

New Calif. Appeal Bond Rules Correct Outdated Process

Law360, New York (September 10, 2014, 1:32 PM EDT) -- In most jurisdictions, a plaintiff who wins a money judgment can enforce the judgment even if the defendant decides to appeal — unless the defendant posts a bond or a deposit in lieu of bond, to make sure there's still a pot of funds to collect from once the appeal is all over.

For example, if the defendant brings a bag of cash into court, depositing the full amount of the judgment plus a statutory amount of interest sufficient to cover what might build up during the life of the appeal, the plaintiff will have to wait for the appeal to be over to collect that money.

But the statutes that outline how to do such deposits were written long ago, and financial instruments have evolved a bit. An overdue amendment to those statutes brings the deposit procedure in line with modern banking and investment practices.



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Specifically, California Gov. Jerry Brown has signed into law Assembly Bill 1856, which amends the statutes governing deposits in lieu of appeal bonds. These amendments enhance access to justice by expanding and improving mechanisms that allow litigants to stay execution proceedings while they seek appellate review of adverse money judgments, while also protecting the interest of judgment creditors by requiring adequate security for the payment of money judgments in the event they are affirmed on appeal.

AB 1856 was carried by Assembly Member Scott Wilk. It was sponsored by the Conference of California Bar Associations and supported by both the Appellate Courts Section of the Los Angeles County Bar Association and the California Appellate Law Group. The unopposed bill passed by consent in all legislative committees and it passed unanimously in both the Assembly and the Senate.

AB 1856 leaves intact the existing rules for posting an appeal bond — basically, a type of insurance policy that allows the judgment creditor to seek payment from the surety company that issued the bond, if the defendant doesn't pay on the judgment. What AB 1856 changes are the statutes governing the use of a deposit in lieu of an appeal bond. (See Code Civ. Proc., §§ 995.710 et seq.)

A deposit is not a mere promise by a bond surety that funds will be available and can be used to pay a judgment that is affirmed on appeal; it is the actual funds that can be used to satisfy the affirmed judgment and accrued interest. Making a deposit in lieu of filing an appeal bond thus benefits judgment creditors, who are protected by the availability of funds needed to satisfy their judgments.

A deposit in lieu of appeal bond also may benefit judgment debtors because it allows them to avoid transaction costs, such as the appeal bond premiums that sureties charge. Also, deposits can be made quickly if the judgment debtor has liquid assets, which avoids the need to locate a

suitable surety company and negotiate a contract for issuance of a bond. Finally, a judgment debtor's use of a deposit in lieu of bond can actually help the judgment creditor, by minimizing the exposure for recoverable costs (such as bond premiums) if the judgment debtor wins on appeal.

The deposit in lieu of bond statutes have not been amended since 1982, and they were in need of amendment. AB 1856 makes two important changes that will facilitate the use of a deposit in lieu of an appeal bond.

First, the statutes used to authorize the deposit of "bearer bonds" in lieu of an appeal bond issued by a surety, and anachronistically referred to how one deals with the "coupons" on such bearer bonds in this context. However, the U.S. Treasury and the states ceased issuing coupon/bearer instruments in 1982. (26 C.F.R. 5f. 103-1.) Today, the purchase of a U.S. Treasury bond or note is simply reflected in an account entry at a federal reserve bank. While AB 1856 does not prohibit the use of bearer bonds for a deposit in lieu of an appeal bond, the bill now allows litigants to use U.S. Treasury and the states bonds that are currently available for purchase as their deposit in lieu of an appeal bonds. This modification accounts for the modern reality that no litigant is likely to have bearer bonds anymore, and provides everyone with equal opportunity to use U.S. Treasury and state bonds as their deposit in lieu of an appeal bond.

Second, AB 1856 allows litigants to make a deposit in lieu of appeal bond using a cashier's check, which the court clerk would be directed to deposit in an interest bearing trust account. Existing law already allows litigants to deposit cash and other bank instruments, such as certificates of deposit and savings accounts, in lieu of an appeal bond. (See Code Civ. Proc., § 995.710.) Cashiers' checks were not included in the original list of what could be deposited with the clerk in lieu of an appeal bond. But a cashiers' check is the functional equivalent of the other approved deposits, and is probably the easiest form of secured payment that a litigant can obtain.

Bringing a cashiers' check to court for deposit is also considerably safer than carrying large sums of cash, and they are also easier and safer for clerks to handle as well. While clerks sometimes accepted cashiers' checks in the past, they often refused to accept them absent a court order because they were not listed in Section 995.710. AB 1856 amends Section 995.710 by adding cashier's checks to the list of approved securities that can be deposited in lieu of an appeal bond.

Finally, AB 1856 expressly provides that litigants may use a deposit in lieu of appeal bond without first obtaining a court order approving the deposit. Together, these amendments will streamline the procedure for making a deposit in lieu of bond, and help to reduce the waste of resources, time and money that the prior version of the statutes entailed for the court and for litigants. As a result, appellate review of money judgments will be facilitated, while judgment creditors remain fully protected.

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Disclosure: The authors drafted the text of this bill, and then worked with Curtis Raulinaitis, a member of Assembly Member Scott Wilk's staff, Larry Doyle, a lobbyist for the Conference of California Bar Associations, and Sarvenaz Bahar, a fellow member of the Appellate Courts Section of the Los Angeles County Bar Association.

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