

Being a Guarantor

in Alberta



Has someone you know asked you to be a Guarantor? Are you already a Guarantor and worried about what comes next, or what is already occurring? This booklet provides important information on being a Guarantor, and will help you understand everything that is involved in this role.

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 the loan agreement (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.

You should **not** rely on this booklet for legal advice. It provides general information on **Alberta law only**.



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Becoming a Guarantor is a big responsibility and can have a lot of serious consequences, so 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 becoming a Guarantor.

Why would a bank need a Guarantee?

The *only* reason lenders want security (a Guarantor) is because the lender is *not prepared to take the risk* of lending the money itself. The lender may not want to take the risk for a variety of reasons. Some of the reasons are neutral (the Borrower is young and has not yet established credit), while some reasons are not (the Borrower has defaulted on loans in the past). Understanding why credit is not being granted to someone may impact 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 – with all of its holdings – 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. On the contrary, 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 then receive collection calls if you don't make the payments, and you can be sued for the loan. The lender may even sue you without first suing the Borrower. If you lose in court, you'll have a judgment on your credit report. The lender may even be able to garnish your wages to get repayment.

My child would never allow this happen: 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 he or she cannot meet the terms and conditions of the credit contract 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 – the bank 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 bank 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 his/her own bank statements, proof of assets, and proof of identification. A lender may also require a credit check.

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 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 bank 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 your property being used as security; and
- is only some of your property acting as security, or all of it?

Ensure that you are comfortable with the whole set up of both the loan and the Guarantee. Knowing the Borrower's credit history will also help you in the decision-making process. In addition, ensure there is a plan in place (such as debt insurance) to cover you in the event that the Borrower dies or is disabled before repaying the debt.

The banks suggested that my company sign the Guarantee. Is that different than me just signing it personally?

Yes, it is. Signing a personal Guarantee results in you being personally responsible for the debt in question; so your own personal monies and property are at risk. If, on the other hand, you sign a Guarantee in the name of your company, it is the company that becomes responsible for the repayment of the debt should the Borrower default. This means that your company's assets would be at risk. This is a big decision, as depending on the circumstances, it could put the health, or the very existence of your business, in jeopardy. This in turn, may negatively affect your future ability in terms of credit or financing for the company (and possible subsequent businesses as well).



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 property as collateral for the debt (that is, if you can't pay, you lose that property). Examples include: a mortgage over your home, or what is called a "registered security interest" over your other property such as a state-of-the-art home theatre system (this is done through a "financing statement").
- An unsecured Guarantee means that the lender does not require you to use property to make the Guarantee more secure (perhaps the debt is not that large, or you generally have a demonstrated amount of funds available to cover the debt).

A secured Guarantee makes it easier for the lender to collect its loan in the event that the Borrower defaults. The lender can sell the property that you agreed would act as security to collect the money that is owed to them. It is important to note however, 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 use 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 amount of 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 guaranteed by a specific property. The property in question will be listed. Without such 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 get 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 use your home to collect on the debt.

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

In theory, yes. You can specify to 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 for a limited amount of time. In any event, you should consider limiting your Guarantee to the amount lent plus interest and exclude any additional advances made to the Borrower at a later date.

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.

My son's bank said I had to go see a Notary Public to make sure I understood what I was doing. Why do I have to do that?

Under Alberta law, you are *required* to meet with a Notary Public to ensure that you understand your obligations under the Guarantee. The Notary Public must then sign a specific form that says that this meeting took place. This meeting has nothing to do with you or any of the other parties: it is a requirement under the *Alberta Guarantees Acknowledgment Act*. This is an act of consumer protection, meant to ensure that no one gets into such a large financial responsibility without understanding the consequences. In addition, from the lender's perspective, this helps to reduce the possibility that you would later say that you did not understand what you were signing (should the borrower default and the lender seek the funds from you). Remember – the lender is trying to protect itself from a risk it is otherwise unwilling to take.

Where can I find a Notary Public?

You can call any law firm and they will be able to help you. In Alberta, all lawyers are Notary Publics. Most MLA offices also provide the services of a Notary Public.

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

It depends. The lender may charge you some administrative fees when you go to the bank. You will have to pay to see a Notary Public, but the charge for that visit varies.

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 initial application process, a Guarantor should have little or no involvement in the loan whatsoever. However, as soon as a Borrower misses one payment, the Guarantor may become involved (when the lender comes after the Guarantor for the amount of the loan).

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, 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, as well as on his/hers. Accounts that are being paid help to maintain a good credit score because they demonstrate financial responsibility, whether it's 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: assume 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, that money could be a loan to your daughter, and you could make a separate loan agreement between the two of you. This is, however, a very complex area. To explore the options that may be applicable to your situation, you may want to see a qualified lawyer or accountant.



My brother, who went through something similar when his son wanted to borrow money, has advised me to get independent advice. Do I have to do this?

It is very important that you do not rely on the advice provided to you by the Borrower or the lender's representative. A Guarantee may be written in very technical language and can be very difficult to understand. Before making any decisions, seek independent legal advice on each of the options, so that you understand your position and the risks you are taking in any transaction. In addition, a lawyer can advise you on additional actions you may be able to take to protect the property to which the loan applies.

Is this independent advice different from what I am getting when I attend at the office of the Notary Public?

Yes. The job of the Notary Public is to ensure you understand what you are agreeing to when you sign the Guarantee. Giving advice about alternative or additional actions is a separate thing. You may be able to obtain that service at the same time (if the Notary Public is also a lawyer qualified to give that kind of advice), but you might not.

What will actually happen if the Borrower defaults on the loan?

When the Borrower fails to make any payment on time, the Guarantor (you) become liable to make up for that failure. This means that you could have to pay the full amount owing, including interest, immediately. The lender can exercise its rights against 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.

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 remembering about the debt and keeping open the lines of communication with the Borrower. For example: you could consider letting the Borrower know that s/he should tell you if s/he is having trouble keeping up with payments. It might be better for you to make the payments on his/her 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.



Last year, I signed a Guarantee for my son. He became ill, was in the hospital and forgot to pay last month. The bank sent a letter saying they could not reach him and it is coming after me. I only just found out about this. Can the lender come after me after just one missed payment?

Yes, it can. 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. Again, all it takes is one missed payment. You should contact the lender as soon as possible to see what arrangements can be made.

Five years ago, I signed a Guarantee for my daughter. Everything has been going well since then, and I have not had any involvement. Recently, though, my daughter lost her job. She thought she had made last month's payment but somehow it got missed. Now the bank is coming after me: after five years of meeting her obligations, should they not try to deal with her first and maybe give her the benefit of the doubt?

The lender can come after the Guarantor without first trying to obtain payment from the Borrower. Again, the lender generally does not care why the default occurs. It will move to protect itself whenever it sees fit. All it takes is one missed payment – it does not matter how many payments have been made in the past.

Three years ago, I signed a Guarantee for my nephew. Last month he was killed in a motor vehicle accident and now the lender is coming after me. 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. For this reason, you should consider asking the Borrower to get some kind of disability and life insurance to cover the amount of the debt. You can expect the Borrower to pay the debt if all goes well, but the Borrower simply won't be able to pay if s/he dies or is disabled.

Last week, I signed a Guarantee without knowing all of this. I am now having second thoughts. How can I get out of being a Guarantor?

You cannot just cross your name off the Guarantee or destroy the agreement if you are having second thoughts. As long as the Guarantee exists, you are responsible to pay the debt if the Borrower defaults. If you do not want to act as a Guarantor anymore, you must legally change the situation. To do this, the Borrower must either pay off the loan or get it re-financed through a new loan *without* your name on it. You may want to talk to the lender or contact a lawyer to receive legal advice.

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 can try to sue the Borrower to get your money back and you may get a judgment saying that you are owed the money. But if your friend couldn't afford to pay the lender, then 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?

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, 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.
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	a person who agrees to be responsible for the payment of another person's debt if that other person (also known as the Borrower) breaks the loan agreement.
judgment	a court order.
Lender	a financial institution that lends money to a Borrower. For example: a bank or credit union.
secured guarantee	a Guarantee that used property as collateral to secure a debt.
security	property used to guarantee a debt.
unsecured guarantee	a Guarantee that did not use property as collateral to secure a debt.

For more information

Alberta: Consumer Tipsheet – Bill Collection and Debt Repayment:

<http://www.bizpal.alberta.ca/1009.cfm>

Alberta Courts > Civil Claim Process >

www.albertacourts.ab.ca/ProvincialCourt/CivilSmallClaimsCourt/CivilClaimProcess/tabid/166/Default.aspx

Financial Consumer Agency of Canada > For consumers:

www.fcac.gc.ca/eng/consumers/default.asp

Getting and Enforcing your Judgment in Alberta (publication of AB Courts)

www.albertacourts.ab.ca/qb/publication/GettingandCollecting.pdf

Industry Canada, Office of Consumer Affairs

Cost of Borrowing Calculator

www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca01812.html

The Legal Resource Centre of Alberta has a number of other publications that may also be of interest:

- Making a Will
- Making a Personal Directive
- Making a Power of Attorney
- Being an Executor
- Being an Attorney
- Being an Agent
- Grandparents' Rights
- *Alberta Adult Guardianship and Trusteeship Act*
- Dating & New Relationships
- Planning Your Own Funeral

To order our publications, visit our website at

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The Legal Resource Centre

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