



THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

- A Summary -

A receiver is someone appointed by a court to take possession of another person's property and manage it. Receivers can be used in a variety of situations, including:

- When the property is the subject of a lawsuit and its value must be preserved while the issue is litigated;
- When the property includes an operating business, to sell its assets in an orderly manner and maximize the return for its owners and/or creditors; and
- When requested by a creditor, to collect, preserve, and distribute the property of an insolvent or defaulting debtor.

Currently, receivership procedures vary widely from state to state, and sometimes even from court to court. The Uniform Commercial Real Estate Receivership Act (UCRERA) provides a consistent set of rules for receiverships involving commercial property, including:

Due Process. Under UCRERA, the court may issue an order only after notice and opportunity for a hearing, unless no interested party requests a hearing or special circumstances require the issuance of an order before a hearing can be held.

Appointment. UCRERA establishes uniform standards under which a court may appoint a receiver, and under which a mortgage lender may obtain appointment of a receiver, either as a matter of right or as a matter of the court's discretion.

Identity and Independence. Because a receiver is the agent of the court, UCRERA requires independent receivers. A party seeking the appointment of a receiver may nominate a person to serve, but the nomination is not binding on the court.

Effect of Appointment. On appointment, a receiver has the legal status of a lien creditor with respect to receivership property. However, pre-existing perfected security interests in receivership property are unaffected.

Powers and Duties. UCRERA sets out the receiver's presumptive powers, as well as those that the receiver may exercise only with court approval. The act also sets out the duties of both the receiver and the owner of receivership property.

Use or Sale of Receivership Property. Receivers can use or sell receivership property in the ordinary course of business, but must get court approval for uses or transfers of property outside the ordinary course of business. With court approval, sales may be free and clear of liens and rights of redemption, except that junior lienholders may not force a sale free and clear of liens without the consent of senior lienholders. Secured creditors are entitled to the proceeds of property sales according to existing priority rules.

Existing Contracts and Leases. A receiver may accept or reject a pre-existing contract with court approval, but UCRERA provides special protections for most commercial tenants of receivership property as well as tenants who occupy receivership property as their primary residences.

Creditor Claims. In most cases, a receiver must notify creditors of the receivership, and creditors must file claims with the receiver before receiving distributions from receivership property.

Reporting. A receiver must file periodic reports with the court overseeing the receivership, creating a public record of receivership accounts.

Receivership in Context of Mortgage Enforcement. Under UCRERA, a mortgage lender that requests appointment of a receiver is not liable as a possessor of receivership property and retains other remedies for enforcing the mortgage.

UCRERA provides a set of uniform rules that should provide more predictability to lenders and borrowers alike. It gives state courts guidance on the receivership process while preserving the court's flexibility to craft a remedy appropriate under the circumstances.

For further information about UCRERA, please contact Jane Sternecky, ULC Legislative Counsel, at (312) 450-6622 or jsternecky@uniformlaws.org.