

MAGiC Position Statement

Bond Requirements in Conservatorships

In 2009, the Minnesota State Legislature passed into law changes in the Guardianship and Conservatorship Statutes. Section 524.5 – 413 addressed the mandatory requirement of bonding the conservator:

Minnesota Statutes 2008, Section 524.5-413(d) - Who May Be Conservator; Priorities

In any proceeding where the value of the personal property of the estate of the proposed protected person in the initial inventory of the estate filed by the conservator under section 524.5-419 is expected to be at least \$10,000, the court shall require the conservator to post a bond. The bond requirements under this paragraph does not apply to conservators appointed before August 1, 2009, but shall apply as current conservatorships are reviewed by the court after August 1, 2009.

It should be noted that historically, bonding in conservatorships nation-wide have involved the requirement of surety bonds. A surety bond is a guarantee that the bonded individual or entity will perform the duties required of it, as specified in the bond form, to the benefit of others who might be “injured” by the actions of the bonded individual or entity. Conservator bonds are set by the judicial officer on a file-by-file basis, in an amount appropriate for the exclusive protection and preservation of the protected person’s assets. The form, or language, of the bond is generally consistent throughout the surety industry, as prescribed either by state law or by historical case precedence. The bonds, once written, are non-cancellable until ordered by the court. There is no deductible on a conservator surety bond

The current language in the law states that the conservator post a bond. By failing to specify “surety” bond, the law has created an opportunity for unintentional loose interpretation of the requirement. Many state county probate courts are allowing the filing of a “fidelity” bond as fulfillment of the bonding requirement.

A fidelity bond is different from a surety bond. A fidelity bond, also known as commercial crime insurance or employee dishonesty coverage, provides in its basest form protection to an employer from theft by its own employees. If written in this base form, the bond being supplied to the court does not provide any of the protection intended by statute. A fidelity bond can be modified to extend “third party coverage”; i.e. the employee theft protection is subsequently extended to include coverage to those customers of the business. This will offer partial compliance with the protection intended by statute, but the coverage is only for theft and does not provide protection for failure of performance of duties. Oftentimes, third party fidelity bonds contain a conviction clause, which requires the offending party to be convicted of theft in a court before the bond will pay out to the “injured” party. Fidelity bonds, like most insurance policies, will usually have a deductible. This deductible prevents full protection to the protected person’s assets. Fidelity bonds are available to all customers of the bonded entity, unless specifically endorsed to limit coverage to a specific client. This creates a potential dilution of coverage; in the event of a surcharge, the possibility of too many claims against the bond by many “injured” parties could drastically reduce the amount available for recovery. Another difference is that, by its very definition, owners are not typically covered under a fidelity bond; it is limited to employee

theft only. Sometimes owners can be added on at an additional cost. Without careful scrutiny, a fidelity bond could be provided that fails to properly address all of the potential shortfalls. Fidelity bonds are also cancellable at any time by the bonding company or the conservator; this feature again does not offer the full assurance of protection that a conservator's surety bond will provide.

A side-by-side comparison:

SURETY BOND

Full guarantee of performance
No deductible
Written file-specific for each individual client
Non –cancellable unless by court order
Covers all owners/employees of conservator firm

Form is court-tested to be appropriate
Cost of bond properly assigned to conservatorship

FIDELITY BOND

Limited to theft
Deductible
Blanket – covers all customers
Can be canceled at any time
Only covers actions by employees, unless
Owners are specifically added
May have conviction clause & other exclusions
Cost of bond typically borne as "expense"

Upon analysis, it is the position of the MN Association for Guardianship & Conservatorship that a surety bond is the only appropriate measure of bonding protection in conservatorships, and is the true intent of the statute. We encourage our members to be familiar with the difference between the two types of bonds, and request when necessary that the court specify a surety bond of at least 80% of the conservatorship's liquid assets when being appointed conservator.