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New disclosure laws set stiff requirements

New environmental disclosure laws that went into effect in Indiana and Illinois the first of this year will require sellers of high-risk properties to file and record an extensive disclosure document before closing the deal.

According to Larry Schnapf, an attorney in the Environmental Practice Group at the national law firm of Lord Day & Lord, Barrett Smith, the legislation reflects a growing trend by state legislatures "to more aggressively address environmental liabilities before property is transferred. The new laws may also serve to protect unwary lenders and property buyers from future liabilities for pollution clean-up costs."

Under the new laws in the two Midwest states, failure to file a disclosure document will subject property sellers to stiff fines, and will allow both buyers and lenders to void the deal. Adds Schnapf, "the transaction can also be voided if the disclosure document reveals information not previously made public. Property buyers, as well as sellers, are responsible for assuring that the document is recorded with the county clerk and state environmental authorities."

Schnapf points out, however, that although the new laws in Indiana and Illinois are tough, they fall short of what New Jersey's stringent Environmental Cleanup Responsibility Act (ECRA) dictates. The statutes in both Indiana and Illinois permit some flexibility among participants while allowing the deal to proceed; in New Jersey, an inspection and clean-up, if necessary, has to be carried out before the transaction can proceed.

With some flexibility, "the Indiana and Illinois legislation reflects concern being voiced by the business and lending community for less onerous property-transfer restrictions," Schnapf concludes.