

# ENVIRONMENTAL INSURANCE AND THE REAL ESTATE INDUSTRY

Property owners, real estate managers and developers face a host of environmental exposures that can be devastating to their businesses. Whether as a result of their operations, their position as owners, their contractual obligations, or the actions of contractors, they may find themselves liable for conditions they had little to do with or knew little about, especially following a merger or redevelopment. Environmental risks, such as historic contamination, and the associated stigma attached to such issues, are intangible, hard to quantify and therefore very hard to effectively manage.

What can be done? The answer is a comprehensive environmental risk management plan and risk financing strategy. But first, property owners, real estate managers and developers must understand the exposures they face.

## KEY REAL ESTATE EXPOSURES

### ACQUISITION OF SITES WITH HISTORICAL CONTAMINATION

Sites once used for industrial purposes can pose a range of unanticipated exposures for owners, occupants and even lenders and investors. Pollutants may be encountered when land is disturbed, and this discovery may trigger

regulatory notification requirements and cleanup obligations. Another issue is exposure to bodily injury claims, including those related to the intrusion of volatile vapors, which is now a priority enforcement target for regulators. Older facilities may also contain lead paint or asbestos.

### STORAGE OF HAZARDOUS MATERIALS

Storage tanks above and below ground are frequently utilized to store potential pollutants such as fuels, heating oil, lubricants and chlorine or other pool additives. Smaller volumes of materials, such as pesticides, herbicides and cleaning agents are often stored or used on-site. Property owners must also consider any hazardous materials that may be stocked for sale by retail tenants.

### POTENTIALLY HAZARDOUS TENANT OPERATIONS/ACTIVITIES

Potentially hazardous operations include dry cleaners, gas stations, car repair facilities, photography development centers – essentially any businesses that may use or store significant quantities of hazardous chemicals. Any of these can translate into significant environmental liabilities for building owners depending on terms of lease agreements.

### RENOVATIONS

Renovations are typically done in one part of a facility while other sections remain operational – increasing the risk of third-party exposure from spreading contaminants. This can be caused by demolition or removal of materials containing lead, asbestos and other hazardous substances or by vapors or gasses emitted by newly installed materials.

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## INDOOR AIR QUALITY

Commercial buildings have many enclosed spaces especially vulnerable to mold or Legionella, which can form in HVAC and plumbing systems as well as in other parts of the structures. Some residential facilities include swimming pools, which produce the humid conditions that can foster mold problems. When high concentrations of customers, workers, residents and delivery persons are exposed, even a single release of pollutants can have far-reaching impact and yield extensive claims.

The potential consequences can include:

- **DIRECT LOSSES** Legal defense costs add up quickly; so can unexpected cleanup expenses and damage payments to third parties.
- **INDIRECT LOSSES** Pollution events can trigger a variety of consequential losses; for example, contamination can render facilities unusable, causing business interruption losses, loss in rental income and costs associated with relocation.
- **PROPERTY DEVALUATION** Environmental liabilities can dramatically impact the overall value of large asset holdings or the transferability of individual assets.

## REAL SOLUTIONS

Environmental insurance policies are readily available to address the risk exposures faced by the real estate industry. Many standard General Liability and Property programs include pollution exclusions. Environmental insurance policies address these coverage gaps. Site-specific Pollution Liability policies routinely provide coverage for:

- All primary and ancillary facilities – sometimes without the need to schedule individual locations
- On-site cleanup of new and preexisting pollution conditions
- Business interruption resulting from pollution conditions
- Both sudden and gradual pollution conditions
- Third-party claims for bodily injury, property damage and cleanup costs arising from on-site or off-site pollution conditions
- Defense of third-party claims up to the limit of the policy
- Transportation and non-owned disposal sites (NODS)
- Mold and microbial matter, including Legionella

Environmental coverage can also bolster indemnity agreements for preexisting known and unknown environmental liabilities, while protecting new owners from future exposures. In addition to routinely available coverage, an experienced Environmental broker can obtain significant coverage enhancements tailored to the

## AN EXPENSIVE EXAMPLE

The owners of a multistory building containing retail space and apartments settled a mold lawsuit by agreeing to remediate all contaminated apartments and retail space. They also agreed to pay for temporary housing and legal fees, reimburse all tenants for personal property damage, reimburse retail tenants for business interruption, rebate rents, pay actual medical expenses incurred and pay an additional lump sum payment of several thousand dollars to each resident. The lawsuit, filed by current and former building tenants, alleged that improper maintenance of the building's HVAC system caused extensive mold growth throughout the building. The total cost to the building owners was more than \$10 million.

individual history, operational risks and liability concerns of organizations involved in real estate. A broker should also help you address the exposures associated with contractors' activities at your facilities. Verifying that your contractors have a Contractor's Pollution Liability (CPL) policy can help ensure that pollution conditions caused by or made worse by contractors' activities are covered.

## CONTACT

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