

Guaranteeing someone's debt

Acting as a guarantor for someone's debt comes with many obligations and should not be undertaken lightly.



Banks will sometimes lend a customer money only if someone else provides a guarantee. If you agree to be a guarantor for a borrower, the bank can require you to pay the borrower's debts if he or she defaults on repayments.

Note: The following is intended as a guide only. Seek independent legal advice if you are considering becoming a guarantor. If you are already a guarantor and have any concerns, contact us, the bank or your lawyer immediately. Similarly, talk to us or a lawyer if you feel you were not properly advised about a guarantee or were pressured into agreeing to it.

If asked to guarantee someone's debts

Get independent legal advice and think carefully before agreeing to be a guarantor. The fact a bank has asked for a guarantee suggests the borrower does not meet the bank's lending criteria, or the bank thinks the borrower may default on the loan. Ask yourself whether:

- this person can service the loan
- you know this person's credit history
- you know if he or she already has other obligations to the bank, and if so, what those obligations are

- this person is likely to let you know if her or she starts finding the repayments difficult to make
- this person is likely to tell you about any further loans he or she may take out
- you could afford to meet all of his or her obligations
- you can help this person in another way.

If already a guarantor

Your exact position will depend on the provisions of the guarantee. Most guarantees are unlimited in amount and extend to "all obligations" of the borrower. This may include all lending existing at the time you gave the guarantee, plus all of the borrower's obligations to the bank on a continuing basis. This may include further lending, credit card debts and overdrafts. You can ask for your guarantee to be limited to a specified amount, but the bank does not have to agree to the request.

Cancelling a guarantee

In general, you can cancel a guarantee at any time. However, this does not release you from the obligations of the guarantee. It simply freezes your liability to the size of the debt at that particular point in time. The bank can require you to pay the debt that existed up to that time (including any interest and costs). If you cancel a guarantee, the bank may require the borrower to provide alternative security.

Financial difficulties

It is not uncommon for a guarantor to learn of a borrower's difficulties only when called on by the bank to cover some outstanding amount. As a rule, banks aren't obliged to notify guarantors of a borrower's financial difficulties. In fact, banks could breach their duty of confidentiality to the borrower by doing so. The exception would be if the guarantee contained provisions – agreed to by all parties – that the bank should inform the guarantor in such a situation. The bank will, however, tell you the guaranteed debt amount at any time.

Pursuing the guarantor first

A bank has the right to call on the guarantor first if a borrower fails to make repayments. It does not have to pursue the borrower for the debt. If there is more than one guarantor, the bank can usually decide which one to pursue. It can also require only one guarantor to pay the entire guaranteed debt. In some circumstances, one guarantor may be able to pursue other guarantors for their contribution to the debt. This is not always straightforward, and we recommend taking legal advice.

Mortgages

A bank does not have to sell a borrower's property, over which it has a mortgage, rather than pursue a guarantor for a debt. However, a guarantor, having paid the debt, may be entitled to claim against the bank's mortgage.

Failure to pay

Most guarantees require a security from the guarantor, typically a mortgage over the guarantor's home or other property. If the guarantor cannot pay the borrower's debt, the bank can sell that property to recover its money. If the guarantee did not require a security, the bank can sue the guarantor through the courts for payment of the debt. If a guarantor has an account at the same bank as the borrower, the bank may take funds from the guarantor's account to cover the debt.

A guarantor can try to encourage the borrower to pay the outstanding amount, but invariably a bank calls on a guarantor precisely because the borrower can't pay.



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