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To Guarantee Or Not To Guarantee?

This is the question a generation of baby boomers is asking in assisting their first home buyer children get a leg-up on the property ladder.

INTERGENERATIONAL equity, as Malcolm Turnbull recently described it, is becoming more widespread as housing affordability becomes a bigger problem for more people. Unfortunately, the solution is not as simple as Joe Hockey once put it, that is, to “get a better job”. One solution that is becoming increasingly utilised is the “family

guarantee” which borrowers and lenders are using to get home loans over the line. Usually the guarantee doesn’t involve the exchange of cash however it almost always involves mum and/or dad putting a mortgage or second mortgage over the family home as security. This can put that property at risk if the borrower doesn’t pay the loan, particularly if mum and dad are retired and don’t have a regular income.

Rather than risk a court setting aside a guarantee, lenders are making guarantors seek independent legal advice about the terms and conditions and risks of giving a guarantee. This is a positive step and helps ensure that guarantors understand what they are really getting themselves into by signing a guarantee.

So, what are you really guaranteeing? Every guarantee is different but they all share one common element – you guarantee the payments that the borrower is required to make and if the borrower doesn’t make these payments then you promise to make the payments personally. Sounds simple enough, right? Unfortunately many guarantees contain some other onerous promises or obligations that you might not be aware of. These can include:

1. You are probably guaranteeing the loan PLUS interest, administrative costs and legal costs.
2. By signing a guarantee you may have given the lender consent to use any money you have in any account (as long as it’s with the lender) to repay the loan without notifying you first.
3. The lender may be able to recover money owing by the borrower from you as the guarantor, even where

the original loan contract with the borrower is invalid and unenforceable against the borrower.

4. You may be guaranteeing money owed by the borrower now and into the future e.g. credit cards & personal loans.
5. If for some reason the borrower does not make repayments then the lender may not be obliged to “chase” the borrower for the money before exercising its rights against you as the guarantor.
6. You may give up the right to take action to recover money from the borrower if you have to pay the loan in full.
7. The lender may not necessarily have to wait for the borrower to default on the loan before making a demand on you as guarantor for full payment of the loan. It could be as simple as the bank conducting a routine valuation which values the property at less than the amount of the loan. The lender may then make a demand on the borrower and/or you as the guarantor to repay the loan in part or in full. If neither you nor the borrower can repay the amount demanded the bank can sell any property used to secure the loan. This could be your home.

Providing a guarantee is a big responsibility! You should always seek independent financial and legal advice before signing any guarantee and you should be financially prepared to repay the full amount you have agreed to guarantee, without warning.



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