Environmental Lending and Foreclosure Risks in 2020

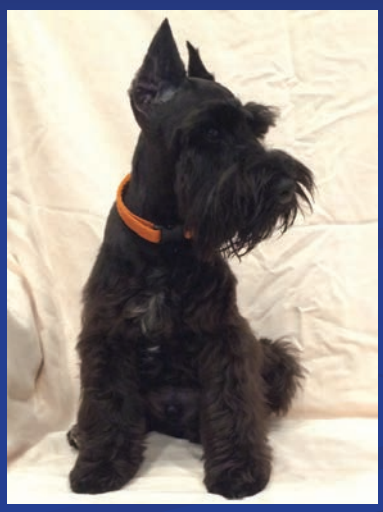
Mark McPherson
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Serving All of Texas from Dallas



Environmental Lending and Foreclosure Risks

- Today's COVID-19 Setting

The Home Office Comes With an Automatic Doorbell….



Environmental Lending and Foreclosure Risks

- Scope of this Presentation
  - Environmental Issues from the Lender Perspective
  - Federal and State Law
  - Enforcement Process
  - What Happens in Bankruptcy
  - Strategies

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Environmental Lending and Foreclosure Risks

- CERCLA
  - Owner or Operator
    - AAI
  - Lender
    - Not a Participant in Management (relationship to the collateral)
    - Bona Fide Extension of Credit (relationship to action)
    - To a Non-Affiliated Person (relationship to borrower)

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Environmental Lending and Foreclosure Risks

- Texas Solid Waste Disposal Act (SWDA)
  - Adds Unique Safe Harbor to the Exclusion of Lenders Not Participants in Management
  - Divest the property at the earliest practicable, commercially reasonable time, if, within 12 months after foreclosure…

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Environmental Lending and Foreclosure Risks

- Enforcement Process
  - Enforcement Order
  - Technical/Ordering Provisions
  - Monetary Penalty
  - Unpaid Penalty Accrues Interest
  - Expenditure of Govt Funds to Remediate
  - CERCLA Lien/Judgment Lien

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Also available as part of the eCourse
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