

MEMORANDUM

TO: Drafting Committee, Advisors, Observers, ULC leadership, and ULC staff liaisons—Model Commercial Real Estate Receiverships Act

FROM: Thomas S. Hemmendinger, Chairperson, and R. Wilson Freyermuth, Reporter

RE: Limits on Receiver’s Power to Reject Tenant Leases

DATE: November 10, 2014

Several stakeholders have pointed out that Subsections 17(h) and (i) contain potential ambiguities. For your consideration at our meeting this week, here is language combining the two subsections into one. Please focus on substance rather than style, as this is only a first cut.

(h) A receiver may not reject an unexpired lease to a tenant if:

(1) the tenant has an enforceable agreement with a mortgagee that the mortgagee will not disturb the tenant’s occupancy as long as the tenant performs its obligations under the lease;

(2) the mortgagee has consented to the lease, either in a signed record or by its failure to timely object that the lease violated a provision of the mortgage or a loan document related to the mortgage;

(3) the terms of the lease were commercially reasonable at the time the lease was made; or

(4) the tenant occupies the leased premises as the tenant’s primary residence under a lease [for a term of [one year] or less] made by the tenant in good faith.