



Legal Ease

An Exclusive Benefit for Members of:

The Independent Community Bankers Association of New Mexico

Legal Ease – Publish Week of February 15th – February 19th

Lending, General: Co-Borrowers, Co-Makers, Co-Signers, Guarantors

eNews Headline: Co-Borrowers, Co-Makers, Co-Signers, Guarantors – What’s The Difference?

Question: I am looking for some guidance on what documentation is required if there is a co-Signer or Co-Applicant. Is there a difference? I recall there being a notice to Co-Signer required somewhere. Can you have a “Co-Applicant” on the loan that is not obligated for the indebtedness?

Answer: Much depends on your specific loan contract and language. Terms are often defined more specifically in your loan agreements.

The term ‘Co-Signer’ is a regulatory term pertaining to Regulation AA and is limited to only consumer loans.

...snip

Section 227.14 Unfair or deceptive practices involving cosigners

Prohibits a bank from misrepresenting the nature and extent of a cosigner's liability. Also prohibits a bank from obligating a cosigner unless the cosigner has been informed of the nature of the cosigner's liability. To comply with this section, a bank must give the cosigner a written notice prior to the cosigner's becoming obligated. The notice must be substantially similar to the model notice provided in the Board's regulation. The notice may be a separate document or may be included in the credit obligation.

A Co-Applicant or Co-Maker is a legal term that includes any primary obligor in any obligation. Such legal term does not include a Guarantor who is a secondary obligor.

A Guarantor becomes liable for the loan if the primary borrower(s) can't repay it. The difference between a Co-Applicant or Co-Maker and Guarantor is that a Co-Applicant or Co-Maker signs the debt obligation and is contractually liable without the bank needing to take any specific action to request payment from the Co-Applicant or Co-Maker.

A loan could have both a Co-Applicant or Co-Maker and a Guarantor.

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