



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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Bulletin 18-002

June 12, 2018

Collateral in Connection with a Bail Transaction

Bail is regulated by the Division of Insurance (“Division”) according to the laws for bail under the Insurance Code, which are found under Nevada Revised Statutes (“NRS”) title 57 chapter 697. This Bulletin provides guidance from the Division regarding collateral in connection with a bail transaction under the Insurance Code; however, a transaction involving collateral is also subject to other laws.¹ This Bulletin is not a comprehensive review of all applicable laws and regulations.

- A. Laws Governing Bail Bonds Are Considered Incorporated into the Bail Bond Agreement
Any provision in a contract that violates Nevada law is invalid. Waivers or agreements that violate Nevada law cannot be enforced by a bail agent because a contract cannot circumvent the law. Any action, document, or form that violates the law is prohibited even if both parties agree.
- B. Collateral Security
In bail, collateral is something that is pledged as security to guarantee that the defendant will appear in court as required by the court. By accepting collateral, the bail agent is securing his or her interest in the transaction because the bail agent can be reimbursed for certain losses through the collateral. A “security interest” means that the bail agent has a legal right that enables him or her to be indemnified through the collateral for the amount the bail agent actually pays to the court on a forfeited bond. NRS 697.320.4. It does not mean that the bail agent can just take the collateral and become the legal owner; it means that the bail agent must take the proper steps to transfer ownership or sell the collateral to indemnify himself or herself for the loss, as permitted by law, which the Division will address in a separate bulletin.
- C. Provisions Addressing Collateral Under NRS 697.320

¹ NRS titles 8, 9, and 10 address different aspects of security interests, secured transactions, and other property rights. Other provisions of Nevada law may also apply.

a. When and How Collateral May Be Accepted

Whether to require collateral in a bail transaction is an underwriting decision that must be made at the time the contract for posting a bond is signed. For property to qualify as collateral, the person offering the property must have voluntarily pledged it *at the time the contract is executed*. The intent to offer specific property as collateral security, including cash, *must be clearly stated and signed*.² If the parties later agree to substitute other property as collateral, this must be reflected in a new bail agreement and new written receipt, and also comply with any applicable laws.

If the bail agent decides that collateral is necessary in the bail transaction, this decision must be reflected in the bail agreement by specifically identifying the pledged property. In addition, Nevada's bail laws require a detailed written receipt be provided to the client. NRS 697.320.5. A copy of the bail agreement and receipt must be given to the person offering the collateral at the time the bail contract is executed.

NRS 697.320 imposes obligations for collateral in general,³ as well as addresses certain additional requirements imposed by the Insurance Code on bail agents who take physical possession of personal property or accept real property as collateral. The Division is aware that bail agents often choose not to accept physical possession of collateral because of the costs and duties it imposes on the bail agent. A bail agent cannot include a provision in the bail agreement that allows the bail agent to collect, seize, or otherwise take any property belonging to the client at a later time or at the bail agent's discretion. Note that if a bail agent does not specifically identify the collateral in the bail agreement and in a written receipt, the bail transaction is unsecured.

b. Type and Amount of Collateral Security

Collateral security can be personal property, money, or real property. The key is that it was *specific* and *voluntarily* provided by the client at the time of the execution of the bail agreement. Collateral must be *reasonable* in relation to the face *amount of the bond*, which means that the collateral cannot be worth significantly more than the bond is worth. NRS 697.320.1. The value of the collateral must be determined *before* the bail agreement is signed, and *must be included on a collateral receipt*. NRS 697.320.5. The value of the collateral must be based on some rational determination like a certified appraisal or bluebook value. A general power of attorney, or other document under any name that attempts to have the same effect of a general power of attorney, is not a legal substitute for collateral security, and is prohibited in a bail transaction.

c. How Collateral Must Be Handled or Kept—Fiduciary Capacity

Anytime a bail agent accepts collateral in a bail transaction, he or she receives it *in a fiduciary capacity*. NRS 697.320.2. A "fiduciary" is a person who must

² Additionally, any document conveying title to real property must clearly indicate on its face that it is executed as part of a security transaction.

³ Again, these obligations are in addition to the requirements for security interests in NRS titles 8, 9, and 10, and any other applicable laws.

exercise a high standard of care in managing *another person's* money or property.⁴ Thus, when a bail agent accepts collateral, the bail agent is in a position of trust and must act in good faith. Property pledged as collateral *does not belong* to the bail agent—the bail agent simply secures his or her interest through the collateral.

Taking physical possession of property as collateral imposes a duty on a bail agent to take certain actions to ensure that when the property is returned to the client, it is in the same condition as when it was accepted. The bail agent must ensure that the property is properly safeguarded and handled. Any damage or loss to the collateral or anything else that occurs with the collateral that negatively affects the value while the collateral is in the custody of the bail agent, is the responsibility of the bail agent.

d. When Collateral Must Be Returned

Nevada law requires collateral *be returned as soon as the obligation is discharged*, which is when the bond has been exonerated. Once a court exonerates a bond, the bail agent is no longer liable to the court on behalf of the defendant. When courts issue notices of exoneration to bail agents, such notices may not be ignored. When a court exonerates a bond, the bail agent must return the collateral. The obligation is unconditional—a bail agent must return collateral as soon as exoneration occurs; it *does not* depend on whether a client requests return of collateral. As the licensed expert in the business of bail, it is a bail agent's obligation to diligently monitor outstanding bonds and court proceedings. Collateral involving real property must follow the same provisions,⁵ except that additional requirements are imposed on bail agents.

i. Client Requests Return of Collateral

If a bail agent receives a request for the return of collateral before the bail agent has received notice from the court that the bond was exonerated, the bail agent is obligated to *immediately determine* whether the bond has been exonerated. The law does not impose any requirements on the client to provide proof of exoneration. A client may choose to present a certified copy of a minute order from a court to show the bond has been exonerated and the bail agent must accept it. The bail agent *must return the collateral immediately*. If the document is recorded, the bail agent or surety in possession of the document *must immediately* determine whether the bond was exonerated and, if so, *immediately* re-convey the real property according to the terms of the statute. Failure to timely return collateral is a violation of the Insurance Code and a crime.

ii. Fees Owed to Bail Agent

The fees referenced in NRS 697.320 are those that are permitted by NRS 697.300, namely the expenses charged by third parties (limited to guard fees, notary public fees, and recording fees) specifically identified in NRS 697.300.1(c) subsections (1) through (4), and expenses that meet the

⁴ Black's Law Dictionary (8th ed. 1999).

⁵ In addition to any other applicable laws.

requirements established in NRS 697.300.1(c)(5) and 697.300.1(d). If fees are owed to a bail agent in a bail transaction, the bail agent may hold collateral until the client reimburses the bail agent for the fees. Fees do not include premium, which was the cost to make the bail agreement effective. A bail agent or a consumer may request the Division to review whether a fee is permitted.

iii. Return of the Amount by Which the Collateral Exceeds the Amount of the Bail Forfeited

If bail is forfeited, the bail agent must immediately return to the person who deposited the collateral the amount by which the collateral exceeds the amount of bail forfeited. NRS 697.320.4. The disposition of collateral is subject to the provisions of NRS titles 8, 9, 10, or other applicable law. If the transaction is unsecured, a bail agent may only take appropriate legal action in order to be reimbursed for losses. Any collateral returned to a person pursuant to this subsection is subject to a claim for fees, if any, owed to the bail agent returning the collateral.

D. Compliance with Provisions Regarding Collateral

The Division is authorized to review and examine bail agent files to ensure compliance with requirements related to collateral, as well as other laws applicable to bail. NRS 697.290; NRS 679B.240.1. Failure to comply with these requirements may result in administrative fines, suspension or revocation of the license.

The Division will be providing additional guidance about collateral in connection with bail, as well as other bail topics on its website soon. Please direct any questions to the Division's Enforcement Section in Las Vegas, Nevada, by using the Division's toll-free number at (888) 872-3234.



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