



VICTOR O.  
SCHINNERER  
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# DISCLOSURE DISASTER

## THE FACTS

Mrs. Johnson, an agent with ABC Realty, was hired to list a bank-owned, commercial property. She heard the previous owners, a mechanic shop, had abandoned the property and left it in bad shape. When she arrived at the property, she could clearly see used motor oil had been dumped inside the structure and in several areas outside.<sup>1</sup>

Concerned about the potential environmental impact, she requested a copy of a recent assessment report conducted by the bank that owned the property. The bank agreed to send her the report only after she signed a non-disclosure agreement and agreed that the information contained in the report could not be relied on as fact.

Upon receiving the report, Mrs. Johnson, worried about her own E&O regarding disclosing the condition of the property to potential buyers, sent the report to the local municipality to get their opinion. The municipality inspected the property and determined there was no significant environmental impact regarding the spilled motor oil. However, what Mrs. Johnson did not anticipate was her act of sharing the report with the municipality would also trigger a letter to the bank with the findings of the municipality's assessment.<sup>2</sup>

## THE RESULT

The bank filed suit against Mrs. Johnson claiming she wrongfully disclosed their assessment report to a third party; clearly violating her signed non-disclosure agreement.

Mrs. Johnson and her E&O insurance company mutually agreed to settle out of court ultimately paying a total of \$50,000 in damages to the bank.

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### RISK FACTOR #1

Mrs. Johnson should have advised potential buyers that since the property was previously used as a mechanic shop, they should obtain an environmental impact assessment report for the property.

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### RISK FACTOR #2

Because Mrs. Johnson signed a non-disclosure agreement with the bank, she should not have sent a copy of the report to the local municipality, thereby violating the terms of the non-disclosure agreement.

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Victor O. Schinnerer & Co., Inc. | Two Wisconsin Circle | Chevy Chase, MD 20815  
Phone: 301-961-9800 | Fax: 301-951-5444 | [www.Schinnerer.com](http://www.Schinnerer.com) | [vos.info@Schinnerer.com](mailto:vos.info@Schinnerer.com)

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