

Virginia Court Clerks Association

Liability Protection and Faithful Performance of Duty Bond

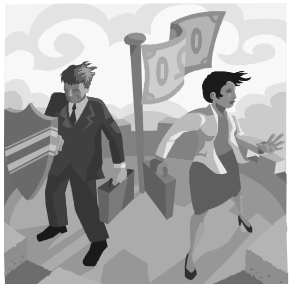
September 16, 2011

Presented by
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Linda Lilly**
Division of Risk Management

WHAT YOU WILL LEARN

- Your liability protection
- Litigation diversion assistance
- Surety and the Constitutional Officer:
Fidelity Bonds vs. Faithful Performance of
Duty Bonds

LIABILITY PROTECTION



§ 2.2-1839, Code of Virginia

"The Division shall establish one or more risk management plans..... subject to the approval of the Governor to provide protection against liability imposed by law for damages.... resulting from any claim made against any...constitutional officer ...for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization "

Virginia Constitutional Officer and Regional Jail Risk Management Plan

"VaRISK"

- Official duties of your office
- \$1 million limit of liability per claim
- Defense costs and expenses
- Plaintiff's attorney's fees
- Post-judgment interest
- Court costs
- Appeal bond premiums

VaRISK Exclusions

- Workers' Compensation
- Motor vehicle coverage
- Willful, wanton, or criminal acts
- Criminal proceedings
- Salaries & benefits
- Non-official duties

What to do if you are sued?



A lawsuit is filed and the suit papers make their way to you.

What should you do?

First...

Find out and record three things:

- WHO received the suit papers?
- WHEN did they receive them?
- HOW did they get them?

Document It!

Notify DRM **IMMEDIATELY**

Department of the Treasury
Division of Risk Management
101 N. 14th Street, 3rd Floor
Post Office Box 1879
Richmond, VA 23218

804-786-3152
804-371-2442 (FAX)

DRMclaims@trs.virginia.gov

What Happens Next?

- We review lawsuit for coverage
- We assign outside defense counsel
- Defense counsel files responsive pleadings on behalf of covered defendants
- Discovery takes place
- Defense counsel provides status and evaluation reports
- Case is concluded by dismissal, settlement or trial

Helpful Hints ...

- Be prepared
- Prepare your staff
- Act promptly
- Be attentive
- Cooperate and help

LITIGATION DIVERSION



Litigation Diversion Services

- Guidance from DRM staff
- Human Resource consultation
- Loss Control services
- Pre-litigation legal advice
- Pre-litigation claim resolution

SURETY AND THE CONSTITUTIONAL OFFICER



A little history



- Surety bonds have been a valuable tool for centuries.
- Code of Hammurabi 1792-50 BC. First known legal code included surety.
- Babylonian contract of financial guarantee from 670 BC oldest surviving written.
- Romans developed laws of surety around 150 AD that still exist in modern principles of surety.

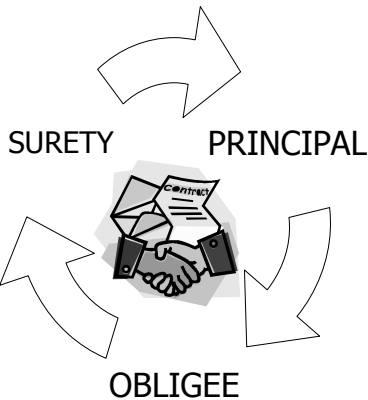
Suretyship has a long history, but

- It wasn't till the 19th Century that corporate surety bonds came into being.
- Industrial Revolution and robber barons taught Congress they had to protect the taxpayers.
- Heard Act 1894 and Miller Act of 1935 required bonding on federally funded projects.
- It's been uphill ever since.

WHAT IS SURETY?

- Three party contract.
- One party guarantees a second party on behalf of a third party.





FIDELITY BOND

- Guarantees that if the Principal steals, the Surety will make good the loss.
- Essentially crime insurance without a lot of the issues of insurance.
- Insurance "issues" include:
 - Fixed term of coverage
 - Easier to Underwrite
 - Pay claim and be done

FIDELITY AND CRIME COVERAGE

Employee Dishonesty
Forgery or Alteration
Robbery and Safe Burglary
Computer Fraud
Extortion
Theft, Disappear & Destruction
Safe Deposit Liability
Etc. You get the idea.



OK,
SO WHAT IS A
FAITHFUL PERFORMANCE OF
DUTY BOND?

FAITHFUL PERFORMANCE OF DUTY BOND

- Covers what the Fidelity Bond covers.
- Goes further.....



FAITHFUL PERFORMANCE OF DUTY BOND INCLUDES:

- The same dishonesty as the fidelity bond.
- Malfeasance.
- Willful neglect of duty.
- Bad faith.
- Negligence.



- Faithful Performance bond is designed for public officials and employees who can be held responsible for their performance by the public. Officials in positions of trust.
- Typically, they are identified by statute.

Travelers Public Official Bond

- "If each Principal named in the schedule...shall faithfully perform the duties of his/her office or employment as required by law, and at the expiration of his/her term or employment shall pay over and deliver all money, records and property that may come into his/her possession, then this obligation to be void; otherwise to remain in full force and effect."

ISSUES

- Why protect an Official or Employee from their own wrongdoing?
 - Bonds do not protect the official or employee.
 - Bonds protect the Commonwealth, the public.
 - Individuals cannot collect under these bonds. Should a bond pay for the official's dishonesty or malfeasance, it would be paid to the entity.

ISSUES

- Is an Official or Employee on his/her own if accused of intentional wrongdoing under the bond program?
 - No, not if only *accused*.
 - But the official or employee is own their own to pay damages if a court determines their guilt.

ISSUES

- What happens if the loss isn't bonded, if the bond amount isn't sufficient, or if there's loss beyond the bond loss?
- There's a likelihood that other insurance programs of the Commonwealth or the locality may provide protection. Check.

WHAT TO DO

When you know or suspect a loss

- Step 1. ASAP, Notify State Police, Division of Risk Management and the Auditor of Public Accounts.
- Step 2. ASAP, provide sworn, detailed proof of loss.
- Step 3. Cooperate with investigation and settlement.

QUESTIONS?