

GIVING A GUARANTEE

These notes are a very basic guideline to the main obligations people undertake when giving a guarantee. We have referred to here to the guarantee of a loan, but much of the information also relates to the guarantee of a lease or other contract. These notes are not tailored to your own individual situation which needs to be looked at in detail before advice can be given.

The guarantee is unconditional

Generally you unconditionally and irrevocably guarantee to the lender the payment of all money owed to the lender by the person you have guaranteed (the debtor). If the debtor doesn't pay money it owes to the lender you must make payment straight away whether or not the lender has asked you to. You may not know or be advised there has been a default. You have no defence to the guarantee irrespective of any action or omission by the lender with regard to you or the debtor.

The guarantee is unlimited

The guarantee is often unlimited. That means you are liable for all obligations and money owed to the lender.

The guarantee may be limited to a specific dollar amount. In that case it usually also includes 2 or 3 years interest on the guarantee amount, plus the costs and expenses incurred by the lender in enforcing and obtaining payment plus any amount claimed by the lender for default interest and any exchange rate loss incurred by the lender in respect of payments received in other currency.

The guarantee is usually not limited to just the one transaction. It usually covers all obligations up to the stated amount. Obligations may include such things as letters of credit and guarantees given by the debtor.

Whether you are liable for the full amount

If there are two or more people named as guarantor your obligations are "joint and several". This means that each of you is potentially separately liable for the full amount. The lender has the right to recover from you either jointly or separately at its discretion.

Whether you can recover any amount you have to pay from the debtor

Until the lender is paid in full you have no rights of subrogation. This means you may have no rights or only limited rights to take either a security from the debtor or to take steps to recover money owed by the debtor to you.

No control over any increase to the debt

The lender may make further advances to the debtor, or the debtor's obligations to the lender may be increased without your knowledge or consent, although where you have given a limited guarantee that limit would still apply.

You rights of cancellation are limited

Your rights to cancel the guarantee are extremely limited.

Security for the guarantee

Any security over any property you have already given, or which you give in the future to the lender, will also be security for the guarantee even if they are not specifically referred to in the guarantee documentation.

The lender can choose who to sue

The lender may sue you first. It does not have to sue the debtor first, or at all.

The lender can access your accounts (if you bank with them)

The lender can take money from any of your personal accounts which you may have with them in order to pay money owed to the lender by you.

Alternatives to giving a guarantee

Signing the guarantee is a very important thing. You should not take this lightly. There may be other ways of providing assistance to the debtor. We are always happy to explore those other options with you. That does take time and we urge you not to agree to providing a guarantee on short notice.

Investigations that should be made

You should thoroughly investigate the debtor's financial abilities to meet his or her obligations to the lender before giving a guarantee. You could be effectively "stepping into their shoes" in terms of the loan and you need to know as much as you can about whether you will be left in the position of having to pay the loan or lose the asset you have provided as security.

Advice

Please feel free to make an appointment to discuss any guarantee that you are asked to provide. We look forward to working with you to manage your risks and plan solutions.