

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

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"Environmental Lending and Foreclosure Risks in 2020"