

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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ORDER R-92-05 ADOPTING REGULATIONS OF THE DIVISION OF INSURANCE

The attached fourteen pages of regulations, dealing with bail bonds are hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance adopts under authority of AS 21.06.090 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor, as provided in AS 44.62.180.

DATE: 11-5, 1992
Juneau, Alaska


for David J. Walsh
Director of Insurance

FILING CERTIFICATION

I, John B. Coghill, Lieutenant Governor for the State of Alaska, certify that on NOVEMBER 18, 1992, at 9:41 A.M., I filed the attached regulations according to the provisions of AS 44.62.040 -- 44.62.180.


Lieutenant Governor

Effective December 18, 1992.

Register 124, January, 1993.

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CHAPTER 23. AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

Article

- 1. Licensing Requirements (3 AAC 23.010 -- 3 AAC 23.080)
- 2. Premium Financing (3 AAC 23.210 -- 3 AAC 23.390)
- 3. Brokers' Fee Compensation (3 AAC 23.400 -- 3 AAC 23.490)
- 4. Trust Accounting for Licensees (3 AAC 23.500 -- 3 AAC 23.730)
- 5. Bail Bonds (3 AAC 23.745 -- 3 AAC 23.859)
- 6. General Provisions (3 AAC 23.860 -- 3 AAC 23.900)

3 AAC 23 is amended by adding new sections to read:

Article 5. Bail Bonds

Section

- 745. Applicability
- 750. Bail bond limited producer license required
- 760. Premium only charge permitted
- 770. Written notice of bail bond transaction
- 780. Records
- 790. Prohibited bail bond activities
- 800. Collateral; fiduciary relations
- 810. Collateral; custody
- 820. Collateral; affidavit of receipt
- 830. Return of collateral
- 840. Forfeiture
- 850. Unclaimed collateral or excess collateral
- 859. Definitions

3 AAC 23.745. APPLICABILITY. Under AS 21.27.150(d), the director of the division of insurance is authorized to license a person as a bail bond limited producer. In addition to whatever court rules might apply, a bail bond limited producer is subject to

(1) the applicable licensing and record keeping requirements, fiduciary responsibilities, and disciplinary actions of AS 23.27 as they relate to an insurance producer; and

(2) the trade practices and fraud provisions of AS 21.36.

(Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.010
AS 21.27.150
AS 21.36.350

3 AAC 23.750. BAIL BOND LIMITED PRODUCER LICENSE REQUIRED.

(a) A person may not act in the capacity of a bail bond limited producer or perform any of the functions of a bail bond limited producer unless the person is licensed for and meets the requirements of AS 21.27.150 and acts on behalf of a surety insurer or limited surety insurer. Except for clerical and administrative duties, an unlicensed person may not perform the duties of a licensed bail bond limited producer.

(b) To avoid unfair competition in accordance with AS 21.36.150(d), law enforcement personnel, adjudication and prosecution officials and their employees, officials authorized to admit bail, and state, borough, and city officers may not be licensed to execute bail bonds or receive any benefits from the execution of any bail bond.

(c) The provisions of AS 21.27, AS 21.36, and 3 AAC 23.745 -- 3 AAC 23.859 do not apply to a person who is licensed as and performing the duties of an attorney at law. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.010
AS 21.27.150
AS 21.36.150

3 AAC 23.760. PREMIUM ONLY CHARGE PERMITTED. (a) Except as provided in (b) of this section, a bail bond limited producer may not charge, collect, or receive any fee or consideration other than a premium that is based upon the effective rate on file with the director.

(b) A licensee may charge for reimbursement of travel, lodging, per diem, and any other expenses incurred at the time the bond is executed. A licensee shall retain a record of all expenses incurred for three years.

(c) After execution of a bail bond, an additional premium may not be charged unless the

(1) amount of the bond has increased; or

(2) additional premium is based on the effective rate on file with the director.

(d) A licensee shall refund any premium received above the minimum premium for a bond if a court finds that the surety had no liability under the bond because the defendant did not come under the jurisdiction of the court to which the defendant was thought to be returnable. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.36.360
AS 21.39.030
AS 21.39.040

3 AAC 23.770. WRITTEN NOTICE OF BAIL BOND TRANSACTION. (a)

A licensee or surety shall, at the time of obtaining the release of a defendant on bail, deliver to the defendant and to any other person with whom bail negotiations were conducted, a prenumbered document that describes the bail bond transaction, including the

- (1) name of the surety;
- (2) name and address of the licensee;
- (3) name of the defendant;
- (4) date the defendant is released from the bond;
- (5) date, time, and place of the defendant's required court

appearance;

- (6) amount of bail;
- (7) offenses with which the defendant is charged;
- (8) premium charged for the bail bond;
- (9) premium amount received on account; and
- (10) unpaid balance, if any, and payment terms.

(b) A licensee shall provide the surety with a copy of the written notice of each bail bond transaction within 30 working days.

(c) A licensee shall make available at the licensee's office a copy of each form signed by the person who posts bail or, upon request, mail or deliver a copy of each form to that person within ten working days of that person's signature.

(Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.780. RECORDS. (a) A licensee shall maintain the following records for five years after the liability of the surety is terminated:

(1) a daily register containing the permanent record of all bail bonds and bail bond transactions executed by the licensee including the

- (A) power of attorney form number;
- (B) date a bail bond was executed;
- (C) court in which a bail bond was posted;
- (D) name of defendant;
- (E) amount of bail bond;
- (F) premium charged;
- (G) premium reported to the surety;
- (H) collateral received;
- (I) indemnity agreements;
- (J) disposition of collateral; and
- (K) date of disposition of each bail bond.

(2) a list of every outstanding or unpaid forfeiture and court judgment;

(3) the name of the court in which each outstanding or unpaid forfeiture and court judgment is recorded;

(4) a list of all collateral held and any current disputes or suits filed

over the return of the collateral; and

(5) a separate file for each defendant for whom a bail bond has been made that includes

(A) the original application for a bail bond;

(B) a copy of the written notice of a bail bond transaction required by 3 AAC 23.770;

(C) an affidavit of receipt of collateral;

(D) a description of where the collateral is located;

(E) a receipt or release executed by each person who posted collateral that the collateral has been returned; and

(F) a copy of any indemnity agreement.

(b) Records required under this section must be open to examination by the director or the director's representative upon request. The director will, in the director's discretion, require a licensee to furnish a copy of the records required under this section. Any records not stored at the licensee's principal place of business must be made available within two working days after a request by the director or the director's representative.

(c) Records required under this section may be stored electronically or on other media equipment. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.790. PROHIBITED BAIL BOND ACTIVITIES. (a) In accordance with the applicable provisions of AS 21.27, AS 21.36, and court rules, a bail bond limited producer or surety may not

(1) pay, rebate, give, or promise anything of value to a jailer, peace officer, magistrate, or any other person who has power to arrest or hold a person in custody, or to any public official or public employee for the purpose of securing a settlement, compromise, remission, or reduction of the amount of bail bond, or to secure delay or other advantage; this section does not prohibit public reward paid for the return of a fugitive;

(2) pay, rebate, give, or promise anything of value to an attorney in a bail bond matter, except in defense of an action on a bail bond, collateral, or indemnification agreement;

(3) pay, rebate, give, or promise anything of value to a defendant or anyone acting on the defendant's behalf in exchange for a referral of bail bond business;

(4) also act as the defendant's attorney at a trial or hearing if the licensee or surety has also posted the defendant's bail bond;

(5) accept anything of value from a defendant except a premium, collateral, or reimbursement for expenses as provided for in 3 AAC 23.760(b);

(6) recommend a particular attorney to represent a defendant;

(7) solicit business where a prisoner is confined in or near a courtroom if otherwise prohibited by court order or law;

(8) sign or countersign a bail bond that the licensee did not execute;

or

(9) delegate to a person the authority to sign the name of the licensee to a bail bond.

(b) A single bail amount as ordered by a magistrate or judge may not be divided or reduced by the licensee for multiple charges or cases involving the same defendant. The surety is liable for the full amount of the bond for the duration of the case.

(c) If a magistrate or judge orders a separate bail amount for each charge against a defendant, the licensee or surety must execute a separate bond for each amount.

(d) A violation of this section is an unfair or deceptive act or practice in accordance with AS 21.36.150(d) and subjects the licensee to suspension or revocation of the license under AS 21.27.410. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.410
AS 21.27.550(f) and (g)
AS 21.36.080
AS 21.36.100
AS 21.36.150(d)

3 AAC 23.800. COLLATERAL; FIDUCIARY RELATIONS. (a) A licensee or surety who receives collateral in connection with a bail bond transaction shall receive the collateral in a fiduciary capacity. Until the forfeiture of bail, the licensee or surety must keep the collateral separate from any other funds or assets of the licensee or surety.

(b) Cash collateral must be maintained in accordance with AS 21.27.360 and 3 AAC 23.500 -- 3 AAC 23.730.

(c) If a licensee or surety receives as collateral a document that conveys title to a lien on real property, that document must state on its face that it is executed as part of a security transaction. If that document is recorded, a conveyance of the property, executed in such a manner that it may also be recorded, must be delivered by the licensee or surety to the person executing the original conveyance or to that person's heir, legal representative, or successor in interest. Within 10 working days after notice of the exoneration of the bond in writing by the court, the licensee shall make the document available at the licensee's principal place of business or mail it upon request. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.360

3 AAC 23.810. COLLATERAL; CUSTODY. (a) If a licensee transfers collateral to another bail bond limited producer or surety, the recipient of the collateral shall hold it in a fiduciary capacity, return it, and otherwise handle it in accordance with 3 AAC 23.745 -- 3 AAC 23.859.

(b) Collateral may only be transferred from one licensee to another licensee or surety and may not be removed from the state. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090

AS 21.27.360

3 AAC 23.820. RECEIPT FOR COLLATERAL. (a) A licensee who receives collateral in connection with a bail bond transaction shall provide a prenumbered receipt to the person providing the collateral.

(b) The receipt for the collateral must state the

- (1) date of receipt;
- (2) name of the surety;
- (3) bail bond number;
- (4) number of the power of attorney form;
- (5) name of the defendant;
- (6) amount of the bond;
- (7) full description of the collateral;
- (8) amount of money or value of the collateral received;
- (9) name of the individual making payment or giving the collateral;

and,

(10) conditions for return of the collateral or excess collateral upon forfeiture to the person who paid the collateral, or to that person's heir, legal representative, or successor in interest.

(c) The receipt for the collateral must contain the legend "A complaint or dispute regarding the taking, use, or release of this collateral may be reported to the Department of Commerce and Economic Development, Division of Insurance, 800 East Dimond Boulevard, Suite 560, Anchorage, Alaska 99515, if the complaint

or dispute is not resolved in 45 working days."

(d) A receipt must be issued and maintained in numerical order. The original receipt book must remain permanently at the principal place of business of the licensee or surety. A duplicate receipt book may be kept in a location other than the principal place of business. A duplicate receipt book must be clearly identified as a duplicate.

(e) A willful misstatement on or an intentional omission from a receipt for collateral concerning the amount of collateral given or pledged, is a fraudulent insurance act under AS 21.36.360(f).

(f) A licensee shall send a copy of the receipt for collateral to the surety within 30 working days of execution of a receipt. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.350
AS 21.36.350
AS 21.36.360

3 AAC 23.830. RETURN OF COLLATERAL. (a) Within 10 days after receiving written notification from the court that a bail bond and the surety have been exonerated, a bail bond limited producer shall make any collateral deposited to secure the obligation of that bail bond available for return to the person who deposited the collateral, or to that person's heir, legal representative, or successor in interest. The licensee shall verify with the court that the obligation has been exonerated before returning the bail bond.

(b) If the collateral was deposited as security for unpaid premium, if the

premium remains unpaid at the time of surrender, exoneration, or forfeiture of the bond, and if a demand has been made by the licensee in custody of the collateral, the surety acting by itself, or through its agent, may dispose of the collateral in the manner provided AS 34.45.030 -- 34.45.080 of the Uniform Unclaimed Property Act and the proceeds may be applied against the unpaid premium.

(c) The licensee or surety may not return collateral until the person receiving the collateral provides a written receipt that identifies the bond, describes the collateral returned, shows the signature of the person to whom the collateral was returned, and shows the date returned. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.350
AS 21.36.125
AS 21.36.350

3 AAC 23.840. FORFEITURES. (a) A licensee shall notify the surety of a bail bond forfeiture within 60 working days following the receipt of notice of the judgement of forfeiture from the clerk of the court. (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.36.125
AS 21.36.350

3 AAC 23.850. UNCLAIMED COLLATERAL OR EXCESS COLLATERAL ON FORFEITURE. If collateral, excess collateral on forfeiture, or excess payment of premium being held by a licensee or surety is not claimed or taken away within

one year after the termination of liability under the bail bond, the licensee or surety shall treat the collateral, excess collateral, or excess payment, in the manner provided in AS 34.45, the Uniform Unclaimed Property Act.

(Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.360
AS 21.36.120
AS 21.36.125
AS 21.36.350
AS 21.36.360

3 AAC 23.859. DEFINITIONS. As used in 3 AAC 23.745 -- 3 AAC 23.859,

(1) "bail" means property that is deposited with a judicial officer to secure or continue the release from custody of the defendant in a judicial proceeding; "bail" includes a bail bond, a bail bond transaction, and any pledge or deposit of collateral;

(2) "bail bond limited producer" means a person who is licensed under AS 21.27.150 to transact surety or limited surety, and who is appointed by an authorized insurer to transact, execute or countersign bail bond transactions in connection with judicial proceedings in return for money or other things of value;

(3) "collateral" means additional security given to assure the performance of the defendant's obligation;

(4) "defendant" means the individual whose performance is guaranteed by the execution of a bail bond; and

(5) "fiduciary capacity" means the duty of a licensee and surety to

receive and maintain collateral with fairness and good faith as custodian of the collateral;

(6) "licensee" means a bail bond limited producer licensed under AS 21.27.150;

(7) "limited surety" means insurance as defined in AS 21.12.080(2);

(8) "surety" means an authorized insurer as defined by AS 21.90.900(4). (Eff. 12/18/92, Register 124)

Authority: AS 21.06.090
AS 21.27.010
AS 21.27.150