ENVIRONMENTAL LIABILITY

Modernly, all commercial mortgage lenders (with the possible exception of small, unsophisticated hard money brokers) require some sort of environmental report on a commercial property before they will lend on it. The reason why is because various State and Federal laws now require the owner of an environmentally contaminated property to clean it up. This clean-up cost could run into the millions of dollars.

This liability is *strict liability.* You own the property. You clean it up. This includes mortgage lenders who take back properties in foreclosure.

Virtually all gas station sites are contaminated. The tanks were of single-wall steel construction, and they all leaked. The average clean-up bill can be as low as $60,000 if the water table is deep to $600,000 for a single rusted out tank if the water table is high to several millions of dollars if there were a number of tanks on the property. Clean-up is performed by aerating the contaminated soil (the bad stuff evaporates!) or inserting oil eating bacteria (very expensive but cheaper than hauling) or hauling away all of the contaminated soil (very, very expensive.)

Old dry cleaning plants are a big problem too. The law used to allow them to pour their used cleaning solvents down the drain - until it was realized about 8 years ago that all the underground water pipes leaked at the joints. Watch out for old dry cleaners *down the street.*

Other common polluters are truck storage yards and heavy industrial sites. The solvents used by furniture refurbishers are also particularly nasty. Worst of all were circuit board manufacturers, who used water to clean off their work areas. The heavy metals *from* such manufacturers are extremely water soluble, (they show up in the water table miles away) and they are very carcinogenic.

There is an exception to the rule of *strict liability.* If a landowner obtained a Level I toxic report (estimated cost $2,300 to $3,500) prior to buying the property, and the report did not find any contamination or suggest that further research be conducted (drilling, testing, etc.), then the buyer has a *"safe harbor"* against future toxic contamination liability lawsuits.

Most commercial mortgage lenders always now require a clean Level I (also known as a Phase I) environmental report as a condition of making the loan.

A Phase II (typically $8,000 - $15,000) toxic report is usually only required by a lender if the Level I environmental report asks for drilling and soils analysis. If contamination is discovered after drilling, your deal will frequently be dead.