

MODEL COMMERCIAL REAL ESTATE RECEIVERSHIPS ACT (MCRERA)
AGENDA FOR NOVEMBER 14-15, 2014 DRAFTING COMMITTEE MEETING

Materials:

- ❖ Draft “Model Commercial Real Estate Receiverships Act,” dated October 3, 2014, with Reporter’s Notes
- ❖ Redline comparison of October 3, 2014 draft to 2014 Annual Meeting draft
- ❖ Other materials available at
<http://www.uniformlaws.org/Committee.aspx?title=Commercial%20Real%20Estate%20Receiverships%20Act>

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) Preliminaries

- a) Introduction of participants
- b) Objectives for this meeting
- c) Committee dinner plans
- d) Briefing by the Reporter

2) Topic-by-Topic Consideration of the Act

a) Scope—Section 3

i) *Main issues flagged in the Reporter’s Notes:*

- (1) Scope of the exclusion for residential property
- (2) Definition of “affiliate”

b) Power of Court—Section 4

i) *Main issues flagged in the Reporter’s Notes:*

- (1) Power of court to deal with property elsewhere in the same state

c) Appointment—Sections 5, 6, and 7

i) *Main issues flagged in the Reporter's Notes:*

- (1) Effect of a “receivership clause” in the mortgage documents
- (2) Failure to pay debts when due—bracketed provision on bona fide dispute
- (3) Consequences of unjustified *ex parte* appointment
- (4) Whether to allow non-independent receivers with the parties’ consent
- (5) Deadline for posting the receiver’s bond

d) Secured Claims—Sections 8, 9, and 16

e) Powers and Duties—Sections 10, 11, 12, and 14

i) *Main issues flagged in the Reporter's Notes:*

- (1) Articulation of the owner’s duty as to documents and information

f) Automatic Stay—Section 13

i) *Main issues flagged in the Reporter's Notes:*

- (1) Scope of the stay
- (2) Exclusions from the stay
- (3) Consequences for knowing violation of the stay

g) Use, Sale, Lease, License, or Other Transfer of Receivership Property—Section 15

i) *Main issues flagged in the Reporter's Notes:*

- (1) Whether to reduce the number of Alternatives
- (2) Whether to express a preference for one Alternative
- (3) Transfer of liens to proceeds

h) Executory Contracts—Section 17

i) *Main issues flagged in the Reporter's Notes:*

- (1) Deadline for the receiver to adopt or reject
- (2) Default rule on adoption or rejection
- (3) Who has final say on adoption or rejection
- (4) Restrictions on the receiver's ability to reject certain tenant leases
- (5) Effect of rejection on third parties or on non-receivership property of owner

i) Immunity of Receiver—Section 18

i) *Main issues flagged in the Reporter's Notes:*

- (1) Whether to defer to existing law other than the Act
- (2) If we do not defer to other law, what the standards should be
- (3) Situation where the receiver is also acting as his/her own professional

j) Procedural Issues—Sections 19, 21, and 22

i) *Main issues flagged in the Reporter's Notes:*

- (1) Coordination of Section 22 with Section 7's one-year limitation period
- (2) Consequences of appointment procured wrongfully or in bad faith

k) Claims—Section 20

i) *Main issues flagged in the Reporter's Notes:*

- (1) Medium for "newspaper" publication
- (2) Evidentiary effect of a proof of claim

l) Ancillary Receiverships—Section 23

m) One-Action—Section 24

- n) Transition Provisions—Sections 26, 27, and 28
 - o) Definitions—Section 2—to the extent not already addressed
 - i) *Main issues flagged in the Reporter’s Notes:*
 - (1) Assignment of rents-related definitions
 - (2) State—whether to include tribal sovereigns
 - p) Other Issues
 - i) Ability of owner and mortgagee to vary the Act by agreement
 - ii) Placement of the definition (or rule of construction) “after notice and a hearing”
- 3) Enactment Planning
- a) Enlist support and address opposition
 - b) States to target .
- 4) Next Steps