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REPORT

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STAYING JUDGMENTS PENDING APPEAL: A PRACTICAL OVERVIEW



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The jury returns an adverse verdict requiring your client to pay damages. The court then enters judgment. Your client wants to appeal. How do you prevent the other side from enforcing the judgment in the meantime?

This article outlines steps to stay enforcement of a money judgment pending appeal in California, including what to do before obtaining an appeal bond, how to procure the bond, and what other mechanisms are available for staying enforcement.¹

Step One: Ask The Trial Court For A Temporary Stay Of Enforcement

An appeal doesn't automatically stay enforcement of money judgments.² (Code Civ. Proc., § 917.1, subd. (a).) For those judgments—and certain other orders—the only way to stay enforcement is generally by posting an appeal bond. (*Ibid.*)

However, the trial court has statutory power to grant a *temporary* stay whether or not your client ultimately files an appeal—i.e., discretionary authority to stay enforcement of a money judgment for up to “10 days beyond the last date on which a notice of appeal could be filed.” (Code Civ. Proc., § 918, subd. (b).) A temporary stay prevents the judgment's execution while you and your client (1) evaluate whether to pursue an appeal, (2) file any postjudgment motions before filing a notice of appeal, and (3) assess your client's options for obtaining an appeal bond.

¹ The terms “bond” and “undertaking” are used interchangeably in the context of filing an appeal. (See Code Civ. Proc., § 995.210.) This article will use the term “bond.”

² There is an exception: An appeal automatically stays judgments solely for costs and/or attorney fees, even though such judgments are money judgments. (Code Civ. Proc., §§ 917.1, subd. (d), 1021.)

You should apply for a temporary stay of enforcement as soon as the court enters judgment, or even beforehand if you know the judgment is coming. Because courts have broad discretion in granting or denying a temporary stay, your application should explain why such a stay is necessary and why granting the stay won't prejudice the other side.

Step Two: Ask Opposing Counsel To Waive The Appeal Bond And Stipulate Not To Execute

Before expending the effort and resources to procure an appeal bond, it may be worth asking opposing counsel whether their client would be willing to waive the bond requirement and stipulate not to execute the judgment pending the appeal, or at least until the court decides any postjudgment motions. After all, reasonable costs associated with bonding the judgment are recoverable if your client prevails on appeal. (Cal. Rules of Court, rule 8.278(d)(1).) Even if the other side refuses to waive the appeal bond, seeking a waiver in the first place would bolster your client's request to recover costs associated with obtaining the bond if you prevail on appeal, because the other side's refusal to voluntarily defer enforcement proves that any bond expenses were reasonably necessary.

Of course, a plaintiff will be more willing to waive the bond requirement if it's clear that your client has the means to pay the judgment if you lose the appeal—e.g., if your client's insurance company will be paying the judgment.

Step Three: Advise Your Client Regarding The Available Options And Procure The Bond Or Other Mechanism For Staying Enforcement

Absent an agreement not to enforce, your client will need to post a bond or take similar steps to stay enforcement pending appeal. Here are the different types of appellate bonds and other

ways to stay enforcement to review with your client:

Admitted surety bonds. The most common appeal bonds are issued by admitted surety insurers—i.e., corporations or insurers with a certificate to transact surety insurance in California. (Code Civ. Proc., § 995.120.) An admitted surety bond must be one and one-half times the amount of the judgment. (*Id.*, § 917.1, subd. (b).) Only one admitted surety insurer is required to execute an appeal bond. (*Id.*, § 995.310.)

Courts must automatically accept an admitted surety insurer as surety on a bond if the following requirements are met:

- The bond is executed in the name of the surety insurer under penalty of perjury, or the fact of execution of the bond is duly acknowledged before a notary public.
- The surety insurer has on file with the clerk of the county where the court is located some record showing that the person signing the security instrument is authorized to do so, or a copy of the surety's power of attorney is attached to the bond filed with the court.

(Code Civ. Proc., § 995.630, subs. (a), (b).)

Admitted surety insurers charge an annual premium for the bond and require the appellant to post full collateral for the bond, usually in liquid form (i.e., cashier's check or wire transfer) or through a bank's letter of credit.

You should also put your client in touch with a trusted bond broker who can issue the admitted surety bond, if your client doesn't already have one.

Personal surety bonds. Any third person can act as a personal surety for the appeal bond, provided that the person:

- Is a California resident and owns or rents real property in the state;
- Is not a court officer or California state bar member; and
- Is worth the amount of the bond in real and/or personal property situated in California, over and above all debts and liabilities and exclusive of property exempt from enforcement of a money judgment.

(Code Civ. Proc., § 995.510.)

Personal surety bonds must be twice the amount of the judgment. (Code Civ. Proc., § 995.710, subd. (b).) And, if your client chooses to post a personal surety bond, the bond must be

executed by two or more personal sureties, or a combination of personal sureties and admitted surety insurers. (*Id.*, § 995.310.)

Deposit in lieu of bond. Instead of posting a bond, your client could deposit cash or certain securities directly with the trial court. (Code Civ. Proc., § 995.710.) This option avoids the cost of going through an admitted surety insurer. The amount deposited must be at least equal to the amount required of a bond from an admitted surety insurer—i.e., one and a half times the amount of the judgment. (*Id.*, § 995.710, subd. (b).) The deposit can be by cash or cashier's check, or other specified securities such as federal or state bonds or notes, certificates of deposit made payable to the court, and savings accounts assigned to the court. (*Id.*, § 995.710, subd. (a).)

Negotiated arrangements. It also may be possible to negotiate an arrangement with the other side by, for example, offering to deposit an amount equal to the amount required of a bond from an admitted surety insurer into escrow.

Step Four: Draft And File The Bond

If your client chooses to secure a bond, there are certain requirements to ensure the bond's validity:

- The bond must be in writing. While the law does not require any particular form for the bond, Code of Civil Procedure section 995.330 provides suggested language.
- The bond surety or sureties must sign the bond under oath. (Code Civ. Proc., § 995.320, subd. (a).) If there is more than one surety, the bond must state that the sureties are jointly and severally liable. (*Ibid.*)
- The bond must state the address at which the principal and sureties may be served. (Code Civ. Proc., § 995.320, subd. (a).)

The bond must be served on opposing counsel and filed in the trial court along with a proof of service. (Code Civ. Proc., § 995.370.)

While there is no time limit for filing the bond, you should file it as soon as possible because the plaintiff may be free to execute on the judgment (unless the court grants a temporary stay under Code of Civil Procedure section 918).

The bond becomes effective automatically upon filing. (See Code Civ. Proc., §§ 995.410 ["A bond becomes effective without approval unless the statute providing for the bond requires

that the bond be approved by the court or officer”], 917.1 [no approval requirement for an appeal bond].)

Practice Tips

In sum, the steps to stay enforcement of a money judgment pending appeal include the following:

- The bond must be in writing. While the law does not require any particular form for the bond, Code of Civil Procedure section 995.330 provides suggested language.
- **Apply for a temporary stay of enforcement.** You should do this as soon as the court enters judgment. The application should address why a temporary stay is necessary and why it won’t prejudice the other side.
- **Confer with opposing counsel.** Consider asking whether the other side would be willing to waive the bond requirement and stipulate not to execute the judgment pending the appeal, or at least until the court decides any postjudgment motions.
- **Review the different types of appellate bonds and other ways to stay enforcement with your client.** Without an agreement not to enforce the judgment, your client will need to post a bond or stay enforcement another way. Appeal bonds include admitted surety bonds and personal surety bonds. Other options include a deposit directly with the court, or a deposit into escrow if the other side agrees to that arrangement.
- **Draft and file the bond.** Code of Civil Procedure section 995.320 sets forth the requirements for the bond’s contents. Code of Civil Procedure section 995.330 provides suggested language. You should file the bond as soon as possible to prevent the plaintiff from executing on the judgment (absent a temporary stay of enforcement).

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