



Superior Court of California County of San Mateo

PROCEDURES FOR POSTING EQUITY IN REAL PROPERTY AS BOND

Penal Code section 1298 allows a person who holds legal title to real property to post equity in that property as bond to secure the release of a defendant from custody so long as the requirements as stated in section 1298 are met. The following information is intended to assist with preparation, filing and recording of documents required to post a real property bond to gain the release of a qualified person held in custody.

The Court has arranged for the services of the San Mateo County Counsel's Office to review the required documents prior to their submission to the Court. The contact person is:

Office of the County Counsel, San Mateo County
Hall of Justice and Records
400 County Center, 6th floor
Redwood City, CA 94063
(650) 363-4250

1. **PREPARATION OF REQUIRED DOCUMENTS TO BE SUBMITTED TO THE COURT**

Applicants must follow the following procedures and prepare the following documents in order to apply for posting the real property bond. Make extra copies of each document for your records since the clerk's office will not make additional copies for you.

1.1. **Qualifying Property**

Real property being posted must meet the following requirements (Pen.C. 1298):

- the person posting the property must own the property;
- the value of the equity in the real property being posted must equal at least twice the bail amount.

1.2. A **Short Form Deed of Trust and Assignments of Rents** with the County of San Mateo named as the beneficiary and the Court Executive Officer of the Superior Court of California, County of San Mateo as the trustee. This form is easily available at all title companies and most stationery stores.

The Deed of Trust must be:

- Signed by all owners of the real property being posted as bail
- Signatures must be notarized
- Include the following address and information on the first page of the document in the top left-hand corner of the Deed of Trust (where it reads, "When Recorded Mail To"):
 - Superior Court, County of San Mateo
Hall of Justice, Criminal Division
400 County Center, 4th Floor
Redwood City, CA 94063
 - the property's Assessor's Parcel Number
 - the Superior Court Case Number

NOTE: If after submitting your documentation to the County Counsel's Office for review, your proposed real property is approved for use as bail in lieu of cash or bond, then **you must record the Deed of Trust in the Recorder's Office in the county in which the property is located and a certified copy of the recorded Deed of Trust must be included with your documentation to the Court.** Keep an extra copy of the recorded Deed of Trust for your records. The clerk's office will not provide additional copies for you.

- 1.3. A **Promissory Note, secured by the Deed of Trust**, signed by the owner(s) of the real property being posted promising to pay to the County of San Mateo the amount of bail in the event that the defendant in the particular criminal action fails to make all court-required appearances.
- 1.4. **Title Report or a Preliminary Title Report or a Lot Book Guarantee.** A Title Report or Preliminary Title Report must be obtained from a California title company. If it is a Lot Book Guarantee, it must contain information regarding all judgments and liens which may have been recorded against the property. Most Lot Book Guarantees do not make references to judgments and liens. Commonly, they only contain information about loans against the property. A Title Report, Preliminary Title Report, or Lot Book Guarantee that is more than three months old will NOT be accepted. Property profiles are NOT acceptable.

If there is a negative amortized mortgage against the subject real property then the Title Report, Preliminary Title Report, or Lot Book Guarantee must be accompanied by the two most recent mortgage statements. In most cases this type of encumbrance on the property will not be acceptable.

All property taxes must be paid.

- 1.5. An **Appraisal** of the subject property which must be prepared by an appraiser who is certified by the State of California Office of Real Estate Appraisers. The appraiser's license number must be included on the appraisal report. The appraisal must be no more than six (6) months old. Penal Code section 1298 requires that the equity in a piece of real property pledged as bail must be at least **twice** the amount of the bail. More than one piece of real property may be used to meet this requirement.
- 1.6. **Proof of Fire Insurance:** Fire insurance is required covering the replacement value of any structures or other improvements on the property. If the property is a single family dwelling a copy of the declaration page of a homeowner's policy is acceptable proof of insurance. If the property is a condominium, the declarations page of the policy for the condominium complex will be required.

2. **SUBMITTING REQUIRED DOCUMENTS**

- 2.1. **Submittal to County Counsel.** Provide all documents listed above and the completed Checklist to the County Counsel's Office. County Counsel represents the County's interest in accepting real property in lieu of cash bail or bail bond and may approve or object to the posting of a real property bond. When all of the above paperwork is completed, contact County Counsel for an appointment (650) 363-4250. County Counsel will review the paperwork and will prepare a Memorandum to the Court as to whether the County finds that the documentation is adequate to support a property bond. An Order Admitting Defendant to Bail will be prepared by the County Counsel's Office if all appropriate documentation has been submitted and the subject property has been approved.
- 2.2. **Recording Documents**
 - A. If after submitting your documentation to the County Counsel's Office for review, your proposed real property is approved by County Counsel for use as bail in lieu of cash or bond,

then you must record the Deed of Trust in the County Recorder's Office where the property is located. Note that there is a recording fee that will need to be paid by the applicant at time of recording. It is YOUR responsibility to record the Deed of Trust. Take the original and at least two copies to the Recorder's Office for recording. The Recorder's Office will keep the original and return an endorsed copy to you and get a certified copy for the Court.

- B. After recording, you MUST provide proof of that recording to the Court. The certified copy of the recorded Deed of Trust must be included with the documentation that you submit to the Court for the Order of Release.

3. **COURT REVIEW AND FILING**

3.1. **Court Review and Issuance of Order.**

Once you have the Deed of Trust recorded, bring all of your documents that were returned to you by the County Counsel's Office along with a certified copy of the recorded Deed of Trust and Promissory Note to the Court's Presiding Judge for review and issuance of the Order. The Presiding Judge is located on the second floor (see the electronic judge listing on the second floor for the courtroom number). The Presiding Judge will sign the ORDER ADMITTING DEFENDANT TO BAIL.[Note: the Presiding Judge will only be available to do this during the Law and Motion Calendar, Monday through Friday from 2:00 pm to 3:30 pm.

3.2. **Issuance of Release from Custody.**

Once the Presiding Judge has signed the Order Admitting Defendant to Bail, a clerk from the Criminal Clerk's office will be notified and will come down to the courtroom to pick up the paperwork for filing and processing. You will accompany the clerk to get your copies and the Order (See Section 4 below for release of defendant).

3.3. **Safekeeping of the Promissory Note and Deed of Trust.**

The Court will retain all original or certified copies of the documents submitted in support of the Real Property Equity Bond posting and copies will be provided to the Applicant (please bring extra copies so that they can be endorsed filed for your records). The clerk will insure that the promissory note and the recorded deed of trust and any other documents submitted to the Court are kept in the clerk's safe or otherwise maintained to ensure their safe and protected retention.

4. **RELEASE OF INDIVIDUAL**

- 4.1. Upon execution of the Order Admitting Defendant to Bail by the Judge, the Criminal Division clerk will provide you with TWO certified copies of the Order.
- 4.2. Take one Certified Copy of the Order to the Maguire Correctional Facility located at 300 Bradford Street, Redwood City, California or the facility where the defendant is being detained for defendant's release. The Jail will release the defendant only upon presenting a certified copy of the Order Admitting Defendant to Bail. You are to retain the other certified copy of the Order for your records.