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BULLETIN 16-09

Date: February 23, 2016

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: Implementation of changes to COMAR 31.03.05.01-31.03.05.14 – Insurance Producers and Other Insurance Professionals – Bail Bonds (effective 3/22/16)

The purpose of this bulletin is to notify all licensed insurance producers of recent changes¹ to COMAR 31.03.05.01- 31.03.05.14 – Insurance Producers and Other Insurance Professionals – Bail Bonds. These changes become effective on March 22, 2016.

COMAR 31.03.05.01- 31.03.05.14 implements Title 10, Subtitle 3 of the Insurance Article, Annotated Code of Maryland. Recent substantive changes to the regulations address the standards for instances when a bail bondsman enters into an installment agreement with an indemnitor, including a defendant, and sets forth the record-keeping requirements that shall be maintained by a bail bondsman, as well as others, in the course of a bail bond transaction. The regulatory changes also include technical corrections.

The attached document contains the updated text of COMAR 31.03.05.01- 31.03.05.14 – Insurance Producers and Other Insurance Professionals – Bail Bonds, which will become effective March 22, 2016. The MIA urges all impacted parties to review these regulations to ensure that they are compliant with all changes on the effective date.

¹ Changes to these regulations were initially proposed in the Maryland Register on July 2, 2015, and comments were collected for 30 days. These regulations were repropoed with substantive changes in the Maryland Register on November 13, 2015, reflecting certain suggestions made during the comment period. Comments on the repropoed regulations were then collected for 30 days. The repropoed regulations were adopted without change on January 5, 2016. Notice of final action was published in the January 22, 2016 Maryland Register.

Any questions regarding this Bulletin should be addressed to John Selway, Assistant Chief Enforcement Officer, at john.selway@maryland.gov or 410-468-2183, or Victoria August, Associate Commissioner, Compliance and Enforcement at: victoria.august@maryland.gov or 410-468-2217.

Alfred W. Redmer, Jr.
Commissioner

signature on original

By:

Victoria August, Associate Commissioner
Compliance and Enforcement

Effective March 22, 2016

Title 31 MARYLAND INSURANCE

ADMINISTRATION

Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE PROFESSIONALS

Chapter 05 Bail Bonds

Authority: Insurance Article, §§2-108, 2-109, 10-126 and Title 10, Subtitle 3, Annotated Code of Maryland

.01 Scope.

- A. This chapter does not apply to property bail bondsmen.
- B. 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. In this chapter, the following terms have the meanings indicated.
- 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) "Appointment" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.
 - (3) "Authorized insurer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.
 - (4) "Bail bond" has the meaning set forth in Insurance Article, §10-301, 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.
 - (6) "Bail bondsman" means a surety insurance producer who is appointed by a surety insurer to solicit, negotiate, or procure bail bonds on behalf of that surety insurer.
 - (7) "Bail bondsman services" means any conduct relating to the sale, solicitation, negotiation, or procurement of a bail bond, and includes the posting of a bail bond.
 - (8) "Balance amount" means the amount of premium owed by a person under an installment agreement after subtracting the down payment from the premium.
 - (9) "Commissioner" means the Maryland Insurance Commissioner.
 - (10) "Indemnity agreement" means a written surety agreement that is entered into by a bail bondsman and a person who agrees to indemnify a bail bondsman or surety insurer.
 - (11) "Installment agreement" means a written agreement between a bail bondsman and a person in which the person agrees to pay, and the bail bondsman agrees to accept, the payment of a premium for a bail bond using installment payments.
 - (12) "Insurance producer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.
 - (13) "Licensed insurance producer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.
 - (14) "Property bail bondsman" has the meaning set forth in Criminal Procedure Article, §5-209, Annotated Code of Maryland.
 - (15) "Surety insurance" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.
 - (16) "Surety insurance producer" means a licensed insurance producer who, for compensation, sells, solicits, negotiates, or procures surety insurance contracts and is appointed by an authorized surety insurer to act as an insurance producer.
 - (17) "Surety insurer" has the meaning set forth in Insurance Article, §10-301, Annotated Code of Maryland.

.03 Prohibited Actions.

- A. An insurer may not:
 - (1) Directly or indirectly pay any commission, fee, reward, or other consideration for the sale, solicitation, negotiation, or procurement, or for influencing the sale, solicitation, negotiation, or procurement of, a bail bond to any person unless that person is a bail bondsman, 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 sell, solicit, negotiate, or procure a bail bond for a surety insurer in this State unless that person is a bail bondsman and is appointed by the surety insurer.
- C. A bail bondsman shall not submit to any clerk, District Court commissioner, or other person authorized by law to take a bail bond, a document representing consent by any person unless the document has been fully executed.

.04 Conduct of Business by a Bail Bondsman.

The business of a bail bondsman may be conducted by an individual, partnership, or corporation, provided that an individual who sells, solicits, negotiates, or procures bail bonds shall be a bail bondsman.

.05 Appointments.

A. A bail bondsman shall:

- (1) Before conducting business as a bail bondsman, be appointed by a surety insurer to provide bail bondsman services; and
- (2) Comply with the requirements of Maryland Rule 4-217.

B. A surety insurer that terminates the appointment of a bail bondsman 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 or Revocation.

A bail bondsman who 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 in violation of Insurance Article, §10-126(a)(6), (13), and (14), Annotated Code of Maryland.

.07 Rates.

A. A bail bondsman shall issue a bail bond that complies with Insurance Article, §27-216, Annotated Code of Maryland.

B. Except as provided in §C of this regulation, it shall be an unfair trade practice and a violation of the Insurance Article, §27-216, Annotated Code of Maryland, for a bail bondsman to sell, solicit, procure, or negotiate a bail bond if:

- (1) A surety insurer has an approved premium rate for both cash bail bonds and corporate surety bail bonds;
- (2) The premium rates differ for cash bail bonds and corporate surety bail bonds; and
- (3) A defendant is sold a bail bond with the higher premium rate.

C. If a surety insurer has approved premium rates for cash bail bonds and corporate surety bail bonds, a bail bondsman may sell a defendant a bail bond regardless of the approved premium rate if the court specifies a type of bail bond.

.08 Indemnity Agreement.

An indemnity agreement shall:

A. Contain the signatures of the bail bondsman providing the bail bondsman services and the person signing the indemnity agreement;

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

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

D. Require the person signing the indemnity agreement 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 person signing the indemnity agreement; or

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

E. Contain the following statement on the first page in capital and bold letters of at least 12-point font: "THE PERSON SIGNING THIS INDEMNITY AGREEMENT IS ENTITLED TO A REFUND OF 100% OF THE PREMIUM PAID IF THIS BAIL BOND IS NOT POSTED."

.09 Installment Agreement.

A. An installment agreement shall be signed by a bail bondsman and the person who has agreed to pay the additional premium in installments.

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

D. Evidence that a bail bondsman has taken all necessary steps to collect the amount owed 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 person who signed the installment agreement;

(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 person who signed the installment agreement to the bail bondsman, including the filing of a writ of garnishment.

E. A bail bondsman shall provide the person signing the installment agreement a copy of the installment agreement and a receipt containing the amount of down payment made.

.10 Records.

A. A bail bondsman shall maintain for a period of 5 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 records shall include the following information:

- (1) A copy of the power of attorney form;
- (2) The date the bond was executed;
- (3) The name of the person who signed the indemnity agreement;
- (4) The amount of the bond;
- (5) The premium charged;
- (6) The premium reported to the surety insurer and the date reported;
- (7) A description, including the date and amount, of any collateral received;
- (8) A description, including the date and amount, of any collateral returned;
- (9) The indemnity agreement;
- (10) The disposition of the bond, including the date of disposition;
- (11) A copy of any receipt for payment made to obtain an indemnity agreement or for an installment agreement;
- (12) The bail bond application;
- (13) A copy of the bail bond;
- (14) The installment agreement, if any; and
- (15) The information required under Regulation .09D of this chapter.

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.

D. The certification required pursuant to Insurance Article, §10-309(e)(3), Annotated Code of Maryland, shall be submitted by December 31 on a form made available by the Commissioner.

.11 Premium Receipts.

A. A bail bondsman who collects a premium shall provide a numbered receipt to the person paying the premium. A copy of the receipt shall be retained by the bail bondsman and maintained in accordance with Regulation .10 of this chapter.

B. A receipt shall contain the following information:

- (1) The name, place of business, address, and telephone number of the bail bondsman who collected the premium;
- (2) An itemized statement of the amount of bail and the jurisdiction for which the bond is being written;
- (3) An itemized statement of the premium charged;
- (4) The amount collected by the surety insurance producer;
- (5) The unpaid balance, if any;
- (6) The amount, value, and description of any collateral received;
- (7) The following statement, in capital and bold letters of at least 12-point font, at the bottom of the receipt: **THE PERSON PAYING THE PREMIUM MUST RECEIVE A COPY OF THIS RECEIPT AT THE TIME OF MAKING A PAYMENT;** and
- (8) The insurance producer license number and the printed and signed name of the bail bondsman collecting the premium.

.12 Forms.

A bail bondsman shall:

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

B. Provide the person to whom the bail bondsman services are provided with a copy of:

- (1) A premium receipt at the time the premium is paid;
- (2) A collateral receipt at the time the collateral is given; and

(3) An installment agreement or indemnity agreement at the time that any such document is signed.

.13 Collateral.

A. A bail bondsman shall, in an affidavit, describe in detail any collateral received in connection with the sale of a bail bond and the terms of an indemnity or collateral agreement; and

B. A bail bondsman shall provide a copy of the affidavit to the person signing the indemnity agreement or the person signing the collateral agreement.

.14 Return of Collateral.

A. Immediately upon the discharge of a bail bond, the bail bondsman shall return any collateral held by the bail bondsman. Upon receiving a request for return of collateral, the bail bondsman shall promptly determine whether the bail bond has been discharged.

B. The bail bondsman may deduct any unpaid premiums due on the bail bond from any collateral being returned.