

1 **7-406. Bonds; exoneration; forfeiture.**

2 A. **Exoneration of bond.** Unless otherwise ordered for good cause, a bond shall be  
3 automatically exonerated only under the following circumstances:

4 (1) twelve (12) months after the posting of the bond if the crime is a felony and  
5 no charges are pending in the district court;

6 (2) six (6) months after the posting of the bond if the crime is a misdemeanor  
7 or petty misdemeanor and no charges are pending;

8 (3) at any time prior to entry of a judgment of default on the bond if the district  
9 attorney approves;

10 (4) upon surrender of the defendant to the court by an unpaid surety;

11 (5) upon dismissal of the case without prejudice, unless the case involves a paid  
12 surety; or

13 (6) upon acquittal, conviction, or dismissal of the case with prejudice.

14 B. **Surrender of the defendant by a paid surety.** If the paid surety arrests the  
15 defendant under Section 31-3-4 NMSA 1978 prior to the entry of a judgment of default on the  
16 bond, the court may absolve the paid surety of responsibility to pay all or part of the bond.

17 C. **Forfeiture.** If the defendant has been released upon the execution of an unsecured  
18 appearance bond, percentage bond, property bond, cash bond, or surety bond under Rule 7-  
19 401 NMRA, and the defendant fails to appear in court as required, the court may declare a  
20 forfeiture of the bond. If a forfeiture has been declared, the court shall hold a hearing on the  
21 forfeiture prior to entering a judgment of default on the bond. A hearing on the forfeiture shall be  
22 held thirty (30) or more days after service of the Notice of Forfeiture and Hearing on the defendant,  
23 at the defendant's last known address, and on the surety, if any, in the manner provided by Rule 7-

1 407 NMRA. A paid surety may appear in metropolitan court without the assistance of an attorney  
2 as provided in Rule 7-107 NMRA.

3 **D. Setting aside forfeiture.** The court may direct that a forfeiture be set aside in whole  
4 or in part upon a showing of good cause why the defendant did not appear as required by the bond  
5 or if the defendant is surrendered by a surety, if any, into custody prior to the entry of a judgment  
6 of default on the bond. Notwithstanding any provision of law, no other refund of the bond shall be  
7 allowed.

8 **E. Judgment of default; execution.** If, after a hearing, the forfeiture is not set aside,  
9 the court shall enter a judgment of default on the bond. If the judgment of default is not paid within  
10 ten (10) days after it is filed and served on the defendant, at the defendant's last known address,  
11 and on the surety, if any, in the manner provided by Rule 7-407 NMRA, execution may issue  
12 thereon.

13 **F. Appeal.** Any aggrieved person may appeal from a judgment or order entered under  
14 this rule as authorized by law for appeals in civil actions in accordance with Rule 3-706 NMRA  
15 [~~and Rule 1-073 NMRA~~]. An appeal of a judgment or order entered under this rule does not stay  
16 the underlying criminal proceedings.

17 [Effective, October 1, 1987; as amended by Supreme Court Order No. 10-8300-035, effective  
18 December 10, 2010; as amended by Supreme Court Order No. 17-8300-005, effective for all cases  
19 pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. S-1-RCR-2025-  
20 00175, effective for all cases filed on or after December 31, 2025.]

21 **Committee commentary.** — Under Paragraph A, a bond is automatically exonerated upon  
22 a finding of guilty or not guilty. *See* NMSA 1978, § 31-3-10 (“All recognizances secured by the

1 execution of a bail bond shall be null and void upon the finding that the accused person is guilty,  
2 and all bond liability shall thereupon terminate.”).

3 Under Paragraph B and NMSA 1978, Section 31-3-4, if a paid surety wants to be  
4 discharged from the obligation of its bond, the surety may arrest the defendant and deliver the  
5 defendant to the county sheriff. Section 31-3-4 provides that a “paid surety may be released from  
6 the obligation of its bond only by an order of the court” and sets forth the circumstances under  
7 which the “court shall order the discharge of a paid surety.”

8 Under Paragraph C, the court may declare a forfeiture of any secured or unsecured bond if  
9 the defendant fails to appear in court as required. *See* NMSA 1978, § 31-3-2 (failure to appear;  
10 forfeiture of bail bonds); *see also State v. Romero*, 2006-NMCA-126, ¶ 12, 140 N.M. 524, 143  
11 P.3d 763 (holding that the court may not declare a forfeiture of bail for violations of conditions of  
12 release unrelated to appearance before the court), *aff’d*, 2007-NMSC-030, 141 N.M. 733, 160 P.3d  
13 914.

14 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
15 after July 1, 2017.]