PURPOSE AND TYPES OF SURETY BONDS

What is the Surety's Job? To protect public and private interests against financial loss resulting from a company or individual's bankruptcy or failure to perform a contracted service. **If the principal fails to fulfill its obligation, the surety must either fulfill the obligation to the obligee or pay damages to the obligee**.

- ***For example***: A contractor is awarded a building contract for a school. The principal (the contractor) will usually be required to provide a performance bond (or contract bond). The performance bond guarantees the obligee (the school) that the work will be completed in accordance with the contract. If the contractor (the principal) defaults, the surety will be responsible for completing the work or paying damages to the obligee (the school).

Period of Coverage**:** Surety bonds ordinarily do not terminate until the principal has fulfilled its obligation, which may take only a few days or as long as many years. Consequently, ***surety bonds are not issued as a year-to-year contracts and they normally do not allow either the surety or the principal to cancel them.***

A. License and Permit Bonds are bonds required to obtain a license or permit from a city, county, state, or occasionally the federal government. The purpose is usually to safeguard the public.

- **License and Permit Bonds** are a general class of surety bonds required of a person or entity to obtain a license or a permit in any city, county, or state. These bonds guarantee whatever the underlying statute, state law, municipal ordinance, or regulation requires. They may be requirements for a licensed driver to be present in the vehicle; for example, Judy is a licensed driver and her guardian is anywhere in the automobile, not necessarily in the front or back. Certain taxes and fees and providing consumer protection may be required as a condition to granting licenses related to selling real estate or motor vehicles and contracting services.

B. **Public Official Bonds** are bonds that protect against the dishonesty or lack of performance of duties by a public official. A Public Official is someone who holds a public office; i.e. mayor or school board official.

- **Blanket Position Public Official Bonds** are bonds which protect from loss due to dishonest acts of public employees. The bond is issued for a fixed amount and **each position** is covered for this amount.

- **Blanket Public Official Bonds** are bonds which protect from loss due to the **dishonest acts of all public employees.**

    - **For example**; should a public official's office have a $20,000 blanket bond, and three employees cause a total loss of $50,000, the bond will only pay $20,000. The blanket amount is a fixed total amount for a loss, NOT per employee.

C. A **Court Bond** is a bond that guarantees proper performance or completion of fiduciary duties (i.e. the execution of a will) in compliance with court orders.

- ***Fiduciary Bond***-guarantees those individuals in a position of trust will safeguard assets belonging to others placed under their control. For example, guardians appointed by a court who are authorized to pay expenses of the minor and administrators of estates who take care of a deceased's assets may require a fiduciary bond.

- ***Court Bond***-guarantees concerning ligation such as:
    - *Appeal Bond*, which guarantees that a judgment will be paid if an appeal is lost in a higher court
    - *Plaintiff's Replevin Bond*

- ***Replevin Surety** (Court) **Bond*** is secured by a plaintiff in a replevin ***court action*** to cover losses to the defendant or court officer when seizing the property in the defendant's possession and transferring it to the plaintiff. *If the plaintiff loses the case, the property must be returned. The bond pays if the plaintiff defaults.*

- ***Signature Bond*** **(a.k.a. Personal Bond) —** is a type of court bond that a suspect arraigned before a court signs, promising to show up in court on the next required court date. Failure to do so means that he will have an arrest warrant issued against him. Upon the execution of the arrest warrant, the individual must pay the amount specified on the bond as a fine (without refund) for not attending court.

  A signature bond is different from a cash bond because the suspect does not pay the bond amount upfront. **The amount is paid only if he fails to present himself before court on the day and time required.** The amount paid for a signature bond is essentially **a fine for not appearing in court as promised** after signing the bond.

D. Judicial Bonds includes; 1. ***Court/Litigation bonds* and** 2. ***Fiduciary bonds.***

1. ***Court Bonds (a.k.a. Litigation bonds) include:*** bail bonds, cost bonds, appeal bonds, attachment bonds, supersedeas bonds, replevin, and injunction bonds.

An Attachment Bond is needed when a party to a legal action secures a ***court order to attach the assets of another party.*** The bond guarantees that if the action to attach the property was wrongful, then damages suffered by the other party will be paid.

A Bail Bond offers a defendant a chance to get out of jail for little money because the bond company contributes most of the cost.

A Cost Bond guarantees that the plaintiff (the principal) will pay court costs and any damages to the defendant if the plaintiff loses the case.

An Injunction Bond: A plaintiff may seek an injunction against another party, but the courts require that an injunction bond be furnished before granting the injunction. An injunction bond (very similar to the appeal bond) guarantees that damages to a defendant will be paid if it is later decided that the injunction should not have been issued.

A Supersedeas Bond (a.k.a. *Appeal Bond*) is a type of surety bond that a court requires from an appellant (***the party who appeals a court's decision***) who wants to delay payment of a judgment until the appeal is over.

- **Appeal Bond (supersedeas)** guarantees that the judgment will be paid if affirmed and that the costs of the appeal will also be paid should the defendant default.

- **Plaintiff** - the one who initially brings suit.

- **Appellant** - the one (defendant) who appeals a court's decision made against him.

  For example: A plaintiff wins a suite against an individual or defendant. The defendant decides to appeal the court decision. That defendant is now referred to as an appellant and the court will require the ***appellant to get an appeal bond***.

- The appeal or supersedeas bond guarantees that the judgment will be paid to the plaintiff if affirmed by the court, including the costs of the appeal, should the appellant default.

- **Terms of the Appeal Bond…** Appeal bonds must be collateralized 100 percent. This means a defendant/appellant cannot put down a mere fraction of the bond amount and let the surety finance the remainder, as is the case in most surety bonds. ***An appeal bond must be backed entirely by cash and/or other valuable assets.***

Judicial Bonds continued:

Replevin Surety (Court) Bond is secured by a plaintiff in a replevin ***court action*** to cover losses to the defendant or court officer when seizing the property in the defendant's possession and transferring it to the plaintiff. *If the plaintiff loses the case, the property must be returned and additional losses and expenses to the defendant must be paid. The bond pays if the plaintiff defaults.*

- Replevin means an action for the recovery of property taken rather than for the value of that property. A legal form of action ordinarily employed to recover possession of specific personal property withheld plus damage for its detention.

2. **Fiduciary Bonds** **(usually required by Court Order or by Statute)** guarantee that a fiduciary will faithfully perform duties and act in the best interests of the person being represented. ***A fiduciary is someone who has a legal right to handle the affairs of others. Fiduciary bonds are available for administrators and executors of estates.*** Fiduciary bonds are also issued to receivers in bankruptcy cases and to various trustees.

Fiduciary: person or company holding assets in trust for a beneficiary. The fiduciary is charged with the responsibility of managing the money wisely for the beneficiary's benefit. Some examples of fiduciaries are executors of wills and estates, receivers in bankruptcy, trustees, and those who administer the assets of underage or incompetent beneficiaries.

- A broker is a *fiduciary* for the seller.
- A banker is a *fiduciary* for the bank's depositors.
- An attorney may be a *fiduciary* for the client.
- A guardian or trustee is a *fiduciary* for the beneficiaries. ***Guardians or trustees*** may need to be bonded because they are often ***appointed by courts*** to handle the affairs of people who are incapable of doing so for themselves.
- A qualified producer (or Surety) who receives collateral or security for a bond is a ***fiduciary*** of the property.

Most U.S. States have laws about what a fiduciary may or may not do with a beneficiary's assets. For instance, it is illegal for fiduciaries to invest or misappropriate the money for their personal gain.

Prudent Person Rule: standard adopted by some U.S. states to guide those with responsibility for the money of others. Such fiduciaries (executors of wills, trustees, bank trust departments, and administrators of estates) must act as a prudent man or woman would be expected to act, with discretion and intelligence, to seek reasonable income, preserve capital, and, in general, ***avoid speculative investments***.

E. Contract Bonds are bonds that provide financial security and construction assurance on construction jobs. It assures the project owner (the obligee) that the contractor (the principal) ***will perform*** the contracted work and/or pay subcontractors, laborers, and suppliers. **If the principal (the contractor) fails to fulfill its obligation, the surety must either fulfill the obligation to the obligee or pay damages to the obligee**. Types of contract bonds include:

- **A Bid Bond** guarantees that if the bidder is awarded the contract, two things will occur: one, the bidder will actually sign and accept the contract, and two, a performance bond will be issued.

  For example, if the successful bidder defaults on either account, the obligee may use as much of the bid bond penalty as necessary to cover resulting losses and expenses. **Extra expenses are incurred if a project must be rebid or if the job must be awarded to the next highest bidder.**

- **A Payment Bond** (a.k.a. labor and material bonds) is a bond given to ***guarantee payment,*** usually of a contractor to sub-contractors and suppliers. This is frequently the only protection offered those supplying work or materials to a public job. Sometimes a single bond will contain both the performance and the labor and payment clauses.

- **A Performance Bond** is a bond guaranteeing performance of the terms of a contract. These protect the owner of the contract from financial loss should the contractor refuse or be unable to fulfill the contract obligations.

- **A Commercial Bond** is a bond required by businesses (other than contractors) to guarantee completion of service.

- **A Completion Bond…** When a contractor borrows money to fund a construction project, the lender may require a guarantee that the project will be carried out and the contractor will be paid for the work. A completion bond guarantees the lender (obligee) that the contractor (borrower and principal to the bond) will apply the funds to the project and complete the project free of any liens or encumbrances.

- **A Supply Bond** is a bond that guarantees that a supplier will faithfully furnish supplies, materials, finished products, or equipment according to the terms of a supply contract.

  - **For example**: a building contractor might be unable to complete a project if expected electrical supplies did not arrive. A default on the building contract might trigger payment under the contractor's bond, and the surety would then seek recovery from the contractor. If the contractor had a supply bond from the supplier, the contractor's losses and expenses would be paid by the ***supply bond***.

F. Notary Bonds - Notaries are individuals empowered by a state to perform certain legal functions. Primarily, those are limited to administering oaths and affirming signatures. To protect those who use notaries, most states have a bonding requirement as part of the notary public registration process. The notary surety bond, underwritten by a private company, does not transfer liability away from the notary, but ensures that her clients will receive swift compensation for damages.

The required value of a notary surety bond varies by state. They typically range from $5,000 to $15,000, though the amounts are subject to change. The cost of obtaining the bond is a tiny fraction of the bond amount, as little as $35 to $50 depending on the surety company. ***The precise requirements for each state are set forth in statutes and codes.***

Notaries are licensed through the states. A claim against the notary in her professional capacity is filed against the state. The surety company collects a fee to write the notary bond. If a claim is made, the surety pays out to the state, as obligee, in the amount of a claim, up to the maximum limit of the bond. The payment is used to settle the claim for damages by the notary's client. The principal, which is the notary, is then liable to the surety company, who can collect the full amount of the payment from the notary directly. The notary surety bond does not protect a notary; it protects her clients.

Key concepts to remember about Notary Bonds:

- They protect the public - not the Notary - from liability or dishonest acts by a Notary.
- They cover monetary damages for claims made against a Notary.
- They must be repaid by the Notary in the event of a claim.
- Because Notary Bonds only protect the public, Notaries will have to repay any judgments in addition to reimbursing their bonding company. Errors & Omissions Insurance can protect Notaries from personal financial liability.
- Washington State requires a Notary Bond to protect the public from negligent mistakes or dishonest acts made by a Notary.

G. Role of the U.S. Treasury…

In order for a company to write a surety bond in the United States, it must be licensed by the insurance department of one or more states in which the surety conducts business. **A surety that wants to write bonds for federal government construction projects must have a Certificate of Authority issued by the U.S. Department of the Treasury.**

- Treasury Department Circular No. 570 is published in the **Federal Register** yearly as of the first workday of July. As they occur, interim revisions of the circular are published in the Federal Register. **Surety companies issued a Certificate of Authority from the U.S. Treasury Department are published in the Federal Register.**

IV. PURPOSE AND TYPES OF FIDELITY BONDS

A Fidelity Bond is a type of bond that will reimburse an employer (the insured) for the **dishonest acts of employees**. Losses generally fall into one of the following categories of dishonest acts: Employee Dishonesty, Forgery, Burglary, Robbery and Theft.

Coverage for dishonesty and forgery is available for businesses under two different types of contracts. **One is to obtain the coverage through an insurance policy and the second is to obtain the protection through a fidelity bond.**

- ***Fidelity bond coverage for an employee is cancelled immediately upon discovery by the obligee of any dishonest act committed by that employee (the principal).***

A. Individual Bonds are bonds written in the ***name of a single employee*** for a specific limit of liability. If an employer has only one employee, or one employee with access to funds or the business's property, an individual bond could be used.

B. Schedule Bonds are bonds that schedule the coverage for acts of a ***specific named employee or by the employee's position or job title.***

- A ***name scheduled bond*** covers several specific individuals who are named on the bond, and allows the insured to list a ***separate limit of liability for each employee*** on the schedule.
- A ***position scheduled bond*** is similar to a name scheduled bond, except that it covers ***listed positions*** and does not mention the employees by name.

C. Blanket Bonds are bonds which protect an employer from loss due to dishonest acts of all employees.

- **Blanket Position Bonds** are bonds which protect an employer from loss due to dishonest acts of employees, including embezzlement. The bond is issued for a fixed amount and each position (rather than individual) is covered for this amount.
- **Blanket Position Public Official Bonds** are bonds which protect from loss due to dishonest acts of public employees. The bond is issued for a fixed amount and each position is covered for this amount.
- **Blanket Public Official Bonds** are bonds which protect from loss due to the dishonest acts of all public employees.

D. Financial Institutions (a.k.a. Banker's Bonds) have special exposures because they receive and distribute funds and handle transactions for clients. ***Various bonds are available to cover bankers, credit unions, finance companies, insurance companies, and savings and loan institutions***.

- Bonds for financial institutions provide broad coverage for multiple exposures and are similar to that provided by a commercial crime policy. ***One bond might be used to cover employee dishonesty, robbery, larceny, theft or hold-up on or off the premises***.

- For example: a **Banker's Blanket Bond** is a Fidelity bond that covers banks in the event of a loss due to the *dishonest act of one of its employees*. If a teller steals money from the bank they are employed by, the bank would be indemnified from the Banker's bond. Then the bonding company would go after the ex-employee for recovery of the money.

- The Banker's bond would also protect a bank against losses from a variety of criminal acts: ***employee fraud, robbery, burglary and forgery***.

- **It does NOT cover errors made by employees, losses on inventory computation or a profit and loss computation.**

- ***Fidelity coverage for an employee (the principal) is cancelled immediately upon discovery by the obligee of any dishonest act committed by that employee.***

E. Public Official/Faithful Performance Bonds are fidelity bonds that protect against the dishonesty or lack of performance of duties by a public official. A Public Official is someone who holds a public office; i.e. mayor, school board official, president.

- **Blanket Position Public Official Bonds** are bonds which protect from loss due to dishonest acts of public employees. The bond is issued for a fixed amount and each position is covered for this amount.

- **Blanket Public Official Bonds** are bonds which protect from loss due to the dishonest acts of all public employees.

- The ***premium for bonds*** on public officials or elective public officers and for their deputies or employees ***shall be paid by the state, city, county or public body so served***.

V. BAIL BONDS

While many defendants do not have cash on hand to pay bail, a bond is another option. **A bail bond offers a defendant a chance to get out of jail for little money because the bond company contributes most of the cost.** A bond will end up costing much more in the end though because bond companies charge interest rates.

A bond is some sort of property or money offered by a third party (obligee) to guarantee the appearance of the defendant. Sometimes bond is arranged through a bond company, and sometimes it is offered by family or friends of the defendant. The defendant is expected to pay back the surety if necessary. If the defendant obtains a bond through a bond company, he will be responsible for paying back the bond plus interest if he does not appear at trial and does not get the value of the bond back.

When it comes to bail bonds, every defendant will have a different amount of money to pay in order to get out of jail on bail while waiting for his or her trial. ***The bail bond is a basic assurance that the defendant will return to court on the day of the trial.*** Bondsmen and bail bonding agencies that put up the bail for a defendant are responsible for ensuring that the defendant returns to court for the trial.

There are a number of different factors that are considered when a judge sets bail. Often, the bail determination begins with a rate schedule. **A judge will also take the following considerations into account when he sets bail:**

1. **Severity of the Crime**
2. **Prior Criminal History**
3. **Flight Risk**

A bail bond agent, or bondsmen, is any person or corporation who will act as a surety and pledge money or property as bail for the appearance of a criminal defendant in court. ***A surety bail bondsman utilizes the financial strength and backing of an insurance company.***

A. Surety Bail Bond… The bail agent interviews the arrested individual prior to assuring that the accused will appear in court. This information provides the bail agent with a reasonable determination of whether the accused will make the designated court appearances.

Bonds are usually written for a premium percentage of the bail's full amount (10% rule is common). Collateral from the guarantor is then used to secure the remaining bail amount. The guarantee that the principal will appear in court is made by using the assets and property of the bail agent's insurance, or surety, company. ***The surety company is licensed for operation by the Insurance Commissioner of each state.***

B. Surety Bond Fees (premiums)… Defendants usually don't have to pay the full amount of the bond. Most states have the ***10 percent rule which states*** the defendant only has to pay 10 percent of the total bond set. That is the bail amount.

- Bond fees vary greatly depending on the applicant, bond type, surety, and the obligee. Just like other forms of credit, everyone does not receive the same rate.
- ***Bond fees and rates are approved by the state Insurance Commissioner***.

C. Types of Bail Bonds:

1. Property Bail Bond… Depending on the court jurisdiction, an individual may obtain release from custody by posting a property bond with the court. Here a court records a lien on property, to secure the bail amount. If the defendant fails to appear in court on his/her designated date, the court may start foreclosure proceedings against the property to obtain the forfeited bail amount.

2. Cash Bail Bond… A cash bail bond is put up by a family if a judge determines an individual who is incarcerated to be a flight risk. To be released on cash bail, a person must post with the court the total amount of the bail, in cash, to secure his/her return to court on an appointed date, and thereafter until the case is finished. Full cash bonds are an incentive for defendants to appear at trial. If the defendant appears for his/her court appearances, the cash will be returned to him. However, he/she fails to appear, the cash bond is forfeited to the court.

Cash bail is simply the amount of cash money that you must present in order to obtain the release of the defendant while his case is pending. As long as the accused makes all of his court appearances, you will get all (or nearly all) of your money back. Most people opt to use the services of a bail bond company because instead of paying the full amount of bail in cash, they need only pay a percentage of the bail. **Typically 10% is the fee that a bail bondsman will charge.**

3. Bail Bond… The alternative to cash bail is the posting of a **personal surety bond,** which is sometimes called a **signature bond.**

- A Personal Surety Bond is where you merely put up a promise to appear, or guarantee the bail with personal assets. Fail to appear in court and you will owe the money for the bond. Personal bond is just a signature for specific amount. ***These bonds are sometimes called Signature bonds***.
- A **Signature Bond** (a.k.a. Personal Bond), or ***recognizance bond***, like other types of bonds, allows a suspect to be freed if he promises to show up in court. If he is not present for his court date, a bench warrant will be issued for his arrest and whatever amount of money was agreed upon between the court and the suspect will be paid to the court.
- **Cash bond** means that the person has to pay a certain amount of money to be released. ***A signature or personal bond is different from a cash bond because the suspect does not pay the bond amount upfront.***

4. Whenever a bail bond is exonerated by the court, the qualified agent must, within five business days after written notification of exoneration, return all collateral or security to the person entitled thereto.

D. Appeal Bond (a.k.a. Supersedeas Bond) is a guaranty by the appealing party insuring that court costs will be paid and ensures the loyal execution of the fiduciaries' duties and compliance with the ***orders of the court***.

When plaintiffs win a civil law suit, they are often awarded money as part of the judgment. The defendant, however, usually has **the right to an appeal**, and is not required to pay the award until the appeal is decided. In this situation, the defendant (who becomes the appellant) is required to post an appeal bond (or ***supersedeas bond***) to cover the judgment.

- A ***supersedeas bond*** is an appellant's bond to stay execution on a judgment during the pendency of the appeal. Often shortened to *supersedeas*.

E. Underwriting (Prequalification) Standard… The principal (or contractor in a contract bond) must qualify for a bond. **This process is very much like qualifying for a loan, line of credit or mortgage, or an insurance policy.**

The primary service of the surety is prequalification. Therefore, the surety bond fee that a contractor pays (for example) is primarily for service and granting of surety credit. A surety offers financial backing for the contractor. It does not lend the contractor money, but rather commits its financial resources to back the commitment of the principal/contractor.

For example, with a Contract Bond, the surety company's process for prequalification analyzes the contractor's (principal's) entire business operation. The surety is backing the promise of that contractor to perform the contract. The company investigates and evaluates the contractor's capacity to perform a particular contract, determines his or her financial strength (capital), reviews his or her character and may ask for personal or corporate indemnity.

✓ The surety bond producer (agent) assists the contractor with prequalification in the area referred to ***the 3 C's of underwriting a surety bond:***

Capacity to perform;

Capital or financial strength; and

Character of the individual (personal information).

✓ **As an additional departure from insurance contracts, Suretyship involves a continuous review process in order to determine that there is no negative change in the 3 Cs of a contractor and that the contractor's work program is progressing successfully.**

F. Ethics (Public Interest)… The business of insurance is one affected by the public interest, requiring that all persons act in good faith. *A surety* agent is a representative of the insurance company in which he places business. However, ***all licensees must always act in the public's best interest.***