



**United States District Court  
District of Oregon**

**PROCEDURE FOR CRIMINAL BONDS  
SECURED BY REAL PROPERTY**

These procedures are to be followed in all criminal cases in which the posting or execution of a bond is required by the *Order Setting Conditions of Release* and the defendant seeks to secure that bond using real property.<sup>1</sup>

**1. Background**

Under 18 U.S.C. § 3142(a)(1) and (b), a judge is authorized to release persons on their own recognizance. A defendant released on personal recognizance promises only to make all further court appearances as required and there are no financial conditions. Alternatively, the judge may impose additional conditions for release and may order the defendant to post a financial bond. Financial bonds can be either unsecured or secured. An unsecured appearance bond is executed in an amount specified by the Court and may include the promise of a third party cosigner (*e.g.*, a family member) that the defendant will appear for all further court appearances as required. A secured appearance bond requires the posting of either real property (a “property bond”) or cash (for the total amount or a percentage thereof) in an amount specified by the Court.

**2. Order Setting Conditions of Release**

Based on information received from the U.S. Attorney’s Office, defense counsel, and Pretrial Services (“PTS”), the judicial officer will consider and order either the detention of a defendant pending trial or further hearing, or will order conditions regarding a defendant’s release such that there are assurances that the defendant will appear at all requisite court proceedings, will not pose a flight risk, and will not be a danger to the community. As applicable, the proposed *Order Setting Conditions of Release* document (combining forms AO 199A, B, and C) will be prepared by PTS for consideration by the judge. Orders that impose a bond to be secured by real property are to state the dollar amount binding the defendant to appear and pay to the United States in the event of the failure to appear as required or to surrender as directed for service of any sentence imposed. Furthermore, the defendant will be required to “execute a bond or an agreement to forfeit upon failure to appear as required, and post with the Court indicia of ownership of the following sum or designated property.” If immediately known, the description of the real property is to be described therein.

**3. No Release Pending Compliance with the Order Setting Conditions of Release**

Unless otherwise ordered by the Court, the defendant is to remain in custody pending compliance with the conditions detailed in the *Order Setting Conditions of Release*, if any, and resolution of the sufficiency of the property bond(s). The judge may schedule periodic conferences (optional) for the parties to report on the status of the efforts to comply with the conditions.

**4. Equity in the Property Equal or Greater Than the Amount of the Bond**

In order for the bond to be accepted, the surety must show equity in the property equal to or greater than the amount of the bond. Generally, the estimated market value of the property minus any amount of mortgage due is the equity that may be considered the collateral for the property bond. The ultimate responsibility to order an appraisal (or ascertain the property’s assessed value for tax purposes) and to assemble the requisite documentation in support of the value of the property rests solely with the defendant and his/her counsel (*see* Section 5).

**5. Proposed Secured Bond Package**

In coordination with counsel and PTS, a defendant seeking to secure a bond using real property shall prepare a Proposed Secured Bond Package (the “Bond Package”) that contains the following documents:

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<sup>1</sup> Documents mentioned in these procedures in *italicized text* are included as attachments and are also available on the Court’s Internet website at <http://ord.uscourts.gov>.

- (a) **Surety Information Sheet** (Form AO 100B, Rev. 12/09) containing:
- (1) Full legal description and street address of each and every property that will secure the bond;
  - (2) Names of the current owners of each property, their contact information, Social Security numbers, and employment information; and
  - (3) Estimated equity in the listed properties.
- (b) **Title Report** for each listed property dated within thirty (30) days of the date of submission of the package to the U.S. Attorney's Office. This report is to include the legal description of the real property and all known liens and encumbrances on the property.
- (c) **Certificate of Title Insurance** for each listed property.
- (d) **Proof of a Loss Payable Endorsement** naming the Clerk of Court for the U.S. District Court, District of Oregon as the loss payee on any insurance policies for each listed property.
- (e) **Appraisal or Property Tax Assessment Information** for each listed property. Any submitted appraisal must be performed by a certified real estate appraiser dated within thirty (30) days of the date of submission of the package to the U.S. Attorney's Office. Any submitted property tax assessment must have been prepared by a state, county, or municipality for the purposes of determining the amount of property tax owed, and it must be the most current recorded assessment.
- (f) **Trust Deed Securing the Appearance of the Defendant** signed and notarized for each and every property contained in the proposal. As the Trust Deed securing the appearance of the defendant is prepared, the sureties/property owners are to be the Grantor(s), the Trustee shall be "Clerk of Court for the United States District Court, District of Oregon," and the Beneficiary shall be "United States District Court, District of Oregon."
- (g) **Agreement to Forfeit Real Property to Obtain a Defendant's Release** (locally adopted form based on the AO-100 form). A property bond requires the execution of an agreement to forfeit the designated property to the court should the defendant be found in contempt of court for failure to appear or otherwise comply with the conditions of release as set out by order of the Court. **Sureties/property owners posting their real property as bond need to be aware of the forfeiture risks to that property if the defendant violates any of the pretrial conditions of release.**
- (h) **Proposed Certificate of Sufficiency** (locally adopted form), for signature by the Assistant U.S. Attorney ("AUSA") reviewing the Secured Bond Package on behalf of the Court.

***Practice Tip:** The Surety Information Sheet contains personal information, including Social Security Number(s) of listed sureties. Pursuant to Fed. R. Crim. P. 49.1, counsel should prepare two versions of the document: (1) a redacted version that contains only the last four digits of any SSN(s), and (2) a version that contains the full SSN(s) to be filed with the Court under seal.*

**6. Review by the U.S. Attorney's Office**

The Court relies on and generally abides by the U.S. Attorney's assessment of the documentation in support of the property bond. Prior to submission of the Bond Package to the Court, the defendant is to provide a copy of it to the AUSA assigned to the case as counsel of record. Service of the package may be done

through electronic means outside of the court's CM/ECF application or by another method (like regular mail or hand delivery) upon agreement of the parties. The AUSA shall have seven (7) calendar days from the date of receipt of the package to review and assess its contents on behalf of the Court.

The court must be assured that the property posted is legitimately available and suitable for use as security. The review by the AUSA should be done with these purposes in mind. The Bond Package may be rejected by the AUSA for lack of any required documentation as described above. The AUSA may also reject the package for lack of equity sufficient to meet the monetary amount stated in the *Order Setting the Conditions of Release*.

7. **AUSA Approval of the Bond Package: Certificate of Sufficiency**

Upon review and approval of the Bond Package, the AUSA shall sign and date the *Certificate of Sufficiency* document included in the package, **and** initial (where indicated on the form) the *Surety Information Sheet*. The Bond Package, Certificate of Sufficiency, and initialed Surety Information Sheet shall be promptly returned to the defendant and counsel for filing with the Court (*see* Sections 10 and 11).

8. **AUSA Rejection or Non-Review of the Bond Package**

The AUSA shall have seven (7) calendar days from the date of receipt of the package to review and assess its contents on behalf of the Court. If the AUSA finds any fault, error, or insufficiencies in the documentation or equity in the property,

*Practice Tip: Property owners may choose to wait to record the Trust Deed until after the AUSA has approved the bond package in case it is rejected, as it may take several weeks to complete a reconveyance of that property from the Clerk of Court back to the property owners.*

he/she must notify the defense attorney and describe those problems and issues within seven (7) calendar days from the date of receipt of the Bond Package. The defendant should attempt to comply with or correct the findings, and submit the revised Bond Package to the AUSA for review. If the defendant disagrees with the findings made by the AUSA, he/she may move the Court for an order to show cause as to why the bond and/or documentation are insufficient. In the event that the AUSA fails to respond or object to the proposed bond package within seven (7) days of its receipt for review, the defendant may move the Court for an order to show cause why it should not accept the bond without a signed *Certificate of Sufficiency* and/or initialed *Surety Information Sheet* (*see* Section 9).

9. **Motion for Order to Show Cause Following Rejection by AUSA**

If the AUSA, following review of the Secured Bond Package and notice to the defendant and counsel of the reasons therefor, refuses or declines to sign a *Certificate of Sufficiency* and/or initial the *Surety Information Sheet*, and if the defendant chooses to proceed with posting of the bond, he/she may file a motion for an

*Practice Tip: The parties are strongly encouraged to actively and in good faith attempt to resolve the insufficiencies and differences in completing the bond before those matters are brought to the Court's attention.*

order to show cause stating why the bond should not be accepted by the Court. Pertinent documents, including those copies reviewed as the Bond Package by the AUSA, should be included as exhibits to the motion. The Court may choose to grant the defendant's motion and hold further hearing or briefing on the matter, or may deny the defendant's request. If, after

consideration, the Court finds the Bond Package to be sufficient to ensure the defendant's appearance in court as required by the conditions of release, it may order that the defendant be released following the recordation of the Trust Deed securing the appearance of the defendant (as noted in Section 10) and following the filing of the Bond Package documentation with the Clerk of Court (*see* Section 11). If the Court does not approve of the Bond Package, absent other order, the Court may issue a detention order for the defendant to remain in custody.

**10. Recording the Trust Deed Securing the Appearance of the Defendant**

Either prior to, or concurrently with the filing of the Bond Package with the Court, the executed Trust Deed securing the appearance of the defendant shall be recorded in the designated records office for the county in which the property is located, pursuant to the real estate laws in that state (*see* the Practice Tip in Section 6). Following the recordation of the Trust Deed, it is to be returned (as indicated on the form) to the Office of the Clerk, United States District Court, District of Oregon.

**Failure by the defendant, surety, or property owner to record the Trust Deed properly as indicated herein, shall be an immediate cause for the Court to order that the defendant be detained pending further hearing or order.**

**11. Filing the Bond Package with the Court**

Following the recordation of the executed Trust Deed(s), or concurrently with the submission of the Trust Deed for recording in the designated records office (*see* Section 10), the defendant shall present for filing the completed Bond Package to the Clerk's Office. The following executed documents (as previously described in Section 5 above) are to be included:

- (a) **Surety Information Sheet** (*see* the Practice Tip in Section 5);
- (b) **Title Report** for each listed property;
- (c) **Certificate of Title Insurance** for each listed property;
- (d) **Proof of a Loss Payable Endorsement**;
- (e) **Appraisal or Property Tax Assessment Information** for each listed property;
- (f) **Trust Deed Securing the Release of the Defendant**, signed and notarized, for each and every property contained in the proposal;
- (g) **Agreement to Forfeit Property to Obtain a Defendant's Release**, signed and notarized for each and every property contained in the proposal; and
- (h) **Certificate of Sufficiency** signed by the AUSA; **OR** order or reference to the court order that granted the defendant's motion to file the Secured Bond Package without the approval of the AUSA or an executed *Certificate of Sufficiency*.

**Practice Tip:** *If the original document (following recordation) is still in transit at the time the Bond Package is presented to the Court for filing, a copy of the signed and notarized Trust Deed may be presented to the Court. Alternatively, most recording offices will allow you to retain the original so that you may file it with the Bond Package.*

**12. Notice of Compliance with Pre-Release Conditions and Order of Release**

Following the filing of the completed Bond Package and after confirmation that all conditions of release have been met, the Court will issue a *Notice of Compliance with Conditions of Release and Order to Release* the defendant. The Clerk of Court will serve a copy of this order on the U.S. Marshals Office so that the defendant may be released after processing. Unless otherwise ordered by the Court, the defendant shall remain in custody pending the resolution of the sufficiency of the property bond.

**13. Exoneration of the Bond**

Upon the resolution of the case, or at any time after the conditions of the order requiring the bond have been met or rendered moot, the defendant or surety who recorded the Trust Deed(s) and filed the Bond Package may file a *Motion for Exoneration of the Bond and Order for Reconveyance of the Real Property*. Upon

receipt of an order granting the motion, the defendant or surety is to present the necessary reconveyance documents for each property held in trust to the Clerk of Court for signature. Parties are expected to record the reconveyance documents.

**14. Computing Time**

The counting of days in reference to any deadlines in these procedures shall conform to the guidelines of Fed. R. Crim. P. 45. This includes extensions of time due to manner of service (*see* Fed. R. Crim. P. 45(c)).

**15. Attached Forms and Examples**

- (a) Order Setting Conditions of Release;
- (b) Surety Information Sheet;
- (c) Agreement to Forfeit Real Property;
- (d) Certificate of Sufficiency;
- (e) Motion for Order to Show Cause;
- (f) Notice of Compliance with Pre-Release Conditions and Order of Release;
- (g) Order of Detention; and
- (h) Motion for Exoneration of Bond and Order for Reconveyance of Real Property.