

Note: For additional guidance on taking secured bonds, see:

Joan G. Brannon and Jan S. Simmons, NORTH CAROLINA CLERK OF SUPERIOR COURT PROCEDURES MANUAL, Chapter 22 (UNC School of Government, 2003).

Jessica Smith, "Criminal Procedure for Magistrates," ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).

I. General

- A. After defendant's conditions of release have been established, a judicial official "must effect the release of that person upon satisfying himself that the conditions of release have been met." G.S. 15A-537(a). This includes meeting any monetary condition of release by the posting of an appearance bond in the amount of the condition.
- B. Non-monetary conditions of release do not require an appearance bond.
 1. Written promises to appear and custody releases are "satisfied" by the signature(s) on the Conditions of Release and Release Order (AOC-CR-200) of the defendant and the custodian agreeing to supervise the defendant.
 2. Post-release conditions on the defendant's conduct (*e.g.*, "stay away from the victim") are not part of the bail bond posted for the defendant's release, and therefore are not included on the Appearance Bond for Pretrial Release (AOC-CR-201, hereafter "Appearance Bond").
- C. Monetary conditions of release **always** require an Appearance Bond.
 1. "An appearance bond is a contract of the defendant and the surety with the State." *State v. Corl*, 58 N.C. App. 107 (1982).
 2. Whether secured or unsecured, a bond promising forfeiture of money to the State upon defendant's failure to appear must be executed on an Appearance Bond specifying the terms of forfeiture.
 3. The Release Order does not specify the terms of forfeiture, so without an Appearance Bond, there is no contract from which to enforce the obligation to appear through forfeiture of the bond.
 4. Because the defendant, as principal, always is liable for forfeiture of a monetary bond, the defendant must **always** sign the Appearance Bond, even if the bond is secured by a surety's promise or property.

II. Unsecured Bonds

- A. An unsecured bond is merely a promise of forfeiture of the defendant's money to the State if he fails to appear as required.

- B. There is no apparent requirement that the defendant demonstrate solvency sufficient to satisfy the bond amount; the bond is merely a promise to pay, without any demonstration that the defendant will be able to do so in the event of forfeiture.
- C. Defendant still must execute an Appearance Bond to make forfeiture enforceable.

III. Secured Bonds

- A. A secured bond may be satisfied in one of three ways: cash, a mortgage posted pursuant to G.S. 58-74-5, or at least one solvent surety. G.S. 15A-534(a)(4).
- B. Cash.
 - 1. Cash must be in the “full amount of the bond.” *Id.*
 - a. The validity of “splitting” a bond when a portion is fulfilled by cash is unclear, but local practice generally allows it if the local bond policy allows splitting at all.
 - b. See section IV, below, for more detail on split bonds.
 - 2. When “cash means cash.”
 - a. There is no clear guidance in statute or appellate case law concerning whether or not a judicial official may specify the type of security that will satisfy a monetary condition of release (*e.g.* “cash only”).
 - b. Insurance companies may post cash bonds.
 - 1) If a release order specifies a cash bond, an insurance company bond posted by a bail agent “is considered the same as a cash deposit.” G.S. 15A-531(4).
 - 2) This rule does not apply to cash bonds in child support contempt cases, for which only actual currency will suffice. *Id.*
 - 3. Ownership of the cash (at conclusion of the case).
 - a. Cash deposited by defendant.
 - 1) When defendant provides his own cash to secure release, the cash remains the defendant’s property (unless forfeited). *White v. Ordille*, 229 N.C. 490 (1948).
 - 2) The Appearance Bond should be executed in the defendant’s name, only.
 - 3) **AOC-CR-201: Cash Bond by Defendant.**

See Jessica Smith, “Criminal Procedure for Magistrates” (*Taking a Cash Bond*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).
 - b. Cash deposited by a third party.

- 1) The judicial official accepting the bond **must** determine the third party's intent for disposition of the money.
 - a) *See*, Appearance Bond for Pretrial Release, AOC-CR-200, Side Two, "NOTES ON CASH BONDS" for guidance when determining a third party's intent for the final disposition of the cash.
 - b) If the third party expects to receive a refund of the money upon conclusion of the defendant's case (assuming there is no forfeiture), then the third party **must** sign the bond as a surety.
 - (1) The surety must sign the Appearance Bond as an "Accommodation Bondsman" in order to preserve his ownership interest in the money.
 - (2) Cash deposited in this manner will not be available to satisfy any other obligations the defendant may have at the conclusion of the case (*e.g.*, fines and costs).
 - (3) **AOC-CR-201: Cash Bond by Surety**

See Jessica Smith, "Criminal Procedure for Magistrates" (*Taking a Cash Bond*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).
 - c) If the third party wants the money to be available to satisfy the defendant's other obligations in the event of conviction, then the third party must **not** sign the bond.
 - (1) The Appearance Bond should be completed as if the cash were deposited by the defendant, as described above.
 - (2) The third party effectively has given or loaned the money to the defendant to post as if it was his own. The third party will receive neither notice of any forfeiture nor a refund in the event the case is disposed without forfeiture.
 - (3) Because the third party is not a surety, he has no authority to surrender the defendant to the Sheriff (before or after a breach of the bond).
- c. The receipt should be made out to the person identified as the owner of the cash on the Appearance Bond.
4. Cash bonds greater than \$10,000.

Note: *See also*, N.C. Administrative Office of the Courts, CLERK OF SUPERIOR COURT FINANCIAL POLICIES AND PROCEDURES 37.11-37.13 (2002).

- a. Clerks of federal and state courts must report to the Internal Revenue Service (IRS) and the U.S. Attorney cash in excess of \$10,000 received as bail for a single defendant. 26 U.S.C. §6050I(g).
- b. The reporting requirement applies to magistrates and other officials who receive cash on the clerk's behalf. 26 C.F.R. §1.6050I-2.

c. Reporting is required only for certain specified criminal offenses:

- 1) Any federal offense involving a controlled substance.
- 2) Racketeering.
- 3) Money laundering.
- 4) Any substantially similar state offense to those above.

d. Criteria for reporting.

1) For the purpose of reporting the cash bond, “cash” means:

- a) Actual currency; or
- b) Negotiable instruments (*e.g.*, cashier’s checks) for \$10,000 or **less**.

(1) The issue of an instrument like a cashier’s check for *more* than \$10,000 is reported independently by the issuing institution.

Example: Bond is posted with \$2,000 in actual currency and a cashier’s check for \$9,000. This must be reported, because the check for less than \$10,000 must be counted as cash, and the total exceeds \$10,000.

Example: Bond is posted with a single cashier’s check for \$200,000. This does not need to be reported, because a check in that amount is not “cash” for the clerk’s reporting purposes.

Example: Bond is \$10,000. Defendant’s mother posts \$10,000 in actual currency. This does not have to be reported, because reporting is required only if the amount posted *exceeds* \$10,000. (But see “Suspicious transactions,” below.)

2) Aggregating multiple payments.

- a) When multiple payments for the defendant’s bond exceed the \$10,000 threshold, reporting is required.

Example: Defendant’s bond is \$15,000 for PWISD marijuana. His mother posts \$7,500 in cash, and his brother posts the other \$7,500. The transaction must be reported, because the total cash posted for the defendant on a qualifying offense exceeds \$10,000.

- b) Aggregation is not required if the payments are for separate bonds for separate offenses.

Example: Defendant’s bond is \$9,500 for PWISD marijuana. He has a separate charge of forgery and uttering, with a bond of \$5,000. If his mother posts \$9,500 in cash for the drug charge and \$5,000 in cash for the forgery charge, reporting is not required. However, the magistrate may nonetheless decide to report this bond as a “suspicious transaction,” below.

- c) The aggregation rule is unclear about related offenses arising from the same event, but the safer course may be to treat multiple charges from the same event as a single offense for reporting purposes.

Example: As the result of a single drug bust, defendant is charged with PWISD marijuana (secured bond of \$7,500), and feloniously maintaining a dwelling for the use of controlled substances (secured bond of \$5,000). If cash is posted for both bonds, the payment probably should be reported.

- 3) Suspicious transactions. A transaction may be reported if it is suspicious, which the IRS describes as a transaction in which “it appears that a person is trying to cause you not to file Form 8300 [used to report the transaction] ... or if there is a sign of possible illegal activity.” IRS Publication 1544 (March 2009).

Example: A prospective surety wants to post \$25,000 in cash for a defendant’s bond. Upon being told that the magistrate must report the transaction, the surety decides to come back later. When he returns, he has a cashier’s check for \$15,000 and currency of exactly \$10,000. The transaction normally would not be reported, because the check is not for *less* than \$10,000, and the currency is not *more* than \$10,000. However, because the transaction appears to have been structured solely to avoid reporting to the IRS, it should be reported as suspicious.

e. IRS Form 8300.

- 1) Form 8300 is used to report all qualifying transactions under 26 U.S.C. §6050I.
 - a) A fillable electronic version of the form and its instructions may be found at www.irs.gov, by searching for “Form 8300.”
 - b) Additional guidance is found in IRS Publication 1544 (March 2009).
- 2) Willful failure to file Form 8300 for a qualifying transaction is a felony, 26 U.S.C. §7203, in addition to certain civil penalties that may apply.
- 3) Information required.
 - a) Complete information is required for both the defendant for whom the bond is posted *and* any third-party payor.
 - (1) Information **must** be collected from a third party providing the cash, even if that person does not want to sign the Appearance Bond as surety to protect their interest in the cash.
 - (2) The judicial official accepting the cash **must** verify the identity of the payor from official documentation. 26 C.F.R. §1.6050I-2(c)(3)(ii).
 - b) The Taxpayer Identification Number (TIN) must be collected for both defendant and any third-party payor.
 - (1) This is the Social Security Number if a person has one, and the Individual Taxpayer Identification Number (ITIN) if not.

- (2) The TIN is not required of certain non-resident aliens with limited connections to the United States. However, because a non-resident alien can not serve as an accommodation bondsman, this exception would apply only when the defendant posts his own cash without any third party involved.
- c) Failure to collect complete defendant or payor information will cause the IRS to return Form 8300 to the clerk as deficient, and can result in monetary penalties for the clerk's office.
- 4) Upon completion, Form 8300 should be filed with the clerk's office with the magistrate's Off-Site Daily Cash Report.

C. Mortgage.

1. A defendant may provide a mortgage to his own real or personal property as security for his bond. G.S. 15A-534(a)(4); G.S. 58-74-5.
 - a. Forfeiture of the bond will be enforceable through sale of the property named in the mortgage if judgment on the forfeiture remains unsatisfied after execution.
 - b. The defendant still must execute the Appearance Bond for the obligation to be enforceable. The mortgage must be conditioned upon compliance with the bond.
2. Although the statute specifies a "mortgage," the standard practice in most counties is to require a deed of trust for any property bond, instead.
 - a. A mortgage is a two-party document, executed by the defendant and payable to the State. Forfeiture of the bond on which the mortgage is conditioned permits the clerk to exercise the power of sale to satisfy any final judgment of forfeiture.
 - b. A deed of trust is a three-party document, between the grantor (defendant, in this scenario) and a beneficiary (the State), with power of sale vested in a trustee (the clerk). As with a mortgage, the trustee's power of sale is conditioned upon compliance with the Appearance Bond. If forfeiture occurs and the power of sale must be exercised, the clerk will substitute another party (generally the attorney for the local schools) as trustee to conduct the sale.
3. Affidavit required for mortgage bond.
 - a. Unlike a deed of trust, posting a mortgage as security for an appearance bond requires that the defendant provide the clerk with "an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given." G.S. 58-74-30.
 - b. The statute does not identify any specific person who must execute the affidavit or any basis for the value assessment that must be provided therein, so a magistrate should consult the clerk's office about the requirements for such affidavits if the charging county's local bond policy allows defendants to post property bonds by mortgage.
4. Because G.S. 58-74-5 allows the defendant to post a mortgage for his appearance but makes no reference to a surety, the mortgage should be to property owned solely by the defendant.
5. **AOC-CR-201: Bond Secured by Defendant's Mortgage**

- a. Complete the top portion of the Appearance Bond form (AOC-CR-201).
- b. Check the box for **Defendant's Property Appearance Bond** (added March 2009).
- c. Have the defendant swear or affirm to the bond, have him sign under *Signature of Defendant*, and complete the section entitled "Sworn and Subscribed to Before Me."
- d. Attach the court's copy of the mortgage document to the court's copy of the Appearance Bond for delivery to the clerk.

D. Surety Bonds.

1. The role of the surety.
 - a. A surety is "one who, with the principal [defendant], is liable for the amount of the bail bond upon forfeiture of bail." G.S. 58-71-5(10).
 - b. The surety's obligation is the same as the defendant's: ensuring the defendant's appearance in court. The defendant's failure to appear results in entry of forfeiture against both the defendant and the surety. G.S. 15A-544.3.
2. Joint and several liability with the defendant.
 - a. The surety and defendant are jointly and severally liable for the amount specified in the Appearance Bond. G.S. 15A-544.3(a); G.S. 15A-544.7(a).
 - 1) **All** parties who sign the same Appearance Bond are jointly and severally liable for the full amount specified on that bond.
 - 2) If local practice permits "splitting" a monetary condition of release among multiple sureties, each surety must sign a **separate** Appearance Bond for their specific portion of the total in order to avoid liability for the entire total.
 - 3) The defendant must sign **all** Appearance Bonds associated with his release, regardless of how many are created to satisfy a specific Release Order.
3. Determining a surety's solvency.
 - a. When a judicial official takes a surety's bond, "satisfying himself whether conditions of release are met includes determining if sureties are sufficiently solvent to meet the bond obligation." G.S. 15A-537(a).
 - b. If the determination of the surety's solvency is made in good faith, the judicial official taking the bond may not be held civilly liable for accepting it. *Id.*
 - c. Local considerations for determining a surety's solvency (*e.g.*, the threshold bond amount at which a surety must provide a deed of trust to real property as security) typically are addressed in the local bond policy promulgated by the senior resident superior court judge and chief district court judge, pursuant to G.S. 15A-535.
4. Types of sureties.
 - a. Three entities may serve as surety:

- 1) a professional bondsman, acting personally or through a runner,
- 2) an insurance company, acting through a bail agent, or
- 3) an accommodation bondsman.

G.S. 15A-531(8).

- b. A fourth entity – a motor club – may post bail bonds in certain limited circumstances. *See* subsection e.4), below.
- c. Licensed sureties – General rules for professional bondsmen and insurance companies.
 - 1) Professional bondsman and insurance companies are licensed to do bail bond business by the Department of Insurance (DOI), as are their agents, runners and bail agents.
 - a) Runners execute bonds on behalf of professional bondsmen. A runner may work for only one professional bondsman at a time.
 - b) Bail agents (also “surety bondsmen”) execute bonds on behalf of insurance companies. A bail agent may be an agent of multiple insurance companies at the same time.
 - c) Runners and bail agents are **not** sureties. Neither is ever liable to the State for the bond or its forfeiture, and neither may execute a bond other than in the name of their employer.
 - d) One person may be licensed in multiple roles. Many professional bondsmen and runners also are bail agents for insurance companies.
 - e) A person may execute a bond *only* in the capacity of a license issued to that person.

Example: Bondsman Joe holds only a runner’s license. He works for a professional bondsman who is also a bail agent for an insurance company. Bondsman Joe can post bonds only in his capacity as a runner, on behalf of the professional bondsman as surety. Bondsman Joe **can not** execute bonds for the insurance company of which his employer is an agent, because Joe is not licensed as a bail agent, himself.

- 2) A licensed surety currently registered with DOI and whose license is not suspended, cancelled or revoked may execute bonds in any county in the State. G.S. 58-71-140(e). Bondsmen are no longer required to file their licenses with the clerk of superior court in order to execute bonds in the clerk’s county. N.C. Session Law 2006-188, §1.
- 3) A licensed surety and its agents are prohibited from executing bonds in a county in which the surety has an unsatisfied final judgment of forfeiture. G.S. 15A-544.7(d).
- 4) A surety’s current authorization to execute bonds is reported on the *Surety Report* from the NCAOC’s Civil Case Processing System (VCAP).
 - a) The report is distributed in paper format in most counties, but is available online at all times at:

<http://www.nccourts.org/Courts/OCO/Magistrates/Bondsman/>

- b) If a surety appears on the report for a county, that surety currently is permitted to execute bonds for that county's cases.
 - (1) Not all counties print daily copies of the *Surety Report*. If the county prints the report weekly (or less frequently), the online report is a more reliable source of a surety's current status, because a surety's status may change daily.
 - (2) When taking a bond for another county's case, the judicial official should ensure that the surety appears on the *Surety Report* of the charging county before taking the bond.
 - (3) An agent who wishes to execute a bond may do so only if the agent is listed on the current report and is affiliated with the surety on whose behalf the agent wishes to execute the bond.
 - (a) Because a runner may work for only one professional bondsman at a time, the runner will be listed with only one professional bondsman affiliation.
 - (b) Because a bail agent may be affiliated with multiple insurance companies, the judicial official taking the bond should be careful to ensure that the company for whom the agent presents a power of attorney (POA) certificate currently is affiliated with that agent.
 - (4) Prohibited sureties are omitted from the report.
 - c) The NCAOC's Magistrate System and the N.C. Automated Warrant Repository (NC AWARE) rely on the electronic surety registry in VCAP when preparing the Appearance Bond form electronically. A licensed surety currently prohibited from signing bonds will not be available for selection as a surety.
- 5) Presence on the *Surety Report* is not the sole factor in determining whether or not a licensed surety may execute a bond. Professional bondsmen are limited in the dollar amount of bonds they can post, and insurance companies limit their agents' authority for a single bond to the amount specified in their POA certificate. See both sureties' detailed sections, below.
 - 6) Affidavit required for each bond.
 - a) Any licensed surety or agent executing a bond must provide an affidavit detailing any premium or collateral that the surety has received or will receive as compensation for posting the defendant's bond. G.S. 58-71-140(d).
 - b) The affidavit is on Side Two of the Appearance Bond form, and the surety's or agent's attestation to the affidavit must be indicated by checking the box immediately under **Surety Appearance Bond** ("The 'Affidavit' on the reverse side of this Bond is complete and true.") on Side One.
 - c) No affidavit is required of an unlicensed accommodation bondsman.
 - 7) No blank bonds. A professional bondsman or bail agent may not execute bonds "in blank" for use by another person on the bondsman's behalf. G.S. 58-71-110.

- 8) Violation of any provision governing licensed sureties in Article 71 of Chapter 58 of the General Statutes is a Class 1 misdemeanor. G.S. 58-71-185.

d. Professional bondsmen.

- 1) Personally liable for the bond.
 - a) Like the defendant, the professional bondsman is personally liable for the bond and any forfeiture thereof.
 - b) A professional bondsman is not an incorporated business.
 - (1) Any bond executed by the bondsman must be executed in the bondsman's *personal* name.
 - (2) A business name that a bondsman is "doing business as" is not a legal entity that can serve as surety, so such names (*e.g.*, "XYZ Bail Bonds") should **not** be entered on an Appearance Bond.
 - c) A runner executing a bond must provide **both** his professional bondsman's name and license number **and** the runner's personal name and license number on the bond.
- 2) "Solvency" of a professional bondsman.
 - a) A professional bondsman's authority to execute bonds is limited by his deposits of cash and securities, held in trust by the Commissioner of Insurance. G.S. 58-71-145.
 - (1) A professional bondsman's securities currently on deposit must equal at least one-eighth of his total outstanding bonds as of the first day of each month. *Id.*
 - (2) A professional bondsman may not execute bonds for a single defendant, whether on a single bond or in the aggregate, that exceed one-fourth of his total securities on deposit. G.S. 58-71-175.
 - b) A professional bondsman whose deposits are deficient (*i.e.*, less than one-eighth of his outstanding bonds) may not execute additional bonds until the deficiency is cured. G.S. 58-71-160(a).

3) **AOC-CR-201: Bond Secured by Professional Bondsman**

See Jessica Smith, "Criminal Procedure for Magistrates" (*Taking a Bond Secured by a Professional Bondsman*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).

e. Insurance companies.

- 1) An insurance company executes bonds only through its bail agents ("surety bondsmen"). Only a person currently licensed as a bail agent and registered as an agent of an insurance company may execute bonds on that company's behalf.
- 2) "Solvency" of an insurance company.

- a) Like a professional bondsman, an insurance company doing bail bond business in the State must maintain deposits held in trust by the Commissioner of Insurance for satisfaction of its liabilities. N.C.G.S. 58, Article 5.
- b) Unlike a professional bondsman, there is no statutory limitation on the amount an insurance company may post as bond for a specific defendant.
- c) The company's "solvency" for a specific bond, for the purposes of G.S. 15A-537, is determined by the company's POA certificate provided by its bail agent.
 - (1) The POA certificate offered when executing a bond must be issued by an insurance company for which the agent currently is authorized to execute bonds, as shown on the *Surety Report*.
 - (2) The dollar amount shown on the POA certificate must, by itself, be sufficient to cover the full amount of the bond. POA certificates may not be "stacked" with other security to satisfy a bond. *See* section IV, below.

3) **AOC-CR-201: Bond Secured by Insurance Company**

See Jessica Smith, "Criminal Procedure for Magistrates" (*Taking a Bond Secured by a Bail Agent (Surety Bondsman)*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).

4) Motor club bonds.

- a) A motor club bond is a special type of bond governed by the State's insurance statutes. It is posted to ensure the defendant's appearance for certain motor vehicle offenses. G.S. 58-69-2(3)b.
- b) A motor club bond is not secured by the assets of the motor club, but by a domestic or foreign surety (insurance) company authorized to do business in the State. G.S. 58-69-50(a).
 - (1) The insurance company securing a motor club bond is not necessarily licensed to conduct bail bond business in the State, and therefore may not appear on the *Surety Report*.
 - (2) The *Surety Report* does not determine whether or not a motor club bond can be accepted. The bond should be accepted if it otherwise meets the criteria described below.
- c) A motor club bond certificate (frequently on the back of a membership card) is sufficient to secure a bond up to \$1,500, unless the defendant is charged with:
 - (1) An impaired driving offense, or
 - (2) Any felony.

G.S. 58-69-55.

- d) The judicial official taking a motor club bond should read the bond certificate carefully for other limitations and should refuse the bond if any of its limitations apply to the defendant's case.
 - (1) Amount limitations. Although G.S. 58-69-50 permits a motor club bond to secure a bond of up to \$1,500, the certificate offered may limit the company's liability to a lesser amount.
 - (2) Offense limitations. Some motor club bonds disclaim liability if posted to secure the defendant's appearance for any of a long list of offenses, in addition to impaired driving and felonies.
 - (3) Expiration dates. Because they are based on membership, many motor club bond certificates have an expiration date and secure the defendant's appearance only up to that date.
 - (a) Bonds with expiration dates generally should **not** be accepted unless the official taking the bond can say with a high degree of certainty that the entire case will be resolved by that date.
- e) **AOC-CR-201: Bond Secured by Motor Club**
 - (1) The NCAOC's Magistrate System and NC AWARE do not recognize motor clubs as licensed sureties.
 - (a) Because motor clubs and their surety companies are not necessarily on the list of insurance companies registered to conduct bail bond business in the State, they are not available for selection as sureties in the Magistrate System or NC AWARE.
 - (b) In order to complete the Appearance Bond electronically, the motor club must be recorded as if the club is an "Accommodation Bondsman."
 - (2) The Appearance Bond should be prepared as a "Surety Appearance Bond," because the bond is secured by the motor club (or its surety company) as surety, but it is not an insurance company bond. Only the defendant will execute the bond.
 - (a) Complete the top portion of the Appearance Bond form (AOC-CR-201).
 - (b) Check the box for **Surety Appearance Bond**.
 - (c) Record the motor club's information on the bond in the "Accommodation Bondsman" section. No agent will sign for the club.
 - (d) Have the defendant swear or affirm to the bond, have him sign under *Signature of Defendant*, and complete the section entitled "Sworn and Subscribed to Before Me."
 - (e) Attach the motor club bond card or certificate to the court's copy of the Appearance Bond for delivery to the clerk.

f. Accommodation bondsmen.

- 1) Definitions. There are two definitions for accommodation bondsmen in statute; the relevant elements of both are listed below.

- a) Natural person. G.S. 15A-531(1).
 - (1) An accommodation bondsman must be an actual human being.
 - (2) Corporations, partnerships, churches, and other non-human entities **can not** be accommodation bondsmen.
 - b) Who has reached the age of 18 years. G.S. 15A-531(1).
 - c) Resident of this State. G.S. 15A-531(1).
 - d) Receives no compensation. An accommodation bondsman “[s]hall not charge a fee or receive any consideration for action as surety,” G.S. 58-71-1(1), and “aside from love and affection and release of the [defendant], receives no consideration for action as surety,” G.S. 15A-531(1).
 - e) Endorses the bail bond. G.S. 15A-531(1) and G.S. 58-71-1(1).
 - f) Provides “satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that [such / the] real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized [in the event of / if there is a] breach of the conditions [thereof / of the bond].” [G.S. 15A-531(1) / G.S. 58-71-1(1)]
- 2) Who can not be an accommodation bondsman?
- a) Judicial and criminal justice officials and employees are prohibited from serving as a surety for anyone other than certain family members.
 - b) G.S. 15A-541 prohibits any of the following persons from serving as surety for anyone other than their “immediate family:” “sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, other public employee assigned to duties relating to the administration of criminal justice, *or spouse of any such person.*”
 - (1) The statute further prohibits any such person from becoming an agent of a bonding company or a professional bondsman, and from having any financial interest, direct or indirect, in the affairs of any firm or corporation “whose principal business is acting as a bondsman.”
 - (2) Violation is a Class 2 misdemeanor.
 - (3) “Immediate family” is not defined in Chapter 15A, but may be broader than the traditional understanding of parents, spouse, children, and siblings, due to the relationships named in the companion provision, G.S. 58-71-105.
 - c) G.S. 58-71-105 prohibits conduct substantively identical to that prohibited in G.S. 15A-541.

- (1) The prohibition applies to posting bond for any person except the prospective surety's "spouse, parent, brother, sister, child, or descendant."
 - (2) "Descendant" is not normally within the scope of "immediate family," so G.S. 58-71-105 may allow criminal justice officials more latitude in posting bonds for family (*e.g.*, grandchildren) than the language of G.S. 15A-541 would suggest.
 - (3) Violation is a Class 1 misdemeanor. G.S. 58-71-185.
- 3) No blank bonds. Like a professional bondsman or bail agent, an accommodation bondsman may not sign bonds "in blank" for another person to execute on the accommodation bondsman's behalf. G.S. 58-71-110. Violation of this prohibition is a Class 1 misdemeanor. G.S. 58-71-185.
 - 4) "Solvency" of accommodation bondsmen.
 - a) The standard for finding an accommodation bondsman "sufficiently solvent" for the bond, as required by G.S. 15A-537, is found in both definitions of accommodation bondsmen:

"satisfactory evidences of ownership, value and marketability of real or personal property ... sufficient to assure that the full principal sum of the bond will be realized."

G.S. 15A-531(1); G.S. 58-71-1(1).
 - b) The official taking the bond can be satisfied as to the surety's solvency on the basis of personal property, alone.
 - c) The "evidences of ownership, value and marketability" of property may be established by any source that the official taking the bond deems reliable. The local bond policy may specify evidence that the judicial official should consider.
 - d) Common sources for determining the value of real property or the owner's equity therein, with their relative merits and shortcomings, include:
 - (1) Tax office records. These may give accurate value, but will miss encumbrances like outstanding judgments, liens, or senior mortgages and deeds of trust.
 - (2) Register of deeds. The Register's records will include encumbrances on the prospective surety's real property, such as mortgages or deeds of trust, but will omit judgments and other liens and do not provide an accurate account of the surety's equity in the property.
 - (3) Judgments Index. The index of civil judgments maintained by the clerk of superior court will identify judgments and liens against the prospective surety's real property, but provides no evidence of the property's value or the surety's ability to convey good title.
 - (4) Title opinion. A full title opinion by an attorney is the most comprehensive way to determine equity and marketability, but it is the most burdensome (and expensive) for the surety.

- e) The surety's equity in property offered to demonstrate solvency must be sufficient to cover the amount of the bond over and above the constitutional exemptions that the surety could claim at enforcement of any judgment thereon.
 - (1) For real property, the homestead exemption is \$1,000. The personal property exemption is \$500. N.C. Const. Art. X, §§1-2.
 - (2) The official taking the bond does not need to consider statutory exemptions, because they do not apply to a forfeiture judgment. G.S. 1C-1601(e)(2).
- f) Most local bond policies permit an accommodation bondsman who has demonstrated sufficient solvency to execute a bond below a certain dollar amount solely on the surety's signature (*i.e.*, without posting specific security like cash or a deed of trust to real property).

**AOC-CR-201: Bond Secured by Accommodation Bondsman
(Without Specific Security)**

See Jessica Smith, "Criminal Procedure for Magistrates" (*Taking an Accommodation Bond*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).

- g) False qualification by surety. It is a Class 2 misdemeanor for a prospective surety to "sign an appearance bond knowing or having reason to know that he does not own sufficient property over and above his exemption allowed by law to enable him to pay the bond should it be ordered forfeited." G.S. 15A-542.
- h) Specific collateral/security for an accommodation bondsman.
 - (1) Unlike a bond secured by a mortgage on the defendant's property under G.S. 15A-534(a)(4) and G.S. 58-74-5, there is no statute specifically authorizing an enforceable security interest in real property of a surety. However, local bond policies typically specify a threshold dollar amount of a bond for which specific security (*i.e.*, a deed of trust to real property) will be required.
 - (2) Cash in the full amount of the bond is always acceptable.
 - (a) The ultimate beneficiary of any forfeiture of the bond, the local schools, undoubtedly will prefer cash in lieu of a property bond, because enforcement of the forfeiture judgment requires no additional court action (*i.e.*, no foreclosure proceeding).
 - (b) See section III.B., above, for guidance when accepting cash as a surety's security for the bond, particularly "Cash deposited by a third party" and "Cash bonds greater than \$10,000.00."
 - (3) Property Bonds

Note: The considerations below for accepting a property bond from a surety apply also to deeds of trust posted by the defendant to his own property (in lieu of a mortgage). The only difference is that the Appearance Bond secured by the

defendant's own property is executed by the defendant, only, while a property bond by a surety requires that the surety execute the bond as an accommodation bondsman.

(a) The deed of trust must be executed by **all** owners of an enforceable interest in the property, and **all** of those parties must sign the Appearance Bond as sureties.

(i) **Each surety must meet the qualifications of an accommodation bondsman.** No property owned in whole or in part by a minor, by a non-resident, or by any non-human entity may be used to post a property bond.

(ii) No promissory note is required. The Appearance Bond is the evidence of the debt secured by the deed. However, many local bond policies still require a separate promissory note.

(iii) The deed of trust (or the promissory note, if required locally) must identify the Appearance Bond secured by the deed.

(b) The deed of trust must identify the three parties to the deed:

(i) Grantor(s): Owner(s) of the property, who must execute the bond as surety(ies).

(ii) Beneficiary: "State of North Carolina, f/b/o [Charging] County Board of Education"

(iii) Trustee: "[Charging] County Clerk of Superior Court." The clerk should **not** be referred to by name, because the clerk is the trustee in his official capacity, not personal.

(c) **AOC-CR-201: Bond Secured by Accommodation Bondsman (Property Bond)**

(i) See Jessica Smith, "Criminal Procedure for Magistrates" (*Taking an Accommodation Bond*), ADMINISTRATION OF JUSTICE BULLETIN No. 2007/06 (UNC School of Government, 2007).

(ii) The court's copy of the deed of trust should be attached to the court's copy of the Appearance Bond for delivery to the clerk.

(iii) **Note:** If the deed of trust is executed by the defendant to his own property, prepare the Appearance Bond as described for a mortgage bond in section III.C., above.

(4) Common variations on property bonds.

(a) Case in County A, Property in County B.

- (i) Because local bond policies are set by local officials for cases pending within that jurisdiction, the bond policy of the county where the *charge* is pending should be followed whenever possible.
 - (ii) The deed of trust must be registered in the county where the property lies, but the court’s copy of the deed should be delivered along with the Appearance Bond to the clerk of the charging county.
 - (iii) The official taking the bond makes an independent judgment about the surety’s solvency, and should not ask other court officials to “certify,” “verify,” or otherwise provide an opinion about the surety’s solvency, the value or equity of specific property. *See* Joan G. Brannon and Jan S. Simmons, North Carolina Clerk of Superior Court Procedures Manual 22.7 (UNC School of Government, 2003).
- (b) Property owned by defendant and spouse.
- (i) Because a defendant can not, by definition, be a “surety,” many jurisdictions have prohibited the use of property jointly owned by a defendant and another person (*e.g.*, a spouse) as security for a property bond.
 - (ii) If, however, both the deed of trust and the Appearance Bond are executed by all owners of an enforceable interest in the property – with the defendant executing the bond in his capacity as defendant and the spouse executing in the capacity of a surety – then any judgment of forfeiture on the bond should be enforceable both by execution and by foreclosure on the deed.
 - (iii) Note that this is different from the rule that an actual mortgage posted by the defendant for a bond must be to property owned solely by the defendant. *See* section III.C.4., above.

IV. Stacking and Splitting Bonds

- A. There is no statutory definition or guidance for the common practices of stacking and splitting bonds; the typical scenarios in which the terms are used are described below.
- B. Because there is no guidance in statute or in appellate case law, judicial officials should adhere to any local bond policies applicable to either practice in lieu of any contrary guidance below.
- C. Stacking: Executing a *single* Appearance Bond to satisfy the monetary condition of a release order, using multiple (“stacked”) forms of security, none of which individually covers the full amount of the bond.

Example: A bail agent and the defendant’s girlfriend execute a *single* Appearance Bond to satisfy a \$100,000 condition of release, attaching to the bond a POA certificate from the agent’s insurance company worth \$60,000 and a deed of trust to girlfriend’s property for \$40,000.

- 1. By signing the same bond, the sureties are jointly and severally liable for the *entire* amount, but *neither* has demonstrated solvency for that amount. Because neither has met the solvency standard of G.S. 15A-537, stacking should not be allowed.

2. Insurance companies present an additional problem when stacking. In addition to failure to demonstrate solvency for the entire amount, the POA certificates may be void when stacked.
 - a. Almost all POA certificates disclaim any liability of the insurance company if the certificate is used in conjunction with another POA certificate (whether from the same or another insurance company) to post a single defendant's bond.
 - b. In addition, some companies' POA certificates disclaim liability if joined with *any* other security (*e.g.*, the girlfriend's deed of trust) for the same bond or same defendant.
3. Note that it is not stacking when multiple accommodation bondsmen post a single piece of jointly-owned security (such as the defendant's parents posting a deed of trust to a single parcel of property). Stacking refers to the combination of multiple forms of *security* to post a bond, not the presence of multiple sureties.

D. Splitting: Posting *multiple* Appearance Bonds to satisfy a monetary condition of release, with each bond secured by a different surety or different form of security.

Example: A bail agent and the defendant's girlfriend execute *separate* Appearance Bonds to satisfy a \$100,000 condition of release, one with a \$60,000 POA certificate from an insurance company and one with a \$40,000 deed of trust to the girlfriend's property.

1. Whether or not to allow a splitting is frequently addressed by local bond policies.
2. Some officials disallow splitting for the same concerns about solvency as with stacking. Because neither surety has demonstrated solvency for the full monetary condition of release, it is possible that neither meets the "sufficiently solvent" standard of G.S. 15A-537. Other officials permit splitting, because each surety has demonstrated solvency for their limited portion of the total.
3. If local practice permits splitting, each surety must sign a **separate** Appearance Bond for their specific portion of the total. The defendant must sign **all** of the split Appearance Bonds.
4. A judicial official taking bonds should be wary of splitting that is really stacking.
 - a. In particular, any POA certificate offered by a bail agent to satisfy part of a split bond should be reviewed carefully to ensure that its disclaimers of liability do not prohibit its use in conjunction with other security to post a bond for a single defendant or for the same case.
 - b. *Example*: A bail agent wants to sign two bonds to meet the total monetary condition of release, using two POA certificates from the same company to attach to the two bonds. Because of the disclaimers of liability in the POA certificates, neither is adequate to secure the bond obligation.

END.