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# Nonrecourse Real Estate Loans: An Endangered Species?

## *Oregon Business*

Lane Powell Shareholder Bryan Powell authored an article in the April issue of *Oregon Business* magazine titled “Nonrecourse Real Estate Loans: An Endangered Species?” In the article, Powell discussed the difficulty many borrowers have finding nonrecourse real estate loans to avoid any personal liability. Lenders have become reluctant to offer nonrecourse loans after recently suffering through staggering losses and difficult workouts of past-due loans. Several lenders are beginning to offer “nonrecourse loan” products as competition heats up for placing loans secured by commercial real estate. As a result of the tighter underwriting restrictions and more state and federal oversight, coupled with new laws on the books, lenders are now looking to further incentivize borrowers and key principals to repay the loan on time as agreed. Powell stated that real estate secured lenders will almost always require that a creditworthy principal enter into an unlimited personal guaranty to backstop the loan obligation. However, the lender will still require a creditworthy principal to accept nonrecourse carve-out guarantees for borrowers fortunate enough to get more favorable terms.

***Nonrecourse carve-out guarantees, also known as “bad boy” or springing recourse guarantees, are designed to require the guarantor to repay the loan (or portions thereof) if the borrower commits any of the specified bad acts, or where the borrower takes steps to prevent the lender from enforcing on its collateral, such as filing for bankruptcy and invoking the automatic stay. Today, a loan commitment for a typical nonrecourse commercial real estate loan often includes at least two types of carve-out guarantees: one for borrower acts that trigger full***

*recourse liability to the guarantor, and another more limited variety that is usually tied to actual damages incurred by the lender arising out of a specific bad act by the borrower.*