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TO: Peter Botz
FROM: William F. Gary
DATE: February 13, 2013
RE: HB 2548

Question Presented

Is the authority given the Insurance Division to license corporate sureties to issue bail bonds permissive or mandatory?

Answer

The Insurance Division's authority to license corporate sureties to issue bail bonds is mandatory. The Insurance Code requires the Insurance Division to permit the organization of an insurer that meets the statutory qualifications and to grant a certificate of authority to issue bail bonds to any domestic insurer that complies with the applicable statutes and rules.

Discussion

In *Two Jinn, Inc. dba Aladdin Bail Bonds v. State of Oregon, acting by and through the Oregon Insurance Division*, the Marion County Circuit Court issued a declaratory judgment that the "State of Oregon has the authority under the Insurance Code to authorize a surety to issue bail bonds in Oregon." Based on the following express provisions, we conclude that the Insurance Code requires corporate sureties and their agents who write bail bonds to be authorized by the Insurance Division and that the Division is mandated to grant such authority if the surety meets all requirements specified in the Insurance Code.

Prior to receiving a certificate of authority to transact business, a domestic insurer must apply for a permit to organize as an insurer. ORS 732.055(1) requires the Director of the Department of Consumer and Business Services (DCBS) to approve or disapprove an application to organize an insurer within 90 days of the filing of such application. Under ORS 732.055 (3) the "director *shall* approve an application" and grant a permit to organize an insurer if the specific criteria outlined therein are met. (Emphasis added).

Next, the insurer must receive a certificate of authority to transact business in Oregon. ORS 731.358 provides that:

Upon application a domestic insurer *shall* be granted a certificate of authority to transact any class of insurance permitted by the Insurance Code and provided for in its articles of incorporation upon its compliance with all the laws of this state and the rules of the Department of Consumer and Business Services relating to such insurers.

(Emphasis added.)

The classes of insurance are defined in ORS 731.150 through 731.194. Surety insurance is defined in ORS 731.186 as "insurance guaranteeing * * * the performance of duties, contracts, bonds and undertakings * * *." Under ORS 731.036(1) bail bondsmen are exempt from the application of the Insurance Code "*other than a corporate surety and its agents.*" (Emphasis added.) Corporate sureties and their agents who write bail bonds are required to follow the provisions of the Insurance Code.

Conclusion

While the Insurance Code exempts "bail bondsmen" that exemption does not include corporate sureties and their agents who write bail bonds. The express provisions of the Insurance Code mean that to qualify to issue bail bonds in Oregon, a corporate surety first must apply for a permit to organize and DCBS is required to approve the permit if the statutory criteria are met. The corporate surety next must apply for a certificate of authority to issue bail bonds and the Insurance Division must grant the certificate if the corporate surety is in compliance with Oregon law and DCBS rules.