



LAW SEMINARS INTERNATIONAL

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A timely one-day live/online seminar on

Hazardous Materials in Real Estate Transactions

*Regulatory structures; scope of potential liability; due diligence best practices;
risk management; and drafting tips*

November 3, 2022

Live Online via Interactive Broadcast

Agenda

9:00 Introduction & Overview

Alexandra Kleeman, Esq., Program Co-Chair
Stoel Rives ~ Seattle, WA

Ken Lederman, Esq., Program Co-Chair
McCullough Hill Leary ~ Seattle, WA

9:15 Contaminated Property Liability in Washington: Liability Structures and Tools for Developers

Potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Washington's Model Toxics Control Act (MTCA) including recent legislative developments; MTCA's relationship to CERCLA

Michael Dunning, Esq.
Perkins Coie ~ Seattle, WA

10:00 Transfers of Ownership: Contractual Mechanisms for Managing Potential Liability

Constructing Purchase and Sale Agreements with and without due diligence; indemnities and releases; drafting tips for ensuring that they are effective in allocating liability; seller remediation as a part of the transaction; ERAs and holdback agreements

Barry G. Ziker, Esq.
Joyce Ziker Partners ~ Seattle, WA

10:45 Break

11:00 Conducting Due Diligence for Purchase and Sale Real Estate Transactions: How to Discover Environmental Issues

Phase I site assessment under ASTM E1527 to assess the likelihood of contamination; Phase II approaches and tools for assessing the extent to which contamination exists; interplay between Phase II and estimation of remediation costs

Clare Tochilin, Associate Geologist
SoundEarth Strategies ~ Seattle, WA

Pre-sale due diligence by the seller: What you legally must disclose as a seller; scope of the obligation to "look"; strategic thinking on what you want to know and don't want to know

Alexandra Kleeman, Esq., Program Co-Chair

12:00 Lunch Break

1:00 Post-Due Diligence Purchase and Sale Negotiations: What it Takes to Get Everyone on Board when Contamination is Found

The importance of starting early; anticipating the concerns your lender will have; assessing the lender's environmental risk tolerance; negotiating due diligence related documents such as access agreements

Andrew F. Rigel, Esq.
Hillis Clark Martin & Peterson ~ Seattle, WA

1:45 Historical and Prospective Insurance Options

Accessing historical and current insurance policies to cover environmental remediation costs

Susannah C. Carr, Esq.
Gordon Tilden Thomas & Cordell ~ Seattle, WA

2:30 Break

2:45 The Plume Clause: Now You See It, Now You Don't

Pre and post transaction issues for situations where the property subject to the transaction overlays a contaminated groundwater plume but where activities on the subject property were not the source of the contamination

Ken Lederman, Esq., Program Co-Chair
Matthew J. Stock, Esq.
Joyce Ziker Partners ~ Seattle, WA
Suzanne Stumpf, P.E., Principal Engineer
Farallon Consulting ~ Seattle, WA

3:45 Hazardous Materials in Commercial Leasing Transactions

The most effective lease structures for addressing potential problems and drafting tips for lease documents

Douglas S. Morrison, Esq.
Tupper Mack Wells ~ Seattle, WA

4:30 Evaluations and Adjourn

Who Should Attend

Real estate attorneys, landlords, tenants, brokers, lenders, property managers, and other real estate professionals who are involved with real estate transactions where the underlying property is contaminated

About the Conference

Washington's continuing population growth has put a spotlight on the need for reuse and development of residential, commercial, and industrial property throughout Washington. Public policy has responded by encouraging reuse of contaminated properties while protecting human health and the environment and at the same time promoting sustainability and environmental justice. New programs, new initiatives and new complexities create new opportunities, but it is important for parties on both sides of real estate transactions to understand and manage the risks associated with cleanup requirements.

This program will provide you with the tools you will need to deal with hazardous materials more successfully in purchase/sale and leasing real estate transactions. We open with an update on the statutory sources of potential liability in Washington State and the contractual mechanisms parties can use to manage potential liability.

Attendees will hear from technical and legal experts on the best ways to conduct due diligence for purchase and sale transactions and strategies for conducting post-due diligence contract negotiations. We will have a panel discussion with technical and legal perspectives on how to deal with situations where the property subject to the transaction overlays a contaminated groundwater plume but where activities on the subject property were not the source of the contamination.

Contamination also creates risks of the parties to commercial leasing transactions. You will hear expert advice on the most effective lease structures for addressing potential problems and drafting tips for lease documents.

We hope you will join us for a very informative day and look forward to your participation. Register soon to reserve your virtual seat.

~ Alexandra Kleeman, Esq. of Stoel Rives and
Ken Lederman, Esq. of McCullough Hill Leary, Program Co-Chairs

Registration & Other Conference Information

Tuition: Regular tuition for this program is \$695 with a group rate of \$625 each for two or more registrants from the same firm. For government employees, we offer a special rate of \$520. For public interest NGO's, students, and people in their job for less than a year, our rate is \$347.50. All rates include admission to all program sessions and course materials.

Make checks payable to Law Seminars International. As a value-added bonus, you will receive access to audio and video recordings of the program at no extra charge.

Financial aid is available to those who qualify. Contact our office for more information.

Substitution & Cancellation: You may substitute another person at any time. We will refund tuition, less a \$50 cancellation fee, if we receive your cancellation by 5:00 p.m. on Friday, October 28, 2022. After that time, we will credit your tuition toward attendance at another program or the purchase of an audio or video replay.

Continuing Education Credit: Live credits: This program qualifies for 5.75 Washington MCLE, 7.0 Washington Real Estate (pending), and 5.75 ABCEP environmental professional credits. Upon request, we will help you apply for CLE credits in other states and other types of credits.

Time Shift Your Content: Audio and video replay files, with course materials, are available for download or on a flash drive at the same price as live attendance. Files are available for downloading five business days after the program or from the date we receive payment. Flashdrive orders are sent via First Class mail within seven business days after the program or from the date we receive payment. The course materials alone are available for \$75.

Faculty

Alexandra Kleeman, Program Co-Chair, is a partner at Stoel Rives. She has a versatile real estate and environmental practice that provides public and private real estate developers with transactional and litigation support on real estate, environmental, and regulatory matters, including disposition and acquisition of contaminated sites, redevelopment and cleanup of contaminated properties, resolution of cleanup liability disputes, and insurance recovery for environmental liabilities.

Ken Lederman, Program Co-Chair, is a partner at McCullough Hill Leary. A former Assistant Attorney General for the Washington State Department of Ecology, he is a contaminated property specialist who provides counseling and litigation support on environmental issues in property ownership, transactions (purchase, sale, or financing) and redevelopment.

Susannah C. Carr is a partner at Gordon Tilden Thomas & Cordell where she focuses on insurance recovery, representing policyholders in disputes against their insurance companies. She is among the most experienced policyholder lawyers in the Northwest for complex "long tail" claims—securing coverage for environmental property damage and asbestos bodily injury liabilities resulting from business operations occurring decades ago.

Douglas S. Morrison is Of Counsel to Tupper Mack Wells. He represents clients on a wide variety of environmental issues and claims, including air quality, water and stormwater discharges, solid and hazardous waste, chemical use and storage, contaminated properties, mergers and acquisitions and real estate transactions.

Michael Dunning, a partner at Perkins Coie, is an environmental attorney whose practice focuses on helping clients solve complex challenges arising from land, water, and air pollution, and he has a particular depth of experience in contaminated sites (aka "dirty dirt"). He previously served for more than a decade as an assistant attorney general for the State of Washington and acted as lead counsel on some of the state's most challenging and complex contaminated sites and cases.

Andrew F. Rigel leads the Environmental Practice Team at Hillis Clark Martin & Peterson and focuses on counseling clients regarding the risks and opportunities of buying, selling, and redeveloping contaminated property.

He has extensive experience regarding environmental due diligence, site investigation, regulatory compliance assessments, and cleanup of contaminated sites.

Matthew J. Stock is a member of Joyce Ziker Partners. He assists businesses, developers, and landowners with the many environmental issues that accompany the purchase, sale, and redevelopment of contaminated and brownfield properties, including due diligence review, remediation strategy and implementation, regulatory compliance and closure, and cost-recovery under Washington's Model Toxics Control Act, Oregon's state superfund law, and the federal Comprehensive Environmental Response, Compensation, and Liability Act.

Suzanne Stumpf is a Principal Engineer at Farallon Consulting with extensive experience in the environmental consulting and engineering fields. Her technical expertise includes managing large and/or complex multi-discipline projects involving soil, soil gas, and groundwater remediation; construction management and oversight; and litigation support. Her project experience includes technical oversight for engineering pilot tests, cleanup action implementation, preparation of engineering design plans and bid specifications, regulatory closure strategy and negotiations, and evaluation of cleanup costs to support real estate transactions. She works effectively with multiple stakeholders and regulators to obtain regulatory solutions for contaminated properties.

Clare Tochilin, Associate Geologist at SoundEarth Strategies, is a licensed hydrogeologist with experience in geologic and hydrogeologic fieldwork, data management and analysis, and report writing involving hazardous waste site remediation as well as clean water supply. Her primary areas of experience include environmental subsurface investigations, remedial excavation and drilling oversight, aquifer testing and analysis, groundwater monitoring, and technical report writing.

Barry G. Ziker, Joyce Ziker Partners, works on behalf of a wide range of clients on business and environmental matters. His environmental practice focuses on transactions involving the transfer and development of contaminated properties and resolving legal issues throughout the investigation and cleanup process.