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# Staying Power 2.0.

## UPDATE ON THE LAW OF APPEAL BONDS

**When a money judgment is challenged, the ability to obtain a nonautomatic stay of enforcement can make or break the appeal**

**A**s a general rule, the perfecting of an appeal stays proceedings in the trial court upon the judgment appealed from and upon matters embraced in or affected by it, including enforcement. However, there are exceptions, the most significant of which is the requirement of an undertaking to stay enforcement of a money judgment.<sup>1</sup> When a money judgment is challenged, the ability to obtain a nonautomatic stay of enforcement can make or break the appeal. Following the applicable rules can help to make a needed stay a reality.<sup>2</sup>

Many statutory exceptions to the automatic stay rule require posting a bond or undertaking<sup>3</sup> to obtain a stay of enforcement pending appeal.<sup>4</sup> While the most significant exception applies to enforcement of a money judgment,<sup>5</sup> a bond in an amount set by the trial court is also required in order to stay enforcement of various other judgments and appealable orders.<sup>6</sup> The trial court also has discretion to require a bond in any case not specified in the statutes governing appeals bonds when 1) the appellant possesses “money or other property belonging to the respondent,” 2) an undertaking by the appellant “is required to perform an act for [the] respondent’s benefit pursuant to [the] judgment or order under appeal,” or 3) the judgment is solely for costs awarded under Code of Civil Procedure Section 1021 that would otherwise not require a bond.<sup>7</sup>

There are three principal methods of satisfying the bond requirement:<sup>8</sup> 1) a bond issued by an admitted surety insurer,<sup>9</sup> 2) undertakings by personal sureties—i.e., indi-

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viduals who guarantee payment of the judgment on the basis of their personal assets,<sup>10</sup> and 3) a deposit of cash or other financial instruments in lieu of a bond.<sup>11</sup>

### **Surety Insurer Bond**

The most common form of appeal bond, which is available to a judgment debtor with sufficient financial resources, is issued by an admitted surety insurer, defined as an insurer with a certificate to transact surety insurance in California.<sup>12</sup>

Perhaps because civil judgments are upheld on appeal far more often than they are overturned,<sup>13</sup> surety insurers generally require full collateral and an annual premium before they will issue a bond.<sup>14</sup> A single surety insurer is sufficient;<sup>15</sup> however, “[t]wo or more admitted surety insurers may be sureties on a bond by executing the same or separate bonds for amounts aggregating the required amount of the bond.”<sup>16</sup> If the bond is executed properly in the surety’s name and a power of attorney for the person executing the bond is either on file with the clerk of the superior court or attached to the bond, the bond must be accepted by the court.<sup>17</sup>

A surety insurer properly admitted in California to issue bonds should be able to withstand any objection to the sufficiency of its appeal bond. However, if there is an objection, within 10 days of receiving a request to do so, the admitted surety insurer must submit to the court:

- The original or a certified copy of the power of attorney authorizing the person who executed the bond to do so;
- A certified copy of the insurer’s certificate of authority from the California Insurance Commissioner;
- A certificate from the county clerk that the insurer’s certificate of authority from the insurance commissioner is still in effect; and
- Copies of the insurer’s most recent annual statement and quarterly statement filed with the department of insurance.<sup>18</sup>

Upon submitting this evidence, “and if it appears that the bond was duly executed, that the insurer is authorized to transact surety insurance in the state, and that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond, the insurer is sufficient and shall be accepted or approved as surety on the bond...”<sup>19</sup> An admitted surety insurer must also comply with the capital requirements of Section 12090 of the Insurance Code.<sup>20</sup>

### **Personal Sureties**

Personal sureties are individuals who guarantee payment of the judgment on the basis of their personal assets. This form of appeal bond requires no commitment of funds or encumbrance of assets by either the defendant or the sureties.<sup>21</sup> However, the sureties must obligate themselves to pay the judgment if it is affirmed on appeal and must disclose sufficient assets to demonstrate their ability to do so.<sup>22</sup>

An appeal bond given by a personal surety “shall be for double the amount of the judgment...”<sup>23</sup> Since the law requires a minimum of two personal sureties,<sup>24</sup> each of whom must be “worth the amount of the bond,” assets disclosed by personal sureties must be in an amount equal to four times the judgment.<sup>25</sup>

A personal surety cannot be a lawyer or judge and must be “a resident, and either an owner of real property or householder, within the state.”<sup>26</sup> The defendant cannot act as his or her own personal surety.<sup>27</sup>

Each personal surety must execute an affidavit providing:

- The surety’s name, occupation, residence, and business address (if any);

- A statement of residence in California and either ownership of real property or status as a householder within the state; and
- A statement that the surety has sufficient worth in real or personal property.

If the bond exceeds \$5,000, the affidavit also must include:

- A description of the surety’s property and the nature of the surety’s interest in that property;
- The surety’s best estimate of the property’s fair market value;
- A statement of any charges or liens against the property; and
- A disclosure of any clouds or impediments on the surety’s use of the property.<sup>28</sup>

Individuals willing to act as personal sureties must be prepared to have their financial affairs scrutinized in open court if the beneficiary of the bond (the plaintiff) objects to the sufficiency of the sureties.<sup>29</sup>

### **Deposit in Lieu of Appeal Bond**

An appellant with sufficient assets to meet the collateral requirements of an admitted surety insurer may wish to consider a deposit in lieu of a bond. The same amount required for a surety insurer bond (one and one-half times the judgment plus costs) is required and is deposited by the defendant with the clerk of the superior court.<sup>30</sup>

Judgment debtors may, “without prior court approval” give an appropriate deposit instead of giving a bond.<sup>31</sup> The deposit must consist of liquid assets authorized by statute.<sup>32</sup> The money may be deposited in any one of six different forms: 1) cash or a cashier’s check, 2) state or federal bonds and notes, 3) bank or savings and loan certificates of deposit, 4) bank savings account, 5) savings and loan investment certificates or share accounts, or 6) credit union certificates or share accounts.<sup>33</sup>

If the deposit is in the form of bonds or notes, the person giving the bond may apply to the court for an expedited hearing to place a value on the bonds or notes.<sup>34</sup> The deposit must also “be accompanied by an agreement...authorizing the [clerk] to collect, sell, or otherwise apply the deposit to enforce the liability of the principal on the deposit.”<sup>35</sup> The clerk may prescribe additional terms and conditions.<sup>36</sup> For example, some jurisdictions may by local rule require that the defendant obtain an order of the superior court authorizing and directing the clerk to accept a deposit.

“A deposit given instead of a bond has the same force and effect, is treated the same, and is subject to the same conditions, liability, and statutory provisions...as the bond.”<sup>37</sup> Moreover, interest earned on the deposit during the pendency of the appeal is payable to the person giving the deposit.<sup>38</sup> This may make a deposit, if affordable and available in an acceptable form, preferable to a surety insurer bond, particularly in the case of a large money judgment.

### **Alternatives to a Bond**

In some circumstances when a bond would otherwise be required, a defendant may be able to obtain a stay without posting the required appeal bond or its equivalent. Initially, a defendant should consider seeking a waiver or reduction of the bond from the plaintiff.<sup>39</sup> In the case of a judgment against a solvent defendant, a plaintiff may find it advantageous to waive the bond requirement because the defendant, if successful on appeal, may recover 1) the premium on any surety bond, 2) the costs paid for letters of credit needed to secure the bond, and 3) the fees and net interest expense of borrowing funds to provide security for a bond, obtain a letter of credit, or make a deposit in lieu of a bond.<sup>40</sup>

As an interim measure the defendant may apply to the trial

court for a temporary stay without bond. Code of Civil Procedure Section 918 gives the trial court authority to issue a temporary stay regardless of the defendant's intention to appeal. Therefore, a defendant may seek a temporary stay under Section 918 for the purpose of evaluating whether or not to pursue an appeal without facing the risk of execution on the judgment.

Issuance of a temporary stay is discretionary, and the trial court's authority is limited. Absent "consent of the adverse party," the trial court only has authority to stay enforcement of a money judgment until "10 days beyond the last date on which a notice of appeal could be filed."<sup>41</sup> If the trial court expressly so orders, a stay issued under Section 918 may also extinguish and prevent the creation of judgment liens.<sup>42</sup>

Absent waiver of the bond by the plaintiff or a temporary stay, a defendant lacking financial means may consider seeking relief from the appeal bond requirement. If the defendant is indigent, the courts may grant relief after balancing the relative interests of the parties.<sup>43</sup> Code of Civil Procedure Section 995.240 provides that "[i]n exercising its discretion the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived."<sup>44</sup> If the defendant qualifies as an indigent,<sup>45</sup> relief must be sought and denied in the trial court before similar relief can be requested from the appellate court.<sup>46</sup>

After an appeal has been taken, the appellate court has authority to reduce or eliminate the appeal bond requirement through the issuance of a supersedeas writ.<sup>47</sup> However, the writ is not granted lightly. The courts have articulated several criteria:

- Exhaustion of remedies in the trial court.
- Irreparable harm to the appellant.
- A substantial likelihood of success on the merits of the appeal.
- A showing that the plaintiff will be adequately protected (that is, not irreparably harmed) during the pendency of the appeal, or that injury to the appellant outweighs any damage the plaintiff may suffer.
- Any other factors that tip the balance in favor of relieving the appellant of the normal security requirements.<sup>48</sup>

A writ of supersedeas, however, is certainly not available as a substitute for posting a bond in every case:

In most instances, a stay can be obtained from the trial court by posting a bond...and appellant's alleged inability to post the required security will not justify relief by supersedeas. (Otherwise, virtually all money judgments could be stayed without posting security, rendering [Code of Civil Procedure Section] 917.1 an "empty shell.")<sup>49</sup>

### **Bond Amounts**

Appeal bonds are not insubstantial. An admitted surety bond or deposit in lieu of bond must be one and one-half times the amount of the judgment or order; otherwise (for example, in the case of personal sureties), the bond must be twice the amount of the judgment.<sup>50</sup>

The amount to be bonded must also include costs awarded by the trial court under Code of Civil Procedure section 1021 et seq. and costs awarded under Code of Civil Procedure sections 998 and 1141.21 that would not have been awarded under Code of Civil Procedure Section 1033.5 (which lists the items allowable as costs to a prevailing party).<sup>51</sup>

However, no bond is required to stay enforcement of a judgment solely for costs awarded pursuant to Section 1021.<sup>52</sup> This

last exception covers a broad category of cost awards<sup>53</sup> but its exact meaning requires an examination of caselaw.<sup>54</sup>

During a lengthy appeal the amount of the bond can be increased at the discretion of the trial court when the judgment plus accrued interest exceeds the amount of the bond.<sup>55</sup>

### **Technical Requirements**

Once an appellant determines a bond is needed, the next step is perfecting the appeal. There is no statute authorizing a stay of enforcement of a money judgment by means of an appeal bond alone. Under Section 917.1(a), enforcement of a money judgment pending appeal is stayed by the taking of an appeal together with the posting of an appeal bond. Thus, an appeal bond will not be effective unless a notice of appeal has been filed to commence the appellate process.<sup>56</sup>

The bond must be in writing and signed by the surety under oath.<sup>57</sup> The surety must state it obligates itself under the statute providing for the bond to pay the amount of the judgment.<sup>58</sup> Multiple sureties must state they are jointly and severally liable.<sup>59</sup> The surety also must provide a service address for itself and the principal, i.e., the party for whom the bond is given.<sup>60</sup>

The Bond and Undertaking Law prescribes language that may be used in the bond.<sup>61</sup> Although the statute is not mandatory, its suggested terms provide good benchmarks for determining the technical sufficiency of a proposed bond.<sup>62</sup> However, a "savings" clause forgives technical errors or mistakes in a bond.<sup>63</sup> This provision can be cited in response to any claim that a bond is ineffective to stay enforcement of a judgment because of technical defects.

Once the bond is drafted, it must be filed in the superior court together with a proof of service on the plaintiff.<sup>64</sup> Under Code of Civil Procedure Section 995.030, "service shall be made in the same manner as service of process in civil actions generally."

Because Section 917.1 requires no preapproval of an appeal bond, the bond becomes effective automatically upon filing.<sup>65</sup> Judgment liens that may have been placed against the defendant's property are automatically extinguished by filing the bond and new liens may not be created during the period of the stay created by the bond.<sup>66</sup>

Once an appeal bond has been given by a surety, the resulting obligations cannot easily be set aside.<sup>67</sup> Moreover, after the bond is filed, the beneficiary may object on grounds that the sureties are insufficient, the amount of the bond is or has become insufficient (e.g., due to the accrual of interest over time), or that "[t]he bond, from any other cause, is insufficient."<sup>68</sup> The trial court on its own motion may also challenge the sufficiency of a surety or amount of a bond so long as notice of the motion is given in the same manner as an objection to a bond.<sup>69</sup>

Objections to a bond must be in writing by way of a noticed motion made within 10 days after the beneficiary has been served with the bond,<sup>70</sup> unless time is extended for good cause.<sup>71</sup> Failure to make a timely objection waives "all objections except upon a showing of good cause for failure to make the objection within the time required by statute or of changed circumstances."<sup>72</sup>

Once an objection is made, proceedings move quickly. Absent an agreement of the parties, the trial court must hold a hearing not less than two days or more than five days after service of the notice of the motion.<sup>73</sup> "The hearing shall be conducted in such manner as the court determines is proper. The court may permit witnesses to attend and testify and evidence to be procured and introduced in the same manner as in the trial of a civil case."<sup>74</sup> An objection proceeding may therefore include discovery into a personal surety's finances as well as examination

and cross-examination of the sureties in court.<sup>75</sup>

If the court determines a surety is insufficient, the defendant must be prepared to act fast. Code of Civil Procedure Section 995.960(b)(1) provides that “[t]he court shall specify in what respect the bond is insufficient and shall order that a bond with sufficient sureties and in a sufficient amount be given within five days.”<sup>76</sup> If this deadline is not met, the stay of enforcement ceases to exist.<sup>77</sup>

A defendant who overcomes initial objections to a bond must be prepared for the possibility of further objections during pendency of the appeal. For instance, a personal surety need only list his or her assets and make a pledge to pay the judgment in the event it is affirmed on appeal; there is no requirement that the personal surety encumber any portion of his or her assets.<sup>78</sup> Thus, a conscientious plaintiff should periodically investigate the sufficiency of the sureties and, if problems arise, make a renewed objection to the bond on grounds of changed circumstances.<sup>79</sup>

A working knowledge of the statutory scheme governing stays of enforcement is essential to representation of a judgment debtor on appeal from a money judgment. With that knowledge in hand, the road to an appeal can be made much easier to travel. ■

<sup>1</sup> CODE CIV. PROC. §917.1(a). See *Leung v. Verdugo Hills Hosp.*, 168 Cal. App. 4th 205, 211-12 (2008).

<sup>2</sup> The ground rules for obtaining a stay of enforcement of a money judgment pending appeal have previously been summarized in *Los Angeles Lawyer*. (See David M. Axelrad, *Staying Power*, L.A. LAWYER, Nov. 1995, at 16; David M. Axelrad, *The Statutory Framework For Appeals Bonds*, L.A. LAWYER, June 2005, at 33. The discussion herein, an updated version of those articles, applies to civil actions and certain special proceedings governed by the stay and undertaking provisions of Part 2 of the Code of Civil Procedure. CODE CIV. PROC., §307 nn.

<sup>3</sup> Although Code of Civil Procedure Section 917.1 uses the term “undertaking” as opposed to “bond,” the definition of the term “bond” includes an “undertaking.” The terms “bond” and “undertaking” may be used interchangeably. CODE CIV. PROC. §995.210. See CODE CIV. PROC. §§995.140, 995.190 for further definitions.

<sup>4</sup> A bond is not required in order to appeal from a money judgment. A bond is required only to stay enforcement of a money judgment pending appeal. See CODE CIV. PROC. §§904.1, 917.1-922. As a result, the requirement of an appeal bond does not offend due process. *Grant v. Super. Ct.*, 225 Cal. App. 3d 929, 939-40 (1990); see *Trede v. Super. Ct.*, 21 Cal. 2d 630, 634 (1943).

<sup>5</sup> CODE CIV. PROC. §917.1(a). See *Leung v. Verdugo Hills Hosp.*, 168 Cal. App. 4th 205, 211-12 (2008).

<sup>6</sup> CODE CIV. PROC. §917.2 (assignment or delivery of personal property); CODE CIV. PROC. §917.4 (sale, conveyance, or delivery of possession of real property);

CODE CIV. PROC. §917.5 (appointment of receiver); CODE CIV. PROC. §917.65 (right to attach order); CODE CIV. PROC. §917.75 (attorney fees or costs in Family Code proceeding).

<sup>7</sup> CODE CIV. PROC. §917.9(a).

<sup>8</sup> The technical requirements for bonds are set forth in the Bond and Undertaking Law. CODE CIV. PROC. §§995.010 *et seq.*

<sup>9</sup> See CODE CIV. PROC. §§917.1(b), 995.610-675.

<sup>10</sup> See CODE CIV. PROC. §§995.510-520.

<sup>11</sup> See CODE CIV. PROC. §§995.710-770.

<sup>12</sup> CODE CIV. PROC. §§917.1(b), (d); 995.120(a). A “surety” is “one who promises to answer for the debt, default or miscarriage of another....” CIV. CODE §2787; see CODE CIV. PROC. §995.185 (a) (defining “surety” by reference to CIV. CODE §2787). As a result, “[i]t is axiomatic that one may not act as his own surety....” *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 770 (1994).

<sup>13</sup> See JUDICIAL COUNCIL OF CALIFORNIA, 2018 COURT STATISTICS REPORT 48, available at <https://www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf> (noting that 17 percent of civil appeals in 2017 resulted in a reversal).

<sup>14</sup> See Dan Huckabay, *A Defense Attorney's Guide to Appeal Bonds*, VERDICT MAGAZINE, Vol. 3, 2017, at 24-26.

<sup>15</sup> See CODE CIV. PROC. §§917.1(b), 995.310, 995.610(a).

<sup>16</sup> CODE CIV. PROC. §995.620. Although multiple sureties must state they are jointly and severally liable for the obligation under the bond (CODE CIV. PROC. §995.320(a)(l)), each admitted surety insurer is jointly and severally liable only “to the extent of the amount of the liability assumed by it.” CODE CIV. PROC. §995.620.

<sup>17</sup> CODE CIV. PROC. §995.630(a)(b).

<sup>18</sup> CODE CIV. PROC. §995.660(a).

<sup>19</sup> CODE CIV. PROC. §995.660(b).

<sup>20</sup> INS. CODE §12090 provides:

An admitted surety insurer shall not become a surety on any one undertaking, or accept reinsurance on such undertaking, when its liability thereon, in excess of the amount reinsured by it in an admitted insurer, amounts to more than [10] percent of its capital and surplus as shown by its last statement on file in the office of the commissioner.

<sup>21</sup> See *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 772 (“The declarations of the personal sureties merely list assets to demonstrate their net worth.”).

<sup>22</sup> See CODE CIV. PROC. §§995.185 (definition of surety), 995.320 (contents of bond), 995.330 (form of bond), 995.520 (requirements for personal surety affidavit).

<sup>23</sup> CODE CIV. PROC. §917.1(b).

<sup>24</sup> CODE CIV. PROC. §995.310.

<sup>25</sup> CODE CIV. PROC. §§917.1(b), 995.510(a)(3). There is no upper limit on the number of personal sureties that can be assembled to accumulate the amount required for a bond. Moreover, when the amount of a bond exceeds \$10,000 and there are more than two personal sureties, the worth of a personal surety disclosed in the bond may be less than the amount of the bond, so long as the aggregate worth of all sureties executing the bond is twice the bond amount. CODE CIV. PROC. §§995.510(b), 995.520(d); see also CODE CIV. PROC. §996.470(c) (1) (liability of surety is limited to the amount stipulated pursuant to § 995.520).

<sup>26</sup> CODE CIV. PROC. §995.510(a)(l), (a)(2).

<sup>27</sup> CODE CIV. PROC. §995.510(a)(l); see sources cited supra note 12.

<sup>28</sup> CODE CIV. PROC. §995.520(a)-(c)(4).

<sup>29</sup> See *infra* text accompanying notes 70-79.

<sup>30</sup> CODE CIV. PROC. §995.710(a), (b).

<sup>31</sup> CODE CIV. PROC. §995.710(a).

<sup>32</sup> *Markley v. Superior Ct.*, 5 Cal. App. 4th 738, 745

(1992).

<sup>33</sup> CODE CIV. PROC. §995.710(a)(l)-(a)(6).

<sup>34</sup> CODE CIV. PROC. §995.720(b),(c).

<sup>35</sup> CODE CIV. PROC. §995.710(c).

<sup>36</sup> CODE CIV. PROC. §995.710(d).

<sup>37</sup> CODE CIV. PROC. §995.730.

<sup>38</sup> CODE CIV. PROC. §995.740(a),(b).

<sup>39</sup> See CODE CIV. PROC. §995.230.

<sup>40</sup> CAL. R. OF CT. R. 8.278(d)(1)(F),(G). See *Siry Invs., L.R. v. Farkhondehpour* 238 Cal. App. 4th 725, 729 (2015); *Golf W. of Ky., Inc. v. Life Investors, Inc.*, 178 Cal. App. 3d 313, 316 (1986). The cost of an appeal bond may not be recoverable if the trial court determines the bond was unnecessary or the cost was unreasonable (CAL. R. OF CT. R. 8.278 (d)(1)(F), (G); see CODE CIV. PROC. §995.250(b); *Rostack Invs., Inc. v. Sabella*, 32 Cal. App. 5th 70, 73, 80-82 (2019) (examining factors considered to determine reasonableness of appeal bond cost.) Thus, a trial court could refuse to allow a prevailing defendant to recover an appeal bond premium absent evidence the defendant first sought a reduction or waiver of the appeal bond requirement. *But see* CODE CIV. PROC. §995.250 (a) (where a statute allows costs, “the costs shall include.... [t]he premium on a bond reasonably paid by the party pursuant to a statute that provides for the bond in the action or proceedings”).

<sup>41</sup> CODE CIV. PROC. §918(b).

<sup>42</sup> See CODE CIV. PROC. §697.040(b).

<sup>43</sup> *Burkes v. Robertson*, 26 Cal. App. 5th 334, 345-346 (2018); *Alshafie v. Lallande*, 171 Cal. App. 4th 421, 429 (2009); *Williams v. Freedomcard, Inc.*, 123 Cal. App. 4th 609, 614 (2004).

<sup>44</sup> See *Burkes*, 26 Cal. App. 5th at 345-47; see also *Alshafie*, 171 Cal. App. 4th at 432-36 (examining procedures for determining financial inability to post a bond or undertaking).

<sup>45</sup> The Bond and Undertaking Law does not define the term “indigent.” However, the term has been defined in other statutory schemes. See, e.g., BUS. & PROF. CODE §6213(d) (defining “indigent person” as a person whose income is 125 per cent or less of the current federal poverty threshold).

<sup>46</sup> *Nuckolls v. Bank of Cal., Nat. Assn.*, 7 Cal. 2d 574, 576-77 (1936); *Burkes*, 26 Cal. App. at 346; *Quiles v. Parent*, 10 Cal. App. 5th 130, 136 n.2 (2017).

<sup>47</sup> CODE CIV. PROC. §923; *In re Christy L.*, 187 Cal. App. 3d 753, 758-59 (1986) (supersedes available only in connection with pending appeal); *Quiles*, 10 Cal. App. 5th at 136.

<sup>48</sup> See EISENBERG, HORVITZ & WEINER, CAL PRACTICE GUIDE: CIVIL APPEALS AND WRITS ¶¶7:280-7:286, at 7-54—7-56 (1994) [hereinafter EISENBERG]; *Nuckolls*, 7 Cal. 2d at 577; *Julian v. Schwartz*, 2 Cal. 2d 280, 281-82 (1935); *Estate of Murphy*, 16 Cal. App. 3d 564, 568-70 (1971); *Davis v. Custom Component Switches, Inc.*, 13 Cal. App. 3d 21, 26-28 (1970). Note that if the trial court refuses to acknowledge the existence of an automatic stay of enforcement, a writ of supersedeas is more readily available from the appellate court. *Gallardo v. Specialty Rests. Corp.*, 84 Cal. App. 4th 463, 467 (2000); *Chapala Management Corp. v. Stanton*, 186 Cal. App.4th 1532, 1541 n.8 (2010).

<sup>49</sup> EISENBERG, *supra* note 48, ¶7:282, at 7-54—7-55. A defendant who is unsuccessful in obtaining relief from the bond requirement or who chooses not to post a bond immediately may post a bond at a later point, even after an appeal is taken, because there is no time limit for the filing of an appeal bond. See *Hill v. Finnigan*, 54 Cal. 493, 494 (1880) (there is nothing in the statutory scheme to prevent posting an appeal bond at any time prior to execution on judgment). However, if the judgment creditor seeks to enforce the judgment the posting of a bond will be an urgent matter.

<sup>50</sup> CODE CIV. PROC. §917.1(b).

<sup>51</sup> CODE CIV. PROC. §917.1(a)(2), (3), (d).

<sup>52</sup> Code Civ. Proc. §917.1(d).

<sup>53</sup> See CODE CIV. PROC. §1033.5.

<sup>54</sup> See *Quiles v. Parent*, 10 Cal. App. 5th 130, 137-48 (2017); *Chapala Mgmt.*, 186 Cal. App. 4th at 1546-47; *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1432 (2001); *Gallardo*, 84 Cal. App. 4th at 463; *Ziello v. Super.Ct.*, 75 Cal. App. 4th 651 (1999); *Banks v. Manos*, 232 Cal. App. 3d 123 (1991).

<sup>55</sup> *Grant v. Super. Ct.*, 225 Cal. App. 3d 929 (1990); CODE CIV. PROC. §§995.960(c), 996.010 (allowing renewed objections to a bond upon a showing of changed circumstances), 996.010.

<sup>56</sup> See *California Commerce Bank v. Super. Ct.*, 8 Cal. App. 4th 582, 587 (1992) (“with the subsequent filing of the bond in addition to the earlier notice of appeal, the statutory requirements for a stay of enforcement of judgment under sections 916, subdivision (a), and 917, subdivision (a), were met”); see also *People v. American Surety Co.*, 31 Cal. App. 5th 380, 391-94 (2019) (appeal bond given under CODE CIV. PROC. §917.1 to stay enforcement pending appeal void and of no effect where appeal was not from money judgment or order directing payment of money.)

<sup>57</sup> CODE CIV. PROC. §995.320(a).

<sup>58</sup> CODE CIV. PROC. §§995.320(a)(l); 995.330.

<sup>59</sup> CODE CIV. PROC. §995.320 (a)(1).

<sup>60</sup> CODE CIV. PROC. §995.320(a) (2). If the bond is based on the value of property, the surety also must provide a description of the property and an estimate of the property’s value. CODE CIV. PROC. §995.320(a) (3).

<sup>61</sup> CODE CIV. PROC. §995.330.

<sup>62</sup> *Id.*

<sup>63</sup> CODE CIV. PROC. §995.380(a).

<sup>64</sup> CODE CIV. PROC. §§995.340, 995.370.

<sup>65</sup> CODE CIV. PROC. §§995.410(a); 995.420(a); *People v. American Surety Co.*, 31 Cal. App. 5th 380, 395 (2019); *California Commerce Bank v. Super. Ct.*, 8 Cal. App. 4th 582, 587 (1992). See also *Lee Chuck v. Quan Wo Chong Co.*, 81 Cal. 222, 227 (1889); *Curley v. Super. Ct.*, 199 Cal. App. 2d 369, 371 (1962); compare *Messenkop v. Duffield*, 211 Cal. 222, 225 (1930) (posting of appeal bond cannot undo execution that has been completed).

<sup>66</sup> CODE CIV. PROC. §697.040(a). Note that absent an express order of the trial court, judgment liens are not automatically extinguished by a temporary stay issued under CODE CIV. PROC. §918. CODE CIV. PROC. §697.040(b).

<sup>67</sup> See *In Conservatorship of O’Connor*, 48 Cal. App. 4th 1076, 1102-1103 (1996); *Lewin v. Anselmo*, 56 Cal. App. 4th 694, 700-701 (1997).

<sup>68</sup> CODE CIV. PROC. §995.920.

<sup>69</sup> CODE CIV. PROC. §996.010(a), (b).

<sup>70</sup> CODE CIV. PROC. §995.930(a), (b).

<sup>71</sup> CODE CIV. PROC. §995.050; see CODE CIV. PROC. §996.010(b).

<sup>72</sup> CODE CIV. PROC. §995.930(c). There are additional procedures for objections to bonds that are given by admitted surety insurers. See CODE CIV. PROC. §§995.650-995.670.

<sup>73</sup> CODE CIV. PROC. §995.950(a).

<sup>74</sup> CODE CIV. PROC. §995.950(b).

<sup>75</sup> If the objections challenge the valuation of property listed by a surety, the court may appoint an appraiser to evaluate the property. CODE CIV. PROC. §995.950(c).

<sup>76</sup> CODE CIV. PROC. §§995.960(b) (1), 996.010(c). The five-day period may be extended under CODE CIV. PROC. §995.050, and during this grace period the stay of enforcement created by the original bond remains in effect. CODE CIV. PROC. §995.960(b).

<sup>77</sup> CODE CIV. PROC. §995.960(b)(1); § 996.010(d). See *Stewart v. Whitmyre*, 192 Cal. App. 2d 327,329 (1961).

<sup>78</sup> See *supra* text accompanying note 21.

<sup>79</sup> See *supra* note 55.

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