

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 31 GUARANTY

CHAPTER 31
GUARANTY

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DEFINITION OF GUARANTY

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§ 31101. What is a Guaranty.

A *guaranty* is a promise to answer for the debt, default, or miscarriage of another person.

SOURCE: CC § 2787.

§ 31102. Knowledge of Principal Unnecessary.

A person may become guarantor even without the knowledge or consent of the principal.

SOURCE: CC § 2789.

NOTE: No 1970 Civil Code §§ 2789-2791 existed.

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§ 31201. Necessity of Consideration.

Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation.

SOURCE: CC § 2792.

§ 31202. Guaranty in Writing.

Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

SOURCE: CC § 2793.

§ 31203. For the Obligation of Another, Original.

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. Where 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. Where 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 such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;
3. Where the promise, being made for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy; or his person from imprisonment 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;

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4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

SOURCE: CC § 2794.

§ 31204. Acceptance of Guaranty.

A mere offer to guarantee is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

SOURCE: CC § 2795.

NOTE: No 1970 Civil Code §§ 2796-2798 existed.

ARTICLE 3
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§ 31301. Incomplete Contract Guaranteed.

§ 31302. Guaranty of Obligation.

§ 31303. Recovery of Guaranty.

§ 31304. Guarantor's Liability.

§ 31301. Incomplete Contract Guaranteed.

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

SOURCE: CC § 2799.

§ 31302. Guaranty of Obligation.

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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 taken with reasonable diligence.

SOURCE: CC § 2800.

§ 31303. Recovery of Guaranty.

A guaranty, such as is mentioned in the last section, is not discharged by an 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.

SOURCE: CC § 2801.

§ 31304. Guarantor's Liability.

In the cases mentioned in § 31302, the removal of the principal from Guam, 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.

SOURCE: CC § 2802.

NOTE: No 1970 Civil Code §§ 2803-2805 existed.

ARTICLE 4
LIABILITY OF GUARANTORS

- § 31401. How Guaranty to be Construed.
- § 31402. Liability, Guaranty of Payment.
- § 31403. Liability on Conditional Obligation.
- § 31404. Obligation Limited to Principals.
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§ 31401. How Guaranty to be Construed.

A Guaranty is deemed to be unconditional unless its terms import some condition precedent to the liability of the guarantor.

SOURCE: CC § 2806.

§ 31402. Liability, Guaranty of Payment.

A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

SOURCE: CC § 2807.

§ 31403. Liability on Conditional Obligation.

Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

SOURCE: CC § 2808.

§ 31404. Obligation Limited to Principals.

The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

SOURCE: CC § 2809.

§ 31405. Void on Illegal Contract.

A guarantor is not liable if the contract of the principal is unlawful, but he is liable, notwithstanding any mere personal inability of the principal, though the disability be such as to make the contract void against the principal.

SOURCE: CC § 2810.

NOTE: No 1970 Civil Code §§ 2811-2813 existed.

**ARTICLE 5
CONTINUING GUARANTY**

§ 31501. What is Continuing Guaranty.

§ 31502. Revocation of Continuing Guaranty.

§ 31501. What is Continuing Guaranty.

A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

SOURCE: CC § 2814.

§ 31502. 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 he does not renounce.

SOURCE: CC § 2815.

NOTE: No 1970 Civil Code §§ 2816-2818 existed.

**ARTICLE 6
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- § 31601. What Dealings with Debtor Exonerates Guarantor.
- § 31602. Void Promises.
- § 31603. Rescission of Alteration.
- § 31604. Part Performance.
- § 31605. Delay of Creditor does not Discharge Guarantor.
- § 31606. Guarantor Indemnified by Debtor, not Exonerated.
- § 31607. Discharge of Principal by Law, Guarantor not Released.

§ 31601. What Dealings with Debtor Exonerates Guarantor.

A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of creditor against the principal, in respect thereto, are in any way impaired or suspended.

SOURCE: CC § 2819.

§ 31602. Void Promises.

A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

SOURCE: CC § 2820.

§ 31603. Rescission of Alteration.

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.

SOURCE: CC § 2821.

§ 31604. Part 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.

SOURCE: CC § 2822.

§ 31605. Delay of Creditor does not Discharge 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.

SOURCE: CC § 2823.

§ 31606. Guarantor Indemnified by Debtor, not Exonerated.

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.

SOURCE: CC § 2824.

§ 31607. Discharge of Principal by Law, Guarantor not Released.

A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

SOURCE: CC § 2825.

NOTE: No 1970 Civil Code §§ 2826-2830 existed.

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