



# **SUPREME COURT OF WESTERN AUSTRALIA**

## **THINKING OF BECOMING A SURETY?**

### **What is a surety?**

A surety is a person who enters into a legally enforceable agreement to forfeit a specific amount of money (the surety amount) if the person they are standing surety for (the accused) fails to appear at Court when required by their bail undertaking.

If you give a surety, you will be required to sign a surety undertaking, contained in a Form 8 surety application.

If the accused does not appear in Court as required by their bail undertaking, and does not have a reasonable excuse, then you will be required to attend Court to show why you should not forfeit the surety amount.

The Court may allow the surety amount to be divided between two or more people.

It is an offence to make a false statement when you sign a surety undertaking.

### **What should you think about before agreeing to be a surety?**

You need to consider:

- whether the accused is likely to attend Court;
- whether you can afford to pay the surety amount if the accused does not attend at Court as required by their bail.

If you need advice about your legal obligations as a surety you must seek legal advice from a lawyer independent of the accused.

### **What are your obligations as a surety?**

- You must ensure that the accused attends Court.
- You must advise the Court of any change of your address. Failure to do so is an offence.

### **What are you not obliged to do as a surety?**

- You are not liable if the accused fails to comply with any of their other bail conditions.

### **What is a continuing surety?**

When signing the surety undertaking you must let the person approving the surety know whether you wish to be a surety to:

- the next Court appearance only; or
- a continuing surety.

A continuing surety means you are guaranteeing the accused will turn up to every court appearance until the matter is finished.

If you do not sign a continuing surety then the accused will need you (or another surety) to come to every Court appearance with them and re-sign a surety undertaking on every occasion.

### **Who can be a surety?**

To be a surety you must:

- be over 18 years of age;
- produce proof of identification;
- produce evidence that you have enough assets to cover the surety amount.

### **What assets can be used to be a surety?**

A house, land or property (such as a car) can be used and proof of ownership is required. Title deeds, mortgage papers, rates notices or bank statements showing mortgage payments help to prove ownership.

It may also be sufficient if you provide proof that you have more money in your bank account than the surety amount. On rare occasions the Court may require money to be deposited into Court.

Generally proof of ownership of items such as furniture, whitegoods or tools of the trade will not be accepted as assets to support a surety undertaking as these items could not easily be forfeited in the case of default.

### **What else will be considered when determining whether you can be a surety?**

- Whether you have a criminal record.
- Whether you have any outstanding fines.
- Whether you can afford to pay the surety without financial hardship.

### **Where do I go to give a surety undertaking?**

You can attend the Court which granted bail to the accused.

You can also attend a police station or the prison from where the accused is to be bailed. Alternatively, you can go to a justice of the peace (“JP”). To find a JP go to:

<http://www.courts.dotag.wa.gov.au/apps/jps/Default.aspx>

If you are not seeking to have your surety application approved at the Court which granted bail to the accused, then make sure you telephone ahead to check that there is someone available who can consider your surety application.

If you are approved as a surety, details of the Form 8 surety application will be read through with you. You can access the fact sheet here:

[http://www.courts.dotag.wa.gov.au/files/Fact\\_Sheet\\_6\\_Surety\\_Undertakings.pdf](http://www.courts.dotag.wa.gov.au/files/Fact_Sheet_6_Surety_Undertakings.pdf)

If you are approved as a surety, you will be given a copy of the completed surety undertaking and a form that shows the details of the accused’s bail.

### **What happens if the accused is genuinely unable to attend Court?**

The accused should attend Court and hand themselves in as soon as possible and take any documents with them which explain or support why they did not attend Court.

### **How do you withdraw as a surety?**

If you believe the accused will not attend Court you must apply to the Court to cancel your surety undertaking, using a form called an “Application to Cancel Surety”.

Note: Even if you apply to withdraw as a surety you will remain bound by the terms of the surety undertaking until the accused next appears in Court. If the accused does not appear in Court on or before the next appearance time specified in the accused’s bail undertaking then you will still remain liable to pay the amount of the surety.

It is best if the accused attends Court with you when you apply to withdraw as surety.

If the accused will not come to Court then you should consider notifying the police as soon as possible of your intention to withdraw as surety. The police have the power to arrest the accused if they have reasonable grounds to believe that the accused has breached bail conditions or is not likely to comply with their bail undertaking.

If the accused does not attend Court with you when you make your application to withdraw as surety then the Court may issue an arrest warrant for the accused.