# Risk Management
## Virginia Salesperson PLE Series

# MODULE 1
# Real Estate Settlement Procedure Act (RESPA)

### Learning Objectives:

- Understand the purpose and requirements pertaining to the Real Estate Settlement Procedures Act (RESPA)
- Explain the disclosures required by RESPA and prohibited acts associated with this act

## Background

**Nature of RESPA**

RESPA is a Federal law administered by the Department of Housing and Urban Development (HUD), that regulates closing procedures to ensure that lenders fully inform buyers and sellers of all settlement costs, and that lenders do not engage in unfair practices.

Both HUD and the Department of Justice (DOJ) have authority to enforce RESPA.

RESPA does not set prices for settlement services. Instead, RESPA limits who may conduct a real estate closing (settlement agent) and imposes obligations on settlement agents, which intended to alleviate buyer confusion over the real estate closing process and its costs.

RESPA covers loans secured with a mortgage placed on a one-to-four family residential property, including most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit.

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## Applications & Exclusions

**Covered Loans**
RESPA covers loans secured with a mortgage placed on a one-to-four family residential property, including most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit

**Does Not Apply**
RESPA does not apply to:

1. Transactions financed solely by the seller;
2. A buyer's assumption of a seller's existing loan;
3. A residential property consisting of more than four family units; or
4. Cash sales.

## Principal Disclosures

Covered real estate loans must include full and standardized disclosure of the following:

**Disclosures due after Application**

Within three business days of receiving a loan application, mortgage brokers and/or lenders must provide the following disclosures to the borrower:

- HUD Information Booklet
- Good Faith Estimate
- Mortgage Servicing Statement

If the lender rejects the loan within three business days of receiving the loan application, then the lender is not required to provide these documents to the borrower at all.

RESPA requires that borrowers receive disclosures at various times and identifies certain prohibited acts.

**HUD Information Booklet**

The HUD booklet is called the Settlement Costs Booklet. It contains general information about closing costs, explains RESPA provisions, and pro- vides a line-by-line explanation of the Uniform Settlement Statement. The HUD booklet must be provided to the borrower within 3 business days from the date they apply for a loan.

**Good Faith Estimate**

RESPA requires the lender or mortgage broker to provide a Good Faith Estimate of settlement service charges that the borrower will likely have to pay. If the borrower does not receive a good faith estimate upon application, the lender or mortgage broker must mail or deliver it within the next three business days. The amounts listed on the good faith estimate are only estimates. Actual costs may vary. Changing market conditions can affect prices. RESPA requires that the lender or mortgage broker provide the buyer with a Good Faith Estimate of settlement service charges they will likely have to pay. If not provided at the time of application, the lender or mortgage broker must mail or deliver it to the borrower within the following three business days.

**Mortgage Servicing Statement**

RESPA requires the lender or mortgage broker to inform borrowers in writing, when they apply for a loan or within the following three business days, whether it expects that someone else will service the loan (collect payments).

**Affiliated Business Disclosure**

Sometimes, several businesses that offer settlement services are owned or controlled by a common corporate parent. These businesses are known as "affiliates." When a lender, real estate broker, or other participant in settlement refers borrowers to an affiliate for a settlement service (such as when a real estate broker refers a client to a mortgage broker affiliate), RESPA requires the referring party to provide borrowers with an Affiliated Business Arrangement Disclosure. This form reminds borrowers that they are generally not required, with certain exceptions, to use the affiliate and are free to shop for other providers.

**Uniform Settlement Statement (HUD-1)**

One business day before the settlement, borrowers have the right to inspect the Uniform Settlement Statement, or HUD-1. This statement itemizes the services provided and the fees charged. This form is filled out by the settlement agent who will conduct the settlement.

The completed HUD-1 Settlement Statement generally must be delivered or mailed to the borrower at or before the settlement. In cases where there is no settlement meeting, the escrow agent will mail the HUD-1 after settlement, and the borrower has no right to inspect it before settlement.

**Escrow Account Statement**
At settlement or within the next 45 days, the person servicing the loan must provide the borrower with an initial escrow account statement. That form will show all of the payments which are expected to be deposited into the escrow account and all of the disbursements which are expected to be made from the escrow account during the year ahead.

Lenders or their servicers must review the escrow account annually and send the borrower a disclosure each year which shows the prior year's activity and any adjustments necessary in escrow payments that the borrower will make in the forthcoming year.

**Disclosure Due before Settlement**
After receiving a loan application, but at least one day prior to settlement, lenders must disclose any affiliated business arrangement, and permit the borrower to inspect the HUD-1 Settlement Statement.

**Disclosures Due at Settlement**
By the day of settlement, the lender must produce a finalized HUD-1 Settlement Statement. In cases where there is no settlement meeting, the escrow agent must mail the borrower the HUD-1 after

settlement, and the borrower does not have the right to inspect it before settlement.

### Disclosure Due After Settlement

After settlement, loan servicers must deliver an initial escrow statement within 45 days of settlement, an annual escrow statement once a year thereafter, and a servicing transfer statement if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer.

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## Prohibited Acts

In addition to mandatory disclosures, RESPA prohibits certain practices that increase the cost of settlement services.

- Kickbacks/Unearned Fees
- Excessive Reserve Funds

### Prohibited Acts - Kickbacks

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or anything of value in exchange for referrals of settlement service business involving a federally related mortgage loan. In addition, RESPA prohibits fee splitting and receiving unearned fees for services not actually performed.

Violations of Section 8's anti-kickback, referral fee, and unearned fee provisions are subject to criminal and civil penalties.

In a criminal case a person who violates Section 8 may be fined up to $10,000 and imprisoned up to one year. In a private lawsuit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.

However, RESPA does not prevent title companies, mortgage brokers, appraisers, attorneys, settlement/closing agents and others, who actually perform a service in connection with the mortgage loan or the settlement, from being paid for the reasonable value of their work.

**Prohibited Acts - Excessive Reserve Funds**
Section 10 of RESPA sets limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

If the lender collects escrow payments, RESPA prohibits a lender from charging excessive escrow amounts.

Lenders who collect escrow payments cannot collect more than 1/12 of the total of all disbursements payable during the year, plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year.

The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any excess of $50 or more must be returned to the borrower.

Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

## PROGRESS CHECK 1

1. Broker Manny owns Show and Tell Realty and also owns Title and Tell Settlement Agency. If Broker Manny or any of his agents let clients know about the services available through Title and Tell Settlement Agency, what must the agent do?
   A. Document the referral
   B. Provide at least two other referrals to the client
   C. Provide the client with an Affiliated Business Arrangement Disclosure
   D. Ensure Title and Tell Settlement Agency fully performs

2. When there is an excess of more than _______ found in an escrow account during annual audit it must be returned to the borrower.
   A. $50
   B. $100
   C. $250
   D. $500

3. Which of the following is NOT covered by RESPA?
   A. Home equity loans
   B. Installment land contracts
   C. Assumptions
   D. Refinances

4. According to RESPA, within three days of applying for a loan the lender must provide the borrower with a HUD booklet, a Good Faith Estimate and mortgage servicing statement, unless:
   A. The lender does not have the borrowers current/correct address
   B. Postage exceeds $20 to send it to the borrowers location
   C. The lender rejects the loan within three business days of the application
   D. The borrower waives their right to receive these items

# MODULE 2
# Chesapeake Bay Act

## Learning Objectives:

- Recognize the basis of the Chesapeake Bay Act
- Be familiar with the Virginia Administrative Code (VAC) rules pertaining to the Chesapeake Bay Act

## Background

The Virginia General Assembly enacted the Chesapeake Bay Preservation Act in 1988. The Bay Act established a cooperative relationship between the Commonwealth and local governments aimed at reducing and preventing nonpoint source pollution. The beds of Virginia's streams, rivers and estuaries and the waters above them are held and managed by the Commonwealth for the benefit of all Virginians.

## Purpose

The Bay Act Program is designed to improve water quality in the Chesapeake Bay and its tributaries by requiring the use of effective conservation planning and pollution prevention practices when using and developing environmentally sensitive lands. At the heart of the Bay Act is the concept that land can be used and developed in ways that minimize negative impacts on water quality.

## Design

The Virginia General Assembly designed the Act to enhance water quality and still allow reasonable development to continue. The Bay Act balances state and local economic interests and water quality improvement. The Bay Act created a unique partnership between the state and local governments in Tidewater Virginia. The Act recognizes that local governments have the primary responsibility for land use decisions. The Act expands local government authority to manage water quality and establishes a more specific relationship between water quality protection and local land use decision-making.

## Implementation

To implement the program, the Act established a nine-member citizen board called the Chesapeake Bay Local Assistance Board. Board members represent various stakeholder interests – such as business, agriculture, land development, local government, and environmental protection – as well as different geographic regions within Tidewater Virginia.

## Affected Jurisdictions

Tidewater Virginia means specifically the following jurisdictions: The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

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## From VAC § 10.1-2100

Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that:

1. the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances

2. the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries;

3. the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise

required to carry out and enforce the provisions of this chapter, and

4. all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this chapter.

## PROGRESS CHECK 2

1. There are _____ members on the Chesapeake Bay Local Assistance Board.
   A. 3
   B. 5
   C. 7
   D. 9

2. The main purpose of the Chesapeake Bay Preservation Act is to:
   A. Save endangered species in the area
   B. Eliminate invasive species in the water
   C. Prevent pollution
   D. Raise money to aid clean-up efforts

3. The Bay Act created a partnership between the state and local governments in ____________ Virginia.
   A. Hampton
   B. Norfolk
   C. Tidewater
   D. Quantico

4. The Commonwealth supports the Chesapeake Bay Act by doing which of the following?
   A. Providing technical assistance
   B. Providing policy guidance
   C. Providing financial assistance
   D. All of the above

# MODULE 3
# Anti-Trust Act

## Learning Objectives:

- Understand the importance of the Antitrust Act and how it affects the real estate field
- Identify actions that are considered prohibited acts according to the Antitrust Act

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## Background

The Federal Antitrust Act refers to a series of laws enacted by the United States government to promote fair competition and prevent monopolistic practices in the marketplace. The primary legislation governing antitrust matters at the federal level is the Sherman Antitrust Act of 1890, although subsequent laws such as the Clayton Antitrust Act of 1914 and the Federal Trade Commission Act of 1914 have further shaped antitrust regulation.

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## Sherman Antitrust Act (1890)

The Sherman Antitrust Act is the oldest and most significant antitrust law in the United States. It prohibits certain business activities that federal government regulators deem to be anticompetitive, including:

**Monopolization:** Any attempt to monopolize or restrain trade, or to conspire with others to do so.

**Price-fixing:** Agreements among competitors to fix prices, rig bids, or allocate markets.

**Market allocation:** Dividing territories or customers with competitors to minimize competition.

**Exclusive dealing arrangements:** Contracts that restrict a buyer to purchase goods exclusively from a particular seller, limiting competition.

**Tying arrangements:** Selling one product on the condition that the buyer purchases a separate product.

### Violations

Violations of the Sherman Act can result in severe penalties, including fines and imprisonment for individuals involved in anticompetitive behavior. If the individual is convicted, they may face fines of up to $350,000 and a prison term of up to three years. Corporations may face fines of up to $10,000,000. In addition, the federal government has the power to seize any property that was related to the unlawful trade practice.

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## Clayton Antitrust Act (1914)

The Clayton Act is aimed at strengthening existing antitrust laws and addressing certain practices that were not adequately covered by the Sherman Act.

**Key provisions include:**

1. Prohibiting certain types of mergers and acquisitions that substantially lessen competition or tend to create a monopoly.

2. Preventing price discrimination (selling the same item or service for different prices) and exclusive dealing agreements that substantially lessen competition.

3. Exempting labor unions and agricultural cooperatives from antitrust prosecution, recognizing their collective bargaining rights.

4. Prohibiting interlocking directorates, where individuals serve on the boards of competing companies.

The Clayton Act provides for civil remedies, such as injunctions to stop anticompetitive behavior, as well as damages for parties harmed by violations.

## Federal Trade Commission Act (1914)

The Federal Trade Commission (FTC) Act established the FTC as an independent agency responsible for enforcing antitrust laws and promoting consumer protection. The FTC has broad authority to investigate and take action against unfair methods of competition and deceptive business practices.

Penalties for violating antitrust laws can be substantial. Corporations may face fines amounting to millions or even billions of dollars, and individuals involved in anticompetitive behavior may be subject to significant fines and imprisonment. Additionally, courts may issue injunctions to stop anticompetitive practices and order divestiture of assets acquired through anticompetitive means. Civil lawsuits brought by injured parties, including consumers and competitors, can also result in monetary damages against violators of antitrust laws.

## Favoring and Gifts

Favoring and giving gifts in themselves are not typically violations of the Federal Antitrust Act. However, they can potentially raise concerns under certain circumstances if they are used as part of anticompetitive practices.

### Favoritism

In a business context, if favoritism involves unfair treatment or discrimination against competitors in a way that harms competition, it could potentially violate antitrust laws.

***For example,*** *if a company provides preferential treatment to one customer over others solely to exclude competitors from the market or to maintain a monopoly position, this could be considered anticompetitive behavior and may violate the Sherman or Clayton Antitrust Acts.*

### Gifts and Bribery

Giving gifts or providing incentives to customers or business partners is a common business practice, and it's not inherently illegal under antitrust laws.

However, if gifts or incentives are used as part of an agreement to fix prices, allocate markets, or engage in other anticompetitive conduct, they could be considered illegal under the Sherman Antitrust Act.

Additionally, if gifts or bribes are given to government officials or regulators to influence their decisions in a way that harms competition, this could also violate antitrust laws as well as other bribery and corruption statutes.

In summary, while favoring and giving gifts are not automatically violations of the Federal Antitrust Act, they can become problematic if they are part of schemes to undermine competition or engage in anticompetitive behavior. It's essential for businesses to ensure that their practices comply with antitrust laws and do not harm competition in the marketplace.

## PROGRESS CHECK QUESTIONS

1. Penalties for anti trust violations on the Federal level are outlined in:
   A. The Sherman Act
   B. Federal Fair Housing Laws
   C. Equal Credit Opportunity Act
   D. The Truth In Lending Act

2. Under the Sherman Act corporations can be fined up to _______________ for violations.
   A. $100,000
   B. $250,000
   C. $500,000
   D. $10,000,000

3. The anti-trust act is in place to prevent all of the following, EXCEPT:
   A. Unfair trade practices
   B. Blockbusting
   C. Monopolies
   D. Price discrimination

4. Selling the same item or service for different prices to different people is:
   A. A monopoly
   B. Boycotting
   C. Market allocation
   D. Price discrimination

# MODULE 4
# Environmental Laws Affecting Real Estate

## Learning Objective:

- Identify Environmental laws and that affect real estate brokerage activities

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## Background

The FDIC has created environmental risk programs designed to analyze the environmental risk of a property, prior to receiving a loan on the property, to safeguard the loan institution against environmental losses or liabilities.

According to the FDIC:

“The potential adverse effect of environmental contamination on the value of real property and the potential for liability under various environmental laws have become important factors in evaluating real estate transactions and making loans secured by real estate.

"…. Environmental contamination, and liability associated with environmental contamination, may have a significant adverse effect on the value of real estate collateral, which may in certain circumstances cause an insured institution to abandon its right to the collateral. It is also possible for an institution to be held directly liable for the environmental cleanup of real property collateral acquired by the institution. The cost of such a cleanup may exceed by many times the amount of the loan made to the borrower. A loan also may be affected adversely by potential environmental liability even where real property is not taken as collateral."

For example, a borrower's capacity to make payments on a loan may be threatened by environmental liability to the borrower for the cost of a hazardous contamination cleanup on property unrelated to the loan with the institution.

The potential for environmental liability may arise from a variety of federal and state environmental laws and from common law tort liability.

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## CERLCA

The most significant environmental law establishing liability for the cost of cleaning up hazardous contamination on real property is the Comprehensive Environmental Response, Compensation and Liability Act (also known as "CERCLA" and "Superfund").

CERCLA establishes a broad legal framework that creates potential liability for the cleanup costs of hazardous contamination. Entities that may be potentially liable for these cleanup costs are the current and past owners of the contaminated property, the current and past operators of business on the property, entities that disposed of hazardous substances at the property and entities that transported hazardous substances for disposal to property selected by the transporter.

CERCLA provides a secured creditor exemption from liability for banks and other lenders that do not participate in the management of the property. The United States Environmental Protection Agency has issued a rule interpreting the secured creditor exemption under CERCLA. In addition to the federal Superfund law, most states have enacted legislation that establishes similar liability under state law for hazardous contamination cleanup costs.

## RCRA

The other primary federal environmental law relating to hazardous contamination liability is the Resource Conservation and Recovery Act (also known as "RCRA"). RCRA establishes a comprehensive statutory and regulatory framework that governs the generation, transportation, storage, discharge and disposal of solid and hazardous wastes, and, when necessary, the cleanup of hazardous contamination.

RCRA also establishes regulations governing the prevention, detection and cleanup of releases from underground storage tanks containing certain hazardous substances or petroleum. Under authorization by Congress, many states establish and administer RCRA programs as part of each state's environmental laws.

## Clean Water Act

It is unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is obtained. Homes that are connected to a municipal system, use a septic system, or don't have surface discharge do not need permits, while industrial or municipal facilities must obtain a permit if their discharge goes straight into the water.

## Clean Air Act

The Environmental Protection Agency (EPA) sets limits on certain air pollutants. This helps to ensure basic health and environmental protection from air pollution for all Americans. The EPA has authority through the Clean Air Act to limit emissions of air pollutants from sources like chemical plants, utilities, and steel mills. Each state must develop implantation plans that outline how it will control air pollution under the Act.

## Toxic Substance Control Act

This Act provides the EPA with the authority to require reporting, record- keeping and testing requirements, and restrictions relating to chemical substances and mixtures. These chemicals include:

- asbestos
- radon
- lead-based paint

## Toxic Substance Control Act

### Asbestos

Used in a variety of building construction materials, such as insulation, due to its strength and heat resistance. It can also be found in roofing shingles and floor tiles. People become exposed when the materials are disturbed, such as during demolition work, home maintenance, or remodeling. Health effects include increased risk of lung disease, mesothelioma (rare form of cancer in the lining of the lung), or asbestosis (long-term, non-cancerous disease of the lungs).

Asbestos inspections can be done to check for presence in home materials. If there is a presence, the best thing to do is leave the material alone. Fibers are only released when disturbed. Repairs can involve sealing or covering the asbestos material.

### Lead Paint

Lead has been used in many products found in the home, including paint, ceramics, pipes, and plumbing materials. It is particularly dangerous to children because they can absorb more lead in their growing bodies than adults. Health effects in children can include permanent damage to the brain and nervous system, slowed growth, and anemia. Adults that have been exposed can suffer from nervous system effects, increased blood pressure and decreased kidney function.

All painted surfaces should be inspected and maintained to prevent deterioration. Any water damage should be addressed quickly and completely. In a real estate transaction, an EPA-approved lead pamphlet is provided to purchaser to disclose any known lead paint hazards.

**Radon**

Radon is a radioactive gas that can be trapped inside a home and builds up. The main cause of radon problems stem from soil gas, seeping from the ground to the air above and into the home. Radon gas can get trapped into the lungs when ingested. This can damage lung tissue and lead to lung cancer. Children have a greater risk than adults of certain types of cancer due to radon. Homebuyers will often ask if a home has been tested for radon and if so, to what level. Many homes are built now to prevent radon from seeping in.

## PROGRESS CHECK 4

1. Prior to receiving a loan to purchase property there are environmental risk programs in place that analyze a property and protect the lending company against environmental losses. Which entity created these risk programs?
   A. EPA
   B. FCC
   C. FDIC
   D. CERCLA

2. Which hazardous material is known for causing mesothelioma?
   A. Radon
   B. Asbestos
   C. Mold
   D. Lead paint

3. The main purpose of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is:
   A. To identify and test potential environmental hazards
   B. Raise money to aid in the clean up of environmental hazards where no liability can be found
   C. Establish hazardous material removal procedures
   D. Create liability for environmental hazard clean up costs

4. Under EPA authority and The Clean Air Act rules each state must:
   A. Report results from random sample air quality tests to the EPA each month
   B. Develop air pollution control implementation plans
   C. Keep a minimum of $500,000 in an account designated for potential air quality issues
   D. Establish and maintain a team of at least 5 individuals with air quality testing knowledge

# MODULE 5
# Brownfield Properties

## Learning Objectives:

- Understand what a Brownfield development is and how these developments could impact real estate activities
- Be Familiar with how liability for clean up is established within a Brownfield Redevelopment

## Redeveloping Brownfield Properties

Environmental contamination aggravates well-known comparative disadvantages of previously developed "brownfield" sites in urban centers relative to undeveloped "greenfield" locations in suburban, exurban, and rural areas. As previously-developed sites, brownfields often contain buildings and facilities from earlier industrial periods. These facilities typically are liabilities, not assets, because they cannot accommodate more recent production processes. These sites require clearance, sometimes the acquisition of many smaller plots to form a single large site for modern single-story production facilities, and otherwise present redevelopment costs not found in previously undeveloped, greenfield sites.

When sites are contaminated, not only must buildings be cleared for new uses, but chemicals stored on the properties and spilled into the soil must be removed. Thus older industrial areas - often major portions of the land areas of urban centers (which continue to house large proportions of the population)—face growing problems in attracting new development capital. In addition, the continuing underlying problem with brownfield sites is the presence or apparent risk of environmental hazards that threaten nearby residents.

**Liability for Cleanup**

The Federal law embraces the principle that "polluters pay;" that private sector (or at least, non-Federal) funds pay for clean-ups.

The central tenet of CERCLA and its successor laws—imposition of strict, retroactive, joint and severable liability—means that the entire chain of property owners, and potentially their advisors and other investors, can each be held liable for any and all contamination on a site and for any damage caused by that pollution. These are "potentially responsible parties."

Further, these parties can be held liable whether or not the damage occurred while any one held title ("strict" liability). Acceptance of full liability by one party cannot absolve others of potential liability in the event that the costs of mitigation exceed the assets of the party accepting responsibility (liability is "joint and several").

In addition to potentially high costs to remediate past pollution, considerable uncertainty surrounding potential liability abounds for all parties with any present or past relationship to a contaminated or potentially polluted property. Both costs to remediate and uncertainties about liability have discouraged at least some lenders from placing mortgages on brownfields properties because they may be of questionable value as collateral and because lenders may fear incurring cleanup liability if they foreclose.

To reduce this uncertainty, some lenders may avoid potentially polluted land altogether; others demand very extensive site investigations. Uncertainties also may depress projected returns on investment in property development and thus impede clean-up and re-use of underemployed and potentially (not necessarily actually) contaminated land.

## PROGRESS CHECK 5

1. The fact that old brownfield sites typically cannot be used for new production and must be cleared makes them:
   A. Liabilities
   B. Assets
   C. Contaminated
   D. Historic

2. The central tenet of CERCLA and its successor laws, the imposition of strict, retroactive, joint and severable liability, means:
   A. Only one person, the current owner, may be held liable for clean up
   B. The current owner may be held liable for past hazardous contamination and clean up
   C. A court of law will have to determine liability
   D. Everyone in the chain of custody of the property can be held liable for clean up

3. If one party accepts full liability for hazard clean up but the assets of this party are not enough to cover the total clean up costs other parties may be held liable. This is called:
   A. Retroactive liability
   B. Full term liability
   C. Strict liability
   D. Jointly and severally liable

4. The continuing underlying problem with brownfield sites is the:
   A. Permitting process
   B. Hazard threat to nearby residents
   C. Cost to maintain
   D. Zoning complications