

## TOPIC

### Guard Against Guaranties: Cover Your Assets

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## ADVICE

**Y**our personal guaranty on a real estate loan shouldn't be worth the paper it's written on.

Read that again.

What's your gut reaction to that statement? Insult? ("But I'm wealthy!") Righteous indignation? ("My word is my bond!") Each is valid, but both miss the point.

Your guaranty should mean nothing because your assets should be protected. In other words, if a bank were ever to sue you over a guaranty, it should not be able to recover anything from you, personally, because either the law or a legal entity protects each of your assets from creditors who do not specifically name the asset as collateral.

Few real estate investors are adequately protected. Sure, most have taken the advice of their lawyer and have set up an LLC to hold the real estate, but that is only bare minimum protection from, for example, a tenant who slips and falls. The far more common litigant, especially in this economic environment, is a mortgage lender who wants repayment. Unfortunately, most investors have given away all their personal protections by signing personal guaranties on the loan.

If that describes you, and your response to the above statement was despair ("If I have to make good on all my guaranties, I'm ruined!"), take a deep breath. First, there are many strategies for working out loans, so don't fixate on the parade of horrors just yet. Second, don't be afraid of bankruptcy if it comes to that. More on those in another column.

For those with no personal guaranties or even limited guaranties, don't concede a greater guaranty without a fight! If your lender is knocking at your door, look at the fundamentals of the real estate. Determine if it is realistically worth pursuing. And get professional help. An investor is rarely objective when it comes to his own investments. If a property is not worth pursuing, it might be better to tee it up with the bank now rather than later.

A word of caution: setting up asset protection vehicles properly is highly technical and best left to a lawyer who specializes in asset protection.



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