the PUBLIC ADJUSTER. POLICYHOLDER shall direct POLICYHOLDER'S attorney to prepare a Letter of Protection, which is a legally binding document signed by the PARTIES and the attorney, that directs POLICYHOLDER's attorney to pay the fees and costs due under this Agreement from any recovery by POLICYHOLDER for the LOSS.

**What it means:** If the Policyholder's claim requires retaining the services of an attorney, the Public Adjuster should ask the attorney to obtain approval from the Policyholder to enter into a letter of protection as the Agreement provides. After the attorney receives authority from his/her client, the attorney could then give the Public Adjuster a letter of protection stating that the Public Adjuster's fees and costs will be paid from any recovery obtained from the insurance company. These are legal contracts and there is no "best" way to approach them 100% of the time. Public Adjusters should be aware that the attorney must be a party to the letter of protection before the attorney is bound by the letter of protection. It is not possible to enter into a letter of protection in which the attorney will be required to hold the funds due to the Public Adjuster unless the attorney is a party to the letter of protection agreement. Naturally, there are certain caveats to be aware of and for that reason, the Public Adjuster should consider retaining an attorney to review the document before entering into one. Remember, the provision will require the Policyholder's attorney to prepare this letter; however, that attorney only represents the Policyholder, not the Public Adjuster. Again, there are many factors to consider regarding letters of protection that exceed the scope of this booklet.



# Public Adjuster Service Agreement

## Provisions Concerning Services

**This provision in the Agreement contains several subparts:**

- (a) Cooperation Provisions,
- (b) Merger Clause,
- (c) Venue/Forum Provision,
- (d) Governing Law Provision,
- (e) Nonwaiver Provision,
- (f) Notice Provision,
- (g) Construction,
- (h) Counterparts, and
- (i) Transmission.

These are common provisions that most likely should be in any agreement, if possible. These provisions can provide a level of protection from arguments that can be stumbling blocks to enforcing the Agreement. Each provision is discussed below.

**7. PROVISIONS CONCERNING SERVICES:** POLICYHOLDER and PUBLIC ADJUSTER understand and agree that neither party shall settle any claims arising out of the LOSS without first obtaining the consent of the other. POLICYHOLDER's deposit or negotiation of a claim payment is evidence of POLICYHOLDER's consent to settlement. POLICYHOLDER agrees to cooperate with PUBLIC ADJUSTER, to be available for preparation of the claim, conferences, appraisal, and/or mediation, and to keep PUBLIC ADJUSTER fully informed of all matters relating to this LOSS. POLICYHOLDER acknowledges that PUBLIC ADJUSTER has made no guarantees regarding the disposition or results of any stage of the claims process, and all expressions made on behalf of PUBLIC ADJUSTER are the opinion of PUBLIC ADJUSTER based on information known at that time. This Agreement provides the complete and only agreement between POLICYHOLDER and PUBLIC ADJUSTER with respect to the above referenced LOSS, and supersedes all prior written and oral offers, proposals, and agreements. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing. In the event a dispute between the parties arises and suit is filed, the venue of such suit shall be in the County in Florida where PUBLIC ADJUSTER's above address is located. The substantive law of the State of Florida shall govern this Agreement. Any failure by either party to comply with any provision of this Agreement may be waived, but only if such waiver is in writing and signed by the other party. Any failure to insist upon or enforce compliance with any provision of this Agreement shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if hand delivered, sent by Federal Express or similar overnight carrier, or sent by registered or certified United States Mail, return receipt requested, to the addresses set forth in this Agreement, or to such other address as a party may designate in accordance with this provision, unless specified otherwise for a particular provision in this Agreement. This Agreement shall not be construed more strictly against A PUBLIC DJUSTER simply because it was the party responsible for preparing this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. A copy of this Agreement transmitted by telefacsimile and/or email shall be deemed an original.

# Public Adjuster Service Agreement

## Cooperation Provisions

**Pro:** Protects Public Adjusters and Policyholders. Public Adjusters are protected and have an “out” from policyholders who are uncooperative. Policyholders are protected from Public Adjusters who settle claims without their consent. Furthermore Public Adjusters are protected from a policyholder claiming that there was a guarantee on the amount recovered.

**Con:** May discourage policyholders from entering into a contract. However, if a Policyholder does not want to agree to this, the Public Adjuster may want to reconsider providing services to this Policyholder.

**Florida Law:** Administrative Code [69B-220.051](#) states that an Adjuster may not settle a claim unless the terms and conditions of settlement are approved by the insured. Further, section [626.854\(8\)](#), Florida Statutes provides that it is an unfair and deceptive insurance trade practice pursuant to s. [626.9541](#) for a Public Adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

**7. PROVISIONS CONCERNING SERVICES:** POLICYHOLDER and PUBLIC ADJUSTER understand and agree that neither party shall settle any claims arising out of the LOSS without first obtaining the consent of the other. POLICYHOLDER's deposit or negotiation of a claim payment is evidence of POLICYHOLDER's consent to settlement. POLICYHOLDER agrees to cooperate with PUBLIC ADJUSTER, to be available for preparation of the claim, conferences, appraisal, and/or mediation, and to keep PUBLIC ADJUSTER fully informed of all matters relating to this LOSS. POLICYHOLDER acknowledges that PUBLIC ADJUSTER has made no guarantees regarding the disposition or results of any stage of the claims process, and all expressions made on behalf of PUBLIC ADJUSTER are the opinion of PUBLIC ADJUSTER based on information known at that time.

**What this means:** A Public Adjuster is required to obtain the Policyholder's authority before settling any claim. Additionally, a Public Adjusters' advertisements must be truthful. This statute is in many ways similar to the rules governing attorneys' advertisements. Because this is part of the new statutes, there have not been any cases decided on this statute, thus it is difficult to predict what the court will hold as “untrue, deceptive, or misleading.” However, assuming a court would apply that standard the same way that the standard is applied to attorneys, a Public Adjuster should assume that the rule is strictly construed. Generally, anything that guarantees a certain result or advertisements that make it seem as if the Public Adjuster has some sort of advantage over other Public Adjusters (beyond education and experience) will probably be found deceptive or misleading. Any sort of superlative (e.g. “the best”), even if it is “mere puffery” will likely be found in violation of this statute.

# Public Adjuster Service Agreement

## Merger Clause

This Agreement provides the complete and only agreement between POLICYHOLDER and PUBLIC ADJUSTER with respect to the above referenced LOSS, and supersedes all prior written and oral offers, proposals, and agreements. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing.

**Pro:** This provision is important to try to counter attempts to raise oral or written statements inconsistent with the terms of the agreement provisions.

**Con:** This provision may be too detailed for the claimant. Additionally, a Public Adjuster will be prevented from relying on an oral promise given by the Policyholder, unless it is later confirmed and agreed to in writing. A Public Adjuster who is in the practice of making oral agreements beyond the scope of their written service agreement will have to modify his/her standard service agreement to incorporate oral agreements entered into with the Policyholder.

**Florida Law:** Representations which precede and accompany the making of a contract are presumed to have merged in the written contract. *Windowmaster Corp. v. Jefferson Const. Co.* 114 So.2d 626, 628 (Fla. 3d DCA 1959)

**What this means:** A party to a contract may be held responsible for prior statements, whether they are oral or written, if there is not a merger clause. By using the merger clause, a party is protected against any prior statements that are inconsistent with the terms of the contract as long as fraud has not been committed.

# Public Adjuster Service Agreement

## Venue/Forum Provision

In the event a dispute between the parties arises and suit is filed, the venue of such suit shall be in the County in Florida where PUBLIC ADJUSTER's above address is located.

**Pro:** This provision specifies where a lawsuit can be brought, which is the location of the Public Adjuster's business described in the Agreement. It is helpful if a claim is brought by or pursued against the Adjuster.

**Con:** The Policyholder may object to having venue anywhere but where the subject property is located.

**Florida Law:** Forum selection clauses can be enforced absent showing that enforcement of clause would be unreasonable or unjust. *Manrique v. Fabbri*, 493 So.2d 437 (Fla.,1986)

**What it Means:** These clauses are enforceable, provided they are not "unreasonable or unjust," where "unreasonable or unjust" means more than just "mere inconvenience or additional expense" but "that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." This meaning has been construed more narrowly in various Florida jurisdictions and may differ depending on which district's law applies. For example *Harris v. Caribank*, 536 So.2d 394 (Fla. 4th DCA 1989) states that the parties to a contract may agree to submit to jurisdiction of particular forum if that forum is not chosen because of one party's overwhelming bargaining power, enforcement would not contravene public policy, and purpose of agreement is not to transfer local dispute to remote and alien forum in order to inconvenience one or both of parties.

# Public Adjuster Service Agreement

## Governing Law Provision

the State of Florida shall govern this Agreement.

The substantive law of

**Pro:** This provision specifies that Florida law controls the interpretation of the contract. It is helpful if a claim is brought by or pursued against the Public Adjuster.

**Con:** This provision may be too detailed for the Policyholder and may be objectionable to out-of-state policyholders who want the agreement interpreted under the laws of the state where the subject property is located.

**Florida Law:** Generally, matters bearing on execution, validity, interpretation, and obligations of contracts are determined by laws of place where the contract is made, although matters connected with performance are regulated by the law of the place where contract by its terms may have been provided to be performed and matters relating to procedure in actions on contract depends on the law of the forum. *State-Wide Ins. Co. v. Flaks*, 233 So.2d 400 (Fla. 3d DCA 1970)

**What it means:** The governing law provision, also known as a choice of law provision, works in conjunction with the venue/forum clause and provides further protection that, even if a case is not brought in Florida, Florida law still governs. The difference between the two is the forum selection clause controls WHERE the case may be brought, the governing law provision controls WHAT law applies. For example, a Florida Public Adjuster may enter into a contract with a policyholder in another state. In that situation a contractual dispute may be subject to the law of that state as opposed to Florida law, even if the forum selection clause requires the case to be brought in a Florida court. In general, a court will apply the law of whatever forum it is in, unless one party challenges that choice of law. A choice of law question is decided differently in different states, some apply the law where the contract was entered into, while others apply the law of the state with the “most substantial relationship” to the parties and the contract. Use of a governing clause prevents this complicated issue from arising.



# Public Adjuster Service Agreement

## Nonwaiver Provision

Any failure by either party to comply with any provision of this Agreement may be waived, but only if such waiver is in writing and signed by the other party. Any failure to insist upon or enforce compliance with any provision of this Agreement shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure.

**Pro:** This helps prevent a party from inadvertently waiving, or giving up, requirements under the contract.

**Con:** This provision may be too detailed for the claimant and may be held against Public Adjusters who do not follow the terms of their own agreements.

**Florida Law:** Provision in contract specifying that any extras had to be authorized by owners in writing was valid but could be waived and waiver could be established by subsequent course of dealings between parties. *Broderick v. Overhead Door Co. of Fort Lauderdale*, 117 So.2d 240 (Fla. 2d DCA 1959)

**What this means:** This provision basically prevents what happened in the *Broderick* case. If a provision requires a party to do “X” but over the course of the contract, a party has done “Y”, just because the other party has not asked/insisted/forced the party to do “X” does not mean that the provision has been waived.

# Public Adjuster Service Agreement

## Notice Provision

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if hand delivered, sent by Federal Express or similar overnight carrier, or sent by registered or certified United States Mail, return receipt requested, to the addresses set forth in this Agreement, or to such other address as a party may designate in accordance with this provision, unless specified otherwise for a particular provision in this Agreement.

**This provision is required** under the new statute regulating Public Adjusters. This is especially important for the cancellation of contracts. This provision can better define the parties' rights and avoid potential disputes with the Policyholder.

**Florida Law:** The case of *Florida Recycling Services, Inc. v. Greater Orlando Auto Auction, Inc.* 898 So.2d 129 (Fla. 5th DCA 2005) held that a party did not comply with the notice of breach requirement in parties' contract by making phone calls, given that language chosen by the parties for their contract clearly required a written notice of breach and a written notice of termination and there was no finding that opposing party waived the written notice requirement or otherwise gave up its contractual right to written notice of breach.

**What this means:** While the statute governing Public Adjusters requires notice as to certain events (e.g. cancellation of the contract), it does not address other types of notice. This provision applies to all notice issues besides those addressed in the Cancellation of Agreement provision.



# Public Adjuster Service Agreement

## Construction Provision

This Agreement shall not be construed more strictly against A PUBLIC DJUSTER simply because it was the party responsible for preparing this Agreement.

**Pro:** This provision helps protect the Public Adjuster from the contract being more strictly construed, or interpreted, against the Public Adjuster because he/she wrote the Agreement.

**Con:** This provision may be too detailed for the Policyholder.

**Florida Law:** Florida law holds that an expressed provision cannot generally be varied by an implied one, and in cases of doubt a contract is construed most strongly against party who prepared it. *Niagara Therapy Mfg. Corp. v. Niagara Cyclo Massage of Miami, Inc.* 196 So.2d 474 (Fla. 3d DCA 1967). Ambiguity, if any, appearing in prepared writing will be construed more strongly against party using language and for whose benefit language was inserted in the instrument. *Watson v. Poe*, 203 So.2d 14 (Fla. 4th DCA 1967.)

**What this means:** An ambiguous word or phrase is one that is open to more than one interpretation. Generally, ambiguous provisions in a contract will be interpreted more strictly against the person who wrote the contract. This provision basically negates this matter of law as it applies to the Agreement.

# Public Adjuster Service Agreement

## Counterparts Provision

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

**Pro:** This provision allows the parties to sign separate copies of the same Agreement and the Agreement will still be binding.

**Con:** This provision may be too detailed for the Policyholder. Additionally, issues may arise if there are two different copies of the contract.

**Florida Law:** Florida law permits counterpart provisions.

**What this means:** If a Public Adjuster makes two copies of the contract, and the Policyholder signs one, and the Public Adjuster signs the other, both will be considered originals and together will be considered as if one copy of the contract was signed by both parties.

# Public Adjuster Service Agreement

## Transmission Provision

**Pro:** This provision can better define the parties' rights and avoid potential disputes with the claimant. It protects both parties in case the original is ever lost or destroyed.

**Con:** This provision may be too detailed for the Policyholder.

**Florida Law:** Pursuant to section [90.953](#), Florida, a copy is acceptable to the same extent as the original unless it is a negotiable instrument, security, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment. Furthermore, a copy may not be acceptable where a genuine question is raised about the authenticity of the original or given the circumstances; it is unfair to admit the duplicate.

**What this means:** This provision reinforces what is already stated in Florida law, that a copy of the Agreement is just as good as an original.

# Public Adjuster Service Agreement

## Exculpatory Provision

**Pro:** This provision may be helpful if there is a claim that the Adjuster is “practicing law.” Of course, it is the actual conduct of the Public Adjuster that will be considered when determining whether the Public Adjuster was practicing law. However, with this provision, at least the Agreement may not be used against the Public Adjuster. Also, this provision clarifies that the Policyholder will need to retain her/his own attorney.

**Con:** It will not protect a Public Adjuster whose conduct amounts to the practice of law.

**Florida Law:** Pursuant to section [454.23](#), Florida Statutes “Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree.” *State v. Sperry*, 140 So.2d 587 (Fla. 1962) defines the unauthorized practice of law as “giving advice and performance of service for another as course of conduct... if actions affect important rights of person under law...” *Larson v. Lesser*, 106 So.2d 188 (Fla. 1958) states that a Public Adjuster should not prosecute or defend claims, but merely adjust claims on behalf of a claimant.

**8. NO LEGAL SERVICES PROVIDED:** This Agreement is not for legal services. Any legal services must be provided by an attorney. POLICYHOLDER understands and agrees that POLICYHOLDER will need to enter into a separate written agreement with an attorney of his/her choice and make separate payment for such services provided for representation.

**What this means:** The unauthorized practice of law (UPL) is a serious offense, and it is an issue that a Public Adjuster must always be cognizant of while performing public insurance adjuster services. Throughout this presentation and throughout the sample documents provided, words such as “client” and “represent” are not used. This is another attempt to make it clear that legal representation is not being provided.

# Public Adjuster Service Agreement

## Statement of Claim

This provision is required by statute and is a recitation of the language in section [817.234](#), Florida Statutes concerning potential fraud. It is another exculpatory clause to help the Public Adjuster when accusations are made.

**Florida Law:** Section [626.8796](#) and [626.8797](#), Florida Statutes provides for fraud statements. All contracts for Public Insurance Adjuster Services AND Proof of Loss Statements must be in writing and must prominently display the following statement:

“Pursuant to s. [817.234](#), Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), Florida Statutes.”

9. STATEMENT OF CLAIM: POLICYHOLDER understands and acknowledges that pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.803, or s. 775.084, Florida Statutes. POLICYHOLDER shall confirm the accuracy and completeness of any and all information and documentation provided to PUBLIC ADJUSTER and any and all forms or other documents signed and/or provided to the insurance company for purposes of adjusting through the preparation and submission of a claim for loss, damage, and recovery under any insurance policy.

**What this means:** This provision applies to both the Public Adjuster and the Policyholder and states that if either attempts to make a claim that they know is false, that they are committing a felony. This is a serious provision that both the Public Adjuster and Policyholder need to be aware of and closely follow.

# Public Adjuster Service Agreement

## Attachments

10. ATTACHMENTS: There ☐ are ☐ are not (initial one) attachments to this Agreement.

**Pro:** This provision helps protect the Public Adjuster if there is a claim that there were attachments to the agreement and there were not.

**Con:** It makes the agreement longer.

## Signature and Date Lines

POLICYHOLDER is signing this Agreement on POLICYHOLDER's own behalf and in any representative capacity appropriate to the circumstances. By executing below, POLICYHOLDER specifically agrees to be bound by this Agreement, including the provisions set out above and on the back of this Agreement, which are incorporated herein for all purposes. POLICYHOLDER hereby acknowledges receipt of a copy of this Agreement and that the Adjuster that solicited this Agreement has signed below.

Date: _____	By: _____ Signature of POLICYHOLDER
	_____ Print Name of POLICYHOLDER
Date: _____	By: _____ Signature of POLICYHOLDER
	_____ Print Name of POLICYHOLDER
Date: _____	By: _____ Signature of PUBLIC ADJUSTER
	_____ Print Name of PUBLIC ADJUSTER

This provision requires the signature of the parties and the date that each signed the agreement. It indicates that all parties intend to be bound by the contract.

**Florida Law:** Administrative Code 69B-220.051 specifies that **the date the Policyholder signed must be included.** A contract may be binding on a party despite the absence of a party's signature. The object of a signature is to show mutuality or assent, but these facts may be shown in other ways, for example, by the acts or conduct of the parties. *Integrated Health Services of Green Briar, Inc. v. Lopez-Silvero* 827 So.2d 338, 339 (Fla. 3d DCA 2002) quoting *Gateway Cable T.V., Inc. v. Vikoa Contruction Corp.*, 253 So.2d at 463 (Fla. 1st DCA 1971). A party, who neither has nor signifies intention to close contract until it is fully expressed in written instrument attested by parties' signatures, is not bound thereby until signatures are affixed, and, if written draft is viewed as consummation of negotiation for contract, there is no contract until written contract is finally signed. *Rork v. Las Olas Co.* 156 Fla. 510, 23 So.2d 839 (Fla. 1945)

**What this means:** A signature is a party's indication that it consents to be bound to the terms of the contract. While case law states that it is possible to be bound to a contract that was not signed but has been performed, other case law states that if a party does not intend to be bound by that contract without a signature, then the contract does not exist until the signature is there. It is best to not have these types of ambiguities and be sure that all parties to the contract sign it.



# Public Adjuster Service Agreement

## Other Provisions to Consider

### Arbitration Provision

**Pro:** This provision limits the Policyholder's rights to only resolve disputes in arbitration. It is substantially similar to the one used by real estate brokers.

**Con:** This provision limits the Public Adjuster's and Policyholder's right to a jury trial, which is the forum that best holds insurance companies responsible for unreasonable conduct. An argument can be made that if Public Insurance Adjusters limit jury trials, then insurance companies should be allowed to as well. Additionally, arbitration can be a very expensive process. The last five week arbitration the presenter did cost the parties approximately \$400,000.00, not including attorneys' fees.

**Florida Law:** Parties to a contract may lawfully require arbitration before they resort to legal process but they may not, by their contract, totally exclude the courts from a consideration of their dispute under every circumstance which may possibly arise. *Mike Bradford & Co. v. Gulf States Steel Co.*, 184 So.2d 911 (Fla. 3d DCA., 1966).

**What this means:** An arbitration clause is enforceable, but ultimately may not keep an action out of court. The aforementioned case goes on to say that the right to arbitrate given by an arbitration clause is waiveable. When a party commences an action, it may waive its right to enforce the arbitration clause and when the other party responds (without demanding arbitration) it, too, may waive its right to arbitration. Nevertheless, in a situation where a Policyholder files suit over the terms of the contract, this clause would give the Adjuster the right to demand arbitration rather than continue in court.



# Public Adjuster Service Agreement

## Arbitration Provision

### Example:

Dispute Resolution: This Agreement will be construed under Florida law. All controversies, claims, and other matters in question arising out of or relating to this transaction or this Agreement or its breach will be settled as follows:

(a) Disputes concerning entitlement to deposits made and agreed to be made: Buyer and Seller will have 30 days from the date conflicting demands are made to attempt to resolve the dispute through mediation. If that fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court or the Florida Real Estate Commission. Buyer and Seller will be bound by any resulting award, judgment, or order.

(b) All other disputes: Buyer and Seller will have 30 days from the date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in the county where the Property is located. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Any disputes with a real estate licensee named in paragraph 17 will be submitted to arbitration only if the licensee's broker consents in writing to become a party to the proceeding. This clause will survive closing.

(c) Mediation and Arbitration; Expenses: "Mediation" is a process in which parties attempt to resolve a dispute by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration Association ("AAA") or other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration. In a civil action to enforce an arbitration award, the prevailing party to the arbitration shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses.

# Public Adjuster Service Agreement

## Nonjury Provision

**Pro:** This provision limits the Adjuster's and Policyholder's right to only a nonjury trial, meaning only a judge will decide disputes. It also includes a venue provision.

**Con:** This provision limits the Public Adjuster's and Policyholder's right to a jury trial, which is the forum that best holds insurance companies responsible for unreasonable conduct. An argument can be made that if Public Insurance Adjusters limit jury trials, then insurance companies should be allowed to as well.

**Florida Law:** We are unaware of any public policy reason why the provision [waiving jury trial]...should not be enforced in [Florida]....[B]oth [parties are] experienced in commercial leasing, agreed that any controversy arising under their lease would be tried non-jury. The waiver is clear, unambiguous, and should be given its intended force and effect between them. *Central Inv. Associates, Inc. v. Leasing Service Corp.* 362 So.2d 702, 704 (Fla. 3d DCA 1978).

**What this means:** These provisions are valid and enforceable. There may be some question as to how it is situated in the contract. By making the statement bold and clear, this reduces the argument that it was not noticeable. The example below gives a good idea of what the provision should look like. However, the court is going to take into account the other party's background as well as whether the language is clear and unambiguous. While it may be enforceable, a court could be persuaded to disregard the provision in certain circumstances.

### **Example:**

Disputes concerning any matter arising out of, relating to, or under this Agreement shall not be subject to arbitration but shall be subject to appropriate legal action in the Circuit Courts of the State of Florida in \_\_\_\_\_, Florida.

**EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE, ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES TO THIS AGREEMENT.**

# Public Adjuster Service Agreement

## Attorneys' Fee Provision

**Pro:** This provision may encourage both parties to resolve a dispute to avoid incurring the other parties' attorneys' fees. If the Public Adjuster is forced to pursue action against a Policyholder and is successful, the Public Adjuster may recover his/her attorneys' fees, if the Policyholder is collectable.

**Con:** If one party does not have sufficient assets to collect against, there will not be any recovery. If a Policyholder successfully sues the Public Adjuster, the Public Adjuster is liable for attorney fees.

**Florida Law:** Section 57.105(2), Florida Statutes provides for mutuality of contractual attorney's fees. ...." *Personnel One, Inc. v. John Sommerer & Co., P.A.* 564 So.2d 1217, 1219 (Fla. 3d DCA 1990) quoting *Adler v. Key Financial Svcs., Inc.*, 553 So.2d 284, 285 (Fla. 3d DCA 1989).

**What this means:** The "American Rule" that our courts follow means that when one side sues another, each side incurs its own fees and costs. This rule can be contracted around, but the terms must be explicit. For example, *Ohio Realty Inv. Corp. v. Southern Bank of West Palm Beach* 300 So.2d 679 (Fla. 1974.) states that unless the provision explicitly mentions appellate proceedings, then those fees are not recoverable. These provisions are valid so long as they are mutual – meaning that it would not be valid if the contract only forced one side to pay fees. To be enforceable, both sides must assume the risk.

### **Example:**

In the event any party is required to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to payment of their reasonable attorneys' and legal assistants' fees and costs by the non-prevailing party, incurred before, during, and after suit is filed, in appellate proceedings, and in bankruptcy.

# Public Adjuster Service Agreement

## Document Storage Provision

**Pro:** This provision addresses the current state of document storage and can help protect a Public Adjuster when he/she is only using electronic storage. If a Public Adjuster does not keep paper copies of files, then issues can arise both in and outside of litigation concerning the contract. This provision attempts to mitigate those harms.

**Con:** This provision may be too detailed for the Policyholder. Outside litigation, a party may reject the fact that the original document cannot be produced. Inside litigation, the other side may object to production of an imaged copy of the contract as violation of the “best evidence rule.”

**Florida Law:** Pursuant to section [90.953](#), Florida Statutes, a copy is acceptable to the same extent as the original unless it is a negotiable instrument, security or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment. Furthermore, a copy may not be acceptable where a genuine question is raised about the authenticity of the original or given the circumstances; it is unfair to admit the duplicate.

**What this means:** This provision reinforces what is already stated in Florida law, that a duplicate of this agreement is just as good as an original.

**Example:** The POLICYHOLDER understands and agrees that the PUBLIC ADJUSTER may image and electronically file all documents (collectively, the “Imaged Documents”) and destroy the originals of the Imaged Documents, including all original signatures on those documents. POLICYHOLDER authorizes the PUBLIC ADJUSTER to take this action, and understands and agrees that, as a result, neither the original documents, nor any of the original signatures on such documents, will remain available to POLICYHOLDER or the PUBLIC ADJUSTER for any purpose including, but not limited to, for use in any legal proceeding arising out of or relating to the documents (“Proceeding”). POLICYHOLDER knowingly, willingly, and expressly: (i) waives all rights relating to, and (ii) agrees, based on the PUBLIC ADJUSTER’s reliance on, among other things, POLICYHOLDER’s agreements and authorizations, that POLICYHOLDER is estopped from asserting any claim, defense, or objection, whether evidentiary or otherwise, arising out of or related to the imaging and destruction of original documents and all original signatures on such documents, including, without limitation, any claim, defense, or objection arising out of or related to the PUBLIC ADJUSTER introducing and/or court accepting, into evidence in any Proceeding copies of Imaged Documents, including all imaged signatures, in place of original documents.

# Public Adjuster Service Agreement

## Miscellaneous Provisions

**Pro:** These provisions can better define the parties' rights and avoid potential disputes with the policyholder.

**Con:** These provisions may be too detailed for the Policyholder.

### Examples:

The POLICYHOLDER understands that all communications with the PUBLIC ADJUSTER are important and will immediately advise in writing of any change in telephone number or in the address provided above. The POLICYHOLDER understands and agrees to the PUBLIC ADJUSTER using the above address for all communications with the POLICYHOLDER, as well as other methods of communication.

The POLICYHOLDER understands that the adjuster signing this Agreement on behalf of the PUBLIC ADJUSTER and other adjusters and assistants may participate in the POLICYHOLDER's representation to the extent appropriate as determined by the PUBLIC ADJUSTER.



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- Spinal Cord Injury
- Dental Malpractice
- Dog Bite Accidents
- Drug Injuries
- DUI/Dram Accidents
- Eminent Domain
- Employment Law
  - **Overtime & Wage Disputes**
  - Wrongful Termination
  - Retaliation
  - Discrimination
  - Harassment
  - EEOC
  - Whistle Blower
  - **Family Medical Leave Act**
- Insurance Claims Disputes
  - Property Loss
  - Homeowner Claims
  - Fire Claims
  - Sinkhole Claims
  - Disability Claims
  - Commercial General Liability
  - Automobile Liability Claims
  - Uninsured Motorist
  - Business Claims
  - Life Claims
  - Health Claims
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- **Tractor Trailer Accidents**
- Traumatic Brain Injury
- Vehicle Accidents
- Workers Compensation
- Wrongful Death

# Questions?

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