

DEPARTMENT OF THE ARMY
HEADQUARTERS CARLISLE BARRACKS
CARLISLE, PENNSYLVANIA 17013

September 30, 2002

REPLY TO THE ATTENTION OF
Legal Assistance Office

SUBJECT: **Cosigning a Loan**

1. References.
 - a. 13 Pa. C.S.A. §3419
 - b. P.L. 507, No. 97, §5
2. Parties defined. The party cosigning the loan is referred to in legal text as the "accommodation party." In order to qualify as an accommodation party, the cosigner must receive no tangible direct benefit from the loan transaction. The party requiring the cosigner in order to benefit from the loan is known as the "accommodated party."
3. **Before you cosign a loan, you should be aware that:**
 - a. As a cosigner, you may be held liable for any or all of the following:
 - i. The balance remaining on the loan
 - ii. Late fees
 - iii. Court costs and attorney's fees if the lender chooses to sue.
 - b. The lender may elect to sue you instead of the accommodated party; making your wages and/or property subject to seizure.

*The lender, however, is legally obligated to seek payment from the accommodated party first and may only seek payment from you if:

 - i. Execution of judgment against the other party has been returned unsatisfied;

- ii. The other party is insolvent or is in an insolvency proceeding;
 - iii. The other party cannot be served with process; or
 - iv. It is otherwise apparent that payment cannot be obtained from the other party.
- c. 74.6% of those who cosign a loan are called upon to repay the loan. This figure should not be surprising since a cosigner is being asked to take a risk that a professional lender will not make.
- d. An accommodation party who repays a loan not honored by the accommodated party is entitled to reimbursement from the accommodated party. This entitlement is legally enforceable.

An accommodated party who pays the loan has no legal right to seek contribution from the cosigner.

4. If you choose to cosign a loan, you should:

- a. Make sure that you can afford to repay the loan.
- b. Make sure you do not secure the loan with your property.
- c. Require **in writing** that the lender notify you by mail if the borrower misses a payment. The notification should be made before a late charge is assessed and before the loan is accelerated. This way, you will have time to find a solution or at least make back payments instead of being required to pay the entire amount due at once.
- d. Make sure that you get copies of all of the documents signed by the borrower: the loan contract, the truth in lending disclosure statement, and any warranties.
- e. Attempt to get the lender to agree **in writing** that you can only be held liable for the balance due on the loan; that you will not be held responsible for late charges, court costs, or attorney's fees. If the lender agrees, the following clause should be a written term of the contract: "The cosigner will only be responsible for the principle balance on this loan at the time of default."