

LEEDS PROPERTY ASSOCIATION
GUIDANCE NOTES FOR GUARANTEE

IMPORTANT: WARNING TO PROPOSED GUARANTORS –

1. Please read these Guidance Notes carefully before signing the Guarantee.
2. You should also read the Guarantee through carefully and think about its terms before signing.
3. You also need to read the tenancy agreement through carefully to make sure that you fully understand the Tenant's responsibilities. This is because you are guaranteeing that the Tenant will comply with the terms of the agreement and pay his/her share of the rent.
4. You should consider taking legal advice before signing the Guarantee.
5. You need to think about the Tenant's financial position and whether or not he/she will be able to meet his/her financial responsibilities under the Tenancy Agreement including whether the Tenant is able to pay his/her share of the rent. You should also think about whether the Tenant will behave in a responsible manner and comply with his/her other obligations under the Tenancy Agreement.
6. As the Tenant is one of a number of tenants then different tenants will be guaranteed by different guarantors. Although under the Guarantee you are only responsible for the Tenant's share of the rent, as the Tenant is jointly and severally liable for the other obligations (beside rent) then you stand behind this liability of the Tenant, which is explained in more detail below.

The Guarantor's liability

The Guarantor agrees with the Landlord to pay the Landlord the Tenant's share of the rent under the Tenancy Agreement, should the Tenant not do so. This must then be paid by the Guarantor. If the Tenant fails to pay any other money as required by the Tenancy Agreement (beside the rent) this must be paid in full if the Tenant fails to pay. If the Tenant breaks any of the provisions of the Tenancy Agreement and the Landlord has a claim for damages or expenses as a result then the Guarantor must pay the Landlord the full amount of that loss, should the Tenant fail to do so. The Guarantee is limited as to the amount of the rent that may have to be paid but otherwise is unlimited.

Limited liability for rent only

The Guarantee is limited to the Tenant's share of the rent. For any other money, which is payable, beside the rent, the Guarantor's liability is not limited.

Unlimited liability for things other than a share of the rent

The Guarantee is unlimited for anything beside the rent. This means that there is no maximum amount fixed which the Guarantor has to pay should the Tenant not pay. It is not just limited in this case to the Tenant's share (i.e. the share of the Tenant you will be guaranteeing)

More than one Tenant – Guarantor's liability

For things other than the rent, as there is more than one tenant then the individual liability of each tenant (including the Tenant who is guaranteed) is joint and several (individual). This means that should one tenant fail to pay any resulting claim then the other tenant(s) must pay this instead. All tenants are individually responsible for making any other payments beside rent due under the tenancy agreement even though the Guarantor's liability is limited to a share of the rent. For any other amount payable then full payment has to be made if the tenant who is guaranteed does not pay. Similarly, importantly, the Guarantor is responsible for paying the Landlord any damages which the Landlord is entitled to recover, e.g. because the property is damaged. This means that the whole amount then has to be paid by the Guarantor if claimed.

Different Guarantors/different Tenants' Liability

Although, as set out above, this Guarantee limits your responsibility as Guarantor for non payment of the rent to the share of the rent payable by the Tenant whom you guarantee, for other liabilities under the Guarantee, e.g. damage to the property, you can be made fully liable to compensate the Landlord. This is the case even if one of the other tenants who is responsible for causing the loss, e.g. damage to the property. The Landlord can go after any of the Guarantors including you in this situation and claim the full amount. This includes claiming for any other money payable beside rent. If one of the other Guarantors/Tenants cannot pay then you have to stand the loss.

You can claim recovery from other Guarantors/Tenants for an appropriate contribution from them but whether or not you are able to recover this loss will depend on their financial position. You still have to pay yourself even if they cannot.

Continuation of the Guarantee

The tenancy is normally granted for a fixed term. If all the tenants fail to vacate it can run on as a statutory periodic tenancy once the fixed term runs out (or occasionally there may be express provision for continuation in the tenancy itself). In such a situation you continue to be liable for the Tenant's share of the rent (whether or not the Tenant you are guaranteeing has vacated) and likewise for payment of any other money or damages if the terms of the tenancy are broken while the tenancy runs on. In this situation where there is a run on of the tenancy you can give six months notice to put an end to your

liability by cancelling the Guarantee, but this notice can only be given if a statutory (or contractual) run on has actually begun. Until the notice ends you are still responsible as Guarantor.

Cancellation

The Guarantee cannot be cancelled by you during the fixed term or for so long as the Tenant remains a Tenant of the property. There are only limited situations where it can be cancelled as set out in these Guidance Notes.

Death of the Tenant

If unfortunately the Tenant who is guaranteed by you dies then the Guarantee will continue afterwards for the remainder of the fixed term of the tenancy. Should there be a run on tenancy in existence if the Tenant's death occurs after the end of the initial fixed term the Guarantee will end when the current period of that run on tenancy finishes. If before the Guarantee would otherwise end as a result of the Tenant's death a satisfactory replacement tenant is found approved by the landlord and the other tenants then the Guarantee will end once that person becomes the Tenant.

Death of the Guarantor

If the Guarantor dies his/her estate continues to be liable under the Guarantee. This liability will only end at the end of the initial fixed term or if by then this has already ended by the tenancy is running on it will finish at the end of the current tenancy period. However, this is only so long as (in either case) the tenant who is guaranteed has vacated the property. If this has not happened it still carries on. If, before then, a satisfactory replacement Guarantor is found then the liability will end once the new Guarantor assumes responsibility.

Bankruptcy of the Guarantor

If the Guarantor becomes bankrupt this will not end the guarantee during the initial fixed tenancy term. It will end when the fixed term of the tenancy ends or if there is a continuation of the tenancy when the current period of the tenancy ends. This only applies so long as the Tenant has vacated the property but if not it continues. The Guarantee, however, is cancelled if a satisfactory replacement Guarantor is found and has taken on the liability.

Bankruptcy of the Tenant

This does not in itself end the Guarantor's liability. This is because the Tenant's bankruptcy does not automatically end the tenancy.

Variations to the tenancy terms

Any changes made to the tenancy terms do not cancel the Guarantee. This includes increases to the rent. If any change is agreed by the Guarantor then the Guarantor will be bound by and will be required to guarantee the tenancy terms as varied. On the other hand if the Guarantor does not agree then the Guarantor is still required to guarantee the tenancy terms as they were before the variation took effect.

Termination of the tenancy

Termination of the tenancy brings an end of future responsibility as Guarantor but the Guarantor still remains liable for any unpaid share of the rent down to the date of the ending of the tenancy and likewise, for other money payable before that date as well as any other breaches of the tenancy agreement which occur before then.

Non cancellation even if arrangements are made between the landlord and the tenant/s

The Guarantee is not discharged because arrangements are made between the Landlord and any other tenant including the Tenant who you guarantee. This could be to allow a change to the dates on which rent is payable for example. It could include things such as a change in who is the tenant or even if a sub-letting is allowed. Likewise the Guarantee will not be cancelled if the Landlord gives time to pay when rent is in arrears. The Guarantee will not be cancelled should the Landlord not take steps to enforce a breach of the Tenancy Agreement.

Ongoing liability of the Guarantor

Just because the Guarantee is cancelled it does not mean that any outstanding payment which is due at the time of the cancellation is still no longer payable. It still has to be paid.

Unenforceable terms etc

If a term of the Guarantee is held to be unenforceable (e.g. by a Court or Tribunal) (or illegal or invalid) this does not affect the rest of the Guarantee which is still enforceable.

Future owners

The guarantee is not just for the benefit of the current Landlord but should the current Landlord sell or transfer the property then the new owner can take over the benefit of the Guarantee.