
Atty. Alexander Ullenberg's

GETTING PAID BULLETIN

Your source for information on collecting the money you're owed, promptly and legally.†



Happy New Year!

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COLLECTING FROM COSIGNERS & GUARANTORS

Question: If a mother cosigns a car loan for her son, and the son has an accident with the car, what is the mother's liability to the creditor for being the cosigner on the car loan? — Horicon, Wisconsin.

Simply, the mother's liability to the creditor depends upon the written terms of the loan agreement between her and the creditor.

When you cosign a loan, you become either a co-debtor or a guarantor depending upon what the document says that you sign.

In most consumer transactions, a cosigner actually signs the loan documents and has their name put on the title to the collateral (here the car). The cosigner then becomes a co-debtor and is "jointly and severally" responsible for the payment of the debt. That is, the creditor can demand full payment from either cosigner (here, from either the mother or the son). And in most of these transactions, if the collateral is destroyed or damaged,

the creditor can demand full or partial payment or additional collateral.

In other transactions, like when a president of a small corporation guarantees the payment of a corporate debt, the cosigner signs a separate agreement called a "guaranty agreement". There are many types of these agreements: limited (ie. \$10,000) vs. unlimited, continuing vs. specific, guaranty of payment vs. collection only, and revocable vs. irrevocable. However, in these types of transactions, courts sometimes require the creditor to attempt collection on the underlying debtor before going after the guarantor.

Collecting from Guarantors. Before you can collect upon a guaranty agreement, you must comply with all applicable laws.

1. The guaranty agreement must be in writing.
2. The guarantor must receive some value (legally called "consideration") for making

the guaranty. For example, stockholders receive a benefit when their corporation receives a loan, and parents receive value when a creditor agrees to extend payment time on a loan to their child.

3. Provide any required notices. In consumer transactions, creditors must provide certain notices before

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the guaranty agreement is signed, when the underlying loan is in default, and when demanding payment. In other transactions, notice of default is usually required by the court.

4. Since the terms of guaranty agreements can differ,

there may be additional requirements required by contract before you can enforce the guaranty agreement.

Guaranty agreements are valuable collection tools — but, remember as with any tool, they must be used in the right situation and enforced in good faith

and within the constraints of applicable law.

Excuse of the Month:

“Yeah, I had the car painted. But I sold that car last week. Go talk to the new owner...”

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Atty. Alexander Ullenberg has represented clients in hun-



dreds of lawsuits across Wisconsin from high-volume small-claims collections to complex bankruptcy litigation.

He is a guest lecturer at the University of Wisconsin Law School and a former business law instructor for Marian College of Fond du Lac.

Alex lives in Fond du Lac, Wisconsin, where he is an active member of the State Bar of Wisconsin, Fond du Lac County Bar Association, and Noon Rotary Club among others.

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Questions? Comments? Ideas? Opinions? I'm always happy to hear from you. Alex

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