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ENVIRONMENTAL PRIMER

WHAT YOU NEED TO KNOW
ABOUT THESE COSTLY ISSUES
— BEFORE YOUR NEXT DEAL

BY ROBYN A. FRIEDMAN

So you've just plunked down a deposit on your next real estate investment. Maybe it's an income-producing warehouse, an office building or even a grocery store-anchored neighborhood shopping center. Your inspectors are on board, ready to perform their structural and wood-boring insect checks within the terms set forth in the purchase agreement. Assuming the inspections turn out OK and your financing is approved, the deal's a go, right?

Wrong. Experts say that no buyer should close on a commercial deal today without performing environmental assessments — inspections to determine whether there has been any contamination or other environmental issues with respect to the property.

"It's recommended that a minimum of a Phase I environmental assessment be done on every commercial property for acquisition," said Ira L. Whitman, Ph.D., founder of The Whitman Companies Inc., an East Brunswick, NJ-based firm that performs environmental due diligence for property purchasers, investors and lenders.

That's because, under federal and state statutes, purchasers of property with environmental issues may be held liable for the remediation, or cleanup, of that property, even

if they had nothing to do with the contamination. And remediation isn't cheap. Cleanup costs can run from a few thousand dollars into the millions.

No Property Exempt

Environmental issues can pop up on any type of commercial property, whether it's office, industrial or retail. Gas stations are notorious for environmental contamination and set off red flags with environmental consultants and mortgage lenders. Strip malls can also present problems, especially if there is a dry cleaner on site, due to the potential for soil or groundwater contamination.

Jeff Civins, head of the Environmental Practice Group at law firm Haynes and Boone in Austin, TX, knows of some developers who started building apartment complexes and then discovered they were building on land that had formerly been used as a municipal landfill. That's one reason he recommends that environmental due diligence be conducted on nearly every commercial deal.

"The prudent thing is to take a look on the front end and have an assessment," he said. "The liability you might incur could far exceed the value of the property."

Even raw land can present a problem, depending on