

Biz Legal Contract Term EXPLORED: Guarantor/Surety

Introduction/Definition

A guarantor or surety is a person (or company) who agrees to be responsible for the debt or obligation of another, called the principal. The person receiving the guarantee is called the guarantee.

This is best known as "co-signing" like people do on leases, houses, credit cards and student loans. The guarantor is saying "If the primary person does not pay, I will pay" to a third party. This is a LOT of responsibility.

Points to Consider

1. Subject to the Statute of Frauds which requires a writing. Ex. Small business owner signs a lease and the signature line has "On Behalf of Business X" and there is no separate line holding the individual owner responsible, the landlord cannot later claim that the individual is personally responsible for the lease terms if the business breaches the contract.
2. If the surety is required to pay or perform due to the principal's failure to do so, courts usually will grant the surety/guarantor the right of subrogation which we discussed earlier.
3. The principal is the primary person responsible to the guarantee; The guarantor is the person making the guaranty (thing) to the guarantee (person).

In GA...

- Sureties/guarantors can assert any reasonable defenses which would have been available to the principal as long as there is not waiver or estoppel.

My Advice

Don't co-sign or guarantee UNLESS its' an emergency or you have the funds to automatically pay the principal. You must ASSUME that you will ultimately be responsible guaranteeing anything, otherwise you will set yourself up for failure.

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