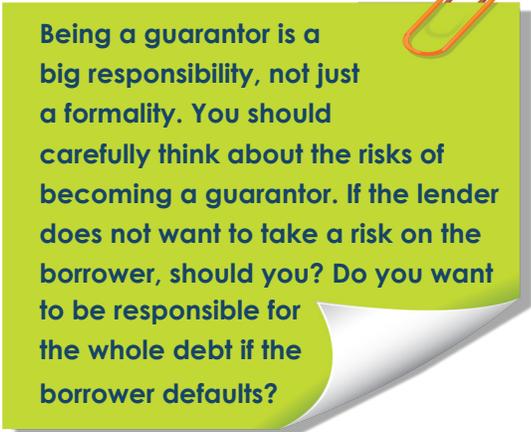


Being A Guarantor

A **guarantor** is a person who guarantees (agrees to be responsible for) repayment of another person's debt. If the person (borrower) breaks the agreement to repay the money (defaults), the lender can ask the guarantor to pay the debt. Any type of lender such as a bank, car dealership, credit card company or individual lender can ask for a guarantor.

Usually the lender wants a guarantor because it is risky to lend money to the borrower. This could be because the borrower is young, does not have good credit or has defaulted on loans in the past.

EXAMPLE Your child wants to buy a car. The dealership only agrees to finance the purchase if someone else guarantees the loan amount. You agree to be a guarantor. If your child misses a car payment, the dealership can come to you to pay the loan.



Being a guarantor is a big responsibility, not just a formality. You should carefully think about the risks of becoming a guarantor. If the lender does not want to take a risk on the borrower, should you? Do you want to be responsible for the whole debt if the borrower defaults?

Borrowers usually do not plan to default on their loan. But circumstances can change. The borrower could lose their job, become injured or die. The lender does not care why the borrower missed a payment. They only want to make sure they are repaid.

Becoming a Guarantor

You become a guarantor when you sign a written and legally binding agreement – a guarantee.

A guarantee is not legally binding until you do three things:

1. Meet with a lawyer who is in good standing with the Law Society of Alberta. The lawyer cannot be a student-at-law, or an honorary or suspended member of the Law Society. If the lawyer practices outside Alberta, they must be entitled to practice law in that jurisdiction.
2. Acknowledge to the lawyer that you signed the guarantee.
3. Sign a Guarantees Acknowledgement certificate in front of the lawyer. The certificate must be attached to or noted on the guarantee.

The lender will usually ask you for copies of bank statements, proof of assets and identification to make sure you are able to repay the loan if need be. The lender may also run a credit check on you. After the application process, you should have little or no involvement with the lender unless the borrower defaults.

Before you sign the guarantee, ask the borrower or lender for a copy of the loan agreement and any other documents the borrower is to sign. You should make sure you understand what these documents say and what you are guaranteeing. Some things to look for:

- Are you guaranteeing a set amount? Or are you also guaranteeing future advances?
- Is the lender using some or all your property as security?
- For what reasons could you be asked to repay the loan?

You may have to pay administrative fees to the lender. You or the borrower will also have to pay the lawyer you meet with.

“How can I protect myself?”

You can try to limit your risk with the lender. You can tell the lender you will only guarantee a certain amount of money (the loan amount only and not any advances) or for a limited amount of time, or both.

You can also ask the borrower to keep in contact with you. If they are having trouble keeping up with the payments, ask them to tell you. You might be able to make the payments on their behalf instead of letting the loan go into default. Ask the borrower to give you payment details so you can make payments in case of an emergency, such as an accident. You can also ask the borrower to get insurance to cover the amount of the debt in case the borrower becomes disabled or dies.

“Will being a guarantor affect my credit rating?”

Yes. This could be a good or bad! If the lender reports the guarantee to a credit agency, the loan will show up on your credit report just like any other account for which you are liable. Paying accounts help a good credit score because they show financial responsibility. If the borrower makes the payment on time, it will have a positive effect on your credit rating. If the borrower defaults on the loan, it will have a negative effect on your credit rating. If you do not take over the payments or pay off the loan, this will count against your credit score in the same way that any other unpaid account would.



Alberta's Guarantees Acknowledgement Act says that any person signing a guarantee must sign a certificate in front of a lawyer.

“If I have to pay part of the loan, can I get my money back from the borrower?”

You can try to sue the borrower to get your money back. If you are successful in proving your case in court, the judge can issue you a judgement saying you are owed the money. Remember though, if the borrower cannot afford to pay the lender, it is unlikely they will be able to pay you. On the other hand, a judgement is good for ten years, so you may be able to collect on it in the future.

Secured vs. Unsecured Debt

A **secured loan** means the lender requires the borrower to use its property as collateral for the debt. If the borrower defaults on the loan, the lender can seize the property. It can use the property to repay the loan.

There are two types of secured loans:

1. **Mortgages:** the security is real estate. The lender registers the mortgage at Alberta's Land Titles Office against the title to the property.
2. **Registered security interests:** the security is property that you own other than real estate, such as a vehicle, mobile home, recreational vehicle or boat, or household goods. The lender registers their interest with Alberta's Personal Property Registry.

The agreement must say what property is being used as collateral. It might be all of the borrowers property or specific property.

An **unsecured loan** means the lender does not require the borrower to use property as collateral. It could be that the debt is not that large or that the borrower has good credit.

The lender can ask for a secured guarantee or unsecured guarantee. If the lender asks you for a secured guarantee, then your property will be collateral for the loan. If the borrower defaults, the lender can seize your property.

An unsecured loan or unsecured guarantee does not mean that the lender cannot seize your property. It means the lender cannot automatically seize your property. The lender must sue you and get a court judgement against you before they can take your property.



If the lender uses your home as property to secure the loan and the borrower defaults, then the lender can take legal proceedings against the title to your home to collect the debt. This can affect your mortgage. This might put you in default of your mortgage with your lender.

Other Ways to Help Financially

There are other ways you can financially help your relative or friend:

- You could gift the person money. This gift may help them increase the down-payment so that they qualify for a smaller loan on their own. You can also consider this gift when planning your Will.
- You could loan money to the person and make a loan agreement between the two of you.
- You could offer to let the person use an asset you own as security for the loan. If the person defaults on the loan, the lender can only seize that asset.

To explore your options, talk to a lawyer or accountant.

Get More Help

Visit the **Government of Alberta** website for more information about debt and debt repayment options: <https://www.alberta.ca/information-collection-agencies-debt-repayment.aspx>

Money Mentors is a non-profit agency based in Alberta that offers credit counselling, debt consolidation and financial education. It offers the Orderly Payment of Debts (OPD) program. The OPD program is a debt consolidation program created under Canada's *Bankruptcy & Insolvency Act* and monitored by the Province of Alberta.

For more information, call 1.888.294.0076 or visit www.moneymentors.ca

You should not rely on this publication for legal advice.