

Being a surety



This information is for people who are considering being a surety for an accused who has been granted bail.

What is a surety?

A surety is a person who agrees in writing to pay a specific amount of money if the accused (the person charged) fails to comply with their bail undertaking to appear in court. The agreement in writing is called a surety undertaking.

It may be a condition of an accused person's bail that they have someone sign a surety undertaking for them before they are released.

What does it mean to be a surety?

You need to be sure that the accused will attend court before you agree to be a surety. If the accused fails to attend court you will be required to forfeit the amount of money specified in your surety undertaking.

Can I be a surety?

To be a surety you must be at least 18 years old and have proof of identification.

You also must show that you have enough **assets** to cover the amount of the undertaking that has been set. Your assets, after taking away your debts and liabilities, must be worth more than the amount you would have to pay if the accused does not attend court.

It is an offence to make a false statement when applying to become a surety.

What assets can I use to be a surety?

Houses, land and property can be used if you have enough equity in them.

Vehicles, furniture and personal effects **may** be suitable in some cases. The white goods, furniture

or appliances that you use every day are not suitable because the loss of these items could cause you hardship. Tools of work are not suitable for the same reason.

Cash may be suitable but it may have to be deposited with the court.

You must own the assets you want to use to become a surety. Title deeds, mortgage papers, rates notices or bank statements showing mortgage payments help to prove that you own houses or land. For other property, receipts or registration papers will help.

What else will be taken into account?

Other factors which may be considered in determining your suitability to be a surety include:

- your character and past history (eg whether you have a criminal record)
- your relationship with the accused (eg as a relative, someone you live with, whether the accused is pressuring you to act as surety)
- your ability to pay without severe hardship if the accused does not appear in court
- whether you have any outstanding fines.

Can the surety amount be split between two sureties?

In some circumstances, the court may allow a surety to be divided between two or more people if one person alone does not have sufficient assets. It is necessary to make a special application to the court to have the surety amount split, and the magistrate must agree to this.

Can anyone else pay the surety for me?

No, you alone are responsible for the payment of the amount in the surety undertaking if the accused fails to attend court. If someone else pays the surety amount for you, both you and that person are committing an offence.

It is also an offence if you enter into an agreement for someone else to pay your surety amount. In this case everyone who is a party to the agreement is committing an offence.

Who can approve my surety application?

A justice of the peace, magistrate, judge, court registrar, authorised police officer, judge's associate, person in charge of a prison, or an authorised community services officer if the accused is a child, may approve your surety application.

Justices of the peace are available at most courts, prisons and some police stations. Make sure you telephone before you go to check that someone is there who can consider your surety application.

Alternatively, go to Find a JP (www.courts.dotag.wa.gov.au under Justices of the Peace) to locate a justice of the peace near you.

I live interstate. Can I still be a surety?

Yes you can apply if you are interstate. However, the fact that you are not in close proximity to the accused may make it difficult for you to ensure the accused will attend court. This may be taken into account in determining your application.

To apply to be a surety from interstate, you should contact the Western Australian court where bail is being considered for the accused and follow the directions of that court in relation to signing and submitting the relevant application for surety.

What is a “continuing surety”?

When you enter into a surety undertaking you must advise the person approving the surety whether you wish to be a continuing surety or a surety only until the next court appearance.

Signing a “continuing surety” means you are guaranteeing that the accused will turn up for **every** court appearance until the case is finished. This means you do not have to attend court and re-sign a surety undertaking on every occasion the accused attends court. This is useful where the accused will need to appear in court many times before the case is finished and you are confident they will continue to attend as required.

Alternatively, you can choose to have your surety undertaking extend only to the next court appearance. If the charge is not dealt with on the next court appearance, you or another surety will have to sign the undertaking again before the accused will be released.

What documents must be given to a surety?

You must be given a form that shows details of the accused’s bail. You must read the details or have them read to you.

You must be given a copy of the written surety undertaking, which sets out all of your obligations. Read it carefully and make sure you fully understand it. If you are unsure, ask for it to be explained to you.

What are my obligations as a surety?

As a surety, you must **ensure the accused attends court**.

You must also keep the court informed of any **change to your address**. Failure to do so without a reasonable excuse is an offence.

You are **not liable if the accused fails to comply with any of their other bail conditions**. However if the accused is not complying, you should consider whether this means they are unlikely to attend court and whether to withdraw your surety.

Can my surety undertaking be cancelled?

Yes, the court may cancel your surety undertaking if it considers it appropriate to do so. For example, because of a change in the charges or the circumstances of the accused, because the police have concerns about your suitability to be a surety

or because you have concerns about whether the accused will attend court.

How do I apply to have my surety undertaking cancelled?

If for any reason you believe the accused will not attend court when required, you can apply to the court to **cancel your surety undertaking**.

The court will not cancel a surety undertaking unless the accused appears in court on or before the time specified in the accused's bail undertaking. If the accused will not attend court with you voluntarily, you should consider the following options for getting the accused to court:

- Notify the police that you wish to withdraw your surety. The police can arrest the accused and bring them to court if they are satisfied that there are reasonable grounds to believe that the accused is not likely to comply with their bail undertaking, or has breached bail or home detention conditions.
- Take the accused and deliver them into police custody yourself. You must believe that the accused is not likely to comply with their bail undertaking, or has breached bail or home detention conditions.
- Attend court well before the date when the accused is due to appear and apply for cancellation of the surety undertaking. The court can then issue a warrant for the accused's arrest.

If you wish to withdraw as surety in the Magistrates Court, you should complete a form called "Application to Cancel Surety" available from the **Magistrates Court of WA website** under Bail.

Importantly, your obligations will continue until the accused is brought before the court and an order is made cancelling the surety undertaking.

What if the accused is genuinely unable to go to court?

If the accused misses a court date for any reason, they should attend court as soon as possible afterwards and hand themselves in to the police at the court.

The accused should bring any documents that explain and support why they didn't attend court.

What happens to the surety if the accused fails to go to court?

If the accused does not appear in court and does not have a reasonable excuse, you may be required to attend court to show why you should not forfeit the surety amount.

Generally, you **will have to pay** the surety amount unless you can show that your circumstances have changed and it would cause you excessive hardship. This can be difficult to prove.

You should seek legal advice if you believe you have a reason for not paying the surety amount.

Where can I get legal advice?

If you need advice about becoming a surety, it is important to seek advice from a lawyer who is independent of the accused. The lawyer representing the accused is not independent and will usually be unable to advise you because of a conflict of interest. A duty lawyer from Legal Aid WA may be able to assist you, as long as they are not representing the accused.

If you are appearing in court because you have been told you must pay the surety amount, you can get advice from a duty lawyer, however the duty lawyer will not be able to represent you in court.

Where can I get more information?

See the following **webpages** under Information about the law on the **Legal Aid WA website** www.legalaid.wa.gov.au:

- Bail
- Breach of Bail

There is information about bail and surety obligations on the **Magistrates Court website** (www.magistratescourt.wa.gov.au).

See Court Locations on the **Department of Justice website** (www.dotag.wa.gov.au) if you need to contact a particular court.

Contact the **Legal Aid WA Infoline** on **1300 650 579** for further information and referral.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Infoline open Monday to Friday 9.00 am to 4.00 pm

(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450

National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

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(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230

(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330

(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430

(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530

(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722

(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725

(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743

(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai

Christmas Island, Indian Ocean, WA 6798

(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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