



A guide to

Independent Legal Advice

For guarantors, directors, occupiers
and other third parties

01 • AT A GLANCE

Why you have been asked to see a solicitor

A lender is advancing money — to a company you are a director of, to a business, or to somebody else — and you are being asked to guarantee it, to charge property you own, or to consent to a mortgage. Before you sign, the lender wants a solicitor to advise you, and that solicitor cannot be the one acting on the transaction.

This is independent legal advice, usually called ILA. It exists so that you understand exactly what you are taking on before you take it on, and so that you cannot later say you did not — protecting you from signing something you have not understood, and the lender from an argument years later that the security should be set aside.

We provide it for guarantors, company directors, occupiers, spouses and partners, family members putting up security, and anybody else a lender or another firm needs advised — for most banks and building societies, for bridging and development lenders, and on private arrangements where property is being controlled or given away.

THE ESSENTIALS

Etridge	the House of Lords decision that shaped what a lender and a solicitor must each do
Alone	how the meeting is conducted — without the borrower or any other party present
Yours	whose solicitor we are. The certificate goes to the lender; the duty is owed to you
All monies	the wording that makes a guarantee unlimited, and the first thing we look for
A choice	what the advice exists to protect. You are entitled not to sign

We advise the individual, not the lender. Nothing here is financial, tax or investment advice: the commercial merits of the borrowing are for you and your own advisers.

The situations that call for it

The common thread is that somebody is taking on a liability, or putting up property, for a debt that is not straightforwardly their own — or is signing away a right in property they occupy.

The usual cases

- **A director or shareholder guarantee.** You guarantee the borrowing of a limited company you are involved in. Much the most common reason people are sent to us, and the one most often underestimated.
- **A third-party charge.** Property you own is charged as security for somebody else's debt — a company's, a relative's, a business partner's.
- **A spouse, partner or co-owner.** The borrowing benefits one party and the security is over a home you both own or occupy.
- **An occupier's consent.** You live in the property but are not on the title or the mortgage, and the lender wants your interest postponed to its charge.
- **A deed of postponement.** An existing lender or an interested party agrees to rank behind a new charge.
- **A gifted deposit.** You are giving money towards a purchase and the lender wants confirmation that you take no interest in the property and will not occupy it.

AND BEYOND LENDING

The same advice is frequently wanted where property is being controlled or transferred privately: a transfer of equity, a declaration of trust between co-owners, a deed of gift, or an arrangement within a family where one person is giving up or acquiring an interest.

In each case the point is the same — the person giving something up should have had it explained to them, by somebody who is not acting for the person receiving it.

Why it cannot be the same solicitor

This is not administrative box-ticking, and it is not the lender being difficult. It follows from a decision of the House of Lords and from the conflict rules that bind every solicitor.

Where the requirement comes from

In *Royal Bank of Scotland v Etridge* the House of Lords set out what a lender must do where there is a risk that a person standing surety has not freely and properly understood what they are signing. The lender must communicate with that person directly, ask them to nominate their own solicitor, provide that solicitor with proper financial information about the facility, and obtain written confirmation that the nature of the documents and their practical implications have been fully explained.

If the lender does not take those steps, the security may be set aside. That is why the request comes from the lender rather than from you, and why it will not proceed without the confirmation.

Strictly, the decision concerns non-commercial sureties. A director guaranteeing their own company's borrowing is in a commercial relationship, and a lender is less obviously put on inquiry. In practice lenders now require independent advice across commercial lending as well, because the protection is cheap and the consequence of not having it is a charge that cannot be enforced.

What the lender has to do as well

- Communicate with you directly, rather than through the borrower, and tell you that it will require written confirmation from a solicitor for its own protection.
- Ask you to nominate your own solicitor, and not proceed until you have done so.
- Provide that solicitor with proper information about the facility – its purpose, the amount, the existing indebtedness and the proposed terms.
- Wait for the confirmation before completing.

And the conflict point

The solicitor acting for the borrower – or for the company – cannot properly advise you. Their duty is to their client, and their client wants the facility drawn down. Our duty is to you, and it may be to tell you not to sign. A solicitor acting for the borrower should not take on advising a third party where there is a real possibility that the advice would be to refuse.

That is why lenders require a separate firm, and why the certificate is worth something.

What a personal guarantee commits you to

Most people signing a director's guarantee believe they are signing a formality about a specific loan. Very often they are not. This is the part of the meeting that takes the longest.

The features to understand

- **It may be unlimited.** An “all monies” guarantee covers everything the company owes the lender now or in future, not the facility in front of you. Some are capped; many are not, and the difference is not always obvious from the document.
- **It is usually payable on demand.** The lender does not have to sue the company first, realise its other security first, or wait. It can come to you directly and immediately.
- **It is joint and several.** Where there are several guarantors, the lender may pursue any one of them for the whole amount and leave that person to recover from the others.
- **It survives your involvement.** Resigning as a director does not release you. A guarantee ends when the lender releases it in writing, and not before.
- **The facility can change without you.** Lenders commonly reserve the right to vary the terms, including increasing the amount borrowed, without reference to the guarantor.
- **It extends to costs and interest.** The liability is rarely just the principal.

The practical question is a simple one. If the company fails, can you pay this? If the answer is no, the consequences run from a claim against you to a charge over your home being enforced, and in the worst case to bankruptcy. That is the conversation we will have, and it is better had now than later.

Questions worth asking before you sign

- Is the guarantee capped, and if not, will the lender agree to cap it?
- Does it cover this facility only, or everything the company may ever owe?
- What releases it — a sale, a refinance, a defined date, or only the lender's written release?
- Who else is guaranteeing, for how much, and what happens if one of them leaves or cannot pay?

Charges, consents and gifts

Guarantees are the commonest, but the other documents carry their own consequences and are frequently treated as more routine than they are.

01

A charge over your property

You are giving the lender the right to take and sell your property if the debt is not paid – even though the money is going to somebody else. Where that property is your home, this is the most serious document in the set, and it is often signed with the least attention.

02

An occupier's consent or waiver

You confirm that you have no interest in the property capable of taking priority over the lender's charge, or that you postpone whatever interest you have. The practical effect is that if the property is repossessed you cannot resist possession on the basis of your occupation.

03

A deed of postponement

An existing charge or interest agrees to rank behind a new one. Straightforward in principle, and worth understanding precisely: on a sale or enforcement, the postponed interest is paid only after the prior one is satisfied in full.

04

A gifted deposit declaration

You confirm the money is a gift rather than a loan, that you take no interest in the property, and that you will not live there. It is short, and it means you cannot later claim the money back or claim a share.

READ THE DOCUMENT YOU ARE ACTUALLY SIGNING

Titles are unreliable. A document called a consent may postpone a beneficial interest; a deed described as a guarantee may also contain an indemnity, which is a different and often wider liability. We work from the document rather than its heading, and we will tell you if it is not what you were told it was.

What we cover with you

The scope of the advice follows what the courts and the Law Society expect, and the same ground is covered whether the sum involved is fifty thousand pounds or five million.

- The nature of each document, and its practical effect, in plain language rather than legal terms.
- The extent of the liability: how much, for how long, on what trigger, and whether it is capped.
- The seriousness of the risk, including the possible loss of your home and the possibility of bankruptcy.
- What the lender can do without asking you, including varying the facility or increasing the amount lent.
- Your position against the borrower and any co-guarantors, including rights of contribution and indemnity.
- What happens if the company becomes insolvent, and where your liability sits in that event.
- Whether there is anything worth negotiating — a cap, a time limit, a release on a defined event. Lenders will sometimes agree, and nobody asks on your behalf unless you do.
- That the decision is yours alone, and that you are entitled to decline.

WHAT THE ADVICE IS NOT

We do not advise on whether the borrowing is a good idea, whether the business will succeed, or whether the rate is competitive. Those are commercial and financial questions for you, your accountant and your broker.

We advise on what the documents do to you if things go wrong. That is a narrower question and, in our experience, the one nobody else in the transaction is being paid to answer.

And what we will ask you

Not as an interrogation, but because a certificate means nothing unless the answers are satisfactory: whether you understand the extent of the liability, whether anybody has pressed you or set you a deadline, whether you have been told anything about the transaction that turns out not to match the documents, and whether — knowing what you now know — you still wish to proceed.

How it works, and how quickly

Most of these are dealt with within a few days of instruction, and we are used to bridging and development timetables where the drawdown date is already fixed.

01

Instruction and conflict check

SAME DAY

You instruct us — not the lender, and not the borrower, although either may have made the introduction. We check that we have no involvement with the borrower or the transaction, and confirm our fee in writing.

02

Documents and information

1 TO 3 DAYS

We ask for the documents you are being asked to sign and the financial information the lender is expected to provide: the purpose of the facility, the amount, the existing indebtedness and the proposed terms. Without that we cannot give meaningful advice, and we will chase it if it has not been sent.

03

The meeting

USUALLY 30 TO 60 MINUTES

We meet you alone. We take you through each document, explain the liability, answer your questions and record the advice given. If you want time to think, you take it — nothing is signed in that meeting unless you are ready.

04

Signature and certificate

SAME DAY, OR WHEN YOU ARE READY

We witness your signature where required and issue the certificate in the lender's own form, confirming that the nature and practical implications of the documents have been explained to you.

What the meeting requires

A few requirements are not negotiable, because a certificate given without them is worth nothing to the lender and no protection to you.

You are seen alone

The borrower, the other director, the family member who benefits — none of them attends. That is not a discourtesy; it is the point of the exercise. Advice given in the presence of the person who wants you to sign is not independent advice, and a lender is entitled to say so afterwards.

Face to face, or by video

Many lenders now accept advice given by video call with identity verified electronically, and for urgent bridging work that is frequently how it is done. Some still require a physical meeting, and a few require original wet-ink signatures. We establish which at the outset so that a certificate is not rejected at drawdown.

Identity, capacity and language

- Identity and source of funds checks are completed before the meeting, as they are on any matter.
- Where there is any question about capacity — age, illness, medication, obvious distress — we will address it, and if necessary we will not proceed without further steps.
- Where English is not your first language we will arrange an independent interpreter rather than rely on a family member, who is very often the person with the interest in your signing.

THE CERTIFICATE, AND WHO RELIES ON IT

The certificate is addressed to the lender and the lender relies on it. Our duty, however, is owed to you. Those two things sit together comfortably: the certificate says that the documents were explained and that you were free to decide, and we can only say that if it is true.

Why it should not be left to the last day

The certificate is usually a condition of drawdown, so a transaction cannot complete without it. Leaving the appointment until the day before completion removes the two things the advice is meant to give you: time to think, and time to ask the lender for a change to the documents if one is warranted.

It also creates the pressure the whole exercise exists to guard against. Where a deadline has been engineered to prevent proper consideration, that is itself something we would want to explore with you.

When we will say no

It is worth knowing in advance that this is not a service that always ends in a signature, and that a solicitor who would certify regardless would be no use to anybody.

We will not certify where

- We are not satisfied that you understand what you are signing, after we have explained it more than once.
- We are not satisfied that you are acting freely — because you have been pressed, misled, or given a deadline designed to prevent you thinking.
- The lender has not provided the financial information needed to advise you properly.
- There is a real question about your capacity that has not been resolved.
- You have decided not to proceed, which you are entitled to do at any point up to signature.

If you decide not to sign, that is the end of our involvement and there is nothing further to explain to anybody. We will not report your reasons to the lender or to the borrower. We will tell them only that no certificate will be issued, which is all they are entitled to know.

What happens next if we do not

Usually rather less drama than people expect. A lender told that no certificate will be issued will ordinarily go back to the borrower, and the borrower will restructure: a cap on the guarantee, a different guarantor, more security elsewhere, or a smaller facility. Occasionally the transaction does not proceed, which is sometimes the right answer.

What does not happen is that you are left exposed for having asked questions. Declining to sign carries no liability.

And if the documents should be changed

Sometimes the right outcome is neither signing nor refusing, but going back with a request: a cap on the guarantee, a limit on its duration, a release on the sale of a particular asset, or the removal of an indemnity that was not mentioned. We will tell you where that is worth asking for, and we can raise it if you would like us to.

Why instruct Arcadia Law

This is a discrete piece of work that has to be done properly and, very often, quickly. Both of those are matters of how a firm is organised rather than how clever it is.

We act for individuals referred by lenders, brokers, accountants and other solicitors, and we are used to the forms the major banks and building societies use as well as the shorter documents that bridging and development lenders produce.

How we work

- **Quickly, and to a fixed fee.** Quoted at the outset with no hourly surprises, and appointments usually available within a day or two – including outside working hours where a drawdown date requires it.
- **The right certificate first time.** We establish at the outset which form the lender requires, whether video advice is acceptable and whether wet-ink signatures are needed, so nothing is rejected at completion.
- **Advice that is actually independent.** We take no instructions from the borrower and no fee arrangement that depends on the deal completing. If our advice is that you should not sign, that is what we will say.
- **Property lawyers, not a call centre.** Charges, occupiers' rights, priority and postponement are our daily work. Where a document affects an interest in land, we understand what it is doing rather than reciting it.
- **Discreet.** What you tell us stays with us. The lender receives a certificate, not a report.

FOR LENDERS, BROKERS AND REFERRING SOLICITORS

We are happy to be added to panels and to take referrals directly. We work to the referrer's timetable, use the lender's own certificate wording, and keep you informed of progress without disclosing the content of the advice – which we cannot do, and which no lender should want us to.



Arcadia Law is a member of the Association of Leasehold Enfranchisement Practitioners.

Where to start

If a lender has asked you to take independent advice, the quickest route is to send us the documents and the lender's requirements.

01

Send us the paperwork

THE SAME DAY, IF YOU CAN

The documents you are being asked to sign, the lender's instructions or certificate form, and the date by which it is needed. Tell us who the borrower is so that we can run a conflict check.

02

We confirm the fee and book you in

WITHIN A DAY

A fixed fee, an appointment, and a note of anything still missing from the lender — usually the financial information about the facility.

03

We advise you and certify

AT THE MEETING

In person or by video, alone, for as long as it takes. The certificate follows immediately if you decide to proceed.

SPEAK TO US

Arcadia Law Ltd

15 Approach Road, London SW20 8BA

020 8546 6630 info@arcadialaw.co.uk arcadialaw.co.uk

General information only, reflecting the law of England and Wales as at 26 July 2026, and not legal advice on any particular transaction — the effect of the documents you have been asked to sign depends on their wording and on your circumstances. Nothing in this guide is financial, investment or tax advice. Arcadia Law Ltd is a private limited company registered in England and Wales, company number 10043933, registered office 15 Approach Road, London SW20 8BA. Authorised and regulated by the Solicitors Regulation Authority, SRA number 629605. © Arcadia Law Ltd 2026. The ALEP name and logo are the property of ALEP and are reproduced under licence to member firms.