Climate Change Has Far-Reaching Impact. How Will You Be Affected?

December 2007

The urgency of global climate change is certain to be a subject of debate for the foreseeable future. But its impact on financial institutions, insurance companies, and businesses—as well as regulators at every level of government—is well underway.

REAL PROPERTY
Financial institutions are factoring in climate change risks when they assess collateral and lend money—on both a transactional and portfolio basis. nsurance companies, too, are taking a harder look before underwriting real property.

MERGERS & ACQUISITIONS
Costs related to climate-change compliance are now increasingly incorporated into merger and acquisition transactions. Watch for due diligence procedures (now in an early evolutionary stage) to identify carbon-related liabilities, along with any positive impact associated with energy efficiency.

STEWARDSHIP POLICIES
More corporations and financial institutions are adopting environmental stewardship statements to reflect their beliefs, commitment, and actions related to operations and investments. Some of these policies could extend to relationships with vendors and customers.

KYOTO CATCH-UP
The Kyoto Protocol, adopted by many countries in 1997, has become the standard for contemporary climate-change regulation. Nations that embraced Kyoto now enjoy a head start in developing regulatory and transactional procedures that could serve as instructive models for the U.S.

GOING GREEN
Climate change is driving market demand for green buildings and sustainable development. Still, the definition of a green structure is far from clear. Currently the Leadership in Energy and Environmental Design (LEED) program, created by the U.S. Green Building Council, offers the most cogent guidelines for green designation.

DEVELOPMENT INCENTIVES
A carrot-and-stick regulatory approach is emerging at the local level. Reduced permit fees, accelerated permit turnaround, and tax credits or abatements are just some of the incentives currently offered.

LENDING OPPORTUNITIES
Because energy will consume an increasing percentage of revenue, it's taken into consideration when attaching value to an income-producing asset. A lender's ability to calculate the energy/net-operating-income nexus, apply it to a particular type of asset, and compare it to similar assets in that class, could identify strategies to reduce the energy impact on a particular type of asset—and increase lending opportunities in the process.

CARBON IMPACT

A carbon footprint—the measurement of an entity's carbon dioxide emissions based on consumption of purchased energy, direct emission output, supply-change efficiency, and several other quantifiable environmental factors—will become increasingly important in real estate and other business transactions. Once quantified, a Carbon Impact Assessment (CIA) can become a powerful negotiating tool for buyers, sellers, and lenders.

These are just a few issues connecting climate change and the law. For an in-depth analysis, see Mark J. Bennett's article. "The Evolution of Climate Change Due Diligence Standards" by contacting him, or please call him at 248.267.3269.