



# Bail 101

# BAIL 101

By Jerry Watson, AIA Chief Legal Officer

## INTRODUCTION

This paper is designed and written for people who are new to the bail bond business or are established and have little training on the subject of bail could also benefit from this material.

This article is intended to be neither scholarly nor impressive. Its sole purpose is to present, in the simplest terms information to assist a person new to the bail bond business familiarity and knowledge regarding the bail bond business.

## DEFINITIONS

Here we will cite some key bail bond terms, an adequate understanding of which is absolutely necessary to accomplish our purpose. Pay careful attention and be sure to use this section as a reference because any misunderstanding later on is going to operate as a hindrance when attempting to fully comprehend the information that follows.

The following are the key terms and their definitions:

- **Bail.** The security necessary to be put up with the court in order for a person who has been arrested to be released from custody.

Example: Bill Smith is pulled over by a police officer for driving recklessly. During the course of his investigation, the officer can see that Bill is intoxicated and a Breathalyzer confirms this. Bill is subsequently arrested and booked at the local jail. He is then taken before a judicial officer (a judge or a magistrate) where he is advised that his "bail" is set at \$10,000.00. Now for Bill to get out of jail, a person who has been pre-approved to provide such services must come down to the jail and put up the acceptable security in the amount of \$10,000.00. This is "bail."

- **Defendant.** A person against whom an action is brought. In this case, it is Bill.
- **Bail Bond.** A one-page written contract promising to pay the bail amount if the defendant does not come back to court when he is supposed to.
- **Surety.** The insurance company approved to put up the bail bonds to get defendants released from jail.

In Bill's case, the state gets \$10,000.00 if Bill doesn't come to court and the surety is the entity promising to pay that amount to the state if Bill doesn't show.

- **Bail Agent.** The person who goes to the jail and physically puts up the bail bond in order to get Bill released.

This person must be licensed by the state to perform such a service. The bail agent also operates under contract with the surety and for their services the bail agent receives a portion of what Bill pays to get his bond posted.

- **Power of Attorney.** A written document attached to the bail bond (by the bail agent) that communicates to the court as well as the local authorities that the bail agent reserves the right to present the bail bond to the jail and sign the surety's name to that bail bond.

Remember, the bail bond is a written contract between the surety and the state and – to legally bind the surety – it must be signed by the surety or someone authorized to sign for the surety. The power of attorney is proof that the bail agent has the proper authority to bind the surety, making it the responsible party on the promise to pay.

- **Forfeiture.** An order from the court that is drawn up when the defendant misses his scheduled court appearance.

This order means that the bail bond is no longer in effect. Bill is not in custody, but he is no longer authorized to not be in custody because his bail bond is no longer active. Now Bill has an open warrant for his arrest because now he is a fugitive.

- **Fugitive.** A person who is not in custody, but is supposed to be.
- **Fugitive Recovery Person.** A person responsible for locating the fugitive defendant and bringing them back to custody.

This person does not have to be an actual peace officer.

A bail agent has the right to apprehend the fugitive and surrender him back into custody themselves or can do so by contracting a third party person to fulfill the fugitive warrant. These third party fugitive recovery persons are often called "bounty hunters" because traditionally they take a percentage (usually 10%) of the amount of the bond for apprehending and surrendering the defendant back into custody.

- **Motion to Set Forfeiture Aside.** A formal document filed with the court by the surety's attorney. It is an attempt to convince the court that it should not make the surety pay the entire bail amount because the defendant had a very good excuse for not being in court when he was supposed to be.

Maybe Bill had an automobile accident on his way to court. Maybe Bill was taken to the hospital the night before with a ruptured appendix. Maybe Bill had been picked up for drunk driving yet another time and was in jail in another county. Maybe Bill is dead. There can be all kinds of reasons, some of them quite legitimate, as to why Bill missed his court date. The surety therefore would want the court to set the forfeiture aside.

Many states have different procedures regarding these types of actions and a seasoned bail agent can explain these very well for the jurisdiction in which they operate.

- **Indemnitor.** A person who co-signs someone else's note, promising to pay should the borrower fail to honor the agreement. The indemnitor is also known as the "co-signer."

In the bail bond business, an indemnitor signs an agreement at the time the bail bond is made. The indemnitor's signature signifies a promise that if the defendant fails to appear and the bail has to be paid, then they as the acting co-signer will pay that bond loss.

Besides granting a bail agent the necessary guarantee needed to get the bond made, an indemnitor can also be a good friend to have as they will usually assist the bail agent wherever needed because they do not want to suffer any financial loss.

- **Collateral.** The actual security put up by the indemnitor to be used if the defendant fails to appear and the surety is called upon to pay the bond loss.

Full or partial collateral is generally taken on all large bonds (approximately \$10,000.00 and over) and many bail agents require collateral to support the indemnitor's promise on smaller bonds. Collateral may be in the form of cash or some tangible item, such as real estate, jewelry, stocks, bonds, or titles to chattel such as boats, trucks or automobiles.

For example: Let's say Bill doesn't appear on his \$10,000.00 bond, the bond is then forfeited and the full \$10,000.00 bail must be paid by the surety. Let's also say that Bill's uncle was an indemnitor on the bond and he put up a \$5,000.00 certificate of deposit to partially secure the full \$10,000.00 risk. The \$5,000.00 would be used, and Bill's uncle, as the indemnitor, would be responsible for the remaining \$5,000.00 bail payment.

- **Bail Agent Indemnitor.** Bail agents are also liable as indemnitors, under their written contract with the surety, promising to pay the bond loss if there is one.

The idea is for the surety to never have to pay on a bail bond because the surety gets a very small percentage of what the bail agent collects from writing the bond. Since the bail agent takes the majority of the money, the bail agent takes all of the risk and stands to lose whatever he cannot collect from the indemnitor.

So, the bail agent is protected against loss by the indemnitor and the surety is protected against loss by the indemnitor and the bail agent indemnitor.

- **Premium.** A small percentage of money the bail agent pays to the surety.
- **Build-Up Fund.** A smaller percentage of money (less than the premium) that is also paid by the bail agent to the surety to further guarantee the surety in the event the surety is called upon to pay the bond loss.

For example: For every \$1,000.00 worth of bond liability the bail agent writes on the surety, the bail agent will pay the surety \$20.00 (2% of the bond amount) as premium. The bail agent would also pay the surety a smaller amount; say \$10.00 (1% of the bond amount) as build-up fund. This build-up fund actually belongs to the bail agent, but the surety holds it and has the right to use it to prevent the surety from having to pay a loss itself.

- ***Bond Report.*** A written report sent by the bail agent to the surety, detailing what business the bail agent wrote on the surety during that reporting period.

The bail agent follows up with a check for the surety's premium and another check for the build-up fund. When the surety gets this report, it immediately sends the bail agent a replacement supply of the powers of attorney that the bail agent used in writing the bonds reflected on the report.

This concludes the key definitions used in the bail bond business. A good comprehension of these terms is the first step toward understanding the ins and outs of bail.

## HOW IT WORKS

Let's go back and revisit Bill Smith's story using our key terms as they have been defined. These words will be in italics, so the reader can better appreciate their function.

### BILL'S STORY

After attending the company holiday party, Bill got into his car to drive home. Unfortunately, Bill did not exercise good judgment, failing to realize that he was a little more impaired than he thought. Next thing he knows, his erratic driving has caught the attention of a local police cruiser and he finds himself pulled over on the side of the road. The peace officer gives him a sobriety test and determines that Bill is quite drunk. Bill's thoughts race on the long ride down to the station. "Not again. I wonder how much my *bail* will be this time."

Bill is booked into the jail and the next morning, he is put before a magistrate who sets his *bail* at \$10,000.00.

Bill calls his wife, Mary, and relays the bad news of his newly instated \$10,000.00 *bail*. "But Bill, we don't have that much money!", she exclaims. He tells her to call a bail agent to put up a *bail bond* and get him out.

Mary promptly speaks with a *bail agent* who tells her she needs come down to the *bail agent's* office to arrange for the making of the *bond*.

Mary meets with the *bail agent* and the *bail agent* outlines the conditions under which they will be able to go and post a *bond* to get Bill out of custody. He explains to Mary that she will have to pay 10% of the \$10,000.00 *bail* (\$1,000.00) and that she, or someone else on Bill's behalf, will have to put up *collateral*. Mary informs the *bail agent* of the \$3,000.00 in a savings account, but that's all they have. The *bail agent* follows up by asking her if she has another responsible party who could serve as *indemnitors/co-signers*. Mary says Bill's employer, Big Sack Concrete, would probably co-sign in order to get Bill back on the job. Mary makes a call, and sure enough, Bill's boss comes down and signs an indemnity agreement for any bond loss and/or incidental expenses that may be incurred should Bill not make his scheduled court appearances.

Having all the paperwork completed the *bail agent* then: (1) goes to the jail, (2) fills out the *bail bond*, (3) signs the *bail bond* as the bail agent of the *surety*, (4) gives the *bond* to the jailer and, finally, (5) waits for Bill to be released.

Generally, the *bail agent* would take Bill to the *bail bond* office where the *bail agent* will explain to Bill and Mary (and perhaps the *indemnitor/co-signer*) all of the responsibilities pursuant to the conditions and terms to which they have agreed.

Mary goes home and Bill and his boss go to the cement plant. Weeks pass and Bill's first scheduled court appearance is this coming Tuesday at 10:00 A.M. Sure enough, Bill got drunk again and missed his court date.

Once Bill failed to appear, the judge declared the *bond forfeited* and ordered the issuance of a bench warrant, thus declaring Bill a *fugitive*.

The *bail agent* calls Mary and Bill's boss and tells them Bill is in trouble and that they need to get him down to the bond office immediately. Twenty-four hours later, still no Bill.

The *bail agent* then calls the *fugitive recovery person* ("*Bounty Hunter*") he normally uses under such circumstances. He instructs that person to get a copy of the warrant, go find Bill and bring him back to jail.

Bill, knowing that the third time is the charm, and that he will likely be serving time in the penitentiary, flees to Canada.

The *fugitive recovery person* learns of this and goes to considerable expense to try and locate Bill in Canada so he can be brought back into proper custody. A few months of this activity goes by, and despite the fact that the *bail agent* has spent \$4,000.00 on the *fugitive recovery person's* expenses, Bill is still at large.

The *bail agent* calls his lawyer and asks him to file a *motion to set the forfeiture aside* as an alternative to reduce the amount that will have to be paid because of all the money the *bail agent* has spent trying to locate Bill. The lawyer files the motion. The court denies it and enters a judgment for the state. The state demands payment from the *surety* of the full \$10,000.00.

The *surety* advises the *bail agent* of the payment demand and the *bail agent* pays the \$10,000.00.

Now the *bail agent* is out a total of \$14,000.00 (\$10,000.00 for *bail* and \$4,000.00 for *Fugitive Recovery Person* expenses). In order to recoup his money, the *bail agent* claims Mary's \$3,000.00 *collateral* deposit and uses it to offset some of his expenses, leaving him still with \$11,000.00 in out-of-pocket expenses.

The *bail agent* then makes a demand upon both Mary and Bill's employer for the \$11,000.00. Neither of them responds.

The *bail agent* calls his lawyer back and has him file a lawsuit against Mary and Bill's employer for recovery of the \$11,000.00, plus his attorneys' fees for collection, all part of the indemnity agreement terms and conditions as agreed to and signed by Mary and Bill's employer.

Between Bill's boss and Mary, they work out a payment plan with the *bail agent* to give him \$500.00 a month (all they can raise between themselves each month) until the entire \$11,000.00 is paid. The *bail agent*, perhaps having little choice and under advice of his attorney, accepts the payment plan.

Bail is a risky business.

The *bail agent* sends in his production report and he lists Bill's *bond*. He sends the *surety* one check for *premium* of \$200.00 (2% of the *bond* amount) and one check for *build-up fund* of \$100.00 (1% of the *bond* amount). The *surety* sends the *bail agent* back a new \$10,000.00 replacement *power of attorney*.

## **CONCLUSION**

The bail bonding business is filled with various twists and turns. However, the materials presented here are designed to assist the reader with knowledge regarding the bail bond business.

*All rights regarding the content herein are reserved. All information presented in this article is owned exclusively by AIA except where otherwise noted. No portion of this article may be reproduced without express written consent. Any references to this material must contain an appropriate citation to AIA.*

FOR MORE INFORMATION ON THE AIA  
COMPANIES, PLEASE CONTACT:

ALLEGHENY CASUALTY COMPANY  
INTERNATIONAL FIDELITY INSURANCE COMPANY  
ASSOCIATED BOND

800.935.2245

[WWW.AIASURETY.COM](http://WWW.AIASURETY.COM)  
[INFO@AIASURETY.COM](mailto:INFO@AIASURETY.COM)

**AIA**  
EMPOWERING AGENTS