Contents

Purpose and Type of Surety Bonds (10 items)

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.***

1) Commercial:

A Commercial Bond is a bond required by businesses (other than contractors) to guarantee completion of service. Its purpose is in guaranteeing the credibility of professionals and business persons and making sure they follow the federal and local laws regarding their profession.

They are required for maintaining a professional license from a federal, state, or local agency. This bond may be required for a business or an individual, a contractor or a producer. In this case the obligee is the agency that required you to purchase the bond. You are the principal and the surety is the guarantor or obligor. If you break the law, a claim is made to the state, if it is valid the individual protected by law may collect up to the limit of the bond. The surety then collects from the principal.

2) License and permit:

. **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.

3) Public official:

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.

4) Court:

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.

  - A personal bond, also known as a "***release on recognizance bond***," is a signed document that states your promise to appear in court on all future court dates related to your case if the court allows you to remain free. **A judge may issue a personal bond in lieu of bail or secured bonds.** If you fail to appear when required by the court's schedule, the judge will revoke the personal bond, take you into custody, and you must forfeit the amount of the personal bond to the court.

- **Guardian Bond**

    - A guardian is a ***court-appointed agent*** charged with managing the finances or day-to-day care of a minor without living parents or of an individual with debilitating mental and/or physical handicaps. After accepting his/her duties, a guardian must submit a guardian bond to the presiding court. This bond protects the interests of the individual on whose behalf a guardian performs his/her duties. ***The bond compensates the individual if there is evidence of abuse of power or neglect by the guardian in court reports which the guardian must frequently submit.***

i. Judicial

Judicial Bonds include; ***Court/Litigation bonds and 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.

ii. Appeal Bond

- Legal proceedings conclude with a **judgment** that favors either the plaintiff (the party who sues) or the defendant (party being sued). If the losing party chooses to appeal the judgment, the case passes to an appellate court, and the party who is appealing is not yet required to pay the penalties handed down by the initial judgment. Because judgments are often appealed for this very reason, ***appellate courts require an appeal bond from the appealing party.***

  If the appeal proceedings fail to overturn the original judgment, the appeal bond functions in two ways*:*

    - ***it ensures that penalties and applicable court costs are paid***

    - ***it discourages continued appeals solely to avoid these payments***

iii. Attachments Bond or plaintiffs attachment bond or a plaintiff bond.

Attachments are used in court cases between a debtor (defendant) and a creditor (plaintiff). A plaintiff may want to attach the property of the defendant if there is any belief the debtor will not pay. Before an attachment can be issued the court may require an attachment bond. This bond guarantees

- The plaintiff will pay all legal costs, fees and damages if the court decides the attachment was not necessary
- The defendant will receive the property back
- If something has happened to the seized property a claim is made against the bond

iv. Injunction Bond

Is used in court actions where one party (the plaintiff) wants to prevent another party (the defendant) from an action. Temporary injunction, a.k.a. a temporary restraining order, preliminary, or permanent; the judge may require an injunction bond so if the plaintiff suffers damages or the court decides in their favor, the plaintiff will need to pay the court costs and damages.

v. Probate Bond

- The property belonging to a deceased individual must be distributed through a probate court if the deceased did not leave a will. The ***court appoints an executor*** (usually a relative of the deceased) to maintain custody of the property until the proceedings have concluded. The executor must submit a probate bond to the court in an amount equal to the property's total value. A probate bond ***compensates the heirs of the deceased*** if any part of the property is stolen or unlawfully sold in the course of the proceedings.

vi. 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 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.

- ***For example, you move out and your roommate kept your laptop for past due rent. You could sue the roommate for the return of your property and in fact, by filing a replevin bond get you property back before the court date. If the plaintiff (you) loses the case, the property must be returned. The bond pays if the plaintiff defaults.*

vii. Supersedeas Bond

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.***

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*.

5) Contract bond

A guarantee of the performance of a contractor. In general, ***contract bonds are used to guarantee that the contractor will perform according to the specifications of the construction contract.*** If the contractor fails to perform according to contract, the insurance company is responsible to the insured for payment, up to the limit of the bond, which is usually for an amount equal to the cost of the construction project. The insurance company then has recourse against the contractor for reimbursement.

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 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***.

6) Performance Bond

Performance Bonds guarantee the owner (obligee) that the principal will complete the contract according to its terms including price and time. The owner (obligee) may sue the principal and the surety on the bond. If the principal defaults or is terminated for default by the owner, the owner may call upon the surety to complete the contract.

7) Bid Bond

Bid Bonds guarantee the owner that the principal will honor its bid and will sign all contract documents if awarded the contract. If the principal refuses to honor its bid, the principal and surety are liable on the bond for any ***additional costs*** the owner incurs in completing the contract. **This usually is the difference in the dollar amount between the low bid and the second low bid**. The penal sum of a bid bond often is ten to twenty percent of the bid amount.

8) Retention Bond

This is a type of performance bond that protects the consumer after the job is complete. Like a warranty, the contractor must make any repairs and carry out all the work necessary if there are structural or other defects discovered immediately after completion of the contract and payment has been made.

It is similar to retainage (where the full payment is withheld) in that the work is guaranteed and any defects will be taken care of by the contractor; a retention bond will not withhold any moneys due and will still offer the consumer the same guarantees. This keeps the cash flow steady for the contractor and the stress of going after retained funds is gone.

The retention bond may be conditional or unconditional.

9) WA State Surety laws (This is the same material for the law as in in the other segment. It is on the outline twice.)

(**RCW** 48.28)

a) Requirements deemed met by surety insurer.

Whenever by law or by rule of any court, public official, or public body, any surety bond, recognizance, obligation, stipulation or undertaking is required or is permitted to be given, any such bond, recognizance, obligation, stipulation, or undertaking which is otherwise proper and the conditions of which are guaranteed by an authorized surety insurer, or by an unauthorized surety insurer as a surplus line pursuant to chapter 48.15 RCW of this code, shall be approved and accepted and shall be deemed to fulfill all requirements as to number of sureties, residence or status of sureties, and other similar requirements, and no justification by such surety shall be necessary.

b) Fiduciary bonds—Premium as lawful expense.

Any fiduciary required by law to give bonds, may include as part of his or her lawful expense to be allowed by the court or official by whom he or she was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds.

c) Judicial bonds—Premium as part of recoverable costs.

In any proceeding the party entitled to recover costs may include therein such reasonable sum as was paid to such surety insurer as premium for any bond or undertaking required therein, and as may be allowed by the court having jurisdiction of such proceeding.

d) Official bonds—Payment of premiums.

The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served.

e) Release from liability.

A surety insurer may be released from its liability on the same terms and conditions as are provided by law for the release of individuals as sureties.

f) Binders—Duration—Premium.

(1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate.

(3) Where the premium used in the binder differs from the actual policy premium by less than ten dollars, the insurer shall not be required to notify the insured and may use the actual policy premium.

Bail Bonds (8 items)

A ***court bond*** is a dollar amount set by a judge, which must be paid by the defendant charged with a crime, to ensure that the defendant returns for trial. A court bond can also be non-monetary -- or "on your own recognizance" -- meaning the judge believes the defendant will return to court on his/her own, without any disincentive from the courts. Bond can also be denied, and in the case of a homicide, usually is.

- The purpose of a court bond is to ensure a defendant returns to court. If the bond amount is paid, the accused may go home until the court date. If it is not paid, the defendant will be held at the local jail until the court case comes up.

- Bond, in many cases, ***is a set amount determined by the criminal statute*** that the defendant is accused of violating. Different classes of felonies and misdemeanors have different bond amounts. Sometimes, it is up to the judge's discretion; in others, it is not.

- 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.

- There are typically four different types of court bonds that can be issued after a person is arrested. There is the *signature bond*; the *cash bond*, in which the arrestee must pay the bail amount upfront before he is released; *the 10-percent bond*, in which the arrestee must pay 10 percent of the bail amount upfront before he is released; and *a* ***surety bond***, in which a bail bondsman, who is approved by the court, promises the court that the arrestee will appear on his court date, and that if he does not, the bail bondsmen will pay the bail amount in full.

    - ✓ **Bail bondsmen** are people registered and licensed by the state who will accept collateral in exchange for a cash payment to the court for bond.

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 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, 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.***

A Bail Piece is a certificate that is formerly issued by a judge or clerk of the court to the surety attesting the surety's act of offering bail for the defendant, in a certain sum, and in a particular case. 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.***

1) Surety bail bond

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.***

2) Surety bond rate

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***.

3) Types of bail

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.

4) Appeal bonds

A defendant has a right to bail while awaiting a trial. A defendant who has been convicted may choose to appeal the conviction and may not have a right to bail during the appeal process. Whether yes or no depends on the state laws.

An Appeal or "Supersedeas" bond is a surety bond that a court will require from a defendant should the defendant want to delay payment of a judgement until the appeal is complete. This type of bond allows a defendant to stay out of jail until the appeal process is over.

For all criminal actions, save for those where proof of guilt is clear, in order for an appeal to be taken for a judgement the court that made the decision must fix and determine the amount of bail required by the appellant by an order that is either entered in the journal or filed with the clerk. The appellant is then committed to the bond in the sum executed on their behalf by at least two qualified sureties.

The bonds have a condition so that the appellant must appear when needed, abiding by the judgement or orders of the appellate and any superior courts. If the appellant is already at large on bail, their sureties would become liable to the bond amount, just as though they executed the bond dictated by this section. The court can also require a new bond of a greater amount or with new sureties, and may have the appellant committed until they comply.