



**Office of the Director  
Arizona Department of Insurance**

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**Douglas A. Ducey, Governor  
Andy Tobin, Director**

**REGULATORY BULLETIN 2015-06<sup>1</sup>**

**To:** All Surety Insurers (that engage bail bond agents to post appearance (bail) bonds in Arizona courts); All Bail Bond Agents

**From:** Andy Tobin  
Director

**Date:** November 4, 2015

**Re: Notification of Change of Department Procedure**

The purpose of this Bulletin is to advise all surety insurers that engage bail bond agents to post appearance (bail) bonds in Arizona courts of a change of procedure within the Department. As of the date of this Bulletin, the Department will now refer indemnitors with unreleased liens on vehicles and real property directly to the surety insurer that issued a bail bond that the court has exonerated if it cannot communicate with the bail bond agent or the bail bond agent fails to cooperate in releasing the lien.

Arizona law requires the return of collateral as soon as the obligation secured by the collateral is discharged. ARS § 20-340.03(A)(6), AAC R20-6-601(E)(4)(b). Although certain allowances are made for unpaid premium or charges under AAC R20-6-601(E)(4)(c), those obligations should be resolved as soon as is practicable.

In some cases, the fact that a lien has been left in place long after a bond has been exonerated, sometimes for years, is not discovered by the indemnitor until they want to sell an automobile or home. When an indemnitor discovers this and cannot contact the bail bond agent, they come to the Department for assistance. The Department then attempts to contact the bail bond agent but often without success especially if the Department has revoked the bail bond agent's license or the bail bond agent has failed

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<sup>1</sup> This 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.

to update their contact information as required by law. ARS § 20-286(C) as applied to bail bond agents under ARS § 20-340.06.

Until recently, for vehicle liens, the Department worked with the Department of Motor Vehicles (MVD) to release vehicle liens with a letter from the Department. MVD requires vehicle liens to be recorded and released electronically through an approved service provider. Sureties should contact the Arizona Department of Transportation at [elthelpdesk@aada.com](mailto:elthelpdesk@aada.com) or call 602.468.0888 ext. 112 for information on vehicle liens.

Real property liens are even more problematic especially if the bail bond agent has recorded the lien in their own name. Sureties should discourage this practice and should require deeds of trust to be recorded naming the surety company as beneficiary. Arizona law allows a beneficiary to name a successor trustee. ARS § 33-804.

Because Arizona adopts the theory of inherent agency power<sup>2</sup>, it is the Department's position that the surety, not the Department, is ultimately responsible for working with indemnitors to either obtain a release of the lien placed by their agent against the collateral or to make the indemnitor whole for their loss.

The Department encourages sureties to take steps to ensure that their bail bond agents comply with AAC R20-6-601(e)(4)(b) and release liens in a timely manner to eliminate the issue altogether.

Please direct any questions related to this Regulatory Bulletin to:

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<sup>2</sup> See, *Anchor Equities, Ltd. V. Joya*, 773 P.2d 1022, 160 Ariz. 463 (Ariz. Ct. App., 1989). "So far as the authority of an agent involves the rights of innocent third persons, who have relied upon the character bestowed upon the agent, the principal is bound equally by the authority which he actually gives and by that which by his own act he appears to give..." *Id.* at 1025 (quoting *Brutinel v. Nygren*, 17 Ariz. 491, 154 P. 1042 (1916)).