any recourse against the borrower or its principals if the collateral doesn't suffice to repay the loan.

The list of violations triggering a nonrecourse carveout guaranty sometimes includes amending a lease, or waiving a tenant's obligations, without the lender's consent. So an ordinary accommodation to a tenant in trouble, if done without the lender's consent, might make the owner's principals responsible for payment of the entire loan, an exposure they otherwise would have avoided. This would be a disaster.

A borrower should consider another similar trap before approaching its lender for any relief. Almost all loan documents say it's a default, so the lender can foreclose, if the borrower admits in writing its inability to pay its debts. This default usually appears in a long, dense, unreadable paragraph on insolvency-related defaults. If a borrower admits it can't pay its debts, this might help support an involuntary bankruptcy filing against the borrower. The lender doesn't want that to happen—not that the borrower's written admission will affect the ultimate outcome all that much if the borrower in fact can't pay its debts.

A borrower's admission of inability to pay debts may even allow the lender to claim that the borrower's principals are now liable for the entire loan under a nonrecourse carveout guaranty. This is, of course, an absurd result, but no more absurd than other recent results in litigation over similar guaranties. So the owner shouldn't say or write anything about its general inability to pay its debts, whether or not accurate.

Conclusion

Any real estate owner must proceed with extreme care both in accommodating its tenants and in seeking accommodations from its lender. Read the loan documents first. Do nothing to give the lender a hook on which to hang a default—or, worse, a claim under a nonrecourse carveout guaranty. And when negotiating with tenants, remember that lease renegotiations can work both ways.