

Part 1

Contracts of Suretyship

31A-22-101 Scope of part.

This Part 1, Contracts of Suretyship, applies to those suretyship obligations that are subject to Chapter 21, Insurance Contracts in General, and this chapter under Section 31A-21-101.

Amended by Chapter 90, 2004 General Session

31A-22-102 Bonds need not be under seal.

Under this code, no suretyship obligation is required to be under seal.

Enacted by Chapter 242, 1985 General Session

31A-22-103 Validity of surety bonds.

- (1) An undertaking to stand as surety which is issued by an insurer authorized to do a surety business in this state is complete compliance with any qualification requirement in Utah law respecting surety bonds. This undertaking is acceptable to any state official or court-appointed fiduciary authorized to receive or empowered to require the undertaking. A copy of a surety's certificate of authority, certified by the commissioner, is prima facie evidence that a surety was authorized to do business in this state on the date of the certificate.
- (2) No instrument executed by an insurer authorized to do a surety business is ineffective because of the insurer's failure to attach a copy of its certificate of authority to do business in this state. However, a public official or court-appointed fiduciary may, by prior written request, require that a copy of the insurer's certificate of authority, certified by the commissioner, be delivered. The insurer's failure to deliver a certified copy of the surety's certificate of authority within 10 days of receipt of the request is adequate grounds for refusing to accept the suretyship instrument. Failure to request a copy of the certificate of authority prior to accepting the surety instrument is a waiver of the right to request the certificate.
- (3) After executing an obligation of suretyship, no insurer may deny its corporate power to execute that type of instrument or to incur that type of liability in any proceeding against the insurer upon that instrument.

Amended by Chapter 204, 1986 General Session

31A-22-104 Indemnity agreements and security for benefit of surety.

- (1) Any insurer authorized to do a surety business may contract with any person, including a principal debtor under a suretyship obligation, for indemnity or security to protect the surety against losses. No indemnity agreement or provision of security by the principal debtor releases from or changes the liability of the principal debtor or of the sureties from the terms established in the bond. No surety may be indemnified through funds held by the principal debtor in a fiduciary capacity.
- (2) Security may be in any of the following forms:
 - (a) deposits of money or other property of the principal debtor which can be held by a responsible financial institution authorized by law to do that type of business, in a manner that prevents withdrawal or alienation of the money or other property without the written consent of the

sureties or an order of a court of competent jurisdiction made after notice is given to the sureties and a hearing is held as directed by the court; or

(b) security interests in real or personal property perfected under the laws of Utah.

(3) This section does not affect a surety's common-law right to reimbursement, subrogation, or exoneration.

Amended by Chapter 218, 1987 General Session

31A-22-105 Common control of fiduciary funds permissible.

Any fiduciary from whom a bond, undertaking, or other obligation is required may agree and arrange with his sureties for the deposit for safekeeping of any and all assets for which he is responsible with a depository institution authorized by law to hold the assets, in a manner which prevents the withdrawal or alienation of any part of the property without the written consent of the sureties, or an order of the court made after notice is given to the sureties and a hearing is held as directed by the court. This deposit agreement does not release or change the fiduciary responsibility of the principal, or the liability of the principal or sureties as established under the bond.

Enacted by Chapter 242, 1985 General Session

31A-22-106 Petition of fiduciary's surety to be relieved from liability.

Any surety securing others against losses caused by breach of duty by a fiduciary, herein called "principal," may petition the court where the surety's obligation is filed or which has jurisdiction over the principal, for an order relieving the surety from further liability for the acts or omissions of the principal. This order may be issued only after the court is satisfied that the principal has accounted to the petitioner and has obtained a new surety. The surety relieved from liability shall refund any unearned part of the premium paid which the surety held as consideration for its promise to be surety. To relieve a surety from liability, the court may order the principal to account, to obtain a new surety, or to refrain from acting except to preserve property held in a fiduciary capacity.

Enacted by Chapter 242, 1985 General Session

31A-22-107 Bond premium allowable expense of fiduciary.

Any fiduciary required by law, or the court in providing a surety to secure the fiduciary's performance, may include as part of the expense of executing the fiduciary responsibility a reasonable premium paid to a surety for becoming the fiduciary's surety. However, the court may not allow an expense allowance greater than the larger of 1% of the surety's maximum obligation or \$25.

Enacted by Chapter 242, 1985 General Session