

Can a Limited Liability Company or Other Corporate Entity Shield a Land Purchaser from Environmental Liability?

Potential purchasers of land that is known or thought to be contaminated with hazardous substances often ask whether they can shield their other corporate or personal assets from environmental liability and the expense of environmental investigation and possible clean up costs by arranging for the purchase to be made by an entity such as a subsidiary corporation or limited liability company. As might be expected, the answer is not a simple yes or no, but instead one dependent on several key facts. Nonetheless, a reliable answer can be found by applying seemingly settled law to the facts.

The principal environmental law which created liability to investigate and possibly clean up land contaminated by hazardous substances (collectively "Remediation") is known by the acronym CERCLA. Under CERCLA, responsibility for clean up belongs not just to the owner of the land at the time of release, but to the current owner unless certain obligations known as all-appropriate inquiry ("AAI") are undertaken prior to purchase and despite AAI, the contamination is not found until after the purchase.

In a case where the purchase is made in the name of a subsidiary corporation, CERCLA honors the corporate shield to the same degree as it would in other derivative liability matters. CERCLA does not make the parent corporation or its officers and individual stockholders liable even if the assets of the subsidiary corporation are insufficient to carry out the necessary Remediation. The corporate veil is only pierced (and liability shared because of the parent/subsidiary or subsidiary corporation/stockholder relationship) if the corporate structure is found to exist for some wrongful purpose, typically fraud.

Nevertheless, the current subsidiary corporation owner or its officers may become liable under CERCLA by acting in a way that makes one or more of them an "operator" for CERCLA purposes. Under CERCLA, an "operator" is someone who directs the workings of, manages or conducts the affairs of the facility as they relate to operations having to do with the leakage or disposal of hazardous substances or makes decisions about compliance with environmental regulations. CERCLA operator liability is not imposed merely because the parent and the

POSTED:

Jun 15, 2008

RELATED PRACTICES:

[Real Estate](#)

<https://www.reinhartlaw.com/practices/real-estate>

RELATED PEOPLE:

[Raymond M. Roder](#)

<https://www.reinhartlaw.com/people/raymond-roder>



stockholders through their subsidiary's or parent's officers and directors exercise general business control through budgets or by-laws or even shared corporate offices. Operator liability also accrues where the current owner takes actions that cause the contaminated area to be further disturbed and possibly aggravate release of the contaminants into the environment as a consequence.

As such the corporate structure can serve to protect both the parent corporation, the officers and directors and stockholders from CERCLA liability provided these entities and individuals avoid the active control of the contamination described above.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.