

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 32 SURETYSHIP

CHAPTER 32
SURETYSHIP

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ARTICLE 1
WHO ARE SURETIES

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§ 32101. Surety.

A *surety* is one who at the request of another, and for the purpose of securing to him 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.

SOURCE: CC § 2831.

§ 32102. Apparent Principal may Show Himself to be Surety.

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

SOURCE: CC § 2832.

NOTE: No 1970 Civil Code §§ 2833-2835 existed.

ARTICLE 2
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- § 32201. Limit of Obligations.
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§ 32201. Limit of Obligations.

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

SOURCE: CC § 2836.

§ 32202. Rules of Interpretation.

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

SOURCE: CC § 2837.

§ 32203. Judgment Against Surety, Generally.

Notwithstanding the recovery of a judgment by a creditor against a surety, the latter still occupies the relation of surety.

SOURCE: CC § 2838.

§ 32204. Offer of Performance, Generally.

Performance of the principal obligation, or an offer of such performance, duly made as provided in this Code, exonerates a surety.

SOURCE: CC § 2839.

§ 32205. Creditors' Acts Discharging Surety.

A surety is exonerated --

1. In like manner with a guarantor;
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything when required by the surety, which it is his duty to do.

SOURCE: CC § 2840.

NOTE: No 1970 Civil Code §§ 2841-2843 existed.

ARTICLE 3
RIGHTS OF SURETIES

- § 32301. Rights Same as Guarantor.
- § 32302. Surety may Demand Proceedings Against Principal.
- § 32303. Principal to Perform Obligations When Due.
- § 32304. Principal Liable to Surety.
- § 32305. Surety Same as Creditor.
- § 32306. Surety Entitled to Benefits of Securities held by Creditors.
- § 32307. Principal's Property Taken First.

§ 32301. Rights Same as Guarantor.

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

SOURCE: CC § 2844.

§ 32302. Surety may Demand Proceedings Against Principal.

A surety may require his creditor to proceed against his principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

SOURCE: CC § 2845.

§ 32303. Principal to Perform Obligations When Due.

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

SOURCE: CC § 2846.

§ 32304. Principal Liable to Surety.

If a surety satisfied the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

SOURCE: CC § 2847.

§ 32305. Surety Same as Creditor.

A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

SOURCE: CC § 2848.

§ 32306. Surety Entitled to Benefits of Securities held by Creditors.

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

SOURCE: CC § 2849.

§ 32307. Principal's Property Taken First.

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

SOURCE: CC § 2850.

NOTE: No 1970 Civil Code §§ 2851-2853 existed.

**ARTICLE 4
RIGHTS OF CREDITORS**

§ 32401. Creditor Entitled to Surety's Securities.

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 may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

SOURCE: CC § 2854.

NOTE: No 1970 Civil Code §§ 2855-2857 existed.

Article V of Chapter II of Title XIII of the Civil Code of Guam, Letters of Credit, [§§ 2858-2866] was repealed by P.L. 13-15. The law on Letters of Credit is now found in the Uniform Commercial Code, Title 13 of the Guam Code Annotated.

No 1970 Civil Code §§ 2867-2871 existed.

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