

Chapter 2:

Business Guaranty Agreement

The Business Guaranty Agreement document makes a third party, called a guarantor, obligated for loans made to a borrower. Guaranties may be required to comply with NCUA personal guaranty requirements or because the credit union is concerned about the credit worthiness of the borrower. Guarantor information is gathered from the Business Application, the Business Expanded Application, or the FNMA Application (1003).

Document Description

When used:	Used to obligate a guarantor to repay a particular loan if the borrower defaults.
Purpose:	This document contractually obtains a guarantor for loans made to a borrower and complies with NCUA rules requiring credit unions to generally obtain personal guaranties on business loans. Also, if the loan goes into default, the guaranty provides the credit union with another avenue for the recovery of loan losses.
Document number:	GXB01*
How distributed:	This document contains the borrower's signature(s) and the original is retained by the credit union. A photocopy may be given to the guarantor.
Imprinting:	This document allows an imprint of your credit union's name, address, phone number and logo.
Number of pages	Three
State specific versions:	None – However, state specific language is included in this chapter of the User Guide to be inserted in the Business Guaranty Agreement when applicable.

* Indicates space holder for version number

Page one sample

Use the numbers provided to locate the corresponding instructions on the next page.

LOANLINER

Business Guaranty Agreement

In this Business Guaranty Agreement (this "Agreement" or this "Guaranty") "You", "your" and "Guarantor" mean the person(s) designated as a "Guarantor" in the Signature section of this Agreement. "Credit Union", "we", "our" and "us" mean the Credit Union whose name appears on the Agreement or anyone to whom the Credit Union transfers its rights under this Agreement

Amount of Guaranty - In consideration for _____'s (the "Credit Union") agreement to lend money or give credit to _____ (whether one or more the "Borrower"), you (the "Guarantor(s)"), jointly, severally and in solido if more than one, personally and unconditionally guarantee prompt and full payment when due the following debt, including principal, accrued interest and other charges:

If checked, this guaranty is continuing and applies to all present and future debts incurred by the Borrower.

This Agreement shall be governed by and construed in accordance with the laws of the state of _____.

The undersigned have read and agree to all provisions of this Agreement including the provisions contained on the following pages. In witness whereof, the undersigned has executed this Agreement under seal as of the date below written.

Guarantor _____
Form of Organization (if applicable) _____

Guarantor _____
Form of Organization (if applicable) _____

By: **X** _____ (Seal)
Printed Name: _____
Title: _____ Date: _____

By: **X** _____ (Seal)
Printed Name: _____
Title: _____ Date: _____

FOR MARRIED ARIZONA AND WISCONSIN RESIDENTS ONLY. By signing below, you represent that this obligation is incurred in the interest of your marriage or family. If your spouse has not signed above as a co-guarantor, your spouse by signing below consents to your guaranty of this obligation.

FOR SPOUSES OF CALIFORNIA RESIDENTS ONLY, WHERE THE GUARANTOR'S SPOUSE IS NOT A CO-GUARANTOR OR CO-OBLIGOR: If your spouse has not signed above as a co-guarantor, your spouse ("Spouse"), by signing below, certifies (i) that he or she has read and understands this Guaranty Agreement; (ii) that he or she consents to the terms of this Guaranty Agreement and Guarantor's execution, delivery and performance of it; and (iii) that we may have recourse against the community property interest of the Spouse in community assets. However, the Spouse shall not in any way be individually liable under this Guaranty Agreement, nor shall we have the right of recourse against any of the Spouse's separate property by reason of this consent.

Guarantor
By **X**: _____
Printed Name: _____

Spouse
By **X**: _____
Printed Name: _____

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1. Read explanation

2. Enter guaranty information

3. Record guarantor signatures

4. Record spouse and guarantor signatures

Page one instructions

Instructions are given for each section of the document. Please refer to the corresponding number on the sample document to determine each section's relative position on the document.

1. **Read explanation.** This section identifies the terms or parties that will be mentioned in this document.
2. **Enter guaranty information.** This section provides a place to enter the following guaranty information:
 - Enter credit union's name and borrower's name
 - Record description of debt, including principal, accrued interest and other charges
 - Check box if this guaranty is continuing and applies to present and future debts incurred by borrower
 - If the guaranty is not continuing, a full description of the extent of the guaranty must be included
3. **Record guarantor signatures.** This section provides blanks for recording the guarantor's name and signature:
 - Guarantor
 - If guarantor is a business, then print or type the name of the business (Example: Sam's Lawn Service)
 - If guarantor is an individual, then print or type the individual's name (Example: Sam Kapinski, Jr.)
 - Form of organization
 - If guarantor is a business, then print or type the form of organization (Individual, Sole Proprietorship, Partnership, Corporation, LLC, Association)
 - If guarantor is an individual, then print or type "N/A"
 - By: X
 - Place the signature of the guarantor or the guarantor's representative (the signature should match the printed name on the document)
 - Printed name
 - Print or type the name of the guarantor or the guarantor's representative (the printed name will always be the name of an individual)
 - Title/date
 - Print or type the business title of the guarantor
 - Print or type the effective date of the agreement
4. **Record spouse and guarantor signatures.** This section is reserved for married guarantors living in Arizona, Wisconsin or California. If guarantor lives in any other state, do not complete this section.
 - If spouse is not listed as a guarantor for this agreement, then record signature and print or type name for both the guarantor and spouse
 - If spouse is listed as a guarantor for this agreement or is a borrower on the primary agreement, then do not complete this section

Page two sample

Use the numbers provided to locate the corresponding instructions on the next page.

1. **JOINT AND SEVERAL AND SOLIDARY LIABILITY.** Each person who signs this Agreement and any other agreement guaranteeing payment of the same debt is bound jointly, severally and in solido. The Credit Union can also enforce this Agreement against your estate, successors and legal representatives.
2. **RELEASE OF OTHER GUARANTORS OR BORROWER.** If more than one Guarantor signs this Agreement or any other agreement guaranteeing the same debt, the Credit Union can release or settle with any of the Guarantors at any time without affecting the liability of the others. If the Borrower's obligation to repay an amount you have guaranteed is discharged in bankruptcy you must repay this amount including all interest and other charges that would have accrued after the discharge had the debt not been discharged.
3. **TERM AND TERMINATION.** This guaranty continues until all amounts guaranteed are repaid in full, or if the Guarantor is a Kentucky resident or this Agreement is governed by Kentucky law, until the termination date as disclosed herein. We may renew, extend or defer payment on any amount you have guaranteed without affecting your obligations under this Agreement. If your guaranty is continuing you agree to guaranty additional loans and credit we may extend to the Borrower at any time and for any purpose until you or we terminate this Agreement. If you wish to terminate your continuing guaranty we must receive actual written notice from you. Even if you terminate this Agreement you will be liable for all amounts advanced to the Borrower before termination. If you terminate this Agreement we may demand immediate payment of all amounts you have guaranteed.
4. **AMOUNT OF GUARANTY.** In addition to the amount stated in the Amount of Guaranty section, your guaranty includes all fees and charges associated with any debt you have guaranteed. Your guaranty also includes all costs and expenses of collection, including attorneys' fees, incurred in collecting a debt that is subject to your guaranty or incurred in protecting and enforcing our rights under this Agreement, including attorneys' fees incurred at trial, in any bankruptcy proceedings (including efforts to modify any automatic stay or injunction or to object to any proposed plan), and any appellate proceedings.

To the extent not limited elsewhere by this Agreement, your guaranty also includes amounts advanced by the Credit Union in order to perform any obligation of the Borrower under a loan, or credit agreement and/or a security agreement for property given as security for a loan including, but not limited to amounts advanced for the payment of taxes, insurance premiums and other fees. We may sell any property securing a loan and apply the proceeds to any loan secured by that collateral. Amounts applied to a loan do not offset or reduce your guaranty obligations under this Agreement for unpaid amounts remaining.
5. **SECURITY.** You pledge all shares and/or deposits in any of your joint and individual accounts at the Credit Union as security for your guaranty. The Credit Union has the right to apply your shares and/or deposits towards what you owe if you are in default under this Agreement. Shares and/or deposits in an Individual Retirement Account and any other account that would lose special tax treatment under state or federal law if given as security are not subject to the security interest you have given in your shares and deposits.
6. **WHEN YOU MUST PAY.** We can demand immediate payment from you for all amounts you have guaranteed even if we have not tried to collect from the Borrower and have not attempted to enforce any security interests given to secure an amount subject to your guaranty:
 - a) If the Borrower is in default under any agreement with us.
 - b) If anyone is in default under any security agreement securing an amount you have guaranteed.
 - c) If the Borrower fails to pay the Credit Union any amount required to be paid when it is due or if payment is subject to demand, when payment is demanded.
 - d) If you break any promise you made under this Agreement or default under any other loan obligation or credit agreement you have with us.
 - e) If you file for bankruptcy or similar proceedings, or become insolvent, or if you are an entity, if a partner or a majority owner of the entity dies, files for bankruptcy or similar proceeding, or becomes insolvent.
 - f) If you make any false or misleading statements in any credit application, financial statement or similar document.
 - g) If any statement becomes misleading due to a change in circumstance and you fail to correct that statement.
7. **NO NOTICE REQUIRED.** This guaranty remains in effect even though you are not given notice of the following:
 - a) If the Borrower fails to pay any amount due.
 - b) Of any action taken by the Credit Union with respect to property given by the Borrower as security for the debt.
 - c) Of any new debts with the Credit Union incurred by the Borrower.
 - d) Of any renewal, extension or substitution of any of the Borrower's debts.
 - e) Of the acceptance by the Credit Union of this guaranty.
 - f) Of any change in the Borrower's financial condition.
 - g) Of any change in the terms of the Borrower's debts.
8. **POWERS, PURPOSE AND AUTHORITY.** If the Guarantor is an organization, you warrant that you are duly and validly organized under the name of and in the form indicated in the Signature section of this Agreement. You agree that even if you do not receive any direct benefit from any debt incurred by the Borrower that our agreement to lend money or extend credit to the Borrower is sufficient consideration for your Guaranty. You agree that this guaranty is for a business purpose. You agree that each Loan which you guaranty under this Guaranty Agreement will only be used for commercial or business purposes, and not for personal, family, or household purposes. You also promise that you have the authority to enter into and to agree and to be bound by all provisions of this Agreement and to agree to all documents related to this Agreement.
9. **GUARANTOR'S WAIVER AND ASSIGNMENT OF CLAIMS.** You agree that all debts and obligations for which the Borrower may be liable to you or to any entity in which you have the majority control are secondary and subordinate to the Borrower's obligations to us, whether such obligations exist now or in the future. If for any reason, the assets of the Borrower are liquidated through bankruptcy or otherwise, you agree that the proceeds shall be applied first to all amounts the Borrower is obligated to repay to us. If you have a claim or right against the Borrower you agree to waive that claim or right or assign it to us to the extent that we obtain and may retain payment in full for all amounts the Borrower owes us (including applicable costs of collection, including attorney's fees).

Page two instructions

Instructions are given for each section of the document. Please refer to the corresponding number on the sample document to determine each section's relative position on the document.

1. **Joint and several and solitary liability** This section explains to the guarantor that each person who signs this document is obligated as a group or as individuals.
2. **Release of other guarantors or borrower.** This section explains to the guarantor that if more than one guarantor signs the document, the credit union can release or settle with any of the guarantors at any time without affecting the liability of the others.
3. **Term and termination.** This section explains to the guarantor the length of the obligation under this agreement.
4. **Amount of guaranty.** This section explains to the guarantor what amounts are included in the guaranty.
5. **Security.** This section explains to the guarantor that all shares and/or deposits in any account will be pledged as security for the guaranty.
6. **When you must pay.** This section lists the situations that may require payment on the guaranty.
7. **No notice required.** This section explains to the guarantor that the guaranty will remain in effect even though notice is not given of specific events. These specific events are listed for the guarantor.
8. **Powers, purpose and authority.** This section explains the power, purpose, and authority the guarantor must have in order to enter into this agreement.
9. **Guarantor's waiver and assignment of claims.** This section explains to the guarantor that any debts and obligations that the borrower owes the guarantor are subordinate to the borrower's obligation to the credit union.

Page three sample

Use the numbers provided to locate the corresponding instructions on the next page.

10. GUARANTOR'S PROMISES.

a. Name of Guarantor. You promise that unless you have disclosed otherwise to us, in writing, you have not in the past or present operated or held property under any other name.

b. Updating Credit Information. You promise that you will promptly give us immediate written notice if there is a material change in your financial condition, you become the subject of litigation, a claim, an investigation or proceeding or any action against you arises that may materially affect your financial condition. You promise to promptly give us written notice if you change your name, there is a change in your ownership or form of organization, or if any other information you provided to us changes. Upon our request, you also agree to promptly provide us updated financial information or any other information we may request.

c. Compliance with laws. You promise that you are in compliance with and will continue to comply with all laws and obligations applicable to you, your business and your property. You may in good faith dispute any law and refuse to comply with it pending the outcome of your challenge and any appeals provided that you are following appropriate procedures for challenging the law and you have set aside adequate reserves to pay all losses, costs and expenses.

11. **SALE OF LOANS**. You agree that we may sell all or part of any loan subject to your guaranty and such sale will not affect your obligations under this Agreement. You agree that we may, without notice to you, share any information about you in order to facilitate such sale. You waive any right to notice of sale or resale of a loan. You waive any right of set-off or counterclaim that you may have against us or any purchaser of an interest in a loan that is subject to your guaranty. You agree that any purchaser of an interest in a loan that is subject to your guaranty may enforce its interest in such loans regardless of any personal claims and defenses you may have against us.

12. **FINANCIAL CONDITION**. You promise that the financial information you have provided to us accurately and completely reflects your financial condition and you understand that such information is being relied upon by the Credit Union in the extension of credit to you. Unless already disclosed to us, in writing, you promise that you are not the subject of any pending litigation, outstanding claims, any investigations or proceedings, or that you have any outstanding tax liabilities or any other outstanding unpaid obligations.

13. **INTEGRATION AND SEVERABILITY**. This written Agreement is a final expression of the agreement between you and the Credit Union. This written Agreement may not be contradicted or modified by evidence of any alleged oral agreement. If any provision of this Agreement for whatever reason is [found to be] declared or rendered unenforceable, this Agreement shall be construed such that the violating provision shall be made enforceable. If this Agreement or related document cannot be so construed, the violating provision shall be considered stricken. In any case, the enforceability of any particular provision shall not render unenforceable any other part of this Agreement, and the remaining obligations of the Agreement shall be binding and fully enforceable. Striking such provision shall not affect the remaining provisions of the Agreement.

14. **DELAY IN ENFORCING RIGHTS AND CHANGES IN THE AGREEMENT**. We can delay enforcing any of our rights under this Agreement any number of times without losing the ability to exercise our rights at a later time.

15. **SURETYSHIP DEFENSES WAIVED**. All suretyship defenses are hereby waived by you. As part of this waiver, you agree you shall remain liable under this Guaranty even if:

- a) we release some or all of the collateral
- b) we fail to create a valid security interest in the collateral
- c) we release any other guarantor or other obligor, including Borrower(s)
- d) we modify the terms of the loan(s) (including extensions of due dates)
- e) we increase the amount of the loan(s)
- f) we waive any default under the loan documents or otherwise elect not to exercise any available remedy.

16. **WAIVER OF JURY TRIAL**. In the event of any action to enforce the terms of this agreement, you consent to the jurisdiction of the state or federal court where the credit union brings the action. You also waive any trial by jury and waive any objection to venue of any action instituted under this agreement and consent to the granting of any legal or equitable relief as is deemed appropriate by the court.

17. **ADDITIONAL TERMS AND CONDITIONS**.

Page three instructions

Instructions are given for each section of the document. Please refer to the corresponding number on the sample document to determine each section's relative position on the document.

10. **Guarantor's promises** This section explains the guarantor's promise to:
 - Not operate or hold property under any other name except if disclosed in writing
 - Promptly give written notice of material change in the guarantor's business or the guarantor's property
 - Comply with all laws and obligations applicable to the guarantor's business or the guarantor's property
11. **Sale of loans.** This section explains to the guarantor that the note may be sold without notice and information about the guarantor may be used to facilitate the sale.
12. **Financial condition.** This section explains to the guarantor that the financial information provided regarding financial condition must be accurate and complete.
13. **Integration and severability.** This section explains to the guarantor that each provision in this agreement is binding and enforceable. If a particular provision is proven to be unenforceable, all of the remaining provisions in this agreement remain binding and enforceable.
14. **Delay in enforcing rights and changes in the agreement.** This section explains to the guarantor that the credit union may delay enforcement of its rights without losing the ability to exercise its rights at a later time.
15. **Suretyship defenses waived.** This section explains the guarantor will remain liable under this agreement even if specific events occur. These events are listed.
16. **Additional terms and conditions.** The following state terms and conditions should be inserted as appropriate in the blank provided in section 16:
 - **Connecticut.** If the domicile of the guarantor is Connecticut, then insert this language:

Acknowledgement of Commercial Transaction

You acknowledge and agree that the transactions of which the business credit and continuing credit agreement are a part of commercial transactions as that term is defined in section 52-278a of the Connecticut General Statutes, as amended. **By executing the Business Guaranty Agreement, you are voluntarily and knowingly waving and relinquishing any and all rights which you may have pursuant to any law or constitutional provision, including without limitation, chapter 903(a) of the Connecticut General Statutes, as amended, including your right to any notice or hearing or the posting of a bond prior to any attempt by the credit union to obtain a prejudgment remedy against you in connection with transactions pursuant to the Business Guaranty Agreement.**

- **Georgia.** If the domicile of the guarantor is Georgia, then insert this language:

FOR GEORGIA GUARANTORS:

Guarantors hereby expressly waive any statutory right pursuant to O.C.G.A. Section 10-7-24 to require any holder of the amounts guaranteed hereby to take action against the Borrower.

- **Kentucky.** If the domicile of the guarantor is Kentucky, then insert this language:

FOR KENTUCKY GUARANTORS OR IF THIS AGREEMENT IS GOVERNED BY KENTUCKY LAW:

Your maximum aggregate liability under this agreement is \$_____. This Agreement shall terminate on _____, 20__.

- **Maine.** If the domicile of the guarantor is Maine, then insert this language:

FOR MAINE GUARANTORS OR IF THIS AGREEMENT IS GOVERNED BY MAINE LAW:

The addition of an attesting witness(es) to the Guaranty Agreement may extend the statute of limitations to twenty (20) years under Maine Law. To add a witness execution section, insert the following:

Attesting Witness:

Printed Name: _____

- **Minnesota.** If the domicile of the guarantor is Minnesota, then insert this language:

FOR CORPORATE GUARANTORS IN MINNESOTA:

The guarantees of payment under this Guaranty Agreement are unconditional. Also, the person signing this Guaranty Agreement for the corporation warrants that it has been approved by the Guarantor's Board of Directors, and that it has been made either in the regular course of the corporation's business; for the benefit of a related organization; or for the benefit of a corporate director, officer, or employee, and reasonably expected to benefit the corporation, or approved by the holders of two-thirds of the voting power of the shares owned by disinterested persons.

- **North Carolina.** If the domicile of the guarantor is North Carolina, then insert this language:

FOR NORTH CAROLINA GUARANTORS:

Guarantors of this LOANLINER Business Lending System Guaranty Agreement (the "Agreement") who are residents of North Carolina, or parties to an Agreement enforced within or according to the laws of the State of North Carolina acknowledge:

1. That the Guarantor(s)' obligations herein are guaranties of payment and not of collection;
2. That the Guarantor(s) are not "accommodation parties" within the meaning of applicable North Carolina law;
3. That the Guarantor(s), to the extent permitted by applicable law, waive:
 - a) any defenses provided to the Guarantors otherwise available at law or in equity other than actual payment of the indebtedness;

- b) any defense provided in N.C.G.S. § 25-3-605 (Discharge of endorsers and accommodation parties);
- c) any defense that a sale of collateral by the Credit Union was not commercially reasonable;
- d) any rights provided in N.C.G.S. § 26-7 (Surety, endorser or guarantor may notify creditor to take action).

Should any of the above statutory references change in numerical designation but be retained in substance, the above waivers shall be read in correlation with the provisions' new numerical designations.

