HOW MUCH DOES AN APPEAL BOND COST?

February 2021

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One of the most common questions people naturally have about appeal bonds is what they cost. Like so many questions, the answer is "It depends." There are a variety of factors that go into it, but generally speaking, the cost for an appeal bond can range from 0.30% to 4%. This article will examine those specific factors and provide more narrow rate ranges that can apply based on the circumstances.

Before doing so, it's worth revisiting what exactly appeal bonds guarantee. Put simply, the purpose of an appeal bond is to maintain the status quo during appeal whereby the surety insurer issues a guarantee on behalf of the appellant to the appellee that if the judgment is affirmed, the surety will pay the appellee if the appellant is unable to. In most jurisdictions, the bond not only covers the underlying judgment but costs and interest during the appeal up to some cap typically between 1.2 and 1.5 times the judgment amount.

When you consider that most appeals do not result in a reversal of the lower court's judgment, this means a high likelihood that the surety providing the appeal bond will receive a claim. Due to the high risk and probability of a claim, collateral in the full amount of the bond is typically required, but there are exceptions to this general rule when the appellant has a substantial net worth and liquid assets relative to the bond amount. Many publicly traded companies, banks, and insurers meet this high bar along with some large private companies and very high net worth individuals.

Uncollateralized Appeal Bond Rates

The first factor in determining the premium for appeal bonds is, therefore whether collateral is required. In those instances when collateral is not required, the premium rates will generally range from 0.30% to 2% of the bond amount per year. The client's financial strength relative to the bond amount will be one of the main factors in determining where the premium rate falls in the range.

The other primary factor is the size of the bond. Premium rates are generally higher for smaller bonds and decrease for larger bonds.

Collateralized Appeal Bond Rates

When an appeal bond is collateralized, the primary determinant of rate is the type of collateral. There are 4 types of collateral that sureties will consider.

Cash

The premium rate for using cash collateral will range between 0.30% to 2% of the bond amount per year. The size of the bond usually determines the ultimate rate in this range with larger bonds being on the lower end. One other factor that is important to consider for clients using cash is some sureties pay interest on the cash deposit. Depending on the premium rate and interest environment at the time, the interest may be enough to partially or entirely offset the cost of the premium.

Letters of Credit

Letters of credit are issued by banks, and they provide a guarantee to the surety to make available a certain amount of funds (generally equal to the bond amount). When using a letter of credit as collateral, the premium rate is similar to cash with a range of 0.30% to 2% per year of the bond amount. It's important to note that banks may charge their own fee for the letter of credit, which is in addition to the surety's premium for the appeal bond.

Real Estate

Real estate is the most expensive collateral option, typically costing 4% of the appeal bond amount per year. Sureties usually require appraisals of the property and title insurance, which the client is responsible for paying in addition to the premium. While it is the most costly option, real estate is often an important tool used in securing appeal bonds, particularly for companies or individuals with much of their net worth invested in real estate.

Marketable Securities

Marketable securities is a term used to refer to nonretirement brokerage account holding stocks and/or bond investments. These accounts can be pledged to certain sureties directly to avoid liquidating the holdings, possibly triggering a tax event or losing out on future investment returns.

The premium rate for using these accounts primarily depends on the type of assets held generally and ranges between 0.75% to 4% of the bond amount per year. For example, sureties usually charge a lower premium rate for lower-risk assets such as treasury or highly rated municipal bonds, whereas they will charge a higher rate for stock mutual fund indexes or individual stocks that may fluctuate greater in value. The size of the bond can also influence the premium rate with this collateral type as well.

Other Things to Note

As mentioned throughout the article, premiums for appeal bonds are charged annually. The first year is fully earned once the bond is issued, even if the case is settled or decided mid-term. Renewal premiums are collected upon the renewal date. However, the client will receive a prorated return premium in the event the bond is exonerated mid-term during the renewal. It's also important to note that bonds cannot be cancelled, and therefore, the premium continues to be charged until the appeal bond is exonerated.

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