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Guarantees in Alberta

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A guarantee is a deed or written agreement in which a person enters into an obligation to answer for a default or omission of another person. Creditors commonly require guarantees from third parties before loaning money to debtors.

In all guarantees, the debtor owes a payment or obligation, the creditor is owed the payment or obligation, and the guarantor guarantees the payment or obligation. If these three parties do not exist, a guarantee will not be created. The difference between a guarantee and other legal relationships can sometimes be difficult to distinguish and legal counsel should be consulted whenever it is unclear whether or not a guarantee exists.

The Guarantee Acknowledgement Act (Alberta)

The *Guarantee Acknowledgement Act* (the “GAA”) applies to all guarantees in Alberta granted after 1969 and sets out specific requirements that must be followed in order for a guarantee to be enforceable in Alberta. The GAA was enacted to protect individuals guaranteeing the debt or obligation of another, and imposes requirements that differ from obligations found in other Canadian jurisdictions.

The GAA requires a guarantor to appear before a notary public and acknowledge that he or she is the person who executed the guarantee. The notary public must then satisfy himself or herself that the guarantor is aware of the contents of the guarantee and understands its effect. Upon being satisfied, the notary public must issue a certificate under his or her seal. This certificate must be executed by the guarantor in the presence of the notary public and be attached to the guarantee. It is important to note that the requirements under the GAA only apply to guarantees granted by individuals and do not apply to guarantees granted by corporations.

Guarantors: Proceed with Caution

Guaranteeing the debts or obligations of another is a serious legal obligation, and it is very important that a guarantor fully understands the nature and effect of the obligation.

Although a guarantee only needs to be executed before a notary public, legal advice from a solicitor is highly recommended, as many guarantors do not fully understand the transaction.

Understand the Agreement

In our experience, many clients misunderstand the following common provisions in guarantees:

1. The creditor does not have to go after the principal debtor before pursuing the guarantor. A creditor typically does not have to exhaust its recourse against the debtor before pursuing payment from one or more guarantors.
2. The creditor does not have to realize other security before seeking satisfaction of the debt from the guarantor.
3. What amount is guaranteed? Some guarantees are unlimited, or fluctuate based on a revolving line of credit, for example. A guarantor must understand his or her exposure and determine if he or she will have any control over or visibility of the guaranteed amount.
4. Are there other guarantors? The creditor typically does not have to pursue payment from all of the guarantors. The creditor can choose to pursue just one of the guarantors if the creditor so wishes.

Post – Signing Tips

Once a guarantor has signed a guarantee there are some important final steps that he or she should take. A guarantor should try not to provide the creditor with the guarantee until all of the other guarantors have done the same. Also, it is important for the guarantor to keep a copy of the guarantee for his or her records to avoid having to ask the creditor for a copy when the guarantor is worried about the primary debtor's solvency. Finally, once the debt is paid the guarantor should ask the creditor to return the creditor's copy of the guarantee to the guarantor.

Should you have any questions about guarantees or other financial or corporate documents, please contact Field Law's [Business Law Group](#).

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