

Have You Personally Guaranteed Your Business' Debts?

Many business owners or officers are required to sign contracts for goods, services, or other necessary utilities for the operation of their businesses. At times, the business may face a dispute with a vendor, landlord, lender, or other creditor regarding payment under the contracts. To the business owner's or officer's frustration, not only is the business then named in a lawsuit by the creditor, but the signee on the contract is named *personally*. The creditor now seeks to hold the signee personally liable for the business's default, claiming the signee to the contract gave a "personal guaranty" for the business debts. If the contract does not make clear in which capacity the owner or officer signed, they may be faced with personal liability for the underlying debts of their company in the event of a default, otherwise known as a "personal guaranty".

A personal guaranty is a promise by an individual to personally ensure that payments or obligations to a creditor are satisfied in the event the original debtor defaults. The guaranty places *personal liability* upon the individual guarantor to ensure that payments and obligations will be met. Often times, a business owner or officer is asked to sign a personal guaranty on behalf of their business. For example, a vendor may ask an officer of a company to personally guaranty payment for the delivery of all goods to their business. Another good example includes a landlord who requires a personal guaranty by an officer for a company's commercial lease in the event the company becomes insolvent and defaults on rent payments. If the companies in these examples default on their payments, the creditor could then turn directly to the personal guarantor to satisfy the company's debt.

The above scenarios can create a risk for the personal guarantors, such as the seizure of unprotected, personal assets by creditors to satisfy the debts of their business. The key factual question then becomes: did the signee execute the contract personally creating a personal guaranty, or were they signing as a representative on behalf of their business. Therefore, it is important to understand how a personal guaranty is created, and appreciate the risks if you are asked to personally guaranty a future contract. Questions arise such as: what contractual language is needed to create a personal guaranty?; is a personal guaranty still enforceable even after I leave the business?; and, what are my defenses from liability if I never intended to create a personal guaranty? Florida case law and precedent have addressed these issues on a case by case basis, and each contract should be reviewed thoroughly before entering into any personal guaranty.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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