



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

1828 L Street, NW, Suite 720

Washington, DC 20036-5104

Tel: 202.686.3700

Fax: 202.686.3656

www.nasbp.org

Sent via e-mail to herb_hyman@davie-fl.gov and facsimile to 954-797-1049.

January 31, 2011

Mr. Herb Hyman
Procurement Manager
6591 Orange Drive
Davie, Florida 33314

Re: Countersignature requirements for Sunny Lakes Bird Sanctuary B-11-15

Dear Mr. Hyman:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers and brokers, representing over 5,000 personnel who specialize in surety bonding, whose membership includes licensed resident bond agents and licensed non-resident bond agents in Florida, I am writing you to respectfully request your prompt review of resident agent and Broward County resident agent countersignature requirements concerning the Sunny Lakes Bird Sanctuary, B-11-15 located in Davie, FL.

It has come to my attention that your office is requiring the contract bond be countersigned by the surety's "resident Florida agent" and also by a "resident agent in Broward County." This requirement appears in bid document located in Article 20, "Qualification of Surety."

However, according to section §624.425 of the Florida Statutes the term "a resident of this state" was removed in 2004, when the Florida legislature removed the resident agent signature requirement. I have attached, as an exhibit to this letter, a photocopy of the applicable Florida statute, §624.425, and an annotated version, which indicates the history of amendments to this law.

Such an action by the Florida 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was in keeping with the state legislative trend to repeal resident agent countersignature requirements as wholly outdated with respect to modern business practices and at odds with federal constitutional law.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 established that such requirements ensure a practice of disparate treatment between licensed nonresident agents and licensed resident agents.

I am attaching also the FL Informational Bulletin (2003-004), dated November 12, 2003, informing property, casualty and surety insurers and general lines insurance agents of a court decision that affected the way nonresident general lines agents conduct business in Florida. In the *Council of Insurance Agents and Brokers v. Tom Gallagher* (Case No. 4:02cv208-RH), the United States District Court for the Northern District of Florida ruled that Sections 624.425, 626.741 and 626.927 of Florida Statutes violated the United States Constitution to the extent that they denied the same rights and privileges to Florida licensed

nonresident insurance agents that they afforded to Florida-licensed resident insurance agents. Each of these sections of law restricted the ability of nonresident general lines agents to do business in Florida. As I stated earlier, the Florida legislature acted accordingly by removing the “a resident of this state” language in 2004.

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) no unconstitutional countersignature preferences for licensed resident agents are included in existing or future bidding documents.

NASBP appreciates your attention to this important matter and looks forward to your prompt response on the requested actions.

Yours 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
Chief Executive Officer

Attachments