

March 14, 2019

Via Email Only: suebell@doi.nv.gov
Susan Bell, Legal Secretary
Nevada Division of Insurance
1818 E. College Parkway
Carson City, NV 89706

Re: LCB File No. R173-18. Business of Bail - Proposed Regulations

Dear Ms. Bell:

On behalf of International Fidelity Insurance Company, please accept the following as our response to the request by the Nevada Division of Insurance ("Department") for public comment to above-referenced proposed regulatory amendments, dated February 11, 2019.

1. Section 21. NAC 697.380

Proposed Amendments:

A bail agent shall satisfy a final judgment of default within 30 days after the clerk serves a copy of the judgment upon the bail agent or surety.

Comment:

We suggest service of the judgment upon BOTH the bail agent and surety. Service upon the bail agent only could create issues with the agent not timely or otherwise providing notice to the surety, which could lead to delays in satisfaction of the judgment.

2. Section 24. NAC 697.430

Proposed Amendment:

All forms forwarded to the surety pursuant to this chapter must be maintained for *not less than 7 years after the date on which the liability of the surety was terminated.*

Comment:

Currently, under the NAC 697.430, the surety is required to maintain records of forms for a minimum of three (3) years after the date of receipt by the surety company. The proposed amendment requires maintenance for seven (7) years from the date the liability is terminated. NRS §697.360 provides that a bail agent is required to maintain bond records for a minimum of three (3) years after the liability of the surety has been terminated. We do not understand the rationale for a seven (7) year retention period for “forms” provided to the surety. Perhaps a three (3) year retention period for forms is more consistent with the current statutory requirements.

3. Section 25. NAC 697.440

Proposed Amendment:

1. Each licensee shall file *for approval* by the Commissioner each form *which the licensee intends to use* in his or her business, *including, without limitation, any agreement or document which:*

(a) Requires the signature of the defendant or indemnitor; or

(b) Is made part of a bail agreement by reference.

2. *A licensee may only use a form in a bail transaction if the Commissioner has expressly approved the form.*

Comment:

First, we believe that the surety, not the agent, should file all bail forms on behalf of appointed bail agents.

Second, bail agents should only use such Department approved surety forms. If agents are permitted to file forms, there will be very little consistency of the forms presented to the consumer in the marketplace. Sureties are in a better position to ensure submitted forms comply with applicable laws.

Lastly, more definitive information is needed about the process of approval:

- What is the proposed approval process for reviewing forms filed by the licensee?
- How long does the Department anticipate the approval process will take?
- Will the forms be submitted via electronic or hard copy?
- Will confirmation of approval be received by the licensee and the surety?
- Will the Department keep records of the forms that have been approved?
- How long will those records be kept?
- If a form is not approved, will the Department provide the basis for the denial?
- Many licensees use the forms provided by their surety. Will the Department review/approve surety forms?

4. Section 26. NAC 697.450

Proposed Amendment:

Every *bail agent* or employee of a *bail agent* shall promptly provide a *defendant or indemnitor* complete copies of every form, agreement or other document that is made by reference a part of a bail agreement to which the *defendant or indemnitor*, as applicable, is a party.

Comment:

May a bail agent provide electronic copies of the executed forms or must they be physical copies?

5. Section 697.460

Proposed Amendment:

1. A *bail agent* must track all collateral received in a bail transaction in a master collateral receipt book. The book may be maintained in hard copy or electronic form.

Comment:

May a bail agent track collateral received in an excel spreadsheet or similar electronic format? Must the bail agent maintain a physical master collateral receipt book?

6. Section 697.470

Proposed Amendment:

All *bail agreements* must be in writing or reduced to writing as soon as possible after consummation in a form which was previously approved by the Commissioner pursuant to NAC 697.440. If any person acts as an *indemnitor*, a copy of the agreement executed by the *indemnitor* must be delivered to him or her promptly upon his or her completion of the execution.

Comment:

May a bail agent provide electronic copies of the executed forms or must they be physical copies?

Proposed Amendment:

Any collateral offered by a *defendant or indemnitor* and accepted by a *bail agent* must be specifically itemized, described and authenticated by signature of the person pledging the collateral at the time the bail agreement is executed. A *bail agent* may not enforce a bail agreement without disclosing to the *defendant or indemnitor* all collateral held by the *bail agent* indemnifying the bond. The *bail agent* must disclose to the *indemnitor* the identity of other *indemnitors*, if any, to the same bond.

Comment:

Will a collateral receipt fulfill the requirement to itemize, describe and authenticate by signature? How does the agent disclose all collateral held to other indemnitors? Provide a copy of the collateral receipt to all indemnitors?

7. Section 29. NAC 697.475

Proposed Amendment:

3. Add or amend terms of a bail agreement or form in a bail transaction.

4. Threaten to surrender a defendant, or take other action, to unduly or improperly influence a person's decision whether to agree to add or amend the terms of a bail agreement or form.

Comment:

Does this proposed amendment prohibit bail agents from adding or amending terms to the bail bond agreement when assented to by the indemnitor(s)?

8. Section 32. NAC 697.520

Proposed Amendment:

Collateral must be returned to the person who posted it not later than 10 business days after the date when the obligation secured by the collateral is discharged.

Comment:

Please advise whether the 10-business day period begins to run upon receipt of notice of the bond discharge by the agent/surety or from the date of court discharge of the bond. We suggest 10 days from receipt of notice of discharge by the agent/surety since mailing by the court could be delayed and create situations where notice is not received in adequate time to effectuate the return of collateral.

Proposed Amendment:

If the bail bond secured by the collateral is forfeited, and payment is made to the court upon a final judgment of default against the bond and the bail agent seeks to retain possession of the collateral or otherwise dispose of the collateral, in payment of the forfeiture, the bail agent shall...

Comment:

Please confirm or provide further specificity that this proposed amendment does not require the agent to pay the forfeiture before liquidating any collateral pledged for the bond. The agent should have the ability to liquidate collateral to pay a bond forfeiture. May an agent deduct fees (e.g., recovery agent fees) and expenses from the liquidated collateral to reimburse agent for same?

Proposed Amendment:

If the *bail* bond secured by the collateral is forfeited, *and payment is made to the court upon a final judgment of default against the bond* and the *bail agent* seeks to *retain* possession of the collateral or otherwise *dispose* of the collateral, *in payment of the forfeiture*, the *bail agent* shall:

(b) *Comply with all applicable lawful procedures to transfer or dispose of the collateral*

Comment:

We suggest the Department provide reference to the appropriate Nevada statutes or regulations relating to “lawful procedures to transfer or dispose of collateral.”

9. Section 34. NAC 697.530

Proposed Amendment:

If a *bail agent* receives any document which conveys title to real property as collateral in a bail transaction, whether on his or her own behalf or on behalf of a surety, the document must state on its face that it is executed as part of a security transaction.

Comment:

Does this proposed amendment permit the conveyance of title to real property to the agent/surety (e.g., quit claim deed)? We suggest that the amendment should prohibit an agent from receiving a conveyance of real or other property as collateral. The agent/surety should be able to obtain a security interest in such property (e.g., deed of trust or security agreement/UCC-1).

We also recommend all documents granting a security interest in real property (i.e., deed of trust) designate the surety as beneficiary, not the agent.

10. Section 34. NAC 697.550

Proposed Amendment:

No *surety or bail agent* may *cause* the surrender of a defendant back into custody without good cause before the time specified in the *bail* bond for the appearance of the defendant. If a *surety or bail agent* *cause the surrender* of a defendant before the time specified in the *bail* bond, the *surety or bail agent, as applicable*, shall, within 10 days after the surrender, *file with* the Commissioner a verified statement concerning the surrender...

Comment:

Once a defendant fails to appear, does the recovery of the defendant to custody thereafter require the filing of the Early Surrender Form?

Proposed Amendment

If the surety or bail agent, as applicable, fails to timely submit the statement and other information and documents as required by this subsection, the Commissioner will deem the surrender to be without good cause.

Comments:

We suggest that if an Early Surrender Form is timely submitted by the agent, but upon review, the Department deems the Form incomplete (i.e., requires "other" information), the Department should provide notice and an opportunity to cure the deficiency.

Thank you for considering our comments. We respect this process and value our role in the criminal justice system. Should you have any questions, please let us know. Thank you for your consideration.

Sincerely,



James D. Portman
Assistant Vice President
Bond Counsel