

CIVIL PRACTICE AND REMEDIES CODE  
TITLE 2. TRIAL, JUDGMENT, AND APPEAL  
SUBTITLE C. JUDGMENTS  
CHAPTER 43. PRINCIPAL AND SURETY

Sec. 43.001. DEFINITION. In this chapter, "surety" includes:

(1) an endorser, a guarantor, and a drawer of a draft that has been accepted; and

(2) every other form of suretyship, whether created by express contract or by operation of law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.11, eff. April 1, 2009.

Sec. 43.002. SUIT ON ACCRUED RIGHT OF ACTION. (a) When a right of action accrues on a contract for the payment of money or performance of an act, a surety on the contract may, by written notice, require the obligee to without delay bring a suit on the contract.

(b) A surety who provides notice to an obligee under Subsection (a) is discharged from all liability on the contract if the obligee:

(1) is not under a legal disability; and

(2) does not:

(A) bring a suit on the contract during:

(i) the first term of court after receipt of the notice; or

(ii) the second term of court if good cause is shown for the delay; or

(B) prosecute the suit to judgment and execution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.11, eff. April 1, 2009.

Sec. 43.003. PRIORITY OF EXECUTION. (a) If a judgment granted against two or more defendants finds a suretyship relationship between or among the defendants, the court shall order the sheriff to levy the execution in the following order:

(1) against the principal's property located in the county where the judgment was granted;

(2) if the sheriff cannot find enough of the principal's property in that county to satisfy the execution, against as much of the principal's property as the sheriff finds; and

(3) against as much of the surety's property as is necessary to make up the balance of the amount shown in the writ of execution.

(b) The clerk shall note the order to the sheriff on the writ of execution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.11, eff. April 1, 2009.

Sec. 43.004. SUBROGATION RIGHTS OF SURETY. (a) A judgment is not discharged by a surety's payment of the judgment in whole or part if the payment:

(1) is compelled; or

(2) if made voluntarily, is applied to the judgment because of the suretyship relationship.

(b) A surety who pays on a judgment as described by Subsection (a) is subrogated to all of the judgment creditor's rights under the judgment. A subrogated surety is entitled to execution on the judgment against:

(1) the principal's property for the amount of the surety's payment, plus interest and costs; and

(2) if there is more than one surety, both the principal's property and the property of the cosurety or cosureties for the amount by which the surety's payment exceeds the surety's proportionate share of the judgment, plus interest and costs.

(c) A subrogated surety seeking execution on the judgment under Subsection (b) shall apply for execution to the clerk or court. The execution shall be levied, collected, and returned as in other cases.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.11, eff. April 1, 2009.

Sec. 43.005. OFFICER TREATED AS SURETY. (a) An officer has the rights of a surety provided by Section 43.004 if the officer is compelled to pay a judgment in whole or part because of the officer's default.

(b) An officer does not have the rights of a surety provided by Section 43.004 if the officer:

(1) does not pay over money collected; or

(2) wastes property that is levied on by the officer or is in the officer's possession.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.11, eff. April 1, 2009.