

1-1-1996

A Buyer's Guide to Contaminated Land

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Recommended Citation

Kenneth P Serné, "A Buyer's Guide to Contaminated Land" (1996) 5 Dal J Leg Stud 302.

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A Buyer's Guide to Contaminated Land

Dianne Saxe

Toronto: Emond Montgomery, 1994, 101 pp.

Reviewed by Kenneth P. Serné†

In recent years, environmental issues have increased in profile and importance. Many people are familiar with such concepts as global warming, acid rain, and ozone depletion. Few people are as familiar with the concept of contaminated land. This subject may not be as important as other environmental topics but it is significant for such interests as vendors and purchasers of land, lenders, real estate agents, lawyers, and government.

A Buyer's Guide to Contaminated Land purports to serve as a practical guide to contaminated site scenarios. Its author, Dianne Saxe, uses Ontario as an example to demonstrate the important considerations for those involved with the purchase and sale of contaminated land. Those looking for theory or extensive analysis should look elsewhere; this publication is purely a handbook for those interested in contaminated land.

The central theme of this book is that contaminated land can be very expensive to own or occupy. Once one is involved in ownership or occupation of the contaminated land it is quite difficult to escape liability for site remediation or damages to others affected by the contamination. Once land is declared contaminated, polluters, owners and former owners, occupiers, directors and officers, and generally those with "deep pockets" will be held responsible for the contaminated land.

Saxe uses a logical format to consider the topic of contaminated land. The book is structured with a modest examination of the relevant environmental legislation, followed by an explanation of the consequences of ownership of contaminated land and strategies to manage contamination and liability. Saxe also provides useful

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checklists and appendices for vendors, purchasers, and real estate agents.

According to Saxe, the consequences of ownership of contaminated land include a number of scenarios: a) the land is unsaleable; b) it is ineligible for mortgages; c) municipal permits may be denied; d) purchasers may sue the vendor; e) neighbours may sue the owner; f) governments may sue or prosecute the owner, or; g) governments may order cleanup of the contaminated land. From these consequences it is logical to conclude that it is wise to avoid involvement with contaminated land if it is possible to do so.

The consequences of ownership or management of contaminated land may be quite onerous. Landlords, lenders, and innocent purchasers may be held liable. Officers and directors may have their personal assets drained in order to pay for contaminated land liability. Lenders may be forced to use their own assets to cleanup the property. Contaminated land can be a costly business.

Saxe offers several strategies to manage contamination: a) walking away, b) selling the property, or c) cleaning up the property. Saxe effectively explains each option and illustrates the limitations of each approach. Saxe also accurately exposes the limitations of government policies, guidelines, and scientific methods.

Saxe also offers practical advice for the management of liability by purchasers, vendors, real estate agents, and lawyers. Purchasers should still live by the *caveat emptor* maxim while vendors should limit their provision of warranties. Real estate agents owe a duty to both parties, and lawyers may be sued for negligent advice.

In summary, Saxe has provided both the general public and the legal community with a useful overview of the significant factors regarding contaminated land. The book's major shortfall is its over-dependence on Ontario examples. The publication would be more useful if it compared legislation and policies across jurisdictions. The text does not purport to be comprehensive in this regard; however, this would have strengthened its content.

While this book could have been called *A Buyer's Guide to Contaminated Land in Ontario*, it does, however, provide useful information and strategies for individuals living outside of that jurisdiction. The core of Saxe's advice will have to be absorbed with a greater caveat that reference must be made to the relevant legislation and regulations in a particular province. This criticism is

not meant to diminish the value of the text but merely to point out the deficiencies for residents outside of Ontario.

I would certainly recommend this book to anyone interested in contaminated land as a good introductory text. It is not intended as a comprehensive work, and in that sense it has achieved its goal. It is a useful text for members of the general public and legal counsel involved in real estate, banking, bankruptcy and insolvency, and general environmental law. The checklists and appendices are particularly useful for anyone involved in the purchase and sale of real property.