

In the Spotlight

Beware of Real Estate 'Icebergs'

By Jack Garson

If you own a shopping center, a regional mall or a strip of stores in an office building, you very likely anticipate the more frequent business problems: Tenants don't pay their rent on time or don't pay the rent at all; tenants alter their premises, install signs or assign their leases without your consent; tenants use the wrong parking spaces or the wrong dumpsters. Generally, these common problems are an expected part of owning retail property. Upcoming Spotlight columns will discuss some of these problems. But for now, we address some-thing unanticipated...



Expert Opinion

Jack Garson

THE UNUSUAL SUSPECTS —

HAZMATS

What's often overlooked is the unexpected — the real estate "icebergs." These are the unanticipated problems that can literally sink the value of a property. A hazardous materials discharge is a notorious real estate iceberg. It can reduce property values and scare off purchasers and lenders. Gas stations and dry cleaners are common culprits. Any business that uses underground fuel tanks, solvents or a variety of other chemicals can discharge hazardous materials. When a hazmat has been discharged, you may be required to notify government agencies, engage in extensive testing, limit uses of your property and perform expensive remediation. Lenders likely will require that you escrow estimated remediation costs, and provide personal guarantees of remediation. Purchasers will require indemnification and a lower sales price. Avoiding the hazmat iceberg requires thorough due diligence when purchasing a property, not just a review of the historical uses of the property. You may need to sample soil and ground waste and inspect buildings and equipment. Once you own the property, you should restrict the use of dangerous materials, inspect for violations and aggressively pursue violators. Otherwise, you may be stuck with a remediation process that lasts for years and costs you a small fortune. Next month's column will explore a few more icebergs.

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