

## **CHAPTER 32-40.1**

### **LENDER LIABILITY FOR ENVIRONMENTAL DAMAGE**

#### **32-40.1-01. Definitions.** As used in this chapter:

1. "Lender-owner" means any person who by virtue of foreclosure, whether by action, advertisement, or voluntary, nonjudicial foreclosure, or upon receipts of an assignment, bill of sale, or deed in lieu of foreclosure, becomes the owner of property.
2. "Representative" means any person acting in the capacity of a receiver, conservator, guardian ad litem, personal representative of a deceased person, or trustee or fiduciary of property, except a trustee or a fiduciary is limited to an entity acting as trustee or fiduciary and which is chartered by the state banking commissioner, the office of the United States comptroller of the currency, or the office of thrift supervision.
3. "Third party" means a person other than a governmental entity, seeking to enforce a federal, state, or local environmental statute, ordinance, rule, permit, or order.
4. "Third-party liability" means liability to a third party for any claim arising out of or resulting from contamination or pollution, including a claim for personal injury, consequential damages, lost profits, exemplary damages, or property damages.

#### **32-40.1-02. Third-party liability - Environmental damage.**

1. Except as preempted by federal law, a person may not be deemed to be an owner or operator of property who, without participating in the management of the property, holds indicia of ownership primarily to protect a security or lien hold interest in the property or in property in which the property is located.
2. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination or pollution emanating from the property before the date the title vests in the lender-owner or representative. For the purposes of this section, the issuance of a sheriff's certificate of sale is not sufficient to vest title in the lender-owner or representative.
3. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination or pollution emanating from the property during the period of ownership so long as, and to the extent that:
  - a. The lender-owner or representative does not knowingly cause new contamination or pollution or does not knowingly allow others to cause new contamination or pollution;
  - b. The lender-owner has, in good faith, caused an individual, including an officer or employee of the lender-owner, possessing the requisite knowledge and experience to conduct a visual inspection of the property to determine the presence and condition of hazardous wastes or substances and obvious contamination or pollution; and
  - c. The lender-owner found by the enforcing agency to be in noncompliance with federal or state laws takes steps to assure compliance with applicable laws.

**32-40.1-03. Extent of application.** This chapter applies to a lender-owner or representative as long as the lender-owner or representative makes reasonable efforts to resell the property and does not affect any liability expressly created under federal or state health or

environmental statutes, rules, permits, or orders. This chapter does not apply to a lender-owner who transports or disposes of waste for profit.

**32-40.1-04. Applicability to civil actions.** This chapter applies to civil actions filed on or after August 1, 1993.