

Explanation of Bond Form Revision

At the outset, by changing the language on the bond, the Commission did not intend to increase or decrease the scope of the bond coverage, but believes any language change merely reflects existing law. My hope is that this letter will assuage any concerns that you may have.

The new bond form added the language “and any third party sustaining injury within the terms of this bond for payment.” Again, the purpose of this was to clarify existing law. First, a homeowner is a third party under the bond, and the South Carolina Supreme Court has expressly stated that members of the public other than homeowners can call on the bond. Second, regardless of who can call on the bond, a bond is limited by the terms set forth in its provisions. In Kennedy v. Henderson, 346 S.E.2d 526 (1986), the Court stated that the purpose of a surety bond is to protect “the public only as to those violations falling within the coverage of the particular surety bond provisions.” In Lite House Inc. v. North River Insurance Company v. Grimsley, 322 S.C. 26, 471 S.E.2d 166 (1996), the Court expressly expanded Kennedy and stated that “nothing precludes members of the public other than homeowners from maintaining an action against the surety under the terms of the bond . . . as long as the alleged misconduct of the home builder falls within the coverage of the particular surety bond provisions.” Read together, these cases explicitly provide that third parties (both homeowners and others) may file a claim against the bond, and, importantly, that the bond’s scope is defined by the terms of the bond—which the Commission has not changed.

The Commission is mindful, however, that some of the bonding companies believe the words “third party” and “injury” together appear to expand the bond to cover personal injury. In an effort to make clear that the intent of the bond is to provide coverage to the homeowner and that personal injury is not covered within the terms of the bond, the Commission will change the word “third party” to “homeowner” and delete the word “injury.” The sentence on the bond form will now read: “and any homeowner sustaining loss or damage within the terms of the bond.” As previously stated, the “terms of the bond” have not changed.

The new bond form also removed the language that all claims could be initiated “only through the authorization by the Commission.” This change was made because this assertion is not legally accurate. According to a South Carolina Court of Appeals case, Watson v. Harmon, 312 SE.2d 8 (Ct. App. 1984), the purpose of the bond “is to afford some measure of protection to the public and not to safeguard the Commission’s interest. . . .” and “those protected may maintain an action based on the bond.” This case makes clear that the bond is for the benefit of the public; and therefore, a private right of action in civil court exists. The Commission believes it will make practical and financial sense, however, for most claimants to take advantage of our process rather than institute a private action in civil court on a claim, so we will continue to encourage all claimants to initiate claims through the Commission.

The new bond form also added the language that “the Surety Company must determine the amount of loss or damages.” We have reconsidered this language, and because the Commission is here for the benefit of the public, we will continue to determine whether to release the bond and the amount

of damage for a claimant who wishes to initiate a call on the bond through us. Thus, the language of the bond form has been changed to reflect that the Commission will still validate and determine the amount of claims instituted through it.

In conclusion, I hope that this letter serves to explain the rationale behind the changes to the bond form. Please click here <http://llronline.com/POL/ResidentialBuilders/PDF/LICENSE%20BOND.pdf> for the revised bond form to be used to write Surety Bonds for the Residential Builders Commission licensees who are required to hold bonds by statute. If you have any additional concerns please contact me at 803-896-4696.

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