

GENERAL ORDER No. 55
BOND EXONERATION AND THE POSTING AND RETURN OF PROPERTY

I. PURPOSE

The purpose of this General Order is to ensure that property is correctly posted as security for a bond in a criminal case and is returned in conformance with the law promptly after entry of final judgment.

**II. GUIDELINES FOR POSTING REAL PROPERTY TO SECURE
A PERSON'S RELEASE FROM CUSTODY**

A. Introduction

The following are guidelines for posting real property to support a pretrial release bond in the United States District Court for the Northern District of California. When the court sets a bond to secure a person's pretrial release and orders the bond secured by real property, certain documents will be required to prove the value and ownership of the property and to secure the court's interest. The documents are typically prepared by the defense, presented to the government for approval and then lodged with the court. These guidelines are intended to assist parties to generate accurate and reliable documentation without undue delay, expense, or burden.

B. Required Documents

The court requires accurate information concerning the value of and title to any property posted as security for a bond. For each piece of real property posted, documents must be provided to show (1) that the property has enough equity to support its portion of the bond amount, and (2) that the person(s) posting the property is/are the true and only owner(s). There will be no deviation from the requirements set forth below regarding (1) the Obligation, (2) the Deed of Trust, or (3) the Reconveyance (see B.3, 4 & 5 below.)

1. Valuation Documents

Documents that show the current fair market value of property are to be used in this process. Appraisals conducted by licensed appraisers are recognized as the most effective means of capturing the fair market value of property. Other methods, such as property profiles or comparative market analyses, may be considered when particular circumstances diminish valuation concerns or when otherwise appropriate.

2. Title Documents

Documents prepared by a title insurance company or a title research company that show (a) the current legal owners, and (b) encumbrances, liens and/or mortgages on the property must be submitted. Such documents usually include a preliminary title report and/or litigation report. Other documents may be considered when warranted by particular circumstances, such as the posting of multiple properties.

3. Obligation

This document guarantees that the owner(s) of the property understand(s) that the property is being posted as security for the defendant's release from custody. Defendants and sureties must be advised that if the defendant fails to appear and abide by all other conditions imposed by the court, the property is subject to forfeiture by the United States. The obligation must be signed by each person who holds title to the property. The form is attached hereto as *Form CAND GO-55-A*.

4. Deed of Trust and Assignment of Rents

This document conveys the interest in the property to the court. The document must be signed by all parties who hold title to the property. The document must also conform to the legal requirements of a document conveying interest in real property. Both the "beneficiary" and "trustee" for the property must be "Mark B. Busby, Clerk of the Court." The deed of trust must have the case name, case number and the amount of the bond on its face. A sample form is attached as *Form CAND GO-55-B*. The deed of trust must be recorded with the County Recorder in the county where the property lies. The deed of trust should not be recorded until the entire bond package has been approved.

5. Reconveyance

A fully prepared reconveyance deed must be lodged with the court at the time the property bond is posted. A sample form is attached as *Form CAND GO-55-C*. The sample reconveyance document may not satisfy the requirements of states other than California. The preparer of the reconveyance document is responsible for verifying the requirements of any other state in which property lies and providing the proper documents to the Clerk.

The Clerk's Office will automatically use the lodged reconveyance document to reconvey the Clerk's interest in the property upon exoneration of the bond. If changed circumstances make this reconveyance document obsolete, the submitting party must submit a new reconveyance document to the Clerk's Office along with clear instructions to use it in place of the one previously submitted.

The Clerk's Office will not alter or amend the reconveyance document submitted at the time the bond package is lodged and does not warrant its accuracy or assume liability for the reconveyance document or its recording. The submitting party is solely responsible for its accuracy and recording.

C. Review Process

A flexible, case-by case approach to the valuation of property may result in the parties agreeing on different combinations of the valuation and title documents outlined below. The documents listed in II.B must be given to the prosecutor assigned to the case for review and approval before being submitted to the court. The parties should make good faith efforts to resolve informally any issues and/or disagreements regarding the sufficiency of documents before bringing such matters before the court.

The court will not be involved in the valuation or approval of a bond package unless there is a dispute between the parties and only after good faith efforts have failed to resolve it.

D. Lodging the Bond Package with the Court

When all the above documents have been prepared and approved by the parties or by the court and the deed of trust has been recorded, the documents must be lodged with the Clerk of the Court.

The Clerk's Office will only lodge recorded deeds of trust. A conformed or certified copy from the recording office of the recorded deed of trust will suffice to show proof of recording. The Clerk's Office will issue a receipt in exchange for the lodged documents.

III. PROCEDURE FOR EXONERATION OF BOND AND RECONVEYANCE OF PROPERTY

A. Unless otherwise requested by one of the parties, upon final judgment in any criminal matter in which a bond has been posted, the court on its own motion will either (1) exonerate the bond at the time of sentencing, or (2) order the bond exonerated upon the self-surrender of the defendant to the Bureau of Prisons for service of the defendant's sentence. Unless otherwise provided by the court, an order of dismissal or judgment of acquittal exonerates the bond without further action by the court and any bond plus interest is to be returned to the owner identified on the *Affidavit of Owner of Bond Security (Form CAND GO-55-D)*.

B. Upon exoneration of the bond, the Clerk of the Court will reconvey the property by executing the reconveyance document lodged with the court by the posting party and sending the executed reconveyance document to the address for the posting party which appears on the reconveyance document. The posting party is responsible for recording the reconveyance document with the respective county recorder.

C. Subject to the provisions of 28 USC § 2044, if bond is posted, the owner(s) of the bond, *i.e.*, the defendant or a surety or sureties, must proceed in the manner described in the attached *Procedures For Bond Posting & Exoneration*, and complete the *Affidavit of Owner of Bond Security (Form CAND GO-55-D)*.

D. All travel documents surrendered at the time of the posting of the bond shall be submitted to Pretrial Services. All other personal and real property related to the posting of the bond shall be submitted to the Clerk of the Court.

1. Bond Exoneration—Return of Travel Documents or Personal Property

Except as hereinafter provided, travel documents surrendered to Pretrial Services, and other personal property of the defendant submitted to the Clerk of the Court at the time of the posting of the bond, will be sent to the defendant or defendant's attorney upon execution of the order exonerating bond, execution of an order of dismissal, or entry of a judgment of acquittal. If, however, a travel document is known to have been

issued in a false name, it will be sent to the appropriate passport agency (unless the document is being held for evidentiary purposes in another proceeding).

2. Documents or Property Unable to be Returned

If the defendant's attorney is no longer representing the defendant and there is no known address for the defendant or attorney, the travel document or personal property will be held by Pretrial Services or the Clerk of the Court, respectively, until such time as the defendant requests its release. After 5 years, the travel document will be sent to the appropriate passport agency. An expired travel document will be sent to the appropriate passport agency irrespective of the outcome of the criminal case. If the defendant is convicted, all travel documents will be sent to the appropriate passport agency.

E. If the bond is exonerated for any reason other than entry of final judgment, the defendant's attorney must submit a proposed order of exoneration.

F. If any judge of this court orders the forfeiture of a bond, then the bond or property, real or otherwise, posted for the purpose of securing the bond will be forfeited up to the amount of the bond and any interest earned on the bond will be disbursed pursuant to the court order forfeiting bond.

ADOPTED: April 19, 2005
AMENDED: May 9, 2007
AMENDED: November 21, 2011
AMENDED: March 17, 2015
AMENDED: April 19 2016
AMENDED: October 15, 2019
AMENDED: October 8, 2021
AMENDED: December 6, 2021
AMENDED: October 1, 2022

FOR THE COURT:



RICHARD SEEBORG
CHIEF JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK

PROCEDURES FOR BOND POSTING & EXONERATION

When a defendant is permitted to post bail (personal check, cashier's check, or money order), the posting and exoneration of bail will be in accordance with the following procedures. These procedures relate to General Order 55.

POSTING OF BOND GENERALLY

Each person delivering bond must complete the *Affidavit of Owner of Bond Security (Form CAND GO-55-D)* providing, under penalty of perjury, his or her name, address, Social Security Number (SSN), Taxpayer Identification Number (TIN), Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN) and the amount of bond owned by that person posted as bail. In the event of bond being posted by more than one person, the cashier will issue a separate receipt to each owner of the bond based on the information provided on the *Affidavit of Owner of Bond Security*.

Bail bonds that are posted with the court are invested in the Court Registry Investment System (CRIS) pursuant to General Order 31. Upon exoneration of bail, an order of dismissal or judgment of acquittal, the Clerk's Office will refund the bond and the interest earned on those funds only if a SSN, TIN, ITIN or EIN has been provided. A completed *Affidavit of Owner of Bond Security (Form CAND GO-55-D)* must accompany the bail, whether it is remitted in person, by mail or express delivery, or in some other fashion.

**REFUNDING OF BOND AFTER BOND EXONERATION,
DISMISSAL OR ACQUITTAL**

Upon the exoneration of bail, an order of dismissal or judgment of acquittal, the Clerk's Office will return the bail and any interest earned thereon to: (a) the name(s) and address(s) provided on the *Affidavit of Owner of Bond Security*; or (b) the name and address contained in any applicable court order identifying the owner of the bail. It is the obligation of the person or persons to whom, under the above provisions, the exonerated bail will be returned to notify the financial unit of the Clerk's Office, in writing, of any address changes.

TRANSFER OF BAIL FROM ANOTHER DISTRICT

In any case in which bail received in another district court has been transferred to this district court, it is the responsibility of defense counsel to obtain a court order identifying the owner of the bond, and to have the owner complete the *Affidavit of Owner of Bond Security (Form CAND GO-55-D)*.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK

OBLIGATION

We, the undersigned, represent and/or agree that:

1. We are the owners of the property pledged in the attached Deed of Trust;
2. In consideration for the release of defendant _____
on bond in the matter of the United States v. _____,
Case No. CR_____, we pledge the amount of \$ _____ to be secured
by the above-mentioned Deed of Trust executed in favor of the United States District
Court, Northern District of California.
3. In the event bail is eventually exonerated in said matter, said beneficiary of the Deed of
Trust is authorized and requested to execute and acknowledge the Reconveyance
document also attached hereto;
4. In the event bail is eventually forfeited for failure to comply with the terms of the bail
order, said beneficiary is authorized to request the trustee under the Deed of Trust to
proceed with foreclosure under the terms of the Deed of Trust and to submit this
document together with the order forfeiting bail and the Deed of Trust as conclusive
evidence of default.

Signature

Date

Signature

Date

WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE

FULL RECONVEYANCE

Mark B. Busby, Clerk, United States District Court for the Northern District of California as Trustee and Beneficiary under that certain Deed of Trust dated the ____ day of _____, 20__, executed by _____ as Trustor(s) and recorded on the ____ day of _____, 20__ as instrument number _____ in Book _____ at Page _____ of Official Records, in the Office of the Recorder of _____ County, California, having been requested in writing by the holder of the obligations secured by said Deed of Trust to reconvey the estate granted to Trustee under said Deed of Trust, DOES HEREBY RECONVEY to the person or persons legally entitled thereto, without warranty, all the estate, title & interest acquired by Trustee under said Deed of Trust.

Dated: _____

Mark B. Busby,
Clerk of Court, United States District Court

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } ss

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

[SEAL]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK

AFFIDAVIT OF OWNER OF BOND SECURITY

Case Name: United States v. _____

Case Number: CR _____

By my signature below, on the date signed, I, the owner of the bond listed below, hereby certify under penalty of perjury that:

1. The below amount of bond appearing next to my signature and deposited as security on the foregoing bond is owned by me and is to be returned to me with interest earned based on the ratio of the bond deposited at the below address upon exoneration of this bond,
2. The SSN/TIN/ITIN/EIN shown below is my correct taxpayer identification number,
3. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
4. I am a U.S. Citizen or other U.S. person defined by the IRS for federal tax purposes as (a) an individual who is a U.S. citizen or U.S. resident alien, (b) a partnership, corporation, company, or association created or organized in the United States or under the law of the United States, (c) an estate (other than a foreign estate) or (d) a domestic trust (as defined in Regulations section 301.7701-7).
5. I am exempt from Foreign Account Tax Compliance (FATCA) reporting.

Name:

Address:

SSN/TIN/ITIN/EIN (required for disbursement upon exoneration):

Telephone Numbers:

Home:

Work:

Mobile:

Amount of Bond provided as bail:

Personal check: \$ _____

Cashier's check: \$ _____

Money order: \$ _____

Other: \$ _____

I declare under penalty of perjury that the information provided on this form is true and correct.

Signature

Date

