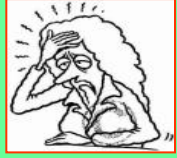


# *Are you signing away your future? Read this before you sign a guarantee*



## **DEFINITIONS**

### Who are the people involved?

- The **borrower** is the person who is getting the loan.
- The **lender** is the person who is providing the loan.

### What is a mortgage and security?

- A **mortgage** means that you give the lender certain rights over property you own.
- A mortgage '**secures**' your guarantee, because if you do not pay, the lender can sell the mortgaged property to get the money that is owed to them.



**Check that you are signing as a guarantor and NOT as a co-owner.**

Being a co-owner means that you share responsibility for the loan.

## **STEP ONE – Should I sign a guarantee?**

### What is a Guarantee?

- A guarantee is a promise by you that the borrower will keep to the terms and condition of their loan agreement. You are promising to repay the loan if the borrower does not pay.
- When you sign a guarantee, you become a guarantor.
- You will usually be asked to provide security for your guarantee, such as a mortgage over property that you own. (see definitions)
- Signing a guarantee does not give you any benefit. For example, if the loan is to buy a car, you do not get part ownership of the car.

### What should I ask myself before signing the guarantee?

- Will the borrower be able to make ALL repayments? - Do they have a steady job?
- Am I able and willing to repay the debt if the borrower becomes unable to do so?
- Why am I signing the guarantee? If you are signing to help out a friend or partner, remember that relationships come and go but a guarantee remains until the loan is repaid.
- Do not feel under any pressure to ever sign a guarantee.

## **STEP TWO – So I've decided to go guarantor...**

- The guarantee must be in writing.
- Make sure you understand what you are signing – get some independent financial and legal advice.

### What should I ask the lender?

- How much is the loan for and how much are the loan repayments?
- What is the interest rate on the loan?
- What is the duration (term) of the loan?
- Is the borrower putting up security for the loan, for example their home?
- Am I providing a mortgage over anything, for example my home?

### What should I RECEIVE BEFORE signing the guarantee?

- A copy of the borrower's loan contract
- A statement called 'Things you should know about guarantees', explaining your rights and obligations as a guarantor (Form 5A of the *Consumer Credit Regulation 1995*)

### What information must the guarantee contain?

- The guarantee must have a warning box on it immediately above where you sign (Form 4 of the *Consumer Credit Regulation 1995*). Make sure you read and understand what the warning box is saying.
- You must receive a copy of the signed guarantee within 14 days after you have signed and given it to the lender.

## ***STEP THREE – I've signed the guarantee, what now?***

### I've changed my mind, can I withdraw from the guarantee?

- You can withdraw from the guarantee in writing at any time before the loan is provided to the borrower. You can also withdraw after the loan is provided if the final loan contract is materially different from the one you viewed before signing the guarantee.

### What happens if the borrower stops paying back their loan?

- You will have to pay back the entire amount still owed plus interest, charges and fees. You will be pursued if the borrower cannot make repayments, has stopped making repayments or cannot be found.

### How will I know if there is a problem?

- Normally you will get notice when the borrower has stopped making their repayments. The notice will detail the action the borrower must take. Notice does not have to be given if the borrower cannot be found.

### When will I have to pay the money owing to the lender?

- If a court has told the borrower to pay and the lender has asked them in writing, but 30 days have passed and they have not paid; or
- If the court says so because borrower is unlikely to be able to pay; or
- If the borrower has disappeared; or
- If the borrower has no money to pay back their loan

### What happens if I cannot or do not pay?

- You should try and negotiate with the lender. However, if you have provided security for your guarantee, such as a mortgage over property that you own, the lender can sell the mortgaged property, which could be your house.

### Can I ever get my money back?

A guarantor is entitled to recover money from the borrower. BUT remember, if they can't pay back their loan, they may not have any money to ever pay you back.



### When will my guarantee be unenforceable?

- If the guarantee is not in writing and signed by you, the guarantor.
- If you didn't receive a copy of the loan contract before you signed the guarantee.
- If the guarantee is for more than the amount of the loan.
- If the guarantee wasn't entered into before the loan was given.
- If the lender (or the borrower with the lender's knowledge) used force, fraud or threats to make you sign.



## ***I think I'm in trouble, who can help me?***

Consumer Law Advice Clinic  
(07) 3012 9773  
[www.qpilch.org.au](http://www.qpilch.org.au)

Legal Aid  
1300 651 188  
[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

The Banking and Financial  
Services Ombudsman  
1300 780 808  
[www.abio.org.au](http://www.abio.org.au)

Lifeline Financial Counseling  
(24 hr crisis counseling)

## ***What laws protect me?***

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Depending on what the borrower used their loan for, your rights and obligations as a guarantor may be defined in the *Consumer Credit Code 1994 (Qld)*, and *Consumer Credit Regulation 1995 (Qld)* which can be found at [www.creditcode.gov.au](http://www.creditcode.gov.au)

This brochure is not a

***Remember, never sign a guarantee if...  
You don't understand something, or you feel pressured.  
Guarantee your own future first!***