

IC 29-1-11

Chapter 11. Bond of Personal Representative

IC 29-1-11-1

Conditions requiring execution and filing

Sec. 1. A personal representative is not required to execute and file a bond relating to the duties of his office unless:

(1) the will provides for the execution and filing of such a bond;
or

(2) the court finds, on its own motion or on petition by an interested person, that a bond is necessary to protect creditors, heirs, legatees, or devisees.

(Formerly: Acts 1953, c.112, s.1101; Acts 1971, P.L.408, SEC.1; Acts 1975, P.L.288, SEC.17.)

IC 29-1-11-2

Deposit of money or assets; withdrawal

Sec. 2. It shall be lawful for the personal representative to agree with his surety for the deposit of any or all money and other assets of the estate with a bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

(Formerly: Acts 1953, c.112, s.1102.)

IC 29-1-11-3

Run to state; joint and several liability; conflict of laws

Sec. 3. The bond of the personal representative shall run to the state of Indiana to the use of all persons for whose benefit it was given under the provision of this article and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the personal representative and with each other. The provisions of this section shall not change the rights of the sureties under other statutes or under the law.

(Formerly: Acts 1953, c.112, s.1103.) As amended by Acts 1982, P.L.171, SEC.31.

IC 29-1-11-4

Joint representatives; personal representative as surety

Sec. 4. When two (2) or more persons are appointed personal representatives of the same estate and are required by the provisions of this article to give a bond, the court may require either a separate bond from each or one (1) bond from all of them. No personal representative shall be deemed a surety for another personal representative unless the terms of the bond so provide.

(Formerly: Acts 1953, c.112, s.1104.) As amended by Acts 1982, P.L.171, SEC.32.

IC 29-1-11-5

Affidavit of surety; value of property

Sec. 5. Each personal surety shall execute and file with the court an affidavit that he owns real property, subject to execution, of a value over and above his liabilities, equal to the amount of the bond, and shall include in such affidavit the total amount of his obligations as surety on other official or statutory bonds.

If the amount of the bond exceeds \$1,000, the affidavit shall also state:

(a) An adequate description of the real property within this state offered by him as security.

(b) The total amount of the liens, unpaid taxes, other bonds executed and other encumbrances on the property so offered by him as security.

(c) The assessed and market value of such property and the value of the surety's equity over and above all encumbrances, liens, and unpaid taxes.

(d) That the equity in such property so offered is equal to the amount of the bond.

The only provision of this section which shall apply in counties in this state having a population of less than fifty thousand (50,000) according to the last preceding United States census, is the provision that each personal surety shall execute and file with the court an affidavit that he owns real property, subject to execution, of a value over and above his liabilities, including contingent liabilities equal to the amount of the bond.

(Formerly: Acts 1953, c.112, s.1105.)

IC 29-1-11-6

Sufficiency; value of assets; evidence of title

Sec. 6. No bond of a personal representative shall be deemed sufficient unless it shall have been examined and approved as required by law, and the approval endorsed thereon in writing. Before giving approval the court, judge, commissioner, or clerk may require evidence as to the value and character of the assets of personal sureties, including an abstract, certificate or other satisfactory evidence of title of every tract of real property which is offered as security. In the event that the bond is not approved, the personal representative shall, within such time as may be directed, secure a bond with satisfactory surety or sureties.

(Formerly: Acts 1953, c.112, s.1106.)

IC 29-1-11-7

Failure to give bond; successor; revocation of letters

Sec. 7. If at any time a personal representative fails to give a bond as required by the court, within the time fixed by the court, some other person shall be appointed in his stead. If letters have been issued, they shall be revoked.

(Formerly: Acts 1953, c.112, s.1107.)

IC 29-1-11-8

Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-11-9

New bond; release of surety; accounting

Sec. 9. (a) Any surety upon any bond of any personal representative or other fiduciary may petition the court approving such bond to be released therefrom. Ten (10) days' notice thereof shall be given the principal in said bond. Upon proof of such notice, the court shall notify the principal to file a new bond within fifteen (15) days with penalty and surety to the approval of the court. Upon failure to file such a new bond with the time fixed, the principal shall be forthwith removed by the court. In either event the principal shall file an accounting covering his acts to date. As soon as said new bond is filed or said principal removed, the surety shall be released from any liability for the acts or omissions of the principal thereafter occurring, but shall remain liable for his prior acts and omissions.

(b) Any principal in any bond given by any executor, administrator, guardian or fiduciary may apply to the court approving such bond to terminate further liability on such bond and to release the surety or sureties thereon from all further liability and offer a new bond in an amount and with sureties as required by law and file an accounting covering his acts to the date thereof. Ten (10) days' notice of such application shall be given the sureties. Upon the approval of the accounting and the new bond, the court shall enter an order discharging the original sureties from all liability upon said bond for acts or omissions of the principal thereafter occurring, but they shall remain liable on said former bond for prior acts and omissions.

(Formerly: Acts 1953, c.112, s.1109.)

IC 29-1-11-10

Breach of obligation; damages; intervention

Sec. 10. (a) The court may, on breach of the obligation of the bond of the personal representative, after notice to the obligors in the bond and to such other persons as the court directs, determine the damages as a part of the proceeding for the administration of the estate, and by appropriate proceeding enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor personal representative, or of any other personal representative, or of any other interested person. The court may hear the application at time of settling the accounts of the defaulting personal representative or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other non-defaulting personal representative and distributed as other assets held by the personal representative in his official capacity.

(b) The bond of the personal representative shall not be void upon

the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

(c) If the court has already determined the liability of the personal representative, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the personal representative.

(Formerly: Acts 1953, c.112, s.1110.)

IC 29-1-11-11

Validity; bound to full extent; action on defective bond

Sec. 11. No surety bond entered into under the provisions of this article shall be void for want of form or substance or recital or condition nor the principal or surety be discharged, but the principal and surety shall be bound by such bond to the full extent contemplated by the law requiring the same and the sureties to the amount specified in the bond. In all actions on a defective bond the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond complied with the law requiring the same.

(Formerly: Acts 1953, c.112, s.1111.) As amended by Acts 1982, P.L.171, SEC.33.