

TOPIC

Liability for Stalled Real Estate

ADVICE

Now that promises of triple digit returns have vaporized, commercial developments are hot potatoes—no one wants to hold them. Indeed, problems loom for projects that stalled after breaking ground.

The economics of these projects can get turned upside down in a hurry. Partially completed buildings are Petri dishes for black mold, especially in this climate. Clear cut land with no ground cover accelerates soil erosion, which clogs municipal drainage systems and pollutes waterways, killing flora and fauna. The cost of mitigating either of these issues can quickly erode a project's value.

In fact, I recently visited a stalled development where property having infrastructure costs of \$25 million now holds an appraised value of \$0. Fortunately, the owner of the land is committed to mitigating the project's environmental issues. He realizes that he is responsible to the community for his stewardship of the land, despite the fact that the original business plan turned sour.

His lender is not on board yet, but it needs to be. Banks must learn to deal with real estate owned ("REO") that cannot be quickly disposed. Maintenance costs money. Lenders also inherit legal liability for code and regulatory violations by REO. Even if a bank is not in possession of the land, it may still be liable on account of its lending practices or its position in the chain of title.

Local and federal agencies are moving more quickly and aggressively than in the past. The "green" movement has heightened the public's awareness of environmental issues, and they are rightly concerned about protecting their communities and the earth. Fines levied by agencies can be heavy and are on top of the cost of mitigation.

So, what to do? Borrower, talk with your insurance provider and make sure that your coverages are appropriate. Talk also with your lender and keep it apprised of potential situations. Lender, do your homework. Know where the borrower's project stands (you collect inspection fees from your borrowers for a reason). Better yet, visit the property in person. Stewardship is a joint responsibility.



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