

Practice Rules Compliance Committee

Loan Guarantees - Practice Standard

Law Society Rules Part V - Uniform Trust Account Rules

Borrowing and Lending

5.11 A member shall not borrow money from or lend money to a client during the existence of a solicitor and client relationship unless

- (a) the client is carrying on the business of lending money to or borrowing from the public, or*
- (b) Benchers, because of other circumstances, authorizes the transaction in writing.*

5.11.1 For the purposes of this rule, guaranteeing or co-signing a loan for a client is considered the same as lending money to a client.

Code of Professional Conduct (2013) - Chapter 3, Section 3.4 Conflicts

Guarantees by a Lawyer

rule 3.4-35

Except as provided by rule 3.4-36, a lawyer must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

rule 3.4-36

A lawyer may give a personal guarantee in the following circumstances:

- (a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;*
- (b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or*
- (c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:
 - (i) the lawyer has complied with this section (Conflicts), in particular, rules 3.4-27 to 3.4-36 (Doing Business with a Client); and*
 - (ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.**

The Practice Rules Compliance Committee has been informed by the Law Society Auditors that some members have been guaranteeing loans for clients. The Practice Rules Compliance Committee has discussed this issue, and are of the opinion that guaranteeing or co-signing loans for clients should be considered the same as loaning money to clients. The Committee is of the view that although there is no immediate direct pressure on firm funds with a loan guarantee, there is possibly more risk if the client defaults as the amounts are usually higher than that of a cash loan and interest continues to accrue on the loan. At the 2007 Winter Term Convocation, Benchers approved a Rule amendment stating that the guaranteeing or co-signing a loan for a client is considered the same as lending money to a client.

Members are directed to adhere to the practice standard prescribed by the Law Society Rules and the Code of Professional Conduct (2013).