



Real Estate

Q: My company is obtaining a non-recourse loan that is secured by real estate, but the lender is requesting that I execute a non-recourse carve-out guaranty. Why am I being asked to guaranty a non-recourse loan?

A: While a non-recourse loan generally limits recourse to the real estate and associated personal property securing the loan, non-recourse carve-out provisions are standard in commercial real estate loans. These provisions provide additional recourse options to a lender if a borrower or guarantor either fails to undertake a material obligation related to the property (e.g., failure to insure the property or mishandling hazardous materials) or commits certain “bad acts” (e.g., fraud, misappropriation of funds, or transferring the real estate without repaying debt). If the company obtaining the loan is a special-purpose entity whose sole asset is the real estate collateral, lenders typically require a non-recourse carve-out guaranty from a principal of the borrower.

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