

Michigan Adopts Its Version of the Uniform Assignment of Rents Act

June 27, 2022

In May 2017, **we highlighted the Sixth Circuit’s opinion** in *Town Center Flats*. Briefly, *Town Center Flats* held that ownership of a commercial property’s rents transferred to a lender when (1) a commercial loan is secured by a recorded assignment of rents, (2) the borrower defaults, and (3) a lender follows Michigan’s statutory procedure to enforce the assignment of rents. Subsequently, a bankruptcy court held that tenants need not receive notice of the borrower’s default for ownership to transfer.^[1] Without rents being part of the bankruptcy estate, some borrowers could not finance a bankruptcy proceeding.

On June 24, 2022, the Legislature changed that by enacting the Michigan Uniform Assignment of Rents Act (MUARA).^[2] The MUARA protects lenders by clarifying that an assignment of rents is a perfected security interest as soon as it is recorded. It changes the outcome in *Town Center Flats*, however, by confirming that an assignment of rents does not transfer *ownership* of rents to a lender, no matter how the loan documents are worded. If a borrower files for bankruptcy protection post-MUARA, the rents are property of the bankruptcy estate and may help pay for the bankruptcy case—if the borrower either obtains lender permission or demonstrates that the lender’s security interest in the rents is adequately protected, of course.

The MUARA considerably enhances Michigan law, clarifies numerous other ambiguities, and adjusts the Uniform Assignment of Rents Act (UARA) (upon which the MUARA is based) to harmonize it with Michigan practice.^[3] For instance, under the UARA, every commercial mortgage automatically creates an assignment of rents unless the mortgage states otherwise; under the MUARA, an assignment of rents is only created if a mortgage or separate agreement grants one.

Because the MUARA substantially affects the borrower-lender relationship, Miller Canfield will be issuing a series of articles focused on it. Should you have any questions or would like assistance in understanding how this might affect your matters, please feel free to contact us.

[1] *In re Skymark Properties II, LLC*, 597 B.R. 363 (Bankr. E.D. Mich. 2019).

[2] Public Act No. 115 of 2022. The MUARA takes effect September 22, 2022.

[3] The Uniform Law Commission proposes legislation covering a variety of topics and urges states to adopt them so as to provide consistent legal expectations throughout the United States. The Uniform Commercial Code is one well-known example of legislation recommended by the ULC, in partnership with the American Law Institute.