

How to Post a Secured Bail-Bond

**By Wayne Buchanan Eads
Attorney at Law**

During the course of more than twenty-five years that I have practiced law in North Carolina, I have observed a great deal of confusion among the people of this state as to how a secured bail-bond, also called an appearance bond, can be posted. If the defendant can post bond, he will be released from jail until his case can be resolved in court.

In some communities, if a secured bond is required by the court, it is commonly believed that the only way it can be posted is by hiring a professional bail-bondsman, who is usually referred to simply as a bondsman. However, many times defendants have available to them friends or relatives who can post their bond without having to spend any money to hire a bondsman. Often, they do not know about that law and do not know that there are cheaper alternatives when it comes to posting bond after being arrested.

A client's wife came to me last year and informed me that a bondsman was posting her husband's bond and that the husband would come over to my office as soon as he was released. The appearance bond was set at one hundred thousand dollars secured. The bondsman's fee was fifteen thousand dollars, which the woman had paid using a significant portion of the family's life savings. Accompanying the woman to my office was her brother, who owned a home and a farm. In talking to him, I learned that he had a lot of equity in his two parcels of real estate, and that his equity totaled at least two hundred thousand dollars. I immediately called the magistrate's office to try to stop the posting of that bond through a bondsman. As I will explain below, they could have posted that bond by means of a mortgage, and the total cost to them would have been a few hundred dollars. Unfortunately for that family, my call was too late, because the defendant walked in just as the magistrate answered the telephone. Almost fifteen thousand hard-earned dollars were wasted that day.

That example is not unusual. In fact, it probably occurs every day in one courthouse or another in this state, so the law relating to secured appearance bonds will be the subject of today's column.

State Court

First let me explain the rules about posting a secured appearance bond in the state courts of North Carolina. The law requires any police officer who makes an arrest to promptly bring the defendant before a magistrate "without unnecessary delay."¹ Unless a person is arrested for first

¹N.C. General Statute 15A-501(2).

degree murder, he is entitled to have terms and conditions set for his pretrial release.² Once terms and conditions for release are established, if the judicial official required a secured bond, there are three ways to post it under North Carolina law.³

First, a secured bond can be posted by a cash deposit equal to the full amount of the secured bond. The entire deposit will be returned when the case is over, assuming of course that the defendant goes to court as required.

Second, a secured bond can be posted by use of a mortgage on real estate, whether residential, commercial, or agricultural.⁴ The real estate must be located within the State of North Carolina, but it does not have to be in the county in which the defendant is arrested. That method of securing a defendant's release will require a document from the county tax office showing the assigned tax value of that property. It will also require a statement from the bank or other lender showing the exact balance owed on the property. Subtracting the balance owed from the tax value yields the equity owned in that property. That equity must be equal to or greater than the amount of the secured bond. If it is, then the Clerk of Superior Court will accept the mortgage and order the release of the defendant.

Third, a secured bond can be posted by one or more solvent sureties, who are usually professional bail-bondsmen. Bondsmen are licensed by the state and regulated by the Commissioner of Insurance. They are permitted by law to charge a fee of up to fifteen percent (15%) of the face amount of the secured bond. If the appearance bond is posted in this manner, that fifteen percent fee will be kept by the bondsman as payment for his services in securing the release of the defendant.

Bondsmen May Request Collateral

In addition to their fees, bondsmen have the legal right to ask for collateral, and do so routinely, especially in cases involving defendants who are not United States citizens. And, in the case of the undocumented alien, the bondsmen can and usually will ask for full collateral before obtaining the defendant's release. Collateral is defined as additional cash or property equal to as much as 100% of the face amount of the secured bond. If the defendant flees without going to court, that collateral is forfeited by its owner. But if the defendant goes to court as required and completes his case, then the bondsman is obligated by law to promptly return the collateral after the case is completed.⁵

²N.C. General Statute 15A-533(b).

³N.C. General Statute 15A-534(a)(4).

⁴N.C. General Statute 15A-534(a)(4) and N.C. General Statute 58-74-1.

⁵N.C. General Statutes, Chapter 58, Article 71.

Federal Court

The major difference between state and federal courts on the issue of pretrial release versus detention without bond is that, for many federal offenses, such as drug conspiracies and crimes of violence, one section of the federal statute prohibits release in most cases.⁶ That specific section of the law, called a rebuttable presumption, can sometimes be overcome but it is very difficult to do so in most cases. The federal courts also detain defendants without bond if they are believed to be a danger to the community, for example, because of possible violent behavior or continued drug dealing, or if they are considered a flight risk who will not return to court. Because undocumented aliens always fall into the latter category, they will almost always be detained without bond.

Immigration Detainers Control

In the situation where the defendant is subject to a detainer, he might not be released even if he can post bond. There are several types of detainers, but the detainer that I want to discuss here is the immigration detainer. The federal agency now known as Immigrations and Customs Enforcement, usually just called ICE, is now a part of the Department of Homeland Security. Their budget and their manpower have been greatly increased since the terrorist attacks on September 11, 2000. Their computer networks have been tremendously upgraded as well. The result is that ICE is now extremely efficient in reviewing computerized arrest records and determining which defendants are legally or illegally in the United States.

What that all means for the undocumented alien who is arrested is that he will not be released on bond if an ICE detainer is filed against him. An ICE detainer takes precedence over an appearance bond in both state and federal court. Even if a defendant's bond were reduced to one dollar, and he posted that one dollar, he would not be released from jail. The ICE detainer would control him until it was resolved.

I once had a family come to my office and insist that I try to get a bond reduced despite the defendant having an ICE detainer on file. I advised them not to spend money on a bond reduction effort because the defendant would not be released. Why waste the time and money? They said they understand that the effort would be futile, but then they left my office and went to another attorney. He took their money, drafted a bond reduction motion, filed it, conducted a hearing on it, got the bond reduced by half, and told the family to go post it. They did so, paying the attorney one thousand dollars for the bond reduction and paying the bondsman \$3,750 for his fees. The jail refused to release the defendant because the ICE detainer prohibited them from doing so. They did not want to hear what I told them, so they found someone who would tell them what they wanted to hear. Because of that, they wasted several thousand dollars, which they were not able to get back, and the defendant stayed in jail.

⁶Title 18, United States Code, Section 3142(e).

Families also occasionally tell me that they know a person who had an ICE detainer but got his bond reduced, posted it, and was released despite the detainer. I tell those people that every case is different, and without knowing all the facts of that case, I have no way to compare that situation to the case they came to talk to me about. Jails sometimes make a mistake and release a defendant despite an ICE detainer being on file. It does not happen often. Therefore, before anyone attempts to post a secured appearance bond for any defendant, a determination should first be made as to whether or not an ICE detainer is on file in the case.