
Credit Enhancements

Three primary types

1. Reliance on a **third party** for assurance the debts of another will be paid
 - a. Another **individual or a corporation**
 - i. **Personal Guaranty** should always include personal identifiers, such as the Social Security number and home address.
 - ii. A Joint Personal Guaranty may be executed by spouses.
 - iii. **Corporate Guaranty** requires a Board of Directors resolution, which should be attached.
 - b. A **bank**
 - i. A **Bank Guaranty of Payment** involves the Bank stepping into the shoes of the Debtor to pay the Beneficiary of the Guaranty.
 - ii. A **Commercial Letter of Credit** involves the Bank paying the Beneficiary once certain conditions are met.
 - iii. A **Standby Letter of Credit**, like the Bank Guaranty, provides assurance to the Beneficiary that should the Debtor not pay as agreed, the Bank will pay.
 - iv. Usually, these forms involve the Debtor's relationship with the issuing bank, often involving security for the Bank which is not visible or relevant to payment of the Creditor.
2. Reliance on **collateral** should a debtor fail to pay as agreed
 - a. An owner may provide **personal or real property** as collateral for an obligation
 - i. A **Security Agreement** requires filing of a financing statement with the State, including a description of the collateral the Debtor has provided as security for obligations.
 - a. Often includes a "floating lien" which covers "now or hereinafter acquired" personal property, such as accounts receivable and inventory.
 - ii. The **Purchase Money Security Interest** provides the personal property sold, usually inventory, as collateral and gives the creditor first-position over all other creditors having security in the property, provided required notice is given before shipment.
 - iii. A form of PMSI, a **Consignment Agreement** requires filing a financing statement and notice to other secured creditors as noted above.
 - b. **Real property** may be used as collateral in the form of a Mortgage, which is subject to substantial filing requirements, usually at the county level, depending on the State.
3. Industry-driven **legal rights**
 - a. **Artisan's Liens** are recognized by State law for products and services resulting in the improvement of personal property, e.g., jewelry or auto repair. These liens allow the service-provider to maintain possession of the property until the obligation has been paid and allow the lienholder to sell the collateral to obtain payment after a period of time.
 - b. **Mechanic's Liens** (State law) for provision of products and services resulting in improvement of real property, i.e., consumer or commercial buildings. Allows providers to put a lien on the title to the property, given they've followed the prescribed process of identification and notice which varies by State. Ultimately, the lienholder may force sale of the property to gain payment.

The law provides many other specialized, industry-specific forms of security, usually providing preferential status or using products or proceeds as secured property.

Always rely on your attorney to give you solid legal advice for any of these options!

***Provided courtesy of NACM Commercial Services**