

Environmental Issues in Lending Transactions

For banks, private lenders, and other financial institutions, a specific set of concerns is associated with managing potential lender liability issues in transactions involving contaminated properties due to the potential for environmental liabilities to devalue collateral, impact a borrower's ability to repay a loan, or even expose the lender or other institution to direct cleanup costs under certain circumstances.

Evaluating the environmental condition of a property is an important step in making business decisions associated with loan issuance, workout or foreclosure. We regularly counsel lenders in evaluating whether property is contaminated and if so, how that affects the credit worthiness of the borrower and the value of the collateral. We also assist lenders in considering whether environmental issues, such as operational and permit compliance, air, water and soil impacts, and transaction-triggered environmental laws, have the potential to disrupt the income stream required to pay the debt service. In a foreclosure setting, we counsel lenders regarding the steps required to limit their liability risks under statutes such as CERCLA and the New Jersey Spill Act. Our proactive guidance and attention to detail helps lenders structure secure transactions, minimize their exposure to environmental liabilities, and effectively manage risk throughout the loan lifecycle.

Likewise, we assist business clients seeking financing from financial institutions, or seeking to establish financial instruments to secure remediation obligations to state and federal environmental authorities, in presenting their applications and back-up materials in support of their objectives.

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