

ASK A LAWYER

Lease can limit liability in case tenant pollutes

Q. A tenant at my shopping center is a dry cleaner. What can I do to protect myself from environmental liability arising from dry-cleaning operations?

Many dry cleaners use chemical solvents for cleaning. Environmental investigations often reveal significant groundwater contamination on and around the site of the dry-cleaning facility. A spill of several gallons or more of such solvents can cost several hundred thousand dollars or more to clean up. Under environmental law, the landlord and its tenant are jointly liable for these costs.

While the lease may require the tenant to do the cleanup, if the tenant lacks financial resources the landlord will be legally obligated to do it. Landlords should do whatever they can to avoid such liability. They may prohibit the use of dry-cleaning solvents. Some dry cleaners are permitted by the lease to be only "drop-offs" that use no solvents, with the customer's clothes being taken to an off-site location for cleaning and then returned to the shopping center for customer pickup. Of late, dry-cleaning machines that do not use solvents are being used more frequently by many dry cleaners.

Finally, for landlords willing to let a tenant use dry-cleaning solvents, environmental insurance could be purchased at the landlord's or the tenant's expense to guard against the financial consequences of contamination of the property. Insurance com-

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panies selling environmental insurance for a site that has a dry cleaner as a tenant will require assurance that there is no existing problem on the site caused by past dry-cleaning operations. Most companies require groundwater samples to be tested for the presence of dry-cleaning solvents before issuing a policy. Some companies are willing to issue environmental insurance without such investigations if they are satisfied that prior use of dry-cleaning solvents at the site was limited.

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