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PROPERTY & COMMERCIAL LAW

Loan Agreements & Guarantees

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Attwood Marshall Lawyers specialise in property law in both Queensland and New South Wales. We help buyers, sellers, and people who are considering acting as a guarantor on a loan agreement understand their rights and obligations before signing the contract.

Loan Agreements

A Loan Agreement (which can also be called a Facility Agreement) can sometimes be full of technical legal terms and difficult to understand. It is important to understand the basic terms of a Loan Agreement before committing yourself to obligations as a guarantor on a loan.

Some of the key terms in a Loan Agreement are the following:

- **Term of the Loan**

It is important to consider whether the timeframe in which to repay the loan is suitable and practical in your own personal financial circumstances.

- **Repayment and Interest**

Interest can vary between fixed rates, floating rates and default rates. Default rates will apply if the borrower is in default of its obligations under the Agreement.

The parties to the Agreement must agree on whether repayments should occur weekly, fortnightly, or monthly or even over a longer period. Repayments are common where there is a fixed

term for the repayment of the loan. In some Loan Agreements there are clauses to state the loan will be repayable on demand.

There is considerable risk in such an “on demand” clause and the drafting of this type of clause should carefully be considered before accepting it.

- **Events of Default**

Every Loan Agreement will specify what will be considered as events of default and what the parties rights will be on default by the other party.

If a borrower is in default the lender can usually recall the loan at will and claim any damages from the borrower.



Deed of Guarantee and Indemnity

When the Loan Agreement is entered into by a company as borrower it is standard practice to require the director/s of a company to provide personal guarantees.

Even if a lender believes a borrower is a credit risk, it may require a third party to provide a personal guarantee. A Deed of Guarantee and Indemnity is a binding legal agreement which in simple terms means a third party promises that any obligations by the borrower will be fulfilled by the guarantor.

There are usually two parts of these obligations by a third party:

(a) Guarantee

A guarantee is purely a promise by one person that all obligations under the main Agreement (Loan Agreement) will be fulfilled by the guarantor if the borrower is in default to fulfill its obligations.

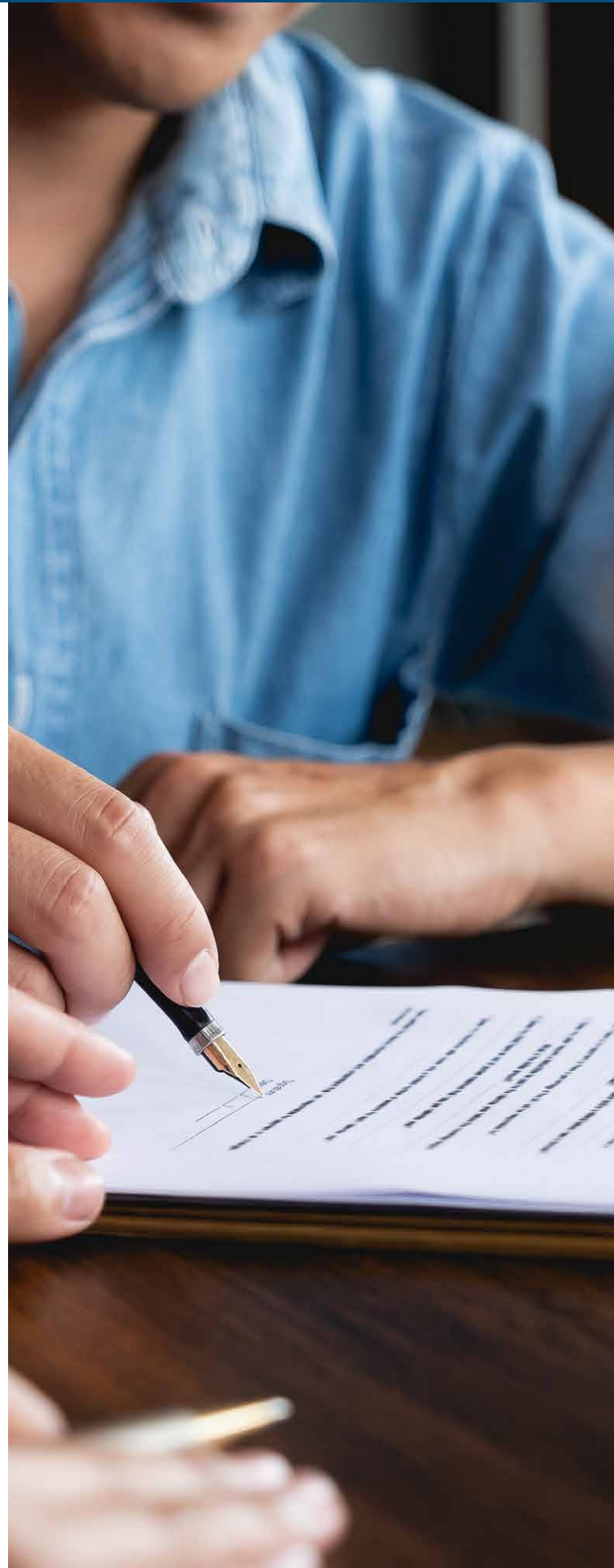
A guarantor may also be responsible to ensure that the borrower completes its obligations.

(b) Indemnity

An indemnity is a promise by a third party that the party will compensate the lender for any loss suffered by the lender because of a Loan Agreement.

This is usually the case where a court may find the Loan Agreement is illegal or invalid and there is no obligation on the borrower to repay the loan.

If the lender has suffered damages the third party will become liable for those damages based on the indemnity provided regardless of the Loan Agreement being invalid and not enforceable.



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Things to consider

Pre-signing legal advice

Most lenders insist that anyone becoming a loan guarantor obtain their own independent legal advice. This is to ensure that you understand the full implications of your guarantee.

For the most part, you will need to obtain advice around the worst case scenarios that could unfold. That being, if the borrowers were to default on the loan, what would be the consequence.

You should do your own due diligence on the financial position of the borrower, such as whether the borrower has a bad credit rating which may indicate a greater chance they may default on the loan.

It is also important to understand what restrictions becoming a loan guarantor may place on the property you are putting up for security, and what might happen if you want to sell your property or borrow funds against it for your own needs.

Restrictions

It can be very messy and costly to remove a guarantee after you have signed the documents and a loan has been granted based on your guarantee. Any property you use as security should be one that you intend to keep for the long term.

If a situation arose that required you to sell the property you have used as security, due to the reduction in how much the borrower is contributing to the loan, the lender may insist on someone contributing cash to keep it to the maximum they will allow with just one security. Alternatively, the lender may also not allow your property security to be released, putting restrictions on you and what you intend to do with it.

How much is the guarantee?

A loan guarantee can either be for the amount needed to keep the loan to an 80% lend or for the full loan amount. In most cases, when someone guarantees a loan, they put security forward to the value of 20-30% of the purchase price of the new property.

Before committing to becoming a loan guarantor, you need to establish how much you will be

guaranteeing. The amount you agree to needs to be clearly documented in the contract and checked thoroughly before signing.

If at all possible, it is preferable to negotiate a cap on any amount that should be repaid or costs that may be charged. Your own financial position should be on such a level that you will be able to comply with the Loan Agreement if the borrower defaults on the loan.

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Helping people and changing their lives for the better.

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Thur: 7.30am - 5.30pm
Fri: 7.30am - 5.30pm
Sat: Closed
Sun: Closed

Robina Town Centre

Shop 4135, Robina
Town Centre,
Robina
PO BOX 4358 Robina
QLD 4230

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Thur: 8.30am - 9.00pm
Fri: 8.30am - 5.00pm
Sat: 9.00am - 12.00pm
Sun: Closed

Southport

Suite 10, Level 10,
36 Marine Parade
(Commercial Tower),
Southport QLD 4215

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Kingscliff

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Contact Attwood Marshall Lawyers on **1800 621 071** or email info@attwoodmarshall.com.au to speak to one of our experienced lawyers today.



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