

By David M. Axelrad

Staying POWER

Careful attention to appellate procedures
is necessary to stay enforcement of
a money judgment

When a defendant moves to challenge a money judgment on appeal, the attorneys for both sides of the case must be familiar with the statutes and procedures for obtaining a stay of enforcement pending appeal.¹ The principal mechanism for obtaining a stay is the appeal bond, whose technical requirements are set forth in the Bond and Undertaking Law.²

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.³ These bonds are not insubstantial. If provided by an admitted surety, the 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.⁴ Moreover, under Code of Civil Procedure Section 917.1(d), the judgment or order upon which the bond amount is calculated must be increased to include costs awarded by the trial court.⁵ Furthermore, 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.⁶

The requirement of an appeal bond to stay enforcement of a money judgment pending appeal has been found to comport with due process.⁷ And this is true even if the amount of the bond could jeopardize the defendant's ability to remain in business. For example, in *Pennzoil Co. v. Texaco, Inc.*,⁸ Texaco was required to post a bond for more than \$13 billion in order to stay enforcement of a Texas state court judgment pending appeal.⁹ Like California, Texas does not condition the right of appeal on the posting of a bond; a bond is needed only to stay enforcement of the judgment pending appeal.¹⁰ Although the Supreme Court did not reach the merits of Texaco's constitutional attack on the bonding requirement, the comments of Justice Stevens in his concurring opinion are noteworthy:

Texaco does not claim that the Texas [bonding] procedures make it *impossible* for it to take an appeal in this case....To be sure, neither of Texaco's options under the rules [posting the bond and risking bankruptcy or risking

execution] is very attractive....Neither of these consequences, however, would necessarily prevent Texaco, or its successor in interest—possibly a bankruptcy trustee—from going forward with the appeal. It is certainly wrong to denigrate the seriousness of these effects. But it is similarly wrong to approach this case as one involving an absolute deprivation of the opportunity to appeal.¹¹

Justice Stevens went on to make the observation that:

The proposition that stays of execution are available as a matter of federal constitutional right was rejected long ago. In *Louisville & Nashville R. Co. v. Stewart* [citation], Justice Holmes explained for a unanimous Court that a State is not bound, by reason of providing an appellate process, also "to provide for a suspension of the judg-

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ment" during the appeal. [Citation.] It is clear that the States' strong concern in protecting appellees' right to recover on judgments amply justifies the bond or security requirements that are currently so prevalent across the country.¹²

In some circumstances, a defendant may be able to obtain a stay without posting an appeal bond or its equivalent. Initially, a defendant should consider seeking a waiver of the bond from the plaintiff under Code of Civil Procedure Section 995.230. In the case of a large judgment against a solvent defen-

issuance of a supersedeas writ.¹⁷ However, the writ is not granted lightly. The courts have articulated several criteria:

- Exhaustion of remedies in the trial court.¹⁸
- 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.¹⁹

dict.²⁴ Therefore, the need to file a notice of appeal in order to effectuate an appeal bond should not interfere with post-trial motions.

Because both the filing of a notice of appeal and the posting of a bond are necessary to stay enforcement of a judgment, there is a risk a plaintiff may attempt to enforce the judgment before these requirements have been satisfied. To alleviate this risk, 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. A defendant therefore may seek a temporary stay under Section 918 for the additional purpose of evaluating whether or not to pursue an appeal.

Issuance of such 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."²⁵ If the trial court expressly so orders, a stay issued under Section 918 may extinguish and prevent the creation of judgment liens.²⁶

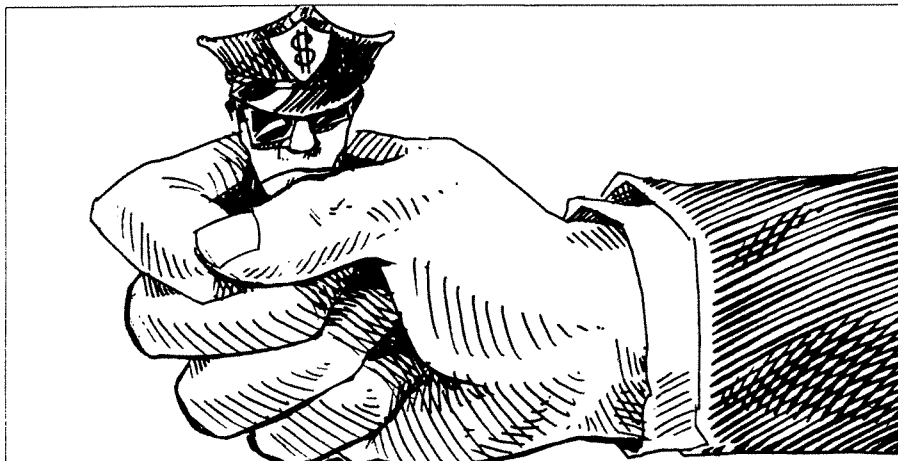
Once the appeal has been perfected, the precise amount of the required bond should be calculated. Absent an agreement by the plaintiff to a reduction in amount,²⁷ the amount of the bond will depend on the method used to satisfy the bonding requirement: personal sureties, an admitted surety insurer, or deposit in lieu of a bond.

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.²⁸ The sureties must obligate themselves to pay the judgment if it is affirmed on appeal and only must disclose sufficient assets to demonstrate their ability to pay.²⁹

According to Code of Civil Procedure Section 917.1(b), an appeal bond given by personal sureties "shall be for double the amount of the judgment...."³⁰ However, the law requires a minimum of two personal sureties,³¹ each of whom must be "worth the amount of the bond...."³² Thus, assets disclosed by personal sureties must be in an amount equal to four times the judgment.

There is no limit on the number of personal sureties that can be assembled to accumulate the amount required for a bond that is more than \$10,000: "If the amount of a bond exceeds [\$10,000] and is executed by more than two personal sureties, the worth of a personal surety may be less than the amount of the bond, so long as the aggregate

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dant, a plaintiff often may find it advantageous to waive the bond requirement because the defendant, if successful on appeal, may recover the premium on any surety bond as well as the costs paid for letters of credit needed to secure the bond.¹³ However, the premium on an appeal bond is not recoverable if "the court to which the remittitur is transmitted determines that the bond was unnecessary."¹⁴

Absent waiver of the bond by the plaintiff, a defendant lacking financial means may consider seeking relief from the appeal bond requirement. If the defendant is indigent, the trial court may grant relief after balancing the relative interests of the parties. 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." If the defendant qualifies as an indigent,¹⁵ relief must be sought and denied in the trial court before similar relief can be requested from the appellate court.¹⁶

Once an appeal has been taken, the appellate court has authority to relieve a litigant of the appeal bond requirement through the

But a writ of supersedeas is certainly not 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.")²⁰

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 Code of Civil Procedure 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.²¹

In general, filing a notice of appeal divests the trial court of jurisdiction to act.²² However, the trial court retains jurisdiction over collateral matters such as a motion for new trial²³ and, according to the most recent view, a motion for judgment notwithstanding the ver-

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gate worth of all sureties executing the bond is twice the amount of the bond."³³

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."³⁴ The defendant cannot act as his or her own surety.³⁵

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.
- 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.
- A disclosure of any clouds or impediments on the surety's use of the property.³⁶

If the amount of the bond is more than \$10,000 and there are more than two personal sureties, the surety may list assets in an amount less than the bond and the surety's liability may be "limited to the worth of the surety stated in the affidavit, so long as the aggregate worth of all sureties executing the bond is twice the amount of the bond."³⁷

Individuals willing to act as personal sureties must be prepared to have their financial affairs scrutinized if the beneficiary of the bond (the plaintiff) objects to the sufficiency of the sureties.³⁸

A second form of bond, available as a practical matter to a defendant with sufficient financial resources, is one issued by an admitted surety insurer in an amount equal to one and one-half times the judgment plus costs.³⁹ The term "admitted surety insurer" is defined as "a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code."⁴⁰ Insurance Code Section 105(a) provides that surety insurance includes "[t]he guaranteeing of behavior of persons and the guaranteeing of performance of contracts (including executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed)...."

There is no requirement that an admit-

ted surety insurer be a person other than the principal. The question therefore arises whether an admitted surety insurer that is itself the judgment debtor can act as its own surety for purposes of an appeal bond. The answer appears to be no. Code of Civil Procedure Section 995.185(a) provides that the term "surety" "has the meaning provided in Section 2787 of the Civil Code...." In turn, Civil Code Section 2787 defines a "surety or guarantor [as] one who promises to answer for the debt, default or miscarriage of another...." An insurer presumably could not act as surety for itself and satisfy this definition.⁴¹

Perhaps because civil judgments are upheld on appeal far more often than they are overturned, surety insurers generally require full collateral and an annual premium before they will issue a bond. Unlike the case of personal sureties, a single surety insurer is sufficient;⁴² 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."⁴³ 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.⁴⁴

An adequately capitalized insurer properly admitted in California to issue bonds should be able to withstand an objection to the sufficiency of its appeal bond. However, if there is an objection, then 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.
- Three copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance.⁴⁵

The insurer must in any event submit a certificate from the county clerk that the insurer's certificate of authority from the insurance commissioner is still in effect.⁴⁶

Upon submitting this evidence:

[A]nd 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....⁴⁷

An admitted surety must also comply with Section 12090 of the Insurance Code. Subdivision (a) of that section provides that:

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.

The defendant 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) may be deposited by the defendant with the clerk of the superior court.⁴⁸

The deposit must consist of liquid assets authorized by statute.⁴⁹ The money may be deposited in any one of six different forms:

- 1) Cash.
- 2) State or federal bearer bonds and notes.
- 3) Bank or savings and loan certificates of deposit.
- 4) Bank savings accounts.
- 5) Savings and loan investment certificates or share accounts.
- 6) Credit union certificates or share accounts.⁵⁰

If the deposit is in the form of bearer bonds or bearer notes, the person giving the bond may apply to the court for an expedited hearing to place a value on the bonds or notes.⁵¹

The deposit must "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."⁵² The clerk may prescribe additional terms and conditions.⁵³ For example, Los Angeles County requires that the defendant obtain an order of the superior court authorizing and directing the clerk to accept the deposit.

The statute provides that "[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."⁵⁴ Moreover, since interest earned on the deposit during the pendency of the appeal is payable to the person giving the deposit,⁵⁵ a deposit may be preferable to a surety insurer bond, particularly in the case of a large money judgment.

An appellant who chooses either a personal surety or an admitted surety insurer bond must insure proper execution and filing of the bond. Although an admitted surety insurer presumably will be familiar with the technical requirements and generally will use preprinted forms to issue the bond, it is impor-

tant for the defendant to be familiar with these requirements and to guard against mistakes by becoming actively involved in the process of procuring a bond.

The bond must be in writing and signed by the surety under oath.⁵⁶ The surety must state it obligates itself under the statute providing for the bond to pay the amount of the judgment.⁵⁷ Multiple sureties must state they are jointly and severally liable.⁵⁸ The surety also must provide a service address for itself and the principal—for example, the defendant for whom the bond is given.⁵⁹

The Bond and Undertaking Law prescribes language that may be used in the bond.⁶⁰ Although the statute is not mandatory, its suggested terms provide good benchmarks for determining the technical sufficiency of a proposed bond.⁶¹

Once the bond is drafted, it must be filed in the superior court together with a proof of service on the plaintiff.⁶² 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 Code of Civil Procedure Section 917.1 requires no preapproval of an appeal bond, the bond becomes effective automatically upon filing.⁶³ Judgment liens that may have been placed against the defendant's property are automatically extinguished and new liens may not be created during the period of the stay created by the bond.⁶⁴

Posting an appeal bond can have a dramatic effect. For example, in *California Commerce Bank v. Superior Court*,⁶⁵ the defendant bank paid the marshal more than \$100,000 pursuant to a writ of execution on a money judgment against the bank. The bank, having previously filed a notice of appeal, then posted an appeal bond before the marshal delivered possession of the cash to the judgment creditor. The court of appeal held the effect of the appeal bond was to require the marshal to return the cash to the defendant-appellant.⁶⁶

Once the bond is filed, the beneficiary may object on grounds that the sureties are insufficient, the amount of the bond is insufficient, or that "[t]he bond, from any other cause, is insufficient."⁶⁷ 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.⁶⁸

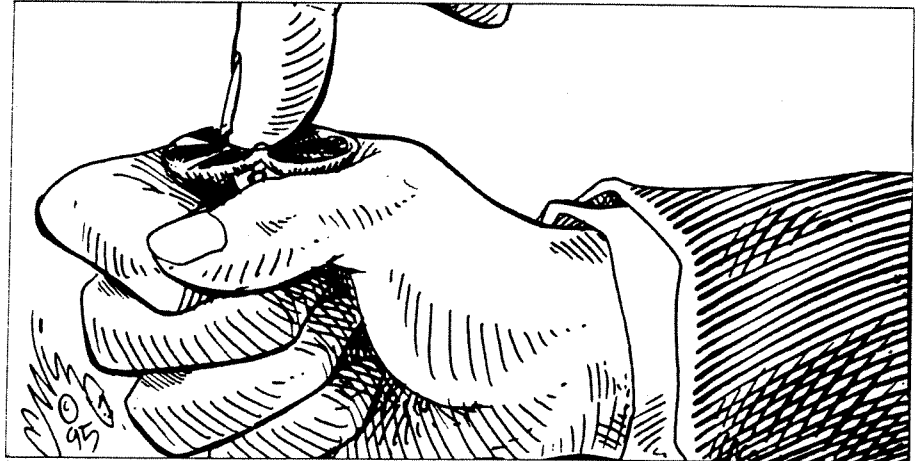
Counsel should note that a "savings" clause forgives technical errors or mistakes. Code of Civil Procedure Section 995.380(a) provides that:

If a bond does not contain the substantial matter or conditions required by this chapter or by the statute providing for the bond, or if there are any

defects in the giving or filing of the bond, the bond is not void so as to release the principal and sureties from liability.

This provision should be cited in response to any claim that a bond is ineffective to stay enforcement of a judgment because of technical defects.

Objections must be in writing by way of a noticed motion made within 10 days after the beneficiary has been served with the bond,⁶⁹ unless time is extended for good cause.⁷⁰ 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."⁷¹

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.⁷²

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.⁷³

The breadth of this statute undoubtedly means that in the case of personal sureties, an objection proceeding may include discovery into the sureties' personal finances, as well as examination and cross-examination of the sureties in court.⁷⁴

If the court determines the sureties are insufficient, the defendant must be prepared to act very quickly. 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."⁷⁵ If this deadline is not met, the right to a stay of enforcement pending appeal ceases to exist.⁷⁶

A defendant who overcomes initial objections to a bond must be prepared for the pos-

sibility of further challenges 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.⁷⁷ There is no requirement that the personal surety encumber any portion of his or her assets during the pendency of the appeal.⁷⁸ Technically, a personal surety could encumber such assets after the bond is posted. Thus, a conscientious plaintiff should periodically investigate the sufficiency of the sureties and, if problems arise, make a renewed objection on grounds of changed circumstances.⁷⁹

Plaintiffs also should be aware that the

mere passage of time can render a sufficient bond insufficient. If the appeal is a lengthy one, the plaintiff-respondent may seek to increase the amount of an appeal bond when the judgment plus accrued interest exceeds the statutory amount.⁸⁰ ■

¹ The statutes governing a stay of enforcement of a money judgment pending appeal are set forth in CODE CIV. PROC. §§916, *et seq.*

² CODE CIV. PROC. §§995.010, *et seq.*

³ CODE CIV. PROC. §917.1(a). A bond in an amount set by the trial court also must be given in order to stay enforcement of various other judgments and appealable orders. 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). The trial court also may require a bond in certain other cases where the court believes it necessary. CODE CIV. PROC. §917.9.

⁴ CODE CIV. PROC. §917.1(b). Although §917.1 uses the term "undertaking" as opposed to "bond," the definition of the term "bond" includes the definition of the term "undertaking." An "undertaking" is defined as a "surety, indemnity, fiduciary, or like undertaking executed by the sureties alone." CODE CIV. PROC. §995.190. A "bond" is defined as both "(1) [a] surety, indemnity, fiduciary, or like bond executed by both the principal and sureties," and "(2) [a] surety, indemnity, fiduciary, or like undertaking executed by the sureties alone." CODE CIV. PROC. §995.140(a). The terms "bond" and "undertaking" may be used interchangeably. CODE CIV. PROC. §995.210.

⁵ No appeal bond is required when the judgment on

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appeal is limited to an award of costs under CODE CIV. PROC. ch.6, §§1021, *et seq.* See CODE CIV. PROC. §917.1(d); compare Bank of San Pedro v. Superior Court, 3 Cal. 4th 797, 803, 805 (1992) (appeal bond required for award of nonroutine expert-witness fees pursuant to CODE CIV. PROC. §998).

⁶ Grant v. Superior Court, 225 Cal. App. 3d 929 (1990).

⁷ *Id.* at 939-40.

⁸ Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987).

⁹ *Id.* at 5.

¹⁰ *Id.* at 32 (Stevens, J., concurring).

¹¹ *Id.* (note omitted).

¹² *Id.* at 32-33 (Stevens, J. concurring) (note omitted).

¹³ CAL. R. OF CT., Rules 26(c)(5), 26(c)(6). See Golf West of Kentucky, Inc. v. Life Investors, Inc., 178 Cal. App. 3d 313, 316 (1986).

¹⁴ CAL. R. OF CT., Rule 26(c)(5); see CODE CIV. PROC. §995.250 (b). Thus, the 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. However, because a bond is required by statute to stay enforcement of a money judgment pending appeal, the trial court may have no discretion to find a bond unnecessary in that situation. 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 proceeding").

¹⁵ The Bond and Undertaking Law does not define the term "indigent." However, the term has been defined with some precision in other statutory schemes. See, e.g., BUS. & PROF. CODE §6213 (d).

¹⁶ Nuckolls v. Bank of California, Nat. Assn., 7 Cal. 2d 574, 576-77 (1936).

¹⁷ CODE CIV. PROC. §923.

¹⁸ See Nuckolls, 7 Cal. 2d at 577.

¹⁹ See EISENBERG, HORVITZ & WEINER, CAL. PRACTICE GUIDE: CIVIL APPEALS AND WRITS ¶¶7:280-7:286, at 7-54—7-56 (1994). 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).

²⁰ EISENBERG, HORVITZ & WEINER, *supra* note 19, ¶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. There is no time limit at the trial court level 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.

²¹ See California Commerce Bank v. Superior Court, 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 [S]ections 916, subdivision (a), and 917, subdivision (a), were met").

²² CODE CIV. PROC. §916(a).

²³ Weisenburg v. Molina, 58 Cal. App. 3d 478, 485-86 (1976).

²⁴ Foggy v. Ralph F. Clark & Associates, Inc., 192 Cal. App. 3d 1204, 1213 (1987); *but see* Weisenburg, 58 Cal. App. 3d at 486.

²⁵ CODE CIV. PROC. §918(b).

²⁶ See CODE CIV. PROC. §697.040(b).

²⁷ See CODE CIV. PROC. §995.230.

²⁸ See text, *infra*.

²⁹ *Id.*

³⁰ CODE CIV. PROC. §917.1(b).

³¹ CODE CIV. PROC. §995.310.

³² CODE CIV. PROC. §995.510(a)(3).

³³ CODE CIV. PROC. §995.510(b).

³⁴ CODE CIV. PROC. §995.510(a)(1), (a)(2).

³⁵ CODE CIV. PROC. §995.510(a)(1).

³⁶ CODE CIV. PROC. §995.520(a)-(c)(4).

³⁷ CODE CIV. PROC. §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).

³⁸ See text, *infra*.

³⁹ CODE CIV. PROC. §917.1(b)(d).

⁴⁰ CODE CIV. PROC. §995.120(a).

⁴¹ See Buzgheia v. Leasco Sierra Grove, 30 Cal. App. 4th 766, 770 (1994) ("It is axiomatic that one may not act as his own surety since a surety is defined as 'one who promises to answer for the debt...of another....' [CIV. PROC. §2787; CODE CIV. PROC. §995.185.]").

⁴² See CODE CIV. PROC. §§917.1(b), 995.310, 995.610(a).

⁴³ 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)(1)), 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).

⁴⁴ CODE CIV. PROC. §995.630(a)(b).

⁴⁵ CODE CIV. PROC. §995.660(a)(1), (a)(2), (a)(4).

⁴⁶ CODE CIV. PROC. §995.660(a)(3).

⁴⁷ CODE CIV. PROC. §995.660(b).

⁴⁸ CODE CIV. PROC. §995.710(a), (b).

⁴⁹ Markley v. Superior Court, 5 Cal. App. 4th 738, 745 (1992).

⁵⁰ CODE CIV. PROC. §995.710(a)(1)-(a)(6).

⁵¹ CODE CIV. PROC. §995.720(b)(c).

⁵² CODE CIV. PROC. §995.710(c).

⁵³ CODE CIV. PROC. §995.710(d).

⁵⁴ CODE CIV. PROC. §995.730.

⁵⁵ CODE CIV. PROC. §995.740(a), (b).

⁵⁶ CODE CIV. PROC. §995.320(a).

⁵⁷ CODE CIV. PROC. §§995.320(a)(1); 995.330.

⁵⁸ CODE CIV. PROC. §995.320(a)(1).

⁵⁹ 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).

⁶⁰ CODE CIV. PROC. §995.330.

⁶¹ *Id.*:

A bond or undertaking given in an action or proceeding may be in the following form:

(Title of court. Title of cause.)

Whereas the [fill in blank] desires to give (a bond) (an undertaking) for (state what) as provided by (state sections of code requiring bond or undertaking); now, therefore, the undersigned (principal and) (sureties) (surety) hereby (obligate ourselves, jointly and severally) (obligates itself) to (name who) under the statutory obligations, in the amount of [fill in blank] dollars.

⁶² CODE CIV. PROC. §§995.340, 995.370.

⁶³ CODE CIV. PROC. §§995.410(a); 995.420(a).

⁶⁴ CODE CIV. PROC. §697.040(a). Absent an express order of the trial court, judgment liens are not automatically extinguished by a temporary stay without a bond issued under CODE CIV. PROC. §918. CODE CIV. PROC. §697.040(b).

⁶⁵ California Commerce Bank, 8 Cal. App. 4th 582.

⁶⁶ *Id.* at 587. See also Lee Chuck v. Quan Wo Chong Co., 81 Cal. 222, 227 (1889); Curley v. Superior Court, 199 Cal. App. 2d 369, 371 (1962) (posting appeal bond "perfected" appeal and required sheriff to release to judgment debtor money seized under writ of execution). Compare Messenkop v. Duffield, 211 Cal. 222, 225

(1930) (posting of appeal bond cannot undo execution that had been completed).

⁶⁷ CODE CIV. PROC. §995.920.

⁶⁸ CODE CIV. PROC. §996.010(a), (b).

⁶⁹ CODE CIV. PROC. §995.930(a), (b).

⁷⁰ CODE CIV. PROC. §995.050.

⁷¹ 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.

⁷² CODE CIV. PROC. §995.950(a).

⁷³ CODE CIV. PROC. §995.950(b).

⁷⁴ 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).

⁷⁵ CODE CIV. PROC. §995.960(b)(1). 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). See Stewart v. Whitmyre, 192 Cal. App. 2d 327, 329 (1961) ("An objection to sureties does not negative the automatic stay which becomes effective upon the filing of an undertaking on appeal. The mere filing of the appeal bond stayed execution of the judgment...until the objection to sureties and justification of sureties had been determined.").

⁷⁶ CODE CIV. PROC. §995.960(b)(1).

⁷⁷ 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).

⁷⁸ See Buzgheia, 30 Cal. App. 4th at 772 ("The declarations of the personal sureties merely list assets to demonstrate their net worth.").

⁷⁹ See CODE CIV. PROC. §995.960(c) (allowing renewed objections to a bond "upon a showing of changed circumstances").

⁸⁰ See Grant, 225 Cal. App. 3d at 938.

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