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REGULATORY BULLETIN 2012-03¹

TO: Bail Bond Agents and Other Interested Parties

FROM: Germaine L. Marks *GLM*
Acting Director

DATE: November 16, 2012

RE: **Common Areas of Non-Compliance with Bail Bond Statutes and Rules**

The Arizona Department of Insurance (ADOI) is aware of cases where licensed bail bond agents and registered bail recovery agents are engaging in activities that may constitute violations of Arizona law. To promote compliance with all applicable statutes and rules, this regulatory bulletin highlights some of those violations; however it is not meant to be a comprehensive review of all Arizona bail bond regulations. Each agent is responsible for reviewing and abiding by all statutes, rules and regulatory bulletins that pertain to the profession. Bail bond agents, both individuals and business entities, are governed by the ADOI pursuant to ARS §§20-340 *et seq.*, and Arizona Administrative Code (AAC) R20-6-601. Violations of a statute or rule may result in the ADOI taking an administrative action against a bail bond agent's license ranging from civil penalties to the suspension or revocation of a license.

I. Reporting Requirements

A. Administrative Actions – ARS § 20-301(A)

As applied to bail bond agents under ARS § 20-340.06, this statute requires bail bond agents to report any administrative action taken against the agent in another jurisdiction or by another governmental agency within thirty days after the final disposition of the administrative action. Applications (new and renewal) may also require disclosure.

- “Another jurisdiction” includes, but is not limited to, a political subdivision, another state, or the federal government.
- “Another governmental agency” includes, but is not limited to, the Arizona Department of Public Safety, the Arizona Secretary of State, or the Arizona Corporation Commission.
- “Administrative action” is any action taken against an individual or a business entity by a government agency.

¹This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

B. Use of Bail Recovery Agents – ARS §§ 20-340.04 and 13-3885

A bail bond agent must submit an annual report to the Department no later than **January 31st** of each year. The report must list all bail recovery agents employed, hired as independent contractors or otherwise utilized by the bail bond agent during the year pursuant to ARS § 20-340.04(C) and ARS § 13-3885(D). This report shall certify that all employees of the bail bond agent have met the requirements prescribed in ARS § 20-340.03 and that all bail recovery agents have complied with ARS § 20-340.04. The report shall include the name, home and business addresses, date of birth, telephone number, and a two-inch wide by three-inch high photograph of the face of each person identified in the report.

ARS § 20-340.04(D) and ARS § 13-3885(C) require a surety or a bail bond agent employing, hiring as an independent contractor, or otherwise utilizing a bail recovery agent to provide written notification to the Department that the bail recovery agent is providing the services to the surety or bail bond agent on a given case(s). The notice must be submitted within **24-hours** after the retention and include the name, date of birth, home and business addresses and telephone number of the bail recovery agent. The bail recovery agent identified in the written notice must certify on the written notice, under penalty of perjury, that the bail recovery agent has never been convicted in any jurisdiction of theft or of any felony or any crime involving carrying or the illegal use or possession of a deadly weapon or dangerous instrument and that the bail recovery agent has complied with ARS § 20-340.04.

These requirements are not new requirements under Title 20, yet licensed bail bond agents routinely fail to comply with them. A violation of these filing requirements may result in an administrative action described above.

II. Disposal of Collateral – AAC R20-6-601(E)(4)(c)

This regulation provides some of the legal requirements on collateral used as a security in a bail transaction. Namely, the code permits collateral (other than cash) to be levied upon *in the manner provided by law* up to the amount of unpaid premium or charges (*emphasis added*).

The Department is aware of instances where bail bond agents have disposed of collateral through auctions, including online auctions, or through online advertisements. Under certain circumstances, it is possible that these methods of disposing of collateral may not be in a manner provided by Arizona law. The Arizona Uniform Commercial Code – ARS § 47-9601(et seq.) – contains the legal requirements for commercial disposal of collateral. ARS § 47-9610 and § 47-9611 contain requirements on debtor notification requirements before the disposition of collateral can take place after default. Further, some local governments have additional requirements on auctions and the commercial sale of property. The ADOI encourages all professional bail bond agents and agencies to take the time to review all legal requirements relating to collateral, and when necessary, obtain legal advice about whether certain means for disposing of collateral comply with Arizona law.

III. Charges and Fees – AAC R20-6-601(E)(2)(c)

This regulation details the permitted charges in a bail transaction. Specifically, it states a bail bond agent shall not, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except to 1) pay the premium at the rates established by the surety insurer; 2) to provide collateral; and 3) to reimburse the agent for actual and reasonable expenses incurred in connection with the individual bail transaction. “Actual and reasonable expenses” include i) guard fees, ii) notary and recording fees, necessary long distance telephone calls and non-local travel, and iii) any

other actual expenditure necessary to the bail transaction not usually and customarily incurred in the ordinary operation and conduct of bail transactions.

The ADOI has received complaints that charges levied by bail bond agents are excessive. The rule requires that charges be both "actual and reasonable." This means that a bail bond agent cannot charge for an expense that is not actually incurred. Any charges or collections that do not meet these criteria may be a violation of the law, including, but not limited to, charging more than \$2.00 for a notary signature (see AAC R2-12-1102) and charging for missed call-ins. Please review your charges and collections to ensure compliance with Arizona law.

IV. Return of Collateral – AAC R20-6-601(E)(4)(b)

This regulation requires that a bail bond agent return collateral to the person who deposited it as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Some bail bond agents interpret this requirement to mean within 30 days after the exoneration of a bond to accommodate any appeal period. This interpretation is unfounded because the rule does not provide for additional time to return collateral in the event of an appeal. In most cases, the ADOI recognizes as reasonable the return of the collateral within no more than 5 calendar days after the exoneration of the bond.

V. Inspection by the ADOI – ARS § 20-340.01(H) and AAC R20-6-601(D)(8)

The statute and rule both require a bail bond agent to maintain records for three years open to inspection or examination by the ADOI. The statute requires that the records be available "at any business time," and the rule requires that the records be available at "all reasonable times" at the agent's place of business. ADOI interprets this requirement to mean that the bail bond agent's records must be open and available to inspection by the ADOI during regular State business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. See, A.R.S. § 38-401. When possible, the ADOI will try to coordinate with bail bond agents for access to records, but the ADOI may conduct spot inspections when necessary.

Please direct any questions related to this Regulatory Bulletin in writing to Mary Kosinski, Executive Assistant for Regulatory Affairs, at mkosinski@azinsurance.gov.