

WHEN IS A GUARANTEE NOT A GUARANTEE?

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Guarantees come in many shapes and forms. We have all heard the infomercials promising a money back guarantee if you do not love their product. Many electronic appliances come with guarantees that the appliance will perform well for a certain period. The type of guarantee we are talking about here is a guarantee about debt being repaid.

When getting a loan from someone other than a bank, often guarantees will be necessary to make sure lenders will get their money back. Some lenders might only agree to loan money if they are provided with a guarantee and would refuse to loan money if no guarantee is given.

The New Zealand property market is booming, and it does not look to be changing anytime soon. Getting onto the property ladder has always been a big jump for many people and the hurdles in the way look like a big task to overcome. Being a first home buyer in this market can be very daunting, which is why a lot of parents will want to help their children as much as possible to get onto the property ladder. A common way for parents to help their children buy property is to provide guarantees that the money being loaned will be paid back. These guarantees mean that in the event the person taking out the loan has failed to pay it back, such as defaulting in loan

repayments, the guarantor (person who has made the guarantee) will be responsible for paying that loan back.

A guarantee will only be valid if it follows the strict requirements as found by the Supreme Court in *Brougham v Regan* [2020] NZSC 118. If you ever plan on making a guarantee or if someone will be making a guarantee for you, make sure the terms of the guarantee are clearly recorded in writing and signed by all guarantors involved. If these requirements are not met, the guarantee may not really be a guarantee and the lender may not get any money back.

This is most essential if you are lending money because it could be the reason why you are never repaid the money you loaned. Always ensure the guarantee is in writing, clearly stating that the guarantor agrees to be responsible for a third party's debt, default or liability. And always ensure all guarantors have signed the guarantee as guarantors cannot be taken to agree to the terms of the guarantee unless each guarantor has signed.

If you are lending money on the basis that a guarantee is required, always wait for the guarantee before handing over money. Taking short cuts is not worth risking the validity of a guarantee.