

The holder of record title to contaminated real estate may be subject to significant liability under federal and state “Superfund” or environmental protection laws. This liability, which can exceed several million dollars, can apply to the titleholder regardless of whether they caused the contamination or merely held title as an Accommodator for a short period of time to property that was already contaminated. Liability of the titleholder could also apply if a facility currently operating on the real estate is not in compliance with environmental regulatory requirements.

Since IPX1031 takes title to real property in Reverse and Improvement Exchanges, IPX1031 and its subsidiaries may be subject to potential environmental claims. It is important to keep in mind that unlike lenders, an entity acting as an Exchange Accommodation Titleholder (EAT) is not exempt from environmental liability under federal statute, and could be held responsible for the remediation costs associated with environmental contamination. Because the law will apply joint and several liability, an EAT could be held responsible for 100% of the clean-up costs associated with a property it held in a parking transaction. Even if an EAT was successful in avoiding ultimate liability in an environmental lawsuit, the costs of its defense will be many thousands of dollars. Such costs could be substantial enough to drive a small to moderately capitalized EAT into bankruptcy, and potentially jeopardize the EAT’s other exchange transactions.

Although IPX1031 makes use of special purpose entities (SPE) to hold title in Reverse and Improvement Exchanges, IPX1031 does not rely solely on SPEs to protect itself, and its Exchangers, from potential environmental claims. IPX1031 believes that a sound environmental policy that focuses on proper due diligence and risk analysis provides more security than thinly capitalized SPEs that might easily be “pierced”.

To prevent IPX1031 from ever facing an environmental challenge we have developed the following policy regarding environmental investigations. The only properties excluded from this policy are:

1. Residential property of less than four units, and
2. Vacant residential lots in residential neighborhoods.

For all properties for which we are asked to hold title (other than residential property), we require a current Phase I Environmental Site Assessment Report. This Report must meet the following criteria:

- a. The Report must be conducted in accordance with current ASTM standards (ASTM E-1527-13).
- b. The Report must be addressed to our SPE and its Member, or the consultant must issue a Reliance Letter in favor of the SPE and its Member.

If a known or potential release of a hazardous or regulated substance has been identified in the environmental reports, then in addition to providing the Phase I and subsequent reports, the Exchanger will need to provide IPX1031 with the proposed response plan. The response plan must include (1) who is responsible for the clean-up, (2) what is being done to remediate the problem and keep it from worsening, and (3) what funds have been set aside to conduct the response plan. After a review of the information, IPX1031 will, at its sole discretion, determine whether or not it will hold title to the property. Such review may include a review by outside counsel, at the Exchanger’s expense.

The environmental policy of IPX1031 is strict, and we acknowledge that many of our competitors do not go to such lengths in their investigations prior to taking title to property. We believe, however, that it is in our Exchanger’s best interest to use an EAT that understands the environmental implications of holding title and takes every reasonable measure to insure that the property it holds will not negatively affect its financial condition or the property it holds on behalf of its other Exchangers.