

SUING AND COLLECTING ON BONDS  
FOR BREACHES BY ADMINISTRATORS AND GUARDIANS

R. DYANN McCULLY  
The Blum Firm, P.C.  
777 Main Street, Suite 700  
Fort Worth, Texas 76102  
Telephone: 817-334-0066  
Fax: 817-334-0078  
e-mail: [dmccully@theblumfirm.com](mailto:dmccully@theblumfirm.com)  
Web site: [www.theblumfirm.com](http://www.theblumfirm.com)

Texas Tech Estate Planning & Community Property Law Journal  
**CLE & EXPO**  
March 1, 2018  
Lubbock, Texas

**R. DYANN McCULLY**  
**The Blum Firm, P.C.**  
777 Main Street, Suite 700  
Fort Worth, Texas 76102  
Telephone: 817-334-0066; Fax: 817-334-0078  
email: dmccully@theblumfirm.com  
Web site: <http://theblumfirm.com/>

## **BIOGRAPHICAL INFORMATION**

### EDUCATION

J.D. with High Honors, Southern Methodist University School of Law 1986; Honors: Order of the Coif, Order of the Barristers, Law Journal, Editor and Staff Member Journal of Air Law and Commerce 1984 - 1986  
B.F.A. in Radio/TV/Film, Summa Cum Laude, Texas Christian University 1980

### LAW PRACTICE

Partner, The Blum Firm, P.C., Fort Worth, Texas - December 30, 2016 to current  
Shareholder, Bakutis, McCully & Sawyer, P.C., Fort Worth, Texas - 1995 to December 29, 2016  
Associate Attorney - Cantey & Hanger, Fort Worth, Texas - 1986 to 1995

### CERTIFICATIONS

Board Certified by the Texas Board of Legal Specialization - Estate Planning & Probate Law since 1994  
National Registered Guardian (NCG) and Texas Registered Guardian since 2007  
Certified Mediator since 2013

### BAR MEMBERSHIPS AND PROFESSIONAL ORGANIZATIONS

Member, State Bar of Texas Real Property, Probate and Trust Law Section  
Member, Tarrant County Bar Association, Tarrant County Probate Bar Association and Hood County Bar Association  
President, Tarrant County Probate Bar Association Board of Directors, 2005–2006, Director 2002-2007, Member 1992-current  
Member, Tarrant County Probate Bar Association  
National Guardianship Association; Texas Guardianship Association  
Association of Attorney Mediators

### PROFESSIONAL ACTIVITIES

State Bar of Texas, Real Estate, Probate & Trust Law Section, Guardianship Code Committee Member, 2001-2004, 2017, 2108  
Committee State Bar of Texas Fiduciary Litigation Course 2017  
Committee State Bar of Texas Advanced Guardianship Law and Elder Law Course 2011, 2013-2016  
Course Director, State Bar of Texas Advanced Elder Law & Guardianship Course 2015  
Chairman of the Board of Directors, LivingStone University Partners, 2012 - 2015, Director, 2011-2015  
Moderator, State Bar of Texas Webcast 2012, How to Draft Living Wills and Incapacity Documents  
Co-Chair, Tarrant County Probate Bar Association Nuts & Bolts Seminar 2007  
Co-Chair, Tarrant County Probate Bar Association Probate Litigation Seminar, 2002, 2003  
Trustee, Fort Worth Christian School Board of Trustees, 2003 - 2008  
Author/Speaker in areas of guardianship, probate, and estate planning, to various groups including: State Bar of Texas Fiduciary Litigation Course 2017; State Bar of Texas Advanced Guardianship Law Course 2016, 2014, 2013, 2011, 2005; State Bar of Texas Alternative Dispute Resolution Course 2015; Tarrant County Probate Bar Association 2015; Tarrant County Probate Bar Association Probate Litigation Seminar 2014, 2012; State Bar of Texas Advanced Estate Planning and Probate Course 2011, 2010, 2007, 2006 (Nuts & Bolts); U. T. School of Law 12<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference 2010; Texas Advanced Paralegal Seminar (TAPS) 2017, 2012, 2011; National Guardianship Association National Conference 2008, 2007; Tarrant County Probate Bar Association Nuts & Bolts Course, 2013, 2011, 2009, 2007, 2006

### PROFESSIONAL HONORS

Guardianship Services Inc. - Ad Litem of the Year 2011; Rated AV Preeminent by Martindale-Hubbell since 2001; Bar Register of Preeminent Women Lawyers since 2011; Thomas Reuters Texas Super Lawyers 2008, 2009, 2011, 2013 - 2017; *Fort Worth, Texas* Magazine Top Attorneys in Probate, Estates & Trusts Lawyers in Fort Worth since 2003.

### LAW RELATED PUBLICATIONS

*Extraordinary Remedies in Guardianships*, 7 EST. PLAN. & COMMUNITY PROP. J. 159 (2015).

Reviewing Editor in Practitioners Publishing Company's *Guide to Administering Estates*, July 2004.

Co-Author, *Removal, Resignation, and Successor Representatives*, and *Final Settlement, Accounting and Discharge*, Matthew Bender, Estate Planning and Probate Guide, 1993.

## TABLE OF CONTENTS

I.	Introduction.....	5
II.	Liabilities of Sureties .....	5
	A. Removal .....	6
	B. Failure to File Annual Accounting or Exhibits.....	6
	C. Failure to Send Required Notice.....	6
	D. Failure to Invest and Loss of Interest.....	6
	E. Prejudgment Interest .....	6
	F. Attorney’s Fees .....	7
	G. Discharge on Resignation or Removal of Personal Representative.....	7
	H. Surety Liable Up to Face Amount of Bond .....	7
	I. Bond Irregularities .....	7
	J. Failure to Pay Bond Premium.....	8
	K. Focus on Protecting Ward.....	8
	L. One Bond, Multiple Suits .....	8
	N. New Bond .....	8
	O. Multiple Sureties.....	8
	P. Temporary Guardian of Estate.....	8, 9
	Q. Additional Statutory Liability.....	9
	(I) Lack of Ordinary Diligence Collecting Claims and Property of Estate.....	9
	(ii) Claims .....	9
	a. Guardian’s Payment of Unauthenticated Claims .....	9
	b. Nonpayment of Claims Approved by Court .....	9
	(iii) Rental of Estate Property .....	9
	a. Lack of Adequate Security.....	9
	b. Rented Estate Property Returned in Poor Condition .....	9
	c. Failure to Rent Estate Property for Reasonable Value .....	9
	(iv) Reduction or Elimination of Guardian’s Quarterly Compensation .....	9
	(v) Improper Delivery of Deed .....	9
III.	Limitations to Surety’s Liability.....	9
	A. Personal Representative Not Liable.....	9
	B. Third Parties.....	9
	C. Legal Malpractice .....	9
	D. Acts Prior to Bond .....	9
	E. Barred Actions .....	9
	F. Punitive Damages .....	10
	G. Loss Caused by Others.....	10
	H. Assets Not Received .....	10
	I. Liability Limited to Terms of Contract.....	10
	K. Indemnity .....	10
	L. No Liability for Conduct of Trustee .....	10
IV.	Making Demand Against Guardian and Guardian’s Surety .....	10
	A. Approaching Bond Companies with Claims .....	10
	B. Demand Letter .....	11
V.	Filing Suit .....	11
	A. Necessary Parties .....	11
	(I) Surety .....	11
	(ii) Principal .....	11
	B. Jurisdiction and Venue.....	11
	C. Burden of Proof.....	11

D.	Statute of Limitations.....	12
E.	Discovery .....	12

**Table of Authorities .....13-17**

**Appendices - FORMS**

**Appendix A - Demand Letter to Former Personal Representative**

**Appendix B - Demand Letter to Bond Company**

**Appendix C - Original Complaint Against Former Personal Representative and Surety**

**Appendix D - Default Judgment Settlement with Surety Company**

**SUING AND COLLECTION ON CORPORATE SURETY BONDS**

**I. INTRODUCTION**

In most cases administrators and guardians of a ward's estate (hereinafter sometimes collectively referred to as "personal representative") are required to post a bond and take an oath to faithfully discharge their duties according to the law. It is the personal representative's duty to take care of and manage the estate as a prudent person would manage his own property. *Chandler v. Welborn*, 156 Tex. 312, 319, 294 S.W.2d 801, 807 (1956); *Rodriguez v. Gonzalez*, 830 S.W.2d 799, 801 (Tex. App. - Corpus Christi 1992, no writ). The personal representative is to account for all rents, profits, and revenues that the estate would have produced by such prudent management. See *Rodriguez v. Gonzalez*, 830 S.W.2d at 801. The purpose of the bond is to ensure the personal representative's diligent performance of this duty to protect the ward, or the estate and its beneficiaries, and any person who has an interest in the estate, from loss due to the personal representative's waste, mismanagement, or fraud. See *Colonial America Cas. and Sur. Co. v. Scherer*, 214 S.W.3d 725, 729-730 (Tex. App. - Austin 2007, no pet. hist); see also, *Rodriguez v. Gonzalez*, 830 S.W.2d at 801; *Gabriel v. Snell*, 613 S.W.2d 810, 814 (Tex. App. - Houston [14th Dist.] 1981, no writ). Both the personal representative and the surety are liable for losses suffered by the estate or ward resulting from the personal representative's waste, mismanagement, or fraud. See *Brown v. Seaman*, 65 Tex. 628, 629-30 (Tex. 1886); see also, *Gabriel v. Snell*, 613 S.W.2d at 814; Unif. Guardianship and Protective Proceedings Act of 1997 §416(a)(1); 39 Am. Jur. 2d Guardian and Ward §243. The liability of the surety is assessed according to the liability of the principal. *Argonaut Ins. Co. v. ABC Steel Products Co., Inc.*, 582 S.W.2d 883, 886 (Tex. Civ. App. - Texarkana 1979, writ ref'd n.r.e.). The risk of financial losses caused by a personal representative's misconduct acts as an incentive for the personal representative to faithfully perform all of the personal representative's duties. *Seaboard Surety Co. v.*

If a personal representative misappropriates estate funds, the personal representative is charged with the continuing duty to account for the misappropriated funds and reimburse the estate. *Cross v. Old Republic*, 983 S.W.2d 771, 776 (Tex. App. - San Antonio 1998, pet. denied); *Ward v. Maryland Casualty Co.*, 140 Tex. 124, 166 S.W.2d 117, 120 (1942); *Fidelity Union Ins. Co. v. Hutchins*, 134 Tex. 268, 133 S.W.2d 105, 110-112 (1939) rev'd on other grounds, 134 Tex. 268, 133 S.W.2d 105

*Boney*, 761 A.2d 985, 995-96 (Md. App. 2000), cert. den. 768 A.2d 54; *Matsumoto v. Matsumoto*, 762 A.2d 224, 232 (N.J. Super 2000).

**II. LIABILITIES OF SURETIES**

**A. Removal**

When costs are incurred because a personal representative neglects to perform a required duty, or if removed for cause, the personal representative and the surety on the bond are liable for costs of removal, and for other additional costs incurred that are not authorized expenditures. Tex. Est. C. §351.003 and §1155.152. Furthermore, they are liable for reasonable attorney's fees incurred in the removal, and in obtaining compliance regarding any neglected statutory duty. *Id.* The purpose of these statutes is to ensure that the estate will not be charged with fees, costs or expenses caused by the personal representative's neglect of statutory duties, but instead that these amounts are charged against the culpable personal representative and the surety. *Lawyers Surety Corp. v. Larson*, 869 S.W.2d 649, 653 (Tex. App. - Austin 1993, no writ); *Fillion v. Osborne*, 585 S.W.2d 842, 845 (Tex. Civ. App. - Houston [1<sup>st</sup> Dist.] 1979, no writ). When the court orders someone removed from the position of representing the estate, the order shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative. Tex. Est. C. §361.053 and §1203.053(3)(A). In the event that the removed representative fails to deliver all of the estate that has not been validly expended, then the successor may bring suit on the bond or bonds of the predecessor in the successor's own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by the predecessor. Tex. Est. C. §361.153(c)(3) and §1203.202(c)(3); *Drake v. Trinity Universal Ins. Co.*, 600 S.W.2d 768, 772 (Tex. 1980); see also *Di Portanova v. Hutchison*, 766 S.W.2d 856, 857 (Tex. App. - Houston [1<sup>st</sup> Dist] 1989, no writ).

(1939); see *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex.1991). The entire amount of funds traced into the personal representative's possession are presumed to continue to be in the personal representative's possession, and it becomes the personal representative's burden to show the personal representative is not in possession of all or part of the traced amount. *Id.* If the personal representative fails to meet this burden, the personal representative breaches the condition of the personal

representative's bond to well and truly perform the personal representative's duties, and the surety becomes liable to the estate for the misappropriated funds up to the face amount of the bond. *Ward v. Maryland Casualty Co.*, 166 S.W.2d at 120; *see also Great Am. Ins. Co. v. North Austin Mun. Util. Dist. No. 1*, 908 S.W.2d 415, 426 (Tex.1995) rev'd on other grounds, 950 S.W.2d 371 (Tex. 1997).

**B. Failure to File Annual Accounting or Exhibits**

The administrator and the surety are both liable for various penalties if the administrator fails to timely file an annual accounting, including removal, a \$500 fine, and liability for costs and fees due to removal. Tex. Est. C. §359.101. If the accounting fails to include the required exhibits or reports, the penalty includes a \$1,000 fine. Tex. Est. C. §359.102. It is not clear whether the surety is liable for this fine, but one could make that argument pursuant to Texas Estates C. §351.003(1).

The guardian of the person or of the estate is liable for various penalties if the guardian fails to timely file an annual accounting or other report, including removal, a \$1,000 fine, and liability for costs and fees due to removal. Tex. Est. C. §1163.151; *see also* Tex. Est. C. §1155.152. Arguably the fine would be included in the surety's liability pursuant to Texas Estates Code §1155.152.

**C. Failure to Send Required Notice**

Failure to file notices properly can result in personal liability for the personal representative and the surety. Tex. Est. C. §308.056 and §1153.005.

**D. Failure to Invest and Loss of Interest**

If a guardian of the estate fails to invest or lend estate assets properly, the guardian and the guardian's surety are liable for the principal and the greater of: the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or the overall return that would have been made on the principal if properly invested. Tex. Est. C. §1161.008(a). The guardian and the surety are also liable for attorney's fees, litigation expenses, and costs related to the proceeding brought to enforce the foregoing. Tex. Est. C. §1161.008(b). Loss of interest suffered by the estate due to the personal representative's mismanagement

The surety is liable for reasonable attorney's fees and costs where judgment is granted against the principal or the surety. Tex. Est. C. §351.003(2), §1155.152(2), and §1161.008(b); *see, e.g., Colonial Am. Cas. & Sur. Co. v. Scherer*, 214 S.W.3d at 731, *Lee v. Lee*, 47 S.W.3d 767, 796-797 (Tex. App. - Houston [14<sup>th</sup> Dist.] 2001, pet. denied). Included are

is also recoverable as against the surety, which interest begins to accrue when the demand is made on the surety. *See Ward v. Maryland Casualty Co.*, 166 S.W.2d at 130, *distinguished in Gabriel v. Snell*, 613 S.W.2d 810, 814-15 (Tex. Civ. App. - Houston [14th Dist.] 1981, no writ). In *Gabriel v. Snell* the personal representative made an unauthorized loan, and the court held that the interest begins to accrue when the loan is consummated. *Gabriel v. Snell*, 613 S.W.3d at 815. The court in *Gabriel v. Snell* held that the ruling in *Ward v. Maryland* applies only to cases dealing with defalcations by the personal representative with respect to which liability for interest did not accrue by the terms of the defalcation itself, and where the defalcations involved were not governed by a statutory provision expressly charging the surety with liability for the defalcation, as in the case of an unauthorized loan by a guardian, which at time was Texas Probate Section 392 [now Texas Estates Code §1161.205]. *Gabriel v. Snell*, 613 S.W.3d at 815. A surety's liability arises when it breaches its obligation under the bond. *Gabriel v. Snell*, 613 S.W.2d at 814. The key to determining when the surety's breach occurred is to compare the personal representative's wrongful act to the facts in the above referenced cases

**E. Prejudgment Interest**

The surety is liable for prejudgment interest from the date demand was made. *Howze v. Surety Corp. of America*, 584 S.W.2d 263, 268 (Tex. 1979); *see also, Old Republic Surety Co.*, 27 S.W.3d 35, 38 (Tex. App. - San Antonio 2000, no pet. hist.); *Cross v. Old Republic*, 983 S.W.2d 771, 776 (Tex. App. - San Antonio 1998, pet. denied). To determine the correct amount of prejudgment interest, see Texas Finance Code §304.003. The current judgment rate as determined by the Texas Office of Consumer Credit can be found in the Texas Credit Letter published at <http://occc.texas.gov/publications/interest-rates>.

**F. Attorney's Fees**

**(i) Surety Liable for Attorney's Fees up to Face Amount of Bond.**

attorney's fees incurred by the successor personal representative taking steps to correct problems caused by the mismanagement of the prior personal representative. *Lawyers Surety Corp. v. Larson*, 869 S.W.2d 649, 652-653, (Tex. App. - Austin 1994, writ den.). The surety is not liable to pay for the portion of attorney's fees and costs that exceed the



face amount of the bond. *Colonial Am. Cas. & Sur. Co. v. Scherer*, 214 S.W.3d at 731; *Old Republic Surety Co. v. Cross*, 27 S.W.3d 35, 37 (Tex. App. – San Antonio 2000, no pet.). In *Old Republic Surety v. Cross*, the court held that Section 38.001 of the Texas Civil Practice and Remedies Code, which allows a party to recover reasonable attorney's fees for a valid claim on an oral or written contract, does not apply to a personal representative's bond. *Old Republic Surety Co. v. Cross*, 27 S.W.3d at 37, 28. The court reasoned that only written contract, the bond, did not create a third-party beneficiary contract because the bond did not clearly and fully spell out that the parties to the bond, the personal representative, the surety, and the probate court, intended to confer a direct benefit upon a third party. *Id.* The court noted that, although the requirement of a bond would seem to imply that the bond was intended to protect potential third parties in the event of the personal representative's mismanagement of the estate, it was not permitted to imply that benefit. *Id.* The court admitted that its ruling might seem to encourage a surety to resist payment of a bond despite a proper claim, the ultimate remedy was within the probate court's discretion in determining which sureties to approve, referencing Texas Probate Code §194 [now Texas Estates Code §305.106], requiring the written approval of the judge in the judge's official capacity. *Id.*

(ii) **Other Jurisdictions Allow Attorney's Fees Beyond Face Amount of Bond.**

However, in some jurisdictions, if it can be shown that attorney's fees and costs were incurred because of the surety's failure to diligently investigate and to timely pay the claim under the guardian's bond when the guardian failed to perform the guardian's duties, the surety is liable for those attorney's fees and costs in excess of the bond amount. *Nichols v. Preferred National Insurance Co.*, 704 So. 2d 1371, 1374 (Fla. 1997).

(iii) **Surety Not Entitled to Attorney's Fees**

In an unpublished opinion the court held that if a surety requests attorney's fees against a plaintiff who knowingly filed a surcharge action against the surety of a former administrator outside the statute of limitations, the court may deny sanctions if the plaintiff did not file the case for the purpose of harassment or in bad faith, and acted in good faith. *Lawyers Sur. Corp., V. Hall*, No. 01-93-0142-CV, 1994 Tex. App. LEXIS 1906, at \*8 - \*9. (Tex. App. Houston [1<sup>st</sup> Dist.] July 28, 1994 opinion

Generally, the surety is bound by whatever binds the personal representative. See *Chefflet v.*

unpublished). The court's reasoning was that although the administrator's pleadings were groundless, the suit was not brought in bad faith or for the purpose of harassment. *Id.*

G. **Discharge on Resignation or Removal of Personal Representative**

(i) **Resignation.**

When a personal representative resigns, the surety may not be discharged until the personal representative is discharged. *Gabriel v. Snell*, 613 S.W.2d 810, 814 (Tex. Civ. App. - Houston [14th Dist.] 1981, no writ). And after a ward attains majority status, the guardian has an ongoing duty to make a final account. *Massie v. DeShields*, 62 S.W.2d 322, 324 (Tex. Civ. App. - Dallas 1933, writ ref'd). When the resigning personal representative has complied in all respects with the orders of the court, an order will be entered accepting the resignation, and discharging the personal representative and the sureties. Tex. Est. C. §361.005 and §1203.006(b). When the court requires that a new bond be given, the surety on the old bond is not discharged until the new bond is approved. *Miller v. Miller*, 21 Tex. Civ. App. 382, 384, 53 S.W. 362, 364 (1899); *Gabriel v. Snell*, 613 S.W.2d at 813.

(ii) **Removal.**

When a representative is removed without an order of discharge, or the representative dies, the surety is still subject to suit for any breach of trust committed by the representative prior to removal or death. *Brown v. Seaman*, 65 Tex. 628, 630 (1886); *Evans v. Oakley*, 2 Tex. 182, 183 (1847). When guardian is removed and a successor is appointed without notice, the court may not release the former guardian or the sureties until a final order has been issued on the removed guardian's final account. Tex. Est. C. §1203.054.

(iii) **Concealed Fraud Prevents Release of Liability.**

Closing the estate and the discharge of the personal representative does not relieve the representative and the surety from liability on the bond for loss resulting from the personal representative's fraud that has been concealed from the court. *Moyers v. Carter*, 61 S.W.2d 1027, 1031 (Tex. Civ. App. – Dallas 1933, writ ref'd).

H. **Surety Liable Up to Face Amount of Bond**

*Willis*, 74 Tex. 245, 252, 11 S.W. 1105, 1107 (1889); *National Surety Co. v. Hemphill*, 13 S.W.2d 921,

923 (Tex. Civ. App. - El Paso 1929, writ ref'd). The surety on a probate bond is liable up to the face amount of the bond, even if the law imposes a greater liability on the principal. *Great American Ins. Co. v. North Austin Mun. Util. Dist.* 908 S.W.2d 415, 426 (Tex. 1995) rev'd on other grounds, 950 S.W.3d 371 (Tex. 1997); *Brown v. Seaman*, 65 Tex. 628, 630 (1866); *Old Republic Surety Co. v. Cross*, 27 S.W.3d 35, 37 (Tex. App. - San Antonio 2000, no pet. hist.).

However, as in some jurisdictions, if it can be shown that attorney's fees and costs were incurred because of the surety's failure to diligently investigate and to timely pay the claim under the guardian's bond when the guardian failed to perform the guardian's duties, the surety is liable for those attorney's fees and costs in excess of the bond amount. *Nichols v. Preferred National Insurance Co.*, 704 So.2d 1371, 1374 (Fla. 1997).

I. Bond Irregularities

Even if there are certain irregularities as to the form and execution of the bond, typically the law will not release the obligors. *See Bopp v. Hansford*, 18 Tex. Civ. App. 340, 347, 45 S.W. 744, 748 (1898, writ ref'd); *see also*, 39 Am. Jur. 2d Guardian and Ward §229. If the face of the bond fails to name the obligee, or names the wrong person, the bond will still be enforced. *Bopp v. Hansford*, 45 S.W. at 748. A surety is liable even when a guardian is appointed without jurisdiction, where an action is brought against a de facto guardian for an accounting. 39 Am. Jur. 2d Guardian and Ward §228. A surety is liable if it executes a bond and allows the bond to be delivered to the personal representative or to the court, even if the personal representative fails to sign the bond. *Id.*; *see also*, *Roverson v. Tonn*, 76 Tex. 535, 13 S.W. 385, 385 (Tex 1890); Unif. Guardianship and Protective Proceedings Act of 1997 §416(a)(2). However, if the surety informs the court it does not intend to be bound unless another certain person also signs the bond as surety, the surety is not liable unless there is another signer. *Bopp v. Hansford*, 45 S.W. at 749.

J. Failure to Pay Bond Premium

The surety is liable for the personal representative's wrongdoing, even when the bond company can prove the personal representative failed

When the order appointing the temporary guardian provides that the temporary guardian may "make any and all reasonable and necessary expenditures" from the estate, the temporary guardian does not have authority to make reasonable and necessary expenditures without first obtaining approval of the court, except as provided in §776(b) of the Texas Probate Code [now §1151.103 of the Texas

to pay the bond premium. *See Ohio Casualty Group of Ins. Cos. v. Cochran*, 586 N.E.2d 257, 258 (Ohio App. 1990). The failure of the personal representative to pay the bond premium is a breach of contract, it does not void the bond. *Id.*

K. Focus on Protecting Ward

When balancing the competing interests of the ward and the surety, the scale tips heavily in favor of protection of the ward against defalcations of the guardian. *See Massie v. DeShields*, 62 S.W.2d 322, 324 (Tex. Civ. App. - Dallas 1933, writ ref'd).

L. One Bond, Multiple Suits

The bond of a guardian is not void on the first recovery, but may be sued on and prosecuted from time to time until the full amount of the bond has been recovered. Tex. Est. C. §305.111, §1105.112.

M. One Bond, Multiple Wards

Where one surety bond is filed by a guardian of the estates of two minor wards, the order discharging the surety from liability when one ward reaches the age of majority, the bond continues to protect the remaining ward. *Gabriel v. Snell*, 613 S.W.2d 810, 814 (Tex. Civ. App. - Houston [14th Dist.] 1981, no writ).

N. New Bond

The surety continues to be liable as regards the remaining wards's estate, and is liable for any loss due to the guardian's mismanagement or waste, up to the entire face amount of the bond. *Id.* When the court requires that a new bond be given, the surety on the old bond is not discharged until the new bond is approved. *Miller v. Miller*, 21 Tex. Civ. App. 382, 384, 53 S.W. 362, 364 (1899).

O. Multiple Sureties

As among themselves, sureties on the bond are jointly and severally liable. *Keowne v. Love*, 65 Tex. 191, 198 (Tex.).

P. Temporary Guardian of Estate.

Estates Code]. *Hartford Cas. Ins. Co. V. Morton*, 141 S.W.3d 220, 228 (Tex. App. - Tyler 2004, pet. denied). Texas Estates Code §1151.103 lists a limited number of actions a guardian of the estate may take without court order, including paying taxes, court costs, and bond premiums. Tex. Est. C. §1151.103(a)(6). The liability of a temporary personal representative and her surety continues

until paid. *See Drake v. Trinity Universal Ins. Co.*, 600 S.W.2d 768, 772 (Tex. 1980); *see also Sierad v. Barnett*, 164 S.W.3d, 471, 480 (Tex. App. - Dallas 2005, no pet.).

Q. Additional Statutory Liability

The Texas Estates Code details additional administrative improprieties for which a surety for a personal representative may be held liable. Generally the surety is liable for the personal representative's failure to carry out statutory administrative tasks, such as:

- (I) Lack of Ordinary Diligence Collecting Claims and Property of Estate. Tex. Est. C. §351.151(b) and §1151.105(b).
- (ii). Claims.
  - a. Guardian's Payment of Unauthenticated Claims. Tex. Est. C. §1157.102(b).
  - b. Nonpayment of Claims Approved by Court. Tex. Est. C. §355.113(b), (c), and §1157.108(b), (c).
- (iii) Rental of Estate Property.
  - a. Lack of Adequate Security. Tex. Est. C. § 357.003 and §1159.003.
  - b. Rented Estate Property Returned in Poor Condition. Tex. Est. C. § 357.004 and §1159.004.
  - c. Failure to Rent Estate Property for Reasonable Value. Tex. Est. C. §357.052(c) and §1159.052(c).
- (iv) Reduction or Elimination of Guardian's Quarterly Compensation. Tex. Est. C. §1155.007(b).
- (v) Improper Delivery of Deed. Tex. Est. C. §356.559 and §1158.559.

**III. Limitations to Surety's Liability**

A person must bring suit on the bond of a guardian not later than four years after the day of the death, resignation, removal, or discharge of the guardian. Tex. Civ. Prac. & Rem. C. §16.004(b). *See also, Lawyers Surety Corp. v. Hall*, 590 S.W.2d 762, 762 (Tex. Civ. App. - Houston [14<sup>th</sup> Dist.] 1979 writ ref'd). Suit against the surety on a personal surety's bond may not be brought against that surety on any matter as to which an action or proceeding against the guardian is barred. Unif. Guardianship and Protective Proceedings Act of 1997 §416(b). If a surety requests sanctions against a plaintiff who knowingly filed a surcharge action against the surety

There are limitations to the liability of a surety, as below listed.

A. Personal Representative Not Liable

A surety on a bond is not liable for alleged misconduct of the principal where the principal is found not liable. *Ames v. Herrington*, 139 S.W.2d 183, 191 (Tex. Civ. App. 1940, writ dismissed). An action against a surety cannot be maintained if the same action cannot be taken against the personal representative. *See Sawyer v. State Surety Co.*, 558 N.W.2d 43, 47 (Neb. 1997). Therefore, where a ward who has attained the age of majority signs a document agreeing not to hold the guardian liable, the ward is precluded from recovering against the guardian's surety. *Id.*

B. Third Parties

A surety is also not liable to members of the public who deal with the personal representative, but who otherwise have no cognizable rights in or claim to the estate property. *See Seaboard Surety Co. v. Boney*, 761 A.2d 985, 995-96 (Md. App. 2000), cert den. 768 A.2d 54.

C. Legal Malpractice

A personal representative's bond does not cover the legal malpractice of an attorney who is serving as the personal representative. *See Seaboard Surety Co. v. Boney*, 761 A.2d 985, 997 (Md. App. 2000), cert den. 768 A.2d 54.

D. Acts Prior to Bond

A surety on a personal representative's bond is not liable for wrongful acts of the personal representative that occurred prior to the execution of the bond, absent an express agreement that made the surety liable for the prior acts. *See King v. Jones*, 971 S.W.2d 916, 920 (Mo. App. 1998).

E. Barred Actions

of a former administrator outside the statute of limitations, the court may deny sanctions if the plaintiff did not file the case for the purpose of harassment or in bad faith, and acted in good faith. *Lawyers Sur. Corp., V. Hall*, No. 01-93-0142-CV, 1994 Tex. App. LEXIS 1906, at \*8 - \*9. (Tex. App. Houston [1<sup>st</sup> Dist.] July 28, 1994).

F. Punitive Damages

Typically, without statutory authorization, punitive damages cannot be assessed against a surety on a guardian's bond. Unif. Guardianship and Protective Proceedings Act of 1997 §416(b).

G. Loss Caused by Others

A surety is not liable for losses suffered by an estate where some of those losses could have been caused by the actions of a successor personal representative. *See Ex parte Lawyers Surety Corp.*, 719 So.2d 833, 837 (Ala. 1998).

H. Assets Not Received

The bond covers all of the assets of the estate that come into the hands of the principal. *Sargent v. Wallis*, 67 Tex. 483, 487, 3 SW 721, 721-22 (1887). The bond extends to the assets that the guardian should have received in the performance of duty. *Id.* Unless there is fraud or lack of due diligence on the principal's part in failing to collect them, assets may not be charged against a personal representative until collected. *See American Bonding Co. v. Fountain*, 196 S.W. 675, 678 (Tex. Civ. App. – San Antonio 1917, no writ).

I. Liability Limited to Terms of Contract

The liability of a surety depends not only on the liability of the principal, but also on the terms of the surety contract. *See Wyatt v. Wingo v. White*, 228 S.W.154, 155 (Tex. Com. App. 1921).

J. Setoff

As a surety's liability cannot be greater than the liability of the principal, and whatever credits a guardian is entitled to for payment of encumbrances on the ward's property or for maintenance of the ward may be shown as a defense to an action against the guardian's surety. *Fidelity & Deposit Co. v. Schelper*, 37 Tex. Civ. App. 393, 396, 83 S.W. 871, 873 (1904, no writ); *Chapman v. Brite*, 4 Tex. Civ. App. 506, 514, 23 S.W. 514, 518 (1893). However, if the personal representative is guilty of a breach of trust, a setoff may be denied for commissions that are due to the personal representative. *Chapman v. Brite*, 23 S.W. at 518 (1893); *see also, Richardson v. McCloskey*, 261 S.W. 801, 817 (Tex. Civ. App. – Austin 1924) rev'd on other grounds, 276 S.W. 680 (Tex. Com. App. 1925).

K. Indemnity

Sureties have the right to indemnity as against their principals. *Old Republic Sur. Co. v. Palmer*, 5

To the extent that a settlement is reached, it may be necessary to obtain the court's approval of the agreement before it can be finalized. In a guardianship, the court may appoint an attorney ad litem to review the agreement and to report to the court whether the agreement is in the ward's best interest. If the court approves the agreement, in most cases, the

S.W.3d 357, 362 (Tex. App. - Texarkana 1999 no pet.). Even without an indemnity agreement, a surety on a probate bond who pays a debt of its principal has an equitable right at common law to indemnification. *Id.*

L. No Liability for Conduct of Trustee.

Neither the guardian of the person or estate of a ward for whom a management trust is created, nor the surety on the guardian's bond, is liable for an act or omission of the trustee of the trust. Tex. Est. C. §1301.156.

**IV. Making Demand Against Guardian and Guardian's Surety**

A. Approaching Bond Companies with Claims

Sometimes a bond company will agree to pay a claim if it is clearly valid, to avoid the expense of litigation, which includes the bond company's attorney's fees and expenses, and if the bond company loses, the plaintiff's attorney's fees and expenses. It is important that the first contact with the bond company be as pleasant as possible, to avoid defensive behavior that causes the bond company to take a hard line approach. Some bond companies always take the hard line approach, but many bond companies are quite reasonable.

When making a claim against a bond company, be sure to provide as much documentation as possible to demonstrate the actual loss caused by the personal representative's misconduct. For example, providing copies of bank statements and cancelled checks, to prove that the representative had possession of, and improperly expended, the funds in question. If non-cash assets can be valued, such as an automobile, provide a letter from a car dealer stating the value of the automobile, or a copy of the Kelly Blue Book value of the automobile (Internet address: [www.kbb.com](http://www.kbb.com)). Also helpful are affidavits signed by individuals with expertise about values of certain other items that cannot be easily valued. Complete copies of financial records, income tax records, and the like, can aid the bond company representative to quickly realize the claim is valid.

surety is then discharged, and the surety has no more liability on the guardian's bond.

B. Demand Letter

If the matter cannot be settled, it may be necessary to proceed to file suit against the bond company. No demand need be made as a condition

precedent to bringing suit on an administration bond where the personal representative fails to account for property in the personal representative's hands. *Hill v. Escort*, 38 Tex. Civ. App. 487, 490, 86 S.W. 367, 368 (1905). However, better practice is to send a demand letter to the personal representative and the surety, if possible, prior to filing suit. Further, as discussed above in Paragraph II.E, prejudgment interest begins to run from the date of the demand. The demand letter should reference the style and cause number of the guardianship or decedent's estate, the name of the principal, and the bond number. The letter should detail the specific actions taken by the personal representative that resulted in the loss. Include the demand for the exact sum of money needed to cover the loss, plus interest, attorney's fees and costs.

#### **V. Filing Suit**

If the bond company still refuses to pay the claim, it will be necessary to file suit.

##### **A. Necessary Parties**

###### **(I) Surety.**

When a surety contracts to be generally liable for all the undertakings of the principal, the surety must be given notice and opportunity to defend the case before it is bound by the judgment. *Howze v. Surety Corp. of America*, 584 S.W.2d 263, 265 (Tex. 1979). The surety may be sued alone if judgment has previously been rendered against the principal. Tex. R. Civ. P. 31; *Cross v. Old Republic*, 983 S.W.2d 771, 777 (Tex. App. - San Antonio 1998, pet. denied).

###### **(ii) Principal.**

The principal is a necessary and indispensable party to any action against the surety. See *Scott v. United States Fidelity & Guaranty Co.*, 256 S.W.2d 860, 863 (Tex. Civ. App. - Amarillo 1953, no writ). If a personal representative cannot be located for a number of reasons, then suit may proceed against the surety alone. See *Bopp v. Hansford*, 18 Tex. Civ. App. 340, 345, 45 S.W. 744, 747 (Tex. Civ. App. 1898, writ ref'd), see also, Tex. Civ. Prac. & Rem. C. §17.001(b)(1), (b)(2). If the personal representative is deceased, it is not necessary to join the deceased personal representative's estate in a suit against the personal representative's surety. Tex. Civ. Prac. & Rem. C. §17.001(b)(3); *Bacon v. Wright*, 52 S.W.2d 1111, 1113 (Tex. Civ. App. - Dallas 1932, writ

##### **D. Statute of Limitations**

Generally, suit on the bond of an executor, administrator, or guardian, must be brought no later than four years after the day of the death, resignation, removal, or discharge of the executor, administrator,

ref'd). Finally, the personal representative who is actually or notoriously insolvent does not have to be joined. Tex. Civ. Prac. & Rem. C. §17.001(b)(4); *Cross v. Old Republic*, 983 S.W.2d at 777; *McFarland v. Beaton*, 126 S.W.2d 719, 723 (Tex. Civ. App. - Dallas 1939), judgment aff'd, 134 Tex. 152, 134 S.W.2d 1058 (1940).

##### **B. Jurisdiction and Venue**

All courts having original probate jurisdiction as to matters incident to an estate, have jurisdiction as to a suit on a probate bond. Tex. Est. C. §31.002(a)(2), (b)(1), (c)(1); Tex. Est. C. §1021.001(a)(6)(B), (b)(1). Generally, a suit on a personal representative's bond must be brought in the county where the defendants reside. *Stewart v. Morrison*, 81 Tex. 396, 399, 17 S.W. 15, 16-17 (1891). This rule was interpreted so that the court where guardian's bond was filed had exclusive venue of action by wards against guardian's surety on the bond. *Scott v. United States Fidelity & Guaranty Co.*, 256 S.W.2d 860, 863 (Tex. Civ. App. - Amarillo 1953, no writ).

##### **C. Burden of Proof**

The plaintiff has the burden of proof to show a breach of the bond, and that the defendants are indebted to plaintiff in the amount claimed. *Fidelity & Deposit Co. of Maryland v. Schelper*, 37 Tex. Civ. App. 393, 83 S.W. 871, 872 (1904, no writ). Circumstantial evidence is allowed to prove that the principal received certain assets. *American General Ins. Co. v. Nance*, 60 S.W.2d 280, 284 (Tex. Civ. App. - Dallas 19 93, writ ref'd). A surety on a probate bond has the burden of proof to show the surety is not liable. See *Bopp v. Hansford*, 18 Tex. Civ. App. 340, 348, 45 S.W. 744, 749 (Tex. Civ. App. 1989, writ ref'd). Similarly, the surety has the burden to show that a personal representative properly accounted for the estate assets. See *Davis v. White*, 207 S.W. 679, 685 (Tex. Civ. App. - El Paso 1918), affirmed, *Wyatt & Wingo v. White*, 228 S.W. 154, 156 (Tex. Com. App. 1921). Similarly, a surety has the burden of proof on the affirmative defense that the bond has been improperly altered, which affirmative defense must be pled by way of confession and avoidance. See *Peveler v. Peveler*, 54 Tex. 53, 56 (1880); see also, *Reliance Ins. Co. v. Dahlstrom Corp.*, 568 S.W.2d 733, 736-737 (Tex. Civ. App. - Eastland 1978, writ ref'd n.r.e.) or guardian. Tex. Civ. Prac. & Rem. C. § 16.004. However, there is a two year statute of limitation regarding a fiduciary accused of conversion, trespass to property, trespass for injury to the estate,

personal injury, and forcible entry and detainer. Tex. Civ. Prac. & Rem. C. §16.003(a).

A cause of action against a surety for the alleged fraud of the personal representative does not accrue until the fraud is, or should have been, discovered. *Mills v. Baird*, 147 S.W.2d 312, 316 (Tex. Civ. App. – Austin 1941, writ ref'd). Thus, since the surety is only secondarily liable and cannot be sued without its principal, the cause of action does not accrue as to the surety until it accrues against its principal. *Id.* The undertaking of the surety is to make good any breach of official duty of its principal, whether or not tainted with fraud, not because of anything the surety may have done or failed to do, but because the surety has so bound itself by its undertaking. *Id.* Fraud of its principal, with all its consequences, is a risk the surety assumes to compensate by virtue of its obligation of surety. *Id.* The liability of the principal is that of the surety, and, where the statute of limitation does not begin to run because of the concealed fraud of the principal, the surety cannot invoke the aid of the statute on the ground that the surety was innocent of the fraud. *Id.*

The four-year statute of limitations, however, does not apply to a guardian attacking a predecessor's accountings, because the Texas Probate Code §224 [now Estates Code §361.153] imposes liability upon the successor guardian of the estate to account for the estate that came into the hands of its predecessor, with no specified time limit. *See Di Portanova v. Hutchison*, 766 S.W.2d 856, 857-858 (Tex. App. - Houston [1<sup>st</sup> Dist] 1989, no writ).

#### E. Discovery

Interestingly, the *Di Portanova* court also discussed the scope of discovery in an action against a former guardian, and held that it is not unduly burdensome or harassing to require a former guardian to provide documents for the entire period of his guardianship, as the Texas Probate Code §405 [now Texas Estates Code §362.004] requires strict responsibility and accountability by a guardian for the period of the guardianship, and does not excuse older transactions for reasons of convenience. *Di Portanova v. Hutchison*, 766 S.W.2d at 858. Additionally, discovery is not limited to admissible evidence; the permissible scope of discovery includes any matter which is relevant to the subject matter in the pending action, if it appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*, citing Tex. R. Civ. P. 166b (2)(a).

**TABLE OF AUTHORITIES**

**A. STATUTES**

Tex. Fin. C. §304.003 ..... 6

Tex. Civ. Prac. & Rem. C. §16.004(b) ..... 9, 12

Tex. Civ. Prac. & Rem. C. §16.003(a)..... 12

Tex. Civ. Prac. & Rem. C. §17.001(b)(1), (b)(2) ..... 11

Tex. Civ. Prac. & Rem. C. §17.001(b)(3)..... 11

Tex. Civ. Prac. & Rem. C. §17.001(b)(4)..... 11

Tex. Est. C. §31.002(a)(2), (b)(1), (c)(1) ..... 11

Tex. Est. C. §305.106..... 7

Tex. Est. C. §305.111..... 8

Tex. Est. C. §308.056..... 6

Tex. Est. C. §351.003. .... 5

Tex. Est. C. §351.003(1)..... 6

Tex. Est. C. §351.003(2)..... 6

Tex. Est. C. §351.151(b)..... 9

Tex. Est. C. §355.113(b), (c) ..... 9

Tex. Est. C. §356.559..... 9

Tex. Est. C. §357.003..... 9

Tex. Est. C. §357.004.....	9
Tex. Est. C. §357.052(c).....	9
Tex. Est. C. §359.101.....	6
Tex. Est. C. §359.102.....	6
Tex. Est. C. §361.053.....	5
Tex. Est. C. §361.153 .....	5, 12
Tex. Est. C. §362.004 .....	12
Tex. Est. C. §1021.001(a)(6)(B), (b)(1).....	11
Tex. Est. C. §1105.112.....	8
Tex. Est. C. §1151.103.....	8, 9
Tex. Est. C. §1151.105(b).....	9
Tex. Est. C. §1153.005.....	6
Tex. Est. C. §1155.007(b).....	9
Tex. Est. C. §1155.152.....	5
Tex. Est. C. §1155.152(2).....	5
Tex. Est. C. §1155.152.....	5,6
Tex. Est. C. §1157.102(b).....	9
Tex. Est. C. §1157.108(b), (c) .....	9
Tex. Est. C. §1158.559.....	9
Tex. Est. C. §1159.003.....	9



Tex. Est. C. §1159.004.....	9
Tex. Est. C. §1159.052(c).....	9
Tex. Est. C. §1161.008(a), (b) .....	6
Tex. Est. C. §1161.205.....	6
Tex. Est. C. §1163.151 .....	6
Tex. Est. C. §1203.006(b). .....	7
Tex. Est. C. §1203.053(3)(A) .....	5
Tex. Est. C. §1203.054.....	7
Tex. Est. C. §1203.202(c)(3) .....	5
Tex. Est. C. §1301.156.....	10
Unif. Guardianship and Protective Proceedings Act of 1997 §416(a)(1).....	5
Unif. Guardianship and Protective Proceedings Act of 1997 §416(a)(2).....	8
Unif. Guardianship and Protective Proceedings Act of 1997 §416(b) .....	9, 10

**B. RULES**

Tex. R. Civ. P. 31..... 11

Tex. R. Civ. P. 166b (2)(a)..... 12

**C. CASES**

*American Bonding v. Fountain*, 196 S.W. 675, 678 (Tex. Civ. App. – San Antonio 1917, no writ)..... 10

*American General Ins. Co. v. Nance*, 60 S.W.2d 280, 284 (Tex. Civ. App. - Dallas 1993, writ ref'd)..... 11

*Ames v. Herrington*, 139 S.W.2d 183, 191 (Tex. Civ. App. 1940, writ dism'd)..... 9

*Argonaut Ins. v. ABC Steel Products Inc.*, 582 S.W.2d 883, 886 (Tex. Civ. App. – Texarkana 1979, writ ref'd n.r.e.) ..... 5

*Bacon v. Wright*, 52 S.W. 2d 1111, 1113 (Tex. Civ. App. – Dallas 1932, writ ref'd) ..... 11

*Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex.1991) ..... 5

*Bopp v. Hansford*, 18 Tex. Civ. App. 340, 347, 45 S.W. 744, 748 (1898, writ ref'd) ..... 8, 11

*Brown v. Seaman*, 65 Tex. 628, 629-30 (Tex. 1886)..... 5, 7, 8

*Chandler v. Welborn*, 156 Tex. 312, 319, 294 S.W.2d 801, 807 (1956) ..... 5

*Chapman v. Brite*, 4 Tex. Civ. App. 506, 514, 23 S.W. 514, 518 (1893)..... 10

*Chefflet v. Willis*, 74 Tex. 245, 252, 11 S.W. 1105, 1107 (1889)..... 8

*Colonial Am. Cas. & Sur. Co. v. Scherer*, 214 S.W.3d 725, 729-730 (Tex. App.- Austin 2007, no pet.) ..... 5, 6

*Cross v. Old Republic*, 983 S.W.2d 771, 776 (Tex. App. - San Antonio 1998, pet. denied) ..... 4, 5, 8

**Suing and Collecting on Bonds for Breaches by Administrators and Guardians**

*See Davis v. White*, 207 S.W. 679, 685 (Tex. Civ. App. – El Paso 1918), affirmed, *Wyatt & Wingo v. White*, 228 S.W. 154, 156 (Tex. Com. App. 1921)..... 9

*Di Portanova v. Hutchison*, 766 S.W.2d 856, 857 (Tex. App. - Houston [1<sup>st</sup> Dist] 1989, no writ) ..... 4, 9

*Drake v. Trinity Universal Ins. Co.*, 600 S.W.2d 768, 772 (Tex. 1980) ..... 4

*Evans v. Oakley*, 2 Tex. 182, 183 (1847)..... 5

*Ex parte Lawyers Surety Corp.*, 719 So.2d 833, 837 (Ala. 1998) ..... 7

*Fidelity & Deposit Co. of Maryland v. Schelper*, 37 Tex. Civ. App. 393, 396, 395, 83 S.W. 871, 873, 872 (1904, no writ)..... 7, 9

*Fidelity Union Ins. Co. v. Hutchins*, 134 Tex. 268, 133 S.W.2d 105, 110-112 (1939) rev'd on other grounds, 134 Tex. 268, 133 S.W.2d 105 (1939)..... 4

*Fillion v. Osborne*, 585 S.W.2d 842, 845 (Tex. Civ. App. – Houston [1<sup>st</sup> Dist.] 1979, no writ) ..... 4

*Gabriel v. Snell*, 613 S.W.2d 810, 814 (Tex. App. - Houston [14th Dist.] 1981, no writ)..... 4-6

*Great Am. Ins. Co. v. North Austin Mun. Util. Dist. No. 1*, 908 S.W.2d 415, 426 (Tex.1995) rev'd on other grounds, 950 S.W.2d 371 (Tex. 1997)..... 4, 6

*Hartford Cas. Ins. Co. V. Morton*, 141 S.W.3d 220, 228 (Tex. App. - Tyler 2004, pet. denied)..... 8

*Hill v. Escort*, 38 Tex. Civ. App. 487, 490, 86 S.W. 367, 368 (1905) ..... 8

*Howze v. Surety Corp. of America*, 584 S.W.2d 263, 268 (Tex. 1979)..... 5, 8

*Keowne v. Love*, 65 Tex. 191, 198 (Tex.)..... 6

*King v. Jones*, 971 S.W.2d 916, 920 (Mo. App. 1998)..... 7

*Lawyers Surety Corp. v. Larson*, 869 S.W.2d 649, 653 (Tex. App. - Austin 1993, no writ) ..... 4, 5, 7

*Lee v. Lee*, 47 S.W.3d 767, 796-797 (Tex. App. - Houston [14<sup>th</sup> Dist.] 2001, pet. denied) ..... 5

*Massie v. DeShields*, 62 S.W.2d 322, 324 (Tex. Civ. App. - Dallas 1933, writ ref'd) ..... 5, 6

*Matsumoto v. Matsumoto*, 762 A.2d 224, 232 (N.J. Super 2000) ..... 4

*McFarland v. Beaton*, 126 S.W.2d 719, 723 (Tex. Civ. App. - Dallas 1939), judgment aff'd, 134 Tex. 152, 134 S.W.2d 1058 (1940) ..... 8

*Miller v. Miller*, 21 Tex. Civ. App. 382, 384, 53 S.W. 362, 364 (1899) ..... 5, 6

*Mills v. Baird*, 147 S.W.2d 312, 316 (Tex. Civ. App. – Austin 1941, writ ref'd) ..... 9

*Moyers v. Carter*, 61 S.W.2d 1027, 1031 (Tex. Civ. App. – Dallas 1933, writ ref'd) ..... 6

*National Surety Co. v. Hemphill*, 13 S.W.2d 921, 923 (Tex. Civ. App. -El Paso 1929, writ ref'd) ..... 6

*Nichols v. Preferred National Insurance Co.*, 704 So. 2d 1371, 1374 (Fla. 1997) ..... 5, 6

*Ohio Casualty Group of Ins. Cos. v. Cochrane*, 586 N.E.2d 257, 258 (Ohio App. 1990) ..... 6

*Old Republic Surety Co. v. Cross*, 27 S.W.3d 35, 38 (Tex. App. – San Antonio 2000, no pet.) ..... 5-8, 11

*Old Republic Surety Co. v. Palmer*, 5 S.W.3d 357, 362 (Tex. App. – Texarkana 1999, no pet.) ..... 10

*Peveler v. Peveler*, 54 Tex. 53, 56 (1880) ..... 11

*Reliance Ins. Co. v. Dahlstrom Corp.*, 568 S.W.2d 733, 736-737 (Tex. Civ. App. – Eastland 1978, writ ref'd n.r.e.) ..... 11

*Richardson v. McCloskey*, 261 S.W. 801, 817 (Tex. Civ. App. – Austin 1924) rev'd on other grounds, 276 S.W. 680 (Tex. Com. App. 1925) ..... 10

*Rodriguez v. Gonzalez*, 830 S.W.2d 799, 801 (Tex. App. - Corpus Christi 1992, no writ) ..... 5

*Roverson v. Tonn*, 76 Tex. 535, 13 S.W. 385, 385 (Tex 1890) ..... 8

*Sargent v. Wallis*, 67 Tex. 483, 487, 3 SW 721, 721-22 (1887) ..... 9

*Sawyer v. State Surety Co.*, 558 N.W.2d 43, 47 (Neb. 1997) ..... 9

**Suing and Collecting on Bonds for Breaches by Administrators and Guardians**

---

*Scott v. United States Fidelity & Guaranty Co.*, 256 S.W.2d 860, 863 (Tex. Civ. App. – Amarillo 1953, no writ)..... 11

*Sierad v. Barnett*, 164 S.W.3d, 471, 480 (Tex. App. - Dallas 2005, no pet.) ..... 9

*Seaboard Surety Co. v. Boney*, 761 A.2d 985, 995-96 (Md. App. 2000), cert. den. 768 A.2d 54..... 5, 9

*Stewart v. Morrison*, 81 Tex. 396, 399, 17 S.W. 15, 16-17 (1891) ..... 11

*Ward v. Maryland Casualty. Co.*, 140 Tex. 124, 166 S.W.2d 117, 120 (1942) ..... 5, 6



