



NEWS FROM THE FIRM

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Chris Griswold, P.C.
A Business Transactions
and Estate Planning Firm

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- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Oklahoma Renewable Energy Council
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www.crecokc.com
International Council of Shopping Centers
www.icsc.org
Oklahoma Renewable Energy Council
www.ocgi.okstate.edu.orec

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Message from Chris....

If you're somehow involved in the commercial real estate business, you've become familiar with the concept of "All Appropriate Inquiry," otherwise referred to as "AAI." The Environmental Protection Agency has promulgated AAI to, more or less, increase the steps which a reasonable buyer should take in the process of determining/evaluating whether the property they're buying is, to the extent possible, free of excessive hazardous material. Today, I want to expand the way people have traditionally viewed AAI. Read more below. ...

Sellers Using AAI To Manage Risk

You already know that conducting a Phase I is, as a rule, required of any buyer in order to, among other things, determine a current "baseline" at the time of purchase. Moreover, you know that the engineering firm conducting the Phase I will usually advise the buyer whether a Phase II is, in their opinion, necessary. Accordingly, people have come to view AAI as really a safeguard for **buyers**. However, **sellers** should consider the benefits of having a Phase II conducted at their own cost and expense – regardless of the engineering firm's recommendation. *Why?*

First, most purchase contracts make the seller indemnify the buyer for the presence and clean-up of hazardous materials. As the seller, when you weigh the risks associated with indemnifying the buyer against the time delay, inconvenience and expense of conducting a Phase II, sometimes, it might just be worth it to go that extra step in establishing a "harder" current baseline. Maybe not in every deal, but, for certain deals (e.g., where the property is adjacent to I-3 or a strip of railroad tracks), you may sleep better knowing that you conducted a Phase II so as to better prevent that baseline from "moving around" in the future.

Second, just because the current buyer's specific uses/needs don't trigger any alarms after the completion of their Phase I study doesn't mean that some future, subsequent purchaser's specific uses/needs won't call your current "baseline" into question when hazardous materials eventually appear on the property (and odds are they will) and every other owner in the chain of title throws up their hands and says "...we didn't do it." That's when your Phase II looks really good against a bunch of other Phase I's.... Something to think about.

What My Clients Are Saying....

"I commend Chris Griswold for his efforts in a recent transaction for keeping distant legal departments of large companies informed. Chris has always been a real asset in bringing people together and he has the ability to center the focus on the transaction. It's good to have qualified, energetic, and capable legal support ready to move the process along. My thanks to Chris for his efforts in this most recent transaction."

Irmon Gray / Broker / NAI Sullivan Group / Oklahoma City, Oklahoma