

Co-signer vs Guarantor

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Which is better – a co-signer or guarantor?

A bank is requested to make a loan to a customer. The loan may be for consumer or commercial purposes. As a condition to making the loan, the bank requests that the loan be co-signed or guaranteed by another person who is not receiving proceeds from the loan (called a “co-signer” in this article). FIPCO™ is frequently asked whether it is better for the co-signer to sign the note or a separate guaranty form. The FIPCO™ Financial Link users are trained to have co-signers sign a guaranty form. This is important for other documentation to properly print.

As a general rule, the liability of a co-signer to the bank is the same regardless of whether the co-signer signs the note or signs a separate guaranty form. However, for several reasons it is usually better for the co-signer to sign a separate guaranty form.

1. First, a co-signer may have certain legal defenses to paying the obligation. However, a co-signer may waive most of these defenses. The WBA guaranty forms include many of the defense waivers.
2. Second, WBA guaranty forms include several consent provisions under which the co-signer consents to certain actions of the bank. These are important protections for the bank.
3. Third, guaranty forms are frequently broader in their coverage than note forms. For example, a signature on a note form is a promise by the co-signer to pay that particular obligation. A signature on a continuing unlimited guaranty is a promise by the guarantor to pay all past, present and future obligations of the borrower.

4. Finally, in those cases where a co-signer signs the note, it is not uncommon for a bank to overlook the need or be unable to obtain the signature of co-signer on a renewal note. In that case, the co-signer may have a defense to payment. A separate guaranty form is applicable to the note and any renewals or extension of the note.

These are some of the reasons for FIPCO's decision to require that co-signers sign guaranty forms. There may be other reasons important to a bank in a particular transaction. The bottom line is that the guaranty form usually offers greater protections to the bank.

If two or more persons are in fact acting as co-borrowers and each is a beneficiary of the loan proceeds, the appropriate procedure in that case is for the co-borrowers to co-sign the note form. The defenses to payment usually available to persons who do not receive the proceeds of the note are generally not available to co-borrowers.

Persons who act as co-signers may be entitled to certain co-signer notices under the Wisconsin Consumer Act and Federal Reserve Regulation AA. These notice requirements are applicable regardless of whether the co-signer signs the note or separate guaranty form. Other WBA materials describe the applicability of these requirements to co-signers and guarantors.