

MEMORANDUM

TO: Appointment and Powers of Real Estate Receivers Drafting Committee, Advisors and Observers

CC: Harriett Lansing, Richard Cassidy, Anita Ramasastry, Lane Shetterly, John Sebert, and Ben Orzeske

FROM: Thomas S. Hemmendinger and R. Wilson Freyermuth

DATE: September 16, 2014

RE: Summary of September 12, 2014 Conference Call of the Drafting Committee on the Model Commercial Real Estate Receiverships Act

On September 12, 2014, the Drafting Committee held a conference call with ABA Advisors and Observers. Participating were Commissioners Thomas Hemmendinger (Chairperson), Steve Cawood, Ellen Dyke, Thomas Edmonds, Patricia Fry, Fred Miller, Rosemary Sackett, and Gay Taylor-Jones; Reporter R. Wilson Freyermuth; ABA Section Advisor Jeffrey Allen; and Observers Mark Denton (American College of Business Court Judges); William Hoffman, Kenneth Jannen (ALTA), Samuel Levine (ACREL), Beverly McFarland (California Receivers Forum), Megan Michiels (American Bankers Association), Gregory Mize (National Center for State Courts), and Steve Sepinuck (American College of Commercial Finance Lawyers); and ULC staff John Sebert and Ben Orzeske. Commissioner Jack Burton could not attend, but provided written comments before the call. These were shared with the group.

The purpose of the conference call was to give our Reporter drafting directions which Alternative(s) of the scope exclusion in Section 3(b) to include in the next draft of the Act. The 2014 Annual Meeting Draft presented two alternative ways to deal with the residential property exclusion in the Drafting Committee's charge. The purpose of these alternatives was to seek guidance from the Committee of the Whole on which approach to take. Alternative A is adapted from the Home Foreclosure Protection Act project and excludes most one- to four-family properties. Alternative B focuses on the primary purpose or configuration of the property. The Committee of the Whole gave us very helpful comments on the Act, but did not express a clear preference for either alternative.

The group discussed the relative merits of each Alternative and a number of possible refinements to the scope exclusion that might be included in the next draft to be considered at our November 2014 meeting. As a matter of drafting direction, the Drafting Committee reached consensus that the next meeting draft should include only Alternative B, and that the draft should address comments and questions raised in the conference call.

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