

**MODEL ACT ON THE APPOINTMENT AND POWERS
OF REAL ESTATE RECEIVERS (MAAPRER)**

AGENDA FOR MARCH 7 & 8, 2014 DRAFTING COMMITTEE MEETING

Materials Distributed for this Meeting:

- ❖ Draft “Model Act on the Appointment and Powers of Real Estate Receivers.” dated February 12, 2014
- ❖ Reference materials:
 - Redline comparison of February 12, 2014 draft to August 21, 2013 draft
 - Background Memorandum on Receiver’s Immunity, by Wilson Freyermuth, Reporter, and John Freese, law student, dated March 3, 2014
 - Background Memorandum re Receiver’s Power to Sell Free and Clear of Liens/Rights of Redemption, by Wilson Freyermuth, Reporter, dated March 3, 2014
 - Draft Missouri bill to enact new receivership law (not yet introduced)

Reference Materials Previously Distributed:

- ❖ Detailed memorandum dated April 2, 2013 and appendices
- ❖ State-by-state capsule summary of existing receivership laws
- ❖ State-by-state compilation of receivership statutes
- ❖ Uniform Assignment of Rents Act, with official comments
- ❖ JEB for Uniform Real Property Acts May 18, 2011 recommendation to ULC Scope and Program Committee
- ❖ Other reference materials:
 - Jim Baillie, Ryan Murphy, and Sarah Gibbs, “Minnesota Constructs Comprehensive Receivership Law”
 - Barnes & Thornberg LLP, “Michigan Court Authorizes Receiver Sale of Real Property Free and Clear of Redemption Rights”
 - Jeremy Downs, “Federal Receivers’ Reach, Authority Often Overlooked”
 - Morris A. Ellison, Lawrence M. Dudek, and Samuel H. Levine, “‘Tis Better to Receive – the Use of a Receiver in Managing Distressed Real Estate”
 - Loyola Complex Case Symposium, “Ask the Experts”
 - Loyola Complex Case Symposium, “Receivership vs. ABC vs. Bankruptcy”
 - J. C. Murray and K. R. Jannen, “Public and Private Sales of Real Property by Federal Court Receivers”
 - Receivership News, “California Court Finds Protections Afforded by California Foreclosure Laws Preclude Sale of Property Rents, Issues and Profits Receivers”

The Committee’s Charge: “*RESOLVED, that . . . a drafting committee on a Model Act on the Appointment and Powers of Real Estate Receivers be formed, and that the act not cover receivers appointed with respect to owner-occupied residences.*”

1) Housekeeping

- a) Introduction of committee members, reporter, advisors, and observers
- b) Meeting plan
- c) Committee dinner plans

2) Briefing by the Reporter

3) Receiver's Power to Sell (Sections 16 and 17):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Receiver's Power to Conduct Foreclosure
 - ii) Alternatives:
 - (1) *Alternative A:* Free and clear of plaintiff's lien and junior liens
 - (2) *Alternative B:* Free and clear if ancillary to a foreclosure
 - (3) *Alternative C:* Sale free and clear
 - (4) *Alternative D:* Power to sell left to other law
 - iii) Manner of sale
 - iv) Purchase by secured party
 - v) Safe harbor provision

4) Scope (Section 3):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Defined terms "receivership property" and "property"
 - ii) Bracketed language—application of the Act if another law so provides
 - iii) Single-family residence exclusion

5) Appointment and Replacement of Receiver (Sections 4, 5, 6, 8 and 22):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Court jurisdiction—degree of detail
 - ii) Court jurisdiction—police powers
 - iii) Contract clauses and their effect
 - iv) Consequences of unwise or improper appointment
 - v) Deadline for posting receiver's bond
 - vi) Effect of failure to post bond

- 6) Identity of Receiver; Disclosure of Interest (Section 7):
 - a) *Main issues flagged in Reporter's Notes:*
 - i) Disclosure model (Alternative A) v. Independence model (Alternative B)
 - ii) Logistical issues for exigent appointments

- 7) Turnover of Receivership Property (Section 11):
 - a) *Main issues flagged in Reporter's Notes:*
 - i) Terminology – “turnover” v. “deliver”
 - ii) Consequences of failure to turn over

- 8) Powers and Duties (other than Sale) (Sections 12, 13, and 15):
 - a) *Main issues flagged in Reporter's Notes:*
 - i) Digital assets
 - ii) Professionals
 - iii) Interim fees
 - iv) Financing

- 9) Automatic Stay (Section 14):
 - a) *Main issues flagged in Reporter's Notes:*
 - i) Breadth of the stay
 - ii) Carve-out for PMSI 20-day window and similar situations
 - iii) Consequences of stay violation

- 10) Ancillary Receiverships (Section 24):
 - a) *Main issues flagged in Reporter's Notes:*
 - i) How the section should operate (see examples in Reporter's notes)
 - ii) How to address eligibility issues that may differ between states
 - iii) Whether, and if so how, to address conflict principles on the grounds for appointment
 - iv) Facilitating communication and coordination between main court and ancillary court

11) Immunity of Receiver (Section 19):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Substance and degree of detail

12) Effect of Receivership on Property Interests (Sections 9 and 10):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Effect of lien creditor status—personal property
 - ii) Effect of lien creditor status—real property
 - iii) Strong-arm concerns
 - iv) After-acquired property

13) One-Action (Section 25):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Substance of the section
 - ii) Drafting approach

14) Executory Contracts (Section 18):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Terminology “adopt” v. “assume”
 - ii) Purchase and sale agreements, and timeshare interests
 - iii) Tenant safe harbors

15) Claims (Section 21):

- a) *Main issues flagged in Reporter's Notes:*
 - i) Whether secured creditors should have to file proofs of claim
 - (1) If secured creditors must file, what consequences if they do not
 - ii) Whether the court can dispense with the claims process
 - iii) Whether the Act should specify the evidentiary effect of a proof of claim
 - iv) Whether the Act should contain priority provisions

16) Receiver's Reports (Sections 20 and 23)

- a) Interim Reports of Receiver
 - i) *Main issues flagged in Reporter's Notes:*
 - (1) Failure to object to a receiver's interim report
- b) Final Report and Discharge

17) Other Issues to Address

- a) Whether the Act should address other issues; and if so what and how
- b) Whether to seek guidance from the Executive Committee on any point

18) Enactability issues – to the extent not raised during substantive discussions

- a) Identification of potential enactability concerns
- b) Identification of additional potential observers

19) Next steps

- a) Summarize decisions made at this meeting
- b) Annual meeting in Seattle (July 11 – 17, 2014)