New Kansas Act Allows Relief for Purchase of Contaminated Property

May 18, 2016

On May 9, 2016, Kansas Governor Sam Brownback signed into law the Contaminated Property Redevelopment Act (the “Act”). The goal of this Act is to allow purchasers in Kansas to acquire real property with pre-existing environmental contamination without the new owner becoming liable for cleanup costs. If statutory conditions are met, this Act will allow a purchaser of real property acquired after July 1, 2016 to be released from environmental liability for pre-existing contamination. This Act will not apply to real property purchased before July 1, 2016.

To qualify for the protections under this Act, the purchaser cannot be responsible for the contamination nor have a relationship (beyond purchasing the property) with the party responsible for the contamination. Additionally, the purchaser cannot cause or exacerbate the contamination on the property.

Under this Act, a purchaser or potential purchaser can apply to the Kansas Department of Health and Environment (“KDHE”) for a Certificate of Environmental Liability Release (“CELR”) for a contaminated property by submitting an application and providing the following documentation:

- Phase I or Phase II environmental reports completed within industry standards;
- environmental assessment reports completed within industry standards; or
- other relevant reports requested by KDHE.

KDHE may consider the use of the property in deciding whether to issue a CELR.

Purchasers must agree to grant access to KDHE or to a third party performing future environmental investigation and remediation being overseen by KDHE. New owners must also agree to disclose the CELR to subsequent purchasers of the property until the property's use is unrestricted, and purchasers are required to provide KDHE with notice of any transfer or sale of the property covered by the CELR within 30 days. KDHE has 15 business days after receiving the purchaser’s application and documentation under the Act to determine if the property qualifies for the protections under the Act and issue the CELR.

This Act does not apply to properties:

- contaminated with radon, lead-based paint, or asbestos containing materials;
- where the contamination is subject to regulation under the Kansas Nuclear Energy Development and Radiation Control Act;
- where the property is the source of contamination and eligible for cleanup under the Kansas Storage Tank Act or the Kansas Drycleaner Environmental Response Act – unless the site has been enrolled in the applicable cleanup program;
- where the property is the source of contamination and is on the list of federal Superfund sites (or proposed to be listed);
- where the purchaser has entered into a contract, agreement, or order with the purpose of performing investigation or remediation of the contamination; or
- where the purchaser has provided indemnification or release of environmental liability to another party.

A CELR will not be transferable and does not relieve a purchaser of the requirements or duties of any applicable environmental use control agreement or risk management plan. A CELR can be revoked if the purchaser fails to grant the required access to the property; if the purchaser exacerbates the contamination or interferes with KDHE's approved remedy for the property; or if the purchaser acquires liability for the contamination through contract, law or other mechanism.

This Act also establishes the Contaminated Property Redevelopment Fund to assist municipalities with redevelopment of contaminated and potentially contaminated properties. This Fund will consist of fees from CELR applications, federal brownfields contributions, and other sources directed to the Fund.

If you have any questions regarding this alert, or whether property may be subject to the Kansas Contaminated Property Redevelopment Act, please contact your Lathrop Gage attorney or one of the attorneys listed above.