CHAPTER 9

Separate Composition of One of Joint Debtors

**SECTION 32‑9‑10.** Separate composition of indebtedness by join debtor.

 Any joint debtor may make a separate composition with his creditor as prescribed in this section. Such composition shall discharge the debtor making it and him only. The creditor must execute to the compounding debtor a release of the indebtedness or other instrument exonerating him therefrom. A member of a partnership cannot thus compound for a partnership debt until the partnership has been dissolved by mutual consent or otherwise. In that case the instrument must release or exonerate him from all liability incurred by reason of his connection with the partnership. An instrument given pursuant to this section shall not impair the creditor’s right of action against any other joint debtor or his right to take any other proceeding against the latter unless an intent to release or exonerate him appears affirmatively upon the face thereof.

HISTORY: 1962 Code Section 11‑251; 1952 Code Section 11‑251; 1942 Code Section 7038; 1932 Code Section 7038; Civ. C. ‘22 Section 5598; Civ. C. ‘12 Section 3944; Civ. C. ‘02 Section 2841; R. S. 2311; 1883 (18) 431.

CROSS REFERENCES

Assignments for the benefit of creditors, see Sections 27‑25‑10 et seq.

Consent of State to bankruptcy of or compositions by local governmental units, see Section 6‑1‑10.

Library References

Debtor and Creditor 10.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 84 to 92.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accord & Satisfaction Section 5, Composition‑Settlement by Joint Obligors.

S.C. Jur. Release Section 12, Joint Obligors.

Treatises and Practice Aids

Williston on Contracts Section 7:29, Promise to Pay or Payment of Debts; Liquidated Debts‑Promise of Payment or Payment of Part of Debt by One Joint Debtor.

NOTES OF DECISIONS

In general 1

1. In general

A guardian’s release of coguarantors on bond and mortgage belonging to ward is not a “compounding of debt” under this section. Poole v. Bradham (S.C. 1927) 143 S.C. 156, 141 S.E. 267. Guaranty 63

Joint guarantors are “joint debtors” within the meaning of this section. Poole v. Bradham (S.C. 1927) 143 S.C. 156, 141 S.E. 267.

Applied in Meyer v. Bouchier (S.C. 1917) 107 S.C. 254, 92 S.E. 471.

Release of surety does not release guarantor after judgment against all parties, thus where defendant signs note with one as a guarantor who has also signed the note with the principal as surety and judgment is obtained against all three, the parties are joint debtors under this section and a composition with the surety‑guarantor does not operate to discharge the defendant‑guarantor. Symmes v. Cauble (S.C. 1905) 72 S.C. 330, 51 S.E. 862.

The release, under this section, of the maker of a note does not operate to release other persons jointly liable with the maker. Ragsdale v. Winnsboro Nat. Bank (S.C. 1896) 45 S.C. 575, 23 S.E. 947.

**SECTION 32‑9‑20.** Satisfying judgment recovered.

 An instrument given pursuant to Section 32‑9‑10 shall be deemed a satisfaction piece for the purpose of satisfying any judgment recovered upon an indebtedness released or discharged thereby as far as the judgment affects the compounding debtor. When a judgment is satisfied thereby a special entry must be made upon the judgment roll to the effect that the judgment is satisfied as to the compounding debtor only.

HISTORY: 1962 Code Section 11‑252; 1952 Code Section 11‑252; 1942 Code Section 7039; 1932 Code Section 7039; Civ. C. ‘22 Section 5599; Civ. C. ‘12 Section 3945; Civ. C. ‘02 Section 2842; R. S. 2312; 1883 (18) 431.

Library References

Debtor and Creditor 10.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 84 to 92.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accord & Satisfaction Section 5, Composition‑Settlement by Joint Obligors.

S.C. Jur. Release Section 12, Joint Obligors.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Symmes v. Cauble (S.C. 1905) 72 S.C. 330, 51 S.E. 862.

**SECTION 32‑9‑30.** Rights of joint debtor who has not compounded.

 When a joint debtor has thus compounded a joint debtor who has not compounded may make any defense or counterclaim or have any other relief as against the creditor to which he would have been entitled if the composition had not been made. He may require the compounding debtor to contribute his ratable proportion of the joint debt or of the partnership debts, as the case may be, as if the latter had not been discharged. And the debtor who has not compounded with his creditor may set up by way of discount against such creditor the amount compounded by his joint debtor.

HISTORY: 1962 Code Section 11‑253; 1952 Code Section 11‑253; 1942 Code Section 7040; 1932 Code Section 7040; Civ. C. ‘22 Section 5600; Civ. C. ‘12 Section 3946; Civ. C. ‘02 Section 2843; R. S. 2313; 1883 (18) 431.

Library References

Debtor and Creditor 10.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 84 to 92.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accord & Satisfaction Section 5, Composition‑Settlement by Joint Obligors.

Treatises and Practice Aids

Williston on Contracts Section 7:29, Promise to Pay or Payment of Debts; Liquidated Debts‑Promise of Payment or Payment of Part of Debt by One Joint Debtor.

NOTES OF DECISIONS

In general 1

1. In general

Amount of creditor’s recovery from debtor not released. Where a creditor makes a separate composition with a joint debtor he can recover the full amount of the debt from the other joint debtor less the amount actually paid by the first joint debtor. Meyer v. Bouchier (S.C. 1917) 107 S.C. 254, 92 S.E. 471.

Cited in Symmes v. Cauble (S.C. 1905) 72 S.C. 330, 51 S.E. 862.