



## National Association of Surety Bond Producers

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**FOR IMMEDIATE ATTENTION**

Sent via e-mail at [Gordon.Andersen@ci.ohmaha.ne.us](mailto:Gordon.Andersen@ci.ohmaha.ne.us)

Gordon Andersen  
City of Omaha  
Quality Control Division Manager  
1819 Farnam Street, Suite LC1  
Omaha NE, 68183

***Re: Resident Agent Countersignature and Service Notice Requirements***

Dear Mr. Andersen:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing firms employing surety bond producers, including licensed resident and licensed non-resident agents placing contract surety bonds in the State of Nebraska, I am contacting you to express concerns about two issues in the Contract Book for the service of Transportation of Sludge Cake.

The Performance, Payment and Guarantee Bond form requires a resident agent countersignature. Resident agent countersignature requirements are outdated with respect to modern business practices and, even more importantly, are at odds with the law in every state in and jurisdiction of the United States (with the exception of Guam, where it has not been challenged). You may not be aware that resident agent signature and countersignature requirements have been held as unconstitutional by federal courts throughout the United States and/or have been eliminated through acts of state legislatures, because such requirements impermissibly favor licensed resident agents over licensed non-resident agents.

One of the most well-known cases on this matter is *Council of Insurance Agents and Brokers v. Tom Gallagher*, 287 F. Supp. 2d 1302 (N.D. Fla. 2003), by which a U.S. District Court in Florida struck down a Florida statute that impermissibly favored resident agents. The district court determined that there was no rational basis for a distinction between Florida licensed resident agents and Florida licensed non-resident agents and declared unconstitutional the Florida statute at issue that discriminated against Florida-licensed non-resident agents. Moreover, resident agent countersignature statutes were repealed in Nebraska in 1999. Such disparate treatment between licensed resident producers and licensed non-resident producers cannot be permitted to stand, and NASBP recommends that the City of Omaha Public Works Department remove the requirement of a "resident agent," signature, which appears on page B-3 of the bond form to comply with the law, and changed to "licensed" agent.

Secondly, we are concerned with the requirement on page NB-3 of the contract book which states:

*“No surety company will be acceptable as bondsman that has not a permanent agent or representative in Douglas County, Nebraska upon whom notices may be served; service of said notice on said agent or representative in Douglas County shall be equal to service of notice on the president or such other officer of the surety company as may be concerned.”*

We believe the requirement to have a surety representative in Douglas County to serve notice to is impractical and burdensome. There are currently 93 separate counties in Nebraska, and it would be cumbersome and unnecessary for a surety to employ an agent in each of these counties. Each surety doing business in the state of Nebraska is required to be registered with the Department of Insurance, and we believe this requirement should be sufficient and provides adequate regulatory protection to the state of Nebraska.

For these reasons, NASBP respectfully requests that you bring this matter to the attention of legal counsel for immediate evaluation and direction. We appreciate your prompt consideration of our comments, and we request that you keep us apprised of the actions taken to address this important matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" being more prominent than the last name "LeClair".

Larry LeClair  
Director, Government Relations

cc: Martha Perkins, General Counsel  
Shannon Crawford, Manager, State Relations