

6.6 Sureties and security

What is a surety?

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

The surety may be required to:

- pay a court-determined amount of money, to be held by the court until the court hearing
- 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 should it be required.

Requirements of a surety

Under the *Bail Act 1980* (the Act) a surety to an undertaking must be a person who:

- is 18 years or over
- has not been convicted of an indictable offence
- is not 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
- is not a forensic disability client within the meaning of the *Forensic Disability Act 2011*
- is not a person for whom a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000*
- is not an insolvent under administration
- has not been, and is not likely to be, charged with the same or another offence as a consequence with which the defendant has been charged
- is worth more 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 the prescribed *Form 11 – Affidavit of Justification* (the affidavit) prior to becoming a party to the bail undertaking. You must read it carefully and you are permitted to ask any questions and sight any evidence of ownership of property when determining the person's suitability to act as a surety.


The bail undertaking

1. Obtain a copy of *Form 7 – Undertaking as to bail* (the bail undertaking) and *Form 8 – Notice to surety or sureties of undertaking as to bail* (the notice to surety) from the relevant court registry.
2. Read through the bail undertaking and the notice to surety with them to satisfy yourself they have an understanding of:
 - all charges the defendant has been charged with
 - all bail conditions, including the requirement to attend necessary court dates and to comply with any such conditions
 - they will become personally liable for ensuring the defendant complies with all conditions of the bail.
3. If the surety is prepared to proceed, have them sign the undertaking of surety.
4. Complete and sign the bail undertaking and the notice to surety. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.

The affidavit of justification

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Warn the signatory that if they knowingly make a false affidavit, they commit an offence.
2. Immediately place the signatory on oath or affirmation as outlined in chapter 4.6. Ensure the surety understands that swearing an oath or making an affirmation is a solemn matter.
3. Ask relevant questions to ensure the person's eligibility and sufficiency of means to meet the surety. Consider their financial resources, character and background, proximity to the defendant and any other matters considered relevant and reasonable.
4. Ask the surety to produce evidence of ownership or interest in any real estate or personal property. Evidence of ownership may include any document considered relevant, such as a current rates notice of the property or a current certificate of title.
 - Ensure the surety has sufficient equity in any property to meet the means of the surety by requesting any relevant document, such as a valuation certificate or mortgage account statement. Record the details of the property or document on the affidavit and return them to the surety.

 **Note:** 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.

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.

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.
5. Check the surety understands the document and have them sign it.
6. Witness the surety's signature. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.
7. Record all relevant information in your logbook as outlined in chapter 2.4.

Frequently asked questions

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 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.

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