RESPONSE TO COMMENTS

"NOTARIES PUBLIC"

Title 153 Series 46

The West Virginia Secretary of State (SOS) responds as follows to the comments received on Friday, July 27, 2018 at 6:07 P.M.:

COMMENTS RECEIVED FROM

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

COMMENT 1: "The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the United States. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of premium and loss statistics for fidelity and surety bonds. The vast majority of bonds that secure licensing and regulatory obligations, including notary bonds, are provided by SFAA members.

SFAA appreciates the opportunity to submit comments related to the above referenced Proposed Amendment concerning notaries public. By removing the bonding requirement for notaries, we believe your office seeks to make the Rule consistent with recent changes to W. Va. Code §39-4-20 (2018). However, we contend that the changes to §39-4-20 do not necessarily preclude the Secretary of State from still requiring bonds. Notary applicants must still comply with rules promulgated by the Secretary of State. Moreover, the six (6) requirement set forth in §39-4-20(b) are not expressly exhaustive.

Requiring bonds is good public policy, given the importance of the service provided by notaries, and the reliance upon them by courts, government, and banking institutions. A surety bond provides two (2) valuable services. First, in the event that the bond principal defaults in its performance, namely in this case, a notary's failure to comply with applicable laws, the surety steps in to handle claims on the bond and performs pursuant to the conditions of the bond and applicable statutory or regulatory language. Equally critical is the prequalification that a surety performs on a notary before the surety will write the bond. In this capacity, the surety assesses the notary's ability to meet its obligations through a review of its experience and financial resources. Prequalification helps to ensure that notaries are preselected as having the ability and willingness to comply with applicable law. Importantly, the surety provides these services and assurances at no cost to the state. For these reasons, experience shows that surety bonds are the most cost-effective way to protect the public against licensing or regulatory violations.

Lastly, notary bonds are widely available and relatively inexpensive. By removing bonds as a requirement, West Virginia falls into a minority of jurisdictions that forego this requirement. Without requiring bonds, the state, on its own, will be forced to evaluate claims against notaries and expend its own resources to enforce compliance by notaries with applicable laws.

We at SFAA would be happy to discuss this matter further with you, if you have any questions. Thank you for your consideration."

RESPONSE: Although the SOS does not take issue with the intent of the comments, in general, the commenter is incorrect that the SOS may continue to require the bonding requirement which was expressly removed by the Legislature. By removing that section of code, §39-4-20(6)(d), the Legislature has removed our ability to require a bond. We no longer have statutory authority for it. The Acts of the Legislature supersede legislative rules. LRMRC was designed to screen rules to ensure agencies don't make requirements that exceed the scope of the agency's statutory authority, specifically §29A-3-11(b)(1)(2) and (3). As a result, the public comment cannot be included in the Agency Approved filing.