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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 they place business. However, ***all licensees must always act in the public’s best interest.***

BAIL BONDS

When an individual is arrested for a crime, the trial date is not immediate. They will be taken to the police station, medically checked if necessary, and booked. This involves paperwork, a mug shot, fingerprinting, etc. Next is either bail using a schedule, or a cell waiting for a bail hearing or arraignment. If there is a schedule used, the individual has the choice to pay bail or wait for a hearing where the judge may lower the amount. The judge can set bail according to the severity of the crime, the flight risk involved, or deny bail altogether. If the judge sets an amount for bail, that is the amount to be paid to the courts to guarantee the return of the defendant for the trial if the individual does not want to stay in jail until the court date. They have a few options if bail is not denied: pay the full amount out of pocket, with collateral, or secure a bail bond (also with collateral).

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 they set bail:**

1. Severity of the Crime

2. Prior Criminal History

3. Flight Risk

Posting bail is a promise to the court that you will show up for all future court dates if they release you. There is — usually — some form of security exchanged for the release of the charged individual. See ‘Types of Bail’ below. A certificate given by a judge or the clerk of the court, in which it is certified that the bail is made for the defendant, in a certain sum, and in a particular case, is called a bail piece. It functions as a formal document regarding the specifics of the bail granted to the defendant.

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 out of pocket in the end though because bond companies charge a nonrefundable premium.

A bond is some sort of property or money offered by someone, perhaps a third party, to guarantee the appearance of the defendant. Sometimes a 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, they will be responsible for paying back the bond plus interest **if they do not appear at trial and do not get the value of the bond back.**

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.***

If the individual does not show up for the court appearance, the bail will be forfeited (kept by the courts) and the person may be charged with failure-to-appear. If they return to make the required appearances, bail will be returned after the trial. If they do not show up, a bail bond recovery agent (a.k.a. bounty hunter) may try to locate them and bring them back to the police department, if bail was secured through a bondsman. Although the recovery agents are not police, when the defendant signs the application for a surety bail bond, they waive many of the rights we may take for granted. *E.g., a bail bond recovery agent can enter premises without a warrant if they know the defendant lives there.*

When the defendant complies with all the bail conditions, at the end of the trial, the money will be returned or, if there was a lien on property, that will be released.

A. Surety Bail Bond... is an agreement between 3 parties, the principal or the defendant, the surety or the company writing the bond, and the courts — the entity requiring the bond. The defendant asks the bond agent (who will go to the surety company) to pay the full bond amount to the courts in exchange for a fee or premium. This fee will be around 10% of the bond amount. Bail is paid by the bond agent and the defendant agrees to return for the trial. Bail bond agents will keep the 10% whether or not the defendant appears in court. If they do not show, the bondsman is out all the funds paid to the court unless and until they can locate the person and convince them to appear.

The bail agent interviews the arrested individual prior to issuing a bond, 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 bondsman borrows the remaining 90% of the bond amount from the surety company. 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 Rate 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 their 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.

- 1. Surety Bond Fees (premiums)** ... Defendants don't have to pay the full amount of the bond when going through a bondsman. 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.) This fee can range from 8% to 15%, depending on the state limits.
- 2. 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. These fees are in addition to the 10% premium amount paid.
 - *Bond fees and rates are approved by the state Insurance Commissioner.*
- 3. Collateral** needs to be offered in exchange for the surety bond and may be forfeited to the company if the defendant skips bail.

C. Types of Bail: Are many but they generally fall under 2 categories, those that require a secured financial condition of release and those that do not.

- 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 their 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 an individual, or their friends or 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 their 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 their court appearances, the cash will be returned to them. However, if they fail 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 their case is pending. As long as the accused makes all of their 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. Deposit Bond** Is similar to a surety bond in the 10% fee but in this case it is paid to the courts, not to a bondsman. If the defendant fails to appear they are responsible for the full amount to be paid to the courts. If they do show, they receive most of the money back. The court can charge an administrative fee.
- 4. Surety Bail Bond...** is a payment on the bail made by a bail bond company on behalf of the defendant. It is a form of a loan made and will cost the defendant approximately 10% of the bail amount. Since it is acting like a loan, the bond company may require collateral to cover the amount if the defendant defaults. The premium paid to the bondsman is nonrefundable, regardless of the outcome of the trial.
- 5. Own Recognizance or Personal Recognizance Bond** are similar to a citation and release, only they happen after a bail hearing. If a court allows this, there is no bail, and the defendant is released on the condition that they will return to court when requested. There may be requirements along with this, e.g., refraining from certain activities or meetings with a probation officer. If the client does not go to court they may be arrested and charged with bail jumping.
- 6. Unsecured or Signature Bond** is similar to the OR bond in that there is no money exchanging hands. Instead of paying the bond amount, the defendant signs an agreement and agrees to return to court and IF they don't, they will be required to pay the bail amount.
 - 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. A 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 they promise to show up in court. If they are not present for their court date, a bench warrant will be issued for their arrest. 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 they fail to present themselves 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.

7. Conditional Release bond Is a bond that allows release but only under specific conditions, usually monitoring or supervision.

D. Appeal Bond (a.k.a. Supersedeas Bond) is a guaranty by the appealing party ensuring 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 lawsuit, 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 (to the plaintiff) until the appeal is decided. They still have to pay though, 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*. It is a financial guarantee that if the appeal is lost the funds will be there to pay the original judgement.
- In order to guarantee payment of the judgement if the appeal is lost, the appeal bond is the full amount of the judgement plus interest placed in holding while an appeal is being decided.
- This is also used to limit unnecessary attempts at an appeal since the money is already paid out to the court or a third party to demonstrate good faith in the event the appeal is lost.
- In the event the defendant declares bankruptcy, the funds for the judgement are safe.

E. Basic Terms

- Accused** The individual arrested and charged with a crime, a.k.a. defendant.
- Arraign** Is the action of calling the accused by name, reading the charges, and requesting a plea of innocence or guilt. The judge will set or deny bail at this time.
- Bail** A form of security in exchange for the freedom of the defendant depending on their showing up at the court proceedings. The other option is to remain in custody until the trial.
- Bail bond** The document executed to secure the release of the defendant.
- Bail schedule** A list of crimes and their recommended bail amounts. An accused may choose to stay in jail until a judge can decide on a lower amount if they wish.

- f) **Bounty hunter** Or bail recovery agent is a person who captures the wanted person for the reward (bounty), if the defendant fails to appear they are now the wanted person.
- g) **Collateral** Is something of value to exchange for the promise of the surety bond.
- h) **Defendant** The accused in a criminal proceeding
- i) **Defense attorney** Or criminal defense lawyer is the person who represents the defendant.
- j) **Discharge** Is what happens to the bond when the case is completed.
- k) **Extradition** Is where the defendant is moved from one state to another state where they were charged for a crime that was committed.
- l) **Exoneration** Is the legal process by which the bondsman is relieved of all obligations associated with a posted bond.
- m) **Forfeiture** Is when the defendant fails to appear in court and the bond amount is forfeited to the courts.
- n) **Indemnitor** Is a person who agrees to be financially responsible for another party's obligations or debts.
- o) **Jump bail** a.k.a. skipping bail, is when the defendant fails to appear in court and the bail is forfeited.
- p) **Lien** Is a claim on property in exchange for paying off a debt. The courts or a bond company may put a lien on property in exchange for the bond to cover any losses it may incur.
- q) **Obligee** The party to whom an obligation is due (for bail bonds, this is the state)
- r) **Obligor** The party who owes the debt, i.e. the defendant
- s) **Plaintiff** A person filing a complaint in a civil action, filing suit.
- t) **Plea** Is an answer to a charge
- u) **Public Defender** A lawyer who is publicly appointed and paid to represent criminal defendants.
- v) **Recognizance** An obligation of record entered into before a court requiring the performance of an act, such as appearing in court.

