



ASTREA LEGAL ASSOCIATES LLP



IMPACT OF ENVIRONMENTAL ISSUES ON REAL ESTATE

By

Asmit Chitransh
26 October 2016

INTRODUCTION

Real Estate Industry in India is the second largest employer after agriculture and if predicted then it is slated to grow at a speed of 30% over the next decade. Real Estate mainly includes land, buildings, property and apart from these it includes crops, minerals and water. The greatest impact of property on the natural environment is that the property development process is very much dependent upon the built environment. Day by day the concern about the environment is increasing and therefore, the governments as well as the individuals are exerting a lot of pressure on the Real Estate industry to take more account of environmental considerations. Recently, in India as well as European Environmental Legislations, there has been a direct impact on the Real Estate Industry as the concern about the environment is a very grave as well as important issue. Since the early 1990s there has been increased environmental awareness, legislative pressure and growing public interest in environmental issues. Consequently, the UK construction industry has been encouraged to seek more appropriate strategies to respond to the environmental pressures. It is evident that many UK firms in general, and construction firms in particular, have embarked on the adoption of some form of corporate environmental policies. The study offers an insight into the degree to which these firms have in fact incorporated current environmental regulations into their corporate strategies. The results suggest that during this period most of the firms in the sample have adopted such policies. However, content analysis of these policies reveals that firms' responses in different areas of concern such as energy, pollution, waste, raw materials and recycling are quite varied.

ENVIRONMENTAL ISSUES & REAL ESTATE – DIRECT RELATION

Environmental issues are such which routinely arise in all types of real estate transactions, either in the sale of residence of an individual or transfer of large commercial and industrial facilities. The most common environmental concern with regards to the real estate transactions is the land contamination. This may arise or originate either from the activities of the owner of the land, either present or past owner, collectively known as on-site sources OR it may originate from the off-site sources. Since the site owner's liability may vary depending on the context in which the contamination arose, locating its source is important in order to quantify the potential risk and

allocate responsibility. Moreover, such issues may become even more complicated if there are drinking water supply wells on or near the property.

Another Environmental concern is the Mold Contamination, which basically occurs in buildings which are poorly constructed or which lack adequate ventilation. Due to air circulation, different types of mold might breed in a building basically on walls. In normal circumstances, the mold contains moisture which results in physical damage to the building or the structure but there are certain cases wherein the molds are toxic in nature which results into medical conditions. In the recent past, there are certain cases/lawsuits wherein the injured party succeeded in securing substantial personal injury which occurred due to the toxic molds. From past few years, the insurance industry is also paying a lot of attention towards the claims related to molds which includes both, damage to the property as well as the personal injury.

Nowadays, the presence of molds is becoming a very important issue for all those who own either a residential or commercial or industrial buildings. Individuals or rather the owners are not just concerned about the property which is being subject to damage but also the residential tenants and workers & employees working in the commercial and industrial establishments, they might be exposed to toxic molds. Most importantly, the owner of the property should be aware and should carefully consider to what extent the old and the new insurance coverage may be available to offset such liabilities.

Another important environmental concern is Asbestos. This element is found in numerous places, the most common being the insulating material in pipes and boiler rooms, apart from this, in flooring and in roof shingles. Mainly, asbestos tends to create a lot of problem in commercial and industrial buildings but the issue related to asbestos may also arise in older residential properties. The cost to decrease or rather end or dispose of materials containing asbestos could be substantial. Therefore, considering all types of environmental issues, it is suggested that if any sort of asbestos issue is being identified, the owner's first priority must be to end such problem before the closing of the Real Estate.

Lead Paint is another important and grave issue of environmental concern. It is mainly found in old residential properties. Individuals, especially young children are mainly subject to lead related injuries, mainly because of the lead paint chips. The other harm that lead paint chips can

do is that it can contaminate the soil which is harmful for the plants to grow and hence the farmers and individuals who grow plants, fruits & vegetables, are aware of such problems. It is suggested that before buying any old property, one should closely verify the surroundings as well as the property for lead contamination. If found then they should try to remove the same at the first instance else it might cause serious and grave injuries.

Next issue is of Radon, another important and potential contaminant which is colorless, odourless and a radioactive gas which can enter and spread via water and air both. For a better knowledge of the same, the researcher will talk about the State, New Hampshire. In this particular state, in the residential areas basically, the presence of Radon is tested every now and then & this is also because of the geology of the state. In New Hampshire, there isn't any uniform standard prescribed for determining the 'safe' level of Radon in water and air respectively but there are certain guidelines being given which might be useful for an individual for determining the extent of such problem. In case of water as well as air, the minimum that can be done to evaluate and confirm the presence or absence of radon is via 'Sampling'. This shall help the purchasers to decide whether they want to buy the property or not.

The environmental concerns mentioned above can be dealt in numerous manners, there are certain tools which are sufficient enough to tackle the environmental problems discussed above. The first and the foremost step is the identification of the problem. To tackle such problems, a panel of environmental consultants is being set-up. Nowadays, in any country across the globe, the environmental assessment is becoming a major concern and a standard component during the transactions of Real Estate. Most of the time, these consultants are reserved through the Environmental attorneys basically to maintain a relationship between an attorney and client or for the attorney-client privilege they do so. This practice is being opted basically to combat future problems wherein legal affairs are being dealt. 'Ultimately, the key to addressing these issues is obtaining reliable information about the property, understanding the implications of that information and managing the issues correctly and efficiently.'¹

¹ <http://www.mclane.com/thought-leadership/environmental-issues-in-real-estate-transactions>, Browsed on 26th September 2016 @1345 Hours.

CERTAIN GUIDELINES

In normal circumstances, most of the buyers who are willing to buy or purchase any property will find that there are no issues related to the property. The property is fine and fit to purchase BUT there are very less chances that the property doesn't have any issue related to environment. An environmental inspection is suggested by the researcher. It is important to have an environmental inspection as it gives a clear idea as to the property is worth purchasable or not. It is also important as one can add or insert a contingency in the contract and it will allow the purchaser to opt out of the contract anytime in the future if any environmental hazards are detected & it's difficult to eliminate the same.

Items that should and must be tested are as follows: -

- a. Check for soil and groundwater contamination.
- b. Test for radon gas.
- c. Test for lead paint if the structure was built before 1978.
- d. Test for toxic mold.
- e. Test the water quality.
- f. Check for asbestos if the structure was built more than 30 years ago.

The Lead-Based Paint Hazard Reduction Act (LBPHRA) requires the following for residential real estate transactions: -

- a. Both sellers and landlords must disclose any known lead hazards to buyers or renters by including a disclosure form in the sales contract or lease agreement.
- b. Buyers have 10 days to inspect for lead-based paint.
- c. Buyers and lessees must be given the pamphlet 'Protect Your Family from Lead in Your Home' published by the U.S. Consumer Safety Commission.
- d. Renovators must give homeowners the same pamphlet before commencing work.²

² Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550), As Amended Through April 21, 2005.

The above mentioned points are basically for the purchasers. Few guidelines are there for the sellers too, if properly followed, then he/she might save himself/herself from legal trials. They should take care of the following: -

- a. Remove any asbestos.
- b. Clean up any soil and groundwater contamination.
- c. Eliminate any radon gas.
- d. Remove or lead any lead paint.
- e. Make sure that the water quality is at an acceptable level.
- f. Remove any mold and repair any damage caused by the mold.

Other environmental hazards both inside and outside the property includes: -

- a. Formaldehyde which might cause Sick Building Syndrome (SBS).
- b. Carbon Monoxide.
- c. Underground Storage Tanks (USTs)

LEGAL STEP TAKEN TO TACKLE ISSUES RELATED TO REAL ESTATE AND ENVIRONMENT

The researcher already mentioned The Lead-Based Paint Hazard Reduction Act (LBPHRA) of 1992. Apart from this, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was enacted in the year 1980 wherein a fund was set-up known as the Superfund. The main rationale behind setting up such a fund was to clean up those sites which contained hazardous wastes and other than this it was set-up to identify Potential Responsible Parties (PRPs) to assess liability for the clean-up costs. This program was administered by the Environmental Protection Agency (EPA). Later on, certain issues were faced by CERCLA and because of which the act expired in the year 1985. One of the major issues was the problems faced by the lenders. Because of the process of foreclosure, the lenders often find themselves in the chain of ownership of land and henceforth, creating heavy liabilities for the lenders. Therefore, a new act, *viz.* Superfund Amendments and Reauthorization Act (SARA) came into force in the year 1986. This act eased the way for lenders by introducing and granting them an Innocent Landowner Immunity. To qualify for Innocent Landowner Immunity, the owner must satisfy the following criteria: -

- a. The pollution must have been caused by a third party.
- b. The property was acquired after the pollution.
- c. The landowner had no knowledge, either constructive or actual, of the waste.
- d. The landowner performed an environmental site assessment before acquiring the property to determine if there was hazardous waste on the property.³

³ Superfund Amendments and Reauthorization Act (SARA), 1986.

LAWYERS



CHANDAN MAHAMUNI
SR. ASSOCIATE

Email id:

chandan.mahamuni@astrealegal.com

Expertise: Real Estate, Automobile, Contract, Litigation, Damages, Check Fraud, Will & Probate, Child Custody, Maintenance & Alimony laws, Negotiable Instrument Act, Succession & Inheritance.



MANDIRA MOITRA
SR. ASSOCIATE

Email id:

mandira.moitra@astrealegal.com

Expertise: Will & Probate, Child Custody, Divorce, Trust, Succession & Inheritance, Arbitration, Domestic Violence, Trust.



ANKITA PAWAR
ASSOCIATE

Email id:

ankita.pawar@astrealegal.com

Practices: Contract, Real Estate, Automobile, Damages, Cheque Fraud, Employment.

Astrea Legal is a full service Law firm. It offers a comprehensive range of legal services in the areas of Civil, Constitutional, Corporate, and Criminal law.

EMAIL AT: contact@astrealegal.com

OUICK CONTACT: +91 9822720483, +91 020 – 65108782