

# Guidelines for Releasing Trust Money

## Resources:

- [Legal Opinions](#)
- For specific CORIS instruction, see DCJUST [documents](#)
- For specific CARE instruction, see JVJUST [documents](#)
- [Trust Type Listing](#)

## Purpose:

This section was established to assist the trust check writer determine what requirements must be met prior to releasing trust money. As per [legal opinion 6/18/2009](#), “The sentence is essentially a blanket order for all releases... there isn’t a need for a separate order each time money is to be paid out of the trust.”

## APPEAL BONDS

Cost bonds on appeal are governed by [URAP Rule 6](#) and [URAP Rule 34](#) of the Utah Rules of Appellate Procedure. Rule 6 requires a \$300 bond to be filed by the appellant. Rule 34 states that a party can make a claim on the bond within 15 days after the remittitur is filed with the clerk of the trial court. The Appellate Procedure Committee elected to not amend the rules to clarify what happens to the money if there is no claim. Therefore, the court has adopted a policy that the clerk may return the appeal bond to the party posting the bond 30 days after the remittitur is filed if there has not been a claim on the bond.

## ATTORNEY FEES

There is no specific provision providing for the deposit of attorney fees into the court. Attorney fees will typically be awarded in a judgment and collected as any other judgment. In this case, attorney fees can be treated like restitution ([paid out after 'Victim Restitution' See Legal Opinions 4/28/08](#)) and simply passed through the court. There may be circumstances in which a court orders attorney fees paid into the court, and it would then require a court order to have the attorney fees released from trust. These could be treated as unclaimed property one year after receipt in the former case or from the signed minute entry/order in the latter.

## **BANKRUPTCY**

Any money, which was received within 90 days prior to receiving the notice of bankruptcy, is the property of the bankruptcy estate and controlled by the bankruptcy trustee. The court may release the money to the trustee, or wait for directions from the trustee or debtor as to what to do with it. In the absence of such direction, the money should be held for 60 days after the bankruptcy filing to see if any legal claims will be filed against it. After the 60 days have passed, the money may be returned to the defendant/payer. If not claimed after one year, the money should be sent to unclaimed property.

## **CASH BAIL**

A person may post cash bail pursuant to [UCA 77-20-4](#). Credit cards and personal checks can be accepted as "cash bail" when a warrant has been issued. (Refer to [Legal Opinions – Subsection: Bail](#) and Section 02 Receipting, [02-04.01 Credit Cards used for Cash Bail](#).)

As per UCA 77-20-7: "If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless prosecutor requests an extension of time before the end of the 120-day period..." Legal counsel has indicated that the minimum is 120 days but the maximum could be 4 years. Refer to Legal [Opinion 10/29/2018](#).

Note: Bail that was paid by card in the Heartland System, can only be returned back to the card within **1 year** of receipt. Otherwise, it must be refunded by issuing a trust check.

The Utah Code no longer contains statutes which discuss the forfeiture of cash bail. Cash bail can be held until a person fails to appear, at which time the cash bail can be immediately forfeited. The cash bail can also be held until the time that criminal proceeding is concluded. **Unless the case is dismissed, Cash Bail is forfeited, applied or refunded if stated on the record or by judicial order.** If the cash bail is not applied to a fine or otherwise forfeited, the bail is exonerated and should be released to the defendant or the person posting the bail or as directed by the court. See also [Legal Opinions – Subsection: Bail](#) regarding cash bail posted and defendant is deceased.

The court may choose to receipt Finder/Tax Intercept monies to cash bail, making a case note the check is tax monies intercepted.

**Note:** It is proper for a court to receipt monies into this trust type if a defendant is trying to pay on a fine and the accounts receivable hasn't been created yet (i.e. coming straight from court). As per [Legal Opinion 5/14/2010](#) this trust type can be used to temporarily hold the money.

## **CIVIL BAIL**

This involves payment on a bench warrant in a civil case. Once paid into court, a written order is required to release the funds, although a judge could sign a minute entry if the plaintiff fails to prepare an order. If the judge allows the money to be released, but an order/minute entry is not prepared, the money can be treated as unclaimed property after one year from the judge's authorization.

## **CONDEMNATION CASES (EMINENT DOMAIN CASES)**

These cases are discussed in [UCA title 78B-6-501](#). A person can take immediate occupancy of condemned premises by paying into trust the fair market value of the condemned property. Once paid into court, the funds can only be released pursuant to court order. Funds that are unclaimed one year after a case terminates could be considered unclaimed property.

## **COST BOND – WHEN SUING A GOVERNMENT ENTITY**

[UCA 63G-7-601](#) requires a plaintiff to post a cost bond in the minimum amount of \$300 when suing a government entity. The \$300 can be paid over to the plaintiff if the plaintiff is successful in a judgment against the state. If the plaintiff is not successful, the state has 60 days to make a claim on the money or it can be returned to the plaintiff. The money can be returned to the plaintiff without a court order in those circumstances. The bond should be treated as unclaimed property if an action concluded and no claim was made on the bond for one year from disposition.

## **DEFENDANT’S SATISFACTION OF JUDGMENT**

When defendants in a civil or small claims case cannot locate the plaintiff to pay off a judgment, they may petition the court for a “Defendant’s Satisfaction of Judgment,” and deposit the money with the court. No order is required from the judge. The money may be sent to Unclaimed Property one year from receipt by the court.

## **FINDERS**

Also referred to as: Tax Intercept and Tax Refund see [UCA 59-10-529](#). The court receives a check from the tax commission made payable to the taxpayer and receipted by the court. The letter from the Division of Finance should be scanned to the case.

**When a person has a warrant outstanding or a warrant triggered the intercept:** A notice goes out notifying the taxpayer of the held refund. Forty days must pass before the court can apply the refund to monies owing unless contact is made by the taxpayer. If the money being held is not ordered forfeited and the case has been closed or the fine satisfied, the court may return the money to the defendant.

If ALL the money intercepted will be refunded to the defendant and the fine was satisfied **prior to the date of the Division of Finance letter**, then the \$15 administrative fee withheld by State Finance may be refunded. The court should send an email requesting the fee be refunded to [finderut@utah.gov](mailto:finderut@utah.gov). Attach a copy of the original letter

noting the date the fine was satisfied. Only if ordered by the judge will any exceptions be granted. This order should also accompany the submission.

In cases of bail, there will typically not be an account past due. A person will have failed to appear and a warrant of arrest will have been issued. There will have been no conviction yet. When an income tax refund is received the court can apply the refund as payment of a fine if the appearance is non-mandatory, but in mandatory cases, the court can apply the bail as a forfeiture and continue the warrant of arrest. (The court needs to be able to make this determination and not the Office of State Debt Collection.) Until CORIS can be programmed to more efficiently forfeit Finder money, the court is allowed to reverse and re-enter the payment as bail. This is an exception to policy regarding reversals found in [Section 02-16.00 Reverse Receipts](#).

**When a case is at tax intercept without an active warrant:** The money is still deposited into trust, but per statute does not need to be held for forty days. See also Section 04 Collections, for specifics regarding the [Juvenile Finders program](#).

### ***IMMEDIATE OCCUPANCY BOND***

[UCA 78B-6-808](#) allows a plaintiff to file a possession bond in an eviction action to gain immediate occupancy of premises. Under eviction statutes, a defendant also has an opportunity to file a counter-bond to remain on the premises. This bond must be in the form of either a corporate bond, cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The courts shall not accept payment using a credit card for this type of trust transaction. In order to release the bond, a court order would be required. The statute does not state how the bond could otherwise be released. If a bond remained unclaimed for one full year after the conclusion and satisfaction of the case, the bond could be treated as unclaimed property.

### ***INTEREST BEARING ACCOUNT FUNDS***

If a plaintiff posted funds in an individual Interest Bearing Account and the case is dismissed, the court should first attempt to locate the plaintiff to have the bond returned. If the plaintiff cannot be located, the court can treat the money as unclaimed property and turn it over to the State of Utah, Division of Unclaimed Property.

### ***JAIL REIMBURSEMENT***

As per [77-38a-404 UCA](#), any restitution ordered for a county correctional facility, shall be paid after fines and surcharges.

## **NON-RESIDENT COST BOND**

[URCP Rule 12](#) states that a defendant may request that an out-of-state plaintiff post a bond for payment of costs in a civil action. The rule does not state how the bond should be released. The bond could only be released pursuant to court order during the pendency of the case. The bond would expire after judgment and appeal if plaintiff is successful. If the defendant is successful, the bond would not have a set time for expiration. However, it could be treated as unclaimed property one year after the time for an appeal has expired.

## **PROBATE BOND**

The probate code ([UCA 75-3-604](#)) requires a bond to be posted when a person becomes a personal representative. The bond would expire when the personal representative's term expires, which is one year after a closing statement is filed. The bond may be released at that time or held for one more year and treated as unclaimed property.

## **RESTITUTION**

Restitution is governed by [UCA 76-3-201](#). Restitution is a pass-through payment and once paid into the court, can and should be immediately paid to the victim within 60 days of receipt as per [77-38a-404](#), unless the payment is \$5.00 and under. As per [legal opinion 2/2/2012](#), if payment was received by credit card and a dispute has been received, the court will hold at least another 45 days from the date the notice is forwarded by AOC Finance (See [Section 03-04.02 Disputed Credit Cards](#)).

If the recipient of a victim restitution payment can not be located, the court can redistribute that victim's payment to the other victims. The court can do this unless and until the other victim is found or remaining amounts are sent to Unclaimed Property. See [legal opinion 12/15/2003](#).

Refer to [legal opinion 4/30/2009](#) when a victim is deceased. If a personal representative has not been established, the court is to send the money in the victims name to Unclaimed Property after one year.

Per general counsel (7/9/2009) the following payment distribution order will be followed:

1. Restitution = all victims receive equal distribution of payments made, unless ordered by the judge.
2. Once victims are paid, restitution payments are prioritized in CORIS in the following manner and have their own interest identifier name:
  - a. Gov Agency restitution = Interest on Gov Agcy
  - b. Crime Victim Rep Fnd = Interest on CVRF
  - c. Insurance Co restitn = Interest on Insur Co

## **TRUST CASE HOLDING**

Money is put into Holding when there is not an order account for the money to be applied. For example: If the money is paid before the order account is set up, the money would be receipted to Holding. Once the order account is set up, the money can be

transferred from the holding account to the order account. An order account could be either revenue or trust.

Money can also be placed into Holding if the client paid more than what the order account reflects. Overpayments of \$10.00 or more would be available for release in the next check run.

### **TRUST WITHOUT A CASE**

Contact the prosecutor's office after the timeframe for holding the cash bail has passed (if known). If the court receives a "notice" from prosecution declining to prosecute, the court can release without a court order. Cash bail receipted to "Trust Without a Case" pending the filing of a citation or information, should not be held indefinitely. If the case has not been filed within the appropriate timeframe (1 year for infractions, 2 years for misdemeanors, and 4 years for felonies), the court should attempt to locate the payer to return the money. Release requires judicial approval. Legal counsel has indicated that the minimum is 120 days but the maximum being 4 years. Refer to [Legal Opinion 10/29/2018](#) and 12/11/2019.

As there isn't a case to scan said order to, an additional folder has been added to the "N" drive since retention could be needed longer than four years.

If the payer cannot be located, the court can treat the money as unclaimed property and turn it over to the State of Utah, Division of Unclaimed Property. Refer also to Cash Bail and Section 01-04.00 Safeguarding Cash found on the Premises.

### **TRUSTEE SALE PROCEEDS**

[UCA 57-1-29](#) governs the trust sale proceeds. When property is sold, excess proceeds are deposited with the court, along with an affidavit listing all known claimants. The clerk is to notify the claimants within 15 days of receiving the affidavit of deposit. Any claimant may then file a petition for adjudication of priority to the funds and request a court hearing for determination. Pursuant to that hearing, the judge will issue an order directing the disbursement of the funds as determined. Funds can only be released to claimants by court order. Once disbursement of the funds has been determined and the claimants notified by the court, the funds may be considered as unclaimed property after one year as allowed under [UCA 67-4a-210\(2\)\(b\)](#) "Property held, issued, or owing by the court is payable or distributable if no claim is made, or property remains after all claims are resolved." According to UCA 67-4a-201 (1)(b)(i) "property may not be considered 'abandoned' or 'unclaimed' when the character or degree of ownership interest of the apparent owner in the property is unsettled or in dispute. If no one comes forth to claim this money, the funds shall be sent to Unclaimed Property according to UCA 67-4a-210(2)(b)

### ***TRUST REIMBURSEMENT***

The creation of this trust type is only available through a request to the Court's Help Desk. Generally this is required for instances such as when a voided check clears causing the account to be in the deficit. The trust type allows for repayment to the court, keeping separate from other payments made by the defendant.