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Environmental Insurance

by

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I wanted to introduce two types of environmental insurance, which have recently become more popular through the course of real estate transactions. Such insurance policies are designed to protect the borrower and/or lender in the event of unforeseen environmental damages occurring after property transfers.

Borrowers' Environmental Insurance

A borrower can protect itself by purchasing an environmental liability policy, which is more widely called a "pollution legal liability policy." Such policies are commonly purchased for a set fee to cover over an established time period, at the end of which, may be renewed. This policy provides coverage for a variety of exposures, including the following.

- Third-party claims arising from sudden and gradual pollution conditions
- Onsite and off-site cleanup due to contamination
- Claims of first- or third-party business interruption
- Owner or vendor transportation
- Non-owned disposal sites

Lenders' Liability Insurance

Lender liability environmental insurance policies are being used by lenders as a lower-cost substitute for, and supplement to, traditional environmental due diligence. Lender liability insurance can protect lenders for unknown or undisclosed environmental conditions, as well as for conditions disclosed by a Phase I assessment, provided those disclosures do not represent policy coverage exceptions. Lender liability insurance also provides coverage against new environmental conditions that may appear during the loan term.

We recently consulted during the real estate transfer of a former gasoline station, where a purchaser has requested environmental insurance to relieve him of both on-site and potential off-site liability in the future. After the insurance company has reviewed competent environmental investigation reports, which identify known environmental conditions and a recent cleanup, they offer a policy for a specific time period to cover a myriad of potential environmental damage claims, arising both on-site and off-site. This insurance policy offered a comfort level with the purchaser, whereby the property transfer was completed.