

## Memorandum 81-16

Subject: Study D-325 - Statutory Bonds and Undertakings (Tentative Recommendation)

Attached to this memorandum is a staff draft of a statute to consolidate the various provisions of the codes relating to bonds and undertakings. The impetus for this draft is the continuing overlap and duplication of statutory language we encounter every time we work in an area involving a bond or undertaking.

In preparing the consolidated statute we have reviewed every statute in the codes that relates to bonds or undertakings and have devised uniform provisions that duplicate their coverage. We have also prepared a statute to repeal or delete the duplicated language out of the various codes. However, the conforming change statute is much too voluminous to attach to this memorandum. We will seek to have the conforming statute printed in preprint bill form for convenience of use by the Commission and interested persons.

The consolidation necessarily involves choices of language and phrasing and choices among variant procedural provisions. The consolidation also involves a few minor substantive changes (e.g., whether one or two personal sureties are required) which were not essential but which we made in the interest of uniformity.

Exhibit 1 to this memorandum is a letter from J. Terry Schwartz, a Santa Barbara attorney, concerning the amount of the undertaking required to obtain a writ of possession in claim and delivery proceedings. Code of Civil Procedure Section 515.010 requires an undertaking in an amount twice the value of the property to be repossessed. The purpose of the undertaking is to assure the defendant of the return of the property and any damages suffered if the repossession turns out to be wrongful.

Mr. Schwartz points out that the defendant's interest in the property may be substantially less than the value of the property. Thus to assure the defendant the return of the property and damages, an undertaking in twice the value of the defendant's interest should be all that is necessary. Otherwise a situation can arise such as that described in his letter in which a \$1.5 million undertaking is required to repossess property in which the defendant has only a \$50,000 interest.

The staff believes the point is well taken and recommends that the amount of the claim and delivery undertaking be based on the defendant's interest in the property. The staff proposes to include the following amendments in the bond and undertaking recommendation:

515.010. ~~(a)~~ The court shall not issue a temporary restraining order or a writ of possession until the plaintiff has filed with the court a written undertaking. The undertaking shall provide that the sureties are bound to the defendant in the amount of the undertaking for the return of the property to the defendant, if return ~~thereof be of the property is~~ ordered, and for the payment to ~~him the defendant of any sum he the defendant~~ may recover against plaintiff. The undertaking shall be executed by two or more sufficient sureties in an amount not less than twice the value of the defendant's interest in the property as determined by the court. ~~The~~

~~(b) If the plaintiff seeks possession of a mobilehome whose purchase price is over fifteen thousand dollars (\$15,000) under the provisions of a security agreement or conditional sales contract wherein the defendant has defaulted in the payments thereof, the amount of the undertaking shall be twice the value of the defendant's interest in such mobilehome.~~

The court may consider the market value of the mobilehome property less the amount due and owing on the any conditional sales contract or security agreement and all liens and encumbrances of record with the Department of Motor Vehicles on the property, and such other factors as may be necessary to determine the defendant's interest in the mobilehome property.

515.020. (a) The defendant may prevent the plaintiff from taking possession of property pursuant to a writ of possession or regain possession of property so taken by filing with the court in which the action was brought a written undertaking executed by two or more sufficient sureties in an amount equal to ~~either the amount of the plaintiff's undertaking required by Section 515.010 or, if there has been no judicial determination, the value of the property stated in the plaintiff's application for a writ of possession; provided however, that if the property possession of which is sought is a mobilehome whose purchase price is over fifteen thousand dollars (\$15,000), the amount of the undertaking shall be equal to twice the value of the defendant's interest therein, as determined by the court.~~ The undertaking shall state that, if the plaintiff recovers judgment on the action, the defendant shall pay all costs awarded to the plaintiff and all damages that the plaintiff may sustain by reason of the loss of possession of the property, not exceeding the amount of the undertaking. The damages recoverable by the plaintiff pursuant to this section shall include all damages proximately caused by the plaintiff's failure to gain or retain possession.

(b) The defendant's undertaking may be filed at any time before or after levy of the writ of possession. A copy of the undertaking shall be mailed to the levying officer and to the

plaintiff. An affidavit stating that such copies have been mailed shall be filed with the court at the time the undertaking is filed.

(c) The defendant's undertaking shall state the address to which a copy of the notice of exception to sureties may be sent.

(d) If an undertaking for redelivery is filed and the defendant's sureties are not excepted to, the levying officer shall deliver the property to the defendant, or, if the plaintiff has previously been given possession of the property, the plaintiff shall deliver such property to the defendant. If an undertaking for redelivery is filed and defendant's sureties are excepted to, the provisions of Section 515.030 shall apply.

(e) Where possession of a mobilehome whose purchase price is over fifteen thousand dollars (\$15,000) is sought, the court may waive the requirement of the defendant's undertaking, and may order that the plaintiff not take possession of the property pursuant to a writ of possession, or that the defendant may regain possession of the property, if the court finds that the defendant is unable to file an undertaking because of indigency.

If the staff draft of the bond and undertaking provisions appears adequate to the Commission, we will distribute the draft among interested persons for comment.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## Exhibit 1

PRICE, POSTEL & PARMA  
COUNSELLORS AT LAW  
200 EAST CARRILLO STREET  
SANTA BARBARA, CALIFORNIA  
CABLE ADDRESS "JARRETT"  
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93102

A.C. POSTEL  
RETIRED

FRANCIS PRICE  
1918-1965  
FRANCIS PRICE, JR.  
1940-1979

TELEPHONE  
962-0011  
AREA CODE 805

IN REPLY REFER TO:

HAROLD A. PARMA  
ROBERT M. JONES  
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GERALD S. THEDE  
ARTHUR R. GAUDI  
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BARRY R. PINNOLIS

October 20, 1980

John H. DeMouloy  
Executive Secretary  
California Law Revision  
Stanford Law School  
Stanford, CA

Re: Undertakings Re Claim and Delivery  
(C.C.P. §515.010)

Dear Mr. DeMouloy:

Code of Civil Procedure §515.010 sets forth the undertaking requirement for a plaintiff seeking to obtain a temporary restraining order or writ of possession in connection with the provisional remedy of claim and delivery. The undertaking required must be "in an amount not less than twice the value of the property as determined by the court". In the case of a mobile home the purchase price of which exceeds \$15,000.00, the undertaking must be in a sum twice the value of "the defendant's interest" in the mobile home. This "twice the value" approach contrasts with the undertaking provision of the attachment law which contains a specified dollar amount for the undertaking depending on the court in which the action is pending unless, on objection, it is established that the potential liability for wrongful attachment exceeds the normally specified undertaking amount. See Code of Civil Procedure §489.220.

While I have no doubt that it is competent for the legislative branch to make a distinction between the provisional remedies of claim and delivery and attachment with respect to the appropriate measure of the undertaking, the current formulation of Code of Civil Procedure §515.010(a) relating to claim and delivery bonds in general can and, in a present case which has brought the problem home to me, does lead to a substantial injustice. Interestingly, the claim and delivery undertaking provision for a mobile home avoids the problem.

The difficulty arises when property is sold subject to a security agreement or conditional sales contract and a default occurs early in the life of the contract when the purchasing party has little, if any, interest or equity in the property. The current provision requires the secured creditor to post

John H. DeMouloy  
October 20, 1980

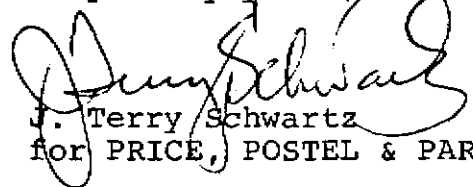
Page two

a substantial bond the amount of which is based on the total value of collateral although the debtor/defendant may have an insubstantial equity interest. In the case of high value items, this can frustrate the legitimate interests of the secured creditor to repossess his collateral or force the creditor to make substantial outlays for a surety bond premium which may ultimately be passed along to the debtor in any event. For example, in a recent case in which I was involved, an out-of-state client had sold an expensive turbo-prop aircraft to a local commuter airline which failed to pay under the terms of the sale agreement. In this particular case, the purchasing party had only paid approximately \$48,000.00 and there remained to be paid approximately \$700,000.00 on the purchase price. When default occurred, the debtor refused to voluntarily relinquish possession and judicial relief was, accordingly, required. Unfortunately, the first hurdle which had to be passed, was securing a bond of close to \$1.5 million dollars even though the debtor's actual equity in the place was, at most, about \$50,000.00. The bond premium alone -- which on these provisional remedies is usually calculated at a rate of \$10.00 per \$1,000.00 bond -- required a \$15,000.00 outlay for the bond alone without regard to the other costs of repossession and counsel fees.

It would appear that the interests of a debtor are adequately protected -- as the Code provides in the case of expensive mobile homes -- by a provision requiring an undertaking in an amount not less than twice the defaulting party's interest or equity in the repossessed property. If even more debtor protection were desired, some minimum undertaking could be provided.

I would be interested in learning your reaction to the foregoing comments and what possible alternatives are available to ameliorating the harsh consequences of existing law.

Very truly yours,

  
J. Terry Schwartz  
for PRICE, POSTEL & PARMA

JTS/jb

cc: Omer Raines  
Gary Hart

STAFF DRAFT

## TENTATIVE RECOMMENDATION

relating to

## STATUTORY BONDS AND UNDERTAKINGS

Statutes throughout the codes of California permit or require the giving of bonds or undertakings. For example, an undertaking may be necessary to procure a provisional remedy such as attachment,<sup>1</sup> claim and delivery,<sup>2</sup> or a temporary restraining order or preliminary injunction,<sup>3</sup> or to stay enforcement of a judgment on appeal.<sup>4</sup> Bonds are required of government officials<sup>5</sup> and of many permittees and licensees.<sup>6</sup> In all, the codes provide for more than 200 different bonds and undertakings, each governed by similar but not identical procedural statutes.

The proliferation of procedural statutes to govern bonds and undertakings is unnecessary. The rules applicable to such matters as the manner of execution of a bond or undertaking, the number and qualifications of sureties, the giving of a new or additional bond or undertaking if the original bond or undertaking becomes insufficient, the limitation on liability of a surety to the amount of the bond or undertaking, and the ability to give a cash or equivalent deposit in lieu of a bond or undertaking, are the same for all bonds and undertakings. Repetition of such procedural rules in every statute that provides for a bond or undertaking is not only wasteful and adds to the complexity and length

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1. Code Civ. Proc. §§ 489.010-489.420.

2. Code Civ. Proc. §§ 515.010-515.030.

3. Code Civ. Proc. §§ 529-535.

4. Code Civ. Proc. §§ 917.1-922.

5. Gov't Code §§ 1450-1653.

6. See, e.g., Bus. & Prof. Code §§ 7071.5-7071.14 (contractor's bond); Civil Code §§ 1812.64-1812.67 (dance studios); Health & Safety Code § 8734 (endowment care fund); Ins. Code §§ 847-849 (broker's certificate); Pub. Res. Code §§ 3725-3725.5 (well drilling); Pub. Util. Code §§ 3631-3635 (highway carriers); St. & H. Code § 30867 (toll bridge or ferry); Veh. Code §§ 11102-11102.1 (driving school).

of the statutes, but also creates the likelihood of inconsistent wording and interpretation where the rules should be the same.

In the past, efforts have been made to consolidate general procedural rules applicable to all statutory bonds and undertakings in one place in the Code of Civil Procedure.<sup>7</sup> These efforts are incomplete, however. The Law Revision Commission recommends that the procedural bond and undertaking provisions be compiled in one statute and that the duplicative provisions be repealed or deleted from the codes.

Consolidation of the numerous similar statutes to create one uniform statute necessarily involves many changes in wording, a few variations from existing procedures, and an occasional minor substantive change. The changes made in existing law by the proposed statute are noted in the Comments that follow each amended or repealed provision of existing law in the draft of conforming changes attached to this recommendation. The Commission believes that any inconvenience caused by the small changes in law is outweighed by the advantages of uniformity in this area of the law.

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The Commission's recommendation would be effectuated by enactment of the following measures.

An act to add Chapter 2 (commencing with Section 995.010) to Title 14 of Part 2 of the Code of Civil Procedure, relating to bonds and undertakings.

The people of the State of California do enact as follows:

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7. See Code Civ. Proc. §§ 1041, 1054a-1059.

Code of Civil Procedure §§ 995.010-996.560 (added). Bonds and undertakings

SECTION 1. Chapter 2 (commencing with Section 995.010) is added to Title 14 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. BONDS AND UNDERTAKINGS

Article 1. Preliminary Provisions and Definitions

§ 995.010. Short title

995.010. This chapter shall be known and may be cited as the Bond and Undertaking Law.

Comment. Section 995.010 is similar to comparable provisions in recently enacted California laws. See, e.g., St. & H. Code § 8300 (Public Streets, Highways, and Service Easements Vacation Law).

36603

§ 995.020. Application of chapter

995.020. (a) Except to the extent the statute providing for the bond or undertaking prescribes a different rule, the provisions of this chapter apply to a bond or undertaking given pursuant to any statute of this state.

(b) The provisions of this chapter do not apply to a bail bond or an undertaking of bail.

Comment. Section 995.020 supersedes portions of former Sections 1041 and 1054a through 1059, which applied to statutory bonds and undertakings generally. The provisions of this chapter governing statutory bonds and undertakings are not exclusive, but are supplemented by the general provisions governing all bonds and undertakings, both common-law and statutory. See, e.g., Civil Code §§ 2787-2855 (suretyship).

31549

§ 995.030. Manner of service

995.030. Service of notices, papers, and other documents under this chapter shall be made in the same manner as service of process in civil actions.

Comment. Section 995.030 is new.



§ 995.040  
2960

§ 995.040. Affidavits

995.040. Affidavits made under this chapter shall conform to the standards prescribed for affidavits made pursuant to Section 437c.

Comment. Section 995.040 is drawn from the last sentences of former Sections 1058a (bonds and undertakings) and 535 (injunctions).

32713

§ 995.050. Extensions of time

995.050. The times provided in this chapter or in any other statute relating to a bond or undertaking may be extended pursuant to Sections 1054 and 1054.1.

Comment. Section 995.050 continues the substance of provisions formerly found in Sections 1054 and 1054.1 (extensions of time).

101/889

§ 995.060. Transition provision

995.060. If a bond or undertaking is given before the operative date of this chapter:

(a) The bond or undertaking remains in effect notwithstanding the repeal or amendment of the statute pursuant to which the bond or undertaking is given.

(b) The law governing the bond or undertaking is the law applicable to the bond or undertaking immediately before the operative date of this chapter, and for this purpose the law is continued in effect as it then existed.

Comment. Section 995.060 saves existing bonds and undertakings and the law governing them on the operative date of the Bond and Undertaking Law. The operative date is January 1, 1982.

31439

§ 995.110. Application of definitions

995.110. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

Comment. Section 995.110 makes clear that this article provides definitions applicable only to this chapter. Particular definitions may be applicable to other statutes by their terms or by the context in which they are used. See, e.g., Section 995.120 ("admitted surety insurer" defined). For other definitions and rules of construction applicable to this chapter, see Sections 10-17.

31440

§ 995.120. Admitted surety insurer

995.120. (a) "Admitted surety insurer" means a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code.

(b) As used in other statutes relating to bonds and undertakings, the phrases "admitted surety insurer," "authorized surety company," "corporate surety," and comparable phrases mean "admitted surety insurer" as defined in this section.

Comment. Section 995.120 is drawn from the first paragraph of former Section 1056 (bonds and undertakings) and from former Insurance Code Section 1300.5 (reciprocal or interinsurance exchange).

31495

§ 995.130. Beneficiary

995.130. (a) "Beneficiary means the person for whose benefit a bond or undertaking is given, whether executed to, in favor of, in the name of, or payable to the person.

(b) If a bond or undertaking is given for the benefit of the State of California or the people of the state, "beneficiary" means the court, officer, or other person required to determine the sufficiency of the sureties or to approve the bond or undertaking.

Comment. Subdivision (a) of Section 995.130 is drawn from former Section 489.020 (attachment).

Subdivision (b) is new. For persons entitled to enforce the liability on a bond or undertaking to the state, see Section 995.850 (enforcement by or for benefit of persons interested).

§ 995.140. Bond

995.140. "Bond" means a surety, fidelity, indemnity, or like bond executed by both the principal and sureties.

Comment. Section 995.140 is new. The only difference between a bond and undertaking is that a bond is executed by principal as well as sureties. See Section 995.190 ("undertaking" defined). The two instruments are interchangeable if given pursuant to statute. See Section 995.210 (bonds and undertakings interchangeable).

31540

§ 995.150. Court

995.150. "Court" means, if a bond or undertaking is given in an action or proceeding, the court in which the action or proceeding is pending.

Comment. Section 995.150 is new. A judge at chambers may approve bonds and undertakings. Code Civ. Proc. § 166 (actions that may be taken in chambers). A court commissioner may take and approve bonds and undertakings and determine objections. Code Civ. Proc. §§ 259, 259a (court commissioners).

31541

§ 995.160. Officer

995.160. "Officer" means the sheriff, marshall, constable, clerk of court, judge or magistrate if there is no clerk, board, commission, department, or other public official or entity to whom the bond or undertaking is given or with whom a copy of the bond or undertaking is filed or who is required to determine the sufficiency of the sureties or to approve the bond or undertaking.

Comment. Section 995.160 is drawn from the introductory portion of former Section 1054a (deposit in lieu of undertaking). It applies not only to bonds and undertakings given in actions and proceedings but to other bonds and undertakings as well.

31542

§ 995.170. Principal

995.170. "Principal" means the person who gives a bond or undertaking.

Comment. Section 995.170 is drawn from former Section 489.020(b) (attachment).

31543

§ 995.180. Statute

995.180. "Statute includes administrative regulation promulgated pursuant to statute.

Comment. Section 995.180 is new.

31544

§ 995.190. Undertaking

995.190. "Undertaking" means a surety, fidelity, indemnity, or like undertaking executed by the sureties alone.

Comment. Section 995.190 is new. The only difference between a bond and undertaking is that an undertaking is executed by the sureties and not the principal. See Section 995.140 ("bond" defined). The two instruments are interchangeable if given pursuant to statute. See Section 995.210 (bonds and undertakings interchangeable).

2956

Article 2. General Provisions

§ 995.210. Bonds and undertakings interchangeable

995.210. Unless the provision or context otherwise requires:

(a) If a statute provides for a bond, an undertaking that otherwise satisfies the requirements for the bond may be given in its place with the same effect as if a bond were given, and references in the statute to the bond shall be deemed to be references to the undertaking.

(b) If a statute provides for an undertaking, a bond that otherwise satisfies the requirements for the undertaking may be given in its place with the same effect as if an undertaking were given, and references in the statute to the undertaking shall be deemed to be references to the bond.

Comment. Section 995.210 is new. It recognizes that the terms "bond" and "undertaking" are used interchangeably in both the statutes

and cases. See, e.g., *Associates Capital Services Corp. v. Security Pac. Nat'l Bank*, 91 Cal. App.3d 819, 154 Cal. Rptr. 392 (1979); *Alexander v. Superior Court*, 91 Cal. App. 312, 266 P. 993 (1928); *Connors*, Cal. Surety & Fidelity Bond Practice § 21.2, p. 308 (Cal. Cont. Ed. Bar 1969); see also Sections 995.140 ("bond" defined) and 995.190 (undertaking" defined). While a bond is executed by principal as well as sureties, the signature of the principal provides the beneficiary no additional security. See Section 996.460 (judgment of liability).

2959

§ 995.220. Bond or undertaking not required of public entity or officer

995.220. If a statute provides for a bond or undertaking in an action or proceeding, the following public entities and officers are not required to give the bond or undertaking and shall have the same rights, remedies, and benefits as if the bond or undertaking were given:

(a) The State of California or the people of the state, an agency of the state, or a state officer in an official capacity or on behalf of the state.

(b) A county, city, district, or town.

(c) The United States or an instrumentality or agency of the United States, or a Federal officer in an official capacity or on behalf of the United States or instrumentality or agency.

Comment. Section 995.220 continues the substance of former Section 1058 (bonds and undertakings).

31545

§ 995.230. Reduction or waiver by beneficiary

995.230. The beneficiary of a bond or undertaking given in an action or proceeding may in writing consent to the bond or undertaking in an amount less than the amount required by statute or may waive the bond or undertaking.

Comment. Section 995.230 is drawn from a number of provisions of former law. See, e.g., former Sections 489.030 (attachment) and 920 (appeals); Section 1255.250 (eminent domain).

§ 995.240. Waiver in case of indigency

995.240. The court may, in its discretion, waive a provision for a bond or undertaking in an action or proceeding and make such orders as may be appropriate as if the bond or undertaking were given, if the court determines that the principal is unable to give the bond or undertaking because of indigency.

Comment. Section 995.240 is drawn from former subdivision (e) of Section 515.020 (claim and delivery). It codifies the common law authority of the courts. See, e.g., *Conover v. Hall*, 11 Cal.3d 842, 523 P.2d 682, 114 Cal. Rptr. 642 (1974) (waiver of injunction bond because of indigency).

31546

§ 995.250. Cost of bond or undertaking recoverable

995.250. If a statute allows costs to a party to an action or proceeding, the costs shall include all of the following:

(a) The premium on a bond or undertaking reasonably paid by the party pursuant to a statute that provides for the bond or undertaking in the action or proceeding.

(b) The premium on a bond or undertaking reasonably paid by the party in connection with the action or proceeding, unless the court determines that the bond or undertaking was unnecessary.

Comment. Section 995.250 continues the substance of former Section 1035 (costs). See also provisions formerly found in Sections 1029.5 and 1029.6 (malpractice actions). Contrast Section 1255.240(b) (premium not recoverable if undertaking required because of issue as to title in eminent domain). Subdivision (a) makes clear that the court does not have discretion to deny the cost of a statutory litigation bond. Subdivision (b) continues the rule that costs may be allowed for non-litigation bonds if procured in connection with litigation. See *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal. App.3d 887, 92 Cal. Rptr. 723 (1971).

31547

§ 995.260. Evidence of bond or undertaking

995.260. If a bond or undertaking is recorded pursuant to statute, a certified copy of the record of the bond or undertaking with all affidavits, acknowledgments, endorsements, and attachments may be

admitted in evidence in an action or proceeding with the same effect as the original, without further proof.

Comment. Section 995.260 is drawn from former Civil Code Section 3227 (mechanics' liens and stop notices) and the last sentence of Government Code Section 8213 (bond of notary public).

38892

§ 995.270. Agreement of deposit

995.270. (a) If the deposit is otherwise proper, the principal on a bond or undertaking may agree with the surety for the deposit of any money and assets for which the surety is responsible with a bank, savings bank, safe deposit, or trust company authorized by law to do business as such, or other depository approved by the court, for the safekeeping of the money and assets in such a manner as to prevent the withdrawal of the money or assets without the written consent of the surety or an order of court, made on such notice to the surety as the court may direct.

(b) The agreement does not in any manner release the principal or surety from liability on the obligation of the bond or undertaking.

Comment. Section 995.270 continues the substance of former Civil Code Section 2811 (deposit of money and assets). This provision is intended to permit the surety to lawfully establish joint control with a fiduciary. See Guardianship of Ounjuan, 4 Cal.2d 659, 52 P.2d 220 (1935).

2961

Article 3. Execution and Filing

§ 995.310. Sureties on bond or undertaking

995.310. Unless the statute providing for the bond or undertaking requires execution by an admitted surety insurer, a bond or undertaking shall be executed by two or more sufficient personal sureties or by one sufficient admitted surety insurer.

Comment. Section 995.310 continues the requirement of two or more personal sureties or one admitted surety insurer found in numerous provisions of former law. See, e.g., former Section 489.040 (attachment); Sections 515.010-515.020 (claim and delivery) and 567 (receivers);

former Sections 571 (receivers, referees, commissioners) and 677 (fraudulent conveyances); Sections 682a (deposit account or safe deposit box), 689 and 710c (third-party claims), 922 (appeals), 1029.5-1029.6 (malpractice actions), 1030 (nonresident plaintiff), and 1210 and 1215 (contempt). If the statute providing for the bond or undertaking requires execution by personal sureties, the bond or undertaking may be executed by an admitted surety insurer. See Section 995.610 (admitted surety insurer in lieu of personal sureties).

§ 995.320. Contents of bond or undertaking

995.320. (a) A bond or undertaking shall be in writing signed by the sureties under oath and shall include all of the following:

(1) A statement that the sureties are jointly and severally liable on the obligations of the statute providing for the bond or undertaking.

(2) The address at which the sureties may be served with notices, papers, and other documents under this chapter.

(3) If the amount of the bond or undertaking is based upon the value of property or an interest in property, a description of the property or interest, and the principal's estimate of the value of the property or interest, or if given pursuant to the estimate of the beneficiary or court, the value as so estimated.

(b) The sureties signing the bond or undertaking are jointly and severally liable on the obligations of the bond or undertaking, the provisions of this chapter, and the statute providing for the bond or undertaking.

Comment. Subdivision (a)(1) of Section 995.320 is drawn from former Section 1041 (undertaking in civil action). Subdivision (a)(2) is drawn from the second sentence of former Section 1058a (security in civil action). Subdivision (a)(3) continues the substance of former Sections 489.050 (attachment) and 677 and 679 (fraudulent conveyances), portions of Section 710c and former Section 712-1/2 (third-party claims), and former Section 1041 (undertaking in civil action). The bond or undertaking may include a stipulation that the liability of a personal surety is limited to the net worth of the surety. See Section 995.520 (affidavit of surety).

Subdivision (b) continues the substance of portions of former Section 1041 (undertaking in civil action) and former Civil Code Section 2781 (obligations of sureties).



§ 995.330. Form of bond or undertaking

995.330. (a) A bond or undertaking given in an action or proceeding may be in the following form:

("Title of court. Title of cause.)

Whereas the . . . desires to give (a bond) (an undertaking) for (state what) as provided by (state sections of code requiring bond or undertaking); now, therefore, the undersigned (principal and) (sureties) (surety) hereby (obligate ourselves, jointly and severally) (obligates itself) to (name who) under the statutory obligations, in the amount of . . . dollars."

(b) The Judicial Council may prescribe the form of a bond or undertaking given in an action or proceeding. A form prescribed by the Judicial Council is deemed to comply with this title.

Comment. Subdivision (a) of Section 995.330 continues the substance of the portion of former Section 1041 (undertaking in civil action) which prescribed the form of a bond or undertaking by a party to an action or proceeding.

Subdivision (b) is new. For the Judicial Council form of attachment and claim and delivery undertaking, see form AT-160(77). For the Judicial Council form of notice of exception to sureties and hearing on justification of sureties, see form CD-150(74).

§ 995.340. Filing required

995.340. If a bond or undertaking is given in an action or proceeding:

(a) The bond or undertaking shall be filed with the court unless the statute providing for the bond or undertaking requires that the bond or undertaking be given to another person.

(b) If the statute providing for the bond or undertaking requires that the bond or undertaking be given to an officer, the officer shall file the bond or undertaking with the court unless the statute providing for the bond or undertaking otherwise provides.

(c) A bond or undertaking filed with the court shall be preserved in the office of the clerk of the court.

Comment. Subdivision (a) of Section 995.340 is drawn from numerous provisions of former law. See, e.g., Sections 515.010-515.020 (claim

and delivery) and former Section 677-1/2 (fraudulent conveyances). Contrast Section 682a (bond transmitted by levying officer to financial institution).

Subdivision (b) is new. Specific statutes may provide different rules. See, e.g., Rev. & Tax. Code § 2954 (bond filed with tax collector; proof filed with court).

Subdivision (c) is drawn from former Probate Code Section 2332 (guardian or conservator).

2977

§ 995.350. Entry in register of actions

995.350. (a) Upon the filing of a bond or undertaking with the court in an action or proceeding, the clerk shall enter in the register of actions the following information:

- (1) The date and amount of the bond or undertaking.
- (2) The names of the sureties on the bond or undertaking.

(b) In the event of the loss of the bond or undertaking, the entries in the register of actions are prima facie evidence of the giving of the bond or undertaking in the manner required by statute.

Comment. Section 995.350 continues the substance of the second paragraph of former Section 1057 (bonds and undertakings) and the last two sentences of former Probate Code Section 545 (bonds and undertakings under Probate Code).

2980

§ 995.360. Return of bond or undertaking

995.360. A bond or undertaking given in an action or proceeding may be withdrawn from the file and returned to the principal on order of the court only if one of the following conditions is satisfied:

- (a) The beneficiary so stipulates.
- (b) The bond or undertaking does not remain in force and effect.

Comment. Section 995.360 is drawn from Court Rules 242(c) (Superior Court) and 530(c) (Municipal Court). For the term of the bond or undertaking, see Section 995.430.

§ 995.370. Service of copy of bond or undertaking

995.370. At the time a bond or undertaking is given, the principal shall serve a copy of the bond or undertaking on the beneficiary. An affidavit of service shall be given and filed with the bond or undertaking.

Comment. Section 995.370 is drawn from numerous provisions formerly found in statutes relating to bonds and undertakings. See, e.g., Sections 489.230 (notice of attachment undertaking) and 515.020 (copy of claim and delivery undertaking for redelivery); former Section 677-1/2 (fraudulent conveyances). Contrast Section 514.020 (copy of claim and delivery undertaking delivered or served by levying officer); Civil Code Section 1861.18 (copy of innkeeper's lien undertaking delivered or served by levying officer).

§ 995.380. Defect in bond or undertaking

995.380. (a) If a bond or undertaking does not contain the substantial matter or conditions required by this chapter or by the statute providing for the bond or undertaking, or if there are any defects in the giving or filing of the bond or undertaking, the bond or undertaking is not void so as to release the principal and sureties from liability. The principal and sureties are equitably liable to the beneficiary.

(b) The beneficiary may, in proceedings to enforce the liability on the bond or undertaking, suggest the defect in the bond or undertaking, or its giving or filing, and enforce the equitable liability against the principal and the persons who intended to become and were included as sureties on the bond or undertaking.

Comment. Section 995.380 is drawn from former Government Code Section 1554 (official bond).

Article 4. Approval and Effect

§ 995.410. Approval of bond or undertaking

995.410. (a) A bond or undertaking becomes effective without approval unless the statute providing for the bond or undertaking requires that the bond or undertaking be approved by the court or officer.

(b) If the statute providing for a bond or undertaking requires that the bond or undertaking be approved, the court or officer may approve or disapprove the bond or undertaking on the basis of the affidavit or certificate of the sureties or may require the attendance of witnesses and the production of evidence and may examine the sureties under oath touching their qualifications.

Comment. Subdivision (a) of Section 995.410 is new. Subdivision (b) continues the substance of numerous provisions of former law. See, e.g., Gov't Code § 1531 (official bonds). If a bond or undertaking is required to be approved by a court, the judge at chambers may approve the bond or undertaking. See Section 166 (actions that may be taken in chambers).

2979

§ 995.420. Time bond or undertaking becomes effective

995.420. (a) Unless the statute providing for a bond or undertaking provides that the bond or undertaking becomes effective at a different time, a bond or undertaking is effective at the time it is given or, if the statute requires that the bond or undertaking be approved, at the time it is approved.

(b) If the statute providing for a bond or undertaking provides that the bond or undertaking becomes effective at a time other than the time it is given or approved, the bond or undertaking is effective at the time provided unless an objection is made to the bond or undertaking before that time. If an objection is made to a bond or undertaking before the time provided, the bond or undertaking becomes effective when the court makes an order determining the sufficiency bond or undertaking.

Comment. Subdivision (a) of Section 995.420 is drawn from Section 489.060 (attachment).

Subdivision (b) is drawn from former Sections 680 (fraudulent conveyances) and 713-1/2 (third-party claims). For statutes providing different effective dates, see, e.g., Section 710d (third-party claim undertaking effective 10 days after service), Civil Code § 3450 (fraudulent conveyance undertaking effective 10 days after service).

§ 995.430. Term of bond or undertaking

995.430. A bond or undertaking remains in force and effect until the earliest of the following events:

(a) The purpose for which the bond or undertaking was given is satisfied or the purpose is abandoned without any liability having been incurred.

(b) A judgment of liability of the principal on the bond or undertaking is satisfied.

(c) The time during which the liability on the bond or undertaking may be enforced has expired.

(d) The term of the bond or undertaking expires.

Comment. Section 995.430 is drawn from former Insurance Code § 1664 (production agencies).

38887

§ 995.440. Term of license or permit bond or undertaking

995.440. A bond or undertaking given as a condition of a license or permit shall be continuous in form, remain in full force and effect, and run concurrent with the license or permit period and any and all renewals.

Comment. Section 995.440 continues the substance of former Civil Code Section 2852 (bond of licensee or permittee).

2964

Article 5. Personal Sureties

§ 995.510. Qualifications of surety

995.510. (a) A personal surety on a bond or undertaking is sufficient if all of the following conditions are satisfied:

(1) The surety is a person other than the principal. No officer of the court or member of the State Bar shall act as a surety.

(2) The surety is a resident and householder, or freeholder, within the state.

(3) The surety is worth the amount of the bond or undertaking, over and above all just debts and liabilities, exclusive of property exempt from enforcement of a money judgment.

(b) If the amount of a bond or undertaking exceeds \$10,000 and is executed by more than two personal sureties, the worth of a personal surety may be less than the amount of the bond or undertaking, so long as the aggregate worth of all sureties executing the bond or undertaking is twice the amount of the bond or undertaking.

Comment. Section 995.510 is drawn from former Section 1057 (bonds and undertakings) and from Rules of Court 242(b) (Superior Court) and 530(b) (Municipal Court). The substitution of \$10,000 for \$3,000 is in recognition of the change in value of the dollar since the enactment of the former law.

2965

§ 995.520. Affidavit of surety

995.520. (a) A bond or undertaking executed by personal sureties shall be accompanied by an affidavit of qualifications of each surety.

(b) The affidavit shall contain all of the following information:

(1) The name, occupation, residence address, and business address (if any) of the surety.

(2) A statement that the surety is a resident and householder, or freeholder, within the state.

(3) A statement that the surety is worth the amount of the bond or undertaking, over and above all just debts and liabilities, exclusive of property exempt from enforcement of a money judgment.

(c) If the amount of the bond or undertaking exceeds \$5,000, the affidavit shall contain, in addition to the information required by subdivision (b), all of the following information:

(1) A description sufficient for identification of real and personal property of the surety and the nature of the surety's interest therein that qualifies the surety on the bond or undertaking.

(2) The surety's best estimate of the fair market value of each item of property.

(3) A statement of any charge or lien and its amount, known to the surety, whether of public record or not, against any item of property.

(4) Any other impediment or cloud known to the surety on the free right of possession, use, benefit, or enjoyment of the property.

(d) If the amount of the bond or undertaking exceeds \$10,000 and is executed by more than two sureties, the affidavit may state that the surety is worth less than the amount of the bond or undertaking and the bond or undertaking may stipulate that the liability of the surety is limited to the worth of the surety stated in the affidavit, so long as the aggregate worth of all sureties executing the bond or undertaking is twice the amount of the bond or undertaking.

Comment. Section 995.520 continues the substance of the first sentence of the first paragraph of former Section 1057 (bonds and undertakings) and a portion of former Section 830 (libel and slander). See also Gov't Code § 1530 (official bonds). The substitution of \$5,000 for \$2,000 and \$10,000 for \$3,000 is in recognition of the change in value of the dollar since the enactment of the former law.

2981

Article 6. Admitted Surety Insurers

§ 995.610. Admitted surety insurer in lieu of personal sureties

995.610. (a) If a statute provides for a bond or undertaking with any number of sureties, one sufficient admitted surety insurer may become and shall be accepted as sole surety on the bond or undertaking.

(b) The admitted surety insurer is subject to all the liabilities and entitled to all the rights of personal sureties.

Comment. Section 995.610 continues the substance of the first paragraph of former Section 1056 (bonds and undertakings) and former Civil Code Section 3227 (mechanics' liens and stop notices).

32813

§ 995.620. More than one surety

995.620. Two or more admitted surety insurers may be sureties on a bond or undertaking by executing the same or separate bonds or undertakings for amounts aggregating the required amount of the bond or undertaking. Each admitted surety insurer is jointly and severally liable to the extent of the amount of the liability assumed by it.

Comment. Section 995.620 is drawn from former Insurance Code Section 11698 (worker's compensation).

§ 995.630. Authentication of bond or undertaking

995.630. An admitted surety insurer shall not be accepted or approved as surety on a bond or undertaking unless, and shall be accepted or approved without further acknowledgment if, all of the following conditions are satisfied:

(a) A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the bond or undertaking to do so for and in behalf of the insurer, is filed in the office of the clerk of the county in which the court or officer is located.

(b) The bond or undertaking is executed in the name of the insurer under penalty of perjury or the fact of execution of the bond or undertaking is duly acknowledged before an officer of this state authorized to take and certify acknowledgments.

Comment. Section 995.630 is drawn from the second and third paragraphs of former Section 1056 (bonds and undertakings) and from Court Rules 242(a) (Superior Court) and 530(a) (Municipal Court).

§ 995.640. Certificate of authority

995.640. The county clerk of any county shall, upon request of any person, issue a certificate stating whether the certificate of authority of an admitted surety insurer issued by the Insurance Commissioner authorizing the insurer to transact surety insurance, has been surrendered, revoked, canceled, annulled, or suspended, and in the event that it has, whether renewed authority has been granted. The county clerk in issuing the certificate shall rely solely upon the information furnished by the Insurance Commissioner pursuant to Article 2 (commencing with Section 12070) of Chapter 1 of Part 4 of Division 2 of the Insurance Code.

Comment. Section 995.640 continues the substance of the last two paragraphs of former Section 1057a (bonds and undertakings). The fee to be paid by the person requesting the certificate is \$3.00 for each certificate issued. See Gov't Code Section 26855.3 (fee for issuing certificate).



§ 995.650. Objection to sufficiency of surety

995.650. If an objection is made to the sufficiency of an admitted surety insurer, the person making the objection shall attach to and incorporate in the objection one or both of the following:

(a) The certificate of the county clerk of the county in which the court is located stating that the insurer has not been certified to the county clerk by the Insurance Commissioner as an admitted surety insurer or that the certificate of authority of the insurer has been surrendered, revoked, canceled, annulled, or suspended and has not been renewed.

(b) An affidavit stating facts that establish the insufficiency of the insurer.

Comment. Section 995.650 continues the substance of former Section 1057b (justification of admitted surety insurer). For the certificate of the county clerk, see Section 995.640 (certificate of authority).

§ 995.660. Determination of sufficiency of surety

995.660. (a) If an objection is made to the sufficiency of an admitted surety insurer on a bond or undertaking, the surety may submit to the court the following documents:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, by-laws, or other instrument entitling or authorizing the person who executed the bond or undertaking to do so.

(2) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner.

(3) A certificate from the county clerk of the county in which the court is located that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.

(4) A financial statement of the assets and liabilities of the insurer at the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond or undertaking. The financial statement shall be made by an officers' certificate as defined in Section 173 of the Corporations Code. In the case of foreign insurer the financial statement may, instead of an officers' certificate, be

verified by the oath of the principal officer or manager residing within the United States.

(b) If the admitted surety insurer complies with subdivision (a) and if it appears that the bond or undertaking was duly executed, that the insurer is authorized to transact surety insurance in the state, and that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond or undertaking, the insurer is sufficient and shall be accepted as the sole and sufficient surety on the bond or undertaking, subject to Section 12090 of the Insurance Code.

Comment. Section 995.660 continues the substance of the first portion of former Section 1057a (justification of admitted surety insurer). The reference to Insurance Code Section 12090 (admitted surety insurer may not become surety on undertaking in excess of 10% of assets) is new. For the certificate of the county clerk, see Section 995.640.

3039

Article 7. Deposit in Lieu of Bond or Undertaking

§ 995.710. Deposit of money, certificates, accounts, bonds, or notes

995.710. (a) The principal may, instead of giving a bond or undertaking, deposit with the officer any of the following:

(1) Lawful money of the United States. The money shall be maintained by the officer in an interest-bearing trust account.

(2) Bearer bonds or bearer notes of the United States or the State of California.

(3) Certificates of deposit payable to the officer, not exceeding the federally insured amount, issued by banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(4) Savings accounts assigned to the officer, not exceeding the federally insured amount, together with evidence of the deposit in the savings accounts with banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(5) Investment certificates or share accounts assigned to the officer, not exceeding the federally insured amount, issued by savings and loan associations authorized to do business in this state and insured by the Federal Savings and Loan Insurance Corporation.

(6) Certificates for funds or share accounts assigned to the officer, not exceeding the guaranteed amount, issued by a credit union, as defined in Section 14000 of the Financial Code, whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Corporations.

(b) The deposit shall be in an amount or have a face value, or in the case of bearer bonds or bearer notes have a market value, equal to or in excess of the amount required to be secured by the bond or undertaking if given by an admitted surety insurer.

(c) The deposit shall be accompanied by an agreement executed by the principal authorizing the officer to collect, sell, or otherwise apply the deposit to enforce the liability of the principal on the deposit.

Comment. Section 995.710 continues the substance of portions of former Section 1054a (deposit in lieu of undertaking) and numerous provisions of other statutes.

§ 995.720. Valuation of bearer bonds or notes

995.720. (a) The market value of bearer bonds or bearer notes shall be agreed upon by stipulation of the principal and beneficiary or, if the bonds or notes are given in an action or proceeding and the principal and beneficiary are unable to agree, the market value shall be determined by court order in the manner prescribed in this section. A certified copy of the stipulation or court order shall be delivered to the officer at the time of the deposit of the bonds or notes.

(b) The principal may file a written application with the court in an action or proceeding to determine the market value of the bonds or notes. The application shall be served upon the beneficiary and proof of service shall be filed with the application. The application shall contain all of the following:

(1) A specific description of the bonds or notes.

(2) A statement of the current market value of the bonds or notes as of the date of the filing of the application.

(3) A statement of the amount of the bonds or notes that the principal believes would be equal to the required amount of the deposit.

(c) The application shall be heard by the court not less than five days nor more than 10 days after service of the application. If at the time of the hearing no objection is made to the current market value of the bonds or notes alleged in the application, the court shall fix the amount of the bonds or notes on the basis of the market value alleged in the application. If the beneficiary appearing at the hearing contends that the current market value of the bonds or notes is less than alleged in the application, the principal shall offer evidence in support of the application, and the beneficiary may offer evidence in opposition. At the conclusion of the hearing, the court shall make an order determining the market value of the bonds or notes and shall fix and determine the amount of the bonds or notes to be deposited by the principal.

Comment. Section 995.720 continues the substance of the portion of former Section 1054a relating to valuation of bearer bonds or bearer notes.

3041

§ 995.730. Effect of deposit

995.730. A deposit given instead of a bond or undertaking has the same force and effect, is treated the same, and is subject to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond or undertaking.

Comment. Section 995.730 is drawn from portions of former Probate Code Sections 541.3 (executor or administrator) and 2331 (guardian or conservator).

3042

§ 995.740. Interest on deposit

995.740. If no proceedings are pending to enforce the liability of the principal on the deposit, the officer shall:

(a) Pay any interest on the deposit, when earned in accordance with the terms of the account or certificate, to the principal.

(b) Deliver to the principal, on demand, any interest coupons attached to bearer bonds or bearer notes as the interest coupons become

due and payable, or pay annually any interest payable on the bonds or notes.

Comment. Subdivision (a) of Section 995.740 continues the substance of a portion of Harbors and Navigation Code Section 731.

Subdivision (b) continues the substance of the fourth paragraph of former Section 1054a (deposit in lieu of undertaking) and former Business and Professions Code Section 9547.4 (cleaning, dyeing, and pressing license).

3043

§ 995.750. Obligation of principal

995.750. (a) The principal shall pay the amount of the liability on the deposit within 30 days after the date on which the judgment of liability becomes final.

(b) If the deposit was given to stay enforcement of a judgment on appeal, the principal shall pay the amount of the liability on the deposit, including damages and costs awarded against the principal on appeal, within 30 days after the filing of the remittitur from the appellate court in the court from which the appeal is taken.

Comment. Section 995.750 is drawn from the third and fifth paragraphs of former Section 1054a (deposit in lieu of undertaking).

3044

§ 995.760. Enforcement against deposit

995.760. (a) If the principal does not pay the amount of the liability on the deposit within the time prescribed in Section 995.750, the deposit shall be collected, sold, or otherwise applied to the liability upon order of the court that entered the judgment of liability, made upon five days' notice to the parties.

(b) Bearer bonds or bearer notes without a prevailing market price shall be sold at public auction. Notice of sale shall be served on the principal. Bearer bonds or bearer notes having a prevailing market price may be sold at private sale at a price not lower than the prevailing market price.

(c) The deposit shall be distributed in the following order:

(1) First, to pay the cost of collection, sale, or other application of the deposit.

(2) Second, to pay the judgment of liability of the principal on the deposit.

(3) Third, the remainder, if any, shall be returned to the principal.

Comment. Section 995.760 is drawn from the last portion of the fourth paragraph of former Section 1054a (bonds and undertakings). Subdivision (b) is drawn from Financial Code Section 12223 (check sellers and cashiers).

§ 995.770. Return of deposit

995.770. Except as otherwise provided by statute, a deposit given pursuant to this article shall be returned to the principal at the earliest of the following times:

(a) Upon substitution of a sufficient bond or undertaking for the deposit.

(b) The time provided by Section 995.360 for return of a bond or undertaking.

Comment. Section 995.770 is drawn from portions of former Probate Code Sections 541.3 (executor or administrator) and 2331 (guardian or conservator) and of Harbor and Navigation Code Section 731 (broker's license). Statutes may provide exceptions to the rule of Section 995.770. See, e.g., Veh. Code § 11102.1 (deposit returned in three years or earlier upon court order).

Article 8. Bonds and Undertakings to  
the State of California

§ 995.810. Application of article

995.810. The provisions of this article apply to a bond or undertaking executed to, in favor of, in the name of, or payable to the State of California or the people of the state, including but not limited to an official bond.

Comment. Section 995.810 supersedes former Section 304 (bonds of receivers, executions, and administrators). The other provisions of this chapter also apply to a bond or undertaking under this article. See also Sections 995.130 ("beneficiary" defined) and 996.510-996.560 (enforcement lien).

3047

§ 995.820. Bond or undertaking by officer of court

995.820. Except as otherwise provided by statute, a bond or undertaking given by an officer of the court for the faithful discharge of the officer's duties and obedience to the orders of the court shall be to the State of California.

Comment. Section 995.820 continues the substance of a portion of former Section 304.1 (bonds or undertakings of trustees, receivers, assignees, officers of court). See also Section 995.840 (court approval of bond or undertaking).

3048

§ 995.830. Bond or undertaking where no beneficiary provided

995.830. If a statute providing for a bond or undertaking does not also provide the beneficiary of the bond or undertaking, the bond or undertaking shall be to the State of California.

Comment. Section 995.830 is new.

3049

§ 995.840. Court approval of bond or undertaking

995.840. If a bond or undertaking under this article is given in an action or proceeding, the bond or undertaking shall be approved by the court.

Comment. Section 995.840 continues the substance of numerous provisions of former law. See, e.g., Section 567 (receivers) and former Section 571 (receivers, referees, and commissioners). The judge in chambers may approve a bond or undertaking. Section 166 (actions that may be taken in chambers).

§ 995.850. Enforcement by or for benefit of persons interested

995.850. (a) The liability on a bond or undertaking under this article may be enforced by or for the benefit of, and in the name of, any and all persons interested in the bond or undertaking who are injured, aggrieved, or damaged by breach of the condition of the bond or undertaking.

(b) A person described in subdivision (a) may, in addition to any other remedy the person has, enforce the liability on the bond or undertaking in the persons' own name, without assignment of the bond or undertaking.

(c) If the bond or undertaking is given in an action or proceeding, enforcement of liability shall be upon order of the court.

Comment. Section 995.850 continues the substance of numerous provisions of former law. See, e.g., the last portion of former Section 304.1 (bonds of trustees, receivers, assignees, or officers of a court).

Article 9. Objections to Bonds and Undertakings

§ 995.910. Article limited to actions and proceedings

995.910. This article governs objections to a bond or undertaking given in an action or proceeding.

Comment. Section 995.910 limits the objection procedure to cases where there are adversary parties and a court to resolve disputes. In other situations the officer required to approve a bond or undertaking must do so without the objection procedure.

§ 995.920. Grounds for objection

995.920. The beneficiary or, in the case of a bond or undertaking to the State of California, any party may object to a bond or undertaking on either or both of the following grounds:

(a) The sureties are insufficient.

(b) The amount of the bond or undertaking is insufficient.

Comment. Section 995.920 is drawn from numerous provisions of former law. See, e.g., former Sections 489.070 (attachment), 678 (fraudulent conveyances), 711-1/2 (third-party claims). For objection to the



sufficiency of an admitted surety insurer, see Section 995.650 (objection to sufficiency of surety).

2988

§ 995.930. Manner of making objection

995.930. (a) An objection shall be in writing and shall be made by noticed motion. The notice of motion shall specify the precise grounds for the objection. If a ground for the objection is that the amount of the bond or undertaking is insufficient, the notice of motion shall state the reason for the insufficiency and shall include an estimate of the amount that would be sufficient.

(b) The objection shall be made within 10 days after service of a copy of the bond or undertaking on the beneficiary or such other time as is required by the statute providing for the bond or undertaking.

(c) If no objection is made within the time required by statute, the beneficiary is deemed to have waived all objections except upon a showing of changed circumstances.

Comment. Section 995.930 is drawn from numerous provisions of former law. See, e.g., former Section 489.080 (attachment), Section 515.030 (claim and delivery), former Section 678 (fraudulent conveyances), Section 689 and former Sections 711-1/2 and 712 (third-party claims). Service on the principal of the objection and notice of motion and proof of service are made pursuant to Sections 1010-1013a.

2989

§ 995.940. Objection to sufficiency of bond or undertaking based on market value

995.940. If a ground for the objection is that the value of property on which the amount of the bond or undertaking is based exceeds the value estimated in the bond or undertaking:

(a) The objection shall state the beneficiary's estimate of the market value of the property.

(b) The principal may accept the beneficiary's estimate of the market value of the property and immediately file an increased bond or undertaking based on the estimate. In such case, no hearing shall be held on that ground for the objection, and the beneficiary is bound by the estimate of the market value of the property.

Comment. Section 995.940 is drawn from numerous provisions of former law. As to subdivision (a), see, e.g., former Sections 489.080(b) (attachment), 678 (fraudulent conveyances), 711-1/2 (third-party claims). As to subdivision (b), see, e.g., former Section 489.100 (attachment) and the first portions of former Sections 679 (fraudulent conveyance) and 712-1/2 (third-party claims).

2990

§ 995.950. Hearing on objection

995.950. (a) Unless the parties otherwise agree, the hearing on an objection shall be held not less than two nor more than five days after service of the notice of motion.

(b) The hearing shall be conducted in such manner as the court determines is proper. The court may permit witnesses to attend and testify and evidence to be procured and introduced in the same manner as in the trial of a civil case.

(c) If the value of property is a ground for the objection, the court shall estimate its value. The court may appoint one or more disinterested persons to appraise property for the purpose of estimating its value.

Comment. Section 995.950 is drawn from numerous provisions of former law. See, e.g., former Sections 489.090 (attachment) and 679 (fraudulent conveyances), Section 689 and former Section 712 (third-party claims), and former Civil Code § 3080.13(a) (livestock service liens). It makes uniform the time within which the hearing must be held.

2991

§ 995.960. Determination of sufficiency of bond or undertaking

995.960. (a) Upon the hearing, the court shall make an order determining the sufficiency or insufficiency of the bond or undertaking.

(b) If the court determines that the bond or undertaking is insufficient:

(1) The court shall specify in what respect the bond or undertaking is insufficient and shall order that a bond or undertaking with sufficient sureties and in a sufficient amount be given within five days. If a sufficient bond or undertaking is not given within the time

required by the court order, all rights obtained by giving the bond or undertaking immediately cease.

(2) If a bond or undertaking is in effect, the bond or undertaking remains in effect until a bond or undertaking with sufficient sureties and in a sufficient amount is given in its place, or the time in which to give the bond or undertaking has expired, whichever first occurs.

(c) If the court determines that a bond or undertaking is sufficient, no future objection to the bond or undertaking may be made except upon a showing of changed circumstances.

Comment. Section 995.960 is drawn from numerous provisions of former law. See, e.g., 489.090(c)-(e) (attachment), 678-1/2 and 679 (fraudulent conveyances), Section 689 and former Sections 712 and 712-1/2 (third-party claims), and former Civil Code Section 3080.13(b)-(d) (livestock service liens). For the time a bond or undertaking takes effect, see Section 995.420 (time bond or undertaking becomes effective).

69409

Article 10. Insufficient and Excessive Bonds and Undertakings  
§ 996.010. Bond or undertaking in action or proceeding

996.010. (a) If a bond or undertaking is given in an action or proceeding, the court may determine that the bond or undertaking is or has from any cause become insufficient because the sureties are insufficient or because the amount of the bond or undertaking is insufficient.

(b) The court determination shall be upon motion supported by affidavit or upon the court's own motion. The motion shall be deemed to be an objection to the bond or undertaking. The motion shall be heard and notice of motion shall be given in the same manner as an objection to the bond or undertaking.

(c) Upon the determination the court shall order that a sufficient surety be substituted or a new, additional, or supplemental bond or undertaking be given within a reasonable time not less than five days. The court order is subject to any limitations in the statute providing for the bond or undertaking.

(d) If a sufficient bond or undertaking is not given within the time required by the court order, all rights obtained by giving the original bond or undertaking immediately cease.

Comment. Section 996.010 is drawn from numerous provisions of former law. See, e.g., former Section 1057 (bonds and undertakings) and provisions formerly found in Sections 391.3 (vexatious litigants), 566 (receivers) and 1030 (nonresident plaintiff).

69407

§ 996.020. Bond or undertaking other than in action or proceeding

996.020. (a) If a bond or undertaking is given other than in an action or proceeding and it is shown by affidavit of a credible witness or it otherwise comes to the attention of the officer that the bond or undertaking is or has from any cause become insufficient because the sureties are insufficient or because the amount of the bond or undertaking is insufficient, the officer may serve an order on the principal to appear and show cause why the officer should not make a determination that the bond or undertaking is insufficient. The order shall name a day not less than three nor more than 10 days after service.

(b) If the principal fails to appear and show good cause on the day named why a determination that the bond or undertaking is insufficient should not be made, the officer may determine that the bond or undertaking is insufficient and order a sufficient surety to be substituted or a new, additional, or supplemental bond or undertaking to be given.

(c) If a sufficient surety is not substituted or a new, additional, or supplemental bond or undertaking is not given within 10 days after the order, the officer shall make an order vacating the rights obtained by giving the original bond or undertaking, including declaring vacant any office and suspending or revoking any license or certificate for which the bond or undertaking was given. Any office vacated, license suspended or revoked, or any other rights lost, for failure to substitute a sufficient surety or to give a new, additional, or supplemental bond or undertaking, shall not be reinstated until a sufficient surety is substituted or a new, additional, or supplemental bond or undertaking is given.

Comment. Section 996.020 is drawn from numerous provisions of former law. See, e.g., former Gov't Code §§ 1580-1581 and provisions formerly found in Gov't Code § 1582 (official bonds).

§ 996.030. Reduced bond or undertaking

996.030. (a) The court if a bond or undertaking is given in an action or proceeding or the officer if a bond or undertaking is given other than in an action or proceeding may determine that the amount of the bond or undertaking is excessive and order the amount reduced to an amount that in the discretion of the court or officer appears proper under the circumstances. The order is subject to any limitations in the statute providing for the bond or undertaking.

(b) The determination shall be made upon motion or affidavit of the principal in the same manner as a motion or affidavit for a determination under this article that a bond or undertaking is insufficient. The notice of motion or the order to show cause made pursuant to affidavit shall be served on the beneficiary. The determination shall be made in the same manner and pursuant to the same procedures as a determination under this article that the bond or undertaking is insufficient.

(c) The principal may give a new bond or undertaking for the reduced amount. The sureties may be the same sureties as on the original bond or undertaking.

Comment. Section 996.030 is drawn from numerous provisions of former law. See, e.g., former Section 391.3 (vexatious litigants).

404/393

Article 11. Substitution and Release of Sureties

§ 996.110. Application for substitution and release

996.110. (a) A surety on a bond or undertaking given in an action or proceeding may at any time apply to the court for an order that the surety be released from liability on the bond or undertaking.

(b) The principal on a the bond or undertaking may, if a surety withdraws or applies for release from liability on a bond or undertaking, apply for an order that another surety be substituted for the original surety. The application shall be made to the court if the bond or undertaking is given in an action or proceeding or to the officer if given other than in an action or proceeding.

(c) The applicant shall serve on the principal or surety (if other than the applicant) and on the beneficiary a copy of the application and a notice of hearing on the application. Service shall be made not less than 15 days before the date set for hearing.

Comment. Section 996.110 is drawn from numerous provisions of former law. See, e.g., former Prob. Code §§ 551 and 553.5 (substitution and discharge of sureties). The manner of service is the same as for service of process in civil actions. See Section 995.030.

67723

§ 996.120. Hearing

996.120. Upon the hearing of the application, the court or officer shall determine whether injury to the beneficiary would result from substitution or release of the surety. If the court or officer determines that release would not reduce the amount of the bond or undertaking or the number of sureties below the minimum required by the statute providing for the bond or undertaking, substitution of a sufficient surety is not necessary and the court or officer shall order the release of the surety. If the court or officer determines that no injury would result from substitution of the surety, the court or officer shall order the substitution of a sufficient surety within such time as appears reasonable.

Comment. Section 996.120 is drawn from numerous provisions of former law. See, e.g., former Prob. Code § 553.6 (substitution of sureties) and Prob. Code § 2335(a) (guardian or conservator); former Gov't Code § 1600 (official bonds).

26253

§ 996.130. Substitution and release

996.130. (a) If a substitute surety is given pursuant to this article or otherwise pursuant to order of a court or officer, the substitute surety is subject to all the provisions of this chapter, including but not limited to the provisions governing insufficient and excessive bonds and undertakings.

(b) Upon the substitution of a sufficient surety, the court or officer shall order the release of the original surety from liability on the bond or undertaking.

Comment. Section 996.130 is drawn from numerous provisions of former law. See, e.g., former Prob. Code §§ 553 and 553.6 (substitution of sureties).

08372

§ 996.140. Failure to give substitute surety

996.140. If the principal does not give a sufficient substitute surety within the time ordered by the court or officer or such longer time as the surety consents to, all rights obtained by giving the original bond or undertaking immediately cease. If the bond or undertaking was a condition of holding office or granting a commission, the court or officer shall declare the office vacant or revoke the commission.

Comment. Section 996.140 is drawn from numerous provisions of former law. See, e.g., former Prob. Code § 552 (application by surety).

08359

§ 996.150. Liability of released surety

996.150. If a surety is ordered released from liability on a bond or undertaking:

(a) The bond or undertaking remains in full force and effect for all liabilities incurred before, and for acts, omissions, or causes existing or which arose before, the release. Legal proceedings may be had therefor in all respects as though there had been no release.

(b) The surety is not liable for any act, default, or misconduct of the principal or other breach of the condition of the bond or undertaking that occurs after, or for any liabilities on the bond or undertaking that arise after, the release.

(c) The release does not affect the bond or undertaking as to the remaining sureties, or alter or change their liability in any respect.

Comment. Section 996.150 is drawn from numerous provisions of former law. See, e.g., former Gov't Code §§ 1612-1613 (official bonds) and 8218 (notary public).

Article 12. New, Additional, and Supplemental  
Bonds and Undertakings

§ 996.210. When bond or undertaking given

996.210. (a) The principal shall give a new, additional, or supplemental bond or undertaking if the court or officer orders that a new, additional, or supplemental bond or undertaking be given.

(b) The principal may give a new bond or undertaking if a surety withdraws from the original bond or undertaking or to obtain the release of sureties from liability on the original bond or undertaking.

Comment. Section 996.210 is drawn from numerous provisions of former law. See, e.g., former Gov't Code §§ 1601 and 1608 (official bonds).

045/069

§ 996.220. Contents of bond or undertaking

996.220. (a) A new, additional, or supplemental bond or undertaking shall be in the same form and have the same obligation as the original bond or undertaking and shall be in all other respects the same as the original bond or undertaking, and shall be in such amount as is necessary for the purpose for which the new, additional, or supplemental bond or undertaking is given.

(b) A supplemental bond or undertaking shall, in addition to any other requirements, recite the names of the remaining original sureties, the name of the new surety, and the amount for which the new surety is liable. The supplemental bond or undertaking shall be for the amount for which the original surety was liable on the original bond or undertaking.

Comment. Section 996.220 is drawn from numerous provisions of former law. As to subdivision (a), see, e.g., former Sections 678-1/2 (fraudulent conveyances) and 712 (third-party claims). As to subdivision (b), see, e.g., former Gov't Code §§ 1608 and 1609 (official bonds).



§ 996.230. Provisions applicable to bond or undertaking

996.230. A new, additional, or supplemental bond or undertaking is subject to all the provisions applicable to the original bond or undertaking and to the provisions of this chapter, including but not limited to the provisions governing giving and objecting to a bond or undertaking and liabilities and enforcement procedures.

Comment. Section 996.230 is drawn from numerous provisions of former law. See, e.g., former Sections 678-1/2 (fraudulent conveyances) and 712 (third-party claims); former Gov't Code §§ 1584 and 1602 (official bonds).

968/983

§ 996.240. Effect of new bond or undertaking

996.240. If a new bond or undertaking is given in place of the original bond or undertaking:

(a) The original bond or undertaking remains in full force and effect for all liabilities incurred before, and for acts, omissions, or causes existing or which arose before, the new bond or undertaking became effective.

(b) The sureties on the original bond or undertaking are not liable for any act, default, or misconduct of the principal or other breach of the condition of the bond or undertaking that occurs after or for any liabilities on the bond that arise after, the new bond or undertaking becomes effective.

Comment. Section 996.240 is drawn from numerous provisions of former law. See, e.g., Gov't Code §§ 1602 and 1611 (official bonds).

18549

§ 996.250. Effect of additional or supplemental bond or undertaking

996.250. (a) An additional or supplemental bond or undertaking does not discharge or affect the original bond or undertaking. The original bond or undertaking remains in full force and effect as if the additional or supplemental bond or undertaking had not been given.

(b) After an additional or supplemental bond or undertaking is given, the principal and sureties are liable upon either or both bonds

or undertakings for injury caused by breach of any condition of the bonds or undertakings. The beneficiary may enforce the liability on either bond or undertaking, or may enforce the liability separately on both bonds and undertakings and recover separate judgments of liability on both.

(c) If the beneficiary recovers separate judgments of liability on both bonds or undertakings for the same cause of action, the beneficiary may enforce both judgments. The beneficiary may only collect, by execution or otherwise, the costs of both proceedings to enforce the liability and the amount actually awarded to the beneficiary on the same cause of action in one of the proceedings.

(d) If the sureties on either bond or undertaking have been compelled to pay any sum of money on account of the principal, they are entitled to recover from the sureties on the remaining bond or undertaking a distributive part of the sum paid, in the proportion the amounts of the bonds or undertakings bear one to the other and to the sums paid.

Comment. Section 996.250 is drawn from former Government Code Sections 1585-1588 (official bonds).

36252

### Article 13. Withdrawal of Sureties

#### § 996.310. Application of article

996.310. This article governs withdrawal of a surety from a bond or undertaking given other than in an action or proceeding and is applicable only if the statute pursuant to which the bond or undertaking is given does not provide a procedure for terminating the liability of a surety or for otherwise releasing a surety from liability on a bond or undertaking upon application of the surety.

Comment. Sections 996.310-996.360 are drawn from numerous provisions of former law. See, e.g., former Civil Code Section 2851 (bond of licensee or permittee).

§ 996.320. Notice of withdrawal

996.320. A surety may withdraw from a bond or undertaking by giving a notice of withdrawal in the same manner the bond or undertaking was given. The notice of withdrawal shall be subscribed and verified by the affidavit of the surety. The surety shall serve a copy of the notice of withdrawal on the principal, beneficiary, and any cosureties.

Comment. See Comment to Section 996.310.

§ 996.330. Effective date of withdrawal

996.330. Withdrawal of a surety is effective at the earliest of the following times:

- (a) Thirty days after notice of withdrawal is given.
- (b) If a new surety is substituted for the original surety, the date the substitution becomes effective.
- (c) If a new bond or undertaking is given, the date the new bond or undertaking becomes effective.

Comment. See Comment to Section 996.310.

§ 996.340. Effect of withdrawal

996.340. If the principal does not substitute a new surety for the original surety or give a new bond or undertaking, within 30 days after notice of withdrawal is given, all rights obtained by giving the original bond or undertaking immediately cease, any office for which the bond or undertaking is given is vacant, and any license for which the bond or undertaking is given is suspended. A person whose license is suspended shall not operate or carry on business pursuant to the license during the period of suspension.

Comment. See Comment to Section 996.310.

§ 996.350. Substitution of surety or new bond or undertaking

996.350. If the withdrawal of a surety does not reduce the amount of the bond or undertaking or the number of sureties below the minimum required by the statute providing for the bond or undertaking, a new surety need not be substituted for the original surety and no new bond or undertaking is required or necessary to maintain the original bond or undertaking in effect.

Comment. Section 996.350 is drawn from former Government Code Section 1600 (official bonds).

§ 996.360. Liability of surety

996.360. If a surety withdraws from the bond or undertaking:

(a) The bond or undertaking remains in full force and effect for all liabilities incurred before, and for acts, omissions, or causes existing or which arose before, the withdrawal. Legal proceedings may be had therefor in all respects as though there had been no withdrawal.

(b) The surety is not liable for any act, default, or misconduct of the principal or other breach of the condition of the bond or undertaking that occurs after, or for any liabilities on the bond or undertaking that arise after, the withdrawal.

(c) The release does not affect the bond or undertaking as to the remaining sureties, or alter or change their liability in any respect.

Comment. See Comment to Section 996.310.

Article 14. Liability of Principal and Sureties

§ 996.410. Enforcement of liability on bond or undertaking

996.410. (a) The beneficiary may enforce the liability on a bond or undertaking against both the principal and sureties.

(b) If the beneficiary is a class of persons, any person in the class may enforce the liability on a bond or undertaking in the person's own name, without assignment of the bond or undertaking.

Comment. Section 996.410 continues the substance of numerous provisions of former law. For enforcement of liability on a bond to the State of California, see Section 995.850 (enforcement by or for benefit of persons interested).

Subdivision (b) is drawn from former Financial Code Section 12211 (check cashers and sellers) and Health and Safety Code Section 1773 (life care contracts).

2994

§ 996.420. Surety subject to jurisdiction of court

996.420. (a) A surety on a bond or undertaking given in an action or proceeding submits itself to the jurisdiction of the court in all matters affecting its liability on the bond or undertaking.

(b) This section does not apply to a bond or undertaking of a public officer or fiduciary.

Comment. Section 996.420 continues the substance of the first sentences of former Sections 1058a (bonds and undertakings) and 535 (injunctions).

36604

§ 996.430. Action to enforce liability

996.430. (a) The liability on a bond or undertaking may be enforced by civil action. Both the principal and the sureties shall be joined as parties to the action.

(b) If the bond or undertaking was given in an action or proceeding, the action shall be commenced in the court in which the action or proceeding was pending. If the bond or undertaking was given other than in an action or proceeding, the amount of damage claimed in the action, and not the amount of the bond or undertaking, determines the jurisdiction of the court.

(c) A cause of action on a bond or undertaking may be transferred and assigned as other causes of action.

Comment. Section 996.430 continues the substance of numerous provision of former law. See, e.g., former Labor Code §§ 1700.42-1700.43 (artists' managers).

§ 996.440. Motion to enforce liability

996.440. (a) If a bond or undertaking is given in an action or proceeding, the liability on the bond or undertaking may be enforced on motion made in the court without the necessity of an independent action.

(b) The motion shall not be made until after entry of the final judgment in the action or proceeding in which the bond or undertaking is given and the time for appeal has expired or, if an appeal is taken, until the appeal is finally determined. The motion shall not be made or notice of motion served more than one year after the later of the preceding dates.

(c) Notice of motion shall be served on the principal and sureties at least 30 days before the time set for hearing of the motion. The notice shall state the amount of the claim and shall be supported by affidavits setting forth the facts on which the claim is based. The notice and affidavits shall be served in accordance with any procedure authorized by Chapter 5 (commencing with Section 1010).

(d) Judgment shall be entered against the principal and sureties in accordance with the motion unless the principal or surety serves and files affidavits in opposition to the motion showing such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue of fact. If such a showing is made, the issues to be tried shall be specified by the court. Trial shall be by the court and shall be set for the earliest date convenient to the court, allowing sufficient time for such discovery proceedings as may be requested.

(e) The principal and sureties shall not obtain a stay of the proceedings pending determination of any conflicting claims among beneficiaries.

Comment. Section 996.440 continues the substance of former Sections 1058a (bonds and undertakings) and 535 (injunctions). Subdivision (a) also continues the substance of a portion of Probate Code Section 684 (family allowance). Subdivision (b) also continues the substance of a portion of Section 1166a (unlawful detainer) and former Civil Code Section 3080.14(b) (livestock service liens). For the standards for affidavits, see Section 995.040.

§ 996.450. Statute of limitations

996.450. No provision in a bond or undertaking is valid that attempts by contract to shorten the period prescribed by Section 337 or other statute for the commencement of an action on the bond or undertaking or the period prescribed by Section 996.440 for a motion to enforce a bond or undertaking.

Comment. Section 996.450 is new. For an exception to the rule of Section 996.450, see Food and Agricultural Code § 55435. Although the general statute of limitations for an action on a bond or undertaking is the 4-year statute provided by Section 337, specific statutes may provide different limitations periods. See, e.g., Bus. & Prof. Code § 6898 (3 years); Fin. Code §§ 12212, 17205 (2 years); Health & Safety Code §§ 1376 (2 years) and 5021 (6 months). The time within which a motion to enforce must be made is one year. See Section 996.440(b).

36606

§ 996.460. Judgment of liability

996.460. (a) Notwithstanding Section 2845 of the Civil Code, a judgment of liability on a bond or undertaking shall be in favor of the beneficiary and against the principal and sureties and shall obligate each of them jointly and severally.

(b) The judgment shall be in an amount determined by the court and shall include the costs of obtaining the judgment, including a reasonable attorney's fee.

(c) A judgment that does not exhaust the full amount of the bond or undertaking decreases the amount of the bond or undertaking but does not discharge the bond or undertaking. The liability on the bond or undertaking may be enforced thereafter from time to time until the amount of the bond or undertaking is exhausted.

(d) The judgment may be enforced by the beneficiary directly against the sureties. Nothing in this section affects any right of subrogation of a surety against the principal or any right of a surety to compel the principal to satisfy the judgment.

Comment. Subdivision (a) of Section 996.460 is drawn from numerous provisions of former law. See, e.g., former Section 391.5 (vexatious litigants), former Section 489.110 and Section 490.030 (attachment), and a portion of Section 917.1 (appeals).

Subdivision (b) is drawn from former Insurance Code Section 11708 (worker's compensation).

Subdivision (c) is drawn from numerous provisions of former law. See, e.g., former Prob. Code § 554 (executor, administrator, guardian, conservator), Gov't Code § 8214 (notary public), and former Rev. & Tax Code § 7455 (vehicle fuel license tax).

Subdivision (d) is drawn from numerous provisions of former law. See, e.g., former Section 489.110 (attachment). See also Section 1050 (right of surety to compel satisfaction of debt by principal).

36607

§ 996.470. Limitation on liability of surety

996.470. (a) Except as otherwise provided by statute:

(1) The aggregate liability of a surety to all persons for all breaches of the condition of a bond or undertaking is limited to the amount of the bond or undertaking.

(2) The liability of the principal is not limited to the amount of the bond or undertaking.

(b) If a bond or undertaking is given in an amount greater than the amount required by statute, the liability of the surety on the bond or undertaking is limited to the amount required by statute.

(c) The liability of a surety is limited to the amount stipulated in the bond or undertaking in any of the following circumstances:

(1) The bond or undertaking contains a stipulation pursuant to Section 995.420 that the liability of a personal surety is limited to the worth of the surety.

(2) The bond or undertaking contains a stipulation that the liability of a surety is an amount less than the amount of the bond or undertaking pursuant to a statute that provides that the liability of sureties in the aggregate need not exceed the amount of the bond or undertaking.

Comment. Subdivision (a) of Section 996.470 is drawn from numerous provisions of former law. See, e.g., former Section 489.110 and Section 490.030 (attachment) and Sections 917.1, 917.4, 917.5, and 917.9 (appeals). Subdivision (b) is drawn from the last sentence of of Section 922 (appeals). Subdivision (c) is drawn from the last paragraph of Section 917.1 (appeals).



§ 996.480. Voluntary payment by surety

996.480. (a) If the liability of the principal is established:

(1) A surety may make payment on a bond or undertaking without awaiting enforcement of the bond or undertaking. The amount of the bond or undertaking is reduced to the extent of any payment made by the surety in good faith.

(2) If the beneficiary makes a claim for payment on a bond or undertaking and the surety fails to make payment, the surety is liable for costs incurred in obtaining a judgment, including a reasonable attorney's fee, and interest on the judgment from the date of the claim, notwithstanding Section 996.470.

(b) Partial payment of a claim by a surety shall not be considered satisfaction of the claim and the beneficiary may enforce the liability on the bond or undertaking. If a right is affected or a license is suspended or revoked until payment of a claim, the right continues to be affected and the license continues to be suspended or revoked until the claim is satisfied in full.

Comment. Subdivisions (a)(1) and (b) of Section 996.480 are drawn from Business and Professions Code Section 7071.11 (contractors). Subdivision (a)(2) is drawn from former Probate Code Section 554 (executor, administrator, guardian, conservator).

§ 996.490. Effect of payment by surety

996.490. (a) Payment by a surety of the amount of a bond or undertaking constitutes a full discharge of all the liability of the surety on the bond or undertaking.

(b) Each surety is liable to contribution to cosureties who have made payment in proportion to the amount for which each surety is liable.

Comment. Subdivision (a) of Section 996.490 is drawn from former Insurance Code Section 11711 (worker's compensation). Subdivision (b) is drawn from former Government Code Section 1552 (official bonds).

Article 15. Enforcement Lien

§ 996.510. Application of article

996.510. This article applies to proceedings for the benefit of the state to enforce the liability on a bond or undertaking executed to, in favor of, or payable to the State of California or the people of the state, including but not limited to an official bond.

Comment. Section 996.510 continues the substance of the first portions of former Section 304.2 (bonds to State of California) and former Government Code Section 1555 (official bonds).

36610

§ 996.520. Affidavit

996.520. The person enforcing the liability may file with the court in the proceedings an affidavit stating the following:

(a) The bond or undertaking was executed by the defendant or one or more of the defendants (designating whom).

(b) The bond or undertaking is one to which this article applies.

(c) The defendant or defendants have real property or an interest in real property (designating the county or counties in which the real property is situated).

(d) The liability is being enforced for the benefit of the state.

Comment. Section 996.520 continues the substance of the first sentence of former Section 304.2 (bonds to State of California) and former Government Code Section 1555 (official bonds). See also Section 995.040 (affidavits).

36611

§ 996.530. Certification by clerk

996.530. The clerk receiving the affidavit shall certify to the recorder of the county in which the real property is situated all of the following:

(a) The names of the parties.

(b) The court in which the proceedings are pending.

(c) The amount claimed.

(d) The date of commencement of the proceedings.

Comment. Section 996.530 continues the substance of the second sentence of former Section 304.2 (bonds to State of California) and former Government Code Section 1556 (official bonds).

36612

§ 996.540. Recordation of certificate

996.540. (a) Upon receiving the certificate the county recorder shall endorse upon it the time of its receipt.

(b) The certificate shall be filed and recorded in the same manner as notice of the pendency of an action affecting real property.

Comment. Section 996.540 is drawn from former Government Code Section 1557 (official bonds).

36613

§ 996.550. Lien of judgment

996.550. (a) Any judgment recovered is a lien upon all real property belonging to the defendant situated in any county in which the certificate is filed, from the filing of the certificate.

(b) The lien is for the amount for which the owner of the real property is liable upon the judgment.

Comment. Section 996.550 is drawn from former Government Code Section 1558 (official bonds).

35090

§ 996.560. Specific performance of agreement to sell property

996.560. If an agreement to sell real property affected by the lien created by the filing of a certificate was made before the filing of the certificate and the purchase price under the agreement was not due until after the filing of the certificate, and the purchaser is otherwise entitled to specific performance of the agreement:

(a) The court in an action to compel specific performance of the agreement shall order the purchaser to pay the purchase price, or so

much of the purchase price as may be due, to the State Treasurer, and to take the State Treasurer's receipt for payment.

(b) Upon payment, the purchaser is entitled to enforcement of specific performance of the agreement. The purchaser takes the real property free from the lien created by the filing of the certificate.

(c) The State Treasurer shall hold the payment pending the proceedings referred to in the certificate. The payment is subject to the lien created by the filing of the certificate.

Comment. Subdivision (a) of Section 996.560 continues the substance of former Government Code Section 1559 (official bonds). Subdivisions (b) and (c) continue the substance of former Government Code Section 1560 (official bonds).