

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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- 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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