

STUCK PAYING A LOAN FOR SOMEONE ELSE DO I HAVE RECOURSE?

Over the years we at **Alison Fielden & Co** have seen many cases where one person has taken out, or guaranteed a loan for someone else and there are then problems when the person who had the benefit of the loan does not repay. This may happen between husband and wife, between unmarried partners, between parent and child or between friends.

When taking out a loan you are entering into a legally binding contract with the lender which will involve you having to repay the loan and interest. You may find yourself a defendant in Court proceedings to recover this money, with a County Court Judgment against you, with Court Bailiffs attending to remove goods, with a Charging Order against your home or an Order for sale of your property.

In some cases the problem may not arise for several years e.g. a parent who took out a loan for her son and daughter in law because she was able to get a lower interest rate than them. The loan was over a 10 year period. After repaying the loan for 2 years they got divorced. The son became ill and could only pay his mother in dribs and drabs. The daughter in law denied any liability to repay.

Similar situations arise where you guarantee a loan for somebody else, whether a family member or not. When guaranteeing a loan you are again entering into a legal contract with the lender that if the person borrowing the money does not repay them you will.

Whether as original borrower or as guarantor you have entered into a contract with the lender and will be obliged to repay.

Effectively you have borrowed money from them and you have lent it on to your family member or friend. These are separate transactions and the original lender cannot pursue the person who had the benefit of the money, they will come after you because their contract is with you, their legal rights are against you. You may be left having to sue the person you lent the money to or whose loan you guaranteed.

Remember why did they need you to be a party to the loan in the first place.

These situations are often made worse by a subsequent marriage breakdown where the party who borrowed the money appears to walk away without paying anything, maybe living with a new partner and you are left with the debts.

If there is a divorce the Court may be able to take account of the indebtedness in distributing assets but if there are no assets left to distribute you could still find yourself dealing with the debts. The Divorce Court cannot take away your contractual

liability to the lender, it may order your ex to make some payments to you. You will have to enforce that if they default, whilst still yourself paying the lender.

What can you do to give yourself the best chance of recovering something

Have an agreement (preferably legally drafted) in writing signed by the person you are borrowing for, setting out:

1. The loan from Xxxx Limited is for their benefit.
2. They will make all payments of interest and capital as they fall due (and if they are paying direct – will produce documentary evidence of payment).
3. They will indemnify you with regard to all capital, interest, charges and penalties levied in relation to the loan.

Remember that if they have nothing you will probably get nothing back or only in dribs and drabs whilst having to meet your contractual obligations to the lender.