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ECOA ALERT: Don't Automatically Have Spouses Sign Guaranties (1995)

It used to be a "no-brainer"; we always had the wife sign a guaranty executed by her husband with respect to a loan or lease transaction.

The thinking was simple: Having the wife sign meant that we could avoid, in large part, community property issues, joint ownership of the family home, joint savings accounts and the annoying tendency of husbands to honor their wives with generous gifts even as the family business began to decline.

As with many things, the government stepped in and complicated matters. The regulations promulgated under the Equal Credit Opportunity Act ("ECOA") include the following prohibition in Section 202.7(d)(1):

"Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested."

In plain (or at least plainer) English, this means that a spouse cannot be required to guarantee his or her husband's loan or lease, or to act as a co-guarantor unless: (1) the spouse is a joint applicant for credit; or (2) the applying spouse, alone, does not qualify under the lender's or lessor's standards for extension of credit.



As a practical matter, the owners of many businesses will be required to guarantee loans or equipment leases to their businesses. Very often, the business owner's financial statement will not be sufficient to support the loans unless jointly-owned property is included. In these instances, the Regulations permit the creditor to require the spouse to co-sign the guaranty.

Likewise, in community property states a spouse may be required to sign where the effect of the community property laws would make the applying spouse's credit insufficient.

As a reminder, "community property" is the law in the following states and holds, generally, that assets acquired by either spouse during the marriage are deemed to be owned jointly: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington.

ECOA provides for treble (triple) damages and punitive damages may also rear their ugly heads in these actions.

We recommend that care be taken whenever a spouse is required to join in a guaranty or as a direct obligor on a loan or lease to ensure that the file indicates that the applying spouse alone is not creditworthy. Memoranda, intra-office notes or correspondence with the applicant indicating otherwise could be seriously damaging.

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