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Real estate transactions involving underground storage tanks can be complicated but successful



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The purchase and sale of real estate involving underground storage tanks ("UST") can create complications in reaching a successful sale transaction. Understanding the applicable local and state laws and regulations can minimize the hurdles in reaching a successful closing on properties with USTs.

Special requirements exist for certain USTs that buyers and sellers should become familiar. Pursuant to R.I. Gen. Laws § 46-12-3(21) all single-wall USTs must be removed and closed if the USTs were installed prior to May 8, 1985. The deadline for the removal and closure of these USTs is December 22, 2017. The removal requirement also applies to double-wall USTs that are regulated as a single-walled UST. USTs installed between May 8, 1985 and July 20, 1992 must be closed within thirty-two (32) years from the date of installation, provided that the owner of the UST performs annual compliance inspections.

The operation, maintenance, removal and closure of USTs is governed by the Rhode Island Department of Environmental Management Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and

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Hazardous Materials (the "UST Regulations"). The UST Regulations provide further guidance with regard to minimum operations and maintenance requirements as well as the process for removal and closure.

Owners of facilities with single-wall USTs that are approaching

Island Department of Environmental Management ("RIDEM") has authority to approve closure of a UST "in place" rather than by removal, if the requirements for an exemption are met. Further, for USTs that do require removal, the UST may be able to be replaced with a new dou-

Understanding the UST Regulations and identifying the potential costs involved in complying with the UST Regulations is important to both the seller and buyer in a transaction to avoid post-closing disputes and additional unanticipated costs. The seller and buyer should address these issues at the time that they are negotiating the purchase and sale of real estate. While the removal and closure of USTs can be a costly process, addressing these issues early in the negotiating process can reduce disputes and give the transaction a better opportunity for a successful result.

the deadline for closure need to follow the procedures for closure of USTs in order to avoid additional cost and expenses. Typically, closure of a UST will require its removal. In very limited circumstances, the Rhode

ble-walled UST.

In either scenario, a closure application must be submitted to RIDEM. If a single-wall UST is not removed prior to the applicable deadline, parties could face monetary penalties

and/or other enforcement actions. For tanks that were installed between May 8, 1985 and July 20, 1992 sellers and buyers need to be aware of the requirements for performing the annual compliance inspections.

As part of the diligence process, buyers should familiarize themselves as to whether USTs are involved in the sale transaction and if so what type of UST is involved. USTs are generally registered with RIDEM. Buyers can obtain information on USTs that are suspected to be located at a property. In the event that a UST requires removal, buyers should work to identify the cost of removal and determine whether a replacement UST would be a necessary part of the sale transaction.

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