



Guarantees... more than meets the eye

With houses becoming more expensive and Banks becoming tougher on lending it is no surprise that young people are looking to their parents to help them into their first home and often this is done by way of a guarantee.

Many people take a casual approach to guarantees, regarding them as just a formality or another document to sign. Little do they know that there is much more to a guarantee than meets the eye.

Entering into a guarantee is a big responsibility. Essentially you are saying that you are prepared to repay the debt in full (including all related costs) if the borrower does not. Before you sign on the dotted line there are three key points you should be aware of:

Limited or unlimited?

A Bank will no doubt request an **unlimited** guarantee (usually in the form of an "Unlimited All Obligations Guarantee"). If you enter into an unlimited guarantee you could be liable for all of the borrower's lending including existing personal loans, credit card debt and also future lending that you may not be aware of. A **limited** guarantee is preferable. It relates to a set amount and you are aware of the extent of your liability.

Joint and several

The liability of the borrower and the guarantor is **joint and several**. This means that you and the borrower are **both** individually liable for the whole amount outstanding, as well as being jointly liable. So if the borrower does not keep up with their payments the Bank may come directly to you for payment and possibly bring Court proceedings directly against you as the guarantor without demanding payment from the borrower.

Where you are jointly guaranteeing a loan, the Bank is not required to seek equal contributions from each guarantor. However, if the Bank obtains payment from one guarantor only, that guarantor will have the right to seek

contributions from the other liable parties which include the borrower.

Continuing

The guarantee is **continuing**. It remains in place until the Bank agrees for it to be released. That is not an automatic process. You need to apply to the Bank to have the guarantee released. This would usually be either when the loan is repaid in full or when the Bank is satisfied that the guarantee is no longer needed because the borrower can service the loan on their own.

If you have existing security (a mortgage) with the same Bank for your own house or property, such mortgage is also likely to secure your obligations under the guarantee.

If the loan you are guaranteeing is with a different Bank they may ask you to provide security for your guarantee. This may include a mortgage over your own home. Once again, if the borrower defaults on their obligations the Bank holds a charge over your property which could result in you having to sell your house or other property to repay the loan.

The form of the guarantee will differ between Banks, although it is a requirement by all Banks that you seek legal advice. It is also recommended that you get independent advice from someone other than the borrower's adviser.

There is much more to guarantees than most people realise. It is important to be aware of all the facts before making the commitment.



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