

# Contaminated Property: A Viable Planned Giving Opportunity

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## The Environmental Liability Scheme

- CERCLA (“Superfund”), HSAA and Common Law
- “No Fault” system – Based upon a party’s “status”
  - Owners of the property
  - Operators at the property
  - “Arranged for disposal” of Hazardous Substances

## The Environmental Liability Scheme for Business Owners and Real Estate Investors

- Jointly and severally liable to Regulators
- Regulatory agencies pursue the parties which are:
  - The easiest to find
  - Have the deepest pockets

- 3 -

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## Contaminating Activities

- Gasoline service stations
- Dry cleaners
- Industrial facilities
- Above ground or underground storage tanks
- Machining activities
- Plating activities
- Degreasing activities
- Car wash
- Auto repair shops
- Truck parking transfer facilities
- Waste disposal sites
- Landfills
- Salvage areas
- Car, truck or equipment rental

- 4 -

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## Example 1: Real Estate Investor Parents

- BACKGROUND FACTS
  - Parents own six strip malls and one industrial park
  - One center has service station
  - One center has dry cleaners and tire shop
  - Industrial park: Lots of potentially contaminating uses

- 5 -

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## Example 1: Real Estate Investor Parents (Cont' d)

### Goals:

- (1) Kids not inherit personal, lifelong liability for contamination
- (2) Maximize value of real estate
  - Must investigate and remediate
- (3) Transfer to charity?
  - Step up in basis?
  - Other tax advantages?

- 6 -

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## Example 2: Business Partnership

- Background Facts
  - Partners A&B in manufacturing business since 1980
  - Partners have Buy/Sell Agreement
  - Owned and operated three properties where manufacturing occurred
  - Business worth \$10 million
  - Probable contamination

- 7 -

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## Example 2 (Cont' d):

- Partner "B" dies – What next?
- Does business valuation process at death include environmental contamination?
  - o Not unless site investigation begins
  - o Opens up whole new "can of worms"
    - Reporting requirements
    - Paying for investigation
    - Pay for cleanup
- Could partners use Trust to segregate one or more contaminated properties?
- Could partners plan to "Gift" property once cleaned up?

- 8 -

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