



3-26-10

A PRIMER ON LOAN GUARANTIES

In today's lending environment, it is uncommon to receive financing without a personal guaranty or the posting of other substantial (and usually liquid) collateral. A guaranty imposes liability upon a person or entity other than the borrower for the borrower's performance of the terms and conditions of the note and the other loan documents. Essentially, the lender is trying to obtain more security for the loan than just the underlying property. For example, if ABC, LLC is the borrower, the lender may require that ABC, LLC's principals personally guaranty the loan. The guaranties may either be joint and several, in which case the guarantors are each personally liable for the entire amount of the loan; several, in which case the guarantors are each liable only for their proportionate share of the loan; or otherwise limited to a specified dollar amount. Accordingly, with a guaranty, the guarantor's assets become additional security for the borrower's obligations.

To make a guaranty enforceable under Wisconsin law, it must be supported by consideration. If the guarantor has received no benefit, a court may find that the guaranty lacks consideration and is therefore unenforceable. Because guaranties are surety contracts, a modification to the underlying loan may result in a guarantor being discharged from its obligations under the guaranty unless the guarantor consents to such modification. Wisconsin law allows the courts broad discretion in making such determinations. Key factors that courts consider when enforcing a guaranty of a modified loan include:

- If the guarantor is one of the owners of borrower, courts will more likely consider the guarantor to be a compensated guarantor.
- Is the increase in the borrower's obligation material? If the increase is immaterial, courts will be more likely to enforce the guaranty.
- Did the guarantor have management/control of borrower's business? If so, courts are more likely to enforce the guaranty.

A couple of practical safeguards lenders can take to avoid losing rights to enforce a guaranty include having the guaranty drafted in a manner that identifies and documents the existence of some type of benefit to the guarantor (even if as ephemeral as peace in the family) and providing that any amendment to the loan requires the written consent of all guarantors.

Lastly, in Wisconsin, individual guaranties are subject to the provisions of the Wisconsin Marital Property Act, Wisconsin Statutes Chapter 766. Therefore, each guaranty signed by a married individual should include a separate statement, signed by the married individual prior to or contemporaneously with the guaranty, stating that the obligation of the guaranty is or will be incurred in the interest of the marriage or the family of the guarantor. Under the Wisconsin Marital Property Act such statements are conclusive evidence that the guaranty obligation is an obligation in the interest of the marriage or family, and exposes all marital property to satisfy the debt. Many lenders go one step further and require that the guarantor's spouse give written consent to the guaranty.

Because of the individual exposure and liability, a personal guaranty is one of the most important loan documents to have reviewed by your attorney. Members of the Reinhart team have the experience and knowledge to assist you in reviewing personal guaranties, and can help you understand and limit your personal exposure in your commercial loan transactions.

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 CURRENT RATES

Maturity	Today	Last week	Last month
5-year Treasury	2.41%	2.40%	2.45%
10-year Treasury	3.66%	3.69%	3.77%

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