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BUSINESSES RELATED TO BAIL

The Nevada Division of Insurance ("Division") has noticed an increase in the number of consumer complaints regarding certain transactions related to the business of bail. Therefore, the Division is issuing this Bulletin to remind and clarify the laws related to those subjects as they pertain to bail agents, bail enforcement agents, bail solicitors, bail agencies, and general agents.

1. Permitted Collections and Charges

NRS 697.300 and 697.310 specifically identify what a bail agent may and may not charge in connection with a bail transaction. NRS 697.300 and 697.310 provide, in their entirety:

> **NRS 697.300 Collections and charges permitted.**
>
> 1. A bail agent shall not, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
>
> (a) To pay the premium at the rates established by the insurer, in accordance with chapter 686B of NRS, or to pay the charges for the bail bond filed in connection with the transaction at the rates filed in accordance with the provisions of this Code. The rates must be 15 percent of the amount of the bond or $50, whichever is greater.
>
> (b) To provide collateral.
>
> (c) To reimburse himself or herself for actual expenses incurred in connection with the transaction. Such expenses are limited to:
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> (1) Guard fees.
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> (2) Notary public fees, recording fees, expenses incurred for necessary long distance telephone calls and charges for telegrams.
>
> (3) Travel expenses incurred more than 25 miles from the agent's principal place of business. Such expenses:

(I) May be billed at the rate provided for state officers and employees generally; and

(II) May not be charged in areas where bail agents advertise a local telephone number.

(4) Expenses incurred to verify underwriting information.

(5) Any other actual expenditure necessary to the transaction which is not usually and customarily incurred in connection with bail transactions.

(d) To reimburse himself or herself, or have a right of action against the principal or any indemnitor, for actual expenses incurred in good faith, by reason of breach by the defendant of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or bail bond was written. If there is no written agreement, or an incomplete writing, the surety may, at law, enforce its equitable rights against the principal and his or her indemnitors, in exoneration. Such reimbursement or right of action must not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that may be verified by receipt in a total amount of not more than the principal sum of the bond or undertaking, incurred in good faith by the surety, its agents, licensees and employees by reason of the principal's breach.

2. This section does not prevent the full and unlimited right of a bail agent to execute undertaking of bail on behalf of a nonresident agent of the surety he or she represents. The licensed resident bail agent is entitled to a minimum countersignature fee of $5, with a maximum countersignature fee of $100, plus expenses incurred in accordance with paragraphs (c) and (d) of subsection 1. Such countersignature fees may be charged in addition to the premium of the undertaking.

(Added to NRS by 1971, 1914; A 1997, 3390; 2003, 3336)

NRS 697.310 Prohibited charges. Except to the extent permitted by paragraphs (c) and (d) of subsection 1 and subsection 2 of NRS 697.300, a licensee shall not make any charge for the services of the licensee in a bail transaction in addition to the premium or the charge for a bail bond at the rates filed in accordance with the provisions of this Code.

(Added to NRS by 1971, 1915; A 1997, 3391)

Examples of expenses which are *not* authorized include, but are not limited to:

1. Fees for the services performed contained within a bail enforcement agreement that are excessive;
2. Time charged by the bail agent for services the agent personally conducted, such as "investigative services";
3. Minimum fees assessed for a failure to appear but charged before the expenses have actually been incurred;
4. Excessive, ambiguous or duplicative fees;
5. Fees that are not itemized with specificity; and
6. Any fee charged by the bail agent that does not correspond to an expense actually incurred by the bail agent.

2. Collateral

Pursuant to NRS 697.320:

1. Collateral must be reasonable in relation to the face amount of the bond;
2. Collateral may not be transferred to another person other than a bail agent or surety;
3. The bail agent and any other person who receives the collateral holds it in a fiduciary capacity; and
4. A receipt for the collateral must be given in accordance with Nevada Administrative Code ("NAC") 697.460, and it must include a full and detailed accounting of the collateral received.

NRS 697.320 and NAC 697.460 provide, in their entirety:

> **NRS 697.320 Collateral; limitations on transfer of collateral; fiduciary capacity; requirements for receiving title to real property as collateral; written receipt for collateral.**
>
> 1. A bail agent may accept collateral security in connection with a bail transaction if the collateral security is reasonable in relation to the face amount of the bond. The bail agent shall not transfer the collateral to any person other than a bail agent licensed pursuant to this chapter or a surety insurer holding a valid certificate of authority issued by the Commissioner. The collateral must not be transported or otherwise removed from this state. Any person who receives the collateral:
>
> (a) Shall be deemed to hold the collateral in a fiduciary capacity to the same extent as a bail agent; and
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> (b) Shall retain, return and otherwise possess the collateral in accordance with the provisions of this chapter.
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> 2. The collateral security must be received by the bail agent in his or her fiduciary capacity, and before any forfeiture of bail must be kept separate and apart from any other funds or assets of the licensee. Any collateral received must be returned to the person who deposited it with the bail agent or any assignee other than the bail agent as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged and all fees owed to the bail agent have been paid. The bail agent or any surety insurer having custody of the collateral shall, immediately after the bail agent or surety insurer receives a request for return of the collateral from the person who deposited the collateral, determine whether the bail agent or surety insurer has received notice that the obligation is discharged. If the collateral is deposited to secure the obligation of a bond, it must be returned immediately after receipt of the request for return of the collateral and notice of the entry of any order by an authorized official by virtue of which liability under the bond is terminated or upon payment of all fees owed to the bail agent, whichever is later. A certified copy of the minute order from the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of liability.

3. If a bail agent receives as collateral in a bail transaction, whether on the bail agent's or another person's behalf, any document conveying title to real property, the bail agent shall not accept the document unless it indicates on its face that it is executed as part of a security transaction. If the document is recorded, the bail agent or any surety insurer having possession of the document shall, immediately after the bail agent or surety insurer receives a request for return of the collateral from the person who executed the document:

(a) Determine whether the bail agent or surety insurer has received notice that the obligation for which the document was accepted is discharged; and

(b) If the obligation has been discharged, reconvey the real property by delivering a deed or other document of conveyance to the person or to the heirs of the person, legal representative or successor in interest. The deed or other document of conveyance must be prepared in such a manner that it may be recorded.

4. If the amount of any collateral received in a bail transaction exceeds the amount of any bail forfeited by the defendant for whom the collateral was accepted, the bail agent or any surety insurer having custody of the collateral shall, immediately after the bail is forfeited, return to the person who deposited the collateral the amount by which the collateral exceeds the amount of the bail forfeited. Any collateral returned to a person pursuant to this subsection is subject to a claim for fees, if any, owed to the bail agent returning the collateral.

5. If a bail agent accepts collateral, the bail agent shall give a written receipt for the collateral. The receipt must include in detail a full account of the collateral received.

(Added to NRS by 1971, 1915; A 1997, 3391; 2003, 3337)

NAC 697.460 Receipts for collateral.

1. Receipts for collateral must be issued and maintained in numerical order. A master collateral receipt book must remain permanently at the principal place of business of the licensee.

2. A licensee may keep a duplicate book of collateral receipts on his person away from the principal place of business. If a duplicate book is maintained, it must be clearly designated as such.

[Comm'r of Insurance, M-8 § XII, eff. 11-22-78]

PLEASE NOTE: IF A BAIL AGENT WANTS TO TAKE SECURITY TO SECURE THE BAIL TRANSACTION, HE/SHE MAY ONLY TAKE COLLATERAL AS SPECIFIED IN NRS 697.320. A GENERAL POWER OF ATTORNEY IS NOT A LEGAL SUBSTITUTE FOR SPECIFIC COLLATERAL. A GENERAL POWER OF ATTORNEY MAY NOT BE USED, IN ANY MANNER, AS SECURITY FOR THE BAIL TRANSACTION.

3. Filing of Forms

NAC 697.440 requires every bail agent, bail enforcement agent, bail solicitor, bail agency, and general agent to file a sample copy of each form used. NAC 697.440 provides:

> **NAC 697.440 Filing of sample copies of forms.** Each licensee shall file with the Commissioner a sample copy of each form used in his business.
> [Comm'r of Insurance, M-8 § XXVI, eff. 11-22-78]

Such forms include, but are not limited to:

1. Contracts for bail;
2. Contracts for collateral;
3. Contracts for bail enforcement services; and
4. Power of Attorney forms.

4. License Required

As defined in the statutes and regulation set forth below, only properly licensed individuals may perform the acts so designated in the below statutes. Using a non-licensed individual to surrender custody of a defendant violates Nevada law.

> **NRS 697.040 "Bail agent" defined.** "Bail agent" means any individual appointed by an authorized surety insurer by power of attorney to execute or countersign undertakings of bail in connection with judicial proceedings and who receives or is promised money or other things of value therefor.
> (Added to NRS by 1971, 1906)

> **NRS 697.055 "Bail enforcement agent" defined.** "Bail enforcement agent" means a person who has contracted with or is employed by a surety or bail agent as a special agent to enforce the terms and conditions of a defendant's release from custody on bail in a criminal proceeding, to locate a defendant and to apprehend a defendant or surrender a defendant to custody, or both, if appropriate.
> (Added to NRS by 1997, 3380)

> **NRS 697.060 "Bail solicitor" defined.** "Bail solicitor" means a person employed by a bail agent to solicit bail transactions as a representative of the bail agent.
> (Added to NRS by 1971, 1906; A 1997, 3383)

> **NRS 697.070 "General agent" defined.**
> 1. "General agent" means any individual or person appointed by an insurer to supervise or manage the bail bond business written by bail agents of such insurer.
> 2. A general agent shall not solicit or negotiate undertakings of bail or bail bonds unless licensed as a bail agent by this state.
> (Added to NRS by 1971, 1906)

NRS 697.090 License required; administrative fine; general restrictions on licensing.

1. A person in this state shall not act in the capacity of a bail agent, bail enforcement agent or bail solicitor, or perform any of the functions, duties or powers prescribed for a bail agent, bail enforcement agent or bail solicitor under the provisions of this chapter, unless that person is qualified and licensed as provided in this chapter. The Commissioner may, after notice and opportunity to be heard, impose an administrative fine of not more than $1,000 for each act or violation of the provisions of this subsection.

2. A person, whether or not located in this state, shall not act as or hold himself or herself out to be a general agent unless qualified and licensed as such under the provisions of this chapter.

3. For the protection of the people of this state, the Commissioner shall not issue or renew, or permit to exist, any license except in compliance with this chapter. The Commissioner shall not issue or renew, or permit to exist, a license for any person found to be untrustworthy or incompetent, or who has not established to the satisfaction of the Commissioner that the person is qualified therefor in accordance with this chapter.

(Added to NRS by 1971, 1906; A 1997, 3384; 1999, 2818; 2001, 2252)

NAC 697.130 Unlicensed persons: Limitations. No person other than a licensee may:

1. Complete an application for a bail bond, other than filling in the initial statistical information.

2. Execute the surety contract, other than clerical preparation of a surety contract under the direct and immediate supervision of the licensee.

3. Execute a collateral receipt, other than clerical preparation of the receipt under the direct and immediate supervision of the licensee.

4. Post a bond with a court or with a jail in which a defendant is confined or have any communication with defendant while he is confined, except to obtain statistical information sufficient to refer the matter to the licensee. Any natural person may post a bond on behalf of a defendant if the person is not regularly engaged in the business of providing bail bonds.

5. Appear on behalf of the licensee at a court proceeding for the purpose of obtaining continuation, exoneration or reduction of a posted bond, or obtaining other court action on it.

6. Solicit bail bond business on behalf of a licensee.

7. Perform any other function of a licensee.

[Comm'r of Insurance, M-8 § VII, eff. 11-22-78]

When individuals or entities fail to comply with the above listed laws, both consumers and the bail industry are harmed. For any questions concerning reporting requirements, please contact Ben Gillard, Chief Investigator, at (775) 687-0709.

AMY L. PARKS
Acting Commissioner of Insurance