

## Foreclosure Does Not Extinguish Assignment of Rents

---

June 29, 2022

Previously, **we alerted you** that Michigan had passed its version of the Uniform Assignment of Rents Act (MUARA). Among other things, this law clarifies that an assignment of rents is not extinguished by a foreclosure sale itself, but instead terminates either at the end of the redemption period or when the property is redeemed.

Before the MUARA, this was not clear. On the one hand, some cases suggested that an assignment of rents continued at least to the end of the redemption period. For example, a strict reading of *Security Trust Co v Sloman* suggests that an assignment of rents continues until the debt is paid in full or the redemption period expires without a redemption—meaning it might continue if there is a redemption.[1] On the other hand, others—such as dictum in *Dunitz v Woodford Apartments Co*[2] stating that “foreclosure of a mortgage extinguishes it”—suggest that the mortgage as a whole, including any assignment of rents it contains, might be extinguished by a foreclosure sale itself. Unless a separate instrument was recorded embodying an assignment of rents, this could allow a foreclosed commercial owner to collect rents for months before the purchaser at the foreclosure sale could step in. Unsurprisingly, this confusion has led to conflicting decisions by different courts.

The MUARA resolves this uncertainty. Now, an assignment of rents automatically terminates when either (i) the redemption period expires, or (ii) an earlier redemption occurs.[3] Moreover, if a third party submits the winning bid at a foreclosure sale, the assignment of rents transfers to it “to the extent of the remaining secured obligation” by operation of law, regardless of what the foreclosure notice says.[4] These important clarifications add certainty to an ambiguous area of law that can have a real financial impact.

This is one of a series of articles Miller Canfield is releasing about the MUARA. For questions about the issues addressed in this alert, or for more information on the MUARA, please feel free to contact us.

[1] 252 Mich. 266; 233 N.W. 216 (1930).

[2] 236 Mich. 45, 49; 209 N.W. 809 (1926).

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

[4] *Id.* § 4(4)(a).