



Criminal and General Division

Surety

What is a Surety?

A surety is a person who agrees to forfeit a sum of money if another person (a defendant) fails to abide by their conditions of bail or fails to appear before a court as required. The surety can be required to deposit money with the court immediately, or provide an undertaking to pay if ordered.

Responsibilities of a Surety

In agreeing to act as surety for a person you are undertaking that you are willing to be responsible for ensuring the defendant's compliance with their order for bail. If the person fails to comply with that bail order you may become liable to pay some or all of the money to the Crown. You may be undertaking that the defendant comply with all bail conditions, or one or more only. You should check the terms of the undertaking carefully.

You should be in court each time the defendant is bailed to appear.

Forfeiture (Estreatment of Surety)

If the alleged offender fails to comply with their bail order, either by failing to attend court OR by failing to abide by any conditions attached to their bail, an application may be made to the court (by Police or the prosecuting body) for forfeiture of the amount specified in the bail document.

A copy of this application will be served upon the surety and the surety will be given the opportunity to attend court at the hearing of this application.

The Magistrate may order that some or all the specified amount be forfeited to the Crown. This means that the surety will have to pay the amount in a similar manner to a fine that is ordered to be paid by the court. If the amount is not paid the penalty will be enforced in the same manner as a fine.

Will Some or All of the Money be Forfeited?

This will depend on the circumstances including the evidence on the following points:

- Proof by the Police or Crown that the defendant breached bail, proof of the recognisance (undertaking) and of service of the application on the surety.
- The extent to which, if at all, the surety was at fault for the breach of bail.
- How soon the breach or expected breach was reported to Police and how helpful the surety has been to locate/arrest the defendant.
- How soon other relevant bail breaches by the defendant have been reported.
- Ability to afford the loss of the money.

- Whether the defendant is still at large, having absconded from bail.
- It may be relevant whether the surety was present in court on the appointed date, even if the defendant is not.

Rights of a Surety

If a person who has agreed to act as surety believes, on reasonable grounds, that the defendant has contravened, or is about to contravene, a condition of bail the surety may arrest that person and take them before the court as soon as practicable. If the surety is unable to bring the defendant before the court themselves then they should seek the assistance of a police officer to perform this task. You will need to show your surety papers to the Police. A police officer who is asked by the surety to help the surety arrest the defendant **MUST** do so (S.26(5) of the Bail Act 1994).

Only the Court can release a surety from their obligations. The Police do not have the power to do this.

To be released from your obligations you must make an application to the Court to be released from the order. The defendant must be present for the hearing of that application.

Result of Arrest of Defendant

When the defendant is taken before the court the Magistrate may restore the order for bail, revoke the bail and order the offender be remanded in custody or revoke the bail and make a fresh order for bail.

If the bail order was originally made in the Supreme Court the Magistrate must revoke bail and remand the alleged offender in custody to appear before a judge of the Supreme Court within 7 days.

Getting Your Money Back

Unless the Magistrate has ordered otherwise, once the defendant's matters have been finalised (the sentence imposed or the charges dismissed), any money you've paid as surety can be refunded. The money will be paid by direct deposit to your bank account. You must provide the following:

Defendant's Name:
 Your Name:
 Your Address:
 Postcode: Contact phone number:
 Amount of Surety \$..... Signature:
 Date:

Direct Deposit Details

Bank: BSB No:
 Account No: Account Name:

Office use only

ID Presented: