

Guarantees in Life and Business

They say the only thing guaranteed in life is death and taxes. It's a bit of an oxymoron to guarantee death in life and it's no comfort to pay taxes on everything you do in life. But then, there's the guarantees you may be asked to give and sign in relation to financing, equipment or supplies needed for your company business. I like those guarantees even less than taxes and death because the end-result of signing one can be as devastating. Here's my advice and tips on giving personal guarantees in relation to your business.

First, avoid them entirely, if at all possible. You likely incorporated your business to escape personally liability in the event of any lawsuits and to protect your personal assets. Giving a personal guarantee takes away that layer of insulation because you have assured the lender that if your company doesn't ante up the money when due, you will. I have a client who leased equipment through his corporation, but also signed the lease in his personal capacity to guarantee the lease payments. His industry took a nose dive and he was forced to close the doors of his business. But that didn't stop the lender from suing him personally for the entire value of outstanding lease payments owed on the equipment they repossessed.

Second, if you can't avoid them, limit them. Certainly don't hand them out like candy at Hallowe'en to anyone who asks for one. Make sure you only give them one-bite chocolate bar. Limit the monetary value of the guarantee to something less than the total value of the loan or equipment or a percentage of the total outstanding value. That way, you're not on the hook for the entire amount if your company defaults on its payments. Limit the duration of the guarantee by having it in place for the first year or two. This gives the lender comfort when the debt is at its highest and ensures a shorter timeline for it to stay in place, allowing you financial relief if the debt is called in during the latter portion of the term.

Third, avoid having it secured. If the guarantee refers to the lender having a general security interest or collateral security over your assets, it has the right to register that security interest against you personally. As a secured creditor, the lender has a stake in any assets that are specifically named. Definitely don't agree to a collateral mortgage against your home, which if called in could leave without a home. If it's "general" security, it can be over anything and everything, consumer goods, inventory, equipment, accounts, other and motor vehicles. Best scenario, limit it to the specific equipment or thing for which the money is being borrowed, that way the lender can only reclaim that asset and not all of your other personal assets.

Fourth, if you're forced to give a personal guarantee, make sure you own nothing of significant value or something you're willing to lose your shirt over. If your spouse is the only one registered on title to your home, the lender can't take it from you; although there's no guarantee your spouse won't put you in the doghouse. You could be forced to cash in RRSPs or other personal financial savings if you have to honour the guarantee. Unless you're sporting fine jewellery or drive some expensive cars you own outright, it's not likely a lender will seize the shirt off your back and cash it in.

Personal guarantees can be risky to those who provide them. On the flipside, however, if you deal with companies whose solvency may be in question, you might want to think about getting a personal guarantee from their owners. In doing so, you have the ability to demand payment from the owner for debt incurred by the company if it is unable to pay its bills. For help with guarantees in life and business (but not death and taxes), contact your Chief Loophole Advisor at moira@wallacelaw.ca.