



From the Other Side - Surety Insight for Appeal Bonds

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As a general overview, what does the process of getting an appeal bond look like?

Every case is different, and you'll hear that a lot, but at its most basic, the process can be boiled down to two stages.

We start by gathering underwriting information, which will largely be done from a financial review perspective. The insurance details, latest annual financial statements, or other information related to the judgment debtor's situation are to be provided.

Once a surety has enough underwriting information, it will offer terms, which is where things get interesting and the second, potentially more time-consuming stage begins. Terms can vary anywhere from immediate willingness to issue the bond to a requirement for collateral – typically cash or a letter of credit (LOC), but sometimes other options are available. The ball is back in the requesting party's court at that point to decide how to proceed and meet the terms.

How does a surety decide what type of underwriting information to review?

There are three types of cases: insured cases, uninsured cases for companies, and uninsured cases for individuals.

If a reputable insurance carrier is willing to indemnify for the bond, then underwriting is likely limited to the insurer's credit rating. These bonds are simple and easy.

For uninsured cases for companies, the company will have to undergo a financial review to determine if it qualifies

for the bond being requested on an uncollateralized basis.

And for uninsured cases for individuals, collateral is nearly always required.

What does the surety look for in the financial statements to decide if a company qualifies?

An underwriter will want to determine that the company is a) solvent without any risk of bankruptcy looming and b) sufficiently liquid to pay the judgment. The balance sheet, income statement, and cash flows statement play defining roles that demonstrate if a certain bond amount can be easily paid without the loss affecting the company's operations.

Underwriters prefer reviewing audits, which are reliable and accurate, but not every company has an annual audit, which is fine. CPA or third-party prepared statements are the next best thing, whereas internally prepared excel spreadsheets leave the door open to questionability because they can be drafted by anyone to say anything. Tax returns unfortunately do not provide all the underwriting info needed for an appeal bond though.

The bond amount dictates the level of underwriting. Higher bond amount requests receive more scrutiny.

How long does the financial review take and how quickly can the bond be issued?

The financial review should be done the same day the numbers are submitted, but a larger bond might require more time.

The whole appeal bond process can take anywhere from a few minutes to a week or longer depending on what is required of the principal. Sureties move quickly and terms can be given in a day, but if collateral is required then the procedure will take time.

The financial review is the critical "jumping off point" to learn about cost, indemnity requirements, and whether or not collateral is necessary. This can be done unofficially from a high-level perspective by having a conversation with an industry professional or by formally submitting the underwriting information to obtain official terms from the market.

It is good to hear that the process can move swiftly in some situations, but how do we know if it will take one day or one week or more?

Speed of issuance depends on the underwriting. A large company that qualifies easily for a small bond because of its financial wherewithal is more reliable to pay the judgment than an individual without any assets, and the surety's requirements will reflect that.

With a lower bar to clear, the attorney might only need to prepare the bond wording. In other cases, various types of indemnity or counter security will need to be given where it can take time to get the appropriate signature. Of course, for individuals and companies that do not qualify on an unsecured basis, there is also the 800-pound gorilla in the room: Collateral.

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Bonds issued based on cash collateral can still be done in a day by simply wiring the funds and signing the necessary supporting documentation. Securing a bond with an LOC will take more time because banks tend to move at their own pace. We find that clients need from one day to a week or more depending on their bank to arrange for an LOC.

What if someone does not qualify for the bond based on financials? What options might they have?

The surety can always issue an appeal bond by holding 100% collateral – typically cash or a letter of credit. Real estate is an option in some instances, but it is expensive and a slow process that requires up front costs. Joint collateral control over a brokerage account can be arranged so that marketable securities do not have to be sold. This can also be expensive and significantly more collateral must remain in the account than the bond amount to protect the surety from any market fluctuations.

Mostly all bonds secured by collateral are done with cash or a letter of credit.

You mentioned individuals earlier. What does the situation look like when an individual takes a judgment personally without any insurance?

For the most part, individuals must post full collateral. There are situations of high

net worth individuals getting away without that, but that is certainly the exception and not the rule. I hesitate to even mention it, but it can happen.

What if a judgment is likely to be overturned upon appeal? Would the surety make considerations?

The arguments of the case are not considered during surety underwriting because judgments in general are less often overturned than upheld. It is also important to note that typical appeal bond claims result in full payment of the bond. They are not often made on a partial basis.

It is assumed that each appeal will be lost with the full bond amount to be paid by the judgment debtor, so the question is not If they *have* to pay, but rather If they *can* pay.

Please clarify the purpose of the bond because clients occasionally ask if the bond will pay the judgment.

Bonding companies are licensed third-party guarantors that provide surety to an obligee that *another party* (the bond principal/judgment debtor) will, in fact, pay the judgment upon appeal if required to do so. If the judgment creditor demonstrates that it cannot timely collect the judgment because of the judgment debtor's insolvency or some other reason, then the surety will at that time step in to pay.

Bond rates are only a paltry sum – think somewhere near 1% and not 10% – and their obligations more closely resemble a letter of credit than an insurance policy. They are not designed to pay the judgment in the first instance, whereas an insurance policy would.

What further information should attorneys and insurance carriers be aware of?

Insurance carriers would be best served by developing their own surety relationships. They do not typically need to provide financial information when they are responsible for a judgment, and their requests can be quickly reviewed.

Attorneys should be aware of the party that is responsible for paying the judgment and whether or not an insurance carrier has confirmed responsibility. If punitive damages are being assessed, then the surety will want to know about that up front.

Non-insurance companies should be prepared to disclose as much financial information as possible for fastest turnaround and best rates. Underwriters are much more comfortable approving a bond when they feel like they have all the details.

Also, bond costs are recoverable in some states including California. This knowledge can be used as a negotiating tactic if your opponent is uncertain if his judgment will remain intact.

Most importantly, bond agents are available to discuss a case either in detail or simply in general to give you an idea if a party can qualify for an appeal bond on an uncollateralized basis and what the path forward might look like. A brief, 5-minute conversation can go a long way. ▾



Conway Marshall has practiced as a Surety Bond Agent with International Sureties, Ltd. since 2009 and specializes in Court Bonds.

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