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Collections & Charges Permitted in Connection with a Bail Transaction

Bail is regulated by the Division of Insurance ("Division") according to the laws for bail under the Insurance Code, which are found under Nevada Revised Statutes ("NRS") title 57 chapter 697. This Bulletin provides guidance from the Division regarding collections and charges permitted in connection with a bail transaction under the Insurance Code; however, a transaction involving collections and charges may be subject to other laws. This Bulletin is not a comprehensive review of all applicable laws and regulations.

A. Nevada Laws Governing Bail Bonds Are Considered Incorporated into Each Bail Bond Agreement

Any provision in a contract that violates Nevada law is invalid. Waivers or agreements that violate Nevada law cannot be enforced by a bail agent because a contract cannot circumvent the law. Any action, document, or form that violates the law is not permitted even if both parties agree. For example, a bail agent cannot charge fees that are not permitted by Nevada law even if the customer signs an agreement or fee schedule agreeing to them.

B. Collections & Charges

Some bail agents levy and collect charges that are prohibited under the Insurance Code. The Insurance Code prohibits a bail agent from charging or collecting money or anything else of value in a bail transaction except as permitted in NRS 697.300.

a. Premium

NRS 697.300.1(a) sets the premium for the service of posting a bond at 15% of the amount of the bond or $50, whichever is greater. This one-time premium takes into account typical services and activities a bail agent must do in a bail transaction until the bail contract concludes. Any attempt, direct or indirect, to collect more than the 15% premium is a violation of NRS 697.300 and NRS 697.310.

i. Renewal Premium Prohibited

A "premium renewal" on a bond is prohibited because the total amount for premium cannot exceed "15% of the amount of the bond" or $50, whichever is greater.[1] NRS 697.300.1(a). Nevada law says that a bond remains in effect until it is exonerated by a court. NRS 178.502. Thus, an annual "renewal" is not required for the bond to remain effective, and a premium renewal violates NRS 697.300 and NRS 697.310.

    ii. Premium Financing Prohibited
It is a violation of Nevada law to finance premium in a bail bond transaction. This is in part due to the fact that interest would result in a client paying more than the 15% of the amount of the bond, which violates NRS 697.300.1(a) and NRS 697.310. Payments of premium in installments with no interest charged is not prohibited.

b. Charges Permitted in a Bail Transaction
The only charges that are permitted are the expenses incurred by a bail agent in the bail transaction. NRS 697.300.1(c) subsections (1) through (4) specifically identify expenses charged by third parties (limited to guard fees, notary public fees, and recording fees) that are permitted in a bail transaction. Any charge that is not on this list is prohibited unless it is an expense that meets the requirements established in NRS 697.300.1(c)(5) and 697.300.1(d). These provisions are the most frequently misinterpreted, misunderstood, and misused.

    i. NRS 697.300.1(c)(5)
If a bail agent seeks reimbursement for expenses incurred in connection with a bail transaction that are not listed in NRS 697.300.1(c)(1) through (4), the expense must be *actual* and *necessary*. An *actual* expense means that the expense must be verified by a receipt or other document evidencing an actual payment made to another party, which can be independently verified. A *necessary* expense means that the expense was unavoidable and imperative to the bail transaction to ensure that the defendant met the court-ordered terms of release.

    ii. NRS 697.300.1(d)
If a bail agent seeks reimbursement for expenses resulting from a breach by the defendant of any of the terms of the written agreement, such expenses must be (1) *actual*, (2) *incurred in good faith*, and (3) *by reason of breach by the defendant of any of the terms of the written agreement*. The reimbursement should not exceed the amount of the bond plus reasonable expenses. The amount paid to the court and the reasonable expenses must be verified by receipt. *Actual* expense has the same meaning as above—the expense must be verified by a receipt or other document evidencing an actual payment made to another party, which can be independently verified. *Incurred in good faith* means that the expenses must be *unavoidable, necessary* and *incurred as a result of a present (not anticipated) obligation or liability*. Finally, an expense incurred *by reason of breach* means that the bail agent has to pay the expense as a direct result of the defendant's failure to

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[1] *See* Attorney General Opinion BGA (July 24, 2013) for the analysis.

comply with the terms of the agreement. In other words, a bail agent cannot charge a flat fee for a breach; there has to be an expense due to the breach.

C. <u>Compliance with Provisions Regarding Collections & Charges</u>
The Division is authorized to review and examine bail agent files to ensure compliance with requirements related to collections and charges, as well as other laws applicable to bail. NRS 697.290; NRS 679B.240.1. Failure to comply with these requirements may result in administrative fines, suspension or revocation of the license.

The Division will be providing additional guidance about bail collections and charges, as well as other bail topics on its website soon. Please direct any questions to the Division's Enforcement Section in Las Vegas, Nevada, by using the Division's toll-free number at (888) 872-3234.

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