



## SPECIFIC GUARANTY & GUIDE

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## 1. Overview

Successful businesses are built on big ideas and long-range goals, but without sufficient capital, those dreams may never be realized. Limited start-up funds can stop a company in its tracks. Business owners often underestimate the amount of money they will need to keep their organization running, and close their doors before they've had a chance to get a market foothold. Many owners also expect their companies to turn a profit on Day 1, failing to consider expenses, competition, and the time it takes to build a customer base.

Whatever the reasons, individuals and companies often must borrow money to keep their businesses afloat. They can turn either to large financial institutions or to friends, colleagues, and relatives for support. In either case, lenders will seek assurance that the money they've lent will be paid back, one way or another. A guaranty is a way to provide such assurance. The guarantor will serve as the borrower's stand-in, liable for the borrower's debts and duties as if they were his or her own, if the borrower ever fails to repay the money borrowed.

Borrowers who find guarantors for their promissory note may find loans more readily available to them. Lenders know that if a default occurs, they have the additional security of being able to turn elsewhere for repayment. The very fact of the guaranty may itself provide comfort. It signals to the lender that a third party has confidence in the borrower or that a business owner has confidence in his or her own company. These assurances may, in turn, make a borrower more comfortable with the loan arrangement, confident in a safety net that can prevent total default and its related credit consequences.

This package contains everything you'll need to customize and complete your specific guaranty. A written agreement minimizes confusion, misunderstanding, and error, and clearly sets forth the parties' expectations and fulfillment obligations. In every way, this promotes a successful and profitable business arrangement.

## 2. Dos & Don'ts Checklist

- Almost all small business loans require guaranties, usually from the business owner him or herself. If your company's financial condition is strong and stable, lenders may not ask you to complete a guaranty, and these should be requested with less frequency as your revenues and prospects grow.
- Before sitting down to sign, decide exactly what your goals are for the guaranty. Will the guarantor be responsible for default interest and legal fees? How and when can the guaranty be cancelled? A good agreement is one that captures the intentions of the parties accurately. Take a moment to clarify the terms and conditions of your agreement before memorializing them in written form.
- Many guaranties, including the enclosed document, allow the lender to recover payment in any order it chooses. In other words, the lender can go after the assets of either the debtor or the guarantor if a default occurs. It is not required to seek money from the debtor first.

- The attached document is a specific guaranty, which is addressed only to repayment of a particular note or loan transaction. A general guaranty, by contrast, promises that the guarantor will secure all of the borrower's debts to the lender, regardless of how many notes or transactions generated that total amount. If the latter describes your situation, you should not use the enclosed document.
- Allow each party to spend some time reviewing the guaranty. This will reduce the likelihood, or at least the efficacy, of claims that a party did not understand any terms or know what their obligations were under the document.
- Both parties should review the guaranty carefully to ensure that **all relevant deal points** have been included. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- Guaranties are generally used to supplement a secured promissory note. The note is the borrower's promise to repay the money it received. The enclosed guaranty assumes the existence of a secured promissory note, but that document is not included with this package. You should attach a copy of the promissory note to the guaranty as Exhibit A.
- Sign three copies of the guaranty, one for the guarantor and one each for the parties to the original contract.
- Depending on the nature of its terms, you may decide to have your guaranty witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

### 3. Specific Guaranty Instructions

The following provision-by-provision instructions will help you understand the terms of your specific guaranty.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the document in its entirety before starting your step-by-step process.

- **Introduction.** Identifies the document as a guaranty. Write in the date on which the agreement is signed. This should be the same date that the secured note is signed and made effective. Identify the parties and, if applicable, what type of organization(s) they are. Note that one party is called the "Guarantor" and the other the "Lender." As you probably guessed, the Lender is the party that loaned the money under the note and the Guarantor is the party that is guaranteeing the debtor's promise to pay with this agreement.
- **Recitals.** The recitals allow the parties to give background information on their arrangement, and explain why each party has an interest in the guaranty being signed. Enter in the date and amount of the note that is being guaranteed.

- **Section 1: Guaranty of Obligations.** Explains that the Guarantor is ensuring the repayment of the debtor's note.
- **Section 2: Proceeding Against Guarantor.** Indicates that the Lender is not required to exhaust its remedies against the Debtor before requesting or demanding repayment from the Guarantor. The Lender can proceed against the Guarantor or the Debtor (or any other guarantor) in any order it chooses.
- **Section 3: Specific Guaranty.** This section explains that the guaranty is specific to the note signed by the Debtor. That is to say, if the Debtor incurs any other credit obligations to the Lender, the Guarantor does not guaranty the repayment of those loans. Insert the amount of the note that is being guaranteed.
- **Section 4: Termination.** Provides that the guaranty will terminate automatically when the Debtor has paid off the note. This section also allows the Guarantor to terminate the agreement of its own accord, if it provides a certain amount of notice to the Lender. You and the other party to your guaranty should discuss how many days notice you will require from the Guarantor. Note that even after termination, the Guarantor will remain liable for any indebtedness that occurred before the termination date; however, it will not be liable for any additional amounts occurring after that date.
- **Section 5: Postponement of Subrogation.** Explains that even though the Guarantor may have a claim against the Debtor if it is forced to pay off the Debtor's obligations under the note, the Guarantor will hold off on making that claim until the Lender has been paid. After the Lender has been paid, the Guarantor is free to seek reimbursement from the Debtor and the Lender will provide any necessary paperwork to support the Guarantor's claim.
- **Section 6: Waiver of Presentment; Additional Demand.** Indicates that if the Debtor defaults on the note, the Lender doesn't have to explain to the Guarantor that it is going to take action. The Lender can simply take that action without further notice.
- **Section 7: Successors and Assigns.** States that the parties' rights and obligations will be passed on to heirs or, in the case of companies, to successor organizations.
- **Section 8: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Guarantor and the Lender.
- **Section 9: Collection Costs and Attorney's Fees.** Places the responsibility for paying any costs of collecting money under the note on the Guarantor's shoulders.
- **Section 10: No Implied Waiver.** Explains that even if the Lender ignores or allows the Guarantor to break an obligation under the guaranty, it does not mean the Lender waives future rights to require the Guarantor to fulfill those obligations.
- **Section 11: No Impairment.** The Guarantor's promise that it has all right and authority to enter into the guaranty.
- **Section 12: Governing Law.** Allows the parties to choose the state and county laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Please write the applicable state and county in the blanks provided.

- **Section 13: Severability.** Protects the terms of the guaranty as a whole, even if one part is later invalidated.
- **Section 14: Entire Agreement.** The parties' agreement that the guaranty (together with the loan documents) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 15: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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## Form Sample

### SPECIFIC GUARANTY

This guaranty agreement (the "Guaranty") dated as of \_\_\_\_\_ [Date], is made and entered into by \_\_\_\_\_, an individual (the "Guarantor") in favor of \_\_\_\_\_, an [individual] [corporation] [limited liability company] [etc.] (the "Lender"), in light of the following:

#### RECITALS

**WHEREAS**, the Lender has loaned the sum of \_\_\_\_\_ to \_\_\_\_\_, (the "Debtor"); and

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Debtor executed and delivered to the Lender that certain promissory note in the original principal amount of \_\_\_\_\_ Dollars (the "Note"), a copy of which is attached hereto and made a part of hereof as Exhibit A; and

**WHEREAS**, as an inducement for the Lender to extend credit and issue the Note to the Debtor, and in consideration thereof, the Guarantor has personally guaranteed the prompt and full payment of the Debtor's indebtedness under the Note; and

**WHEREAS**, the Guarantor will derive substantial benefits from the completion of this extension of credit and issuance of the Note to the Debtor;

**NOW THEREFORE**, in consideration of the foregoing, the Guarantor agrees with the Lender as follows:

1.