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OUTLOOK  
BOSTON, MA  
Q. 115,600

SPRING 1990

## Tough New Environmental Regulations Take Effect in Indiana and Illinois

New environmental disclosure laws have gone into effect in Indiana and Illinois for real estate and corporate transactions consummated after January 1, 1990. These laws require sellers of high-risk properties to file and record an extensive disclosure document prior to closing the deal.

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

Failure to file the disclosure document will subject property sellers to stiff fines and will allow both buyers and lenders to void the transaction. Additionally, the transaction can be voided if the disclosure document reveals information not previously made public. Property buy-

ers, as well as sellers, are responsible for assuring the disclosure document is recorded with the county clerk and state environmental authorities.

According to Schnapf, although the Indiana and Illinois statutes set tough new notification requirements, they are far less onerous than New Jersey's stringent Environmental Cleanup Responsibility Act (ECRA). He explained that the Illinois and Indiana statutes allow for flexibility among the participants of the real estate transaction to resolve pollution clean-up efforts while allowing the deal to proceed.

Under ECRA, the state Department of Environmental Protection mandates an inspection and cleanup, if necessary, of industrial establishments before the facilities can be sold, transferred, or closed. The law has come under harsh criticism from the lending and business communities for creating delays in completing real estate deals.

"The Indiana and Illinois legislation reflects the concern being voiced by the business and lending community for less onerous property-transfer restrictions," said Schnapf. "I believe we will see more state legislatures adopting this type of approach."

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