



## **Crime Coverage and Public Employee Fidelity Bonds**

### What is Crime Coverage?

Crime coverage is a form of property insurance designed particularly to address theft of money and theft by employees, both of which are commonly excluded in a standard property insurance policy. Like any insurance, crime coverage is written to protect the entity purchasing the coverage in the event of loss. Government Crime Coverage policies will typically pay for 1) loss of money, securities, and property resulting from theft committed by an employee, 2) burglary, robbery, or theft of money or securities either in or outside the entity's premises, 3) theft by computer fraud, and 4) loss resulting from accepting counterfeit paper currency.

### Why Crime Coverage?

Typically property coverage forms which protect buildings and contents do not include coverage either for theft by employees or loss of money. Also, compared to a bond, crime coverage provides this protection in a comprehensive manner and with a much lower burden of proof on the insured party who suffered the loss. It is insurance against loss of a specific kind of property vs. a guarantee of personal integrity.

### What is a Bond?

Unlike insurance, a bond is a guarantee of the integrity of an individual and is purchased by or on behalf of a person, such as a city treasurer, who would be expected to personally repay the amount missing in the event of the anticipated loss. This is a fair expectation since if the anticipated loss occurs, it will be the result of that person's failure to do the things he or she was "bonded" to do. It is only in the event that person cannot or will not pay their obligation to the city that the bond company is required to pay. Obviously it is necessary to establish beyond a doubt that it was the failure of the bonded person before the bond company will pay on that person's behalf.

### Why a Bond?

Going back hundreds of years, a bond has been the legal instrument designed to provide for protection of the injured party in the event of dishonesty by a person working in a position of trust. As a result, there are obligations in the Oregon Revised Statutes (ORS 221.903 Bond and Oath of officers, and ORS 210.120 Oath of accountant, bond or letter of credit; requirements of sureties....) describing the certain protections to be undertaken by cities and counties. In addition, many local entities, within their own by-laws, require bonds for certain positions or individuals.

It is very possible that the reason bonds are specified more commonly in these documents than crime coverage is that crime coverage, by comparison, is a more

recent form of protection having come into more common use only in the past 30 or 40 years.

#### What is "Faithful Performance?"

The Oregon Revised Statutes, and typically local ordinances as well, commonly stipulate the bond, or insurance, is to include coverage "for the faithful performance" of the duties of the identified party. Faithful performance is not a synonym for honesty. It includes honesty but also a lot of other factors in which honesty may not be a factor. For example, a county treasurer who has lost the county's money in a bank he/she thought was sound, but which did not comply with state depository laws would have a difficult time proving they had faithfully performed their duties. Likewise, the failure of a bonded supervisor to properly oversee the actions of one of their employees when such failure has as its direct and immediate result the loss of the city or county's covered property.

#### What coverage does CIS provide?

The current CIS Trust Property Coverage Agreement automatically includes \$50,000 of crime coverage for members in the property program. This \$50,000 coverage does include faithful performance of duties. CIS members also have access to an optional Excess Crime Coverage Policy above the \$50,000 limit which extends their protection up to whatever limit of coverage is purchased. Faithful Performance of duties is included in the excess coverage form as well.

Coverage automatically included under the CIS Trust's \$50,000 coverage also includes 1) direct loss of money or securities by theft or forgery by an employee, agent or officer of the member, 2) direct loss by destruction, disappearance, or wrongful abstraction of money or securities within of from the member's premises or the premises, safe or night deposit of a bank, or trust company, 3) direct loss by destruction, disappearance, or wrongful abstraction of money or securities outside the member's premises while being conveyed by an officer, employees agent of the member or an authorized armored motor vehicle company, 4) direct loss caused by alteration or forgery of, on, or in any check, draft, or promissory note, bill of exchange or similar promise.

For a full reading of these coverages, including extensions, exceptions, and exclusions refer to Section 10. CRIME COVERAGE, in the CIS Trust Property Coverage Agreement and the Excess Crime Coverage Policy located on the CIS website.

#### Can CIS provide a Bond upon request?

Because CIS is not an insurance company, we are not able to provide bonds. However, the member's local insurance agent is well qualified to easily access markets which can meet this need.

#### Does Crime coverage satisfy a member's Bond requirement?

As discussed earlier, while both methods are intended to protect the entity from loss, they achieve their result by different means and are not the same thing. Not surprisingly, we have seen opinions which affirm each option, i.e. yes, crime coverage satisfies the bond obligation, and no, it does not.

Effective 7/1/2011, the crime coverage language was changed to include the following:

*Coverage under this Clause will provide all coverage that would be provided by a faithful performance bond required by ORS 210.120 or ORS 221.903 as to any public officials of the member that are required by those statutes to execute such bond.*

However, there are certain conditions to this clause. Please read the full crime language in the CIS Trust Property Coverage Agreement. Our position is that we encourage members to rely upon the opinion of their City Attorney or County Counsel in this matter.