



How scary is a personal guaranty when you aren't the only owner?

Business owners are frequently asked by a creditor to personally guarantee the obligations of the company. For example, landlords and banks typically seek personal guarantees from owners with respect to a company's lease or loan obligations.

In the event that you are held liable on a personal guaranty that you executed for the benefit of the company, do you have recourse against your co-owners? If so, to what extent are they liable to you?

Where more than one owner is asked to sign a personal guaranty, the agreement will generally provide that each owner is "jointly and severally" liable on the obligation. This language protects the creditor because each individual guarantor who signs is liable to the creditor for the entire obligation. Accordingly, in the event of a default, the creditor may choose to hold one or all of the guarantors liable for the obligation.

If you are held liable, you may have recourse against your fellow owners if they also signed the personal guaranty.

What if one of your co-owners doesn't sign? Unequal owners may not have equal business obligations where a personal guaranty is concerned unless they choose to protect themselves by addressing this issue in a separate, enforceable agreement.

For example, the company is owned 70% by A, 20% by B and 10% by C. B and C sign a personal guaranty for the company's line of credit. A, who arguably derives the most economic benefit from the company's business, fails to sign the personal guaranty; the company then defaults and the bank sues only B and C for the entire balance. In this situation, the "safety net" is an agreement among all owners compelling each of them to share in a liability incurred for the benefit of the company.

The agreement needs to define the situation in which owners can seek contribution from each other with respect to a personal guaranty, as well as what that contribution should be. For example, an owner may be liable based on his percentage interest in the company. Likewise, interest could accrue in the event that your co-owner decides not to pony up right away. Additionally, the agreement could provide that distributions are to be withheld altogether or diverted to the owner who was held liable on the guaranty. In the absence of such an agreement, you may find yourself in court deciding what is "equitable."

Finally, business owners should be aware that liability to a creditor pursuant to a personal guaranty is not automatically terminated when one ceases to be an owner of

the company. As you know, a personal guaranty is a binding contract between you and the creditor and is governed by its own terms. Your company agreement should also address this issue and address the removal of owners as personal guarantors of company obligations once they cease to be owners.

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