

What's Up

In the World of Collections



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Personal Guarantees

ARE THERE DIFFERENT KINDS OF PERSONAL GUARANTEES?

Guarantees can be classified as being either guarantees of payment or collection, and the distinction is important to recognize. A guarantee of payment is a far more effective tool, as it allows a creditor to proceed directly against the guarantor without the necessity of taking any action against the primary obligor. Conversely, in the case of a guarantee of collection, a creditor must first proceed directly against the primary obligor, and only if the debt cannot be collected after the exercise of due diligence, can collection commence against the guarantor. Most jurisdictions have defined due diligence as the commencement of legal proceedings against the primary borrower and the result being the obtainment of an uncollectible money judgment. Therefore, when drafting a personal guarantee, a creditor should specify that the guarantee is one of payment.

WHEN SHOULD THE GUARANTEE BE OBTAINED?

Personal guarantees of corporate obligations are generally obtained at either the inception of the business relationship between the supplier and the purchaser, or at a subsequent time when the creditor has lost confidence in the customer's ability to repay a debt incurred in the business relationship.

WHAT ARE THE KEY ELEMENTS OF A SOLID GUARANTEE?

Whether obtained at the inception of the business relationship or not, there are some general rules to follow in drafting and execution of a personal guarantee:

* The guarantee should be a guarantee of payment and should

specifically refer to past, present or future indebtedness.

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Starstone: Moss Agate

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Quality: Sympathetic & Loving
Special Color: Silver
Starstone: Pearl

Ask About Our... Client Birthday Club!!



Cont'd from front.

- * It should be a continuing guarantee, and remain in effect until written notice of an election to terminate is given.
- * The signature of the guarantor should be notarized to insure against any future questions of the genuineness of the signature. There should be no designation of title or corporate capacity.
- * A provision for the recovery of collection expenses and attorney's fees should be inserted.
- * No prior notice or other condition precedent should exist before action can be taken against the guarantor.
- * The guarantee should bind the successors and assigns of the individual guarantors.
- * The social security number and residence (street address and not a PO Box) of the guarantor should be included.
- * The guarantee should be dated and all blanks filled in.

In conjunction with the execution of a personal guarantee, the well-informed credit manager will also attempt to obtain a personal financial statement from the guarantor. One benefit is that it allows an immediate evaluation of the financial capability of the guarantor, and if it is deemed insufficient, additional guarantees or other remedial action can be taken. Furthermore, in the event collection activity is eventually activated against the guarantor, the financial statement will serve a variety of useful purposes including a disclosure of the guarantor's assets.

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Brain Teaser

With your pants on, can you put your right hand in your left pocket and your left hand in your right pocket?

Answer to last Brain Teaser:
Rome, Ely, Paris & Chester

*All answers to be placed on enclosed Fax-O-Gram form.
5 Fax-O-Grams will be pulled at random & sent a FREE Gift.*



Believe It or Not

We would **welcome** your input regarding our newsletter.

What do you like about it or maybe you feel we should change something. Please send your reply & suggestions to....info@commercialcollection.com

Did You Know ??

Bankruptcy Fraud Warning Signs

- * Incomplete or missing books and records
- * Conduct well outside ordinary business or industry standards and practices
- * Unusual depletion of assets shortly before the bankruptcy filing
- * Frequent amendments to schedules, statements of financial affairs and monthly operating reports
- * Frequent dealings in cash rather than recorded transactions
- * Sudden depletion of inventory post-petition without plausible explanation
- * Transfer of property to insiders, shareholders and relatives shortly before bankruptcy
- * Transactions with non-debtor subsidiaries, parent companies or affiliated corporations owned by the same or related persons or entity.
- * A history of prior litigation or post-petition litigation involving breach of contracts, fraud misrepresentations, etc.
- * Fire, theft or loss before or after filing

Information Provided By:
Credit Research Foundation

If there is a topic you would like to see appear in our newsletter, please contact Judy Mattioli at:

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