



An Introduction to Probate Bonds: A Guide for Bond Producers and Other Surety Professionals

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Presenter Biography

- Jeffrey M. Frank is a founding shareholder and the managing partner of Alber Crafton, PSC, a fidelity and surety law firm, practicing in Troy, Michigan. He is licensed to practice in Michigan, and is also admitted to the United States District Court, Eastern and Western Districts of Michigan and the Sixth Circuit Court of Appeals.
- Jeffrey M. Frank graduated from the University of Michigan, Cum Laude, in 1989 with a degree in Organizational Management and from the Boston University School of Law in 1992. Jeff concentrates his practice primarily in the area of Fidelity and Surety Law as well as Commercial and Probate litigation. He served as the co-chair for the Surety Program regarding Probate Bonds at the ABA Annual Meeting in August of 2001. In connection with the program, Jeff is editor of *The Law of Probate Bonds, first edition*. He is also the editor of *The Law of Probate Bonds, second edition* that the ABA released in January of 2015. These books are the only publications specifically devoted to probate bond claims.
- He is a member of the Fidelity and Surety Steering Committee of the Defense Research Institute for which he has chaired the annual Roundtable Meeting and is also a member of the National Bond Claims Association, the Surety Association of Michigan, the Northeast Surety and Fidelity Claims Association, and the inaugural Attorney Advisory Committee of the National Association of Surety Bond Producers. Jeff sits on the Board of Directors of the Wayne County Probate Bar Association.

Introduction

- Probate Bonds are used in estates to protect:
 - Ward
 - Creditors
 - Heirs
- Common in some jurisdictions, but not many

Bonds?

- At first, most people who need these bonds have no idea what they are.

Types of Estates/Probate Bonds

- Guardianship/Conservatorship of a Minor
- Guardianship/Conservatorship of an Adult
- Decedent's Estate
- Trust
- Sale of Real Estate

Underwriting/Issuing Probate Bonds

- Where to find a producer
 - Courthouse
 - Personal producer
 - On line
- Bond Application/Indemnity Agreement
 - Critical information/issues
 - Signed by principal
 - Explanation of principal's duties
 - Past experience of fiduciary
- Character and qualifications of applicant

Application/Indemnity Agreement

- Must obtain applicant's:
 - signature
 - Employer, income, net worth
 - Credit Report

HEREINAFTER CALLED THE COMPANY BOND NO. _____

APPLICANT

NAME: _____ INDIVIDUAL CORPORATION
 ADDRESS: _____
 CITY, STATE, ZIP: _____ PHONE: _____
 HOW LONG AT CURRENT ADDRESS: _____ SOCIAL SECURITY NUMBER: _____
 DRIVERS LICENSE #: _____ DRIVERS LICENSE EXPIRATION DATE: _____
 DATE OF APPOINTMENT: _____ DATE OF BIRTH: _____
 RELATIONSHIP TO ESTATE: _____ PRIOR FIDUCIARY EXPERIENCE: _____
 APPLICANTS NET WORTH: _____ ANNUAL INCOME: _____
 HAVE YOU FILED A PERSONAL BANKRUPTCY? _____ DO YOU OWN YOUR OWN HOME? _____
 HAVE YOU HAD A CRIMINAL CONVICTION? _____ HAVE YOU LOST A CIVIL JUDGEMENT? _____
 EMPLOYER: _____ MARITAL STATUS: M S D W

BOND INFORMATION

NAME AND ADDRESS OF COURT: _____ DOCKET #: _____
 TYPE OF BOND: _____ BOND AMOUNT: _____ EFFECTIVE DATE: _____
 BOND PREMIUM: _____ ANNUAL PRE-PAID PRE-PAYMENT PERIOD: _____
 HAS ANOTHER SURETY DECLINED OR CANCELED THIS BOND? IF YES, PLEASE EXPLAIN _____
 DOES THIS REPLACE A PRIOR BOND? Yes No IS THIS AN ADDITIONAL BOND? Yes No ORIGINAL BOND # _____
 WILL JOINT CONTROL BE EXERCISED? Yes No IF YES, BY WHO _____
 DID DECEDENT LEAVE A WILL? Yes No IS A TRUST CREATED BY THE WILL? Yes No (If yes, please attach a copy of the trust)
 WILL THE ESTATE FUNDS BE USED FOR THE MAINTENANCE OF THE WARD Yes No Monthly Allowance: _____

ATTORNEY INFORMATION

NAME AND ADDRESS OF ATTORNEY: _____
 PHONE NUMBER: _____ BAR NUMBER: _____
 DOES THE ATTORNEY APPEAR ON THE ORIGINAL PETITION AND/OR HAVE THEY FILED AN APPEARANCE IN THE ESTATE? Yes No
 WHAT DUTIES WILL THE ATTORNEY PERFORM? _____
 ATTORNEY RECOMMENDATION OF CLIENT: _____

ESTATE INFORMATION

NAME OF ESTATE: _____ SSN OR TAX I.D. #: _____
 DATE OF BIRTH OF WARD: _____ DATE OF DEATH OF DECEASED: _____
 HOW DOES THE PERSONAL REPRESENTATIVE SHARE IN THE ESTATE? (decedents estates only) _____
 NAMES OF HEIRS AND/OR BENEFICIARIES - attach list if necessary _____

ASSETS OF THE ESTATE: CASH: \$ _____ REAL ESTATE: \$ _____
 OTHER ASSETS \$ _____ MONTHLY INCOME: \$ _____ DEBTS/LIABILITIES: \$ _____

	YES	NO		YES	NO
VETERANS CASE? IF YES, V.A. CASE #	<input type="checkbox"/>	<input type="checkbox"/>	WILL APPLICANT OPERATE A BUSINESS FOR THE ESTATE?	<input type="checkbox"/>	<input type="checkbox"/>
IS APPLICANT INDEBTED TO THE ESTATE?	<input type="checkbox"/>	<input type="checkbox"/>	IS APPLICANT A SUCCESSOR FIDUCIARY?	<input type="checkbox"/>	<input type="checkbox"/>
IS THE BOND REQUIRED ON THE DEMAND OF A CREDITOR OR HEIR?	<input type="checkbox"/>	<input type="checkbox"/>	HAS THE APPLICANT HAD PRIOR CUSTODY OF ASSETS IN ANY CAPACITY?	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATION: _____

PAYMENT MUST BE INCLUDED WITH APPLICATION

GENERAL BOND CONDITIONS

	YES	NO
Do you understand that the bond remains in effect until a final discharge is issued by the court and delivered to the surety?	<input type="checkbox"/>	<input type="checkbox"/>
Do you understand that the court must order all increases and reductions of the bond?	<input type="checkbox"/>	<input type="checkbox"/>
Do you understand that the bond premium is to be paid annually on the renewal date of the bond?	<input type="checkbox"/>	<input type="checkbox"/>
Do you understand that you must retain an attorney throughout the administration of the estate?	<input type="checkbox"/>	<input type="checkbox"/>
Do you understand that this bond is a contract between you and the surety company, and that you are personally responsible for the payment of the bond premium(s) including renewals?	<input type="checkbox"/>	<input type="checkbox"/>

AGREEMENT OF INDEMNITY

The undersigned applicant and indemnitors hereby request The Company to become surety for the above bond. In consideration thereof, the undersigned hereby certify the truth of all statements in the application and attachments and jointly and severally agree:

- 1) to pay the usual premiums, including continuations, renewal premiums, and earned premiums, on or before the renewal date.
- 2) to completely INDEMNIFY the company from and against any liability, loss, cost, attorney's fee and expense whatsoever which the company shall at any time sustain as surety on this bond, of for the encroachment of this agreement.
- 3) that the Company shall, without notice, have the right to amend the penalty terms and conditions of any bond issued for the undersigned and this agreement shall apply to any such amended bond.
- 4) that the Company shall have the right to adjust, settle or compromise and claim, demand, suit or judgment upon said bond(s) and it's decision in good faith;
- 5) Upon demand by the Company, to deposit as collateral security, funds or other collateral/assets satisfactory to the Company, with the Company in amount sufficient to satisfy any claim against the Company by reason of such suretyship.
- 6) that if said bond is cancelable, this agreement may be terminated as to subsequent liability, upon written notice to the Company and with written confirmation from the Company stating when such termination will take effect.
- 7) an itemized statement of loss and expense incurred by the Company, sworn by and officer of the Company, shall be prima facie evidence of the fact and extent of the liability of the undersigned to the Company.
- 8) that the Company may decline to become surety on any bond and may cancel or amend any bond without cause and without any liability which might arise therefrom;
- 9) that the applicants and indemnitor(s) hereby authorize the Company as designated to make such pertinent inquiry as may be necessary from financial institutions, person, firms and corporations in order to confirm and verify information referred to or listed on this application.

This includes, but is not limited to credit reports and histories and to confirm the bank balances claimed and all other items on any financial report furnished until all liability of the company for suretyship or claim obligations expire.

Special Notice for Bonds Written through Merchants Bonding Company: This Agreement shall constitute a Security Agreement to the Company and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect. This Agreement shall, if recorded, constitute a consensual lien upon any and all real estate owned by the undersigned at the time of such recording. However, the filing or recording of this Agreement shall be solely at the option of the Company, and the failure to do so shall not release or impair any of the obligations of the undersigned under this Agreement or otherwise arising, nor shall such failure be in any manner in derogation of the rights of the Company under this Agreement or otherwise. The use of this Agreement as a Security Agreement, Financing Statement or consensual lien shall in no way abrogate, restrict or limit the rights of the Company under this Agreement or at law or in equity. The undersigned waive all right to claim any property, including homestead, as exempt from levy, execution, sale or other legal process.

Signed this _____ day of _____, _____

TYPED NAME OF APPLICANT

Witness: _____
(signature)

By **X** _____
(signature of individual)

Witness: _____
(signature)

By _____
(signature)

In consideration of the execution by the Company of the bond herein applied for, the undersigned jointly and severally join in the foregoing indemnity agreement.

Witness: _____ Indemnitor

AGENTS RECOMMENDATION (This section for Agency Use Only)

BOND EXECUTED BY AGENT COMPANY TO EXECUTE BOND

Signature: _____

Control of Accounts

- Joint Control with:
 - Surety/producer
 - Attorney

- Restricted Letters of Authority

- Proof of Restricted Account (from financial institution)/Restricted Account Agreement

Attorney Involvement

- Some sureties require attorney involvement
 - During entire pendency of administration
 - Exercising joint control
 - Provide notice if they withdraw

Size of Estate

- Size matters
 - Less detailed underwriting for “smaller” estates
 - Detailed underwriting for “larger” estates

Penal Sum of Bond/Assets of Estate

- Penal sum based on:
 - Liquid assets
 - Personal property
 - Annual income
- Know assets to determine:
 - How to protect
 - Penal sum is appropriate

Co-Fiduciaries

- Obtain a signed application/indemnity agreement from each co-fiduciary
- Issue one bond

Underwriting Red Flags

- The nominated fiduciary is not represented by an attorney.
- The applicant is not qualified to serve as bond principal.
- The surety is being asked to issue a bond in an estate that is in the midst of being administered.
- There are disputes between family members and heirs (especially those that are being litigated).
- The fiduciary is running an ongoing business within the estate.
- There is a substantial lapse of time between the date of death and the appointment of the fiduciary to administer the estate.
- There is a high penal sum without appropriate controls of estate assets in place. (Each surety has its own threshold for a large bond.)
- The fiduciary has long-term financial obligations.

Premiums

- Collected on an annual basis
 - Non-payment is not a basis to cancel the bond
 - ❑ Bond can only be cancelled by Order of the court
 - ❑ Non-payment is a red flag and may indicate a problem

- Exception – minor’s estate can be pre-paid to the minor’s 18th birthday

Claimants

- Successor fiduciary
- Devisee/beneficiary/heir
- Creditor (to whom the estate is indebted)
- Outside third party (based on the breach of an agreement, contract, or in other situations)
- Ward
 - if he or she reaches the age of majority
 - if an adult is restored to competency

Types of Claims and Damages

- Failure to file an Inventory or Accounting
- The principal's failure to properly marshal assets (collect the estate's assets).
- Inappropriate expenditures by the principal (often not for the benefit of the ward).
- A decrease in value of assets held by the estate, often securities, when they should have been sold.
- Failure to properly run a business owned by the estate.

Types of Claims and Damages (cont.)

- Self-dealing or conflict of interest when the principal acts in his or her own interest instead of the interest of the estate.
- Attorneys' fees and costs incurred in pursuing a claim against the principal and surety.
- Reliance on counsel (often when a principal gets bad advice from his or her attorney when administering the estate).
- Failure to file or pay taxes (resulting in interest and penalties owed by the estate).

Types of Claims and Damages (cont.)

- Theft of assets from the estate.
- Failure to maintain insurance on assets owned by the estate (resulting in a claim if there is, for example, a fire and an uninsured house owned by the estate burns).
- Failure to collect rent from tenants living in property owned by the estate.
- Inappropriate charitable contributions.

Types of Claims and Damages (cont.)

- Inappropriate settlement of a claim (often when the settlement is not approved by the court or not in the best interest of the estate).
- Excess bond premiums (often when the fiduciary fails to timely complete the administration of the estate, which keeps it open longer than necessary, causing the estate to incur additional expenses).

Practical Guide to Handling Probate Bond Claims

- Review file materials
 - Correspondence
 - Pleadings
 - Underwriting
 - Assets
 - Personal information about principal
- Review Court Docket/Probate Court File
- Resolve early
- Order cancelling bond and releasing surety

Conclusion

- Get information about the principal and estate early
- Contact the surety with questions ASAP
- Understand the basic probate process

Questions?

If you do not have the opportunity to have your question addressed during the seminar, you may contact the presenter directly:

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