

Resolution 08-10-2013 (As Amended and Adopted)

Deposits with the Court: Update Acceptable Financial Instruments

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Code of Civil Procedure sections 995.710, 995.720, 995.740 and 995.760, to read as follows:

§ 995.710.

(a) Except as provided in subdivision (e) or to the extent the statute providing for a bond precludes a deposit in lieu of bond or limits the form of deposit, the principal may instead of giving a bond, 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 or bonds or notes of the United States or the State of California. The “deposit” of a bond or note shall be accomplished by filing with the court, and serving upon all parties and the appropriate officer of the bank holding the bond or note, instructions executed by the person or entity holding title to the bond or note that the Treasurer for the County where the judgment was entered is the custodian of that account for the purpose of staying enforcement of the judgment, and that the title holder assigns to the Treasurer the right to collect, sell, or otherwise apply the bonds or notes to enforce the judgment debtor’s liability pursuant to Code of Civil Procedure section 995.760.

(3) Certificates of deposit ~~payable to the officer~~, not exceeding the federally insured amount, or a cashier’s check, payable to the officer, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation. The cashier’s check shall be deposited by the officer in an interest-bearing trust account and cleared by the bank.

(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 associations authorized to do business in this state and insured by the Federal Deposit 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 14002 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 Financial Institutions.

(b) The deposit shall be in an amount or have a face value, or in the case of bearer bonds or bearer notes or bonds or notes have a market value, equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by an admitted surety insurer. Notwithstanding any other provision of this chapter, in the case of a deposit of bearer bonds or bearer notes or bonds or notes other than in an action or proceeding, the officer may, in the officer's discretion, require that the amount of the deposit be determined not by the market value of the bonds or notes but by a formula based on the principal amount of the bonds or notes.

(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. The agreement shall include the address at which the principal may be served with notices, papers, and other documents under this chapter.

(d) The officer may prescribe terms and conditions to implement this section.

(e) This section may not be utilized after January 1, 1999, for deposits with the Secretary of State. Any principal who made a deposit with the Secretary of State pursuant to this section prior to January 1, 1999, may continue to utilize that deposit in lieu of a bond pursuant to this section and the statute that prescribes a bond; however, the deposit shall not be renewable pursuant to this section.

§ 995.720.

(a) The market value of bearer bonds or bearer notes or bonds or 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) If the bonds or notes are given in an action or proceeding, the principal may file a written application with the court 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 pursuant to subdivision (b) shall be heard by the court not less than five days or 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 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.

§ 995.740

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

(a) Pay quarterly, on demand, 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 any interest on bonds or notes as the interest becomes due and payable or pay annually any interest payable on the bonds or notes.

§ 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 or bonds or 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 or bonds or 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.

(Proposed new language underlined; language to be deleted stricken)

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STATEMENT OF REASONS

The Problem: Under existing law, a defendant appealing a money judgment must post security to prevent execution pending appeal. Security can be provided by a bond or a deposit with the court pursuant to CCP sections 995.710 et seq.

The statutes governing deposits in lieu of bond (CCP §§995.710 et seq.) refer to “bearer” bonds and “bearer” notes, and to “coupons”—instruments that are no longer issued under current law. In 1982, the U.S. Treasury and the states ceased issuing coupons and bearer instruments. (See 26 C.F.R. 5f 103-1

<http://www.law.cornell.edu/cfr/text/26/5f.103-1>.) The statutes do not mention the types of bonds and notes that are issued under current law. So a party who wants to post the

type of bonds and notes issued under current law as security needs to file a motion and make court appearances to explain to the court why it is not posting bearer bonds and bearer notes which are the only options provided by the statutes.

Also, the statutes omit any provision for depositing cashier's checks, although cashier's checks are functionally equivalent to other instruments accepted under the statute, namely, certificates of deposit and savings accounts (subds. (a)(3) &(a)(4)). Cashier's checks are more convenient to deposit with the clerk than the approved "[l]awful money of the United States" (subd. (a)(1)), especially when large sums are deposited. The resolution requires that the cashier's check be deposited and cleared before it constitutes adequate security.

This Solution: The proposed amendments to Code of Civil Procedure sections 995.710, 995.720, 995.740 and 995.760 serve three purposes: (1) they allow for the use of bonds and notes in addition to bearer bonds and bearer notes; (2) they allow for the use of cashier's checks, and (3) they describe the process by which a bond or note is "deposited" under current banking standards. With these changes, the process of making a deposit in lieu of posting an appeal bond will be streamlined, eliminating motion work and court appearances which have been necessary to interpret archaic statutory provisions. The trial courts and their clerks as well as all parties stand to benefit from this streamlined and more efficient process.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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