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Personal Guaranties – How to Narrow Down Your Liability

A personal guaranty is a promise from you that you personally will pay a particular debt of your corporation or limited liability company (LLC). This means that if your company does not have the money to pay certain bills, the holder of the personal guaranty will require you to pay that bill.

Many landlords require that you personally guarantee the rent on the lease that your business is signing. If you are taking out a business loan, the lender may require a personal guaranty from all of the owners.

When you formed your corporation or LLC, you did so to avoid personal liability for the debts of the entity. By signing a personal guaranty, you are assuming the liability for the debts of the entity. Why would you be asked to do this? New businesses have no credit history. In order to protect themselves, landlords and lenders want as many people to be responsible for paying an obligation of the company as they can get. In many instances, you may not get approval for a loan or the lease, if you are not willing to personally guarantee the company's contract. Even if your company has been in business for years, if there are few owners, lenders are concerned that the owners may strip the company of its assets, leaving little for the lender to collect from.

If you are being asked to sign a personal guaranty, ask if the deal will still be approved without your signing one. If the answer is negative, find out whether the personal guaranty can be limited as to amount or time. If the lease is for five (5) years, will the landlord allow the personal guaranty to expire after two (2) years? If the personal guaranty is for an initial term and all extensions and modifications of that term, will the other side agree to limit it to the original initial term? Will the lender agree to a stated dollar amount or percentage of the total debt for which you will be held liable if the company can't pay?

A personal guaranty is a contract and all contracts are subject to negotiation. You should not sign a personal guaranty without first reading and understanding what you are guaranteeing and how much you may need to pay. You should consult with a business lawyer to ensure that you have a correct understanding of the terms of the guaranty – it may be unclear from the terms of the document and getting a more clearly worded guaranty is in your best interest.

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