



## Guarantors

### The risks

Being a guarantor is risky. If you have signed as a guarantor then if the debtor does not pay, the creditor will force you to pay.

If the contract you signed includes your house or your car as security, the creditor can sell them if you do not pay when the creditor asks you to.

### The guarantor contract

Contracts of guarantee must be in writing and they must be signed. You cannot be held to a guarantee you made over the phone.

If you have guaranteed a credit contract, you must be given the same key information that is given to the debtor and a copy of the contract of guarantee. Any other changes or notices sent to the debtor should also be sent to you.

### What if I never signed the guarantee?

Guarantee contracts must be in writing and signed by the guarantor. If this is not the case, for example if someone used your name and forged your signature, you cannot be held to the contract. Go to a community law centre for help.

[Visit the website of the Community Law Centres.](#)

### What happens if the person I'm guaranteeing a loan for misses payments?

If the debtor gets behind in their payments, and the creditor takes steps to repossess, you must be sent a copy of the prepossession notice. You can choose to repay the money owing to stop the repossession, or you could ask to take over the contract.

If you are unsure what your best option is, see a budget advisor or a community law centre. If goods are repossessed you must also be sent copies of all the other notices.

[See here for more information on the repossession process.](#)

If you are not sent copies of the required information, then your liability under the guarantee may be reduced.

### What if changes are made to the credit contract?

If the guarantee contract makes you responsible for any future amounts the debtor borrows, or covers any changes the debtors and the creditor make to the contract, you must be sent written information about the changes.

If the creditor does not send you this information, they will not be able to enforce the guarantee until they do provide it.

You can claim statutory damages from the creditor.

[See here for information on statutory damages.](#)

If the guarantee contract does not allow for changes, then you won't be responsible for the guarantee if the changes are made without your consent.

Example: Douglas borrows \$1000 from a finance company. His friend Efi agrees to guarantee the loan. When Douglas' mother becomes ill, he borrows another \$500 so he can fly to Auckland to be with her. The finance company must tell Efi about the change in the amount Douglas now owes. If they don't tell Efi about this then the company can't make Efi pay back the extra \$500 or the earlier \$1,000, if Douglas doesn't make the payments.

### What if I am the guarantor for a close family member or friend?

People often are the guarantor for someone they have a close relationship with, for example a son, grandchild or partner.

If you are in a close relationship with the person you are going guarantor for then you may be able to get out of the guarantee if the creditor did **not**:

- explain the risks you were taking and what could happen if the debtor didn't pay
- encourage you to get independent legal advice
- provide information to your independent advisor about the transaction and all the financial circumstances of the debtor.

If these things did not happen, you can get advice about your options from a community law centre.

[See contact details for community law centres.](#)

### **What if I think I am being treated unfairly by the creditor?**

You can ask the Court to cancel a guarantee contract or stop a creditor from enforcing a guarantee if:

- the terms of the guarantee are oppressive
- the creditor used their powers under the guarantee in an oppressive way
- you were pressured to sign the guarantee
- you were taken advantage of – for example, you were misled about what you were signing.

[See here for more information on oppression.](#)