

DISTRESSED ASSET PROTECTION PLAN

As lenders continue to foreclose on properties, the inventory of sites is rising exponentially. Unfortunately, overworked asset managers are unable to cope with the large number of properties on the books. A large percentage of the foreclosed properties have “site improvements,” in the form of buildings and infrastructure, some of which are 100% complete, while others are in some stage of construction. Many of these properties are vacant and/or construction has stopped and will remain that way until they are sold by the lender.

Much of the true value of these assets is in these “site improvements.” If left unattended and not properly maintained, the value deteriorates as each day goes by. For those sites in an early stage of construction, much of the value is in the regulatory approvals and construction and environmental permits. In addition, there may be current environmental problems or violations of regulations, which could create a significant liability to a lender once they have taken ownership of the property.

In all cases, it is critical that a lender understand all of the risks and liabilities before foreclosing on a property. Once the foreclosure has occurred, the property and improvements must be maintained until it is sold in order to protect the underlying value. If not maintained, a lender will quickly find that all of the improvements have become worthless.

The huge task of Evaluation, Maintenance, and Protection of properties and any “site improvements” can quickly overwhelm a distressed property asset manager. In many cases, the asset manager finds it difficult to just keep track of the assets, much less evaluating and maintaining them.

A comprehensive Asset Protection Plan can be implemented to help manage and preserve the value of foreclosed properties. Generally, an Asset Protection Plan can be broken down into three categories: Liability Protection, Site Maintenance and Site Protection.

When a lender takes ownership of a property, they gain an asset but also acquire all of the liabilities and responsibilities of an owner. Any environmental problems with the site would become the responsibilities of the “new” owner. Unless identified prior to foreclosure, a lender could become financially obligated for an expensive site cleanup. For properties which are still under construction, there are various environmental permits which could have been violated. The new owner could find themselves subject to fines as well as the cost to repair the properties in order to meet these permit requirements. Typical site problems include soil and groundwater contamination, as well as storm water and sedimentation control violations. Facility problems include building and pool security, mold, Chinese drywall and water intrusion.

Liability Protection

- Chinese Drywall
- Mold
- Pool Security
- Permit Violation
- Soil and Groundwater Contamination
- Storm Water and Sedimentation Control Violations
- Water Intrusion

It is critical that a lender obtain a thorough understanding of their potential liability before foreclosing on a property. Pre-foreclosure due diligence can save the lender money and reduce liability.

Once a lender forecloses on a site, routine maintenance is important in order to maintain value and prevent regulatory violations. Maintenance could be as simple as landscaping and routine site inspections. On construction sites with partially completed and/or vacant buildings, the tasks could be much more extensive. Storm water and erosion control repairs often include silt fences, site grading, culvert cleaning, etc. Building issues include site security, i.e. fences around pools, securing building openings and moisture damage prevention. In Florida, if a building is not properly enclosed and dehumidified, mold can cause extensive damage requiring extensive remediation and possibly a total loss of value. Allowing water to accumulate in a swimming pool creates a safety hazard as well as a breeding ground for mosquitoes.

Site Maintenance

- Landscaping
- Moisture Damage Prevention
- Site Inspections
- Securing Building Openings
- Site Security
- Stormwater and Erosion Control Repairs

A routine inspection and maintenance plan will reduce a lenders' ongoing liability and maintain the value of the property until sold. Initial repairs followed by biweekly inspections will detect any issues and correct them in a timely manner. This plan will ultimately allow the lender to obtain the best purchase price when the site is sold.

Site Protection

- Catastrophe Aftermath
- Emergency Response
- Vandalism

Severe weather is an everyday occurrence in Florida during the summer. In addition, major catastrophes such as hurricanes and tornados can strike and seriously damage a site and buildings. With the large number of vacant buildings, vandals often break in and cause damage. Failure to mobilize immediately and implement repairs can cause even more damage. For example, if water damage is not remediated within 48 hours after intrusion, mold growth will begin. The costs for serious mold remediation can exceed the cost for demolition and reconstruction of a building, which would significantly reduce the value of a foreclosed property.

An emergency response plan provides site protection before a catastrophe occurs and immediate response in the aftermath of the catastrophe. Attempting to hire a firm immediately after a catastrophe is extremely difficult and expensive. Having a firm under contract and on call will reduce the cost of service and guarantee immediate response.

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