

## TITLE 22 GUARANTY, INDEMNITY, AND SURETYSHIP

### CHAPTER 22-01 GUARANTY

**22-01-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. A "continuing guaranty" means a guaranty relating to a future liability of the principal under successive transactions which either continue the liability or from time to time renew it after it has been satisfied.
2. A "guaranty" means a promise to answer for the debt, default, or miscarriage of another person.

**22-01-02. Knowledge or consent of principal unnecessary to guaranty.** A person may become a guarantor without the knowledge or consent of the principal.

**22-01-03. Original obligation sufficient consideration - Exception.** When a guaranty is entered into at the same time as the original obligation or at the same time as the acceptance of the original obligation by the guarantee and forms, with that obligation, a part of the consideration to the guarantee, no other consideration is necessary. In all other cases there must be a consideration distinct from that of the original obligation.

**22-01-04. Guaranty to be in writing - Exception - Consideration need not be expressed.** Except when a guaranty is deemed an original obligation as provided in section 22-01-05, a guaranty must be in writing and signed by the guarantor, but the writing need not express a consideration.

**22-01-05. When a guaranty need not be in writing.** A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

1. When the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise, or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.
2. When the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances which render the party making the promise the principal debtor and the person in whose behalf it is made the debtor's surety.
3. When the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it shall cancel the antecedent obligation and accept the new promise as a substitute therefor, or upon the consideration that the party receiving it shall release the property of another from a levy under an execution on a judgment obtained upon the antecedent obligation, or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person.
4. When a factor undertakes, for a commission, to sell merchandise and guarantee the sale.
5. When the holder of an instrument for the payment of money upon which a third person is or may become liable to the holder transfers the instrument in payment of

a precedent debt of the holder's, or for a new consideration, and in connection with such transfer, enters into a promise respecting such instrument.

**22-01-06. Acceptance of offer to guaranty required - Exception in case of absolute guaranty.** A mere offer to guaranty is not binding until notice of its acceptance is communicated by the guaranty to the guarantor. An absolute guaranty is binding upon the guarantor without a notice of acceptance.

**22-01-06.1. When notice of acceptance to guarantor or surety required.** Repealed by S.L. 1989, ch. 296, § 2.

**22-01-06.2. Surety or guarantor may withdraw within ten days.** Repealed by S.L. 1989, ch. 296, § 2.

**22-01-06.3. When account furnished surety or guarantor.** When a manufacturer, wholesaler, or distributor furnishes merchandise to any agent, salesman, or dealer whose execution of bond or obligation to the manufacturer, wholesaler, or distributor has been joined in by a surety or guarantor, the manufacturer, wholesaler, or distributor upon written request by the surety or guarantor, shall furnish each surety or guarantor either by mail or personal delivery a statement each month during the life of the bond or obligation showing the debit and credit items incurred and made in the account between the manufacturer, wholesaler, or distributor and the agent, salesman, or dealer during the immediately preceding month and the exact balance owing from the agent, salesman, or dealer thereon at the date of the notice.

**22-01-06.4. Surety or guarantor may withdraw at any time.** Repealed by S.L. 1989, ch. 296, § 2.

**22-01-06.5. Public policy.** Repealed by S.L. 1989, ch. 296, § 2.

**22-01-07. Guaranty of contract the terms of which are unsettled - Interpretation.** In a guaranty of a contract the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than the guarantor would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

**22-01-08. Guaranty of solvency - Failure to take proceedings to collect - Removal of principal from state.** A guaranty to the effect that an obligation is good or is collectible imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings if the same are taken with reasonable diligence. Such a guaranty is not discharged by any omission to take proceedings upon the principal debt or upon any collateral security for its payment if no part of the debt could have been collected thereby. The removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

**22-01-09. Guaranty deemed unconditional - Exception.** A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

**22-01-10. Guarantor of payment is liable upon default of principal - Demand or notice not required.** A guarantor of payment or performance is liable to the guaranty immediately upon the default of the principal and without a demand or notice.

**22-01-11. Liability on conditional obligation - When notice to guarantor required.** The liability of a guarantor who guaranties a conditional obligation is commensurate with that of the guarantor's principal and the guarantor is not entitled to notice of the default of the principal unless the guarantor is unable, by the exercise of reasonable diligence, to acquire information of such default and the creditor has actual notice thereof.

**22-01-12. Limitations upon obligation of guarantor.** The obligation of a guarantor must be neither larger in amount, nor in other respects more burdensome, than that of the principal. A stockholder or partner of any entity, including a limited liability company, business corporation, professional corporation, and partnership, may enter into a separate contract of guaranty for the real estate mortgage debt of the entity. If in its terms the obligation exceeds that of the principal, the obligation is reducible in proportion to the principal obligation.

**22-01-13. Nonliability of guarantor on unlawful contract - Personal disability of principal.** A guarantor is not liable if the contract of the principal is unlawful, but the guarantor is liable notwithstanding any mere personal disability of the principal even though the disability is such as to make the contract void as against the principal.

**22-01-14. Revocation of continuing guaranty.** A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to such transactions which the guarantor does not renounce. If the contract of guaranty signed by the guarantor so states, the revocation must be in writing and delivered to the guarantee. If the contract does not so state, an oral attempt to revoke is not effective if at the time of the oral communication the guarantee requests delivery of a written revocation and confirms the request in writing.

**22-01-15. When guarantor exonerated.** A guarantor is exonerated, except insofar as the guarantor may be indemnified by the principal, if, by any act of the creditor without the consent of the guarantor:

1. The original obligation of the principal is altered in any respect; or
2. The remedies or rights of the creditor against the principal in respect thereto are impaired or suspended in any manner.

**22-01-16. Void or voidable promise of creditor does not exonerate.** A promise by a creditor, which for any cause is void or voidable by the creditor at the creditor's option, does not alter the obligation nor suspend nor impair the remedy within the meaning of section 22-01-15.

**22-01-17. Guarantor liability not revived after exoneration.** The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor does not restore the liability of a guarantor who has been exonerated by such agreement.

**22-01-18. Reduction of obligation by partial performance.** The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal, but does not otherwise affect it.

**22-01-19. Delay on creditor's part does not exonerate guarantor.** Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor.

**22-01-20. Indemnified guarantor - Liability.** A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

**22-01-21. Discharge of principal by operation of law does not constitute exoneration.** A guarantor is not exonerated by the discharge of the guarantor's principal by operation of law without the intervention or omission of the creditor.