# Important considerations before signing surety

Surety is usually signed on behalf of a company by a director or shareholder, and in some instances by a spouse or friend, in favour of a creditor. This ensures that if the company cannot make good on its contractual duty of payment, then the creditor may approach the surety to demand payment on the company's behalf.

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A surety is effectively a contract between the creditor and the surety him- or herself and is usually worded in a manner so as to bind the surety for any given amount and for an indefinite period in favour of the creditor. The South African Law of Contract allows for contracting parties to do so on terms that they deem fit. This is referred to as contractual freedom, meaning that parties may contract on any terms of their choosing with very little limitation, legally speaking, as long as the Suretyship document complies with certain statutory formalities.

“The surety should read the wording carefully and be equipped to understand it, so as to request changes as it is purposefully designed in favour of the creditor,” advises PJ Veldhuizen, MD of specialist, commercial law firm Gillan & Veldhuizen.

As an example, a husband and wife married out of community of property buy a house together which is in his name, but the bank requires that the wife sign surety. A standard suretyship agreement by financial houses stipulates that suretyship is signed for the debtor in his capacity as debtor for past, future and current debts that he may incur whether as debtor or surety for another debtor.

Fast forward a few years, the house has been sold and they get divorced. He starts a business and borrows money from the same bank, signing surety for the company, as is standard practice. The company then gets into trouble and the surety agreement the wife signed 16 years ago in respect of the house, is still valid and as such, she is now bound by the surety that had no limits to the time or amount that the bank could claim.

## How can I ensure protection when signing a surety?

When it comes to signing a suretyship you need to be very sure about what you are signing up for. The consequence of signing surety for a debt is that you can be and will be liable to pay the debt if the principal debtor does not, as per the terms of the surety agreement. And, just because you are unaware of the terms of a subsequent contract, you cannot escape liability.

You have to protect yourself at all costs, says Veldhuizen. The surety agreement should be limited to a stipulated amount and in respect of a stipulated debt.

Cancellation of a surety will have to be done in accordance with the agreement itself. Usually, once the debtor has fulfilled its duties in terms of the agreement, the surety should be able to cancel the suretyship. Keeping a record of all sureties you enter into that you can update and check regularly will go a long way to avoiding unnecessary liability.

## Be sure

It is important that you go over the document with a fine-tooth comb before you sign it, and obtain independent, legal advice if you are not sure of the consequences of certain terms.

Furthermore, if you are signing an agreement as a director or member on behalf of a company or close corporation, be sure to scrutinise the agreement because you might be held liable in your personal capacity as well.

“Signing surety doesn’t have to be a life sentence,” says Veldhuizen. It is always advisable to seek legal counsel to assess your potential liability in a suretyship and to ensure that you do not enter into any agreements that may negatively affect you in the long run he advises.