

October 2019

### *Maryland Commercial Receivership Act*

Earlier this year the Maryland legislature passed the Maryland Commercial Receivership Act, which went into effect on October 1, 2019. The Act is codified at Title 24 of the Commercial Law Article. The Act makes receivers of property and assignees for the benefit of creditors much more like bankruptcy trustees. Selected highlights from the new Act follow.

The Act applies to a receivership (1) for an interest in real property, (2) in connection with dissolution of a corporation, or (3) to take possession and control of all or substantially all of a person's property with authority to liquidate the property. The Act does not apply where the receiver is a governmental unit or official.

If a borrower agrees to a receiver in mortgage documents or the property is worth less than the mortgage balance, a mortgage lender is entitled to appointment of a receiver for the mortgaged property on default. A lender's request for appointment of a receiver does not limit any other rights the lender may have to enforce the debt.

Unlike the normal procedure in Maryland Circuit Court, the court may assign the entire receivership case and all related proceedings to a single judge.

Without court approval, a receiver may manage property, operate a business, incur debt related to the receiver's activities, hire contractors and employees, and commence and defend lawsuits. With court approval, a receiver may make improvements to the receivership property, transfer property other than in the ordinary course of business, assume or reject executory contracts, recover preferences and fraudulent transfers, pay professionals, object to claims, or abandon property. Also with court approval, the receiver can sell property free and clear of liens and other interests that are junior to the interest of the party that obtained appointment of the receiver.

The receiver must provide notice to the property owner's creditors of the requirement to file claims in the receivership. Unless the court orders otherwise, creditors have 120 days from the date of the notice to file claims.

Any assumption of an executory contract is conditioned on the receiver promptly curing any monetary defaults. Any obligation incurred as a result of assuming an executory contract becomes a priority expense of the receivership. Damages resulting from rejection of an executory contract are treated as pre-receivership debts.

Entry of an order appointing a receiver creates an automatic stay of (1) litigation against the owner of the receivership property, (2) attempts by creditors to collect from the owner of the receivership property, (3) enforcement of any judgment against receivership property, and (4) an act to create, perfect or enforce a lien against receivership property. However, the receivership order does not stay a foreclosure by the lender that requested the receivership. Other exceptions to the stay as provided in federal bankruptcy law also apply.

No one may sue the receiver or his/her professionals for acts relating to the receivership without first obtaining permission from the appointing court.

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