REAL ESTATE FINANCE
Fall Semester 2019
Mortgagee Liability for Environmental Problems

Reading Assignment: Casebook pages 438-451.

1. Suppose that a jurisdiction follows the title theory of mortgages. Does this mean that a lender holding a mortgage on property in that state would be an “owner” of the property sufficient for the imposition of clean-up liability under CERCLA? Why or why not?

2. Looking at the 1996 amendments to CERCLA (pages 441-443), do you agree with the statute’s attempt to define what actions constitute “participation in management”? Suppose that the Lender strongly encourages, but does not require, Borrower to use ABC Waste Disposal to handle Borrower’s hazardous waste disposal needs (because ABC Waste Disposal is a client of Lender and maintains its operating line of credit with Lender). Is that “participation in management”? Should it be? From a policy perspective, do you think it is better for what constitutes “participation in management” to be clear, or fuzzy? Why?

3. Do you think CERCLA overprotects lenders?

4. Suppose Bank holds a mortgage on Borrower’s land, on which Borrower has operated a gasoline service station and convenience store. The property is situated on a corner lot, surrounded by seven homes that are part of a large single-family residential development on an adjacent parcel. [There is an attractive and well-maintained barrier wall between the homes and the service station.] The Borrower has now defaulted; the outstanding principal balance of the mortgage is $350,000.

   a. Based on this reading assignment, what steps should Bank take in pursuing its default remedies? [Be as specific as you can.]

   b. Given CERCLA’s protection for lenders, is there any reason why the Bank might simply decide to “walk away” from the collateral and not foreclose? If so, why?