

## ASK A LAWYER

# Financing purchase of a tainted site

**Q. I am interested in buying a property that is contaminated, but I understand it may take years to finish the cleanup. Is there a way I can buy it now before it is cleaned up, limit my liability for the cost of the cleanup and get a bank to give me a purchase-money mortgage with this property as sole collateral for the loan?**

Actually, most contaminated property transactions close before the cleanup is finished. The key is to manage the risk so that everyone is comfortable proceeding. There are several ways to do this.

One is to enter into a contract with a willing environmental

consultant, by which the consultant agrees to complete the cleanup of the known contamination for no more than a guaranteed cost.

The consultant agrees to pay costs to clean up known contamination in excess of the guaranteed amount.

If anyone is uncomfortable relying on the financial wherewithal of the consultant, cost-cap insurance is offered by several insurance companies.

Cost-cap coverage uses the guaranteed cleanup cost as the deductible and provides insurance for any cost overruns to clean up the known contamina-

tion. Neither the guaranteed cleanup cost contract nor the cost-cap insurance covers the cost to clean up new discoveries of pre-existing contamination unrelated to what the consultant agreed to remediate.

Another kind of environmental insurance, pollution legal liability coverage, will cover both new discoveries of contamination and third-party lawsuits for property damage and bodily injury, on and off-site. In our experience, there are banks that will accept some combination of a guaranteed cleanup cost contract, cost-cap insurance and pollution legal liability coverage to close a loan

with contaminated property as the sole collateral.

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