

## Eliminating the Personal Guarantee Through Bankruptcy

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If you have ever opened your own business you quickly learned that business credit for a small business simply does not exist. Sure, banks will loan your business money and landlords will allow you to put a lease in the company name, but none of it will take place without you personally guaranteeing that payment will be made.

The personal guarantee exposes all of your personal assets, wages, bank accounts, or other property if things don't work out with the business and you end up defaulting on your business obligations. Before we jump into how bankruptcy can help you with eliminating your personal guarantees, it is helpful to understand some unique aspects to the personal guarantee for those of us who live in Arizona.

### **Both Spouses Must Have Signed the Personal Guarantee**

Arizona is one of nine community property states. Because of this, there are certain rules that apply to personal guarantees in Arizona that are likely not applicable in other states. Specifically, Arizona law requires both spouses to sign a personal guarantee for it to be valid as to community property. To fully understand that you need to understand that when a couple gets married in Arizona the debts and assets that are acquired during marriage are presumed to be joint (with some exceptions that are beyond the scope of this blog). The property acquired is property of your community or "community property."

Under Arizona law, both spouses have to sign a personal guarantee in order to bind the marital community. If both spouses don't sign, then the creditor cannot seek to satisfy the debt through your community property. So, for example, if you sign a personal guarantee on a lease agreement for your business, and your spouse does not, if your business defaults on the lease the landlord would not be able to go after any of your community property. And as discussed above, that generally includes wages, money in your bank account, and most property.

It is important to note that in the above example the landlord would be able to go after any separate property the spouse who signed the personal guarantee may have. Separate property is usually things like property you brought into the marriage or an inheritance you received after you got married.

### **Bankruptcy Will Eliminate the Personal Guarantee**

Just because both spouses didn't sign the personal guarantee, and just because the creditor may not be able to collect on the debt, doesn't mean that the creditor won't still sue you or try and collect on the debt. And, if both spouses did sign (many creditors are now requiring this), you are on the hook.

If you have defaulted or if you believe you may soon default on the business loan, bankruptcy is a good option to eliminate that debt. The personal guarantee is considered an unsecured debt, the type of debt that is eliminated with a chapter 7 bankruptcy filing.

### **Debt Associated With A Personal Guarantee Can Help You Qualify For A Chapter 7 Bankruptcy**

In prior articles I have written about the means test and how you must qualify to file a chapter 7 bankruptcy. This is based upon your household size and income compared to the average income for a family of your size. This limitation only applies to debtors whose debts are primarily consumer related. If 51% of your debts are business related the means test is not applicable and despite having income higher than generally allowed you will be permitted to file a chapter 7 bankruptcy.

If you are a business owner or simply have a personal guarantee on a loan that you cannot continue to pay I would be happy to meet with you in a free consultation to discuss your situation further and help you in understanding what your liabilities are and how we can help you in moving forward.

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