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## Don't get taken to the cleaners

If you are considering adding any commercial real estate to your portfolio, but especially a retail shopping center or strip mall, you should be aware of the following facts:

- At its height, in 2006, the dry-cleaning industry in the United States consisted of 36,000 locations. (The number has since fallen to around 33,000.)
- The vast majority of dry cleaners are or were located in retail shopping centers.
- In the past and even yet today, dry cleaners often use a toxic chemical called perchloroethylene, or "perc." Spilled or improperly disposed of, perc contaminates groundwater.
- Property owners can be held liable for tenant-caused environmental damage, *even when it predates their ownership.*

How common are perc spills? According to the CCIM Institute, an Arcadis, Geraghty & Miller survey of insurers estimates that more than 70 percent of past and present dry cleaners accidentally or intentionally released chemicals into the soil or groundwater. Buyers should know if they are purchasing a contaminated site because contaminated surface or groundwater, hazardous wastes and myriad other pitfalls can significantly affect the value of the property. What's more, purchasers can be held liable for pre-existing site contamination under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly called the Superfund Law or CERCLA. Perc cleanup costs range from tens of thousands of dollars to several million, averaging about \$500,000 per cleanup.

### ■ The Superfund Statute.



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The Superfund statute provides for two alternative mechanisms for hazardous waste cleanup and reimbursement. First, EPA can order potentially responsible parties (PRPs) to clean up contaminated properties. Second, EPA can clean up properties and sue PRPs for recovery of expenses.

■ **The "Innocent Landowner" Defense.** There are three basic defenses against Superfund liability that can accompany a contaminated site. The first is an act of God, and the second is an act of war. The third is an act or omission of a third party against which the property owner took all appropriate precautions. This final defense, often called the "innocent landowner" defense, applies when the owner has used due diligence *on or before the date of purchase of the property* to determine whether or not a site is contaminated.

To exercise prudence in avoiding liability, purchasers must satisfy the requirements of "all appropriate inquiry." These include:

1. Reviewing title and judicial records for environmental liens or activity and use limitations.
2. Sharing any insights or special knowledge about the property's

potential contamination with a qualified environmental inspector.  
3. Making written note of any factors that contribute to a purchase price that is significantly below apparent market value.  
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■ **How to Know if the Property Housed a Dry Cleaner.** Dry cleaners historically have tended to be mom-and-pop shops that come and go. The property you are interested in may not currently house a dry cleaner, and the property manager may tell you that a dry cleaner has never been located there. However, property managers also come and go, and on-site records often are incomplete.

The only safe way to know if a property has housed a dry cleaner is to order a Phase 1 Environmental Site Assessment, which includes city and county records research to determine all past tenants.

■ **For Property Owners With Current Dry-Cleaner Tenants.** Closely monitor your dry-cleaner tenants and consider creating an environmental risk program that requires secondary containment for the dry cleaner unit as well as secure storage for all chemicals and solvents. Many property managers of real estate housing dry cleaners engage periodic inspection to ensure wholesome practices. Property owners may also require that dry-cleaner tenants have insurance against environmental damage.▲