



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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September 7, 2010

J. Brooks Miller, Sr.
State Aid Engineer
Office of State Aid Road Construction
P.O. Box 1850
Jackson, MS 39215

Re: Resident Agent Countersignature Requirements Relating to Surety Bonds in Mississippi Standard Specifications for State Aid Road and Bridge Construction, 2004 Edition

Dear Mr. Miller:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing professional surety bond producers, including licensed resident and non-resident agents doing business in Mississippi, I am contacting you about the surety bond requirements contained in the Mississippi Standard Specifications for State Aid Road and Bridge Construction, 2004 Edition. It has come to our attention that "Section S-102.08—Proposal Guaranty" and "Section S-103.05—Requirement of Contract Bond" contain stipulations that these bonds must be signed or countersigned by a "Mississippi resident agent." "Section S-103.05—Requirement of Contract Bond" further states that the contract bond or bonds be "procured from" and the "premium paid to" a Mississippi resident agent. It is our strong belief that these specification requirements run counter to Mississippi and Federal law.

The current statute governing insurance policy countersignature requirements is Mississippi Code Annotated § 83-17-21, which does not distinguish between licensed resident agents and licensed non-resident agents for purposes of policy countersignatures. You may not be aware that the Mississippi Legislature amended this statute in 1999 to remove the requirement that an insurance agent must be a resident of Mississippi to countersign insurance policies. The Mississippi Legislature also eliminated requirements that commissions be divided between non-resident agents and resident agents. I have attached for your reference a copy of the prior version of the statute showing these changes.

You should note that resident agent countersignature requirements have been eradicated elsewhere in the United States, through acts of state legislatures or through judicial decisions declaring them unconstitutional. Such courts have found statutes mandating that only resident agents can countersign policies to discriminate unlawfully against licensed non-resident agents, violating their rights under the Privileges and Immunities Clause and the Equal Protection Clause of the U.S. Constitution. Please consult, for example, *Council of Insurance Agents & Brokers v. Tom Gallagher*, in which a federal district court declared Florida's statute unconstitutional, and *Council of Insurance Agents v. Molasky-Arman*, in which a federal district court declared Nevada's statute unconstitutional.

We respectfully request your immediate review of this matter and your consultation with legal counsel, as these requirements unlawfully discriminate against licensed non-resident agents. Please inform us of the actions that you will take to rectify this situation.

Yours sincerely,

Mark H. McCallum
Chief Executive Officer

cc: Martha Perkins, Esq., Whiteford, Taylor & Preston, LLP