

Lending/Transactional Issues: Blog Post Addresses Residential Environmental Issues



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Sid Trant and David Roth authored an August 30th post on their law firm's blog *Financial Services Perspectives* titled:

Foreclosing Residential Lenders Ignore Environmental Issues at Their Own Risk

The post addresses the possibility that mortgaged residential properties can sometimes pose environmental risks for lenders.

The need for lenders and other secured creditors to consider environmental issues has been a part of a collateralized loan due diligence checklist for many years. Federal and state environmental programs have in some circumstances posed a concern for financial institutions and other secured creditors considering accepting a mortgage associated with commercial or industrial facilities. The concerns have included:

- a) The responsibility for facilities' environmental problems could be imposed on the secured creditor.
- b) An environmental issue may diminish the value of the collateral securing the loan.
- c) A regulatory/permitting program or environmental contamination may impair the ability of a project or facility to function limiting cash flow) will require expenditures that threaten the economic viability of the business.

Secured creditor exemptions in Federal Superfund and the Arkansas equivalent statute have to some extent provided a path for lenders to avoid liability under those statutes if prescribed procedures are followed. However, most lenders recognize that these statutory exemptions do not address common law claims, regulatory issues and collateral evaluation concerns. Many institutions therefore continue to utilize environmental assessments tailored to the unique characteristics/risks associated with the facility.

The point of the *Financial Services Perspectives* post is that commercial and industrial facilities are not the only type of properties that can pose potential risks. They list a number of issues sometimes associated with residential properties that can pose a concern. Those are stated to include:

- Asbestos-containing materials
- Radon
- Lead-based paint
- Mold
- Household/hazardous waste
- Septic systems

- Underground/home heating oil tanks
- Issues associated with private wells
- Contamination from neighboring properties
- Methamphetamine production wastes

In addition, the authors also provide five suggestions for addressing and evaluating risks which include:

1. Have a Policy
2. Train Personnel to Recognize the Warning Signs
3. Timing Can Be Everything
4. Consult before Acting
5. Be Aware of Environmental Disclosure Requirements

[A link to the article can be found here.](#)