

# Environmental Lending and Foreclosure Risks in 2020



Mark McPherson  
McPherson Law Firm  
Serving All of Texas from Dallas



1

1

## Environmental Lending and Foreclosure Risks

- Today's COVID-19 Setting

The Home Office  
Comes With an  
Automatic  
Doorbell....



2

2

# 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



3

3

# 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)



4

4

# 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...



5

5

# 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



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Environmental Lending and Foreclosure Risks in 2020

Also available as part of the eCourse

[2020 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the  
54<sup>th</sup> Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session  
"Environmental Lending and Foreclosure Risks in 2020"