

## CALIFORNIA LAND REUSE AND REVITALIZATION ACT OF 2004 LIMITS LIABILITY FOR PURCHASERS OF IMPACTED PROPERTIES

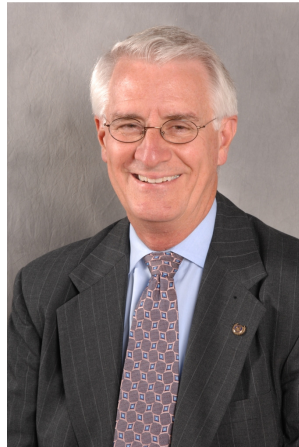
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Rule On September 23, 2004 Governor Schwarzenegger signed into law the California Land Reuse and Revitalization Act of 2004. The Act is codified at Health & Safety Code §§ 25395.110 *et seq.* This bill and similar bills have been in the works since early 2003. Essentially, the intent of the legislation is to provide liability protections, similar to those provided under CERCLA, to “bona fide prospective purchasers” of environmentally impacted properties. However, the California legislation is not as all-encompassing as the federal legislation.

The California legislation only protects purchasers of property “located in an urban infill area for which the expansion, redevelopment or reuse may be complicated by the presence or perceived presence of hazardous materials.” An “infill area” is defined as a “vacant or underutilized lot of land within an urban area that has been previously developed or that is surrounded by parcels that are or have been previously developed.”

Under the California statute, a purchaser must first qualify as a “bona fide purchaser” and then must enter into an agreement with an agency (basically DTSC or RWQCB) in order for the immunities to attach. The conditions for qualification as a “bona fide purchaser” are:

1. Conduct all appropriate inquiry before acquiring the site (effectively, “all appropriate inquiry” is that inquiry required under the Federal regulations to qualify as a bona fide prospective purchaser under CERCLA);



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2. Exercise appropriate care with respect to the release of hazardous materials on the site;
3. Provide for cooperation and access to those required to conduct remedial actions on the site;
4. Comply with any land use control;
5. Comply with all requests for information; and
6. Provide notices required by state or federal law.

For the “bona fide purchaser” to then obtain the immunities, the purchaser must enter into an agreement with DTSC or RWQCB to perform a site assessment and thereafter to implement a response plan if the agency determines that such is required. Once the agency receives the site assessment, the agency has three options:

1. Determine that no “unreasonable risk” exists at the site and that “there are no hazardous materials at the site at levels that are not suitable for unrestricted use”

whereupon the agency shall make a finding that no further action is required;

2. Determine that there are hazardous materials at the site that are not suitable for unrestricted use but that the site is suitable for reasonably anticipated foreseeable uses in which case the agency shall find that no further action is required except for the recordation of land use controls;
3. Determine that a response action is necessary to prevent or eliminate an unreasonable risk in which case the purchaser must submit a response plan to the agency and implement that plan once it has been approved by the agency.

Once all required response actions are completed, the agency issues a certificate of completion whereupon the prospective purchaser and its assignees qualify for the immunities.

This law is scheduled to sunset on January 1, 2010, but any immunities acquired with respect to properties purchased between January 1, 2005 and January 1, 2010 will continue in effect thereafter.

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