

PROCEDURES FOR THE PROPERTY BOND PROCESS

The property bond process begins when a Pretrial Service Officer (Officer) interviews your client to determine whether your client can be released pretrial from custody on a property bond. If the officer determines that your client (client's family or client's friends) has real property that can be used as collateral for the property bond, the officer will hopefully (after weighing all the factors of the case) recommend pretrial release to the court. The magistrate judge or district court judge will order pretrial release if the officer's recommendations are accepted.

The Assistant U.S. Attorney (AUSA) may strongly request detention. Your client will **only** be released **if** the judge adopts the officer's recommendations for release. You need to be aware that **if** your client violates **ANY** of the pretrial conditions of release, the property owners (sureties) **COULD** possibly and most likely will forfeit the amount of the bond or property. This is something you might want to have the court clarify in open court before you start drafting your bond paper work.

A. Gathering Information

Once the court orders your client released on a property bond, your work or that of your client's family/friends really begins. Just remember - the estimated market value of the property minus any amount of mortgage due is the equity that is considered the collateral for the property bond.

You (or your staff) will need to interview the sureties to obtain and verify property information. In addition to the documents and information you receive from the sureties, you also need to obtain the following documents from other sources:

- 1) Client's Conditions of Release either from the Pretrial Officer or from CM/ECF Pacer. If your client has already been released by the Court on an unsecured bond, the Court's Order of Release most likely will have been published.
- 2) A limited title search from a title company
- 3) A real estate appraisal from a certified real estate appraiser.

B. Information/Documents Needed From the Property Owners (Sureties)

1. Property's Estimated Market Value

Ask the sureties how much they think their property is currently worth and when they had their property last appraised. If an appraisal was recently completed (within the last 6-8 months),

the AUSA may accept that appraisal - - saving the owners a big expense!

2. Names, Social Security Numbers and Birth Dates

Obtain sureties' full names, other used names, social security numbers and birth dates for the title search. You may also want to obtain the full names, birth dates and social security numbers of all children. (See explanation under Title Search.)

3. Mortgage Statement(s)(Optional)

If the sureties pay mortgage on the property, you will need their latest mortgage statement(s). The statement will hopefully show the principal amount as well as the total amount still due. If the statement does not show all this information, the sureties should obtain a cumulative mortgage statement from their lender or lenders. Some mortgage lenders have internet web sites where the sureties can download their personal mortgage account information.

4. Grant Deeds or Deeds of Trust

A copy of the sureties' original grant deed or deed of trust. The deed(s) will prove who the recorded sureties are. The deed or deeds will also provide you with a legal description of the property and may also include the county assessor's APN number of the property. This may assist the title company during their limited title search.

C. Information Obtained From Other Sources

1. Title Company

a. Property Profile (OPTIONAL)

Ask your title company for a profile on the property before you have them start a limited title search. Title companies usually provide property profiles free of charge. A profile will provide you with the names of sureties, APN number, legal description of property, and other information relating to when the structure was built and how many square feet the structure has. All the information in the profile is public record. By requesting a property profile, it may assist you in determining whether there is enough equity in the property to support the bond amount ordered by the court.

b. Title Search

Just an advance word of caution - - A property profile report (which is a free report from the title company) and a title search report **are not** the same. While the reports appear to contain the same information, the property profile report cannot act as a insurance guarantee for the property. Only the title search report can do this.

A limited title search, which is less expensive than a full title search, should suffice for your property bond purposes and costs approximately \$100, depending on the title company. You can obtain a limited title search report from any reputable title company (i.e. Fidelity Title Company, American Title Company, Stuart Title Company, Chicago Title Company.....the list goes on).

Chicago Title Company calls their limited title report a PIRT (Policy for Record Title). A PIRT (or a limited title search by other title companies) further acts as an insurance guarantee. This guarantee protects not only the title company, but protects the district court as the insured.

After advising the sureties of the cost of the title search, obtain a money order or check from the owners in that amount made out to the title company of your choice. Each title company has somewhat different procedures in performing a limited title search. Ask the company what their procedures are and what information is required to perform a limited title search. Once you received the funds from the owners, request the title search. When you order your title search report, please make sure that the **Clerk of the Court of the Eastern District of California** is the name of the insured.

In addition to showing who the property owners are, the limited title search report shows tax payments and types of exceptions, such as the 1st, 2nd or 3rd Deeds of Trust (usually 1st, 2nd or 3rd mortgages). It will also show whether there are any judgments or liens posted against the property. Keep in mind that if there are any judgments posted against the property, these may need to be resolved before going forward with posting the bond. You will need to review all the documentation received to determine whether the bond process can go forward.

NOTE: Occasionally, the title report may show judgments that do not belong to the property owners. If you have any questions about the judgments and/or liens, call the title company and have them explain these exceptions to you. If after talking the sureties you feel that these exceptions were posted incorrectly, ask the title company what needs to be done in order to amend the title search.

2. Real Estate Appraiser

a. Property Appraisal

The appraisal needs to be performed by a certified real estate appraiser. A limited drive-by appraisal with three photo comparables should suffice for your bond purposes. It is also the most cost feasible for the sureties. Once it's been determined how much the appraisal will cost, advise the sureties of the total cost and obtain a check or money order from them made out to the appraiser for the appropriate amount. Upon receipt of the appropriate funds, order the appraisal.

NOTE: Chicago Title will no longer assist you with the appraisal. Unfortunately, the company did away with this service several years ago.

As stated earlier, if the appraisal was done within the last six to eight months, the AUSA may be willing to accept it. You'll need to call and find out. If the AUSA won't accept the appraisal that was done several months ago, then you have no other choice but to have another appraisal performed.

If there was a previous appraisal performed that is somewhat recent and the AUSA won't accept it, you may want to include a copy of that appraisal in your bond package. This will especially be important documentation if the previous appraisal on the property showed a higher estimated market value than your more recent appraisal. Historically, limited drive-by appraisals will show a lower market value than a full appraisal. Chances are, with the way the real estate market is going, the property being posted won't go down in value, but you never know.

If you do not know of an appraiser in the county where the property is located, use the phone book's yellow pages to find a real estate appraiser. Alternatively, search the internet to find a real estate appraiser close to the property's location. You can also perform internet searches to find a certified real estate appraiser. Please make sure that you do not have the sureties ask for a **free market value assessment**. It is **NOT** the same as having an appraisal performed by a real estate appraiser.

3. Pretrial Conditions of Release

The Pretrial Conditions of Release will list your client's additional release conditions. Additionally, it will list the property to be posted and who the owners are of that property. Obtain a copy from your client's Pretrial Services Officer or from CM/ECF Pacer. As stated earlier, if your client has already been released, the Court's Order of Release may have been published in the CM/ECF system. You **will** need a copy of your client's conditions, especially since you will probably need to include **ALL** the conditions of release in the straight note.

D. Documents You Need to Draft

1. Straight Note

A straight note, for the most part, is a promissory note that states that the sureties promise to pay the bond amount if your client does not comply with at least one or more of the court's conditions of release. The note must be signed by all parties with an interest in the property. It **usually** does not need to be notarized.....although there are one or two prosecuting AUSA's in Fresno that **may** require you to have the straight note notarized. **(FRESNO OFFICE ONLY)**

The court **must** receive the original signed note.

2. Deed of Trust

A new deed of trust needs to be drafted, naming the court as beneficiary. In the top left hand corner of the deed, type the case name and docket number. In the body of the deed, you need to include the following information: 1) names of the sureties, 2) the property address

being posted as collateral, 3) trustee's names (title company of your choice), 4) beneficiary's name (U.S. District Court) and 5) the amount of the bond set by the court. The signatures of the property owners must be **notarized** before a notary public.

Before the deed is recorded with the County Recorder's Office, you may want to wait until the AUSA has reviewed the property bond package. It is your decision to make. Just keep in mind that it could take up to 4-8 weeks before the court sends the reconveyance papers back to the property owners for recording, if the bond isn't approved.

If you decide not to wait because you feel the bond documentation supports the court's bond requirements, then have the original deed recorded in the county where the property is located (i.e. if the property is in Selma, then the deed needs to be recorded with the Fresno County Recorder's Office). Make sure that you obtain a **certified copy** of the recorded deed. The copy of the recorded deed provided to the court **must be CERTIFIED**.

In **Sacramento**, occasionally, depending on the Judge and the charges, the Judge may release your client and give you up to fourteen(14) days to complete the necessary paperwork. In **Fresno**, the Court requires that you obtain a certified copy of the recorded deed of trust before they order your client released.

3. Appearance Bond (SACRAMENTO ONLY)

_____The majority of the time, the Judge and AUSA will require that the defendant and all sureties (people posting their property) sign an Appearance Bond.

E. Completed Property Bond Package

Sacramento Instructions - When you have all the necessary paperwork together, deliver it to the AUSA for approval. If they approve the package, they will initial the deed of trust in the upper right hand corner and return it to you. After you have gotten the AUSA approval, take the deed of trust to the Recorder's Office and have it recorded. We suggest that you take the original and four (4) copies. This way, the Court will get the original, the property owner can have a conformed copy, you can keep one in your file, and the AUSA and have a copy.

After the deed has been recorded, deliver the original packet to the Magistrate Court Clerk for the Judge who ordered bail. As stated earlier, depending on the Judge and the charges, the Judge may release your client and give you up to fourteen (14) days to complete the necessary paperwork.

Fresno Instructions - At the same time you provide the property bond package to the AUSA for review and approval, deliver the **original** bond package with a cover letter/memo to the deputy court clerk of the judge who ordered your client's release. In your memo, advise the court that the U.S. Attorney's Office is reviewing the bond package. If you have not received any word from the AUSA regarding bond approval after 24 hours, call either the Magistrate's Court Clerk or the AUSA about the status of the bond.

Generally, unless you opted out of the CM/ECF electronic e-mail notification, you should receive an NEF e-mail from the Court advising you that the property bond was approved. If you did opt out of being notified electronically, you should receive your copy through regular U.S. mail.

F. Possible Problems

Not Enough Equity to Meet the Court's Bond Requirements: If you believe that the property doesn't have enough equity to meet the court's bond requirement, it is possible that the AUSA will stipulate to a lower bond amount. You'll need to call. Additionally, even if a compromise is reached regarding bond amount, the AUSA **may** want the straight note and deed to reflect the original bond amount ordered by the court - - although there is not enough equity in the property.

Alternatively, you may wish to request a bond hearing to re-evaluate the terms of release and have the court to lower the bond amount.

G. Release

After the AUSA approves the bond package and submits the bond approval memo to the judge's Courtroom Deputy, the judge will sign your client's Order of Release. A copy of the order will be delivered to the U.S. Marshal's Office. If the Marshal's Office receives the release order **before** 4:30 p.m., they should be able to fax over your client's Order of Release to the jail the same day. You might want to call Marshal's office to verify that they faxed the order to the jail. It has been known to happen where the deputies failed to fax over the release order until the next business day.

Once the order reaches the jail, it may still take approximately 2 to 4 hours or longer to process your client for release from the jail. If your client is released before 4:30 p.m., he or she is required to go over to the Pretrial Services Office to check in with his or her case officer. If your client is released after 4:30 p.m. in the afternoon, then he or she needs to call the Pretrial Service Office the first thing in the morning for instructions. Their office opens at 8:00 a.m. The office telephone number in Sacramento is (916) 930-4350 and in Fresno it is (559) 498-7552.

H. Samples

If you need samples of any of the completed forms talked about in these instructions, please either call Cynthia Compton in Sacramento at (916) 498-5700 or Nancy McGee in Fresno at (559) 487-5561.

II REVISED PROPERTY BOND PROCEDURES FOR 2005 (FRESNO ONLY)

A. CM/ECF Procedures

With the implementation of CM/ECF, some of the bond procedures have been revised.

1. Supporting Bond Documentation

a. Court's Copy

- (1) Certified copy of the recorded Deed of Trust. (**NOTE:** The conformed copy the recorded deed **must** be **certified** by the County Recorder's Office).
- (2) **Original** signed straight note/promissory note.
- (3) Substitution of Trustee and Full Reconveyance.

b. AUSA's Copy for Review and Approval

- (1) Copy of certified copy of the recorded Deed of Trust.
- (2) Copy of signed straight note (**FRESNO ONLY**).
- (3) Recent title search report performed by a title company.
- (4) Recent real estate appraisal showing the estimated market value of the property performed by a certified real estate appraiser. Last mortgage statement(s) if property owner(s) still pay mortgage.
- (5) Copy of owner's grant deed(s) showing proof of ownership. (**Note:** if owners recently refinanced, you may want to include the deed of trust from the refinancing. This deed will may possibly show up on the title search you present to the AUSA as part of your property bond package.)

2. Documents Published Through EDCA's CM/ECF System

- a. AUSA's Bond Approval Memo. (AUSA will submit a property bond approval memo to the Magistrate's Courtroom Deputy. (See attached copy). This memo will be the **only** document that the District Court Clerk's Office will scan into the CM/ECF system. The deed of trust and the straight note that you provided to the Court will be retained in the Court's vault until the case is completed. It will not be a public record.

H. Other Procedures

1. Straight Notes

- a. Unless otherwise ordered differently by the court, ALL of your client's conditions of release need to be included in the straight note (promissory note).