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**BULLETIN 10-29 - AMENDED**

**DATE:** November 15, 2010

**TO:** All Property & Casualty Producers, Surety Insurers and Interested Parties

**RE:** Individual Sureties

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The Maryland Insurance Administration ("MIA") has been asked whether individual sureties who do not hold certificates of authority are authorized to write payment and performance bonds in Maryland. The answer depends on whether or not the project involves a public works project. An individual surety is permitted for public works projects so long as the applicable law is complied with. In all other circumstances, it is not permitted.

The applicable provisions of § 4-101 of the Insurance Article require a person to obtain a certificate of authority from the Insurance Commissioner before engaging in the business of insurance in Maryland. This includes providing surety insurance, which is defined in the Insurance Article as including, among other items insurance that guarantees the:

- performance of contracts other than insurance contracts; and
- execution of bonds, undertakings, and contracts of suretyship.

The State Finance and Procurement Article of the Annotated Code of Maryland permits individuals to serve as sureties for State and local procurement contracts ONLY if the:

- contractor has been denied bonding by a corporate surety;
- individual surety transacts business through an insurance agency licensed by the MIA;
- individual surety attaches an Affidavit of Individual Surety with Appendix to the bid security; and
- individual security meets the criteria found in §§ 13-207 and 17-104 of the State Finance and Procurement Article.

See BPW Advisory NO. 2006-4 (December 7, 2006).

Similarly, individual sureties are permitted as an exception to the federal requirement that a surety company appear on the U.S. Treasury's List of Approved Surety companies if it has fully complied with the requirements of the Federal Acquisition Regulations (FAR § 28.203).

Outside of the public works projects covered by the State Finance and Procurement Article and the Federal Acquisition Regulations, there is no exception to the licensing requirements of the Insurance Article.

Producers should be aware that it is a violation of § 4-203 of the Insurance Article to directly or indirectly act as an insurance producer for or otherwise represent or help on behalf of another an unauthorized insurer. Individual sureties not involved in public works projects have been found by the Insurance Commissioner to be engaging in the business of insurance without the required certificate of insurance. *See* MIA v. Stephen R. Woods, et al. (MIA Case No. 1055-1/90).

Any questions regarding these requirements should be directed to Dave Diehl, Chief Administrator, Property & Casualty Unit at [ddiehl@mdinsurance.state.md.us](mailto:ddiehl@mdinsurance.state.md.us) or by calling 410-468-2320.

**Beth Sammis, Acting Insurance Commissioner**

**By: SIGNATURE ON FILE WITH ORIGINAL**  
P. Randi Johnson, Associate Commissioner  
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