ASIC
Australian Securities & Investments Commission

Love and loans

Has a family member or friend ever asked you to be a co-borrower or to guarantee a loan for them? Before you agree to be a guarantor or co-borrower on a loan, think carefully – you could lose a lot.

How does being a guarantor work?

- If a lender thinks a borrower may not be able to repay a loan, they will ask for a **guarantee**.
- If you sign a guarantee for a friend or family member, you are promising to **pay the entire loan back** if they cannot or will not do so, along with any fees, charges and interest. And if your guarantee is **secured against an asset** like your home, you may end up losing it or other your assets if you don't have the money to pay out the loan you've guaranteed. You may also be made **bankrupt** by the credit provider, which means that even assets that have not been offered as security for the guarantee may be sold to pay the outstanding debt.
- Being a guarantor does not give you anything. You **do not have any rights** to own the property bought with the loan, nor will it give you a good credit record if the borrower pays off the loan. You may however, end up with a bad credit record if the borrower doesn't pay and you cannot. Being a guarantor may interfere with your ability to get a loan, as the guarantee is recorded as a debt outstanding to you. You may have also had to surrender the title deeds to your home, which will mean you may not be able to use your home as security for a loan of your own if you need one.

How does being a co-borrower work?

- As a **co-borrower**, you will be legally responsible for the **whole debt** if the other person does not make repayments on the loan, not just your share. If neither of you can pay the debt, you will probably end up with a default listing on your **credit report**, making it hard to borrow money for several years, and you risk being made bankrupt.
- **Do not sign a loan as a co-borrower unless you are also getting a share of the benefit (such as sharing ownership of a house or car).**

TIP Think carefully before guaranteeing a loan

- Think very carefully before giving a guarantee if you are at risk of losing your only home if the borrower does not pay.
- **Do you need to give a guarantee?** Is there some other way you could help without going guarantor? For example, you might be able to contribute to a deposit so that it is bigger and a guarantee is not required.
- **Find out how the borrower intends to repay the loan.** Do they have a regular income, for example?

- You must be able to pay back the loan if the borrower cannot. This could mean selling assets, such as a house or car.
- **Do you have a plan for how you will repay the debt if the borrower does not pay?**
  Some options to consider:
  - Do you have assets you don't need that you can sell to pay the debt?
  - Do you have savings to cover the debt?
  - Can you afford to make the repayments on the loan if the borrower stops making repayments?

- If you are being asked to guarantee a **business loan**, make sure you find out everything you can about the business. For example, check the past financial statements and speak to the business's accountant for an outsider's opinion.
- If you still want to go ahead with the guarantee, you should enquire about whether you can reduce the amount you are guaranteeing. It is worth trying to negotiate a lower amount.
- Think about the possible effect this guarantee may have on your **relationship with the borrower** if something goes wrong. It may be better to say 'no' now, rather than having a more damaging disagreement later if things go wrong.
- Never allow a family member to pressure or force you into signing anything that you don't want to sign. If a large amount of money is involved, talk with a lawyer or **get free legal advice** to make sure you understand the risks you are taking on. Consult a community legal centre (see **www.naclc.org.au**), your state's Legal Aid office (see **www.nla.aust.net.au**) or look in the front section of your telephone directory for legal support services.
- **If you're feeling pressured**, see a free financial counsellor or go to your local community legal centre for help. You can also find out more about financial counselling by contacting the Australian Financial Counselling and Credit Reform Association (see **www.afccra.org**) or calling ASIC's Infoline on **1300 300 630**.
- In certain limited situations, a guarantor may be able to **challenge a claim** for payment of a guarantee even where a contract was signed. You should **get legal advice immediately** if, at the time you signed a guarantee, you:
  - suffered from a disability or mental illness
  - only agreed to sign through pressure or fear
  - did not understand the nature of the documents, or the extent of the risk you were taking on, and did not receive legal advice before signing
    (for example, you may have thought you were giving a guarantee limited to a certain amount of money but a much larger amount is now being claimed, or you believe that the credit provider or broker used unfair tactics, or tricked or misled you when arranging the finance).

What to ask the credit provider before you guarantee a loan

What type of guarantee are you providing?	• Is the guarantee for a **fixed amount** of money, or is it for **all monies**? You are better off guaranteeing a fixed amount because you will know exactly what you owe. If you sign an all monies guarantee, you may be legally responsible to pay all amounts the borrower owes now and in the future. This could include interest, fees, charges and penalties. • If you believe that there has been an increase to the amount you have agreed to guarantee without your consent, seek legal advice without delay.

What is the exact amount you are guaranteeing?	• The guarantee should clearly state the exact amount of money you will owe if the worst happens and the borrower does not pay.
Could you lose assets?	• You may be asked to provide a **mortgage** over your house as a guarantee. So you may have to sell your house to pay the loan if the borrower does not pay.
Do you have a copy of the loan contract?	• The loan contract should tell you the amount of the loan and the interest rate on it, and whether the loan is **secured** (which means that the borrower is providing an asset, such as their house, as security). • It should also state the **term** of the loan – how long the borrower has to repay the loan – and the amount of the loan repayments.
What type of loan are you guaranteeing?	• Be very careful about guaranteeing a loan that has no specific period of time in which it needs to be repaid, such as an **overdraft** or a **line of credit**. This kind of loan could theoretically go on forever.

What happens if a relationship breaks down?

- A breakdown in your relationship can affect every part of your life, including your finances. You might find yourself supporting your children with little or no help from your ex-partner, or stuck with joint debts your ex-partner is unwilling or unable to help you pay.
- If you signed a **loan contract** as a co-borrower or guarantor (or you were a director of a family company or partner in a business), you might be liable for your ex-partner's debts.
- In most cases, you won't be able to get out of loan contracts you made in the past, but you should get legal advice about where you stand.
- Visit **www.naclc.org.au** to find a community legal centre, consult one of the state Legal Aid offices listed at **www.nla.aust.net.au**, or look in the front section of your telephone directory for **legal support services**.
- For information about **family relationship support services**, go to the Family Relationship Services Australia website **www.frsa.org.au**.

What should you do if your relationship breaks down?	• If possible, discuss with your ex-partner who will take responsibility for paying each debt. Make sure you receive copies of **account statements** (or monitor the accounts online or by phone) to check that debts are being paid as agreed. • Make sure all jointly accessed savings accounts are changed to **two to sign**. • Make sure all redraw facilities and loan offset accounts are **frozen** and cannot be accessed without your consent and signature. • If your credit card has an additional cardholder, **cancel** the additional card. • **Cancel** any utility accounts (for gas, phone and electricity) in your name that you no longer need. Your ex-partner can then get them reconnected in his or her own name.
When should you get legal advice?	• If your ex-partner **won't** continue to **repay joint debts** (or their share). [In this case, you may need to contact your credit provider to seek a **hardship variation** (see step 5 on page 5). Remember: you are liable for the whole debt, not just your share.] • If you think you might **not** owe a debt. • If you need to negotiate a **property settlement** (which may include debt).

Connie (63) agreed to guarantee a business loan for her son

Our family ran cafés for years until my late husband became too ill to work. My son Leo grew up working for the family business. I thought he could make a go of it. But I didn't know that he had a gambling problem.

A few months after I signed the business loan for him, Leo got behind in repayments. Then he got evicted from the café for not paying rent. The bank and the landlord contacted me to pay back what was owed. I'm afraid I'll have to sell my house to pay it all off.

Help with gambling problems

Even if your relationships are okay, a problem like gambling addiction can affect everyone in the family, especially if you have to sell something (a car or even your home) to pay off the debts. For help with gambling problems, call one of the following **free national helplines** (available 24 hours a day):

- **National Problem Gambling Hotline**: call **1800 858 858** or go to **www.gamblinghelponline.org.au**
- **Lifeline**: call **13 11 14** or go to **www.lifeline.org.au**

Six steps to smarter borrowing

Step 1. Work out if you can afford to borrow	■ Remember, if the borrower cannot or will not pay the loan, you will be responsible for paying it all back. So you need to take the same care as if you were taking out a loan for yourself. Always **seek legal advice** before entering into a guarantee.
Step 2. Shop around for the best deal	■ If you do decide to guarantee a loan, take time to check and compare interest rates, product features, and fees and charges. Even a small difference in the interest rate can make a big difference to what you will be liable for. ■ **Compare products** using our multi-loan calculator at **www.fido.gov.au/calculators** or by using online comparison services, such as: • **www.canstar.com.au** • **www.infochoice.com.au** • **www.mozo.com.au** • **www.ratecity.com.au** ■ Research published by the independent consumer group CHOICE is designed to help people find the right product for their particular needs and budget – see **www.choice.com.au**.
Step 3. Know who and what you're dealing with	■ From 1 July 2010 anyone who wants to engage in credit activities (including brokers) must be **registered or licensed** with ASIC or be a representative of someone who is registered or licensed (that is, they must either have their own licence or come under the umbrella of another licensee as an authorised credit representative or employee). It they aren't they are operating illegally, so make sure you only deal with someone who is registered or licensed. ■ There is currently an exemption from registration and licensing for credit assistance provided through some businesses (for example, retail stores and car yards). While the store may be exempt, the actual credit provider must still be licensed or registered. If you are unsure who the credit provider is, ask the person you are dealing with to point out the name in your credit contract. ■ To find out if a credit provider or broker is registered or licensed, visit **www.fido.gov.au/credit** or call ASIC's Infoline on 1300 300 630.

	- From 1 January 2011 anyone engaging in credit activities must give you a **credit guide** (with information including their licence number, fees and details of your right to complain) before they provide you with any credit assistance.
Step 4. Keep up with your repayments	- Ensure the borrower can keep their **repayments up-to-date**. How do they intend to repay the loan? Do they have a regular source of income? - As a guarantor or co-borrower, you have a right to ask the credit provider for statements.
Step 5. Get help if you can't pay your debts	- Make sure the borrower **acts quickly** if they're having trouble making repayments. Even though it may be difficult to face the problem, ignoring it will only make things worse. - If they can't make the full repayment, they should pay what they can, and contact their loan provider without delay. - Anyone experiencing financial difficulties has the right to apply to their credit provider for a **hardship variation**. If the credit provider refuses, they may apply to its independent dispute resolution scheme for a variation on the grounds of hardship (see contact details for the Financial Ombudsman Service and the Credit Ombudsman Service Ltd below). - There are places you can go to for help – visit **www.fido.gov.au/credit** for sample letters and information about support services such as financial counselling and legal assistance, or call ASIC's Infoline on 1300 300 630. - See our factsheet *Can't pay your debts?* at **www.fido.gov.au/credit**.
Step 6. Complain if things go wrong	- Try to resolve a problem with the credit provider first. - If you aren't satisfied, take your complaint to the provider's **independent dispute resolution scheme**. This will be either the Financial Ombudsman Service (FOS) at **www.fos.org.au** or the Credit Ombudsman Service Ltd (COSL) at **www.creditombudsman.com.au**. Both schemes can be reached by calling 1300 780 808. - You can complain to ASIC online at **www.asic.gov.au/complain** or call ASIC's Infoline on 1300 300 630.

Find out more at **www.fido.gov.au/credit**

Find out more about credit, debt and borrowing at FIDO, ASIC's website for consumers and investors. Download our free booklet, *Credit, loans and debt: Stay out of trouble when you borrow money.*

Other factsheets and booklets can also be downloaded from **www.fido.gov.au/publications**

Or call ASIC's Infoline on **1300 300 630** and we'll send you a copy.