



What is the deal with Guarantees?

Date: Tuesday November 12, 2013

Our clients both hate and love guarantees, depending upon whether we act for a tenant or their landlord, a customer or their supplier, or the relative of a borrower versus the lender.

A guarantee is simply a promise to meet the obligation of another person if that person fails to live up to their own obligations. Typically that is an obligation to pay someone else's potential debt.

The reason that guarantees are bad is that the person giving the guarantee (the guarantor) typically gets little or nothing out of the arrangement, whilst exposing his or herself to a great deal of financial risk.

On the other side of the fence, some people find a lot of help from guarantees when dealing with a person who may not be able to pay up out of their own assets or equity of their own.

That's why the two most common uses of guarantees involve business dealings with a company (which might be paper-thin in terms of assets) or loans to purchasers of land who don't have a large enough deposit or income.

For businesses, the directors of a company might give a guarantee, such as for leases, terms of trade or other business supply contracts.

For individuals, it is often a parent risking a great deal to help their child buy a house or start a business.

Whatever the situation, a guarantor is placed in a very difficult position if there is a default, as the guarantor must come up with the money and usually straight away.

The Courts can set aside guarantees that have been obtained in improper circumstances and the law has developed to protect guarantors against some of the more unfair situations that might affect a guarantor's liability.

The possible impact of guarantees are such that guarantees need to be carefully considered whenever they are used and professional advice is recommended.

At Andersons we can prepare guarantee terms, assist with disputes where a guarantee has been called upon and give advice in relation to the effect of guarantees. It is important to note however, for insurance and other reasons, we do not provide independent certificates of advice about guarantees where one has been requested by banks, lenders and other persons.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.