BAIL BONDS 101

1. History of the Bail Bond Industry

The concept of surety bonding is centuries old. In fact, a reference to the concept of surety bonding can be found in the Old Testament of the Bible. In Genesis, Chapter 43, it tells of the brother Joseph offering security to the courts for the release of his brothers. Other documented evidence of this is found in the history of the Roman Empire. The Romans were the first people to codify surety bonding as a part of their legal system. In the Roman Empire, it was traditional when friends or strangers met they would display an open palm which signified their hand was not bearing a weapon. From this eventually came the slapping of hands or as we know it today, the handshake. The act of binding a surety was the slapping of hands. What this meant is that one person gave his word that someone else would do something. The surety was guaranteeing someone else would pay a bill, perform a task, or appear in front of a tribunal/court if needed to settle a legal issue.

Surety bonding became a part of English Common Law and was carried to the new world in the early days of our nation. The colonies and eventually the United States were primarily agrarian societies. This meant that crops and livestock had to be attended. If someone was accused of a crime, and they had a family to support, it was better for the community as a whole that the person be allowed to continue their life until they could have their day in court. Furthermore, many of the courts were circuit courts that convened when they could travel to wherever they were needed. It could be months between court sessions and it was impractical to try to keep someone incarcerated for long periods of time. Finally, many of the jails in the early days of our country were woefully insecure and not capable of housing inmates for any length of time. The law and citizens recognized that a person was innocent until proven guilty and should be treated fairly. That is exactly why the Eighth Amendment to the Constitution was crafted. The Eighth Amendment is only one line and guarantees our citizens the right to a bail that is not excessive.

> *ARTICLE VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.*

The appearance of a person in court to defend themselves was guaranteed by another family member or member of the community. This practice eventually evolved into the system we have today where cash or a bond in lieu of cash is placed in the court to assure a person's appearance. For the sake of this presentation, a brief definition of bail as we know it today is in order:

> Bail is the amount of money the court deems necessary to assure the return of the defendant to all court appearances. Bail can be made with cash or a surety bond. Many times a person does not have liquid cash to place with the court, which brings us to the modern day and the bail profession as we know it. In the early 1800s, the bail bond profession began to evolve wherein a business person would, for a fee (an industry standard 10%) guarantee the defendant's return to court. If the defendant did not appear in court, the businessman was expected to do one of two things; pay the court the full amount of bail or find the defendant and return that person to the court.

Since it was a monetary loss for the businessman to pay the full amount of the bail to the court, the businessman would try to locate the defendant and return that person to the court. The practice of finding a defendant, arresting them and returning them to court by the bail bond

person was tested in the U.S. Supreme Court decision of 1873, *Taylor vs Taintor,* 18 Wall 366, 21L Ed 287; *State v. Lingerfeit,* 109 N.C. 776, 14 S.E. 76.

In this case, a defendant by the name of McGuire was charged by information with the crime of grand larceny in Connecticut and arrested. Bail was granted in the amount of $8,000.00. McGuire subsequently went to New York where he was arrested for burglary. He missed court in Connecticut. In the end the sureties in Connecticut were able to return him to the court and successfully sued to have their bail returned. The precedent of surety agents and bounty hunters (recovery agents) was set forth in the following language of that decision:

> "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him in another state; may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the re-arrest, by the sheriff, of an escaping prisoner."

2. Myths and Facts about Bail Bond Agents and Bounty Hunters

Myth: Most bail bond people spent their days dressed in leather, guns slung around their waist, badges hanging from a chain around their neck as they kick in doors to arrest a defendant. Most of the public's perception of what bail bond people do is from TV shows like "Dog the Bounty Hunter" or movies such as "Jackie Brown" or "Midnight Run" Or, the image of a fat guy behind a desk dressed in a tank top with two weeks of food drippings on it, surrounded by even more seedy characters working in a filthy office.

Fact: (and joke) Many people have asked my wife Gayle and I if we ever considered a reality TV show. My answer to that is "Yes". As a matter of fact we actually brought a film crew to our office to capture what we really do in a day. After about 20 minutes, the camera crew was sound asleep, we are soooo boring.

What we do day to day is underwriting, meeting clients and attorneys in our office or at court, posting bonds, visiting clients in jail and trying to control an ever growing amount of files and paperwork. We dress in business attire and expect our agents to do the same. We work in a neat and clean office which has been beautifully decorated by Gayle with artwork and memorabilia.

Myth: One can make a lot of money as a bounty hunter (recovery agent).

Fact: Recovery agents receive 10% of the face amount of whatever bail was set when they recover a fugitive. However, if companies are doing competent underwriting when clients come through the front door, there is not enough recovery work to keep everyone who wants to do that kind of work gainfully employed. Rather than to arrest, we prefer to work with the defendant's attorney and indemnitor(s) to reschedule a court date. We believe our job is to keep our clients out of jail and make sure they comply with all court orders.

Fact: In 2006 Gayle and I were instrumental in getting legislation passed that now requires all recovery agents to pass a test, attend 32 hours of training at the Washington State Criminal Justice Center, be licensed to carry a concealed weapon, have no felony convictions and attend annual continuing education.

3. How the Bail System Works in the State of Washington

In Washington, as in most states, there are two kinds of bail agents. (Four states, Illinois, Wisconsin, Kentucky and Oregon do not have commercial bail agents) They are property bond agents and surety bond agents. Some bond agents are both property and surety.

a. Property bond agents insure all the bonds they write with their own personal assets. They must be able to articulate to the court(s) what assets they have should they have to pay multiple forfeitures. Property bond agents are frequently, but not always, found in smaller markets.

b. Surety agents have all of their bonds insured by a large surety corporation. Judges frequently set bail with the statement we all have heard "cash or corporate surety". The surety corporation may have many agents that write on their paper throughout the United States. Each bond a surety agent posts with the court has a power of attorney attached to it which ultimately binds the surety company to liability on that bond. Surety agents do not ever want to go to their surety company to pay a bond. The insurance is there for the catastrophic loss, which one hopes they never have. Lacey OMalley's surety company is AIA ~ Associated, International and Allegheny Surety. AIA is the largest bail surety corporation in the nation. One of every five bail bonds written in the United States is written on AIA paper.

In King County, only surety agents are allowed to post bonds.

It is important to understand the difference between insurance and surety bonding.

When one purchases any kind of insurance, life casualty etc. it is a two party contract. Insurance always assumes there will be loss. That loss is mitigated by proper underwriting, price point, and the basic concept of any insurance which is spreading loss among many. Most casualty insurance has a time limit and is negotiated anew when that limit is reached.

Surety, on the other hand is a contract between three parties in which one party is guaranteeing that another of the parties will do something. In the case of bail, it is that the defendant will make all court appearances. In the perfect world, surety assumes everyone will do as they have contracted and there is no loss.
Surety bonding is a huge business in which guarantees are made to bid on projects, build roads, offices, to assure performance including work positions. Bail bonding is a minute part of all bonding that is done everyday all over the nation.

In order to be a licensed bond agent in the State of Washington one must pass two tests, one from the Department of Licensing, the other, the Surety Test, from the Washington State Insurance

Commission. Each bail bond company and its agents must be approved by the office of the prosecuting attorney for any given county.

In the State of Washington, each bonding company must have a Qualified Agent that signs all bonds. Other agents can post bonds signed by the Qualified Agent in any county where they are approved.

When a person is arrested, they have a right to bail except in a very few cases where the court deems the alleged offense to be so egregious that bail is denied. The defendant, or his/her family or friends can take the full amount of the bail to the jail/court, in cash and the defendant will be released with their promise to make all future court appearances.

However, especially with larger bails, most people do not have the ready liquid cash for bail so they contact a bail bond agency. The bail bond agency places a bond at the jail/court in lieu of cash to secure the release of the defendant.

There are two parts to a bail bond:

> Part one is the premium which "purchases the bond." This amount is usually the industry standard of 10%. The premium is paid up front or in part with an agreement to pay the full amount if credit is extended. The premium is non-refundable. Upon the release of the defendant, the bonding company has fulfilled that part of its contract.
>
> Part two is to secure the full amount of the bail with some form of collateral. This can be a vehicle title, a credit card authorization, a promissory note with a deed of trust on real estate, or cash in a trust account or retirement account, or a signature, OAC. By Washington State law, all collateral must be returned to the owner(s) when the defendant makes all required court appearances thereby having fulfilled their obligation.