

Dictum Meum Pactum: Your Word is Your Bond, Unless More is Required

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You've seen it in overwrought period-movies, where some character — a knight or dashing hero — proclaims, “My word is my bond!” as he looks stoically and deeply into the camera. The audience is meant to believe him; sometimes we discover he was never worthy of our trust. Hollywood aside, what does the law have to say about promises? The law, wise as she is, can demand more of her heroes than their own steely gaze. Enter “surety bonds.”

What is a Bond? It's a promise.

In a court context, a bond is simply a promise. It is made by someone who is, in some way, interacting with our court system. When a loved one dies, or declines in mental capacity, a probate or guardianship/conservatorship can be established to formalize your role in managing the estate or the incapacitated person's affairs. Because the law has formally passed the baton of leadership of another man's earthly estate *to you*, it will also ask forward-looking accountability *from you*. These types of circumstances can be lumped together as “fiduciary matters,” and that term is tied directly to the oath you take and the bond you “post.” Whether it is a promise-bond (no surety) or a policy-insured-promise (a bond with surety) will depend on the tasks ahead of you and the circumstances of the case.

Many people are surprised to learn about bonding requirements when they begin probating a loved one's estate; many people think bondsmen are reserved for criminal cases. True, in the criminal context, courts may impose “personal recognizance bonds” which are promises that a defendant (who the judge determines is not any real threat to the community, or any real ‘flight risk’) will come back to court, at a later date, to have the case adjudicated fully; a “bond hearing” tests those two legitimate concerns. In the appeals-context (and depending on your particular state) an “appeal bond” may be nominal, or it may require the full payment of the money-judgment, and a ‘suspending bond’ (sometimes called a supersedeas bond) can work to protect the judgment amount secured *in the lower court*, while also insulating the appellant as he pursues his right to corrective action *from the higher court*. These are all, regardless of species, “promises,” so the pithy definition of a bond as a promise, holds.

Your Word Alone: Bonds without Surety

If you are appointed as guardian of an incapacitated person, your state may blend-in authority over assets, as well as decision-making power over the medical care of the precious person. In Virginia, the law distinguishes guardianship of the person (decisions about the ward's corporeal care) and conservatorship of the estate (the assets/finances). In some cases, if a guardianship is only over “the person” and no assets are in play, a “promise only” bond may do the job, and no insurance policy is required to back up that promise. In those cases, you must nonetheless take an oath to *faithfully perform all your duties to the ward* as part of the court's “qualification” process, however you won't need to apply with a bonding company to purchase the insurance.

Surety Bonds: Ensuring Performance by The Chosen One, for The Loved One

If your role, as with executors or conservators, involves overseeing assets (e.g., things of value like bank accounts, real property, cars, stocks, jewelry, etc.) some states will require an insurance policy to vouch for your promise. This puts the “sure” in assuring you do your work properly. Surety, insurance, assurance, all echo what the state seeks here — it seeks a little more confidence from you than just your word. This rigor can be required based on 1) your relationship to the decedent, 2) your status as an out-of-state resident, or 3) the terms of the will itself, or the court’s order appointing you.

Many people are confounded by the bonding requirement when they are named as executor. Understandable confusion. Why would you need a bond if you are helping close out the affairs of a loved one? Sometimes, if the will does not explicitly direct that the testator/decedent “waives the bond,” the executor may have to apply for this special insurance policy, issued by a bonding company, to back up your promise to properly report to the court and distribute the estate to the decedent’s chosen beneficiaries (grandkids, charities, long-time friends, or great loves).

You may also be called upon to secure a bond if you discover that you are tasked by a court to serve as the conservator of a loved one who has diminished to the point of complete inability to care for themselves or their finances. The bond amount is approximated to the best-guess value of the ward’s estate. Importantly, at your initial qualification in this role, that estimate may be a good-faith “guess,” but as time passes and you begin to receive information from the ward’s banks, the court, with your help and input, will reassess the estate’s value, and increase the bond, if the dollars escalate well-above the initial estimates. Don’t worry about being wrong at the outset with your ‘best guess;’ the system will right-size protection for the ward/estate as better information is discovered. As an inventory is reviewed and confirmed, revising the initial estimate is common and easy, precisely because the law knows many families are serving their deceased kinsman, with very little visibility into his assets. Very often, you will only become aware of best information after you are formally qualified by the court, and you have authority to be given sensitive financial data.

We Swear, Because We Care: Oath as Accountability

The need for a surety bond could seem a little penal to the “Chosen One,” stepping up to do the thankless work of overseeing an elderly ward, administering an estate, or taking over the books of an elderly family member. But no. Think of it as a “further assurance” for a person who has necessarily lost the capacity to watch out for their own life’s bounty.

When you’re appointed guardian/conservator for a precious person, the Commonwealth has a stake in ensuring you faithfully serve your loved one. Similarly, when you are named as an executor, you will be asked a few questions prior to taking your oath. *Have you ever been convicted of a big crime? Have you ever filed for bankruptcy? Ever been a lawyer?* This litany of questions aims to protect the ward/estate from a reckless, hapless, or witless custodian of funds belonging to another man. Qualification will require you to swear that these answers are true and that you will faithfully perform your duties. Because society asks that a *promise-made*, be a *promise-kept*.

It is an honor to have been selected to serve an estate; it is an honor to be chosen by the court to protect a person in need of a proxy. Done right, taking an oath should weigh heavily on us. The task is as weighty as the honor. Honorable people can remain so, with external guardrails like surety bonds to help them perform all their duties. Your loved one thanks you. Society thanks you. Because when you raise your right hand... there’s something heroic in it.