

# Things you should know about becoming a guarantor



Bankwest, a division of Commonwealth Bank of Australia  
ABN 48 123 123 124 AFSL/Australian credit licence 234945

## The Banking Code of Practice and becoming a guarantor

### The Banking Code of Practice applies to you if you're an individual who has signed (or is considering signing) a Guarantee to help another individual or a small business to secure any financial accommodation or loan provided by Bankwest.

Becoming a guarantor is a serious undertaking.

Put simply, you'll be agreeing to guarantee that the person or business we're lending to (the borrower) will keep to all the terms and conditions of that loan or contract, including repaying the loan.

If that person doesn't do so, as guarantor, you become liable for the contract. This means that you might have to pay the amount of the loan (or the amount of the loan up to any limit set out in the Guarantee – plus costs and interest). If you don't or can't pay, you might have to sell your own assets (such as any house you have mortgaged to support the Guarantee) to pay the debt.

#### Banking Code of Practice

You can ask us for a copy of the Banking Code of Practice, or download it at [www.bankwest.com.au](http://www.bankwest.com.au).

#### National Credit Code

If you're an individual who has signed (or is considering signing) a Guarantee to support an individual to secure credit (including a loan) for wholly or predominantly non-business purposes, the National Credit Code might also apply to you and could give you additional rights.

### Becoming a guarantor

#### If you're an individual, we'll only accept a Guarantee from you if your liability is limited to:

- a specific amount and/or category of amounts such as all amounts owing under a specific loan, plus other liabilities and amounts as described in the Guarantee (for example, interest and recovery costs)
- the value of a specified property or other assets under a specified mortgage or other security at the time of recovery.

### Things to expect before we take a Guarantee from you

#### We'll give you a prominent notice that:

- you should seek independent legal and financial advice on the effect of the Guarantee
- you can refuse to enter into the Guarantee
- there are financial risks involved
- you have a right to limit your liability in accordance with the Banking Code of Practice and as allowed by law
- you can request information about the transaction or facility to be guaranteed, and
- if applicable, the Guarantee might cover future credit facilities and variations of the existing loan

- We will also include a warning notice that appears directly above the place where you sign the guarantee (substantially in the form required by section 55 of the National Credit Code and detailed in Form 8 of the National Consumer Credit Protection Regulations 2010 (Cth) and consistent with the Bankwest Code of Practice).

#### Unless you're a commercial asset financing guarantor\*, a sole director guarantor# or a trustee guarantor^, we will:

##### 1. tell you:

- about any notice of demand made by us on the borrower for the guaranteed loan or any loan the borrower has, or has had, with us within two years before we tell you this, and
- if any existing loan we've given the borrower will be cancelled if the Guarantee isn't provided, and

##### 2. give you a copy of:

- the proposed loan contract
- a list of any related security contracts
- any related credit report from a credit reporting agency
- any current credit-related insurance contract that's in our possession
- any financial accounts or statement of financial position given to us by the borrower in the previous two years for the purpose of the guaranteed loan
- the latest statement of account relating to the loan for a period in which a notice of demand was made by us within the last two years, and
- other information we have about the guaranteed loan that you reasonably request – but we don't have to give you our internal opinions.

#### If you're a director guarantor+ (other than a sole director guarantor):

- you have the right to receive the documents referred to in paragraphs 1 and 2 above. These documents contain important information that might affect your decision to give a Guarantee, and
- you can choose not to receive some or all of those documents and we won't influence your choice.
- If you choose not to receive some or all the documents, we'll need you to confirm your decision in writing.

### **We won't accept a Guarantee from you until:**

- you've been given the information mentioned above in accordance with the Banking Code of Practice.
- the third day after you've been given that information.

### **However, we can accept the Guarantee earlier if you:**

- have obtained independent legal advice about the Guarantee
- have accepted an extension of the Guarantee
- are a commercial asset financing guarantor, sole director guarantor, trustee guarantor or vehicle asset financing guarantor, or
- are a director guarantor and you choose to sign and deliver the Guarantee earlier.

We won't influence your choice.

### **How can you withdraw from your Guarantee?**

You must tell us in writing if you want to withdraw from your Guarantee. You can do so:

- at any time before we provide credit under the loan
- after credit is first provided, if the signed version of the relevant loan differs in a material respect from the proposed loan we gave you before you signed the Guarantee, except when you have agreed in writing to the signed version.

However, if your guarantee applies to more than one Loan, you may only withdraw in relation to a Loan referred to under the "How can you withdraw from your Guarantee" section.

### **How can you end your Guarantee?**

You can end your liability under a Guarantee you've given to us by:

- paying us the lower of the borrower's outstanding liability, including any future or contingent liability, or the amount to which your Guarantee of the borrower's liability is limited under the Guarantee, or
- making other arrangements which are acceptable to us in return for releasing you from your Guarantee.

## **Some common questions**

### **How is a guarantor different to a co-borrower?**

A guarantor only becomes liable for the amount they've guaranteed (this could be up to the full amount of the home loan, along with interest and reasonable expenses) in the event the borrower(s) can't meet the repayment terms and conditions of the home loan contract.

A co-borrower is someone who chooses to borrow money with someone else. They're also responsible for the home loan repayments and repaying the home loan. For more information about co-borrowers read our co-borrower information sheet available at [www.bankwest.com.au](http://www.bankwest.com.au).

### **What information can I ask for during the life of the loan?**

You can ask us at any time for a statement of the amount the borrower(s) currently owes, any amounts debited or credited, overdue amounts and when they became overdue. This information will be given to you verbally unless you ask for it in writing.

We'll also give you the following information about a borrower's deteriorating financial situation as it relates to the loan you guarantee, within 14 days of the relevant event:

- A copy of any formal demand or default notice we have sent to the borrower
- A written notice if the borrower has advised us that they're experiencing financial difficulty which has resulted in a change to their loan, and
- A written notice if the borrower is in continuing default for more than two months after the issuance of the default notice referred to above.

This doesn't apply if you're a sole director guarantor or a trustee guarantor.

### **Will becoming a guarantor affect my future borrowing capacity?**

When you apply for credit, you might need to tell the credit provider about any loans you're a guarantor on. This can affect your borrowing capacity, especially if you want to borrow against the property you've provided as security.

### **Will becoming a guarantor affect my ability to sell a property I've offered as security?**

If you decide to sell the property, then the additional security is required to be removed from the loan. This could mean that the borrower(s) might need to pay Lenders' Mortgage Insurance (LMI) or come up with the funds to avoid the need to pay LMI. Due to the reduction in security on the loan, the loan amount might be more than how much we're willing to lend to the borrower(s), even with LMI. In this case, the request to release your property as security might be declined. A cash contribution might be requested to reduce the loan down to an acceptable maximum or we might ask for another Guarantee to be put in place.

In any event, it can be complicated and costly to remove the Guarantee if you want to sell, so you should factor this in before agreeing to the Guarantee.

### **Message us in the Bankwest App**

**Call 13 17 19**

**[bankwest.com.au](http://bankwest.com.au)**

- \* Commercial asset financing guarantor is a director, shareholder or manager of a company, that has provided a guarantee for the company's commercial asset financing.
- # Sole director guarantor is a director of a company that has only one director, and that company is to be the borrower for the loan.
- ^ Trustee guarantor is when the guarantor and the borrower are the same person acting as trustee of a trust in one role and acting in their personal capacity in the other role.
- + Director guarantor is a director of a company which is to be the borrower for the loan.

**Important things you should know:** If you're obtaining legal advice you should take this brochure together with your other documents to your legal adviser. These guidelines are general and descriptive and should not be taken as a complete statement of the relevant law or practice. You should obtain your own legal and financial advice before providing a Guarantee or exercising any right you think you may have as Guarantor in respect of our facilities. These guidelines do not apply to all businesses/companies. Please refer to your Customer Service Representative for further clarification. Bankwest is a division of Commonwealth Bank of Australia ABN 48 123 123 124 AFSL/Australian credit licence 234945.