

# Professional Bail Agents of the U.S.<sup>™</sup> (PBUS<sup>™</sup>) Certified Bail Agent<sup>™</sup> Program – Course 3



## DAILY BUSINESS PRACTICES

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### RISK SELECTION AND UNDERWRITING

#### *Risk Selection*

The decision to write a particular bond is basically a judgment call on the part of the bail agent. It begins with the bond application, which has been designed by professional bail agents who have spent countless hours drafting the questions and information requests. There can never be too much information gathered regarding a criminal defendant or an indemnitor, therefore no question on the bond application should be considered non-valid and unnecessary. Underwriting management begins with the application.

Developing a series of “test questions” to assist the pre-qualification process of both the defendant and the indemnitor can be invaluable. It is also important to learn to identify warning signs or “red flags” on an application, or recovery expenses and/or forfeitures paid to the court will soon consume a bail agent’s profits. A learned bail agent will maintain the perspective that it may cost the commission of more than ten bonds to cover the 100 percent loss of just one judgment.

The following questions and possible scenarios are some of the basic factors that should be considered when assessing a risk:

- What is the amount of the bond and is it unusually high for the offense? If so, this could reflect the concern of the court that the defendant will not appear. Additionally, the court may have other concerns about the defendant being freed from bail.
- What is the defendant charged with?
- Is the defendant on probation, parole or is she/he a repeat offender?
- Does the charge if convicted carry a mandatory or presumptive prison sentence?
- How long a sentence is usually given for the offense?
- What is the defendant’s occupation and family status?
- Does the offender have strong ties to the community? A defendant that lists her/his occupation as a construction worker, painter, roofer, concessionaire or a truck driver should be thoroughly checked.

- Does the offender work for a reputable company or are they freelance? Check any company name in the yellow pages and call to verify employment and length of employment. (*Application should include an authorization to investigate any/all information given on an application*).
- Does the defendant belong to a union? This could indicate more permanence and aid in tracking should the need arise. Requesting a union or an employee identification card, driver's license and employee number can add valuable information to the application's file.
- What are the defendant's ties to the community?
- Was the defendant born and raised locally or lived in the area for an acceptable amount of time?
- Where did s/he live previously and for how long?
- Does she/he have children enrolled in school?
- Does the information given on the application agree with the social security number? Social security numbers can be a good indicator as they are like zip codes; the numbers are smaller when issued in the northeast and get progressively larger when issued in the southwest. Asking for a place of birth and information about their first job will assist an agent in deciding whether or not the number is valid. Also, unless it was issued in New York or California, the middle two digits will almost always be an even number.
- Has the defendant retained an attorney? This will alert the agent to the seriousness with which the defendant is approaching the offense(s) she/he is charged with. A paid attorney is an indication the defendant intends to stay and fight the case.
- Is the indemnitor related to or an acquaintance of the defendant and how closely related or acquainted are they? This will establish whether or not the indemnitor has any control over the defendant and how often they are in contact with one another.
- Is the indemnitor employed? The same employment check should be conducted for the indemnitor as it is for the defendant. The responsible bail agent must ensure that the indemnitor is fully aware of the financial responsibility they are assuming by cosigning for the defendant. The amount of trust and responsibility being placed on the indemnitor should never be misrepresented. This open disclosure policy will ensure the defendant shows for all scheduled court dates.
- Is the collateral property located in a stable area where it will retain its value or even increase in value? Any real property being posted as collateral should be checked to confirm the value and/or for any encumbrances. Another item to be checked is whether mortgage payments are current and whether the property is insured.
- Is the property being offered as collateral the site of the actual arrest of the defendant or was it used in the commission of the alleged offense for which the defendant is being charged? If this is the case, the property could be subject to seizure leaving the agent without collateral.
- Does the property being considered as collateral contain enough equity to be sold at a trustee or sheriff's sale and still cover the loss in case of a failure to appear? A bail agent should try to accept only items that have equity equal to twice or even three times the amount of the bond.

It is the responsibility of the bail agent to ask these and any other applicable questions that are important when qualifying an indemnitor or defendant. Assuming risk is the nature of the bail bond business, and minimizing that risk is what makes or breaks an agent or agency. Maintaining applications in a neat and legible manner and including information that may seem insignificant at the time (such as recording license plate numbers of indemnitors, etc.) can help a bail agent in locating an absconded defendant.

The quality of the application is in direct relationship to the amount of risk that a bail agent feels comfortable assuming and his/her ability to control the risk. Any bail agent can take a short application on an almost risk-free indemnitor or defendant. The professional bail agent learns to write bonds simply by taking a more thorough application, getting more indemnity or collateral and monitoring the defendant more closely.

### *Underwriting*

Because there are so many variables in risk selection, there are no formatted rules or guidelines to follow in underwriting bonds. Therefore, the following section should be considered as simply a guideline for underwriting bonds of various amounts. *NOTE:* any and all applications, agreements, receipts etc. must be signed by the appropriate parties involved.

#### **Up to \$2,500.00**

Bonds in this category should be secured by a minimum of an approved application, an indemnity agreement and a promissory note from a gainfully employed property owner. The indemnity agreement secures the promissory note; therefore no one requires the other. The signatures on all forms should be witnessed. On larger bonds the signature should be notarized whereas on smaller bonds, the defendant alone may suffice to guarantee his own bond.

#### **\$2,500.00 to \$7,500.00**

Bonds in this category should be secured with the same minimum of an approved application, an indemnity agreement and a promissory note signed by a gainfully employed property owner, other than the defendant or the spouse of the defendant. However, signatures from both the defendant and the indemnitor should be secured. If the defendant is considered an unacceptable risk, property or some other form of collateral should be secured.

#### **Upwards of \$7,500.00**

Cash, cash equivalent or real property should secure bonds upward of \$7,500.00. The property should have a total net equity of two-to-three times the amount of the bond. Title searches must be performed to confirm ownership, value and any encumbrances or liens. Property which has changed ownership several times in recent years should be viewed with the utmost caution as this may signal an attempt to inflate the value of the property or that it is owned by a “professional indemnitor.”

Black’s Law Dictionary defined collateral as, “Property which is pledged as security for the satisfaction of a debt. Collateral is additional security for performance of a principal’s obligation...” Property, cash, or its equivalent should be secured whenever possible in any size bonds. There are several very important considerations when accepting collateral. First, local and state forfeiture rules and statutes must be obeyed. Collateral that is secured on a \$50,000.00 bond in a state that has one hundred and eighty day (180) forfeiture rule would be considerably different than in a state where that employs a thirty day (30) forfeiture period. A responsible bail agent, when writing an out-of-state bond, first conducts a review of the state’s applicable laws. For example, if a bond is secured by real property the state has a thirty-day forfeiture period; a judgment is taken against a bail agent and it is highly improbable that the collateral will be liquidated in time for payment.

If a deed of trust or mortgage is taken on real property to secure a bond, it should be immediately properly recorded, preferably even before the bond is written. A bail agent cannot wait until a failure to appear notice is received as that will ultimately cost the agent a lot of money. The owner of the property could sell, file a bankruptcy or a senior lien holder could foreclose or use the property to secure a loan. If the trust deed or mortgage is properly recorded, the agent and/or surety will be notified of all activity on the property (some states require a 'Request for Notification' to be filed).

Cash is of course, the best form of collateral with which to secure a bond. However, it must be taken and held in a manner that is lawful and responsible. Some guidelines to follow when accepting cash collateral are:

1. A specific receipt for all collateral deposited must be given to the depositor, which completely describes the form of collateral (i.e. cash, check, money order, cashier's check, etc.). The depositor's name, address and social security number must be included on the receipt, as well as with any other pertinent information relative to the bond. The original receipt is then signed by the bail agent and given to the depositor; some states have specific forms for this transaction. The use of a generic form in states requiring use of a designated form, could result in civil and/or criminal charges of misuse of mishandling of collateral funds.
2. Even when cash collateral is taken, it is still necessary to properly complete a promissory note and indemnity agreement; the latter clarifies the reasons for which the collateral can be used.
3. When cash in excess of \$10,000.00 is taken as collateral, the source of the money must be verified. The burden of proof as to the legitimacy of the cash lies not only with the depositor, but also with the bail agent. These moneys must be reported to the Internal Revenue Service on their Large Currency Form 4789. An important consideration is that illegal cash collateral can be seized at any time and that failure to file Form 4789 can result in criminal charges and/or some very substantial fines being levied.
4. All cash collateral should be held in a separate bank account for that purpose alone and is not to be commingled with business or personal funds.
5. An alternative to accepting and holding cash collateral is to obtain an assignment on savings or retirement account or on a Certificate of Deposit. It is imperative that officers of the financial institution where the funds are being held acknowledge the assignment by signing on its behalf. Without a signed acknowledgement by such an officer, the funds that are believed to be frozen could be withdrawn at any time.
6. Some states and insurance companies require that all collateral be taken in the name of the bail agent's company. Once again, a specific form may be required for this situation; there are some states that even require copies to be filed with the Department of Insurance. Penalties for failure to comply with the statutes range from an un-recoverable loss to fines to loss of license.

### *Controlling Defendants*

Having a client who needs bail is the first step in the bail bond business. The next step is assessing the risk and accepting or denying the bail applicant. Upon the acceptance, the bail agent must obtain the proper indemnity and/or collateral agreements to guarantee the defendant's appearance in court. The ultimate responsibility of a professional bail agent is to the victims of crime. A bail agent also answers to the judicial system, to the law enforcement community and to the general public seeking to ensure that the defendant's whereabouts are known at all times and that the defendant appears in court when scheduled in answer to the charges against him/her.

When a bail agent doesn't maintain control over every defendant in his charge, not only are countless dollars spent on recovery, but there is also the risk the defendant may be committing other crimes. This is counter-productive to the professional image the bail agent works to present and enhance and it leaves everyone with a bad impression.

By developing a working system of monitoring and controlling defendants on bond, a bail agent is free to consider higher risk bonds. The practice may also encourage the court to be more lenient when it comes to the setting or reduction of bail in cases where they may otherwise be reluctant to do so. This also helps the jail-overcrowding problem that is prevalent throughout the country.

Close monitoring of defendants generally curtails further criminal activity. In some states, bail agents have installed their own jail cells, but even those bail agents who cannot go to such lengths are essentially private jailers for the defendant. Whatever the course of action undertaken, it must be vigilant to be successful. Some suggestions follow:

- Defendants can be controlled with periodic check-ins either by personal visits or telephone calls. In most areas of the country a Caller ID is available that displays the number being called from provided the subscriber doesn't have a block installed; if you have an 800 or 888 number installed, the blocked call is relieved. Because the bail agent has entered into a civil contract with the defendant, he/she may request or require periodic chemical abuse testing or electronic monitoring devices be installed or any other means to affect the required control.
- If the defendant does not agree to accept the conditions imposed, she/he may choose to return to jail and/or to seek another bail agent. A bail agent can also monitor whether or not the defendant is paying his or her attorney fees; this can track the performance and intent of a defendant. It is not unusual for an informed bail agent to surrender a defendant due to a failure to cooperate with counsel. Some companies use a 900 number for all defendants to call on, which breathalyzer data can be transmitted while sending voice analysis confirmation.
- Perhaps the ultimate control bail agents have over their defendants is the ability to surrender them at any time to the court. Surrenders after a defendant fails to appear are necessary in order to minimize losses and should be executed immediately and efficiently. Another type is a "premature surrender," which is affected for violations of the conditions of bond or a violation of the terms and conditions of the bail agent's contract with the defendant. Any decision to affect a premature surrender must be thoroughly considered and be shown valid in the eyes of the legal community or criminal sanctions could be imposed, civil suits could surface or at best, a refund of premium will be realized. The message is clear... bail agents must exercise caution at all times. Arbitrarily seeking reason(s) to make premature surrenders for inconsequential acts is a poor business practice and is not looked upon favorably by the courts or defense attorneys. It is often viewed as tantamount to "stealing premiums." The defendant, their families and friends also suffer as the money they gave to the bail agent could have been spent for attorney fees, fines and/or court as well as personal costs.
- Lastly, calling to remind a defendant when and where to be in court is a service of the bail agent. **YOU MAY WANT TO INCLUDE THIS PROCEDURE IN YOUR INFORMATIONAL SHEET GIVEN TO THE DEFENDANT AND/OR INDEMNITOR.** Checking with the courts on a daily basis to ensure a client appeared, and even appearing with clients, demonstrates a professional approach to business. A premium is not earned until and unless a defendant appears or the case is disposed of in another manner and a bail agent receives exoneration from the court. The bail agent must then promptly report dispositions of cases and releases of bonds to his or her company.

## *Forms and Record Keeping*

While taking a neat, legible and complete application is step-one in the proper writing of a bond, it will be of little importance if the bond cannot be found when needed. An up-to-date filing system is an absolute requirement for all the forms that need to be made available at a moment's notice. Several computer software programs are available and quite adaptable for the bail agent's needs. Some companies require custom programs, but even the small expense involved is inconsequential compared to losses one would face if unable to produce required forms and/or paperwork. Computers are one of the most valuable tools for storing and quick retrieval of information. Every person in the bail profession should have a working knowledge for using a computer.

The forms that are required for executing bonds vary from state to state and from company to company. It is the responsibility of each bail agent to have these forms readily available and organized according to county or municipality or even to the custom of the area. Records, reports and forms used in a bail agent's daily practice should include applications, indemnity agreements, promissory notes, receipts for bond costs, cash received ledgers, collateral receipts, collateral receipt ledgers, collateral affidavits, powers of attorney, power register sheets, appeal bond forms, affidavits of discharge, motion forms, bail agent reports to the company and a variety of other forms necessary to the professional bail agent. Not all of the forms listed above are required by every state, but are the minimum recommended for conducting accurate and efficient business practices.

## **SUPERVISION OF AGENTS AND EMPLOYEES**

### *Introduction*

The PBUS Education Committee is aware that most of the bail agents taking the Certified Bail Agent courses are self-employed and most have years of experience behind them. The goal in Course 3 therefore, is to provide industry standards and guidelines that can be molded into the business practices of our experienced as well as novice bail agents.

The mechanics addressed in this section are the day-to-day interpersonal relationships so vitally important to the business of bail. Many of the issues may seem self-evident, but they are discussed here so they will be fresh in the minds of all and all will be better equipped to deal with the problems as they arise. For the purpose of this lesson, bail agents, employees and staff will be referred to as "group."

### *Courtesy*

When dealing with affiliated bail agents and employees and anyone else encountered in an average workday, it is important to treat them in a courteous manner. Even if you are angry, disappointed or upset, to act otherwise would be counter-productive. It is important to deal with your group in a friendly and courteous manner because courtesy is contagious; your group will be more apt to pass that attitude on to your clients.

Our clients are the lifeblood of this business. Without them, we would not exist in our capacity as bail agents. If you get angry or upset with a client and treat them in a rude manner, your group may get the impression that it is acceptable for them to do the same.

Professionally, we all know how to treat judges, judicial staff and the courts with respect as they exert the control over our everyday business activities. They are all important to the successful functioning of your business. The manner in which you treat your own group is just as important, if not more, as they also have a direct effect on your business practices.

Each person in your group is required to make a great number of decisions each and every day. Such decisions can have both long and short-term effects on how well your business runs and prospers. Perceive their attitude for a moment... do they have an "us" and "we" as their focus or are they concerned with "I" and "me?" A successful bail agent will always encourage a team attitude. This is a reciprocal courtesy that is extended when a bail agent begins to hire sub-agents. They need to know they will be treated with courtesy and respect and that you will expect nothing less of them in return. When it becomes known within the industry that you have a low employee turnover rate, you will eventually have quality and highly motivated people associated with you. Employees and clients alike appreciate knowing they are affiliated with a courteous and respectful agency.

### *Lead By Example*

Groups will usually mimic bad habits ten times faster than good habits. It is a fact of human nature. If you are constantly late in arriving to work, they too may report for work late. If you are sloppy in appearance and/or in your work habits, it will send a signal that you will accept the same from them.

Every so often you may have an employee who approaches you with a personal problem. While you feel that the problem has nothing to do with you or with your business, taking the time to listen and offer possible positive solutions will be to your benefit. The energy the employee is no longer expending on his/her problem will then be applied to his/her work. Be careful and wise not to offer any absolute advice, as it will invariably come back to haunt you. Be sure to help your employees explore their own possibilities and to make their own decision(s). Try to be as objective as possible and supportive of their course of action. Always strive to be part of the solution, not part of the problem.

The larger your group organization becomes, the more likely it is that you will need a written policy and procedure manual. Be aware of when that time arrives and act swiftly. Some people readily follow and understand verbal instruction, while some better perform with a written and detailed outline. Long-term policies are especially important to have in writing.