



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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April 24, 2008

The Honorable Edmund G. Brown, Jr.
Attorney General of California
Department of Justice
Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 94244

Dear Attorney General Brown:

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 producers and licensed non-resident bond producers in California, I am writing you to respectfully request the prompt review and modification of State of California bond forms, such as *Bond of Insurance Broker*, *Bond of Surplus Line Broker*, and *Bond of Special Lines' Surplus Line Broker*, that include a requirement for the surety or the attorney-in-fact for the surety, its authorized bond producer, to indicate next to the signature line the "Place in California where executed."

Such a "locality" requirement is out of keeping with modern business practices and certainly treats licensed non-resident bond producers differently from licensed resident bond producers when either group functions as attorneys-in-fact for sureties issuing such bonds, as non-resident bond producers must incur significant time and cost burdens to travel to a place in California in order to execute the bond as a surety's attorney-in-fact, a burden not shared by licensed resident bond producers since they are domiciled in-state. This places licensed non-resident bond producers at a distinct disadvantage over licensed resident bond producers who wish to produce this type of business in California.

It is not clear what state interest, if any, is being served by a requirement to sign some bonds—but not other bonds—while physically present in the State of California. The state statutes requiring the furnishing of these kinds of bonds do not specify that the bonds must be executed within the State of California. Further, the California legislature has indicated its intolerance of disparate treatment between licensed resident producers and licensed non-resident producers by repealing years ago its statute that required resident producer countersignatures on insurance policies and bonds issued outside the State of California.

Letter to Attorney General Brown
April 24, 2008
Page 2 of 2

As you may be aware, the United States Court of Appeals for the Ninth Circuit, in *Council of Insurance Agents and Brokers v. Molasky-Arman*, 2008 WL 962103 (April 10, 2008), recently affirmed a decision of the United States District Court for the District of Nevada striking down Nevada's countersignature statute, Nev. Rev. Stat. Section 680A.300, as a violation of the Privileges and Immunities Clause, Article IV, Section 2 of the United States Constitution. In that opinion, the U.S. Court of Appeals for the Ninth Circuit makes clear that any statutory requirement that discriminates against citizens of another state in conducting insurance business cannot stand in the absence of a substantial state interest. In short, licensed non-resident producers must be given the ability to conduct business on substantially equal terms with licensed resident producers. The "Place in California where executed" requirement on certain State of California bond forms runs counter to that privilege.

I have attached for your reference previous correspondence on this subject with the California Department of Insurance, which directed me to your office. NASBP would welcome a dialogue on this subject with you, as you are permitted to do under California Government Code Section 11113, which states "[t]he Attorney General may consult with private persons, groups, and associations as to bond forms to be approved, modified, or revoked."

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

Sincerely,

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

Mark H. McCallum
General Counsel & Director of Government Relations

cc: Richard A. Foss, EVP
encl.