

PROBATE SURETY BOND CLAIMS AND AVOIDING POTENTIAL FIDUCIARY LIABILITY

Fiduciary bonds are required by a court when an individual is named as fiduciary or executor for an estate. The bond protects the rightful heirs of an estate in a decedent's estate, and protects the ward in a guardianship or conservatorship estate. With regard to decedent's estates, the court requirements vary by the state, county, township or city where the decedent lived at the time of death, since probate laws vary by jurisdiction. The same is true of guardianship or conservatorship estates. If the fiduciary or executor does not handle the estate according to the will or court requirements, a claim can be filed against the bond. If the bond has to pay, the fiduciary or executor will ultimately be responsible. Understanding a fiduciary's or executor's obligation is the first step to avoiding liability.

A bond can be required even if the will states that no bond is needed; it is ultimately left to the court's discretion. Likewise, most courts will require a bond be posted in a guardianship or conservatorship estate. Regardless of the type of estate, it is always best to seek court approval before any actions are taken on behalf of the estate, and get the approval in writing. Once approval is obtained, ensure the action to be taken conforms to the approval granted by the court. Additionally, detailed records should be kept of all transactions. These records can include contracts for services provided for the benefit of the estate, detailed invoices, detailed receipts issued by the vendor, and bank records. Failure to obtain court approval, or keep detailed records can result in a claim against the bond.

Claims against probate bonds are lodged in the probate court in which the estate is filed. Both the complaining party and the fiduciary will be given an opportunity to present evidence. If the complaining party can demonstrate that actions taken by the fiduciary or executor were not in the best interest of the estate, or violated court approval, a judgment may be entered against the bond and the fiduciary. This judgment may include amounts for any actual loss to the estate, interest on that amount, and attorney fees incurred by the complaining party.

Even in instances when the bond satisfies the judgment, the fiduciary will ultimately be responsible for paying bond claims in full. The claim can be as large as the full bond amount (including legal costs). The indemnity agreement the fiduciary must sign to obtain the probate surety bond is a legal contract that pledges the fiduciary's corporate and personal assets if the fiduciary is the cause of a bond claim. Many times sureties will obtain judgments against fiduciaries to enforce their rights under the indemnity agreement. These judgments can be used to garnish wages and bank accounts, as well as act as liens against real and personal property.