

What's Up In the World of Collections



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April 2012

Personal Guarantees: How Helpful Are They?

It is a prudent credit manager that attempts to obtain personal guarantees from the principals of an incorporated entity to which credit is being extended. In today's volatile marketplace, the existence of a personal guarantee may provide the only viable basis of collecting outstanding receivables from a corporate obligor experiencing financial difficulty. However, in the final analysis, the effectiveness of a personal guarantee is directly dependent upon the financial capability of the guarantor.

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 corporate guarantor - 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.*

* *It should be a continuing guarantee and remain in effect until written notice of an election to terminate is given.*

In this issue:

- * **Personal Guarantees How Helpful Are They?**
- * **Happy Birthday!**
- * **Brain Teaser**
- * **Believe It or Not**

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Save The Date - June 11, 2012

**We're celebrating our
50th Anniversary
at our Annual Breakfast Buffet.
Gaylord Texan Hotel
Dallas, Texas
7 A.M. - 9 A.M.**

Please note: Our 50th Anniversary celebration is from 7 AM to 9 AM not 7 PM to 10 PM as previously announced in our last newsletter.

Cont'd on back



Cont'd from front...

- * The signature of the guarantor should be notarized to insure against any future questions regarding 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 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, not a P.O. 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.

To Be Continued in our next issue...

By Murray S. Lubitz, Esq.

Aries
March 21 - April 19

Best Quality - **A Leader**
Special Flower - **Honeysuckle**
Special Color - **Red**
Lucky Day - **Tuesday**

Happy Birthday to:

Sandra Willis	Jessica Bissett	Marshall Hallett
John Enna	Beth Hodges	Dave Sperduto
Marvella Haire	Debbie Brown	Donna Stanton
Don Puterbaugh	Wesley Agee	Tena Braxton
Kurt Frisbie	Detra Coney	Colleen Stadler
	Loretta Casteel	

Taurus
April 20 - May 20

Best Quality - **Creative**
Special Flower - **Lily**
Special Color - **Pale Blue**
Lucky Day - **Friday**

Happy Birthday to:

Sharon Marberry	Wesley Miller	Sandra Holloway
Suzanne Bastarache	Wayne Underwood	Don Laye

Brain Teaser

The plumber left the taps running in the bath with the plug out. The hot water tap on would fill the bath in 54 seconds. The cold water tap would fill the bath in 48 seconds. The plug out would release a bath full of water in 30 seconds. Would the bath ever fill up?

Answer to last Brain Teaser: 18 days

Winners of Last Drawing

1. Ms. Marilyn Schwindler (Buffalo, NY)
2. Ms. Karen Davis (Knoxville, TN)
3. Ms. Carolyn Kaminski (West Amherst, NY)
4. Mr. Floyd Dickinson (Northfield, VT)
5. Ms. Dawn Williams (Neptune, NJ)

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

The NACM Credit Congress
is coming up fast!

Please e-mail Judy Mattioli at
jmattioli@commercialcollection.com
if you will be attending.

Hope to see you there!

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

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