



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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October 31, 2006

Keith Kuzmich
Division Chief of Licensing Services
California Department of Insurance
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: "Place in California where executed" requirement in certain State of California bond forms.

Dear Mr. Kuzmich:

On behalf of the National Association of Surety Bond Producers, a national trade association of surety bond producers, whose membership includes licensed resident bond producers and licensed nonresident bond producers in California, I am contacting you to inquire about the reasoning for and the continued enforcement of a requirement in at least four State of California bond forms, notably *Bond of Insurance Adjuster* (Form 31A-14), *Bond of Insurance Broker* (Form 417-5), *Bond of Surplus Line Broker* (Form 447-31), and *Bond of Special Lines' Surplus Line Broker* (Form 447-32), copies of which are attached. These bond forms contain a requirement whereby the surety or the attorney-in-fact for the surety, its authorized bond producer, must indicate next to the signature line the "Place in California where executed." It also has come to my attention that there have been instances where these bonds have been rejected by the Department of Insurance when this information was not completed in the form.

The requirement to indicate "Place in California where executed" in these bond forms treats licensed nonresident bond producers differently from licensed resident bond producers when either group acts as attorneys-in-fact for sureties issuing such bonds. Such a requirement imposes substantial time and cost burdens on licensed nonresident bond producers who, if the requirement is read literally, would need to travel to a place in California in order to execute the bond as a surety's attorney-in-fact, a burden that licensed resident bond producers do not have since they are domiciled in California.

It is not apparent what state interest, if any, is being served by such requirements to justify such disparate and discriminatory treatment of licensed nonresident bond producers. Moreover, the state statutes requiring the furnishing of these bonds do not specify that the bonds must be executed within the State of California. In fact, the California legislature has repealed statutes that provide disparate treatment between

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licensed resident bond producers and licensed nonresident bond producers. For example, California, some years ago, repealed its statute that required resident agent countersignatures on insurance policies and bonds issued outside the state.

U.S. Constitutional Law clearly establishes under the Privileges and Immunities Clause (Article IV, Section 2 of the United States Constitution) that citizens of one state doing business in a second state must be placed on terms of substantial equality with the citizens of the second state. Furthermore, when a burden or restriction deprives nonresidents of a fundamental right or privilege, the state imposing such burden or restriction must have a substantial reason for the difference in treatment that bears a substantial relationship to a legitimate state objective. Even in the face of a legitimate state objective, a discriminatory burden or restriction will not stand if there is a less restrictive means of meeting the state's objective.

NASBP respectfully requests (1) your prompt written response providing the reasons, if any, for the requirement of "Place in California where executed" in these bond forms and (2) your consideration for the immediate removal of such requirements in these and other State of California bond forms, where applicable, as being discriminatory requirements imposing substantial cost and time burdens on licensed nonresident bond producers. I may be reached at (202) 464-1173 should you have questions concerning this letter. I appreciate your attention to this important matter and look forward to your response.

Sincerely,



Mark H. McCallum
General Counsel & Director of Government Relations

cc: Richard A. Foss, EVP, NASBP
Edward Gallagher, General Counsel, Surety & Fidelity Association of America