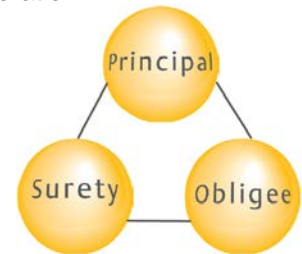


Surety Basics

Principles of Suretyship

Suretyship refers to the obligation to pay the debts of, or answer for, the default of another. It assumes a legal relationship based upon a contract in which one person (the surety) undertakes to answer to another (the obligee) for the debt or default of a third person (the principal). A surety bond is often purchased to fulfill this need.

- **Obligation** – An enforceable duty assumed by or imposed upon a person, firm, or corporation.
- **Surety** – A person or corporation guaranteeing the payment of money or the performance of an act or duty by another.
- **Obligee** – The party protected against loss by a bond.
- **Principal** – In suretyship, the party whose performance, honesty, or responsibility is to be guaranteed.
- **Surety Bond** – A three-part instrument by which one party (the surety) guarantees or promises to a second party (the obligee) the successful performance of a third party (the principal). A bond is a written agreement that holds the surety responsible for the nonperformance of an expressed obligation and provides for compensation should there be a failure to perform within a stated period. A principal purchases a surety bond for the obligee's benefit.



Glossary of Terms

Administrator

A fiduciary appointed by a probate court to manage and/or distribute the assets of an estate of a person who died without leaving a will.

Alcohol Bond (“Liquor Bond”)

A bond given in compliance with Federal or State laws governing the sale, payment of taxes, manufacture, distribution, or warehousing of alcohol for beverage or non-beverage purposes.

Attachment Bond – Plaintiff’s (“Sequestration Bond”)

A bond issued on behalf of the Plaintiff who is seeking to attach a piece of property held by the Defendant to secure payment of a debt. It generally provides for indemnity to the defendant against loss or damage in case it is finally decided that a statutory ground did not in fact exist or the plaintiff fails to recover a judgment against the defendant.

Attorney-in-Fact

One who holds a Power of Attorney granted by a Surety empowering the execution of a bond.

Bond Limit (“Bond Penalty”, “Penal Sum”, “Limit of Liability”)

The maximum amount for which a Surety may be held liable under the bond.

Cancellation Clause

A clause in a bond that permits the Surety to terminate its future liability by serving written notice upon the obligee.

Claimant's Bond

A claimant may purchase this bond to provide for the return or redelivery of property if ordered to do so by the court.

Conservator

A fiduciary appointed by a court to manage the estate of a person who has been declared incompetent.

Continuation Certificate

A document evidencing continuation of a bond beyond the stipulated termination date.

Continuous Bond

A bond that does not contain a fixed expiration date.

Cost Bond

One required of a litigant guaranteeing, subject to the terms of the bond, the payment of the costs of the litigation, such as fees of the court clerk or sheriff.

Counter Replevin Bond ("Defendant's Bond to Recover Property Replevied")

A bond to regain possession of property, pending outcome of the court action. Subject to its terms, this bond guarantees redelivery of the property to plaintiff, if ordered to do so, or otherwise to comply with a court order or judgment.

Court Bond

A general term embracing all bonds and undertakings required of participants in a lawsuit permitting them to pursue certain remedies in the courts.

Defendant's Bond

Bond given by defendants in litigation enabling them to retain or regain possession of property, pending the outcome of a suit, or to suspend the execution of a judgment, order, or decree to a court while the defendant seeks reversal of an unfavorable judgment in a higher court.

Definite Term Bond

A bond containing a fixed expiration date.

Discharge Attachment Bond ("Defendant's Bond to Discharge or Release")

The bond issued on behalf of the Defendant whose property has been attached and wishes to have the property returned. A defendant acquires this bond to cover the payment of any judgment that may be rendered against him with interest and costs.

Earned Premium

The amount owed on a bond which would compensate the Surety for the protection provided until the coverage expired.

Executor

A fiduciary appointed by a probate court to manage and/or distribute the assets of a deceased person's estate; typically named in the will.

Faithful Performance Bond

A type of bond where the coverage, subject to the specific terms of the bond, includes protection against loss due to dishonest or fraudulent acts and/or failure of the principal to perform their duties as prescribed by law.

Federal Bond

These are license and permit bonds which include Immigrants' Bonds, Internal Revenue/Excise Bonds (manufacturers, distillers, brewers, winemakers, etc.), and Customs Bonds.

Fiduciary

A person who occupies a position of a special trust and confidence, particularly one who handles the affairs or funds of another.

Fixed Penalty Bond

A bond for which the limit is expressed in terms of a stated and definite sum of money. Compare with Open Penalty Bond.

Garnishment Bond

When money or property belonging to a defendant has been attached while in the hands of a third party, the proceeding is called a garnishment and the third party is called the garnishee. The bond is similar to a release of attachment bond.

Guardian

A fiduciary appointed by the court to manage the person and/or the estate of a minor or an incompetent.

Indemnify

As used in the Surety context, indemnify means to hold the Surety harmless for any loss or expense it may sustain or incur as a result of furnishing a bond.

Indemnitor

One who enters into an agreement with a Surety to hold the Surety harmless from any loss or expense it may sustain or incur on a bond issued at its request.

Indemnity Agreement

A contract by which one party agrees to protect another against loss.

Injunction Bond ("Defendant's Bond to Dissolve" or "Release of Injunction")

When an injunction has been issued, the court may order the injunction dissolved upon the purchase of a bond guaranteeing to pay, subject to the terms of the bond, such damages as the plaintiff may sustain as a result of the performance of the act originally enjoined.

Injunction ("Plaintiff's Bond to Secure" or "Temporary Restraining Order")

An injunction is a judicial process whereby the defendant is required to do or refrain from performing a particular act. The granting of an injunction may be conditioned upon the plaintiff purchasing a bond to indemnify the defendant against loss in case it is decided that the injunction should not have been granted.

Judicial Bond

A general term applied to all bonds filed in court.

License and Permit Bond

Bonds required by law or ordinance as a condition precedent to the granting of a license to engage in a particular business or a permit to exercise a specific privilege.

Lost Instrument Bond

A bond purchased by the owner of a valuable instrument, such as stocks, bonds, promissory notes, certified checks, etc. which protects the obligee against loss should a duplicate be issued.

Open Penalty Bond

This refers to any bond that lacks a penal sum, thus making it impossible to predict the total exposure. Compare with Fixed Penalty Bond.

Penal Sum

See "Bond Limit".

Permit Bond

See "License and Permit Bond".

Plaintiff's Bond

A bond purchased by plaintiffs in litigation enabling them to exercise certain privileges with permission of the court, such as Attachment, Injunction, and Replevin.

Power of Attorney

Authority given to a person or corporation to act for and obligate another. In corporate suretyship, an instrument under seal which appoints an Attorney-in-Fact to act on behalf of a Surety in signing bonds.

Probate Bond

A bond that guarantees the honest accounting and faithful performance of duties by administrators, executors, trustees, guardians and other fiduciaries.

Public Official Bond

Subject to the specific terms of the bond, these provide that the principal, or Federal official, will faithfully perform his/her official duties and will account for all funds entrusted to his care.

Removal Bond

Guarantees payment of costs in the higher court if it is found that the case was improperly removed. A similar bond may be required on removal of a case from one state court to another state.

Replevin – Plaintiff's Bond to Secure

Replevin is an action to obtain a piece of property that has not been paid in full. The Plaintiff claims that the property belongs to them. The replevin bond, subject to its terms, guarantees the return of the property, if return is ordered, and the payment of all costs and damages.

Rider

A form containing special provisions that is added to a bond. Amendments to an insurance contract are referred to as endorsements.

Statutory Bond

A term generally used describing a bond given in compliance with a statute. Such a bond usually carries the liability the statute imposes on the principal and the surety.

Term

The period of time for which a bond is issued.

Trustee

An individual or entity, such as a bank, that holds legal title to property or manages the assets for a beneficiary.



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