



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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March 26, 2010

The Honorable Ken Bennett
Arizona Secretary of State
Business Services Division
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Honorable Bennett:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, whose membership includes licensed resident bond agents and licensed non-resident bond agents in Arizona, I am writing you to respectfully request your prompt review of your practices regarding the acceptance of surety bonds. It has come to my attention that your office is rejecting the submission of surety bonds, in whole or in part, based on the fact that they are not countersigned by an "Arizona Resident Agent." I have attached as an exhibit to this letter a photocopy of such a rejection that also included the applicable Arizona statute, §20-229, "Countersignature of insurance producer; exceptions." Attached also is an annotated version of that statute which indicates the history of amendments to its language.

Upon review of the annotated statute, you will discover that the "residency" requirement was eliminated from the countersignature statute when it was amended in 2001. Such an action by the Arizona legislature properly was in keeping with the state legislative trend to repeal resident agent countersignature requirements as wholly outdated with respect to modern business practices and at odds with federal constitutional law. Judicial decisions interpreting the resident agent countersignature statutes in other states clearly establish that such requirements ensure a practice of disparate treatment between licensed non-resident agents and licensed resident agents. On constitutional grounds, licensed non-resident agents must be given the ability to conduct business on substantially equal terms with licensed resident agents. The practice of your office to require that "[b]onds must be countersigned by an Arizona Resident Agent, pursuant to ARS §7-101" appears as an unfortunate and lingering holdover from the time when such a "residency" requirement was in existence in §20-229. That residency requirement ended with the rewrite of the statute by the 2001 Amendment.

NASBP respectfully requests your immediate action to review your practices so that (1) nonresident and resident licensed agents are placed on substantially equal terms and (2) businesses seeking authorization or licensing from your office will not be unduly hampered or delayed in their ability to conduct business due to misguided rejection of bonds not bearing "resident agent" countersignatures.

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NASBP appreciates your attention to this important matter and looks forward to your prompt response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark H. McCallum", with a long horizontal flourish extending to the right.

Mark H. McCallum
CEO

cc: The Honorable Terry Goddard, Arizona Attorney General

encl.