

### Appointment Affidavit Frequently Asked Questions

- Q. Is an affidavit needed from a company seeking to appoint a surety bondsman for the first time?
- A. No, a company seeking to appoint a surety bondsman for the first time only needs to complete the Appointment Form for Surety Bail Bondsmen (SBB-APPT).
- Q. Who must submit an affidavit?
- A. A surety bail bondsman that was previously appointed with one or more surety insurance companies must submit an affidavit to ANY former insurers. The insurer shall provide either an affidavit or a notice under oath within 30 days after the surety bondsman submits the affidavit to them.
- Q. What is needed when requesting an affidavit?
- A. In accordance with N.C.G.S. 58-71-141 the surety bondsman shall submit the Affidavit to ANY former insurer and Department. The Department has provided two forms (Affidavit By Former Insurer and Notice Under Oath by Former Insurer) for the former insurers to complete and the insurer shall take one of two actions:
1. Complete an affidavit stating that the bondsman does not owe premium or unsatisfied judgments to the former insurer
  2. Complete the Notice Under Oath stating that the bondsman has not satisfied forfeitures or judgments. In the notice the former insurer also is attesting under oath that the former insurer has paid these unsatisfied forfeitures and/or judgments from the former insurer's own funds.
- If the Department does not receive the affidavit or notice under oath from the insurers within 30 days after the surety bondsman has submitted the surety bondsman's affidavit to the insurers and the Department, the Department will assume that judgments and forfeitures have been satisfied. If one insurer under oath states that there are unsatisfied judgments within in 30 days, the Department will not appoint the surety bondsman. However the bondsman may appeal to the Commissioner as provided in N.C.G.S. 58-71-141 within 10 days.
- Q. What are the reasons that a former insurer may refuse to sign the former insurer affidavit?
- A. The former insurer may refuse to sign the affidavit if the former insurer signs a notice under oath that the surety bondsman has unsatisfied judgments and outstanding premium that has not been remitted to the insurer, with supporting documents. The former insurer's notice is attesting under oath that the insurer has paid these unsatisfied forfeitures and/or judgments from the insurer's own funds.
- Q. Should the affidavit be submitted to my former supervising agent or managing general agent?
- A. The surety bondsman shall submit the affidavit to any former insurer and to Department.

Q. If the MGA or bail bond agency pays off a bondsman's forfeiture, is this the same as the former insurer paying it?

A. No, because NCGS 58-71-141(c) defines a "former insurer" as the insurer with whom the surety bondsman had a prior appointment and who is responsible for any outstanding bonds written by the surety bondsman. The MGA and bail bond agency do not meet the definition of an insurer or former insurer.

Q. What documentation should be submitted by the former insurer if an affidavit is not signed?

A. If the surety bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer shall submit a notice under oath with supporting documents, that the surety bondsman has failed to satisfy, in a timely manner, the forfeitures and judgments on bonds written by the surety bondsman and that the former insurer has satisfied the forfeiture or judgment from its own funds. The notice under oath and the documentation shall be submitted within 30 days after the former insurer receives the affidavit. Proper documentation includes the forfeited attached bail bond(s), bail bond forfeiture documents and bail bond forfeiture judgment(s) as proof that Surety Bondsman has not timely satisfied all forfeiture(s) or judgment(s) on bonds written by Surety Bondsman on behalf of the undersigned Former Insurer. In addition, financial record(s) [cancelled checks, for example] shall be submitted as proof that the former insurer satisfied Surety Bondsman's forfeiture(s) or judgment(s) from its own funds.

Q. I was previously licensed as a surety bondsman, which former insurance companies need to provide affidavits or notices?

A. The surety bondsman must submit an affidavit to ANY former insurers. The insurer shall provide either an affidavit or a notice under oath within 30 days after the surety bondsman submits the affidavit to them.

Q. What will occur if the insurer fails to send the affidavit or notice under oath to the Department within 30 days?

If the Department does not receive the affidavit or notice under oath from the insurers within 30 days after the surety bondsman has submitted the affidavit to the insurers, the Agent Services Division will contact the former insurer(s) and request they provide the notice and documentation required by N.C.G.S. 58-71-141. If one insurer gives notice under oath that there are unsatisfied judgments within in 30 days, the Department will not appoint the surety bondsman. However the bondsman may appeal to the Commissioner as provided in N.C.G.S. 58-71-141 within 10 days.

Q. What steps can an MGA or bail bond agency take to address the concern that a surety bondsman owes funds relative to bail bond business to them?

A. A complaint may be filed to the Department outlining the allegations with supporting documentation such as a judgment showing that the surety bondsman is unlawfully withholding monies belonging to insurers or others and received in the conduct of business under the license. {NCGS 58-71-80(a)(4)}.

Q. What happens under NCGS 58-71-141 if the insurer has forfeitures and unsatisfied judgments which occur after the appointment of the surety bondsman?

A. NCGS 58-71-141 provisions are not applicable in the situation described in the question as it specifically addresses procedures “before receiving an appointment.”

However, the surety company has recourse by filing a complaint with the Department outlining the allegations with supporting documentation such as a judgment showing that the surety bondsman is unlawfully withholding monies belonging to insurers or others and received in the conduct of business under the license. {NCGS 58-71-80(a)(4)}.

Q. If I decide to start writing bonds with a company with which I am appointed but have not been actively writing bonds, do I need an affidavit?

A. No. NCGS 58-71-141 is not applicable in the situation described in the question as it specifically addresses “before receiving an appointment.”