

**Chapter 19.72 RCW
SURETYSHIP**

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RCW 19.72.020 Individual sureties—Eligibility. Whenever any bond or recognizance is required, or permitted, by law to be made, given or filed, conditioned upon the doing or not doing of anything specified therein and to be signed by one or more persons as sureties, each of such sureties shall be a resident of this state; but no attorney-at-law, sheriff, clerk of any court of record, or other officer of such court, shall be permitted to become such surety. [1927 c 162 § 1; RRS § 958-1.]

RCW 19.72.030 Individual sureties—Number—Qualification. Each of such sureties shall have separate property worth the amount specified in the bond or recognizance, over and above all debts and liabilities, and exclusive of property exempt from execution, unless

the other spouse joins in the execution of the bond, in which case they must have community property of such required value; but in case such bond or recognizance is given in any action or proceeding commenced or pending in any court the judge, on justification, may allow more than two sureties to justify, severally, in amounts less than the amount specified, if the whole justification is equivalent to that of two sufficient sureties. [1987 c 202 § 185; 1973 1st ex.s. c 154 § 22; 1927 c 162 § 2; RRS § 958-2.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

RCW 19.72.040 Individual sureties—Examination—Approval. In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge finds the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect. [2000 c 171 § 58; 1987 c 202 § 186; 1927 c 162 § 3; RRS § 958-3. Formerly RCW 19.72.040, 19.72.050.]

Intent—1987 c 202: See note following RCW 2.04.190.

RCW 19.72.060 Corporate surety. See surety insurance: Chapter 48.28 RCW.

RCW 19.72.070 Subrogation of surety. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his or her official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer, or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his or her use. [2011 c 336 § 546; Code 1881 § 648; RRS § 978. Prior: 1877 p 134 § 651; 1869 p 151 § 588; 1854 p 211 § 430.]

RCW 19.72.080 Contribution among sureties. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in RCW 19.72.070 against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [Code 1881 § 649; RRS § 979. Prior: 1877 p 135 § 652; 1869 p 151 § 589; 1854 p 211 § 431.]

RCW 19.72.090 Default by surety—Indemnity. No surety or his or her representative shall confess judgment or suffer judgment by default in any case where he or she is notified that there is a valid defense, if the principal will enter himself or herself defendant to the action and tender to the surety or his or her representatives good security to indemnify him or her, to be approved by the court. [2011 c 336 § 547; Code 1881 § 650; RRS § 980. Prior: 1877 p 135 § 653; 1869 p 151 § 590; 1854 p 211 § 432.]

RCW 19.72.100 Notice to creditor to institute action. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract. [Code 1881 § 644; RRS § 974. Prior: 1877 p 134 § 647; 1869 p 150 § 584; 1854 p 210 § 426. FORMER PART OF SECTION: Code 1881 § 645; RRS § 975, now codified as RCW 19.72.101.]

RCW 19.72.101 Failure of creditor to proceed—Discharge of surety. If the creditor or obligee shall not proceed within a reasonable time to bring his or her action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [2011 c 336 § 548; Code 1881 § 645; RRS § 975. Prior: 1877 p 134 § 648; 1869 p 150 § 585; 1854 p 210 § 427. Formerly RCW 19.72.100, part.]

RCW 19.72.107 Surety bond—Liability limited. (1) Except under RCW 19.72.109, surety bond means any form of surety insurance as defined in RCW 48.11.080. A surety bond may not provide any other type of insurance coverage defined in chapter 48.11 RCW. Language in any statute, ordinance, contract, or surety bond to the contrary is void.

(2) A surety bond shall not be liable for damages based upon or arising out of any:

(a) Tortious injury, including death, to:

(i) Any person; or

(ii) Any real or personal property; or

(b) Failure to have any or adequate insurance coverage, even if liability under (a) or (b) of this subsection is imposed on the surety's principal or the surety by contract, surety bond, strict liability, ordinance, statute, or common law. [1992 c 115 § 1.]

RCW 19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions. Unless otherwise required by the context, words as used in RCW 19.72.110, and 19.72.130 shall mean:

(1) "Bond" shall mean and include any bond, undertaking or writing executed by a principal and surety, required by law from the principal as an official or employee of the state, or any county, municipal corporation or taxing district, or as guardian, executor, administrator, receiver or trustee, or as a licensee or permittee as a condition to the right to receive, hold or exercise any license, permit or franchise;

(2) "Surety" shall mean and include any person, firm or corporation that has executed as surety any bond. [1937 c 145 § 1; RRS § 9942. Formerly RCW 19.72.010.] [SLC-RO-17.]

RCW 19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof. Any surety upon any bond described in RCW 19.72.109 desiring to be released from subsequent liability and responsibility on any such bond shall serve upon the principal of such bond a written notice that on and after a certain date to be fixed in the notice, which shall be not less than ten days from the date of the service of the notice, the surety will withdraw as surety from such bond and shall serve a copy of such notice upon the official with whom such bond is filed not less than ten days prior to the date fixed in the notice as the date of termination of liability. If such principal is an individual and resides within the state of Washington, or is a corporation doing business in the state of Washington, such notice shall be personally served upon such individual, or if the principal is a firm or a corporation, such notice shall be served personally upon any person upon whom personal service of summons may be made under the existing laws of the state of Washington. If the principal is an individual and is not a resident of the state of Washington, or cannot be found therein, or if the principal is a foreign corporation, such notice shall be mailed by registered mail to the last known address of such principal, if any, which fact shall be shown by affidavit filed with the notice of withdrawal as hereinafter provided, and a copy of such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county of the residence of the official with whom such bond is filed. The date of the last publication of notice shall be not less than twenty days from the date stated therein as the date upon which the surety will withdraw from the bond. Proof of such service or publication shall be made by affidavit and filed with the official with whom the bond is filed at least ten days before the date fixed in the notice of withdrawal. [1937 c 145 § 2; RRS § 9943. Formerly RCW 19.72.110 and 19.72.120.] [SLC-RO-17.]

RCW 19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect. On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position, or trust in the case of a

public office, guardian, executor, administrator, receiver, or trustee shall become vacant and a successor shall be appointed as provided by law; and in case of a license, certificate, permit, or franchise, the same shall become null and void: PROVIDED, HOWEVER, That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his or her successor has been appointed and has qualified and taken over the fiduciary assets. Said notice of withdrawal shall be final and not subject to cancellation by said surety and said license, certificate, permit, or franchise can only be continued upon filing a new bond as above provided. [2011 c 336 § 549; 1937 c 145 § 3; RRS § 9944.] [SLC-RO-17.]

RCW 19.72.140 Suretyship—Raising issue as defendant. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff. [Code 1881 § 646; RRS § 976. Prior: 1877 p 134 § 649; 1869 p 150 § 586; 1854 p 210 § 428. FORMER PART OF SECTION: Code 1881 § 647; RRS § 977, now codified as RCW 19.72.141.]

RCW 19.72.141 Suretyship—Order to exhaust principal's property. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [Code 1881 § 647; RRS § 977. Prior: 1877 p 134 § 650; 1869 p 151 § 587; 1854 p 211 § 429. Formerly RCW 19.72.140, part.]

RCW 19.72.150 Heirs, etc., bound—Exception. The provisions of RCW 19.72.070 through 19.72.101, 19.72.140, 19.72.141 shall extend to heirs, executors, and administrators of deceased persons, but the provisions of RCW 19.72.101 shall not operate against persons under legal disabilities. [Code 1881 § 651; RRS § 981. Prior: 1877 p 135 § 654; 1869 p 151 § 591; 1854 p 211 § 433.]

RCW 19.72.160 Assets—Safekeeping agreements—Joint control of deposits. It shall be lawful for any party of whom a bond, undertaking, or other obligation is required, to agree with his or her surety or sureties for the deposit of any or all moneys and assets for which he or she and his or her surety or sureties are or may be held responsible, with a bank, savings bank, savings and loan association, 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: PROVIDED, HOWEVER, That such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of said bond. [2011 c 336 § 550; 1953 c 46 § 1.]

RCW 19.72.170 Bonds not to fail for want of form or substance.

No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond. [Code 1881 § 749; 1854 p 219 § 489; RRS § 777. Formerly RCW 10.19.120, part.] [SLC-RO-10.]

RCW 19.72.180 Successive recoveries on bond—Limitation.

In the event of the breach of the condition of any bond described in RCW 19.72.109, successive recoveries may be made thereon by any of the obligees thereof: PROVIDED, HOWEVER, That the total amount of all such recoveries, whether by one or more of such obligees, shall not exceed, in the aggregate, the penal sum specified in such bond. [1959 c 113 § 1.]

RCW 19.72.900 Application.

This chapter applies to all sureties, regardless of whether the sureties are compensated or uncompensated. [1992 c 115 § 2.]

RCW 19.72.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 55.]