

6.6 Sureties and security

What is a surety?

A surety is a person, other than the defendant, who guarantees the defendant will abide by the bail undertaking.

The surety may be required to pay a sum of money (the amount being determined by the court) to be held by the court until the court hearing. They may otherwise simply promise to pay such a sum if the defendant fails to appear at the hearing.

In addition to completing and signing the necessary documents, the surety must either pay the relevant sum of money to the Court or satisfy you they have sufficient equity or other property to cover the amount of the surety.

What is security?

Security is a cash amount the defendant must pay before they can be released from custody. It is a payment as a personal security they will comply with the conditions of bail.

It must be their own money and documentary evidence will need to be produced to prove that it is. Under no circumstances can it be money that has been lent to them by another person simply to enable them to meet their bail.

When considering a surety, there are some things you will need to take into account before the surety enters into the undertaking. Pursuant to section 21 of the *Bail Act 1980*:

Every surety to an undertaking must be a person who:

- (a) has attained the age of 18 years; and*
- (b) has not been convicted of an indictable offence; and*
- (c) is not—*
 - (i) an involuntary patient under the Mental Health Act 2016 who is, or is liable to be detained in an authorised mental health service under that Act; or*
 - (ii) a forensic disability client within the meaning of the Forensic Disability Act 2011; or*
 - (iii) a person for whom a guardian or administrator has been appointed under the Guardianship and Administration Act 2000; and*
- (d) is not an insolvent under administration; and*
- (e) has not been, and is not likely to be, charged; and is worth not less than the amount of bail in real or personal property*
- (f) is not worth less than the amount of bail in real or personal property.*

How do I enable a surety to become a party to a bail undertaking?

The surety must sign an *Affidavit of Justification* (Form 11) before you prior to becoming a party to the bail undertaking. This is a prescribed form for this procedure and you must read it carefully. The affidavit can be sworn or affirmed, and you are permitted to ask any questions and see any evidence of ownership of property when determining the person's suitability to act as a surety.

In addition to the general procedure for witnessing document, you must:

1. Obtain a copy of the bail undertaking from the relevant court registry. Explain in detail to the surety all charges the defendant has been charged with and any bail conditions, including the necessity to attend all necessary court dates and to comply with any such conditions. Explain they will become personally liable for ensuring the defendant complies with all conditions of the bail.
2. If the surety is still prepared to proceed, ensure the *Form 11—Affidavit of Justification* is completed in full.
3. Ask relevant questions to ensure the sufficiency of the person's means to meet the surety. Consider a person's financial resources, character and antecedents, proximity to the defendant and any other matters considered relevant and reasonable.
4. The surety must produce evidence of ownership or interest in any real estate or personal property. Evidence of ownership may include any document considered relevant, for example, a current rates notice of the property or a current certificate of title.
5. Ensure the surety has sufficient equity in any property to meet the means of the surety by requesting any relevant document, for example, a valuation certificate or mortgage account statement.
6. Record on the affidavit details of the property or document and return the property or document to the surety.
7. If you accept a cash surety, you must instruct the applicant to pay the surety amount to the relevant court registry and ensure the court registry has the original documentation.
8. You cannot accept a person as a surety if they advise you it would be damaging to them or their family if the undertaking is forfeited.
9. You must ensure the surety has not been indemnified by the defendant i.e the defendant or any other person has not agreed to make good any loss that may be suffered as a result of the forfeiture of the bail at a later time for any reason.
10. Obtain the undertaking of the surety and *Form 8—Notice to Surety* documents from the relevant court registry. Explain the details in full and have the surety sign the 'undertaking of surety' portion of the document (all copies). You must then sign the *Form 8—Notice to Defendant of Undertaking as to Bail/Notice to Surety or Sureties of Undertaking as to Bail*.
11. Enter relevant details in your logbook. This could include the following:
 - name of the surety
 - identification sighted
 - evidence of equity, possession or ownership of the type of surety provided.

Frequently asked questions

What are the different types of sureties?

Cash: A magistrate may require a cash surety. If this occurs, cash will need to be paid to the registrar of the courthouse. Bank cheques and real estate are not acceptable.

General: Cash, real estate or personal property can be used as general sureties. If cash is not provided, the most common and practical way of satisfying a surety is using real estate.

What are the responsibilities of the surety?

The surety:

- is responsible for ensuring the defendant's attendance at all court appearances
- is responsible for ensuring the defendant complies with all conditions of the bail undertaking
- remains responsible until the charge is finally dealt with or until a court grants them discharge of their liability.

What happens if the defendant fails to appear at the hearing?

If this happens, the sum of money the surety has either paid or promised to pay may be forfeited to the Crown and an arrest warrant may be issued.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Forms

Queensland Courts

www.courts.qld.gov.au/forms

Sample form

Bail Act—Affidavit of Justification (page 1 of 2)

Form 11
QUEENSLAND
Bail Act 1980 (S. 21 (4))

AFFIDAVIT OF JUSTIFICATION

I,
(surname) (christian names)

of, in the State of
Queensland make oath and say as follows:

1. That I offer myself as surety for
(name of defendant)

who has been charged with the offence
of:.....

2. That my occupation is

3. That I reside at the above address and have resided there for the pastyears.

4. That I am a person who has attained the age of 18 years.

5. That my real estate consists of*

6. That my real estate is not encumbered except by**

7. That my personal property consists of ***

8. That the total of my just debts and liabilities amounts to \$

9. That I am worth not less than the amount of bail in real or personal property.

10. That I am aware that I become bound, upon forfeiture of the undertaking entered
into, to pay to Her Majesty the amount of \$..... The forfeiture of this
sum would not be ruinous or injurious to myself or my family.

11. I have not been indemnified as to bail, that is to say that the person to be bailed or
any other person has not agreed to make good a loss which I may suffer in
consequence of any act or default on the part of the person to be bailed.

12. That I am not a party to an undertaking as to bail in any other criminal
proceedings***

Bail Act—Affidavit of Justification (page 2 of 2)

- 13. That I have never been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that if done or made by me in Queensland would have constituted an indictable offence.
- 14. That I am not detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the Mental Health Services Act 1974-1988 nor am I a protected person within the meaning of the Public Trustee Act 1978-1988.
- 15. That I am not an insolvent under administration.
- 16. That I have not been, nor am I likely to be, charged with the same offence or with another offence as a consequence of the omission of the offence with which the defendant has been charged.
- 17. That my proximity to the defendant (whether by kinship, place of residence or otherwise) is as follows:.....

.....
(Signature of Surety)

TAKEN AND SWORN before me at **Town or suburb** in the
State of Queensland this day of 20.....

Insert your seal of office or your prescribed mark of office and insert your registration number beside or below your signature

.....
(Justice of the Peace)

Details of any property or document produced and returned to surety:
.....
.....

* Insert address and description of land and details of improvements.
** If encumbered state nature of encumbrances and give value of equity.
*** If money on deposit give name and address of bank etc.
**** To be suitably altered if necessary.

Quick guide

Follow these steps to approve a surety

- ① Start with the general procedure for witnessing documents.

- Obtain a copy of the bail undertaking from the court and explain in detail to the surety:
 - a. all of the charges
 - b. bail conditions
 - c. necessity to attend all court dates
 - d. that they will become personally liable for ensuring the defendant complies with conditions.

- ②
- ③ If the surety is prepared to proceed, ensure they have fully completed a *Form 11—Affidavit of Justification*.

- ④ Ask questions to ensure the person can meet surety, including finances, character, proximity to defendant and other matters.

- ⑤ Ask the surety for evidence of ownership or interest in real estate or personal property, such as a rates notice or certificate of title.

- ⑥ Ensure the surety has sufficient equity in any property, such as a valuation certificate or mortgage account statement.

- ⑦ Record the property or document details on the affidavit, then return them to the surety.

- ⑧ If it is a cash surety, ask the applicant to pay the relevant court registry and to give the court the original documents.

- ⑨ Do not accept a surety if they advise you it would damage them or their family if it was forfeited.

- ⑩ Ensure the defendant has not promised to make good any loss suffered as a result of forfeiting bail.

- ⑪ Obtain the surety undertaking and *Form 8—Notice to Surety* documents from the court. Explain the details in full and ask the surety to sign the ‘undertaking of surety’ portion of all copies of the document.

- ⑫ Sign the documents.

- ⑬ Enter the relevant details in your logbook.
