

A HOME FOR YOUR FAMILY 6

Environmental Considerations When Buying or Selling Real Estate

Whether you own land or are considering purchasing land, you must consider environmental contamination. If the land is contaminated, its value can be greatly reduced. For example, a new owner, who did not engage in any polluting activity, may be liable for clean-up costs that greatly exceed the value of the land. Since a valuable asset can become a liability, you should exercise caution in any real estate transaction.

BEFORE YOU SELL

Prevention is by far the best policy. The most common problems arise when soil or groundwater is contaminated by a common product, such as pesticides, gasoline, or manure.

Pesticides must be properly stored and empty containers disposed of correctly. Special caution should be exercised near wells and streams. Storing or mixing of chemicals or rinsing tanks near a well head is one of the most common causes of groundwater contamination. In fact, it is a much more common source of difficulty than the improper application of agricultural chemicals on crops.

Leaking underground storage tanks and pipes are another major source of groundwater contamination. Owners should be on the watch for unexplained product loss, odors, and any other indications of problems

with tanks. Tanks more than 15 years old should be removed or properly filled with inert material and sealed.

BEFORE YOU BUY

A prospective buyer should first ask the seller and any real estate professionals involved whether they are aware of environmental problems on the property. The seller is under no legal obligation to *volunteer* information about environmental problems. If asked, however, he or she is required to answer truthfully. If the seller does not answer truthfully and a problem is found, he or she can be charged with fraud. If the answer is *yes*, the buyer obviously should seek further information. Even if the answer is *no*, remember that there may be problems that the seller honestly does not know about. Further investigation may expose a problem.

Follow up by asking about the presence, age, and condition of any underground storage tanks and septic systems. If the land is a farm, ask questions about the use, storage, and disposal of agricultural chemicals. Also ask about the application of sewage sludge or any other disposal of waste on the property. Industrial property owners should be questioned about the manufacturing process, waste disposal, and previous uses of the property.

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The major problem with currently used residential property is fuel storage tanks. If the tanks are more than 15 years old, they should be checked, even if you plan to use the tank.

The next step is a visual inspection of the property. Look for unusual stains on the land or in buildings, dead or abnormal areas of vegetation, unusual odors or liquids, signs of dumping or incineration, and the possibility of contamination from adjoining property. Certain situations clearly will call for further inquiry. For example, if you are considering buying a swine operation or dairy with an animal waste lagoon, get specific information about such things as the design and operational history of the facility, the status of any permits, and the capacity and expected life of the facility.

Most buyers will find that there are no environmental concerns with the property. If some questions are raised, however, a more thorough investigation by an engineer or environmental consultant is probably in order. This investigation is called an *environmental audit* and typically includes soil and water testing and a review of all previous owners and uses of the property.

An environmental inspection protects you in two ways. It gives you some assurance against a surprise discovery that the property is worth far less than expected, and it may protect against liability for cleanup costs under the federal environmental statutes. Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, also known as Superfund), both current and

previous property owners, as well as waste generators, haulers, and site operators, can be individually liable for the full cost of environmental cleanup.

In a worst-case scenario, CERCLA can make a new purchaser of land liable for costs far in excess of the value of the land. One exception to this liability is based upon the “innocent purchaser” defense. This type of defense provides that an owner is not liable for cleanup if he or she did not know or have reason to know of contamination at the time of purchase and had made “all appropriate inquiry into the previous ownership and uses of the property.”

Because of the potential impact of environmental problems on land values and liability for cleanup, real estate lenders are paying close attention to environmental concerns when making mortgage loans. Even if you are willing to accept the risks that may occur if you fail to make reasonable environmental inquiries, you may find that your lender is insisting upon such measures at your expense.

If you are interested in land that has been used for agricultural purposes, contact your county cooperative extension center for more information about land applications of waste products.

If you would like additional information on selecting a home, you may wish to request other publications in the *A Home For Your Family* series. Single copies of North Carolina Cooperative Extension Service publications are available free of charge at your county extension center.

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