

INSTRUCTIONS FOR POSTING REAL PROPERTY SURETY BOND FOR PRETRIAL RELEASE IN CRIMINAL CASES

OVERVIEW:

- Generally, for real property to be used for a surety property bond, it must have a permanent structure used for residential or commercial purposes, and all decisions as to the value and use of the property as surety shall be in the sole discretion of the Clerk's Office.
- All owners must be competent adults and must have an acceptable state-issued photo identification card.
- If there is a Governor's Warrant or other similar process outstanding from another state, a property bond is **NOT** appropriate for pre-trial release of the Defendant, and will not be accepted.
- A real property bond must have sufficient surety value, on its own, to cover the entire amount of the bond for which it acts as surety bond. You **CANNOT** combine a partial cash and partial real property surety bond, or partial professional bail bondsman to cover the entire amount of the charge(s).

There are two different considerations in using a real property bond for pre-trial release in criminal cases, please refer to the section that matches the relevant bond amount.

- A) **If the TOTAL Bond amount for all charges subject to pre-trial release is more than \$5,000 but less than \$15,000, there may be other pre-trial release options.**

Please be aware that the inherent costs of the legal process including your attorney's fees for certifying the title to the real property, preparation costs for the Note and Deed of Trust, and recording fees, may equal or exceed the cost of utilizing a professional bonding service or simply posting a cash bond. Consult your attorney before beginning this process to determine the most appropriate option for pre-trial release. If you do not have an attorney, you may consult the Lawyer Referral Service (704-375-0120) of the Mecklenburg County Bar or, if the case is assigned a public defender, you may call the public defender.

Also, please be aware that a bond review hearing could decrease the amount of a bond or possibly unsecure a bond, thus making this process costly or unnecessary. You may want to consult with your attorney or the public defender, if applicable, to determine if a bond reduction is scheduled for the Defendant seeking pre-trial release.

- B) **If the TOTAL Bond amount for all charges subject to pre-trial release is more than \$15,000:**

Prior to scheduling an appointment with the Clerk of Superior Court for the purpose of executing the "Appearance Bond for Pretrial Release (Form AOC-CR-201), you must complete and fax to the Clerk's Office (fax number: (704)-686-0410) Parts I and II of the Real Property Bond Certifications Worksheet.

Please include a fax coversheet that includes telephone numbers for you or your attorney to be contacted in reference to questions, corrections, and/or scheduling an appointment for the signing of the "Appearance Bond for Pretrial Release."

Original copies of Part I and Part II of the Real Property Bond Certifications Worksheet that have been faxed in advance of an appointment with the Clerk must be brought to the appointment. The following is a list of these necessary documents:

1. Worksheet Part I: Determination of Available Equity

The information on Part I of the Worksheet will be reviewed to determine the available equity in the property that may be used for pre-trial release and to ensure that the value (as determined by the Clerk's office in its discretion) is sufficient to meet the surety nature of the real property bond required by North Carolina law to fully cover the bond amount being secured.

*** After completing this section of the Worksheet, it may become apparent that the property, after all debts are deducted, does not have enough equity to serve as surety. The Clerk's office requires that you make these initial determinations in an effort to assess the probability of the property to act as surety before expending additional time and money (i.e. attorney fees). ***

2. Worksheet Part II: Office of the Tax Collector Certification

Take Part II of the Worksheet to the Mecklenburg County Office of the Tax Collector located at 700 East Stonewall Street, Charlotte, NC (near the intersection of McDowell Street) and ask a representative in the Office of the Tax Collector to complete the information in section one of the form, date, and sign the form. If the property is not located in Mecklenburg County then take the Worksheet to the North Carolina county tax office that the property is located in.

3. Worksheet Part II: Register of Deeds Certification

Take Part II of the Worksheet to the Register of Deeds Office, 720 East Fourth Street, Suite 101, Charlotte, NC 28202 in the County Court's Office Building and ask a representative to complete the information in section two of the form, date, and sign the form. If the property is not located in Mecklenburg County then take Worksheet to the Register of Deeds in the North Carolina county that the property is located in.

CLERK'S CONSIDERATIONS IN DETERMINING VALUE:

The Clerk of Superior Court's Office may consider the following in determining surety property value:

- a) The amount of the tax value of the real property (as certified). The amount will be adjusted to 60% of the tax value for the amount of the bond if the property is owner-occupied residential real estate. If the property is commercial/rental, only 50% of the tax value may be available for the amount of the bond.
- b) If the property is vacant or only raw land, it will be subject to review. However, raw land is normally assessed at less than 40% of the tax value due to marketability issues. If the property has any hazards, limiting factors on value, or other value concerns, the usable value may be reduced.
- c) The amount of any unpaid mortgages, tax liens or encumbrances. (The Clerk's Office will only accept primary or secondary lien position, due to the surety requirements of the bond.)
- d) All currently due and payable taxes must be paid in full, and a copy of a paid receipt from the Mecklenburg County Tax Collector (or such other tax authority as may have or may create a lien upon the property, including liens to the City of Charlotte for assessments, charges, costs and expenses). If the property is

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not in Mecklenburg County, a paid receipt from the North Carolina county tax office for where the property is located.

- e) Lines of credit that are liens against property must be addressed. All prior liens and lines of credit must be closed, with a copy of acknowledgment from the lender holding any such lien, along with a certification by the attorney that has satisfied the line of credit (as applicable); or if allowed to remain open, the full amount of the line of credit shall be deducted (even if not fully drawn upon) to determine the usable value (since the credit could be drawn upon subsequently). Before closing a line of credit, it is your responsibility to understand the risks involved.

NEXT STEPS AFTER CLERK'S REVIEW OF WORKSHEET

If it is determined, after an initial review of Parts I and II of the Worksheet, that the real property has sufficient value to be used for the charges and proposed surety bond for pre-trial release, a licensed North Carolina attorney must prepare the following documents:

- a) Certified title opinion letter (NC Bar Form #1) signed by a North Carolina licensed attorney, confirming tax value, status of all liens and encumbrances and a minimum of a thirty-year title search.
- b) Deed of Trust (Mortgage) (NC Bar Form #5, with Due on Sale Clause marked) with the following designations:

Trustee: Elisa Chinn-Gary
Clerk of Superior Court for Mecklenburg County,
or her Successor(s) in office.

Beneficiary: The State of North Carolina
832 East fourth Street, Suite 3600
Charlotte, North Carolina, 28202

The Deed of Trust must contain, either within its provisions or as an exhibit, a statement that the Deed of Trust is given to secure the appearance of _____ (Defendant's Name) for Case Number(s) _____ (list all case number(s) the Bond will cover) at all stages of the case(s).

- c) Promissory Note (NC Bar Form #4) to The State of North Carolina payable on demand to secure the appearance of _____ (Defendant's name) for cases numbers _____, _____ (list all case numbers that the bond will cover), at all stages of the case(s), stating the case number and the amount of each bond, and the total amount of the property bond that is the surety amount for the pre-trial release.
- d) Have your attorney call the Clerk's Office at 704-686-0420 to advise that a proposed bond is going to be faxed. The fax number is 704-686-0410. Once it has been reviewed and any required corrections have been completed then call 704-686-0420 to schedule an appointment and hearing date (see below).

HEARING BEFORE THE CLERK

After completing the above steps, an appointment must be made with the Clerk of Superior Court's Office and ALL owners of the real property must be present in Room 3600 of the Mecklenburg County Courthouse,

Charlotte, NC with the necessary documents and the Appearance Bond For Pretrial Release (AOC Form CR-201). Each owner must bring the following documents:

- a) A photo ID.
- b) Defendant's social security number.
- c) Completed Real Property Bond Certifications Worksheet, dated and signed.
- d) Completed Deed of Trust with notarized property owners' signatures.
- e) Completed Promissory Note with property owners' signatures.
- f) Completed and signed Certified NC Bar Form #1 title opinion letter (see above).
- g) Recording Fees. (These fees are set by state law, may be verified with the Register of Deeds office, and are subject to change without notice. <https://www.mecknc.gov/ROD/Pages/Fees.aspx>)
- h) Appearance Bond For Pretrial Release (AOC Form CR-201), to be signed under Oath at the Clerk of Superior Court's Office

IF PROPERTY OWNER IS THE DEFENDANT

If the Defendant is the owner of the property, then call the Clerk of Superior Court's Office to determine the proper procedure to have the Defendant sign the "Appearance Bond for Pretrial Release" form, AOC-CR-201, prior to its presentation to the Clerk of Superior Court's Office.

CANCELLING THE "DEED OF TRUST" (REQUIRED)

THE CLERK OF SUPERIOR COURT RESERVES THE RIGHT TO FORECLOSE ON PROPERTY IF THE TERMS OF THE BOND ARE NOT MET.

It is **required** for you to inform the Clerk of Superior Court at 704-686-0420 that the case has been completed in order to have the "Deed of Trust" cancelled.

- The cancellation of a property bond requires **your or your attorney's written notification** to the Clerk of Superior Court that the case has been completed and the bond is no longer required (which will be verified by the Clerk's Office).
- There is no automatic cancellation of bonds and a bond will remain of record until the charge has been disposed of and **written notice** of the disposition is given to the Clerk of Superior Court's Office. The Clerk of Superior Court Administration Department will process the cancellation of the "Deed of Trust."

REAL PROPERTY BOND CERTIFICATIONS WORKSHEET

Part I: To be completed by sureties

Please Complete The Following Worksheet
Listing All Debts Owed Which Are A Lien Against The Property

<u>KIND OF DEBT</u>	<u>AMOUNT OWED</u>
A. Mortgages (Deeds of Trust)	
_____	\$ _____
_____	\$ _____
B. Back and Current City and County Taxes	
_____	\$ _____
_____	\$ _____
C. Judgments	
_____	\$ _____
_____	\$ _____
D. Any Other Appearance Bonds Signed	
_____	\$ _____
_____	\$ _____
E. Any Other Debts	
_____	\$ _____
_____	\$ _____
<i>(list any other debts on additional sheet)</i>	
Total Liens	\$ _____

AFFIDAVIT OF SURETY

I (We), the undersigned surety(ies)¹, [print names] _____,
first being duly sworn, say that I (we) am (are) the owner(s) of the property located at the following address:

and that all information furnished by me (us) contained in this form is true and accurate. I (We) will not
further encumber or transfer any or all of the said property until the real property bond to be secured by
said property has been terminated.

This the ____ day of _____, 20__.

This the ____ day of _____, 20__.

Signature of Surety 1

Signature of Surety 2

Sworn to and subscribed before me
This the ____ day of _____, 20__.

Sworn to and subscribed before me
This the ____ day of _____, 20__.

(SEAL)
Person Authorized to Administer Oaths

(SEAL)
Person Authorized to Administer Oaths

¹ In the event that there are more than two sureties or owners, please have each surety or owner execute an affidavit.

REAL PROPERTY BOND CERTIFICATIONS WORKSHEET

Part II: To be completed by Certifying Representatives

TAX OFFICE CERTIFICATION

Parcel # _____

This is to certify that according to the tax records in the Office of the Tax Collector of the City of _____ and County of _____ as of the 1st day of January 20____, Mr. and/or Mrs. (Ms.) _____ owned the property located at _____ which carries a tax assessment value as of January 01, 20____, of \$_____. The total amount of outstanding taxes due and on the property is \$_____, and reflects payments due for taxes beginning on _____ up until the current date of this certification. Said property is also shown on the books as being all or a portion of the property recorded in Deed Book No. _____, Page No. _____ of the _____ County Registry, to the extent this recording information is available in our records.

Date of this Certification

Certifying Tax Representative

REGISTER OF DEEDS CERTIFICATION

This is to certify that according to the records in the Office of the _____ County Register of Deeds as of January 1, 20____, through _____, I find no transfers by the above named person(s) listed in the Grantor Index of the _____ County Registry.

REGISTER OF DEEDS
OF _____ COUNTY

Date of this Certification

By: _____
Certifying Tax Representative

<u>INTERNAL OFFICE USE ONLY</u>	
Tax Value:	\$ _____
Less Liens & Exemptions:	- \$ _____
Equals Net Equity:	\$ _____
Less Adjustment of ____ %	- \$ _____
Equals Useable Equity:	\$ _____
Bond Amount:	\$ _____