

Do both spouses have to sign a suretyship where they are married in community of property?

Yes, both spouses do have to sign in terms of section 15(h) of the Matrimonial Property Act, except where the signing of the suretyship is in the ordinary course of the profession, trade or business of the spouse signing. If the said exception does not apply and only one of the spouses signed the suretyship, it would be invalid and therefore not enforceable by the creditor.

It is therefore important for any creditor, who gives credit based on amongst others a suretyship as security, to establish the marital regime of the surety. If the surety is married out of community of property, this fact should be stated and warranted by the surety in the suretyship agreement and proof thereof should preferably be obtained, for example in the form of a copy of the anti-nuptial contract. If the surety is married in community of property, both spouses should sign.

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