


Being a Guarantor



Being a Guarantor is a big responsibility and can have serious consequences. It is important to understand exactly what you are getting yourself into and what the impact of signing the agreement may be. Being a Guarantor can be a helpful and worthwhile thing to do. When someone you love is unable to get the financing they need to get their life started or restarted, your Guarantee can make this possible. Unfortunately, should something go wrong, being a Guarantor can ruin your credit rating and may put your own financial situation in danger.

This booklet will help you understand all that is involved in being a Guarantor.

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Being a Guarantor in Alberta

What's involved in being a Guarantor?

What is a Guarantor?

A Guarantor is a person who agrees to be responsible for the payment of another person's debt if the person breaks an agreement to repay money that is loaned to them (this is called "default"). You become a Guarantor when you sign a written and legally binding agreement, which is called a Guarantee.

When you sign a Guarantee, you (the Guarantor) agree to be responsible for the payment of another person's debt (the Borrower), if the Borrower defaults on repaying the debt. This means that if the Borrower does not make the loan payments, or fails to keep any one of the terms and conditions of the loan agreement, the Guarantor will be responsible for paying the funds that are still owing.



NEVER sign as a Guarantor unless you are comfortable with what you are doing!

Why would a Lender need a Guarantee?

The only reason Lenders want a Guarantor is because the Lender is not prepared to take the risk of lending the money to only the Borrower. The Lender may not want to take the risk for a variety of reasons. For example:

- the Borrower is young and has not yet established credit
- the Borrower has defaulted on loans in the past

Understanding why credit is not being granted to someone may affect your decision about whether to give a Guarantee. No matter what the reasons behind the request for a Guarantee, the bottom line remains the same: a financial institution is not willing to take the risk, so should you? Being a Guarantor comes with responsibility.

Never sign as a Guarantor unless you are comfortable with what you are doing.

I thought this was more of a formality than anything else: you mean I am 100% responsible for the debt?

Yes, you are 100% responsible for the debt that you are guaranteeing if the Borrower fails to meet any of the terms of the loan. A Guarantee is not just a formality to help a friend or relative obtain credit. Being a Guarantor is a big responsibility. It means that you are prepared to pay off the whole of the debt if the Borrower does not. You may even need to pay the Lender all the money owing under the loan agreement as soon as it is asked for - even if there has only been one missed payment.

You may receive collection calls if you don't make the payments, and you can be sued for payment of the loan. The Lender may even sue you without first suing the Borrower. If you lose in court, you'll have a judgment against you, which will show on your credit report. The Lender may be able to garnish your wages or seize your assets to get repayment. To protect yourself, you should ask what events could be treated as a default.



You are 100% responsible for the debt that you are guaranteeing if the Borrower fails to meet any of the terms of the loan.

My child would never default on a loan. In our family, we pay our obligations. Why should I be worried?

Many people believe that the friend or relative for whom they are signing the Guarantee would never do anything to make the Lender enforce the Guarantee. Unfortunately, your friend or relative may suddenly find that they cannot repay money that they owe because of unemployment, illness or any other reason.

Defaulting on a loan is not a question of character; it can happen quite by accident. The Lender does not care why the default happened - it just wants to protect its money. As a result, regardless of why a default happens, when it does happen, the process of collection starts and can impact everyone involved.

To be a Guarantor, you must be prepared to pay and you must understand your obligations.

What financial documents does the Lender need from me before I can sign the Guarantee?

During the initial application process, a proposed Guarantor is normally required to provide the Lender with copies of their own bank statements, proof of assets, and proof of identification. A Lender may also require a credit check.



To be a Guarantor, you must be prepared to pay and you must understand your obligations!

How much is it going to cost me to become a Guarantor? Do I have to pay Lender's fees?

It depends. The Lender may charge you some administrative fees. You or the borrower will have to pay for you to see a lawyer, but the charge for that visit varies.

What documentation should I see before I consider signing the Guarantee?

Before you sign the Guarantee you should make sure that you receive a copy of the loan agreement and any other documents that the Borrower is to sign. You should make sure that you have a clear understanding of what these documents say and what you are guaranteeing. Although many Lender forms are standardized, terms are not always the same. You should know details such as:

- are you guaranteeing a set amount, or will any future advances to the Borrower be included?
- is some or all of your property being used as security?
- what are all of the reasons you could be asked to repay the loan?

I am willing to help, but I don't want to risk too much. Can I limit the Guarantee?

In theory, yes. You can tell the Lender that you will only be a Guarantor if you can limit your Guarantee to a specified amount of money (i.e.: the money borrowed for this loan only), and/or only for a limited amount of time. You should consider limiting your Guarantee to the amount lent plus interest and exclude any advances made to the Borrower later.

Limiting a Guarantee is easier said than done. Remember that the whole reason that the Lender requires a Guarantor is because the Borrower is not able to provide sufficient security on his or her own. If you limit your Guarantee the Lender may then refuse to loan the money to the Borrower.

If I become a Guarantor will I have to be involved every time the Borrower makes a payment?

No, you don't have to be involved as long as the Borrower makes the payments as required by the loan agreement. After the application process, a Guarantor should have little or no involvement with the lender.

Will being a Guarantor affect my credit rating?

Yes, it will. That could be a good thing, or a bad thing. When you sign a Guarantee, you are agreeing to be responsible for paying the debt in the event of a default. Therefore, if the lender reports it to one of the credit agencies it will show up on your credit report just like any other account for which you are liable. If the Borrower is making payments as agreed upon, it will have a positive effect on your credit report.

Accounts that are being paid help to maintain a good credit score because they demonstrate financial responsibility, whether it is your own account or one that you have guaranteed. However, if the Borrower defaults on the account, it will have a negative effect on your credit. If you do not take over the payments or pay off the amount owed, it will count against your credit score in the same way that any other unpaid account would.

Are there other ways that I could provide financial help without becoming a Guarantor?

Yes, there often are other things that you could do. Exactly what can be done depends, of course, on the situation.

For example: your adult daughter wishes to purchase a large, expensive truck. You could give her a gift of money in order to increase her down-payment so that she may then qualify for a loan in a lesser amount (and this gift could then be taken into account when planning your Will).

Alternatively, you could loan money to your daughter, and you could make a separate loan agreement between the two of you. You could also offer to let your daughter use an asset you own as security for the loan. If she defaults, the lender would be limited to seizing that asset. To explore your options you may want to see a lawyer or accountant.

What will happen if the Borrower defaults on the loan?

When the Borrower fails to make any payment on time, the Guarantor becomes liable to make up for that failure. You might be asked to only pay the missed payment, but you could have to pay the full amount owing or the entire loan, including interest, immediately. The Lender can try to collect from you, even if it has not yet gone after the Borrower.

You can, of course, try to talk to the Lender to negotiate other arrangements such as just making payments or paying the full amount in installments. You must remember that the Lender was already worried about this loan (hence the need for a Guarantor in the first place), so the Lender may not be interested in negotiating.



When the Borrower fails to make a payment on time, the Guarantor becomes responsible to make up for that failure.

If I sign this Guarantee, what can I do to protect myself?

Once you sign the Guarantee, you are liable for the debt in the event of a default by the Borrower. Although you cannot change that legal reality, you can manage your risk by keeping open the lines of communication with the Borrower.

For example: you could consider letting the Borrower know that they should tell you if they are having trouble keeping up with payments. It might be better for you to make the payments on their behalf for a while than for the loan to go into default. Ask the Borrower to give you payment details so that, in an emergency such as an accident, you can step in if you have to. Also, you may want to require that the Borrower get insurance to cover the amount of the debt in the event of the Borrower's disability or death.

What happens when?

Situations you may encounter

My daughter's credit union has said that I have to sign a "secured" Guarantee: what does that mean?

The concept of "security" relates to whether or not you are using property to guarantee the funds being borrowed. More specifically:

- A secured Guarantee means that the Lender requires you to use your property as collateral for the debt: that is, if you can't pay, you lose that property.

The two main types are a mortgage on real estate you own and what are called "registered security interests" over your other non-real estate property you own.

- An unsecured Guarantee means that the Lender does not require you to use property as collateral. Perhaps the debt is not that large, or you have good credit.

A secured Guarantee makes it easier for the Lender to collect its loan if the Borrower defaults. The Lender can seize and sell the property that you use as collateral to collect the money that is owed to it.

If you provide an unsecured Guarantee, your property may still be at risk for payment of the debt. The difference is that, with an unsecured Guarantee, the Lender cannot automatically take your property to recover the debt. The Lender must sue you and get a court judgment against you before they can take your property.

Whether your Guarantee will need to be secured or unsecured will depend on a number of factors, including:

- whether the Borrower is providing security for the debt;
- the credit risk of the Borrower (in general, the larger the risk, the more security the Lender will want);
- your income and assets.

In order for a Guarantee to be “secured”, it will need to contain an “assignment” clause. The assignment clause will state that the debt is being secured by specific property which will be listed. Without an assignment clause, the Guarantee is “unsecured”. But remember, this does not mean that your property is not at risk, it just means that the Lender will have to go through the court process to take your property.

My son has asked me to be a Guarantor. My wife, who is not his mother, is worried about how this will affect us. If I sign a Guarantee, will it affect our mortgage?

It can. If your home is used as property to secure the loan, and if the Borrower then defaults, the Lender can take legal proceedings against the title to your home to collect on the debt.



A secured Guarantee means that the Lender requires you to use property as collateral for the debt: that is, if you don't pay, you lose that property.

My son said I have to go see a lawyer to make sure I understand what I am doing. Is that correct?

Yes. Under the *Alberta Guarantees Acknowledgment Act*, any person signing a Guarantee must go to a lawyer who is an active member in good standing of the Law Society of Alberta. The lawyer who advises the Guarantor cannot be a student-at-law, or an honorary or suspended member of the Law Society. If the lawyer practices outside of Alberta, he or she must be entitled to practice law in his or her jurisdiction.

The lawyer must be sure that the person is aware of the Guarantee's contents and understands all of its terms and consequences. The Guarantor must then sign a certificate in front of the lawyer in a form that is set out in the *Act*. No Guarantee has any legal effect unless the Certificate is properly completed. This certificate must then be attached to the Guarantee or noted on the document.

This requirement is to protect you and to make sure that you fully understand the documents you are signing. It also protects the Lender because it reduces the possibility that the Guarantor will later claim to have not understood what they were entering into.



Under the *Alberta Guarantees Acknowledgment Act*, any person signing a Guarantee must go to a lawyer who is an active member in good standing of the Law Society of Alberta.

Last year, I signed a Guarantee for my son. He became ill, was in the hospital and forgot to make his payment last month. The Lender sent a letter saying it could not reach him and it is demanding that I repay the full amount. I only just found out about this. Can the Lender come after me after just one missed payment?

Yes, most guarantees would allow the Lender to do this. The Lender does not care why the default occurs and it will make decisions to protect itself. All it takes to start the process of collecting on the Guarantee is one missed payment. If the Borrower misses a payment and you find out and pay the missed payment late, the Lender can still choose to go after the full outstanding amount right now. You should contact the Lender as soon as possible to see what arrangements can be made.

Three years ago, I signed a Guarantee for my nephew. Last month he was killed in a motor vehicle accident and now the Lender expects me to pay. Would his debt, and my obligation as a Guarantor, not end with his death?

No. By signing the Guarantee, you agreed that you would pay off the loan in the event of a default. Period. The reasons for the default, be it lapse in memory, unemployment, disability, or death are irrelevant.

I signed a Guarantee for a friend and I ended up having to pay the last part of the debt. Is there any way I can get my money back from my friend?

Perhaps. You could try to sue the Borrower to get your money back and you might get a judgment saying that you are owed the money. But, if your friend couldn't afford to pay the Lender, it is unlikely that he or she will be able to pay you. On the other hand, if you get a judgment against your friend, the judgment is valid for ten years, so you may be able to collect on it in the future.

What do the words mean?

Glossary

Assignment Clause

A part of a contract that says whether or not you can give your rights and responsibilities in it to someone else.

Borrower

Someone who borrows money from a Lender.

Credit Report

A record of the history and current status of an individual's or company's past borrowing and repaying activities, including information about late payments and bankruptcy. Credit reports are kept by several companies (known as credit bureaus).

Credit Score

A numerical expression based on a statistical analysis of a person's credit files, to represent the creditworthiness of that person. A credit score is primarily based on credit report information, typically sourced from credit bureaus.

Default

The failure to pay back a loan. It occurs when a Borrower has not met his or her legal obligations according to the debt contract, e.g. has not made a scheduled payment, or has violated a loan covenant (condition) of the debt contract.

Garnish

A legal process that allows a creditor to seize money directly from your pay cheque, before you get paid.

Guarantee

The document, signed by a Guarantor, which makes the Guarantor responsible for the payment of a Borrower's debt, once that Borrower is in default.

Guarantor

The person who guarantees repayment of a Borrower's debt.

Judgment

In this context, an enforceable order from a court saying that the Guarantor must pay the debt of the Borrower. A Judgement may not be needed if the Guarantee is secured. There are many other types of Judgements.

Lender

The person, company or financial institution that lends money to a Borrower.

Secured Guarantee

A Guarantee that uses property as collateral to secure a debt.

Security

Property used to guarantee a debt.

Unsecured Guarantee

A Guarantee that does not use property as collateral to secure a debt.

Where can I get more information?

Resources

Alberta Courts

Civil Claim Process

<https://www.albertacourts.ca/pc/areas-of-law/civil/claims>

Commencing, Getting and Enforcing your Judgment in Alberta

https://justice.alberta.ca/programs_services/civil/Pages/claims_collecting.aspx

Centre for Public Legal Education Alberta

Consumer publications

cplea.ca/publications/consumer-law/

Financial Consumer Agency of Canada

canada.ca/en/financial-consumer-agency.html

Alberta Queen's Printer

Guarantees Acknowledgement Act

www.qp.alberta.ca/documents/Acts/G11.pdf

Industry Canada, Office of Consumer Affairs

Cost of Borrowing Calculator

www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h_ca02222.html

Service Alberta

Consumer Tipsheet – Bill Collection and Debt Repayment

servicealberta.ca/pdf/tipsheets/Bill_Collection_and_Debt_Repayment.pdf

Consumer Tipsheet - What Creditors Can Do if you Don't Pay

servicealberta.ca/pdf/tipsheets/What_Creditors_Can_Do_If_You_Cant_Pay.pdf

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This booklet is one of many publications produced by the Centre for Public Legal Education Alberta. All publications can be viewed and downloaded for free by visiting www.cplea.ca/publications or www.cplea.ca/store

Other publications related to this topic that may interest you include:

- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being a Personal Representative
- Being an Attorney Under an Enduring Power of Attorney
- General Powers of Attorney
- Being a Personal Representative
- *Adult Guardianship and Trustee Act*

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