

QUESTIONNAIRE FOR UNIFORM LAW COMMISSION
STUDY COMMITTEE ON APPOINTMENT AND POWERS
OF REAL ESTATE RECEIVERS

Jurisdiction: RESPONSE: Superior Courts of California i.e. Sacramento County, Placer County, Sonoma County, Alameda County, Santa Clara County, San Joaquin County and most Northern California and Bay Area Counties that my associate and I have been appointed in receivership cases.

1) Are the courts in your jurisdiction familiar with receiverships? RESPONSE: Yes: X No:

2) How common are real estate receiverships in your jurisdiction?

a) Please answer with a number from 1 to 5 (1 = non-existent; 2 = rare; 3 = common in a few counties/districts, but non-existent to rare in others; 4 = common in many counties/districts....; 5 = common throughout the state) RESPONSE: 4 is the best answer.

b) Why? _____

3) How common are general receiverships in your jurisdiction?

a) Please answer with a number from 1 to 5 (1 = non-existent; 2 = rare; 3 = common in a few counties/districts, but non-existent to rare in others; 4 = common in many counties/districts, but not in some; 5 = common throughout the state) RESPONSE: 4

b) Why? 4 is the best answer here as we see a variety of receivership cases. RESPONSE: Lately, the trend since the first of the year is on small operating businesses more than real estate, or a combination of a small business that also owns the real estate from which it operates.

4) How difficult it is to obtain appointment of a receiver in your jurisdiction?

a) Please answer with a number from 1 to 5 (1 = virtually impossible; 2 = very difficult in most counties/districts; 3 = difficult in most counties/districts; 4 = readily in some counties/districts, but difficult in others; 5 = readily in most counties/districts) RESPONSE: 5

b) Why? _____

5) Does your jurisdiction have a business calendar or other special calendar that handles receivership cases?

RESPONSE: Some jurisdictions have specific Law and Motion Depts. that handle receivership matters~ others in Northern CA and the Bay Area just have a first come first serve calendar of judges that hear receivership cases.

- 6) Which grounds for appointment of a receiver are most commonly invoked?

RESPONSE: Major loans in default pending foreclosure on real estate or operating businesses, enforcement of judgments, partnership dispute resolutions, preserving and protecting cash flow of operating businesses subject to settlement, restructure or foreclosure for failure to pay debts and taxes, etc.

- 7) If receivers in your jurisdiction are or may be authorized to sell real estate, describe any issues with obtaining title insurance for a receiver's sale:

RESPONSE: Obtaining title insurance on receivers' sales free and clear of liens; requirements by title insurers that defendants sign all sale and closing documents; resolution to all mechanics liens on title prior to closing (bonding around liens by lender has worked in the past in order to close a sale escrow, then lender litigates with mechanics lien holder until resolution is reached outside the receivership); Court order approving sale must be very specific i.e. receiver has specific rights to sign and adjust escrow documents as necessary that does not include major changes to the terms and conditions of sale, the words present – to “sell and convey title” are necessary. See example of a words in an order which were necessary for a real estate receivership sale completed in Superior Court of Sonoma County, State of California below:

The Receiver is here by granted the right to “sell and convey” title to the property and shall execute all documents necessary to consummate and otherwise effectuate the sale of the Property as “Beverly N. McFarland in her sole capacity as Receiver” on behalf of the Defendant, Redwood Village Investors 2007, LLC, the current owner of the Property as grantor, and shall use the tax identification number for the grantor in connection with the sale. However, the Grant Deed shall be signed jointly by the Receiver and Defendant Redwood Village Investors 2007, LLC.

- 8) If the ULC drafts a Uniform or Model Act on receiverships:

- a) What obstacles do you see to enactment of a Uniform or Model Act in your jurisdiction?

RESPONSE: Educating jurisdictions that do not have specific law and motion departments.

- b) What groups or organizations might oppose enactment?

RESPONSE: Tightening rules to appoint receivers or standardizing them might find objections from special servicers, major lenders and lawyers representing special interest groups and those requesting ex-parte receiver appointments when not really warranted as a true emergencies. Simply, they waited too long to file a petition to appoint a receiver and funds are dwindling fast.

- c) What groups or organizations might support enactment?

RESPONSE: I project that the California Receivers Forum, California Bankruptcy Forum, various California state bar associations might support this enactment if properly

crafted to assist jurisdictions and expedite appointments. This is assuming that any enactment would include proper authorities covering multiple types of receiverships i.e. real estate, operating businesses, judgments, partnership dispute resolutions, etc. which would require very experienced receivers to assist to assure that the enactment could be as complete as possible.

- d) What groups or organizations might actively participate in the drafting process by attending meetings at their own expense?

RESPONSE: Answer for organizations to respond to not individuals.

Person completing this questionnaire:

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