



Environmental due diligence during the pandemic - by Chuck Merritt

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Back in March of 2020 as the world came to an economic halt with many industries that those in the professional service business rely on such as financial institutions and construction, due diligence firms were impacted. The initial freeze that was only supposed to last for a few weeks, quickly turned into a much longer time frame. As local and state governments made decisions to best protect their residents, only essential workers could conduct business. Grocery stores and the trucking industry that delivered our daily food products were at the top of the list. Next back were industries such as construction and banking which has been an important fabric of society for hundreds of years, even longer if you track lending back to the Knights Templar that would hold money for travelers making long journeys and afraid of being robbed along their traveling routes (while charging interest for this service of course). As the financial industry was granted an essential business status, lawyers representing their clients for real estate closings were permitted back to their offices as needed. Although working remotely became a new phenomenon, many banks and their law firms have sensitive information stored only on servers and corporate hard drives. So, accessing this information remotely was near impossible due to security concerns.

In New York, appraisers, engineers and environmental firms were allowed to petition Albany for "essential status" in which most received the necessary waiver to equip their field staff should they come upon law enforcement inquiring as to why they were traveling throughout the state. However, some firms took a different approach and started providing virtual or remote due diligence reports. Some requested from their clients if this would be acceptable while others just implemented the new procedure unilaterally. My firm started receiving calls from long-standing bank relationships asking what our policy was. Since we had the essential status and our inspectors were willing to work in the field, we continued to provide the same level of service.

As technological advances have vastly improved the timing of environmental due diligence reports, there are still some things that can only be discovered while walking the property. As great as Google Earth may be, it cannot see inside a building. Many times buried oil tanks not registered or

installed long before the days of registration could be missed within a database review. In addition, many lenders had a hard time justifying that if one industry vendor such as an appraiser or engineer was willing to visit the site, why should they accept the environmental company refusing to do so? With many banks pivoting to provide Small Business Administration (SBA) loans to keep clients afloat, the amount of commercial real estate loans declined drastically. In many cases, vendor lists that included multiple approved firms were reduced to only a few willing to visit the site and conduct a thorough visual inspection while interviewing key personnel at the property.

We have all come to the realization that working remotely with staff preparing reports is a viable business model if the technology and bandwidth within the company is adequate. Although we now realize this new paradigm has lasted longer than expected (and will continue through this upcoming winter), is the situation we find ourselves in much different than a company's snowstorm policy? When roads become slick from winter storms and driving conditions dangerous, smart companies would allow staff to work from home. Fender benders can lead to a lot of down time as an employee deals with the body shop, insurance carriers, rent-a-car company; not to mention the safety of the staff driving in such conditions. Companies that invest in better, faster technology for their staff should benefit going forward. There are many pros and cons to how we have become more of a remote business society of which I am not qualified to opine, but as the world changes, so will our business models.

Going forward

We are all confident that the pandemic will subside with treatments and vaccines coming out shortly. So, commercial real estate and the due diligence industry that supports the industry will grow strong once again. In the New York City area, developers have restarted construction projects over the summer with new ones getting started every day. Most of these projects have a lending component as part of the structured deal so bank balance sheets should improve as well. Many of these sites have environmental challenges that must meet the local and state investigation and remediation requirements. The Brownfield Cleanup Program (BCP) and Voluntary Cleanup Program (VCP), being the primary vehicles to address contamination that may be present from past historical operations. These developments will meet the demand of tomorrow's housing needs in the tri-state area. As with past downturns in the real estate sector, there are those ready to be opportunistic in such an environment.

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