

Form 9

BAIL ACT 1982

Sections 37 (1) (b)

NOTE: If a proposed surety has difficulty with reading English he may ask to have this form translated to him

1. Contents of this form

This form contains a summary of the main provisions of the *Bail Act 1982* which relate to sureties for bail. Only the general effect of those provisions is stated.

2. Meaning and function of surety

A surety, or a number of sureties, may be required as a condition of the release of an accused on bail.

The intention is to have someone to make sure that the accused appears in court when required.

It is the duty of a surety to do this.

A person becomes a surety by agreeing in writing to pay an amount of money to the State if the accused does not appear. This agreement is called a surety undertaking (see Part C of Form 8).

It may also be a bail condition that a surety deposit cash or other security to cover the amount referred to.

3. Information to be given to surety

As well as this form, a proposed surety must be given a form (Part A of Form 8) showing details of the accused's bail. The proposed surety must read the forms or have them read to him.

4. Application for approval

A proposed surety must apply for approval and be approved by an authorised official. He must complete a form (Part B of Form 8) for this purpose

5. Disqualified persons

A person cannot be approved as a surety if:

- a) he is under 18 years of age; or
- b) his net financial worth is less than the amount he would have to pay if the accused were to default, except where security is provided; or
- c) it appears that the accused or some other person will be compensating the surety for any loss he incurs.

6. Points to be Considered

Whether a person is suitable to be a surety depends mainly on:

- a) his character and past history;
- b) his connection with the accused;
- c) his ability to pay, without severe hardship, if the accused were to default.

Reasons for not approving a proposed surety must be given by the official concerned.

7. Reconsideration

A person may re-apply for approval of himself as a surety to the officer who made the decision, or someone acting in his stead, only if he thinks that circumstances have changed or that he did not put his case properly.

8. Copy of Surety Undertaking

A surety must be given a copy of his surety undertaking.

9. Remands etc. of accused to later date

A surety undertaking will refer to the time and place of the accused's appearance. If his case is to be dealt with at a different time, or a different time and place, the surety will not be liable for the accused's non-appearance at such time and place unless the surety undertaking expressly says so. In that event, the surety may insist on being notified of the different time, or time and place.

10. Change of address.

A surety must, in writing, notify the court where the accused is to appear of any change to the surety's residential address. It is an offence not to do so without reasonable cause. The penalty is a fine of up to \$1,000.

11. Action by surety where accused likely to default

A surety who reasonably believes that:

- a) the accused is not likely to appear in court; or
- b) a bail condition is being, has been or is likely to be broken;

should notify the prosecutor or a police officer in writing and that person may have the accused brought before the court. However the surety's obligations continue until the accused is brought before the court.

In cases of urgency where the surety reasonably believes that the accused is not likely to appear in court or that he has broken any bail conditions, he has the power to arrest the accused. The surety must hand him over as soon as is practicable to a police officer who is required to take the accused before the court.

Once the accused has been so taken before the court the surety undertaking will not be continued in force without the surety's consent.

12. Cancellation of surety undertaking

A surety may apply to an appropriate judicial officer for cancellation of his surety undertaking. The application must be made before the time for the accused's appearance. However, the surety's obligations continue until the accused is brought before the court and an order is made cancelling the surety undertaking.

13. Enforcing payment by surety

Where an accused fails to appear in court, a surety will be summoned before the court and an order for payment of the amount of his undertaking will be made against him unless he shows that the accused had a reasonable cause for failing to appear.

If such an order is made, but at a later date the surety learns that there was a reasonable cause for the accused's failure, he may apply to the Governor for a refund.

14. Cases for hardship

If excessive hardship would result from ordering payment by a surety, and it would not be removed by allowing time to pay or meeting payment from a security given by the surety, the court may decline to order payment by the surety or may reduce the amount to be paid. However, the hardship must be due to a change of circumstances since the surety undertaking was entered into.

15. Surety becoming unsuitable

The prosecutor or a police officer may have the accused brought before the court and apply to have bail cancelled or changed if he reasonably believes (among other things) that a surety is no longer suitable or security given by a surety is no longer sufficient.

16. Offence to compensate surety

It is an offence for a person to compensate, or agree to compensate, a surety or a proposed surety for any liability which he incurs, or may incur, under the *Bail Act 1982*. The surety or the proposed surety and any person who is a party to the agreement also commits an offence. The penalty is a fine of up to \$1,000 or imprisonment for up to 12 months, or both.