Court Services

Fact sheet
Bail Surety

What is bail?

Bail is to be released from custody on an agreement to appear at court to answer a criminal charge. Bail may be granted to any person accused of an offence, at any time during the proceedings and may be with or without conditions. Conditional bail may include reporting to police, surrendering a passport or it can include a surety.

What is a surety?

A surety is an acceptable person who takes responsibility for ensuring the accused appears at court when required. A surety may be asked to lodge an amount of money (security) or forfeit an amount of money if the accused person fails to appear at Court.

Who can decide if I am acceptable to be a surety?

- A judicial officer
- An authorised court officer at the registry
- A Police officer
- A Corrective Services NSW officer

Where do I enter into the surety?

- At a **court registry** during operating hours, or
- at a **police station**, if authorised, or
- at the **correctional centre where the defendant is located**, in limited circumstances

Am I an acceptable person to be a surety?

- You are over the age of 18 years
- You have a current residential address
- You have a relationship with the accused
- You will need to advise the authorised officer if:
  - you have a criminal conviction
  - have charges before the court
  - been bankrupt or have bankruptcy proceedings pending
  - you are subject to debt recovery action

How long will I be a surety?

- Until the matter is finalised or
- If the bail is varied, withdrawn, dispensed with, or revoked or
- If you make an application to withdraw or have yourself discharged as the surety

What is bail security?

Security is an amount of money or property that the surety is asked to deposit & forfeit or agree to forfeit if the accused person fails to appear at court.

Agree to forfeit an amount without security

You agree to forfeit the amount of money if the accused fails to appear at court.

You will be asked to provide a current bank statement with the details of your financial capacity to pay the amount required.

The amount of money held in your account must be your own. The authorised officer may ask questions about recent deposits.

Agree to deposit an amount with security

You will be asked to deposit an amount of money with the court. You must bring the amount in cash, bank cheque or property documents (see land as security factsheet for more information).

You must be able to show this money belongs to you by providing a current bank statement showing the withdrawal and recent transaction history. The authorised officer may ask questions about recent deposits.

What will happen if the accused fails to appear?

The amount you have agreed to forfeit or the amount you have deposited may be forfeited to the court.

What if I think the person will fail to appear at Court?

If you have concerns that the person may not attend their scheduled court appearance, you can apply to be discharged as a surety. To do this, complete and lodge the Application to Discharge as Bail Guarantor at the court registry.

How do I withdraw as surety?

You may make an application to the court to be discharged as a surety. You must give your reasons for wanting to be discharged on the application.

The registry will list your application before the court. The registry will ask the accused to appear at court.

Your application to be discharged will be determined by a judge.

What is a bail forfeiture order?

A bail forfeiture is where the accused person has failed to appear at court.

The court may make an order that any monies deposited or agreed to be deposited are forfeited.

You will receive notification that the bail is going to be forfeited.

You may lodge an application with the court to object or set aside the forfeiture of the bail.

How is my money or property returned if the matter is finalised, bail is dispensed with or revoked?

A bail refund application can be lodged with the relevant registry. The court will refund your money via EFT.

If you have deposited land as security, the crown solicitor will be advised and the caveat on the property will be lifted. Any documents held with the court will be returned.

For further information

- All forms can be found on the Local or District Court websites or at your nearest court registry
- Contact LawAccess by Legal Aid NSW: **1300 888 529**
- Contact the Aboriginal Legal Service: **1800 765 767**
- Contact NSW Courts: **1300 679 27** or via email Court email and contact details

Disclaimer: This information sheet has been prepared for general information purposes only and does not constitute legal advice. While the information in this document has been prepared with all due care, you should seek independent legal advice relevant to your circumstances.