

ACC ONLINE EDUCATION

Transactional Real Estate & Environmental Due Diligence

- in the US and Worldwide -

Speakers



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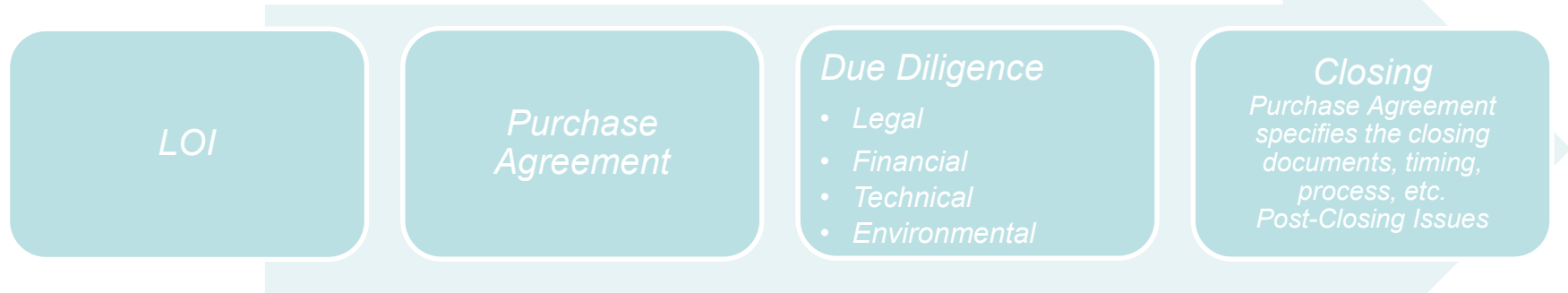


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BASICS OF REAL ESTATE TRANSACTIONS

Typical Steps of a Real Estate Transaction

US, UK, Canada, Australia, etc.



Germany



Closer Look at Civil Law Systems (Germany): Land Register

FIRST OF ALL:

In general, you can not buy the property itself, but only the underlying piece of land

• Analysis of title regarding the real estate, e.g.:

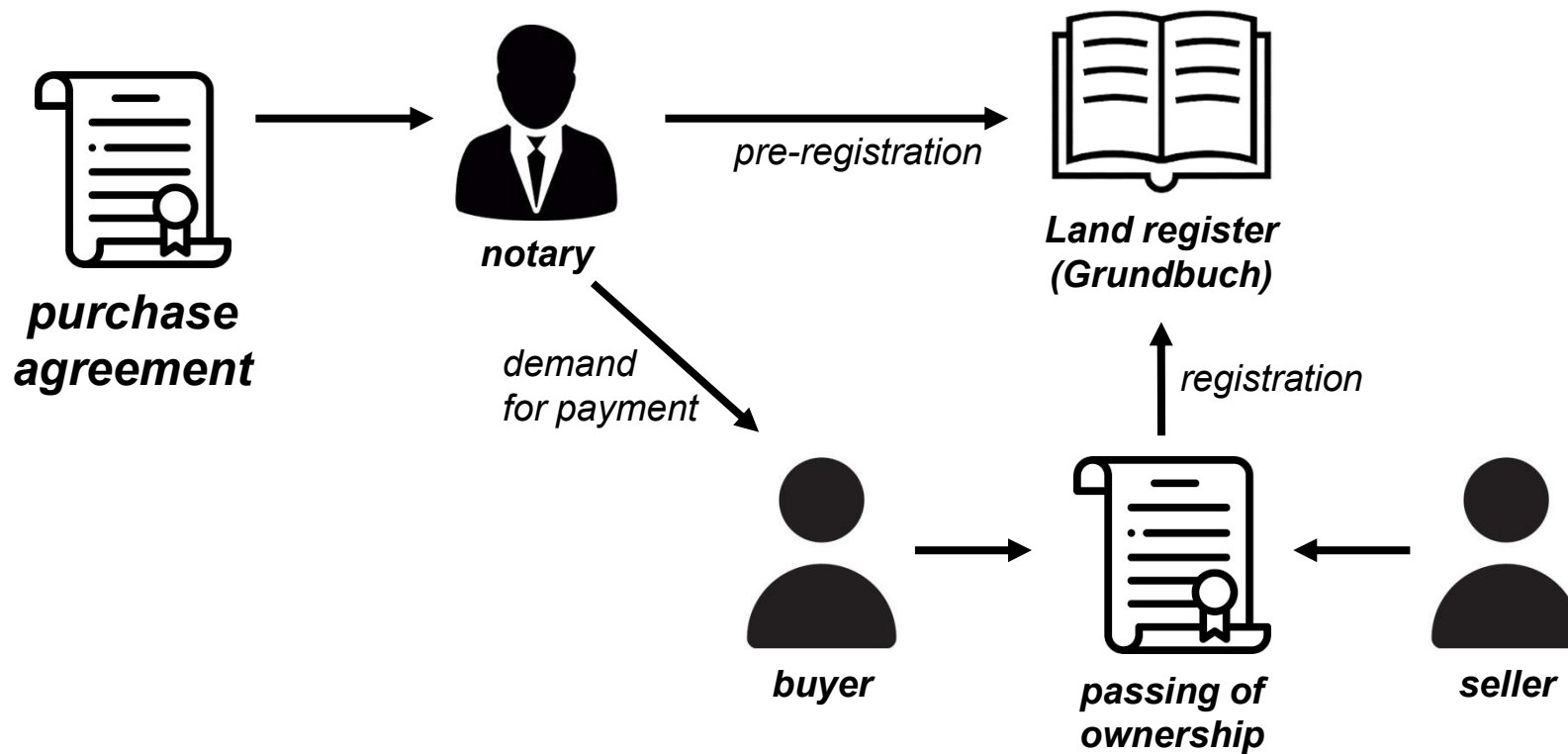
- who owns it?
- any encumbrances, rights of way, right of lines, pipes, etc.?
- mortgages, land charges?



*land register
(Grundbuch)*

Note: Lease agreements are not registered

Closer Look at Civil Law Systems (Germany): Role of the Notary



ENVIRONMENTAL MATTERS IN REAL ESTATE TRANSACTIONS

ENVIRONMENTAL RISKS IN RE TRANSACTIONS

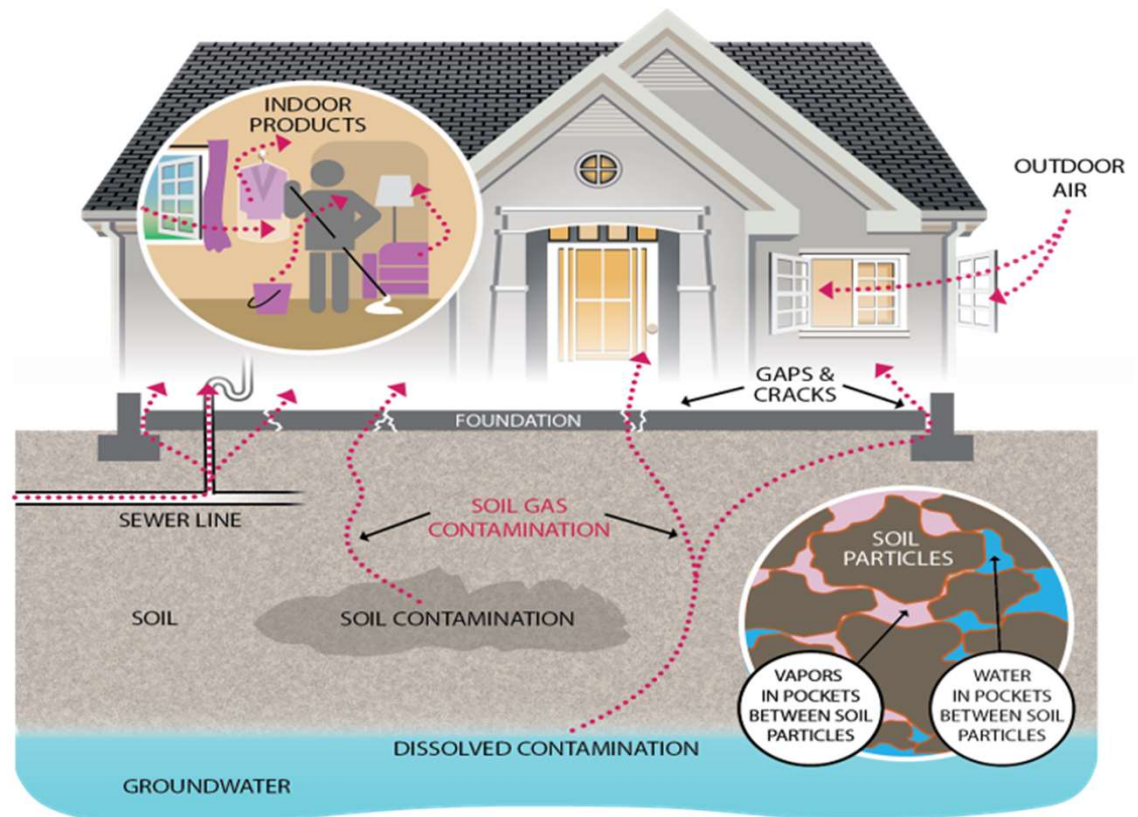
Environmental laws assign liability to parties irrespective of fault (strict liability). That liability can stretch to former owners/operators.

Key risks

- *Regulatory orders (CERCLA 104(e), investigative/cleanup orders)*
- *First-party claims (seller/buyer for failure to disclose, inaccurate reps/warranties)*
- *Third-party claims (neighboring property owners)*
- *Toxic tort claims*
- *Lender requirements*

TYPES OF CONTAMINATED MEDIA

- Soil
- Soil Gas
- Groundwater
- Outdoor air
- Indoor air
- Asbestos / building materials



What are the risks of not doing environmental DD?

- Civil Liability
- Criminal Liability
- Costs
- Compelled investigation or cleanup
- Loss of property value and future marketability
- Reputation Risk

IDENTIFYING POTENTIAL ENVIRONMENTAL ISSUES

Phase I Environmental Site Assessment

- *Site visit*
- *Review of databases*
- *Review of historical records*
- *Review of federal, State and local agency records*
- *Interviews*
- *Identifying “Recognized Environmental Conditions”*

Phase II Environmental Site Assessment

- *Invasive testing to determine presence of contaminants or hazardous substances*
- *Work based on areas of concern, chemicals of concern, local geology, and site access issues*

ASTM Standard

ASTM E1527-21 – Widely used to satisfy the “All Appropriate Inquiries” requirements under US EPA rules that allow parties of commercial property transactions to establish certain defenses to liability under CERCLA. “Recognized Environmental Condition” is the terminology used by the environmental consultant in its Phase I Report to identify a particular, potential environmental impairment on the property.

RECENT UPDATES* TO ASTM STANDARD

- Clarified definitions of Recognized Environmental Condition (REC), Historical REC (HREC), and Controlled REC (CREC)*
- Clarified report viability (aka Report Shelf Life) – 180 days from specific components (interviews, record searches, records review, inspection, etc.)*
- Historical sources-required review of aerials, fire insurance maps, local street directories, and topo maps if reasonably ascertainable, likely useful, and applicable.*
- Updated requirements for conducting title searches for identifying Environmental Liens and Activity Use Limitations (AULs)*
- Added Emerging Contaminants, such as polyfluoroalkyl substances (PFAS) as a non-scope consideration*
- Included a REC vs HREC vs CREC logic diagram as an appendix*

REC EXAMPLES

PROTECTING BUYERS USING DEAL POINTS

- Credit/price reduction
- Escrow/holdback for mitigation/cleanup
- Indemnities
- Releases
- Environmental insurance
- Comfort letters

QUESTIONS/DISCUSSION



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