

# CODE OF VIRGINIA



## Title 49

Oaths, Affirmations and Bonds

# **Title 49 - OATHS, AFFIRMATIONS AND BONDS**

## **Chapter 1 - OATHS AND AFFIRMATIONS**

### **§ 49-1. Form of general oath required of officers**

Every person before entering upon the discharge of any function as an officer of this Commonwealth shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as \_\_\_\_\_ according to the best of my ability, (so help me God)."

Any person reappointed to any office filled by gubernatorial appointment for a subsequent term to begin immediately upon expiration of an existing term shall not be required to renew the oath set out in this section; however, the original oath taken shall continue in effect with respect to the subsequent term.

Const., § 34; Code 1919, § 269; 1936, p. 49; 1971, Ex. Sess., c. 16; 1980, c. 320; 1988, c. 255.

### **§ 49-2. Form of oath for out-of-state commissioners**

Where a person residing in another state is appointed a commissioner by the Governor, he shall only be required to take and subscribe the following oath or affirmation:

"I, \_\_\_\_\_, swear (or affirm) that I will faithfully perform the duties of commissioner to the best of my ability. So help me God."

Code 1919, § 272.

### **§ 49-3. Who may administer oaths to officers**

The oaths to be taken by a person elected a member of either house of the General Assembly shall be administered by the clerk or presiding officer of the houses, respectively, or a notary. Those to be taken by any judge of any court of record elected by the General Assembly shall be administered in a court of record, or by any judge, or by any officer authorized by law to administer an oath. Those to be taken by any person elected or appointed an officer of either house of the General Assembly shall be administered by the person and in the manner prescribed by the rules of such house. The oaths to be taken by a person elected or appointed to any other office or post shall, except in cases in which it may be otherwise directed by law, be administered by the clerk of a court of record, by any judge, by a Commissioner or clerk of the State Corporation Commission or by the Secretary of the Commonwealth. A magistrate or person holding a comparable position in another state may administer the oaths to be taken by a commissioner or other person residing therein.

Whenever a person required to take an oath of office is a member of the United States Armed Forces and is on active duty, or is deployed by the United States Department of Defense as a civilian, the oath set forth in § [49-1](#) may be administered by a notary public.

Code 1919, § 273; 1968, c. 639; 1983, c. 228; 1986, c. 255; 1988, c. 255; 1992, c. 390; 1992, Sp. Sess., cc. 1, 2; 2008, cc. [57](#), [713](#).

**§ 49-4. Magistrates and other officers who may administer oaths and take affidavits**

Any oath or affidavit required by law, which is not of such nature that it must be made in court, may be administered by a magistrate, a notary, a commissioner in chancery, a commissioner appointed by the Governor, a judge or clerk or deputy clerk of a court, a commissioner or clerk or deputy clerk of the State Corporation Commission, or clerks of governing bodies of local governments. In case of a survey directed by a court in a cause therein pending, an oath or affidavit may be administered by or before the surveyor directed to execute the order of survey.

Code 1919, § 274; 1932, p. 339; 1968, c. 639; 1970, c. 783; 1986, c. 255.

**§ 49-5. Officer of another state or country may take affidavit; authentication**

An affidavit may also be made before any officer of any state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by such officer and there be annexed to it a certificate of the clerk or any other officer of a court of record of such state or country, under an official seal, verifying the genuineness of the signature of the first mentioned officer and his authority to administer an oath, except that when such affidavit is made before a notary public of such other state or country the same shall be deemed and taken to be duly authenticated if it be subscribed by such notary with his official seal attached without being certified to by any clerk or other officer of a court of record.

Code 1919, § 275.

**§ 49-6. Oath or affidavit required of purchaser of fuel, etc**

Whenever the purchaser of any fuel, provisions or other thing, whether of like kind with fuel and provisions or not, is required to make oath or affidavit as to the quantity or value of such fuel, provisions or other thing then in the possession of such purchaser, or to make any other oath or affidavit in relation thereto before he is allowed to purchase the same, such oath or affidavit may be administered by the seller with like effect, and with the same penalties for false swearing, as if the same had been administered by a magistrate.

1918, p. 266; Michie Code 1942, § 275a; 2008, cc. [551](#), [691](#).

**§ 49-7. Affidavits for corporations, partnerships, and other entities**

An affidavit filed for a corporation or other entity may be made by its president, vice-president, general manager, cashier, treasurer, a director or attorney without any special authorization therefor, or by any person authorized by a majority of its stockholders, directors, partners or members to make the same.

Code 1919, § 276; 1986, c. 616.

#### **§ 49-8. Where fact of oaths having been taken is recorded**

When a person elected or appointed to any office or post takes the oaths required of him in a court of record, a transcript from the record of the court, stating the fact of their having been taken, and when he takes such oaths before a judge, or other person, a certificate of the person administering the same, stating the fact of their having been taken, shall be obtained by the person taking the same, and be by him delivered for record as follows -- that is to say: When an oath is taken by the Governor, Lieutenant Governor, or any other officer of the general state government or member of any board or commission specifically mentioned in the Constitution, or by any officer or employee of the general state government or officer or member or employee of any state board, commission, division, bureau, institution or agency of whom an oath is required by law, the record shall, unless otherwise provided by law, be kept in the office of the Secretary of the Commonwealth. When an oath is taken by a judge, the record shall be in the first court in which he sits. When taken by an officer appointed by or belonging to a court, it shall be in the said court or in such other court as may be provided by law. In the case of a member or officer of either house of the General Assembly, the record shall be on the journal of the house in which he qualifies, or in such other manner as that house may prescribe by its rules. In the case of any other officer, unless it be otherwise provided, the record shall be in the court of the county or corporation in which the duties are to be discharged; or, if his duties are not to be discharged wholly in one county or corporation, then in the court of the county or corporation in which such officer resides.

Code 1919, § 277.

#### **§ 49-9. When affirmation may be made**

If any person required to take an oath shall declare that he has religious scruples as to the propriety of taking it, he may make a solemn affirmation, which shall in all respects have the same effect as an oath.

Code 1919, § 278.

#### **§ 49-10. Use of Bible in administration of oaths**

No officer of this Commonwealth, or any political subdivision thereof, shall, in administering an oath in pursuance of law, require or request any person taking the oath to kiss the Holy Bible, or any book or books thereof, but persons being sworn for any purpose may be required to place their hand on the Holy Bible.

Any officer violating this section shall be subject to a fine of \$100.

1920, p. 54; Michie Code 1942, § 278a.

#### **§ 49-11. Failure to take oath**

If any officer or person mentioned in § [49-1](#) shall act in his office or function before taking such oaths as are required by law, he shall forfeit not less than \$100 nor more than \$1,000.

Code 1919, § 288.

## Chapter 2 - BONDS TAKEN BY COURTS AND OFFICERS

### **§ 49-12. Provisions and conditions; acknowledgment and recordation; duty of clerk when taken in pending cause**

Every bond required by law to be taken or approved by or given before any court, board or officer, unless otherwise provided, shall be made payable to the Commonwealth of Virginia, with surety deemed sufficient by such court, board or officer. Every such bond required of any person appointed to or undertaking any office, post or trust, and every bond required to be taken of any person by an order or decree of court, unless otherwise provided, shall be with condition for the faithful discharge by him of the duties of his office, post or trust. When such bond is required to be taken or approved by or before the Governor, a court or the clerk of a court, it shall be proved or acknowledged before the Governor or court or clerk, as the case may be, and recorded by the Secretary of the Commonwealth in the first case, or by the clerk of the court in the other cases. When the bond is taken under an order or decree in a pending cause a certified copy thereof shall be filed in the cause by the clerk and charged as costs therein, and upon his failure to file such copy, he shall be fined ten dollars. Every such bond shall contain, as to the respective obligors, such a waiver as is provided for in § [34-22](#). In any such bond the liability of the surety or sureties may be limited to such sum or sums as they may respectively require.

Code 1919, § 279.

### **§ 49-13. How new or additional bonds required and given; failure to give**

The proper court, whenever, in its opinion, it may be necessary for the protection of the public interests, may order any officer, of whom a bond is required by law, to give a new bond, or a bond in addition to one already given, within such time, not less than ten nor more than thirty days, as the court may prescribe; but the officer shall be served with a copy of a summons or rule, at least ten days before the order is made, citing him to appear and show cause against the same. The summons or rule shall be awarded whenever the court deems it proper, or on application to the court by the attorney for the Commonwealth, or, if the application is to the Supreme Court or the Court of Appeals, by the Attorney General. Such order shall be made by the circuit court of the county or city, if such officer is an officer of such county or city or any district thereof or by the Supreme Court or Court of Appeals, if he is a clerk of either court. Any new bond or additional bond given before the Supreme Court or the Court of Appeals shall be certified and transmitted to the clerk, to whom the original bond is required to be delivered, to be recorded by him. The bond may be given before the court requiring it or the judge thereof in vacation, or, if the court is the Supreme Court or the Court of Appeals, before either court or any three of the judges thereof in vacation; and when the bond is given in vacation, it shall be certified and returned by the judge or judges, before whom it is given, to the clerk of the proper court, who shall file and record the same in his office. If any officer fail or refuse to give the bond so required of him within the time prescribed, his office shall be deemed vacant.

Code 1919, c. 280; 1984, c. 703; 2002, c. [858](#).

#### **§ 49-14. Effect of giving new or additional bond**

When it is provided by any section of this Code, or shall be provided by any subsequent statute, that any new bond, or bond in addition to one already given, may be required to be given by any officer, fiduciary or any other person, if such new bond, when required, be given and accepted, the sureties in the former bond and their estates shall, except in cases where it is otherwise expressly provided, be discharged from all liability for any breach of duty committed by their principal after such new bond is so given and accepted. If such additional bond, when required, be given and accepted, the former bond shall continue in force and have the same effect in all respects as if such additional bond had not been required, given and accepted, except that in such case the sureties in the additional bond shall be jointly liable with the sureties in the former bond for any breach of duty committed by their principal after such additional bond was so given and accepted.

Code 1919, § 281.

#### **§ 49-15. Surety companies may be accepted as sureties on bonds; rights and liabilities**

Any company with a paid-up cash capital of not less than \$250,000, incorporated and organized under the laws of any state of the United States or foreign country, for the purpose of transacting business as surety on obligations of persons or corporations, and which has complied with all the requirements of law regulating the admission of such companies to transact business in this Commonwealth, shall, upon production of evidence of solvency and credit satisfactory to the court or judge or other officer authorized to approve such bond, be accepted as surety upon the bond of any person or corporation required by the laws of this Commonwealth, or by any court, judge or other public officer or board or organization, to execute a bond with surety or sureties. If such surety company shall furnish satisfactory evidence of its ability to provide all the security required as aforesaid, no additional surety shall be exacted. Such surety shall be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals, and shall have all the rights, remedies and reliefs of an individual guarantor, indemnitor or surety, and be subject to all the liabilities thereof.

Code 1919, § 282.

#### **§ 49-16. Allowance of expense of procuring corporate surety**

Any court, judge or other officer whose duty it is to pass upon the account of any person or corporation required to execute a bond with surety or sureties, as hereinbefore provided, shall, whenever any such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of securing such surety; but this allowance shall not be made to any state, county, or municipal officer.

Code 1919, § 283.

#### **§ 49-17. Surety company estopped to deny power to execute instrument or assume liability**

Any such company which shall execute any bond as surety under the provisions of this chapter shall be estopped, in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability.

Code 1919, § 284.

#### **§ 49-18. Agent or attorney of surety company signing without seal**

If any company organized and incorporated under the laws of this Commonwealth, or of any other state in the United States, or of any foreign country, for the purpose of transacting business as surety on obligations for persons, after having complied with the requirements of law regulating the admission of such companies in this Commonwealth, shall give any power of attorney, general or special, under its regular corporate seal, to any agent or attorney in fact to sign its corporate name as surety to any obligation, official or otherwise, required by the laws of this Commonwealth, or by any judge, court or other public officer, organization or board, and such power of attorney shall state that such signing by such agent or attorney in fact without the seal of such corporation shall have the same force and effect as if the corporate seal of such corporation was affixed to such obligations, then any and all such obligations, so signed by such agent or attorney in fact without the seal of such corporation, whether the agent or attorney in fact has used a scroll by way of seal or not, or whether the word "seal" is used in the body of the instrument or not, shall, for all purposes, have the same force and effect, and be as binding in all respects upon such corporation, as if the seal of such corporation had been duly and regularly affixed thereto.

Code 1919, § 285.

#### **§ 49-18.1. Seal not required**

In any instance in which the provisions of this Code require a bond with surety, neither a seal nor a facsimile of a seal shall be required for the validity thereof.

1979, c. 211.

#### **§ 49-19. Remedy on bonds**

Suits, or motions as provided by § [8.01-227](#), may be prosecuted from time to time upon any bond mentioned in §§ [49-12](#) and [49-13](#), in the name of the Commonwealth, for the benefit of the Commonwealth, a county or any persons injured by any breach of the condition of such bond, as often as any such breach may be alleged, until damages shall be recovered for such breaches equal to the penalty of the bond.

Code 1919, § 286.

#### **§ 49-20. How bonds given in civil suits made payable**

Any bond required by law to be given upon an injunction, appeal, writ of error, supersedeas or other proceeding in a civil suit may be payable to the party entitled to the benefit thereof, notwithstanding anything contained in § [49-12](#).

Code 1919, § 287.

### **§ 49-21. Failure to give bond**

If any officer or person mentioned in § [49-12](#) shall act in his office, post or trust before giving such bonds as are required by law, he shall forfeit not less than \$100 nor more than \$1,000.

Code 1919, § 288.

## **Chapter 3 - RELIEF OF SURETIES**

### **§ 49-22. Sureties on official bonds**

When the surety, or his committee or personal representative, of any officer, or commissioner or receiver under decree of a court, required to give bond shall petition the court by which the bond is taken, or in which, or in the clerk's office of which, it is recorded, or the circuit court of the county or city, in which, where the bond of such officer is not taken by or filed in any court or clerk's office, the officer resides, to be relieved from the suretyship, such court shall, on proof of reasonable notice of his intended motion, require such officer, commissioner or receiver to give a new bond in the same manner as if none had been given by him. The surety in any bond required to be approved by the Governor shall file his petition in the Circuit Court of the City of Richmond, and the surety in the bond of any clerk of the Supreme Court or the Court of Appeals shall file his petition in the court for which his principal is the clerk.

Code 1919, § 5771; 1984, c. 703.

### **§ 49-23. Surety on bond given under decree of court for payment of money**

A surety, or his committee, or personal representative, in a bond, other than the bond of a commissioner or receiver, given under a decree or order of a court for the payment of money, if no suit be pending for the recovery thereof, may file his petition in the court which rendered or made the decree or order, or to which the case has been removed, for a bond of indemnity. The petition shall state that the petitioner has reason to believe that he, or the estate he represents, is likely to suffer pecuniary loss in consequence of such suretyship and the grounds of such belief and shall be verified by affidavit. Upon the filing of the petition and proof of reasonable notice to the principal in the bond and all the parties in interest, the court may require such indemnifying bond, with satisfactory sureties, to be given within a time to be prescribed. If such bond be given, it shall be with condition and shall bind the obligors therein to indemnify the sureties in the former bond against all loss or damage in consequence of such former bond. If such bond be not given, the court, on the request of such surety, personal representative or committee, if the money be due and payable, or whenever the same becomes due and payable, shall order suit to be brought for its recovery and prosecuted to judgment and by execution.

Code 1919, § 5776.

### **§ 49-24. Failure of officer to give new bond**

If any such officer, commissioner or receiver, being so required, shall fail to give a new bond, as provided in § [49-22](#), within the time required by the court, he shall be deemed to be guilty of a breach of duty, and shall be forthwith removed from his office or trust.

Code 1919, § 5773.

**§ 49-25. Surety may require creditor to sue**

The surety, guarantor or endorser, or his committee or personal representative, of any person bound by any contract may, if a right of action has accrued thereon, require the creditor or his committee or personal representative, by notice in writing, to institute suit thereon, and if he be bound in a bond with a condition, or for the performance of some collateral undertaking, he shall also specify in such requirement the breach of the condition or undertaking for which he requires suit to be brought. Such written notice shall also notify the creditor, his committee or personal representative, that failure to act will result in the loss of the surety, guarantor or endorser, his committee or personal representative as security for the debt in accordance with § [49-26](#).

Code 1919, § 5774; 1979, c. 664.

**§ 49-26. Effect of failure of creditor to sue**

If such creditor, or his committee or personal representative, shall not, within thirty days after such requirement, institute suit against every party to such contract who is resident in this Commonwealth and not insolvent and prosecute the same with due diligence to judgment and by execution, he shall forfeit his right to demand of such surety, guarantor or endorser or his estate, and of his cosureties and their estates, the money due by any such contract for the payment of money, or the damages sustained by any breach of the collateral condition or undertaking specified as aforesaid; but the conditions, rights and remedies against the principal debtor shall remain unimpaired thereby.

Code 1919, § 5775; 1979, c. 664.

**§ 49-27. Surety's remedy against principal for money paid**

If any person liable as bail, surety, guarantor or endorser, or any sheriff liable for not taking sufficient bail, or the committee, heir or personal representative of any so liable, pay, in whole or in part, such note, bond or other demand, or any judgment, decree or execution rendered or awarded on account of such liability, the person having a right of action for the amount so paid may, by motion in the court in which the judgment, decree or execution was rendered or awarded, obtain a judgment or decree against any person against whom such right of action exists for the amount so paid, with interest from the time of payment, and five per centum damages on such amount. The person so paying, in whole or in part, any such judgment, decree or execution rendered or awarded on account of such liability, or any such note, bond or other demand, shall, by operation of law, in addition to the remedy above provided, be substituted to and become the owner of all of the rights and remedies of the creditor for the enforcement and collection of the amount or amounts so paid, and shall be deemed the assignee thereof. Executions, or other legal process to which the principal creditor was entitled, may be issued on any such judgment or decree in the name of the original creditor against the person primarily liable for the benefit of the person secondarily liable to the extent to which he has satisfied the original creditor.

But nothing in this section shall be construed to impair or affect in any way the security of the original creditor, or his rights and remedies as to any balance which may be due him. The provisions of this section are cumulative and are intended to protect the rights of any person secondarily liable to the extent to which he has satisfied the obligation of the person primarily liable. All assignments heretofore made of judgments and decrees to persons secondarily liable are hereby validated, and upon the same executions may be issued as hereinbefore provided.

Code 1919, § 5777; 1926, p. 854.

**§ 49-28. Confession of judgment by surety or failure to notify principal to defend**

If any such surety, other than bail, or his committee, heir or personal representative, confess judgment, or suffer judgment to go against him by default, without giving notice to his principal, if he be a resident of the Commonwealth, or his committee or personal representative, to defend the suit, and after such principal offers to defend the suit, and tenders counter security, approved by the court in which the suit is pending, the principal, or his committee, heirs or representative, may have the benefit of every defense against the motion or suit of such surety, or his committee, representative or heirs, against him that he might have had against the creditor.

Code 1919, § 5778.

**§ 49-29. Failure of principal to offer to defend suit against surety**

In all cases in which any principal debtor, or his committee, representative or heirs, knowing of the pendency of any suit against his surety, or the committee, heir or personal representative of such surety, shall not offer to defend such suit, he shall be precluded from making any defense to the claim of the surety which he might have made against the suit of the creditor.

Code 1919, § 5778.