

Presentation to The Bail System Task Force

December 17, 2003

Rhea R. Reed, Judiciary Internal Audit Director



Purpose of the Task Force

- To make detailed recommendations as to Statewide laws, rules and procedures to ensure
 1. That the bail system effectively guarantees the appearance of criminal defendants without undue detention, and
 2. That the interests of the State and other governmental bodies in collateral are protected through timely recordation of bonds and enforcement on default.

Types of Bonds

- Release on Recognizance (ROR)
- Unsecured (defendant is surety)
- Percentage bond (D deposits % of bail with court)
- Secured by collateral
 1. Cash, certified check or credit card
 2. Intangibles (stock certificates, CDs, letters of credit, etc.)
 3. Real Property
 4. Surety insurer

Types of Sureties

1. Accommodation: uncompensated; often family or friend.
2. Compensated:
 - corporate: an agent who holds a valid certificate of qualification from the Commissioner of Insurance for the sale of surety insurance and is appointed by an authorized insurer to act as its agent in the sale of surety insurance.
 - professional property: property owner who, for a fee, encumbers one or more parcels of real estate situated in the State of Maryland to satisfy the collateral requirement of a bail bond.

Risk Assumptions (Rebuttable)

Generally accepted auditing standards require assessment of risk during the planning phase of an audit. We assessed risk based on type of bond/type of surety as follows:

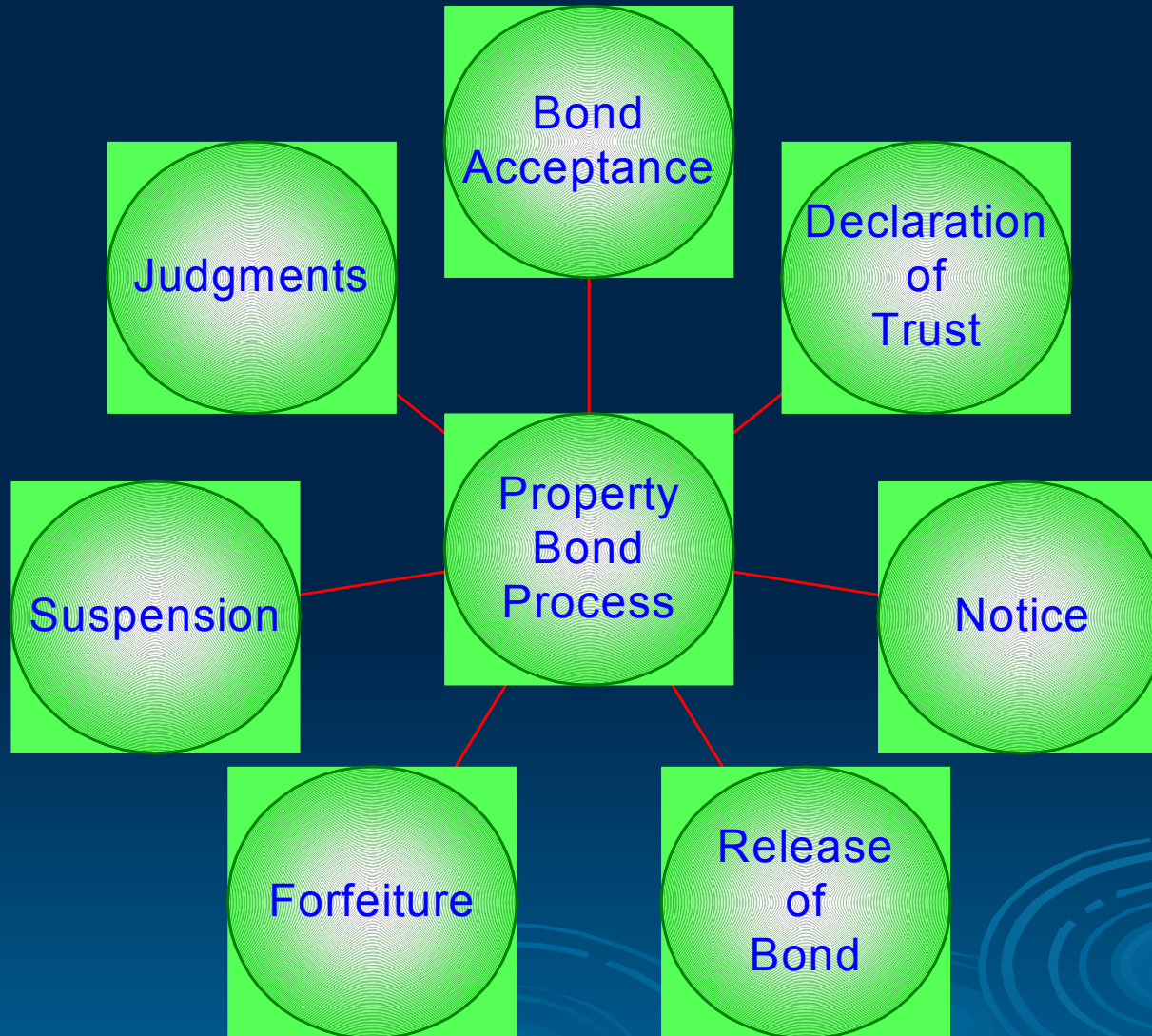
1. Cash and intangibles /accommodation security: none.
2. Unsecured: high collection risk; low monitoring risk,
3. Percentage bonds: not widely used at the time audit was started.
4. Real property bonds/accommodation security: high collection risk; high monitoring risk.

Risk Assumptions (Rebuttable)

1. Surety insurer: licensed and regulated by Maryland Insurance Administration; agents monitored closely by authorized insurers. Therefore, low collection risk; low monitoring risk in DC, but higher monitoring risk in Circuit Court.
2. Professional property/real property: high collection risk, given history of nonenforcement of judgments; high monitoring risk, due to lack of uniform procedures and reporting requirements.

Therefore, we focused audit work on property bonds but tested in other areas that came to our attention during the course of our audit.

Control Points



Bond Acceptance

1. *Rule 4-217(d)(1)(B)* requires surety insurers to be on list maintained by Chief Clerk of the District Court; no specific provision for making the list available to circuit courts.
2. Getting on the list (for corporate bondsmen) is regulated by Maryland Insurance Administration.
3. *Q for Task Force: Is this provision intended to include professional property bondsmen? If so, what are criteria? Only Seventh Judicial Circuit (SJC), Anne Arundel County and Montgomery County have licensing and/or other regulatory requirements for professional property bondsmen.*

Bond Acceptance, *cont'd*

On-Line Bond System – a computerized listing of authorized bondsmen, essentially the “list” used by District Court Commissioners; system not available to circuit court personnel; circuit courts receive a biweekly report.

Data not available in the system (for professional property bondsmen):

- Address of property to be used as collateral
- Authorized amount
- Bonds Outstanding
- Net Equity Available

Bond Acceptance, *cont'd*

- Maryland Rule 4-217(e)(2) and (3) provides that collateral security shall be accepted only if the person who takes the bond is satisfied that it is worth the required amount, and that the court, on motion by the State's Attorney or on its own initiative, may require additional or different collateral security.
- This seems to indicate an intent that Government actors will act affirmatively to protect the interests of the State and other governmental bodies in collateral (purpose statement).

Property Bond Acceptance: Declaration of Trust

- Maryland Criminal Procedure Article § 5-209 provides that a person who acts as a property bondsman for compensation shall provide to the court documentation of ownership, tax status, and liens against the property posted; providing false information is a misdemeanor punishable by imprisonment not exceeding one year or a fine not exceeding \$1000 or both.
- Judiciary (usually District Court Commissioners) accepts bonds based on a Declaration of Trust (or Deed of Trust, usually in SJC); no basis for verifying contents of Declaration.

Property Bond Acceptance: Declaration of Trust, *cont'd*

- Judiciary personnel do not make reasonable inquiry regarding contents of the Declaration of Trust.
- For example, one bondsman submitted photocopies of a Declaration of Trust to support six consecutive bail bonds; “bonds outstanding” and “net equity available” did not change.
- Judiciary personnel indicated that they sometimes do not believe contents of Declarations, but do not feel authorized to question a signed affidavit.
- AG opinion memo – it is not appropriate to attempt to confirm information on a Declaration of Trust.

Property Bond Acceptance: Declaration of Trust, *cont'd*

We found the following inaccuracies in Declarations of Trust:

- mortgages, ground rents and other encumbrances not listed
- other outstanding bonds secured by the property not listed
- property not owned by the bondsman at the time the declaration was signed
- As a result, the collateral security is not worth the required amount. *Action: Share information with State's Attorney for further investigation and possible prosecution.*

Property Bond Acceptance: Declaration of Trust, *cont'd*

- *Action: Uniform statewide requirement for the licensing and regulation of professional property bondsmen; could be based on current SJC rules, with some revisions. For example: execute Deed of Trust for all property to be used as collateral; subsequent Declarations of Trust for individual bonds; annual certificates of title; penalty for false certificates; enforcement of record-keeping requirements for bondsmen; etc.*
- *Action: For accommodation property bonds: require bond acceptor to confirm ownership of property and existence of encumbrances, liens, judgments, etc. through Land Records and value of property through Department of Assessments and Taxation (online); document confirmation for file (i.e. print out online information).*

PPB CourtNet

- We have developed a database to track and monitor property bond activity Judiciary-wide. This database could be made accessible through *CourtNet* or added to the existing Commissioner's Assistant program. Either alternative would require some technical assistance from JIS, but should not be cost-prohibitive.

Notice

- There is no mechanism for providing notice of the State's interest in property which has been accepted as collateral security for a bond.
- We found instances where such property had been transferred while the bond was outstanding.
- *Action: Require recording of Deeds of Trust and Declarations of Trust. This will require Statewide coordination, as deeds should be recorded in county where property is situated, but property situated in any county can be used as collateral in any county.*

Release of Bond

- There is no procedure for identifying bonds that have been satisfied as “released” or “discharged.”
(i.e. information in system is not consistently updated); requires manual process of checking case files to ascertain status.
- This information is necessary for a proper determination of net equity available for a given property.
- ***Action: Require final version of quarterly Absolute Bond Forfeitures in Default report, generated by the Bond Forfeiture System, to be distributed to all DC administrative clerks’ and circuit court clerks’ offices. This report should contain all status changes reported to DCHQ, including releases. Further, require clerks to keep file documentation of status updates sent to HQ and compare to the final report (a reconciliation process).***

Forfeiture

- There is a process for entering bond forfeiture information into the District Court mainframe Traffic and Criminal systems. But there is no procedure for ensuring that the information is accurate and complete (i.e. all information for each case has been correctly entered). In fact, we found an unacceptable error rate in bond information entered into the system.
- Additionally, bond information entered by Commissioners does not automatically upload; must be re-entered by clerk personnel; allows more opportunity for error and omission. (We found omissions.)

Forfeiture, *cont'd*

- Bond forfeiture information is system-generated; to the extent that bond information in the mainframe is not accurate and/or complete, bond forfeiture information is not reliable.
- We found many errors in forfeiture reporting. There is disparity in the use of fields and event codes by users, and the system lacks checks for reasonableness and completeness. There is no procedure for supervisory review of bond entries.
- Circuit courts report forfeitures “outside the system”; no mechanism for tracking this reporting for timeliness, completeness and accuracy

Forfeiture, cont'd

- *Action: Require regular, periodic reporting of circuit court bond forfeitures for inclusion in the Bond Forfeiture System; require circuit courts to maintain file documentation of forfeitures reported, and review quarterly Absolute Bond Forfeitures in Default report for completeness and accuracy; report any inaccuracies with status updates for inclusion in final version of report.*
- *No action by Task Force required for identified DC audit issues; should be addressed by procedures for input/output verification checks and training of personnel using the system.*

Suspensions

- For forfeitures that have been entered into the system, there is a procedure for suspending bondsmen. However, Court personnel do not have enough confidence in the system and process to take appropriate action.
- As a result, we found instances of bondsmen who should have been suspended and weren't.
- Example: we found one bondsman with 113 outstanding forfeitures, dating from 1987-2003; the Chief Clerk's forfeiture system had only 15 of these (the remaining were from Circuit court cases). The bondsman has not been suspended.

Judgments

- Maryland Rules, Rule 4-217 (i)(4)(C) provides that the clerk shall forthwith “prepare, attest and deliver or forward to any bail bond commissioner, appointed pursuant to Rule 16-817, to the State’s Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.”
- We found that the clerks (both administrative clerks for the District Court and circuit court clerks) usually process judgment files for forfeited bonds.

Judgments, *cont'd.*

- The Rules further provide that enforcement of the judgment shall be by the State's Attorney.
- There is no history of action on these judgments.
- *Action: Discuss why judgments are not enforced; consider prohibiting acceptance of bonds secured by property when there is no expectation that, in event of forfeiture and default, judgment would not be enforced.*

Summary of Actions

- Review existing laws and rules governing bail bonds.
- Consider mechanisms for coordination among the districts and circuits to ensure complete and accurate information is readily available to Judiciary personnel involved in any phase of the bail bond process (necessary for acceptance, forfeiture, suspension, release, etc.); auditor recommends Judiciary HQ Bail Bond Commissioner.
- Require statewide licensing/registration of professional property bondsmen.

Summary, *cont'd*

- Require tracking/monitoring of property bonds, including accommodation sureties who pledge property as security for bail bonds; responsibility to notify administrative judge when it is determined that collateral is insufficient; revocation of bond, and other administrative and judicial remedies.
- Require review of property bond database by Circuit Court Clerk prior to release of any Deed of Trust.
- Address issues regarding filing and enforcement of judgments; revise Rules as necessary to reflect resolution.