

# San Francisco Paralegal Association

Fiduciary Bonding: Protecting Clients' Assets Through Bonding

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## 1. Bond Basics

- a. Bonds vs. Insurance
- b. Parties and roles
- c. Surety Coverage
- d. The Fiduciary's Liability and E&O Coverage

## 2. Applying and Qualifying for Bonds

- a. The three C's of Credit
  1. Character -- Credit
  2. Capital -- Assets
  3. Capacity -- Ability
- b. Pre-Approvals
- c. Bond Capacity

## 3. Bonds requirements for decedent's estates

a. When are bonds not required? Probate Code 8481

1. The will waives bond for the given fiduciary.
2. All beneficiaries waive bond.
3. When the court does not impose bond by its own motion

b. How are bond amounts calculated? Probate Code 8482

1. The estimated value of the personal property.
2. The probable annual gross income of the estate.
3. If independent administration is granted as to real property, the net value of the decedent's interest.

4. Bonds requirements for Conservatorships / Guardianships

a. When are bonds not required?

Probate Code 2323

(a) The court may dispense with the requirement of a bond if it appears likely that the estate will satisfy the conditions of subdivision (a) of Section 2628 for its duration.

(b) If at any time it appears that the estate does not satisfy the conditions of subdivision (a) of Section 2628, the court shall require the filing of a bond unless the court determines that good cause exists, as provided in section 2321

Probate Code 2628

(a) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

1. The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than fifteen thousand dollars (\$15,000).
2. The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than two thousand dollars (\$2,000).
3. All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

b. When bonds are required, how are they calculated?

1. Probate Code 2320(c). Calculation of bond amounts:
  - a. The value of the personal property of the estate.
  - b. The probable annual gross income of all of the property of the estate.
  - c. (A)(B)(C) The sum of the probable annual gross payments from any other public entitlements of the ward or conservatee.

*Working example:*

Assets of the Conservatee include:

Liquid / personal property assets: \$1,000,000

Income (all sources): \$100,000

Therefore, the bond amount would be \$1,000,000 + \$100,000, right?

Almost... Don't forget:

- d. A reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs.
- e. Cost of Recovery: The attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or

her duty under this code shall be a surcharge against the conservator or guardian.

5. California Rules of Court, Rule 7.207

a. Bond includes reasonable amount for recovery on the bond

Except as otherwise provided by statute, every conservator or guardian of the estate must furnish a bond that includes an amount determined under (b) as a reasonable amount for the cost of recovery to collect on the bond under Probate Code section 2320(c)(4). (Subd (a) amended effective January 1, 2010.)

b. Amount of bond for the cost of recovery on the bond

The reasonable amount of bond for the cost of recovery to collect on the bond, including attorney's fees and costs, under Probate Code section 2320(c)(4) is:

(1) Ten percent (10%) of the value up to and including \$500,000 of the following:

(A) The value of personal property of the estate;

(B) The value, less encumbrances, of real property of the estate that the guardian or conservator has the independent power to sell without approval or confirmation of the court under Probate Code sections 2590 and 2591(d);

(C) The probable annual income from all assets of the estate (all sources)

(2) Twelve percent (12%) of the value above \$500,000 up to and including \$1,000,000 of the property, income, and payments described in (1); and

(3) Two percent (2%) of the value above \$1,000,000 of the property, income, and payments described in (1).

c. Ten, Twelve, Two... Ten, Twelve, Two

*Working example:*

Assets of the Conservatee include:

Liquid / personal property assets: \$1,000,000

Income (all sources): \$100,000

$\$1,000,000 + \$100,000 =$  Base amount of \$1,100,000

10% of first \$500,000 = \$50,000

12% of next \$500,000 = \$60,000

2% thereafter = \$2,000

$\$50,000 + \$60,000 + \$2,000 =$  Cost of Recover of \$112,000

Therefore, the total bond amount would be \$1,212,000.

6. Why is this important to the Fiduciary?

2320.1. When the conservator or guardian has knowledge of facts from which the guardian or conservator knows or should know that the bond posted is less than the amount required under Section 2320, the conservator or guardian, and the attorney, if any, shall make an ex parte application for an order increasing the bond to the amount required under Section 2320.

7. Surcharges and Claims

When can a fiduciary be surcharged for damages for breach of fiduciary duty? Fiduciary bonds are conditioned upon the faithful execution of the duties of the office, according to law. Conservator and Guardianship bond requirements: (CA PRC 2320 (b))

- a. -Theft
- b. -Mismanagement
- c. -Inaction
- d. What gets the Surety's attention?
  - Objections, OSCs, Surcharges and Petitions for removal
- e. When to notify the Surety and/or your E & O carrier.

8. Standards of Care
  - a. Honesty
  - b. Integrity
  - c. Admitting mistakes
  - d. Attorney Involvement
  - e. Seeking Professional Advice
  - f. Don't be afraid to ask
  - g. Properly Accounting

Statute of Limitations per Probate Code 8488 (b) -- Four years from the date of Final Discharge.