MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

MINNESOTA
DEPARTMENT OF
COMMERCE

BULLETIN 2010-4

TO: **Insurance adjusters, property and casualty insurers and building trade industries**

FROM: **Glenn Wilson, MN Commissioner of Commerce**
Commissioner Steve Sviggum, MN Department of Labor and Industry

RE: **Public adjusting relative to storm damage and general roofing repair**

DATE: **September 17, 2010**

The Minnesota Departments of Commerce and Labor and Industry ("The Departments") have become aware of potentially questionable advertising and business practices by a small number of contracting businesses operating in Minnesota. In the past few years, many property owners experienced damage to their homes or buildings from storms, especially wind and hail storms.

As a result, many policyholders have filed roof and siding damage claims with their insurers. Contractors who regularly offer roofing repair, reconstruction or replacement services have approached policyholders.

By itself, of course, a contractor offering his or her repair, reconstruction, or replacement services is a normal trade practice.

- A contractor may offer an opinion to an insured as to whether roof damage is from a storm or other incident normally covered by a homeowner's policy.
- The contractor may recommend to the insured to file an insurance claim with the insurer.
- The contractor may provide an estimate of repair which the insured may submit to the insurer.
- The contractor may be present when the insurance adjuster inspects the damage. The roofing contractor may answer the adjuster's questions.

Some contractors, however, have offered their "representation" services by offering to "exclusively negotiate" the claim settlement with the insurer(s) involved, often as part of the repair contract. In some instances, the contract "requires" the property owner to have the contractor "negotiate" the terms of the claim settlement on the owner's behalf.

The Departments view this service as the actions of a public adjuster. A public adjuster means "any person who, for compensation or any other thing of value on behalf of the insured ... acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract ..." [Minnesota Statutes § 72B.02, subd. 6 (1)].

Further, M.S. § 72B.02, subd. 6 (2) continues the definition of adjuster as one who "advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property."

The contractor's actions, offerings, or representations may constitute the contractor's acting as a public adjuster. The terms, written or otherwise, of the agreement with the property owner and other facts may demonstrate whether the actions constitute violations of Minnesota insurance law. Even the offering, in a marketing sense, of such "representation" may constitute a violation, which could result in action by the Minnesota Department of Commerce.

Accordingly, a contractor must be licensed as a public adjuster in order to negotiate and act as a representative of the insured with the insurer. A contractor who asks an insured to sign a power of attorney or any other document authorizing him to act on the insured's behalf for a fee may be acting as a public adjuster. A contractor must be licensed as a public adjuster in order to:

(1) enter into a contract authorizing the contractor to negotiate or effect the settlement of a claim for a fee or compensation;
(2) advocate on behalf of the insured or offer assistance to the insured to prepare, file or complete the insurance claim; or
(3) advertise or solicit for employment as an adjuster of such claims.

It must be noted further that M.S. § 72B.135, subd. 4, states in part that no public adjuster shall:

6) have an interest directly or indirectly in a construction firm, salvage firm, or appraisal firm. "Firm" includes a corporation, partnership, association, or individual firm

Consumers are encouraged to take time before entering into a contractual agreement with anyone soliciting repair work. If anyone claims to have the ability to represent you in an insurance adjustment, ask to see their public adjuster license. Record of individuals who are properly licensed as adjusters may be search on the Commerce website at www.insurance.mn.gov.

While consumers are asking if the solicitors are also acting as contractors, ask to see evidence they are licensed as a residential building contractor or residential roofer with the Minnesota Department of Labor and Industry. It is not impolite for consumers to ask anyone to prove they are properly licensed to offer or to perform services. In fact, the legitimate contractors and public adjusters will be more than willing to show that they are licensed. Contractors' licensing status can be checked online at www.dli.mn.gov.

On July 1, 2010, significant changes to laws governing the regulation of adjusters went into effect. Important to note are changes that now require education and testing for adjusters, moving to a birth month renewal cycle and bonding requirements for public adjusters. Please see the website (http://www.insurance.mn.gov.) for a complete list of changes and detailed explanation about how the conversion to birth month renewals will occur.

In addition, effective Aug. 1, 2010, a number of statutory changes occurred affecting the building trades industries. Please note the new language found under:

- M.S. § 325E.66, which prohibits a residential roofer from advertising or promising to pay or rebate all or part of an insurance deductible, when providing goods and services to an insured who will pay for the goods and services from the proceeds of a property or casualty insurance policy. Allows the insured or insurer to bring an action in court for damages if a residential roofer violates this section.

- M.S. § 326B.811, which provides that a homeowner has the right to cancel a contract with a residential roofer for goods and services to be paid from the proceeds of a property or casualty insurance policy within 72 hours after notification by the insurer that the claim has been denied. Requires a residential roofer to provide a disclosure and a cancellation form to the homeowner before entering into a contract. Requires a residential roofer to refund any payments within ten days after a contract is canceled, unless the roofer is entitled to compensation for emergency services performed.

For general questions about adjuster licensing contact the:

Minnesota Department of Commerce, Licensing Division
1-800-657-3978 (Minnesota only, 8 a.m. to 4:15 p.m.)
(651) 296-6319 (8 a.m. to 4:15 p.m.)
(651) 284-4107 FAX

E-mail: licensing.commerce@state.mn.us (General)
E-mail: education.commerce@state.mn.us (Pre-license and continuing ed inquiries)

For general questions regarding contractor licensing or conduct, contact the:

Minnesota Department of Labor and Industry, CCLD – Enforcement Services Unit
Phone: (651) 284-5069 or 1-800-657-3944
(651) 284-5746 FAX

E-mail: DLI.contractor@state.mn.us

Signed 9-19-10

Glenn Wilson
Commissioner
MN Department of Commerce

Signed

9-17-10

Steve Sviggum
Commissioner
MN Department of Labor and Industry