

## Michigan's Receivership Act: No Longer Just for Commercial Real Estate

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The Uniform Commercial Real Estate Receivership Act ("UCRERA"), adopted by Michigan in 2018, originally applied only to receiverships over commercial real estate. An amendment effective October 15, 2020, shortens the name of the Act to the "Receivership Act" and makes the Act applicable generally to commercial and industrial ("C&I") loans that have no real estate collateral. This article summarizes some of the changes and the interplay between receivership and bankruptcy.

The Receivership Act should make it easier for creditors to obtain a receiver. Under the UCRERA, some courts required a lender to seek foreclosure of a mortgage before a receiver could be appointed, which may impose various burdens. The Receivership Act provides that a receiver can be appointed in connection with enforcement of any security agreement or lien. MCL 554.1016(2). A claim and delivery action, for example, is not as burdensome as a foreclosure. While this change will not benefit a traditional commercial real estate loan, it does provide a benefit for C&I lenders who also have a mortgage on commercial real estate. Importantly, under Section 6(2)(b), a Court has the power to appoint a receiver when the borrower has agreed to the appointment of a receiver as a remedy in the loan documents.

Section 7 of the Receivership Act substantially changes the process of appointment and qualifications for a receiver that was set forth in the UCRERA, and harmonizes the Act with MCR 2.622. Among other things, it provides for a formal process for selecting a receiver and for objecting to the appointment of a receiver. MCL 554.1017(1)-(3). Section 7(4) lists factors that must be considered by the court when appointing a receiver. MCL 554.1017(4). In addition, Section 7(3)(b) provides an avenue for a party to object to a receiver that was not nominated by one of the parties but was selected by the Court.

Section 16 mandates notice and an opportunity for a hearing before the receiver can transfer receivership property outside the ordinary course of business. MCL 554.1026(3). This provision will provide greater transparency for the liquidation of both real and personal property through a receivership. The opportunity for a hearing is not the same as mandating a hearing. A Court could set up a sale process for notice with opportunity to object. Any objection will result in a hearing being held.

Section 13(1)(d) requires the owner of the property to provide the receiver with the names and addresses of all creditors and other known interested parties. The receiver must provide notice to those creditors and interested parties within 7 days of receipt, although the court may eliminate this requirement. Section 19 clarifies the frequency of interim reports, requiring them on a quarterly basis.

The expansion of the Receivership Act to include C&I loans might not be a significant change to loan enforcements, as receivership was already a potential remedy. It does provide greater clarity that benefits creditors, debtors and receivers. While the Receivership Act provides an alternative to a bankruptcy proceeding, it should not be considered a substitute for a bankruptcy proceeding. The Receivership Act has no provisions to recover preferential transfers, to use cash collateral, or to reorganize the debtor. Although some state court judges are very astute on business and commercial matters, few, if any, spend as much of their day working on such issues as does a bankruptcy court judge. In addition, the bankruptcy courts are designed to handle the liquidation of assets quickly and efficiently.

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This e-alert is not intended to provide a full analysis of the Receivership Act and its changes, or whether the Receivership Act is right for any particular proceeding. If you have any questions, or wish to discuss, please contact one of the authors or your Miller Canfield attorney.