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BULLETIN 13-20

Date: June 24, 2013

To: Maryland-licensed surety insurance producers, surety insurers and other entities subject to regulation by the Commissioner and authorized to conduct business in this State

Re: Comment Solicitation on Draft Proposed Regulations 31.03.05 – Insurance Producers and Other Insurance Professionals – Bail Bonds

The purpose of this bulletin is to notify all licensed insurance producers of the draft proposed regulations referenced above and to solicit comments from interested parties prior to formally submitting the proposed regulation to the Joint Committee on Administrative Executive and Legislative Review (AELR) for review and to the Division of State Documents for publication in the *Maryland Register*. The authority for this regulation can be found in Title 10, Subtitles 1 and 3 of the Insurance Article, Annotated Code of Maryland.

The proposed regulations implement Title 10, Subtitle 3 of the Insurance Article, Annotated Code of Maryland. Specifically, the regulations provide the standards for instances when a bail bondsman enters into an installment agreement with an indemnitor, including a defendant; sets forth the records necessary to be maintained by a bail bondsman; and otherwise makes technical corrections.

Written comments will be accepted for thirty days from the date of this bulletin's issuance. All comments should be addressed to Thomas Marshall, Associate Commissioner for Compliance and Enforcement, at thomas.marshall@maryland.gov. If you have questions, you may reach Mr. Marshall Monday – Friday, 8 a.m. – 4:30 p.m. at 410-468-2217

Therese M. Goldsmith
Insurance Commissioner

Signature on original

Thomas L. Marshall
Associate Commissioner
Compliance and Enforcement

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE PROFESSIONALS

Chapter 05 Bail Bonds

Authority: Insurance Article, §§2-108 and 2-109, and Title 10, [Subtitle 3] *Subtitles 1 and 3*, of the Annotated Code of Maryland

.01 Scope.

A. (text unchanged)

B. [This chapter does not apply to bail bondsmen engaged in bail bond business in the State judicial circuit that by rule of court prescribes the terms and conditions for bail bonds filed in the circuit court for that county as authorized by Criminal Procedure Article §5-203, Annotated Code of Maryland, and the Maryland Rule of Procedure 16-817.] *Except as provided in Insurance Article § 10-309, Annotated Code of Maryland, this chapter does not apply to a bail bondsman who provides bail bondsman services under Criminal Procedure Article § 5-203, Annotated Code of Maryland.*

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) *“Affidavit” means a dated written or printed statement of facts, made voluntarily, and confirmed by oath or affirmation of the person making it, taken before an individual having authority to administer such oath or affirmation in connection with posting a bail bond pursuant to Maryland Rule 4-217.*

[(2) “Licensee” means an insurer which is authorized in this State to engage in the business of surety insurance, either directly or through an appointed surety insurance producer].

(2) *“Appointment” has the meaning set forth in Insurance Article § 1-101(f), Annotated Code of Maryland.*

(3) *“Authorized Insurer” has the meaning set forth in Insurance Article § 1-101(g), Annotated Code of Maryland.*

(4) *“Bail Bond” has the meaning set forth in Insurance Article § 10-301(b), Annotated Code of Maryland.*

(5) *“Bail Bond Application” means a written request to a surety insurer for a bail bond that sets forth the required information to purchase a policy of surety insurance.*

[(1)](6) *“Bail B[b]ondsman” means a surety insurance producer who is appointed by a surety insurer to solicit, [procure,] negotiate, [and] or procure [effectuate] bail bonds on behalf of that surety insurer.*

(7) *“Bail bondsman services” means any conduct relating to the sale, solicitation, negotiation, procurement of a bail bond, and includes the posting of a bail bond.*

(8) “Balance Amount” means the amount of premium owed by an indemnitor under an installment agreement after subtracting the down payment from the premium.

(9) “Commissioner” means the Maryland Insurance Commissioner.

(10) “Indemnitor” means a person who signs an indemnity agreement and agrees to pay a premium for a bail bond.

(11) “Indemnity Agreement” means a written surety agreement that is executed by a bail bondsman and an indemnitor in which the indemnitor agrees to pay and the bail bondsman agrees to accept a premium for the issuance of a bail bond, subject to certain terms and conditions.

(12) “Insurance Producer” has the meaning set forth in Insurance Article § 1-101(u), Annotated Code of Maryland.

(13) “Installment Agreement” means a written agreement between a bail bondsman and an indemnitor in which the indemnitor agrees to pay, and the bail bondsman agrees to accept, the payment of a premium for a bail bond using installment payments.

(14) “Licensed Insurance Producer” has the meaning set forth in Insurance Article § 1-101(w), Annotated Code of Maryland.

[(3)](15) "Property B[b]ail B[b]ondsman" [means a person who pledges currency or real or personal property as security for a bail bond in connection with a judicial proceeding.] has the meaning set forth in Criminal Procedure Article § 5-209, Annotated Code of Maryland.

(16) “Surety Insurance” has the meaning set forth in Insurance Article § 1-101(oo), Annotate Code of Maryland.

[(4)](17) "Surety I[i]nsurance P[p]roducer" means a licensed insurance producer who, [holds a valid license from the Commissioner] for compensation, solicits, negotiates, and procures surety insurance contracts [for the sale of surety insurance] and is appointed by an authorized surety insurer to act as an insurance producer [in the sale of surety insurance].

(18) “Surety Insurer” has the meaning set forth in Insurance Article § 10-301(h), Annotated Code of Maryland.

.03 Prohibited Actions.

A. [An]A surety insurer may not:

(1) [d]Directly or indirectly pay any commission, fee, reward, or other consideration for [procuring] the solicitation, negotiation, or procurement, or for influencing the solicitation, negotiation, or procurement of, [any] a bail bond to any person unless that person is a bail bondsman[surety insurance producer], [as defined in Regulation .02B(4) of this chapter] and is appointed by the surety insurer[.]; or

(2) Delegate its authority to appoint a bail bondsman.

B. A person acting as a bail bondsman or a person acting on behalf of a bail bondsman may not in any manner solicit, [procure,] negotiate, and procure, [or effectuate for another any kind of] a bail bond for a surety insurer in this State unless that person is a

[surety insurance producer as defined in Regulation .02B(4) of this chapter] *bail bondsman and is appointed by the surety insurer.*

C. A bail bondsman may not submit an affidavit to a court that relies on a promissory note unless the promissory note has been executed by the indemnitor or defendant before the bail bondsman submits the affidavit to the court.

.04 The business of a [surety insurance producer] *bail bondsman* may be conducted by an individual, partnership, or corporation, provided that an individual who solicits, *negotiates, or procures*[, negotiates, or effectuates surety business] *bail bonds* shall be a [surety insurance producer]*bail bondsman*.

.05 Appointments.

A. A bail bondsman shall:

(1) Before conducting business as a bail bondsman, be appointed by [an authorized insurer to act as the insurer's insurance producer in the placement of bail bonds]*a surety insurer to provide bail bondsman services; and*

(2) *Not provide bail bondsman services on behalf of a surety insurer unless and until the bail bondsman has [File] filed with the Commissioner and with the Chief Clerk of the District Court of Maryland the general power of attorney executed by [or on behalf of] the surety insurer evidencing the appointment [authorization] of the bail bondsman [surety insurance producer to conduct business as a] to provide bail bondsman services on behalf of the surety insurer.*

B. A surety insurer [which] *that* terminates the appointment of *a bail bondsman* [any surety insurance producer] shall immediately file a written notice of *the* termination with the Commissioner and with the Chief Clerk of the District Court of Maryland.

.06 Suspension and Revocation.

A [surety insurance producer] *bail bondsman* who [intentionally] makes a misleading or false representation to a court or to a public official for the purpose of avoiding a forfeiture of bail, having a forfeiture set aside, or obtaining the release of a defendant on the defendant's own recognizance, shall be [considered to have violated] *in violation of* Insurance Article[,] § 10-126(a)(6), (13), and (14), Annotated Code of Maryland.

.07 Rates.

[Except for motor clubs, a surety insurance producer] *A bail bondsman* [or licensee] may not [execute] *issue* a bail bond [without charging a specific premium] *for a premium that differs from the premium filed with the Commissioner* [for the transaction] *pursuant to Insurance Article, Title 11, Subtitle 2, Annotated Code of Maryland.*

[B. In instances where a specific premium is charged, the actual premium charged may not differ from the premium rate approved by the Commissioner pursuant to Insurance Article, Title 11, Subtitle 2, Annotated Code of Maryland.]

.08 *Indemnity Agreement.*

An indemnity agreement shall:

A. Contain the signatures of the bail bondsman providing the bail bondsman services and the indemnitor.

B. Be executed prior to the issuance of a bail bond.

C. Contain the printed name and producer license number of the bail bondsman providing the bail bondsman services.

D. Require the indemnitor to pay, and the bail bondsman to collect, the premium for the bail bond that is issued:

(1) At the time the indemnity agreement for the bail bond is executed by the bail bondsman and the indemnitor; or

(2) Through installment payments pursuant to a written installment agreement that complies with the requirements set forth in Regulation .09 of this chapter.

E. Contain the following statement on the first page in capital and bold letters of at least 12 point font: **“THE INDEMNITOR SIGNING THIS INDEMNITY AGREEMENT IS ENTITLED TO A REFUND, PAID WITHIN FIVE WORKING DAYS, OF 100% OF THE PREMIUM IF THIS BAIL BOND IS NOT POSTED OR THE DEFENDANT IS NOT RELEASED PRE-TRIAL.”**

.09 Installment Agreement.

A. A bail bondsman who accepts payment of a premium by installment agreement, shall sign the installment agreement and obtain the signature of the indemnitor on the installment agreement.

B. The installment agreement shall contain the following information:

(1) The amount of the bail bond;

(2) The amount of the premium;

(3) The amount of the down payment;

(4) The amount of the balance owed by the indemnitor to the bail bondsman;

(5) The total number of installment payments required to pay the balance;

(6) The amount and due date of each installment payment;

(7) The printed name and producer license number of the bail bondsman executing the installment agreement;

(8) The printed name of the bail bond producer firm and its producer license number, if the bail bondsman is employed or otherwise engaged by a bail bond producer firm; and

(9) The criminal case number for which bail was posted and the installment agreement entered.

C. The bail bondsman who signed the installment agreement shall maintain records demonstrating that the bail bondsman has taken all necessary steps to collect the amount owed by the indemnitor under the installment agreement.

D. Evidence that a bail bondsman has taken all necessary steps to collect the amount owed by the indemnitor under the installment agreement may include, but is not limited to:

(1) Copies of all correspondence;

(2) Meeting logs, including the date and time the bail bondsman met with the indemnitor;

(3) Telephone logs including the date, time, and name of the person with whom the bail bondsman communicated;

(4) Evidence that the debt has been referred to a collection agency, including the date of the referral and the name of the collection agency; and

(5) A copy of a civil court action seeking the money owed by the indemnitor to the bail bondsman, including the filing of a writ of garnishment .

[.08] .10 Records.

[A. A surety insurance producer shall maintain records of all bail bonds executed, in sufficient detail to enable the Commissioner to obtain all necessary information concerning each transaction. These records shall be made available for inspection by the Commissioner for at least 1 year after termination of the surety liability.]

A. A bail bondsman shall maintain for a period of five years after termination of the surety liability all documentation collected, prepared, and produced by the bail bondsman in the course of providing bail bondsman services, which shall include, but is not limited to, the following:

(1) Evidence of the return of any security or collateral, including a receipt evidencing the return or repayment of the security or collateral;

(2) Copies of the affidavit made in connection with posting a bond or an indemnity agreement or collateral received; and

(3) Copies of all written representations made to any court or to any public official for the purpose of avoiding a forfeiture of bail, setting aside a forfeiture of bail, or causing a defendant to be released on the defendant's own recognizance.

B. In addition to the records set forth in § A of this regulation, a bail bondsman's [A surety insurance producer's] records shall include [a daily bond register. The register shall set forth,] at a minimum:

(1) [The number] *A copy of the power of attorney form;*

(2) (text unchanged)

(3) The name of the [principal] *indemnitor;*

(4) — (5) (text unchanged)

(6) The premium reported to the surety *insurer* [company] and the date reported;

(7) – (8) (text unchanged)

(9) The indemnity agreement[.]; [if any; and]

(10) The disposition of the bond, including the date of disposition[.];

(11) *A copy of any receipt for payment made by an indemnitor to obtain an indemnity agreement or for an installment agreement;*

(12) *The bail bond application;*

(13) *The bail bond;*

(14) *The installment agreement, if any; and*

(15) *The information required under Regulation .09D of this chapter.*

[C. A bail bondsman shall retain:

(1) Evidence of the return of any security or collateral, including a receipt evidencing the return or repayment of the security or collateral, for a minimum of 1 year from the date of return;

(2) Copies of all affidavits made in connection with indemnity agreements or collateral received, for a minimum of 1 year from the date of the termination of the surety liability; and

(3) Copies of all written representations made to any court or to any public official for the purpose of avoiding a forfeiture of bail, setting aside a forfeiture, or causing a defendant to be released on the defendant's own recognizance, for a minimum of 1 year from the date of the termination of the surety liability.]

C. Records required by this regulation shall be maintained in writing or by electronic means, provided that the records:

(1) *Are clear and legible;*

(2) *Accurately reproduce an original document in its entirety, including any attachments to the document; and*

(3) *Preserve any signature contained on the document.*

[.09] .11 Receipts.

A. A [surety insurance producer] *bail bondsman who signs an indemnity agreement* shall provide a numbered receipt to [bail bond purchasers] *the indemnitor*. A copy of the receipt shall be retained by the [surety insurance producer] *bail bondsman and maintained in accordance with Regulation .10 of this chapter.*

B. [The] A receipt[s, at a minimum,] shall contain the following information *at a minimum:*

(1) The name, place of business, address, and telephone number of the [surety insurance producer] *bail bondsman who signed the indemnity agreement;*

(2) – (6) (text unchanged)

(7) *The following statement, in capital and bold letters of at least 12 point font, at the bottom of the receipt: AN INDEMNITOR MUST RECEIVE A COPY OF THIS RECEIPT AT THE TIME OF MAKING A PAYMENT; and*

(8) *The producer license number and the printed and signed name of the bail bondsman providing the bail bondsman services.*

.12 Forms.

A bail bondsman shall:

A. Ensure that each document provided to, or executed by, the indemnitor contains the name and producer license number of the bail bondsman providing the bail bondsman services and the bail bond producer firm, if any.

B. Provide an indemnitor a copy of each document that the indemnitor signs at the time the indemnitor signs each document.

[.10].13 Collateral.

A [surety insurance producer] *bail bondsman* shall, in an affidavit, describe in detail any collateral received in connection with *the sale of a bail bond [transaction]* and the terms of an[y] indemnity or collateral agreement.

[.11].14 Return of Collateral.

A. Immediately upon the discharge of a *bail bond*, the [licensee or surety insurance producer] *bail bondsman* shall return any collateral held by the [licensee or surety insurance producer] *bail bondsman*. Upon receiving a request for return of collateral the [licensee or surety insurance producer] *bail bondsman* shall promptly determine whether the [obligation] *bail bond* has been discharged.

B. The [licensee or surety insurance producer] *bail bondsman* may deduct any unpaid premiums due on the *bail bond* from any collateral being returned.

[.12] .15 Pretrial Release.

In instances where a [licensee or surety insurance producer] *bail bondsman* [executes] *posts* a *bail bond* in anticipation of pretrial release of a defendant and the defendant does not subsequently qualify for pretrial release, [then] the [licensee] *bail bondsman* shall refund all premiums or fees received and all collateral held within *five 5* working days.