

"CERCLA"

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Lender liability for environmental contamination has been done away with under federal law except in very limited circumstances. A lender is protected from liability provided it does not “participate in management” by assuming control of operational matters or by making decisions about hazardous substance disposal. The lender is no longer at risk by the mere fact of possessing the “capacity to influence” the operations of a facility.

No theory of lender liability has been established under state law, although there is also no exonerating provision under state law. As a result, a lender does not need to fear risking liability, if it is merely holding a security interest or providing financial advice in an effort to cure a borrower’s default.

However, lenders still have the problem of a possible loss of collateral, because they would not be able to sell foreclosed contaminated property, it may find itself the owner of collateral that is essentially worthless by virtue of the cost associated with “cleaning” the collateral.