

Environmental Lending and Foreclosure Risks in 2020



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Environmental Lending and Foreclosure Risks

- Today's COVID-19 Setting

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



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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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[Environmental Lending and Foreclosure Risks in 2020](#)

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