

## CHAPTER 22-03 SURETYSHIP

### **22-03-01. Surety defined.**

A surety is one who, at the request of another and for the purpose of securing to the latter a benefit, becomes responsible for the performance by the latter of some act in favor of a third person or hypothecates property as security therefor.

### **22-03-02. Surety appearing as principal may show status as surety - Exception.**

One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that the person in fact is a surety except as against persons who have acted on the faith of that person's apparent character of principal.

### **22-03-03. Limitations on liability of surety.**

A surety cannot be held beyond the express terms of the surety's contract and if such contract prescribes a penalty for its breach, the surety cannot be liable in any case for more than the penalty.

### **22-03-04. Interpreting contract of suretyship.**

In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

### **22-03-05. Suretyship survives judgment.**

A surety still occupies the position of surety even though a creditor recovers a judgment against the surety.

### **22-03-06. Exoneration of surety - Methods.**

A surety is exonerated:

1. In like manner with a guarantor;
2. By performance of the principal obligation or tender of such performance duly made as provided in this code;
3. To the extent to which the surety is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with the surety's rights, or which lessens the surety's security; or
4. To the extent to which the surety is prejudiced by an omission of the creditor to do anything when required by the surety which it is the creditor's duty to do.

### **22-03-07. Rights of surety same as rights of guarantor.**

A surety has all the rights of a guarantor whether the surety becomes personally responsible or not.

### **22-03-08. Surety may require creditors to proceed against principal.**

A surety may require the surety's creditor to proceed against the principal or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden. If the creditor neglects to do so, the surety is exonerated to the extent to which the surety is prejudiced by such neglect.

### **22-03-09. Surety may compel principal to perform obligation when due.**

A surety may compel the surety's principal to perform the obligation when due.

### **22-03-10. Reimbursement of surety by principal - Claims for reimbursement against others.**

If a surety satisfies the principal obligation, or any part thereof, with or without legal proceedings, the principal is bound to reimburse the surety for what the surety has disbursed, including necessary costs and expenses. A surety has no claim, however, for reimbursement

against other persons though they may have been benefited by the surety's act, except as prescribed by section 22-03-11.

**22-03-11. Remedies of surety - Contribution from cosureties.**

A surety, upon satisfying the obligations of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what the surety has expended, and also to require all of the surety's cosureties to contribute thereto without regard to the order of time in which they became such.

**22-03-12. Security to which surety is entitled - Subrogation.**

A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by the surety afterwards, whether the surety was aware of the security or not.

**22-03-13. Property of surety and principal hypothecated - Property of principal applied to discharge of obligation.**

Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

**22-03-14. Creditor entitled to security of debtor given to surety.**

A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and upon the maturity of the obligation the creditor may compel the application of such security to the satisfaction of the obligation.

**22-03-15. Joint control over moneys and assets of fiduciary.**

It is lawful for any party of whom a bond, undertaking, or other obligation is required, to agree with that party's surety or sureties for the deposit of any or all moneys and assets for which that party and that party's surety or sureties are or may be held responsible, with a bank, savings bank, safe deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct. Such agreement does not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.