

Personal guarantees

What you need to know

Guarantors are people who agree to repay a debt another person incurred if that person defaults. If the person goes bankrupt or into a No Asset Procedure creditor will seek to recover what is owed from the guarantor. Professional advice should be sought.

Bankruptcy guarantor example

Dave decides to buy a car for \$NZ8,000 and applies to ABC Finance for credit. ABC Finance asks Dave to complete a credit application form giving details of his assets, employment and liabilities. ABC Finance decides it will only give Dave finance if someone is prepared to co-sign the loan or act as guarantor.

Dave asks his father to help. ABC Finance tells Dave's dad that if Dave defaults on the agreement he will need to pay. If no payments are made by either Dave or his dad, ABC Finance can repossess the car, sell it and pursue both Dave and his dad for any shortfall. After receiving independent legal advice, Dave's dad signs the finance agreement as guarantor.

Dave pays ABC Finance on time. However, in the 8th month, Dave loses his job and is in a difficult financial position. After speaking to the family accountant, he decides bankruptcy is his only option as he has no income, no assets to sell and no one in the family can lend him any money.

ABC Finance is not paid for two months and sent both Dave and his dad a reminder for payment. ABC Finance notifies their intention to repossess the car if the arrears are not paid within 15 days. Dave is bankrupt so no payments have been made. The car is repossessed and sold at auction for \$NZ4,000. The amount outstanding after sale of the car is \$NZ5,500. ABC Finance, knowing that Dave is bankrupt, sends a letter to Dave's dad to demand payment of the \$NZ5,500 shortfall.

As guarantor, Dave's dad is liable to pay what is outstanding. To avoid compromising his own credit rating, Dave's dad enters into an arrangement to pay ABC Finance over the next 18 months.