

Is a Witness Required for Personal Guarantees or Signatures?

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When lending to corporations, commercial mortgage lenders often require personal guarantees from directors, shareholders, or beneficial owners. But a common question arises: must these guarantees be witnessed to be enforceable in Ontario? The same can be applied to any time an individual signs a loan document in their capacity as an individual (and not on behalf of an entity).

The General Rule is that no witness is required.

In Ontario, a personal guarantee signed by an individual is generally enforceable without a witness, provided it is supported by consideration (i.e. something of value, such as a loan or financial accommodation to the principal borrower). The guarantee is treated as a simple contract governed by the common law of contract.

This principle was confirmed in *Global Food Traders Inc. v. Massalin*, where the Ontario Court of Appeal upheld a personal guarantee based on the clear intention of the parties even where formal language was lacking. Courts will prioritize substance over form, especially where consideration and intent are evident.

So when is a witness required? There are key exceptions where witnessing is legally required.

If a guarantee is made without consideration, for example, a shareholder guarantees a loan for a related company without any direct benefit it must be executed as a deed, and under the *Conveyancing and Law of Property Act*, deeds signed by individuals must be witnessed to be enforceable.

As well, land documents signed by individuals (e.g. a charge/mortgage by an individual), such as where the individual mortgagor is the titleholder and signs a registered charge, which is generally rare in our current Ontario electronic registration system, *Land Titles Act* requirements mandate witnessing for registration purposes.

Notwithstanding the above, the best practice is to always use a witness where an individual is executing loan documents.

While not always legally required, it is strongly recommended to have personal signatures witnessed as: (a) it adds evidentiary strength if enforceability is challenged; (b) it aligns with institutional lending standards; and (c) it supports legal opinions rendered by borrower's counsel confirming due execution.

The witness should be an independent adult, ideally not related to the signatory or lender.

Lenders should ensure that guarantee templates are tailored for Ontario law and include appropriate execution blocks for individuals and corporations. A witnessed guarantee will rarely face enforceability issues, however and while not strictly required, an unwitnessed one might, especially if consideration is challenged.

For any related questions or to choose a topic for discussion in an upcoming 1-Minute Read, please contact the writer. To see my previous 1-Minute Reads for Commercial Mortgage Lenders, please visit the Blog portion of my profile at <https://grllp.com/zzlotnick#media-insights>. A PDF version is available for download [here](#).

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