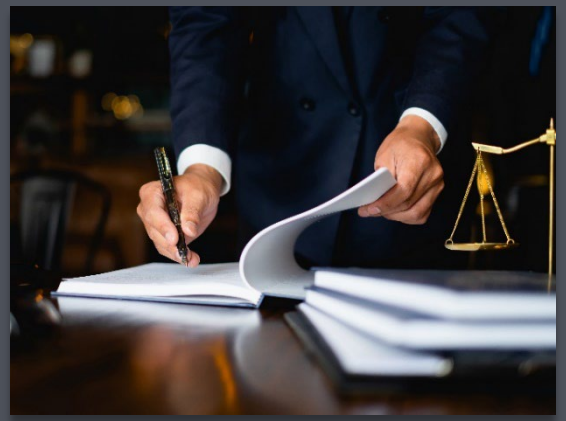
Syndicate Legal Advisory Services

Surety Bond Advisory



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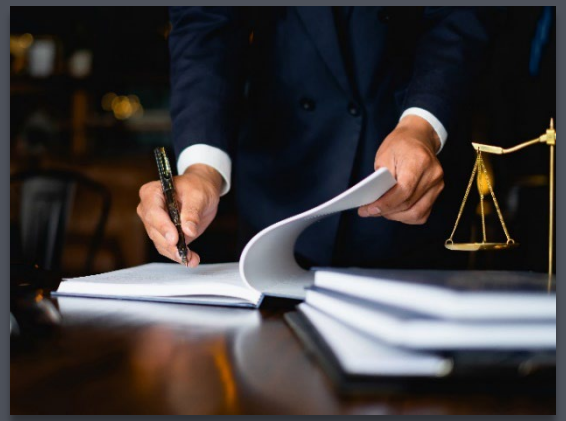

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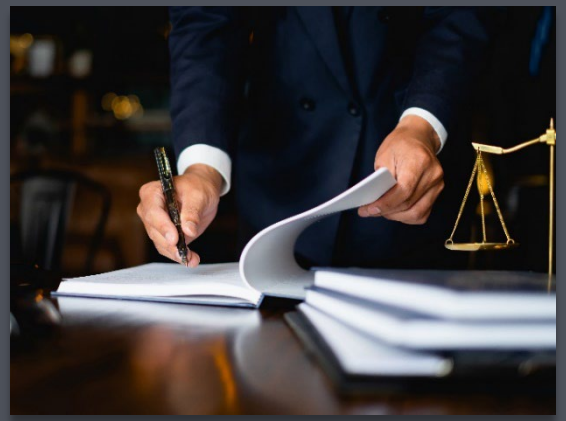

ADMINISTRATOR BONDS

An **Administrator Bond**, also known as an Administration Bond, guarantees that the person who is the administrator of an estate performs legally and ethically his or her court-appointed duties and protects those in the will (beneficiaries) against fraudulent acts.

This type of fiduciary bond / probate bond covers any financial damages to the estate due to dishonest acts by the administrator.

Like most surety bonds, this surety bond is a contractual agreement between three parties. The *Principal* is the court-appointed administrator that needs to obtain the bond. The *Obligee* is the authority that requires bonding. The *Surety* is the party that underwrites the bond.

The court typically appoints an administrator to manage the estates of individuals who:

- Died without a will;
- Had a will but not an executor; or
- When the executor has died, has resigned or declined to serve or have been discharged from the case.

The petitioning administrator is often required to submit a surety bond, inventory, and annual returns.

The documents mentioned above must be filed, and any applicable fees must be paid upon filing. Once everything in the documents is correct and complete, they are submitted to the presiding Judge for approval.

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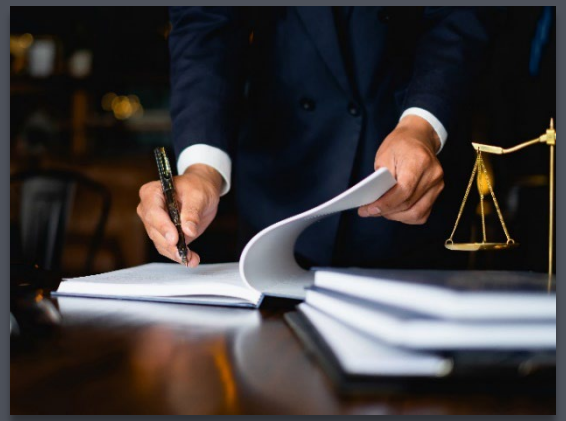

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APPEAL BONDS

Bond Penalty: 150% of Judgment Amount

If you (or your client) have taken an adverse verdict and feel that simply perfecting an appeal will stop collection procedures, you may be in trouble unless you have posted an **Appeal Bond**.

Section 917.1(a) states clearly, "Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following: (1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action. (2) Costs awarded pursuant to *Section 998* which otherwise would not have been awarded as costs pursuant *to Section 1033.5.* (3) Costs awarded pursuant to *Section 1141.21* which otherwise would not have been awarded as costs pursuant to *Section 1033.5.* (Not that "undertaking" is synonymous with "appeal bond" or "California supersedeas bond".)

The validity of **Appeal Bonds** and who issues them are subject to the *Bond and Undertaking Law, Code of Civil Procedure § 995.010*, *et seq*. While the law allows for "personal sureties" to make themselves liable for appeal undertakings, it is a foolhardy practice. Corporate surety companies are the judicially preferred and statutorily authorized source for court bond suretyship. So, in what amount should the **Appeal Bond** be written? *Sec. 917.1(b)*, The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order.

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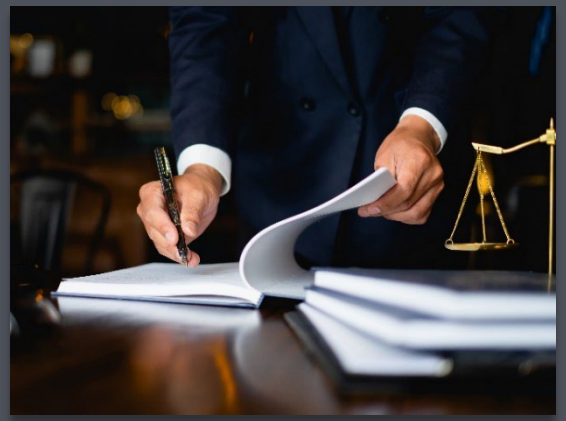

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ATTACHMENT BONDS

Bond Penalty (State Court): Set by Court

An Attachment Bond is a judicial surety bond that indemnifies the owner or legal possessor of certain property or funds from losses associated with having been denied access to the attached asset(s) pending hearing of a civil controversy. An "attachment" is a formal "seizure" of another person or entity's property in accordance with an order or pursuant to a writ (often called a 'writ of attachment'). The attachment is deployed to secure satisfaction of a judgment that has NOT yet been entered. The effect of the attachment is to bring the subject property of funds into the custody and under the control of the court holding jurisdiction. The practical effect and in fact the primary purpose of the attachment is to prevent the possessor/owner from dissipating or absconding with the asset(s). The writ and accompanying attachment bond generally specify that the property will be returned (un-attached) upon finding that the attachment was unwarranted.

An **Attachment Bond** is generally required by the suing party and is therefore secured by a **Plaintiff Attachment Bond**, although a defendant may also seek attachment under certain circumstances. An attachment may be ordered against persons (in the event of contempt proceedings) but are most often granted against property and accounts held by financial institutions. In the event that an attachment is improper, the attached party can suffer damages due to being denied access to or use of the attached property of funds. The **Attachment Bond** provides a measure of financial security that the property or funds will be released and any damages due to said attachment paid to the prejudiced party. Damages are infrequent and the risk to the surety bond low because writs of attachment are generally granted when the court perceives that the attached party is deemed an absconding, concealing or fraudulent debtor AND because upon hearing a motion for writ of attachment the court finds that the movant is likely to prevail in his or her suit.

An **Attachment Bond** must be issued by a bonding company licensed in the jurisdiction wherein the action is to be filed and generally approved in the court district or circuit where the hearing will be held. Quoting a judicial bond is accomplished by a surety bond underwriter with knowledge of court bond obligations.

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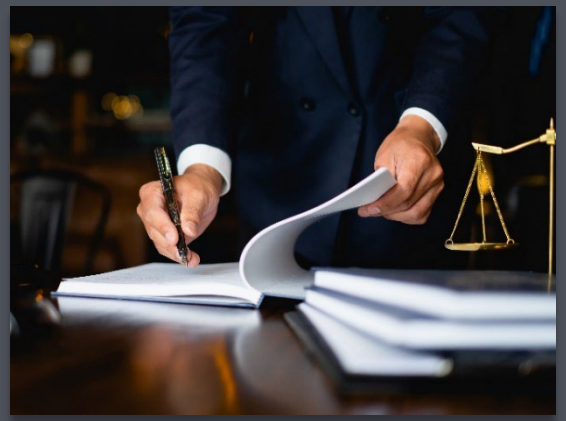

ATTACHMENT BONDS

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Bond Penalty (Federal Court): Set by Court

A **Federal Attachment Bond** is a prejudgment remedy contemplated under *28 U.S. Code §3102*. Any property in the possession, custody, or control of a debtor in which the debtor has a substantial nonexempt interest may be attached pursuant to a writ of attachment in an action or proceeding against him or her. The property may be held as security to satisfy a judgment, interest and costs that may result in a judgment against the debtor.

Pursuant to subsection (b), "If the requirements of section §3101 (Prejudgment Remedies) are satisfied, the court shall issue a writ authorizing the United States to attach property as it may recover on a claim for a debt. In an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that, (A) the contract is not fully secured by real or personal property; or (B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;“

A court order of attachment is considered a "severe remedy" because an improper seizure or "freezing" may cause the affected party to suffer grave damages for which the movant is responsible. An **Attachment Bond** guarantees that the movant will pay to or otherwise perform specific acts to "make the prejudiced party whole" if his or her attachment is later found improper. This civil undertaking is generally required by court order and the bond penalty (bond amount) set by the court. An **Attachment Bond** remains in effect until the court issues a permanent order, the original attachment order is dissolved, the attached party replevies the property with the deposit of appropriate security or the case is adjudicated. Pursuant to *28 U.S. Code §3101*, this prejudgment remedy generally may not be granted on an ex-parte basis.

A **Federal Attachment Bond** must be issued by a surety company licensed in the jurisdiction wherein the civil action is filed and must appear on the U.S. Treasury's list of sureties (the "T-List") acceptable for federal obligations. Quoting an attachment bond is best accomplished by a surety bond underwriter with knowledge of judicial obligations.

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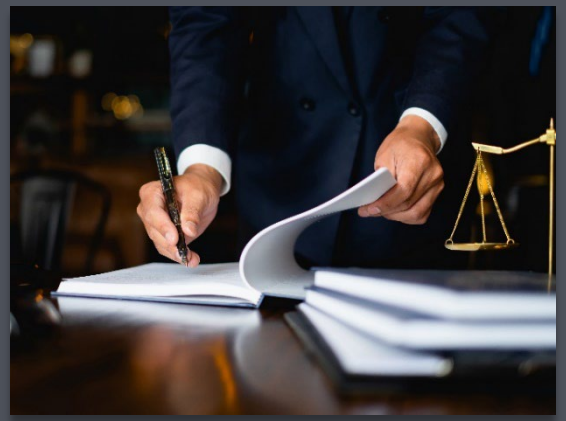

BANKRUPTCY TRUSTEE BONDS

A **Bankruptcy Trustee Bond** is a type of court fiduciary bond that guarantees faithful performance of duty by court-appointed trustees in bankruptcy proceedings.

Both parties - creditors and debtors - involved in the bankruptcy case are not the *Principals* of this type of bond, but the Bankruptcy Trustee is. The bankruptcy trustee is assigned to the debtor, and the bond protects the creditors when a bankruptcy petition is filed.

The *Obligee* is the court that requires the bond to protect creditors, and the *Surety* financially backs up the bankruptcy trustee to ensure that he or she complies with court rules and ethical distribution of funds and assets to the appropriate creditors.

In issuing a Bankruptcy Trustee Bond, the Surety is considered to have submitted to the jurisdiction of the bankruptcy court, under the *Rule 9025 of the Federal Rules of Bankruptcy Procedure.*

The **Bankruptcy Trustee Bond** works by covering a claim for fiduciary duty violations by the bankruptcy trustee. These violations may include theft, misappropriation of funds or property, misrepresentation, and so on.

The Surety would be responsible for the bankrupt real estate property and assets of third parties that are mismanaged by the trustee. The trustee, together with the bond, may be held liable for the improper administration of funds from the bankruptcy or for the trustee's payment of applicable fees without the court order.

A bankruptcy trustee who embezzles or violates his or her trust will forfeit the fee. From this, The Surety may also be impelled to reimburse the bankruptcy estate for fees previously paid to the trustee, even though approved by the court.

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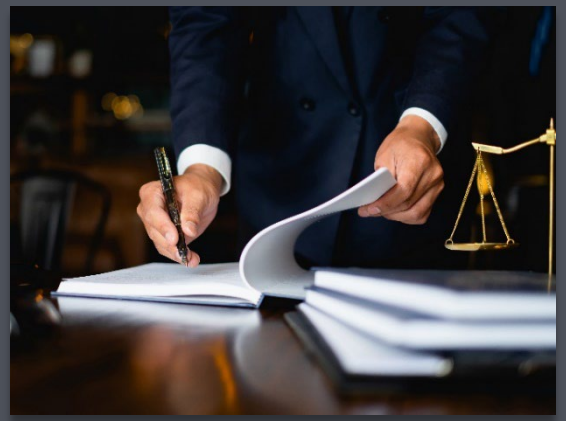

BID PROTEST BONDS

A **Bid Protest Bond** is a type of surety bond required to guarantee that a protest in the allocation of municipal contracts is not wrongful and will not delay the work on contract for the municipality and vendor. Many times, when a municipality accepts bids for contracts, the lowest bid is not always selected.

The bond amount varies by agency but usually includes a provision for interest and court costs.

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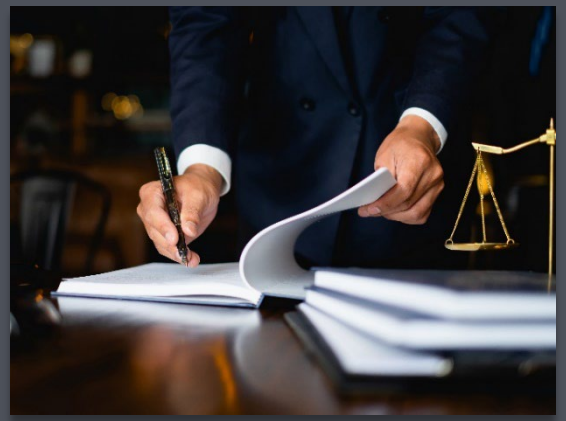

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CHILD CUSTODY BONDS

Bond Penalty: Determined by Court

A **Child Custody Bond** is a type of court bond that is designed to provide a preventative guarantee to protect children and offer financial support and resources for parents.

The court ("Obligee"), through proper pleadings, will require a parent ("Principal") to post a **Child Custody Bond** to be issued by a bonding company ("Surety") during or after divorce proceedings when there is an apparent risk that a child custody decree or visitation terms will be violated.

State laws grant family courts the authority to post security in most child custody cases. Typically, family court judges require protection in the form of a surety bond whenever there is considerable evidence that one party has violated a custody decree by taking off with the child to another location / jurisdiction.

When it comes to international custody situations, a Child Custody Bond ensures that the child will be returned from a parent who has decided to visit or relocate to a foreign country during the period of the custody decree.

In these cases, the judge determines the bond amount or the type of collateral that the parent is required to pay over to the court. Once a parent violates a child custody decree and visitation terms, the money is forfeited.

This type of court bond works where potential risks of financial losses will encourage the parent to conform and stick to the conditions of the child custody decree.

For visitations within the United States, the bond provides assurance the return of the child escorted by a parent on a short-term or long-term trip to a jurisdiction other than the usual residence.

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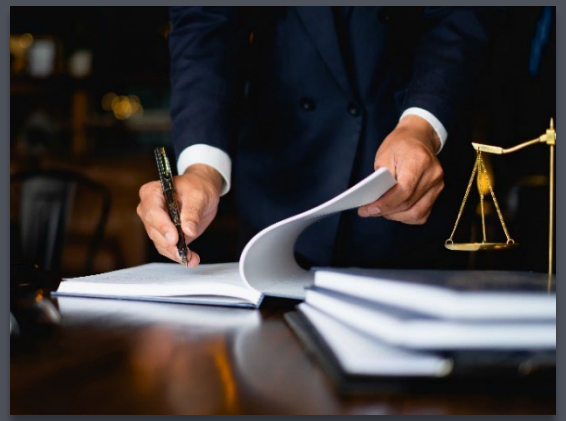

CONDEMNATION BONDS

Bond Penalty: Determined by Court

A **Condemnation Bond** is a unique type of judicial surety bond that provides a guarantee that the owner of private property that has been condemned for public use will be paid whatever price that the court has determined. Because it also functions as an absolute financial guarantee, a **Condemnation Bond** mandates that the Principal (one who posted the bond and will perform under the contract) must pay the owner of the private property the price set by the court.

Condemnation of property is the process where private property is appropriated for public use, particularly involving public infrastructure projects. To be clear, there is a distinction between condemnation and eminent domain. Condemnation pertains to the process of appropriating private property. Eminent domain is the government's inherent right to take or appropriate private property for public use. Eminent domain is a government's authority.

The Takings Clause of the U.S. Constitution provides that if the government or private company wants to take or appropriate private property for public use, they must pay "just compensation" to the private property owner for any damage or loss they might incur.

Because "just compensation" is not a fast and straightforward rule, on many occasions, the company seizing the property and the owner of the private property may not be able to agree on the price and value of the property. To avoid delay in the completion of the project for which the property is needed, the company may obtain a **Condemnation Bond** after filing an eminent domain case.

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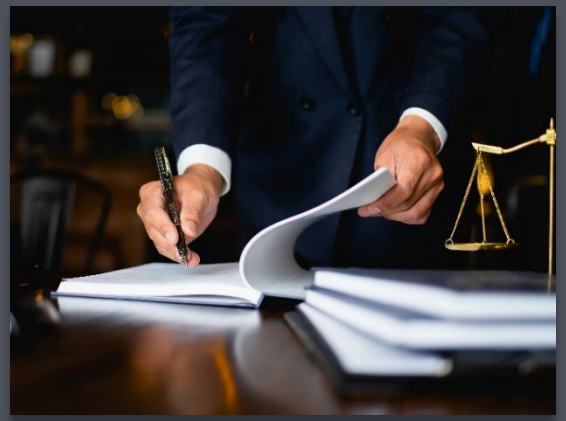

CONSERVATORSHIP BONDS

A **Conservatorship Bond** is a type of *probate bond* required of a conservator for the protection of a conservatee's estate. A conservator acts as a fiduciary for the conservatee. A **conservator bonds** is usually required by the court. A person must submit this in order to qualify as a conservator.

Since conservators are given full or partial authority over someone, the court requires conservator bonds to protect at-risk individuals and their estates. This is to ensure that the conservator will faithfully perform the duties required by the court and to recover any losses if the conservator commits misconduct.

Some of these duties are as follows:

- Develop a plan on how to manage the assets
- Manage the conservatee's assets with the utmost care
- Prepare an inventory of the conservatee's assets for the court

Some of the activities that conservators can do are as follows:

- Open a bank account for the conservatee
- Apply for government benefits
- Transfer a conservatee's stocks, mutual funds, or bonds into the conservator's name
- Sign home contracts or leases on behalf of the conservatee

If, for example, a conservatee's estate loses value due to the dishonesty or mismanagement of the conservator, the court may take action against the bond by filing a claim.

The money that the court will receive will be used to pay the monetary losses that the conservatee has suffered.

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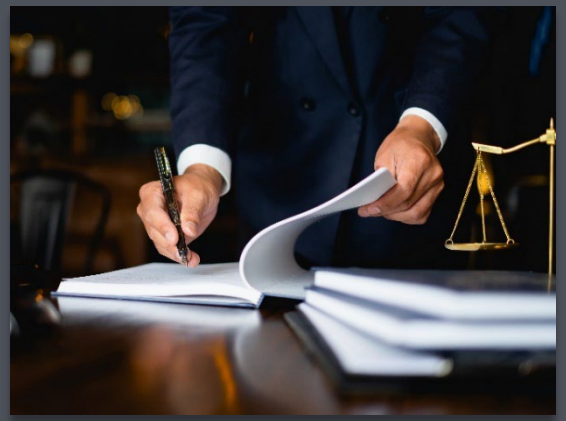

COUNTER REPLEVIN BONDS

A **Counter Replevin Bond** is a defendant's counterpart to a plaintiff's Replevin Bond. Simply put, in a **Replevin Bond** a plaintiff seeks to take physical possession of assets or property *before the trial begins*.

But a **Counter Replevin Bond** allows the defendant to ask the court to be granted the right to take back possession of property taken or replevied by the plaintiff.

In civil court cases, a court may require a defendant to post a **Counter Replevin Bond**, but with assurance, he or she will surrender the asset or property, or its equivalent value, to the plaintiff, should the court decide for the plaintiff.

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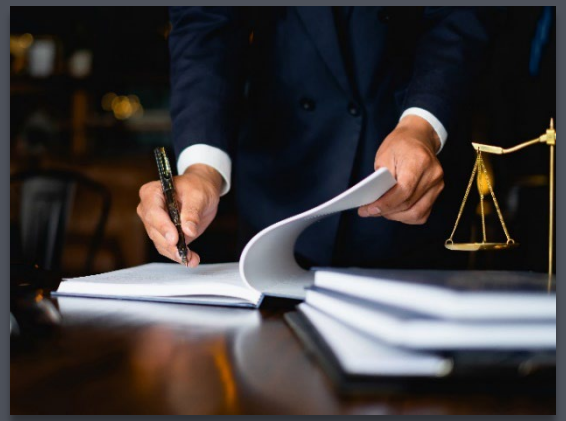

COURT COST BONDS

Bond Penalty: Determined by State Code of Civil Procedure, Judicial Discretion

A **Court Cost Bond** is generally required of plaintiffs to a civil action that are not residents of the state in which the litigation will take place (may also be referred to as a “non-resident cost bond”). As a rule, plaintiffs with a legitimate cause of action are not burdened with undue requirements in order to seek due process in state and federal courts. Notable exceptions are individuals or entities that have been found to be "vexatious litigants" and in the few states that require cost bond security from plaintiffs that are not residents or businesses not domiciled in the requiring state. California is one such state:

California Plaintiff Cost Bond

Pursuant to California Code, Code of Civil Procedure (*CCP §1030*), when a civil action has been commenced in California and the plaintiff is a non-resident, then the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file a **California non-resident cost bond** to secure an award of costs and attorney's fees which may be awarded in the action.

Plaintiff Cost Bond underwriting is best underwritten by a surety bond specialist with knowledge of this class of judicial bond and with experience with **Judicial Cost Bond** language.

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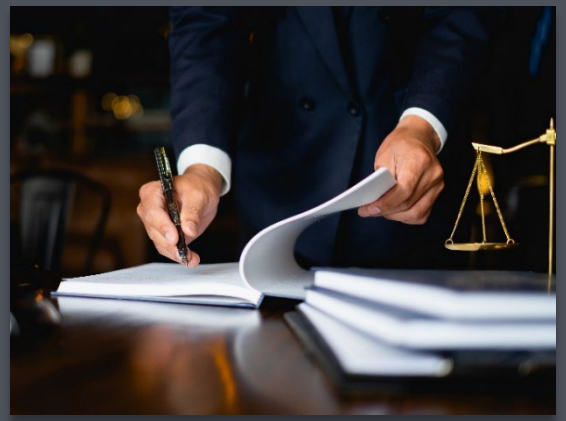

CURATOR BONDS

Bond Amount: Set by the Court

A type of surety bond required by the court to guarantee the estate's assets will not be misused, stolen or wasted. The amount varies from county to county depending on the value of the estate.

A **Curator Bond** may be required to guarantee that the estate's assets will not be misused, stolen or wasted by the Curator. The surety bond amounts vary from county to county and depending on the value of the estate. To receive an accurate estimate on how much a Curator Bond costs please complete the **CURATOR BOND APPLICATION**.

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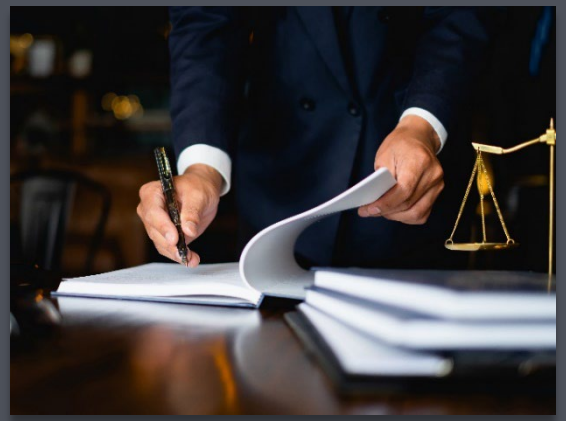

CUSTODIAN BONDS

A **Custodian Bond** is very similar to a *guardianship bond.* A **Custodian Bond** is a *fiduciary bond* that covers a person who is named custodian or guardian of a minor or a disabled person and their assets. It is likely that the court will require a potential custodian to obtain a custodian bond before they are appointed as the custodian of the individual.

Only a court is authorized to grant custody over the beneficiary, although parents may make recommendations. However, the final order and appointment will be in the hands of the judge.

Custodian Bonds guarantee that custodians will act and adhere to the rules and regulations mandated by the courts. This type of court surety bond helps to ensure that the custodian will remain ethical in his or her dealings with the assets of the person with whom they have been entrusted.

The court will set the bond amount. This amount will be based on the annual income and any assets that belong to the person requiring a custodian. Often, this amount is as much as double the amount of that income and assets. The surety bond agency will determine the cost of the custodian bond according to the state's guidelines.

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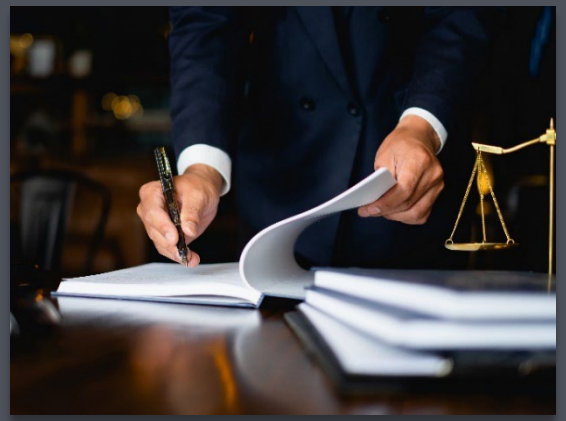

DISTRESS FOR RENT BONDS

A **Distress or Distraint Bond** is a type of surety bond required by a court when a plaintiff seeks to remove a tenant from a commercial property due to unpaid rents. It is commonly known as a "*Distress for Rent*".

Statute requires this surety bond to protect the defendant. The **Distress for Rent Bond** guarantees the defendant's compensation should the court find the Distress to be wrongful.

The bond amount varies by state but usually includes a provision for interest and court costs.

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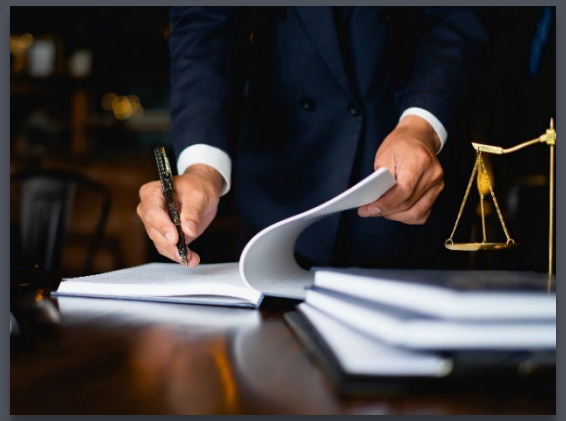

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EXECUTOR BONDS

An **Executor Surety Bond** is a type of fiduciary or *probate bond* that is issued to ensure that a person's estate is handled correctly once they have passed away. The person responsible for managing the estate is known as the *executor*. If an executor is not defined in the will, then the court will appoint one for the estate. Often, courts will appoint executors entrusted with the responsibility of ensuring a person's last wishes are fulfilled.

An **Executor Bond** affords protection to the family of the deceased and the estate from any unlawful actions or fraud on the part of the executor. It is a guarantee that the appointed executor will execute the will as it is expected to be. Not all states require an executor to purchase an **Executor Surety Bond**. Our agents will be able to let you know if it is a requirement in your state.

Since the executor of a will wields a lot of power concerning the real estate and finances of the deceased's estate, the court may require this type of bond to make sure that there is no fraud committed. The executor may be needed to handle these duties

- Paying off the debt of the estate
- Getting an appraisal of the estate
- Cataloging all assets and liabilities
- Notifying beneficiaries
- Conducting an inventory of the assets
- Ensures that the deceased's income taxes are paid
- Distributing the assets according to the direction of the will
- Continue making necessary payments
- Make probate decisions (inheritance, etc.)

If the executor fails to do their duty or commits illegal acts with regards to the estate, the Executor Surety Bond provides a level of protection to the family and heirs of the estate.

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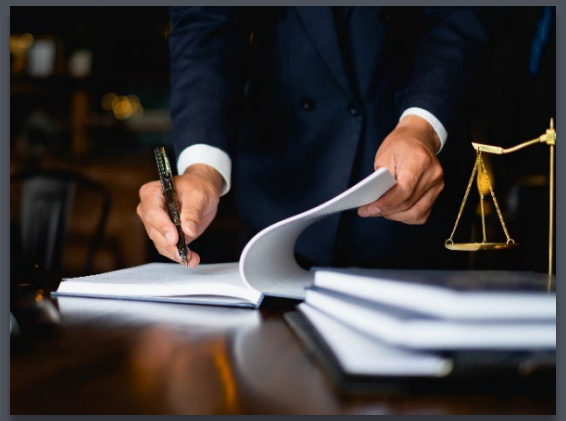

GARNISHMENT BONDS

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Bond Penalty: Determined by Court

A garnishment is a form of legal proceeding (and drastic measure) that enables someone (the plaintiff) you financially owe seize your property and assets as payment.

A garnishment is a percentage of your wages, and bank account balances up to the amount you owe which may be taken without your permission to satisfy a debt. Bank account seizures often occur with joint accounts. If you are a joint account holder, money is often seized along with your balances as debt repayment.

Garnishments are not limited to bank accounts and wages. If your wages are garnished for multiple debts, it may lead to loss of employment. Since garnishment involves seizure of property, the procedure is subject to due process requirements.

A **Garnishment Bond** is a type of judicial bond provided by the defendant to secure the release of property reached by a garnishment.

This bond also ensures that if the plaintiff wins the case, the defendant's property (assets, wages, financial accounts) will be released to the plaintiff. The third party that holds the financial assets or property of the defendant must hold onto the financials or property until a judgment is made.

Should the court rule in favor of the defendant, the **Garnishment Bond** will provide a financial remedy where the plaintiff pays damages and costs if the writ is proven to be wrongfully sued.

A **Garnishment Bond** ensures payment of all damages and costs that may accrue to the defendant if the writ is deemed wrongful and unjust. The bond also guarantees the court that the plaintiff has no prejudice or malicious intentions when making a garnishment claim against the defendant.

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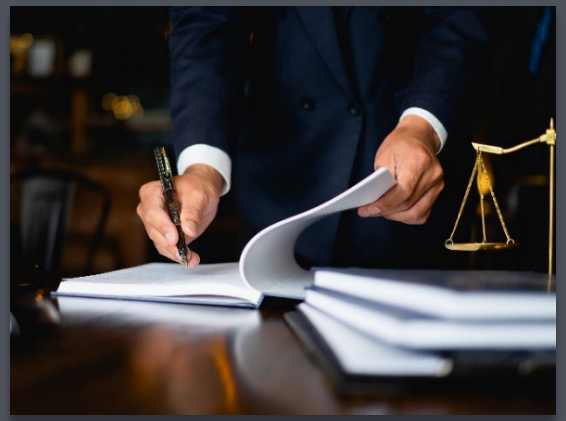

GUARDIANSHIP BONDS

A **Guardianship Bond** also referred to as a *custodian bond* (but not necessarily the same), is a type of probate bond that a court may require if you have been appointed the legal guardian of another individual, typically a minor or someone who is disabled and cannot handle their finances.

This bond is to ensure that the appointed guardian acts in the best interest of the person whom they have guardianship. If the guardian abuses or mismanages the finances of the other person, then a claim will be filed against that bond. It is a way to financially protect the ward if anything happens because of the actions of the guardian.

Some of these decisions (where the courts award them legal authority) may include, but not limited to:

- Keep estate assets separate (right to sell or buy property for the beneficiary's sake)
- Determine a suitable place where the beneficiary will reside
- Meet the medical needs of the beneficiary
- Keep accurate records of each financial transaction you make on behalf of the beneficiary
- Make prudent investments
- Comply with all state and local laws as specified in the Probate Code

If the beneficiaries possess substantial financial resources and properties, guardians are required to post a **Guardianship Surety Bond**. Legal guardians are appointed by courts to avoid any future problems with the beneficiaries when dealing with financial assets and properties to meet debts, legacies or commitments.

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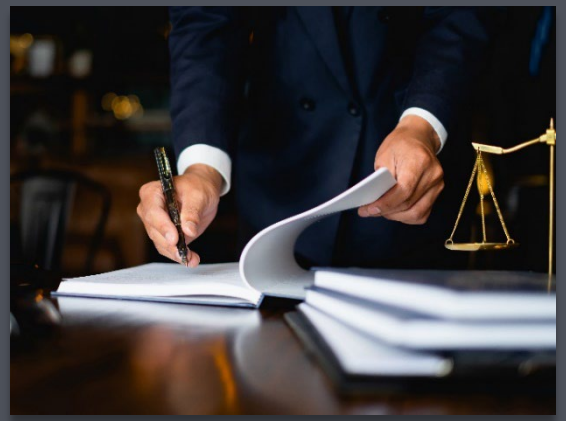

INDEMNITY-TO-SHERIFF BONDS

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Bond Penalty: Varies – Generally, you cost (premium) is typically 1-2% of the Bond

An **Indemnity-to-Sheriff Bond (aka Marshal Bond)** is a type of surety bond that guarantees protection to law enforcement agencies seizing property on orders of the court on behalf of a plaintiff from a defendant. This bond prevents sheriffs or marshals to incur any liability should the defendant seek damages against the officers who seized the property.

This type of bond also called the Marshal Bond ensures that sheriffs or marshals are reimbursed for any financial loss because the plaintiff failed to fulfill his or her contractual obligation. The financial costs include items such as labor, services, or materials that were used to enforce the seizure of the property.

In essence, an **Indemnity-to-Sheriff Bond** provides protection to law enforcement agencies in the course of their action when enforcing a court order to seize or repossess the property of a defendant on behalf of a plaintiff. The bond guarantees that law enforcement agencies are indemnified against any and all legal action that the defendant might take as a result of damages incurred on the property during the legal and lawful seizure of the property.

When the sheriff or marshal removes the property in question, other property that belongs to the defendant could be damaged. For example, the law officer might cause damage to the defendant's premises, on which the plaintiff's property is located while seizing the property.

The cost of a bond premium for a **Sheriff Indemnity Bond** varies from state to state. However, the court usually provides a provision for possible interest and court costs when computing the premium. It is important to note that the full value of the property being seized should be covered by the **Indemnity-to-Sheriff Bond** to avoid future conflict. Also, note that *most states require the bond to be twice the amount of the Judgement.*

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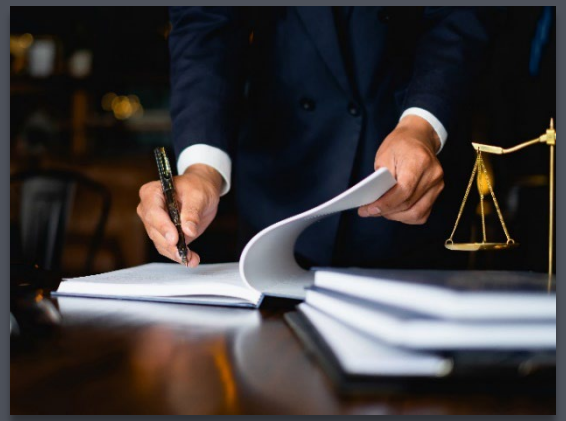

INJUNCTION BONDS

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Bond Penalty (State Court): Set by Court

A motion for injunctive relief can prejudice the restrained party. A court may order the moving party to provide an **Injunction Bond** to protect the injuncted party. An injunction is an equitable remedy which prohibits a person or entity from doing some specific act or acts. The order can be preliminary or permanent (perpetual). This mechanism is also interlocutory, allowing issuance at any time during the pendency of litigation. The purpose is to offer the complainant immediate protection from irreparable injury should the restrained party be allowed to engage in the prohibited act(s).

Generally, an injunction is limited in time and scope, the subject matter being addressed at an expedited hearing on its merits. Further, an injunction is often granted after a court has found that said irreparable injury is likely AND that the movant is likely to prevail in his or her argument for the injunction.

Because a court order may restrain a party from exercising an otherwise legal right, there is a possibility that the injunction will later be found improper. An improper restraint may cause the party to suffer damages for which the movant is responsible. An **Injunction Bond** guarantees that the movant will pay to or otherwise perform specific acts to "make the injuncted party whole". This judicial undertaking is generally required by court order, and the bond penalty (bond amount) set by the court hearing the underlying controversy. An **Injunction Bond** remains in effect until the court issues an interlocutory order, a permanent injunction is issued and/or the preliminary order is dissolved, and the case adjudicated.

An **Injunction Bond** must be issued by a surety company licensed in the jurisdiction wherein the replevy action is to be filed. Quoting an **Injunction Bond** is accomplished by a surety bond underwriter with knowledge of court bond obligations.

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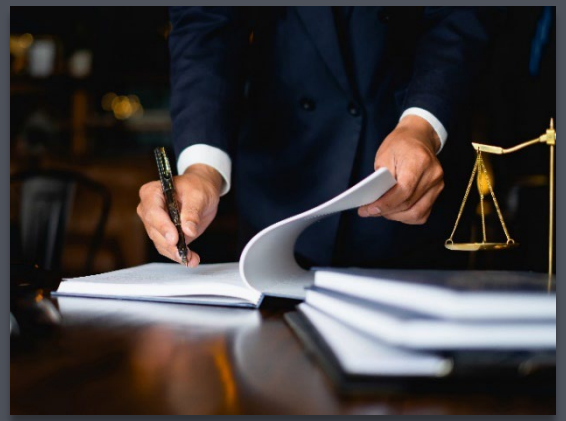

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INJUNCTION BONDS

Bond Penalty (Federal Court): Set by Court

A **Federal Injunction Bond** is a prejudgment remedy contemplated under *U.S. Code (Rule 65*). Unlike a federal temporary restraining order, an injunction may be ordered by the court only after giving notice to opposing counsel or party. Civil procedure in a federal civil forum also allows for consolidation of a hearing for injunctive relief with a trial of merits.

Pursuant to *subsection (a)(2),* "Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.“

A court order injuncting a party from exercising an otherwise legal right inevitably carries the risk that the injunction will later be found improper. An improper restraint may cause the injuncted party to suffer damages for which the movant is responsible. An **Injunction Bond** guarantees that the movant will pay to or otherwise perform specific acts to "make the prejudiced party whole". This civil undertaking is generally required by court order and the bond penalty (bond amount) set by the court. An **Injunction Bond** remains in effect until the court issues an interlocutory order, a permanent restraining order is issued, the preliminary order is dissolved, or the case adjudicated.

A **Federal Injunction Bond** must be issued by a surety company licensed in the jurisdiction wherein the motion is to be filed and must appear on the U.S. Treasury's list of sureties (*the "T-List")* acceptable for federal obligations. Quoting an injunction bond is best accomplished by a surety bond underwriter with knowledge of judicial obligations.

A **Federal Injunction Bond** is accomplished by a surety bond underwriter with knowledge of court bond obligations. underwriter with knowledge of court bond obligations.

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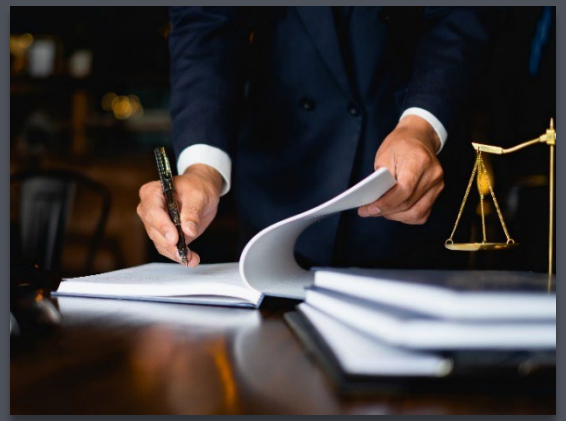

LIS PENDENS BONDS

Bond Penalty: Set by Court

"Lis Pendens" literally means "pending suit". Originally an English common law mechanism, the doctrine has been codified in many states. A **Lis Pendens Bond** is a guarantee specific to the practice of this doctrine. The purpose of lis pendens is to provide fair notice to interested parties (generally prospective purchasers of property or finance companies seeking a lien against property) that any interest which they may acquire in said real property is subject to orders issued by a court hearing litigation involving the property, its owner or legal possessor.

Lis pendens is considered a "constraint". Because public notice of lis pendens is clearly a deterrent to prospective buyers and financial institution, the current owner is prejudiced by the constraint. A filing party may be required to post a lis pendens bond to provide financial assurance to the owner resulting from "putting a cloud" over the title.

Obtaining a **Lis Pendens Bond** is a simple process. We need a complete ***Judicial Bond Application***, and a copy of the suit against the noticed party and the applicant's current financial statement. These are sufficient for us to offer a premium quote (bond cost). The underwriting of **Lis Pendens Bonds** is best done by a surety specialist with knowledge of court proceedings and property lien law.

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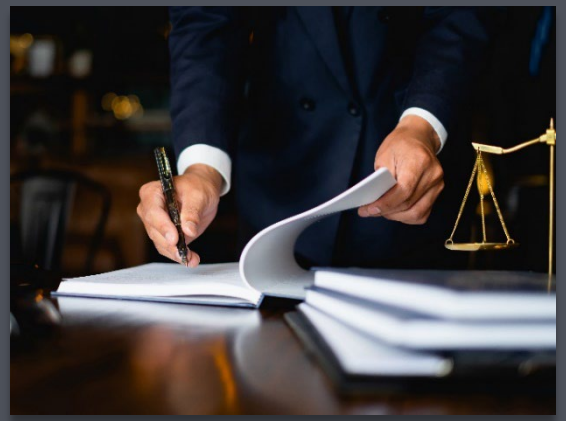

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LOST INSTRUMENT BONDS

A Lost Instrument Bond (*also known as a Lost Note or Lost Deed Bond*) is used when a financial certificate is lost or stolen. Before the bank or financial institution issues you a replacement, they might require you to secure a Lost Note Bond.

A **Lost Instrument Bond** is a type of surety bond which guarantees that if the original document is found, the financial institution will not be liable for honoring it. It also guarantees that you (*the bonded party*) will not be able to cash the original document.

You might be required to get a Lost Instrument Bond if you lose any of the following:

- Stock certificates
- Property deeds
- Cashier's checks
- Car titles
- Savings bank books
- Loan shares
- Real estate certificates
- Municipal or corporate bonds
- Life insurance policies

This is a limited list and does not include all situations where a Lost Note Bond might be required.

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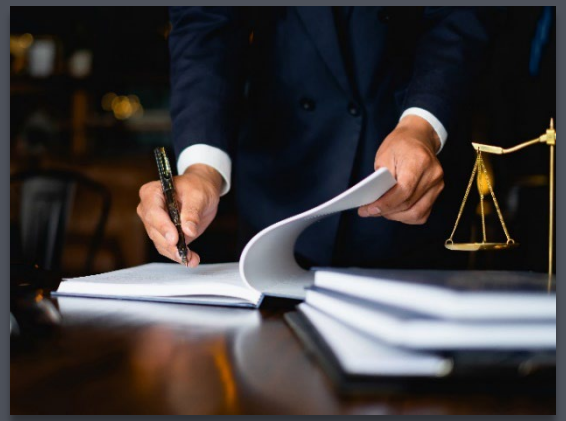

NE EXEAT BONDS

As you go through a divorce, you may get worried that your ex-spouse will ignore his or her legal obligations. Worse is that your ex-spouse is traveling to a foreign country with your kids in tow. If that happens, the court will find it impossible to impose the tenets of the child custody agreement outside U.S. jurisdiction. If the thought of your child / children traveling abroad with your former spouse wakes you up at night, it is crucial to take precautionary measures and understand the state laws regarding children traveling overseas. You may require (through proper court pleadings) your ex-spouse to post a Ne Exeat Bond.

A **Ne Exeat Bond** is a surety bond that provides a guarantee that the other parent will conform to the terms of the divorce settlement and child custody agreement while traveling with your kids to a foreign country.

If your former spouse does not return and does not adhere to the terms of his or her agreement, the **Ne Exeat Bond** will require full payment of the bond. The amount covers the costs of international legal action that you would sustain in getting your children back.

At common law, ***Ne Exeat*** means "*that he does not depart*" or "*no leaving*" in Latin. It is a writ that restrains a person from leaving state or court jurisdiction. It is used in family law to prevent a person from moving or removing a child or property from the local jurisdiction.

Your former spouse is prohibited from leaving the jurisdiction unless he or she post the Ne Exeat Bond first.

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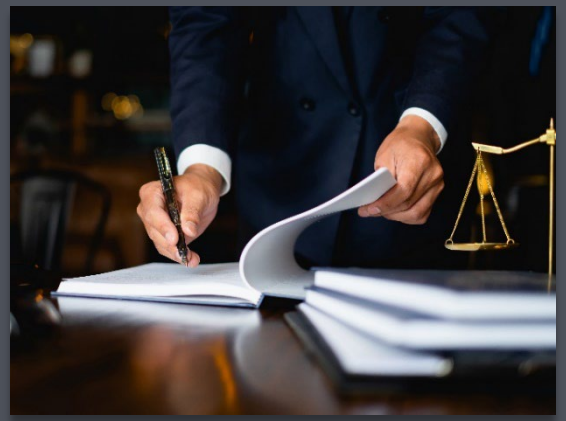

PETITIONING CREDITOR'S BONDS

A **Bond for Petitioning Creditors** in Bankruptcy, or more commonly known as **Petitioning Creditor's Bond**, is a type of surety bond used in certain bankruptcy proceedings. The court requires such a bond when a plaintiff is petitioning a defendant to be declared as officially bankrupt.

After a petition is filed, the court will appoint a receiver or a trustee to take control of the assets and properties of the bankrupt person until the case is resolved. The court will then ask the petition to post a Petitioning Creditor's Bond to ensure that the party who files the petition to declare an individual bankrupt will indemnify the debtor.

The **Petitioning Creditor's Bond** guarantees that the debtor will be compensated for any costs or fees they might suffer as a result of the seizure of their assets or properties in case the court decides to deny the petition for bankruptcy.

The bond can also be used by the debtor in case the petition to declare him or her as bankrupt is withdrawn. In essence, the **Petitioning Creditor's Bond** provides protection to the debtor against any damages or loss.

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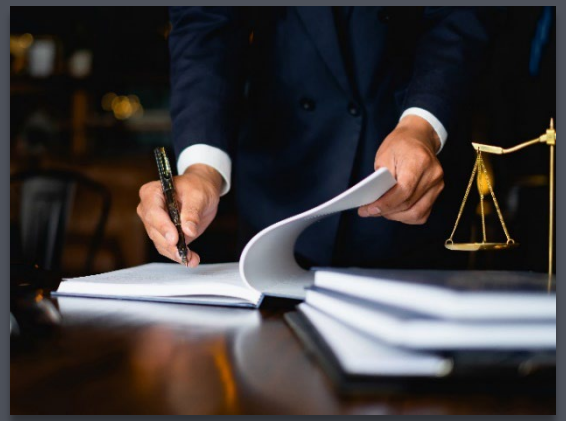

RECEIVERSHIP BONDS

A **Receivership Surety Bond** is a type of court fiduciary bond that insures against any financial distress that may be incurred by a party as a result of a court appointment of a receiver. The decision for receivers to post a bond is left to the discretion of the court and state statutes.

With the direction and order of the court, the court-appointed receiver is put in charge of the management, liquidation, and preservation of business and real property assets. Receivership Bonds must be posted in place before court-appointed receivers can proceed with their fiduciary obligations.

The receiver must execute **a Receivership Bond** with a surety approved by the court in the amount the court specifies. It is under a condition that the receiver will faithfully perform his or her assigned duties in consonance with the state and federal court laws. The bond creates a path of recourse for parties who feel that the receiver is acting in a manner not favorable to the court.

Most claims against a receiver are contended against the receivership property, and not against the receiver in his or her personal capacity. Generally, a receiver may not be sued in his or her individual capacity without the specific authority of the appointing court.

The claims that concern the bond and the Surety are those cited against the receiver in his or her capacity, alleging that the receiver has acted outside the scope of his or her court-appointed duties. That said, the receiver and the receiver's surety will only be held liable where the terms and conditions of the bond are violated, such as misappropriation of funds or embezzlement committed by the receiver.

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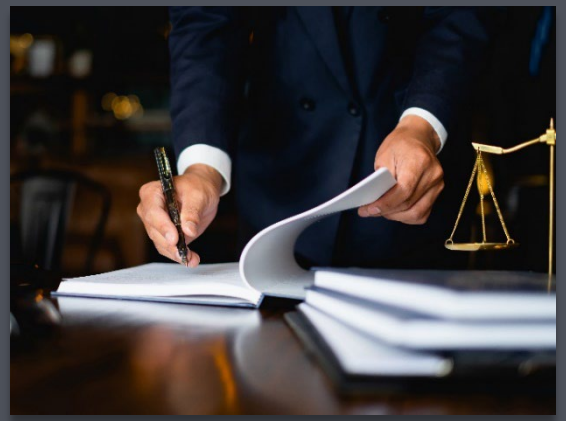

RELEASE OF LIS PENDENS BONDS

When a plaintiff makes a claim to halt the sale of property, a defendant has a chance to smooth things over with a surety bond. A **Release of Lis Pendens Bond** is a type of surety bond that allows the defendant to carry out the sale of the property.

The **Release of Lis Pendens Bond** is a type of *defendant bond*. This court surety bond covers the plaintiff against any wrongful action. The Court takes its responsibility to protect the plaintiff very seriously. It is important that the right **Release of Lis Pendens Bond** is secured.

The use of a surety bond does not remove the defendant's responsibilities to the case. Courts accept the release of lis pendens notice bond as a guarantee that the court's ruling will be followed. Every state has the duty to protect the interest of both parties in a case. Surety bonds are generally a good way of showing the court that good faith.

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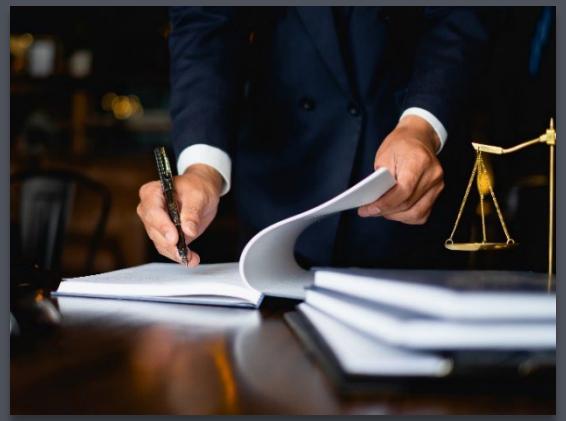

REPLEVIN BONDS

Bond Penalty: Set by Court or by Code of Civil Procedure

A **Replevin Bond** is a judicial surety bond which provides indemnity to the law enforcement officer that executes a writ of replevin and protection to the party subject to the replevin. A defendant or other party from whom specific property was seized may suffer damages as a result of said seizure. That party also has the right to a return of the property in an undamaged condition should he or she prevail in the suit. The obligation guarantees safekeeping of the property, return of the same, and the payment of consequential damages as may be ordered.

Replevin (also referred to as “replevy”) is an action usually commenced by a plaintiff that has an ownership or repossession interest in specific goods or chattels. It is a provisional prejudgment remedy which empowers the movant to take disputed property from another party and hold the same during the pendency of the suit "pendente lite". These motions are also known as sequestration or claim and delivery pleadings. Replevin is a common between individuals and companies that are parties to property subject to finance agreements such as automobiles. So that a replevined party can continue to possess and use the property in dispute, a **Counter Replevin Bond** and action can be commenced to nullify the replevin action.

A **Replevin Bond** must be issued by a bonding company licensed in the jurisdiction wherein the replevy action is to be filed. Quoting a replevin bond is accomplished by a surety bond underwriter with knowledge of court bond obligations.

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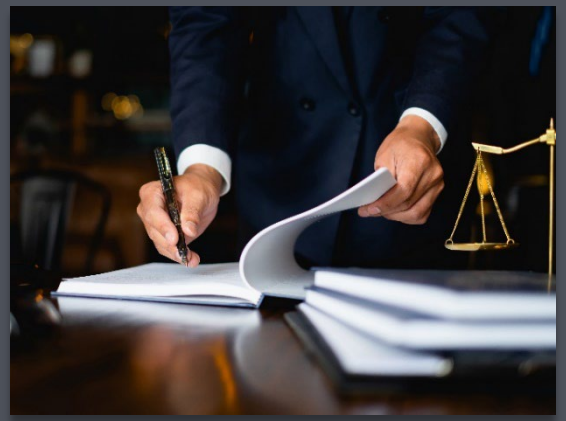

SEQUESTRATION BONDS

A **Sequestration Bond** is a type of financial guarantee that if a court later finds a sequestration case to be untrue or malicious, the plaintiff will release the held property or funds, and pays damages and costs as mandated by the court.

This type of bond is required on behalf of the plaintiffs who are seeking to seize a property held by the defendant to satisfy a payment of debt. The bond ensures indemnity to the defendants against damage or losses in case the court decides there

The bond ensures indemnity to the defendants against damage or losses in case the court decides there are no grounds for sequestration or that a plaintiff fails to obtain a judgment against a defendant.

Since sequestration results in a loss of use of the attached property or that funds in the sequestered financial account cannot be distributed except by direct court order, the defendant's property that is being attached can suffer losses and damages.

To obtain the legal sequestration, the plaintiff should indicate that his grounds for sequestration in apprehending a property is done without prejudice.

A **Sequestration Bond** is often required as an effort to alleviate this harsh legal remedy. The bond covers the action, so in case the court later finds a wrongful sequestration, the bond guarantees financial compensation to the defendant.

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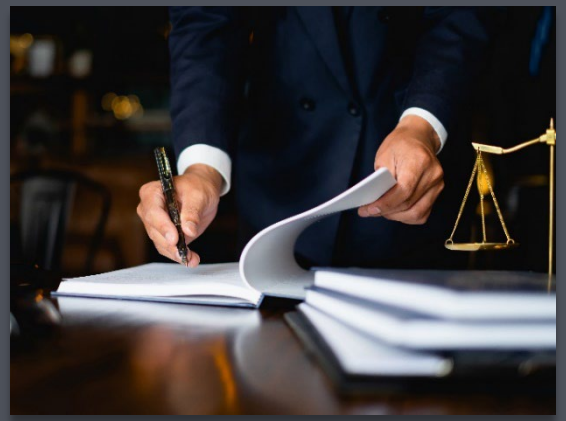

SEPERSEDEAS BONDS

Bond Penalty: 150% of Judgment Amount

In an expanded discussion from the previous page (California Appeal Bonds), a **California Supersedeas Bond** is regularly required of defendants and occasionally plaintiffs party to a civil suit to secure review by a higher court. A "***supersedeas***" request is a formal pleading to a higher-level court (*a court of appeals or supreme court*) that it review the decision of an inferior court such as a general trial court or an administrative agency.

Generally, the appellant seeks supersedeas review because he or she perceives that either the law was improperly applied (*judicial error*) or that an inequitable decision was made by the lower court. The purpose of the appeal is to have the judgment corrected, reversed or remanded to the original court for further adjudication based on the higher court's instructions. Final judgments and orders that are sufficiently final to be entitled to ***supersedeas review*** are in most cases acceptable for this remedy if filed with an appropriate supersedeas bond. In the federal system and many state courts an appeal may be a two-stage process. Trial court decisions being moved to an intermediate appellate court, then perhaps ultimately a Supreme Court. Other special appeal procedures may apply to social security cases and administrative law judge decisions.

On entry of an appealable verdict or order, a party may move to the appropriate court for judicial review. Because the prevailing party may be prejudiced by the stay of enforcement of the original judgment, most codes of civil procedure require the deposit of a **Supersedeas Bond** in order to perfect the appeal. This financial assurance mechanism generally guarantees that the appellant will comply with the original judgment if it is affirmed and pay the appropriate judgment interest, costs of court and attorney's fees to the prevailing party. A **Supersedeas Bond** is a type of surety bond. The surety's obligation is to guarantee that the appellant will comply with the appeal decision. *See the previous page (California Appeal Bonds) for additional information.*

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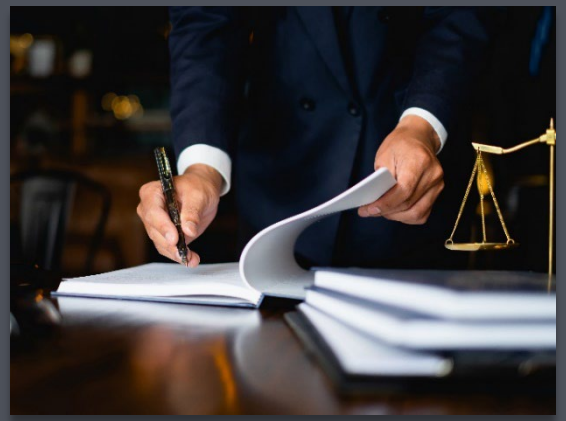

STAY APPENDING APPEAL BONDS

A **Stay Bond** is like an injunction given that the principal is filing the bond to stop another party from doing something. The difference is that a defendant will file for a stay to keep the plaintiff from collecting on a judgment. The **Stay Bond** is required to guarantee that if the pending appeal is lost that the defendant will cover all costs and fees.

The court will rule as to whether the judgment is upheld. A **Stay Bond** works as a surety bond for the court saying the defendant will cover the cost and interest of the judgment should the defendant lose. States require this bond to ensure the defendant will pay the judgment or release the property without a financial loss to the plaintiff.

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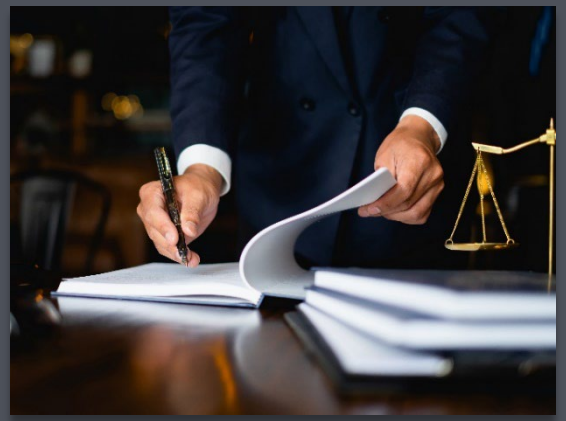

TEMPORARY RESTRAINING ORDER BONDS

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Bond Penalty (State Court): Judicial Discretion

A **California Temporary Restraining Order Bond** is a form of financial assurance that provides indemnity to a restrained party if the underlying Temporary Restraining Order is later found to have been inappropriate AND that the restrained party has suffered damages as a direct result of the constraints created by the order. A temporary restraining order, or "TRO“, is an emergency judicial remedy. Generally, TROs are issued under exceptional circumstances and must be calendared for an expedited hearing on the evidence supporting the same. Much like an injunction, a TRO's purpose is to "*preserve the status quo*" until the aforementioned evidentiary hearing can take place. Likewise, a Temporary Injunction Bond is similar to an **Injunction Bond**.

Why a TRO rather than a preliminary injunction? The answer to this question is largely based on the degree of emergency that the restraint or injunctive relief is. An injunction is generally issued after the moving party files a motion for injunction, serves notice on the opposing party and argues the appropriateness of the injunction before a magistrate or judge. By contrast, a temporary restraining order may be granted upon motion "*ex parte*", and a brief review of the affidavit(s) and complaint proffered in support of the request. Upon finding that unless a TRO is immediately granted, the petitioner may suffer irreparable harm, injury, loss or damage, the court will grant the motion and may order a temporary restraining order bond in an amount sufficient to indemnify the restrained party from loss. When issued on behalf of plaintiffs, TRO bonds are fairly low risk obligations, however they generally do carry more risk to surety than preliminary injunction bonds because of the absence of cross-evidence presented by the restrained party.

Federal temporary restraining order bonds in U.S. District Court cases are regulated by different rules, which are detailed on the next page.

A temporary restraining order bond must be issued by a surety company with a current certificate of authority in the jurisdiction wherein the TRO action is filed. Quoting a TRO bond is accomplished by a surety bond underwriter with knowledge of judicial bond obligations.

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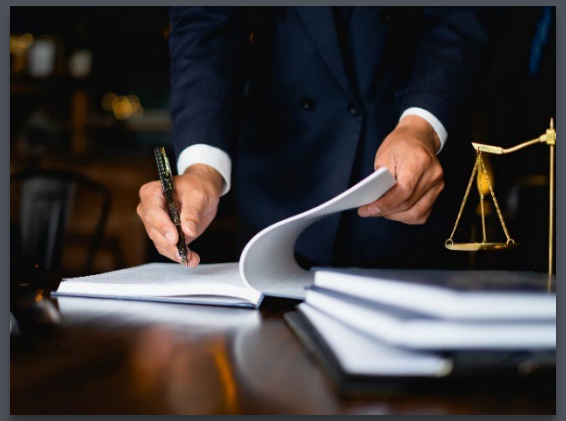

TEMPORARY RESTRAINING ORDER BONDS

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Bond Penalty (Federal Court): Judicial Discretion

A **Federal Temporary Restraining Order Bond** is a prejudgment remedy contemplated under U.S. Code (*Rule 65*). Unlike a Federal Injunction, a Temporary Restraining Order, commonly referred to as “TRO”, may be ordered by the court without giving notice to opposing counsel or party. Civil procedure in a federal civil forum also allows for consolidation of a hearing for injunctive relief with a trial of merits.

Pursuant to *subsection (b)(1),* "The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.“

A court order restraining a party from exercising an otherwise legal right inevitably carries the risk that the TRO will later be found improper. An improper TRO may cause damages to the restrained party for which the movant is responsible. A **Federal Temporary Restraining Order Bond** guarantees that the movant will pay to or otherwise perform specific acts to "make the prejudiced party whole". This civil undertaking is generally required by court order and the bond penalty (bond amount) set by the court. A **Federal TRO Bond** remains in effect until the court issues a permanent restraining order, the case adjudicated or a motion to dissolve is filed and heard *pursuant to (b)(4),* which reads, Upon two days’ notice to the party who obtained the order without notice or on shorter notice set by the court, the restrained party may appear and move to dissolve or modify the TRO. The court must hear and adjudicate the motion as promptly as justice requires.

A **Federal Temporary Restraining Order Bond** must be issued by a surety company licensed in the jurisdiction wherein the civil action is to be filed and must appear on the U.S. Treasury's list of sureties (*the "T-List*") acceptable for federal obligations. Quoting a TRO bond is best accomplished by a surety bond underwriter with knowledge of court undertakings.

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TRANSFER OF LIEN BONDS

A **Transfer of Lien Bond** discharges a lien from the property and replaces it with a bond to guarantee satisfaction if the court upholds the lien's merit. When a construction lien is recorded, the lien can be transferred to a lien transfer bond (*thereby removing the encumbrance or cloud on the property caused by the lien*). The procedure to transfer a lien to a **Transfer of Lien Bond** is statutory in nature.

A lien does not necessarily have to be transferred to a bond immediately after the lien is recorded. Rather, an owner *(or other person with interest in the property*) can transfer the lien to a bond after the entity or person that recorded the lien *(referred to as the "lienor")* files a lien foreclosure lawsuit. In this circumstance, it is important for the lienor to know that they must amend their lien foreclosure action to assert a claim against the **Transfer of Lien Bond**; otherwise, the lienor will essentially lose its lien rights. The lienor will not be able to foreclose the lien as to the property *(because it was transferred to a bond)* and the lienor will not be able to pursue its claim against the **Transfer of Lien Bond.**

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V.A. CUSTODIAN BONDS

A **VA (Veterans Affairs) Custodian Bond** is required by the courts to safeguard the financial assets, including real estate, of the beneficiary against mismanagement of funds or abuse by the legal custodian. It is similar to a *Custodian Bond*, in a sense, that courts appoint a legal custodian to perform the obligation, only this focuses on *Veterans*.

The purpose of the **VA Custodian Bond** is to ensure that the funds and critical assets are used for the well-being of the beneficiaries (the Veteran) and their dependents. This type of fiduciary court bond aims to protect Veterans and their beneficiaries who are unable to handle their financial affairs.

A VA Custodian is a *federal fiduciary* who is a person, or a legal entity, appointed by a state or federal court to oversee veteran beneficiaries because of incapacity to manage their financial or real estate affairs. The legal title of a court-appointed fiduciary may differ from each jurisdiction, but they are also known as a guardian, executor or trustee. Other types of fiduciaries include custodian-in-fact, temporary custodian, institutional award payee, spouse payee or Indian reservation officer. The proper title should be used as required by the courts and state laws.

As a VA Custodian, you must learn and understand the needs of the beneficiary. This way, you can make decisions on how to utilize a beneficiary's funds and make transactions for his or her physical and financial welfare. Those decisions are often based on a beneficiary's needs, values, and unique circumstances. Veteran beneficiaries are entitled to an equal standard of living as any other beneficiary with comparable financial resources.

A VA Custodian Bond is required if the beneficiary's estate is greater than $20,000.

Usually, the bond amount must be sufficient to cover assets, such as the size of the estate of the beneficiary, the special needs surrounding the beneficiary, plus the estimated annual income from the VA benefits. The Surety will determine the amount of the bond as well as any fees that may apply.

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V.A. FIDUCIARY BONDS

A **Veteran's Administration Fiduciary Bond (VA Fiduciary Bond)** is a type of bond that protects the finances of a veteran who is unable to handle his or her finances. A friend or family member who is appointed the fiduciary of a veteran's benefits will use those funds to ensure that the veteran's bills, taxes, and other financial responsibilities are managed properly. This type of bond helps to ensure that these tasks are completed.

The *Veteran's Administration* may require that the person appointed as the fiduciary obtain a bond so as to guarantee that he or she will not misuse the funds of the veteran. The VA may also request an interview with the person chosen to be fiduciary as well as set any necessary requirements to be met. The VA will make the determination of a need for a bond based on the amount of the estate. There may be some instances where the bond is not required.

Like other surety bonds, the cost of a **VA Fiduciary Bond** will depend on the value of the veteran's estate for which you will be responsible.

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