



Explanatory notes for the Deed of Guarantee (Unlimited)

Important warning to any intended Guarantors

- (1) Please read this Guide thoroughly before signing the Guarantee.
- (2) You should read the Guarantee through carefully and consider its terms before signing it.
- (3) You should also carefully read the tenancy agreement through to make sure that you are fully aware of the responsibilities of the tenant under this Agreement because you are guaranteeing that the Tenant will comply with the terms of the Agreement.
- (4) You should consider taking legal advice before signing the Guarantee.
- (5) You must carefully consider the financial position of a tenant and whether or not they will be able to meet his/her financial commitments under the tenancy, especially whether or not the tenant is able to pay the rent. You should also consider whether they are likely to behave in a responsible way and comply with the other obligations under the tenancy, e.g. not to damage the property. You must realise that you will be agreeing to stand behind the Tenant and make sure they keep their promises under the tenancy agreement.
- (6) Where the Tenant is one of a group of tenants (e.g. a student or young professional) then different tenants may be guaranteed by different guarantors. This will not just apply where there is a group of tenants but could also be the case in other situations. Where different tenants are guaranteed by different guarantors then particular issues arise which are explained below. You should read this information carefully.

This explanatory guidance details the responsibilities of the Guarantor, if the Guarantor signs the Guarantee. It also gives the answers to frequently asked questions about the guarantee.

What the Guarantor is liable for

The Guarantor agrees with the Landlord to pay the Landlord what the Tenant who is guaranteed has to pay under the tenancy agreement, if the Tenant fails to do so. If the Tenant fails to pay any rent (or any other money due) then the Guarantor must pay this in full. If the Tenant breaks any of the terms of the tenancy and the Landlord suffers loss then the Guarantor must pay the Landlord the amount of that loss, if the Tenant does not do so.

Unlimited liability

The form of Guarantee which you are being asked to sign is one under which there is unlimited liability. This means that there is no maximum amount fixed which the Guarantor has to pay if the Tenant does not pay.

Liability of the Guarantor where there is more than one tenant

Where there is more than one tenant then the individual liability of those tenants is joint and several. This means that if one tenant fails to pay the other tenant must pay instead. All tenants are individually liable to pay the full Rent (or any other payment). Likewise, all tenants are individually responsible for paying the Landlord for any other losses suffered, e.g. because the property is damaged or there is some other breach of the terms of the tenancy. This means that any guarantor of an individual tenant is also liable for the full amount of any unpaid rent or other loss, including what another tenant owes.

What happens if there are different guarantors for different tenants and one of those guarantors cannot pay?

This section deals with the situation where you have different guarantors for different tenants. As explained above, this form of guarantee is unlimited. For all responsibilities under the Guarantee, e.g. for damage to the property, you will be fully liable to compensate the Landlord. This applies even where it is one of the other tenants who is responsible for causing the loss. The Landlord can pursue any of the guarantors in that situation and therefore the full amount of these costs could be claimed from you. Therefore, if one of the other guarantors cannot pay (e.g. because they have become bankrupt) then you would have to stand the loss.

Where recovery is made from any individual guarantor that guarantor can look to any other guarantors or any other tenant responsible and claim appropriate contribution from them towards the loss that the guarantor has had to pay. Whether or not in reality you can recover will depend on the financial position of the other guarantors/tenant against whom you are making the claim.

Frequently asked questions

1. How long does the Guarantee last for?

Initially, the tenancy starts as a fixed term tenancy, e.g. for six months or twelve months. Please check the tenancy agreement to see how long it will last for. The Guarantor's responsibility may not end when the fixed term tenancy ends. It will do so only if the Tenant moves out on or before the last day of the tenancy. After that the tenancy can run on as a statutory periodic tenancy or there may be a provision in the tenancy agreement for it to continue automatically after the end of the fixed term. It will then carry on as a monthly, weekly, four weekly or fortnightly tenancy. Again, you need to check the tenancy agreement. Importantly, you remain liable to pay the rent and to pay for any loss (e.g. due to damage) if the Tenant fails to do so during any run on of the tenancy after the end of the fixed term.

2. Does the Guarantee end if a new tenancy agreement is signed?

Yes. The guarantee will end unless you agree to sign a new form of guarantee for the new tenancy. You are still responsible if there is an automatic run on of the tenancy after the end of the initial fixed term – see Question 1.

3. What happens if the tenancy is expressly extended?

If the landlord agrees to extend the fixed term, e.g. by giving a letter saying that it will run on for another fixed period of six months, then again your responsibility as the Guarantor ends when the extension starts, unless you agree to guarantee any extension.

4. When do I have to pay if the tenant fails to do so?

If the Tenant does not pay what he/she should pay then the Landlord must make a written demand and you then agree to pay whatever is legally due.

5. What happens if the Guarantor dies?

If the Guarantor dies then the Guarantee is cancelled as from the next rent payment after the date of death. However, if there is more than one guarantor this only applies when the last guarantor dies. However, any money due down to the date when the Guarantee ends still remains payable.

6. What happens if the Guarantor becomes bankrupt?

The same rules apply for bankruptcy of a guarantor as on death.

7. What happens if the Tenant dies?

If the Tenant dies and the fixed term of the tenancy is running then the Guarantee will continue until the fixed term runs out. It will end if the tenancy ends earlier. However, this only applies if the Landlord makes a written offer to accept a surrender of the tenancy as from the next rent payment day after death and this is refused or not taken up. If it is taken up then it will end on the next repayment date after the Tenant's death (or earlier if the tenancy ends before then).

8. Is the Guarantee ended if the tenant becomes bankrupt?

No. This is because the tenancy can still carry on even if the Tenant becomes bankrupt.

9. What happens if the tenancy ends?

If the tenancy ends the Guarantor is still responsible for paying whatever is owed at the end of the tenancy if the Tenant does not pay.

10. What happens if the terms of the tenancy are altered, e.g. an increase in the amount of rent payable or the length of the tenancy is extended?

Importantly, the Guarantee is not ended automatically but what happens will depend on the way in which the tenancy is altered.

If a new or extended agreement is entered into then you are only responsible for the guarantee renewal or extended tenancy if you sign a new guarantee – see Questions 2 and 3.

If there is any other variation then you will continue to guarantee the tenancy.

11. What happens if the Landlord gives the Tenant time to comply or otherwise does not strictly enforce the tenancy agreement?

The Guarantee is not cancelled. The Guarantor will still be liable even if the Landlord fails to take action to enforce its terms, gives the Tenant time to pay, or to make good the broken term of the tenancy, or if the Landlord refuses to accept rent to protect his/her legal rights as the Landlord.

12. How are notifications given to you by the Landlord?

This Guarantee provides that any notice must be sent by post or left at the specified address. This will apply for example if you are required to make a payment under the Guarantee.

13. What happens if there is more than one guarantor?

If there is more than one guarantor then you are jointly and individually liable. This means that any guarantor could be called upon to pay the full amount. This is explained in more detail under the Section above – liability for the Guarantor where there is more than one tenant.

14. Can the Landlord recover legal cost?

Yes, the Landlord can recover legal costs against the Guarantor if steps have to be taken to enforce the Guarantee.

15. When does this agreement come into force?

Once the agreement is signed and dated in the presence of a witness by the Guarantor(s), they should return it to the Landlord. The Landlord will then sign the agreement in the presence of a witness and insert the date on which the agreement comes into force.