

Alabama

Type of Instrument

The mortgage is the customary security document used in Alabama, although the deed of trust is authorized by law.

Foreclosure Method/Time

Judicial foreclosure is permitted, but rarely used. Nonjudicial foreclosure is the primary method of foreclosure in Alabama. Nonjudicial foreclosure requires that notice be given to those identified by statute, and published in a newspaper for three successive weeks. There is a one-year statutory redemption period after the foreclosure sale. Ala. Code § 6-5-248(a). This right cannot be waived prior to foreclosure but may be waived post-foreclosure. Ala. Code § 6-5-250. The mortgagor also waives its statutory redemption right if it fails to deliver possession to the foreclosure sale purchaser within 10 days after written demand for possession. Ala. Code § 6-5-251.

FHFA estimated foreclosure timeline to obtain marketable title: 270 days.¹

General/Procedural

Ala. Code § 6-6-620 provides that a receiver may be appointed by a circuit court judge (and by the register or clerk in the absence of the judge).² A court cannot appoint a receiver unless a suit is pending. Before making the appointment, the receiver must post a bond “in such sum as the circuit judge, register, or clerk may prescribe, payable to the opposite party, and to be approved by the judge, register or clerk, with condition to pay all damages which any person may sustain by the appointment of the receiver if such appointment is vacated or receiver removed or discharged because improvidently appointed.” Ala. Code § 6-6-622(a).

Standards for Appointment

The Alabama statutes do not provide standards for the appointment of a receiver. Judicial opinions establish three requirements for appointing a receiver in Alabama: (1) a clear legal right to be protected; (2) no other adequate remedy; and (3) a showing that the party seeking a receiver will otherwise sustain irrevocable damage if no receiver is appointed. The appointment of a receiver “rests in the sound discretion of the trial judge.” *Wood v. Phillips*, 823 So.2d 648 (Ala. 2001). In addition, the petition will be granted only if the court concludes that there is a reasonable probability that the party seeking the receiver will ultimately succeed in obtaining the general relief in the primary action.

Ex Parte Appointment

An ex parte motion for the appointment of a receiver is available, but requires the show of good cause. The applicant must convey a strong case of pressing emergency and peril or that giving notice of the hearing would jeopardize the property.

¹ All references to “FHFA estimated foreclosure timeline to obtain marketable title” come from Notice, State-Level Guarantee Fee Pricing, Federal Housing Finance Agency (September 25, 2012), 77 Fed. Reg. 58991-01.

² If the receiver is appointed by the register or clerk, the order is subject to appeal to a circuit court judge. Ala. Code § 6-6-621.

Power of Sale

Alabama has no statutory provisions governing the sale of property by a receiver. Ala. Code § 6-6-624 provides that the appointment of a receiver “of a corporation or partnership” shall invalidate any judgment liens attaching to the property of the corporation or partnership during the preceding sixty days prior to appointment. It is not clear, however, that this statute would apply where a receiver is appointed solely for a particular asset. In any event, the statute suggests that by negative inference, the receiver would take title subject to other liens of record.

Trigild’s manual indicates that the mortgagee should include a provision in the court order that the receiver is authorized to market and sell receivership property subject to prior court approval. There is no guarantee that a receiver’s sale would be free and clear of liens, although presumably a receiver might ask for approval to sell the property free and clear of liens.

Alaska

Type of Instrument

Alaska primarily uses the deed of trust. Where the parties use a mortgage, foreclosure typically must occur by judicial foreclosure.³

Foreclosure Method/Time

Judicial foreclosure is available, and is estimated to take six to eight months (if uncontested) or twelve to fourteen months (if contested). See Foreclosure Law & Related Remedies: A State-by-State Digest 7 (ABA). Nonjudicial foreclosure is also permitted; after a notice of default is recorded (which must be not less than 30 days after default), there is a 90-day waiting period before the trustee can foreclose. Alaska Stat. § 34.20.070.

If the lender forecloses nonjudicially, the lender cannot recover a deficiency judgment. Alaska Stat. § 34.20.100. However, the mortgagor has no statutory right of redemption following nonjudicial foreclosure. § 34.20.090.

By contrast, if the lender forecloses judicially, the mortgagor has a 12-month statutory redemption period from the order confirming the sale. Alaska Stat. § 09.35.250.

FHFA estimated foreclosure timeline to obtain marketable title: 300 days

General/Procedural

Before beginning duties, a receiver “shall be sworn to perform them faithfully, and shall file with the clerk of court an undertaking with one or more sufficient sureties in the sum the court may direct to the effect that the receiver will faithfully discharge the duties of receiver and obey the orders of the court.” Alaska Stat. § 09.40.245.

Standards for Appointment

A receiver may be appointed under Alaska Stat. § 09.40.240 in several specified contexts, including:

- “provisionally, before judgment, on the application of either party, when the party’s right to the property that is the subject of the action or proceeding and that is in the possession of an adverse party is probable, and where it is shown that the property or its rents or profits are in danger of being lost or materially injured or impaired” [Alaska Stat. § 09.40.240(1)]
- “after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the debtor’s property in satisfaction of the judgment” [Alaska Stat. § 09.40.240(3)]
- “in the cases when a debtor has been declared insolvent” [Alaska Stat. § 09.40.240(5)]

Representative cases include:

³ <http://www.kleinsmithlaw.com/alaska.html>.

International Trust Co. v. Decker Bros., 152 F. 78 (1907) (to warrant appointment of a receiver by a court of equity, plaintiff must show that the property constitutes a special fund to which he has a right to resort for the satisfaction of his claim, and that the property itself or the income arising therefrom is in danger of loss from neglect, waste, misconduct, or insolvency of the defendant)

First Nat'l Bank of Fairbanks v. Dual, 15 Alaska 542 (1955) (party seeking appointment of receiver to prevent property or rents from being lost/injured/impaired must show inadequacy of security only to the extent that appointment of receiver must be necessary to preserve security or prevent waste; insolvency need not be shown, but only inability of debtor to meet any deficiency)

Ex Parte Appointment

Trigild's manual indicates that ex parte orders "appear to be authorized" but that they are "limited in use." There are no statutes relative to ex parte appointment.

Power of Sale

There are no statutory provisions related to the receiver's power to sell the property, nor any case law related to receiver sales.

Arizona

Type of Instrument

Arizona permits both the mortgage (which must be foreclosed judicially) and the deed of trust (which may be foreclosed nonjudicially).

Foreclosure Method/Time

Judicial foreclosure in Arizona takes approximately 9-11 months. See Trigild Deskbook at 36. Following judicial foreclosure, the mortgagor has a statutory right of redemption for six months following the sheriff's sale. Ariz. Rev. Stat. § 12-1282(A).

Nonjudicial foreclosure may be conducted as early as 91 days following the recording by the trustee of a notice of sale. Ariz. Rev. Stat. § 33-807(C). Following the trustee's sale, the borrower does not have a right of statutory redemption. Ariz. Rev. Stat. § 33-811(B).

FHFA estimated foreclosure timeline to obtain marketable title: 300 days

General/Procedural

In Arizona, a superior court judge may appoint a receiver "to protect and preserve property or the rights of parties therein." Ariz. Rev. Stat. § 12-1241. The receivership need not be ancillary to a foreclosure or any other action; the court may appoint the receiver "even if the action includes no other claim for relief." *Id.* This statute overruled prior authority under which Arizona courts had held that a receiver could not be appointed in a nonjudicial foreclosure proceeding because receivership had to be ancillary to a pending action. See, e.g., *Ferguson v. Superior Court of Maricopa County*, 258 P.2d 421 (Ariz. 1953); *First Phoenix Realty Investments v. Superior Court of Maricopa County*, 841 P.2d 1390 (Ariz. Ct. App. 1992).

An action for appointment of a receiver is commenced by filing a verified complaint and application for appointment of receiver with the superior court.⁴ The adverse party may file counteraffidavits, which shall be considered on hearing the application along with "such testimony as the court admits." Ariz. Rev. Stat. § 12-1242. Trigild's manual indicates that an order to show cause hearing is usually set for a date that is two to four weeks after the complaint is filed, unless emergency or ex parte relief is requested.

The trial court has discretion to appoint a receiver, and appointment of a receiver is reviewed for abuse of the court's discretion.⁵ The superior court may appoint a receiver to protect and preserve property or the rights of parties even if the action includes no other claim for relief.

Standards for Appointment

The Arizona statutes do not provide explicit standards justifying appointment of a receiver. Nevertheless, Ariz. Rev. Stat. § 33-702(B) (most recently amended in 1984) provides that a mortgage or trust deed may provide for an assignment of rents, and that such an assignment may be enforced by the appointment of a receiver "without regard to the adequacy of the security or the solvency of the mortgagor or trustor." A prior Arizona decision had ruled that a court had improperly appointed a receiver to collect rent —

⁴ The application "shall be in writing, supported by affidavit and served upon the adverse party, together with reasonable notice of the time of hearing." Ariz. Rev. Stat. § 12-1242.

⁵ *Gravel Resources of Arizona v. Hills*, 170 P.3d 282 (Ariz. App. 2007).

despite default, an assignment of rents, and a provision in the mortgage consenting to appointment of receiver upon foreclosure — where the lender’s security was adequate. See *Dart v. Western Sav. & Loan Ass’n*, 438 P.2d 407 (Ariz. 1968).

Ex Parte Appointment

The Arizona statutes appear to require prior notice/hearing. See Ariz. Rev. Stat. § 12-1241 (“The court may restrain the adverse party from removing, secreting or otherwise disposing of the property to the injury of the applicant, pending hearing the application for appointment of a receiver.”). Nevertheless, Trigild’s manual suggests that an ex parte appointment is possible in extraordinary situations; typically, the party seeking a receiver must show some form of irreparable harm that would otherwise follow.

Power of Sale

There are no statutes or reported Arizona case law permitting or prohibiting receivership sales. Trigild’s manual indicates that the order of appointment may permit the receiver to market and sell the property, conditioned on court approval by motion served upon the borrower and other interested parties. Trigild notes:

- Borrower consent is preferable, but is not always required by the court or title insurance underwriters.
- Title insurance has generally been available after expiration of the appeal period for the order approving a receivership sale. The title insurer should be involved in the sale process to confirm underwriting requirements (such as proof that all members/principals of the borrower are served with a copy of the motion to approve the sale).

There is no statute or reported Arizona case law on whether a receivership sale would be free and clear of liens. Trigild’s manual does note that the order of appointment may permit the receiver to satisfy or contest liens on the property.

Arkansas

Type of Instrument

Arkansas uses both the deed of trust and the mortgage. A power of sale is implied in every mortgage. Ark. Code Ann. § 18-50-115.

Foreclosure Method/Time

Arkansas provides for both judicial and nonjudicial foreclosure. Following judicial foreclosure, the mortgagor has a statutory redemption period of one year. Ark. Code Ann. § 18-49-106. However, this right of redemption can be (and typically is) effectively waived in the loan documents itself, and thus rarely arises.

Nonjudicial foreclosure is available only where the mortgagee is a mortgage company, bank, or savings and loan and where the mortgaged property is not used primarily for agricultural purposes. Ark. Code Ann. § 18-50-101. A duly acknowledged notice of default and intention to sell must be recorded within the time that a judicial foreclosure could have been filed. Ark. Code Ann. § 18-50-116. The sale may not take place until at least 60 days have elapsed from the recording of the notice of default. Ark. Code Ann. § 18-50-103(5). No bid may be accepted that is less than 2/3 of the indebtedness as of the date of sale. Ark. Code Ann. § 18-50-107(b). The mortgagor has no statutory redemption right following nonjudicial foreclosure. Ark. Code Ann. § 18-50-108(b).

FHFA estimated foreclosure timeline to obtain marketable title: 280 days

General/Procedural

Appointment of a receiver is governed by Ark. R. Civ. Proc. 66. The circuit court may appoint a receiver “for any lawful purpose when such appointment shall be deemed necessary and proper.” Ark. R. Civ. Proc. 66(a). The receiver must provide a bond, with sufficient security, in an amount determined by the court, for the benefit of all interested parties; further, the receiver shall take an oath to faithfully perform its duties. *Id.*

When foreclosing a mortgage, the request for receiver is often filed with the complaint, but a separate motion to appoint a receiver can be filed as well. The appointment of receiver is not required to be ancillary to another cause of action. The request to receiver must include grounds for appointment. There must be a prima facie showing that a receiver is required because of a danger that the property will be lost or materially injured, but the court does not have to hold an evidentiary hearing.

Grounds for Appointment

Rule 66 does not specify grounds for appointment. Ark. R. Civ. Proc. 66, Reporters’ Note 2 (“No attempt has been made to define and identify those situations in which the appointment of a receiver is proper; accordingly, resort must still be made to traditional equitable grounds for the appointment of a receiver.”). Traditional equitable grounds include appointing a receiver when necessary to save property or money from being lost, removed, or materially damaged. The court has broad discretion in deciding whether a receiver should be appointed.

Ex Parte Appointment

A court may appoint a receiver ex parte if the party asking the court to do so can demonstrate that the circumstances are “exceptional.”

Operation of Receivership

Rule 66 provides that the receiver “shall make a report of his proceedings and actions every six (6) months or at such other times as directed by the court.” Ark. R. Civ. Proc. 66(b). Rule 66 also provides that subject to court approval, the receiver “shall have power to employ an attorney, an accountant or such other persons as may be necessary to conduct the business or affairs entrusted to the receiver.” Ark. R. Civ. Proc. 66(c). The receiver’s fee is paid “as an expense from the assets collected by him.” *Id.*

Power of Sale

There are no specific statutes permitting or prohibiting the receiver from selling the property.

California

Type of Instrument

California typically uses the deed of trust.

Foreclosure Method/Time

California allows both judicial and nonjudicial foreclosure. The time frame for judicial foreclosure is typically one year or more. See Trigild Deskbook at 53. Following the completion of a judicial foreclosure, the mortgagor has a one-year period of statutory redemption, Cal. Civ. Proc. Code § 729.010, unless the mortgagee waives any right to collect a deficiency or a deficiency is barred because the debt is purchase money in character. Cal. Civ. Proc. Code §§ 726(e), 716.020.

Nonjudicial foreclosure begins with the recording of a statutory notice of default by the trustee. The sale cannot take place until three months and twenty days after the recording of the notice of default. Cal. Civ. Code § 2924. Approximately three months after recording the notice of default, the trustee will record a statutory notice of sale, which must be recorded at least 20 days prior to the sale date. Cal. Civ. Code § 2924f(b). The mortgagor has no right of statutory redemption following a nonjudicial foreclosure sale. No deficiency judgment is permissible following nonjudicial foreclosure. Cal. Civ. Proc. Code § 580d.

FHFA estimated foreclosure timeline to obtain marketable title: 300 days

General/Procedural

A lender must commence a civil action; a receiver cannot be appointed absent a pending civil action. Cal. Civ. Proc. Code § 564(a). The civil action must be one of the types of actions listed in § 564, including a judicial foreclosure action [Cal. Civ. Proc. Code § 564(a)(2)] or an action by the lender for specific performance of an assignment of rents [Cal. Civ. Proc. Code § 564(a)(11).] A lender may also obtain appointment of a receiver for the purpose of enforcing its rights under Cal. Civ. Code § 2929.5 to determine the presence, location, and magnitude of hazardous substances on the property. Cal. Civ. Proc. Code § 564(c). The appointment of a receiver does not constitute an “action” to enforce the debt within the meaning of California’s “one-action” rule. Cal. Civ. Proc. Code § 564(d).

A receiver must take an oath and post a bond (in the amount established by the court) before the receiver commences his or her duties. Cal. Civ. Proc. Code § 567(a), (b). No party, attorney of a party, or interested person, or person related to any judge of the court can be appointed receiver without the written consent of the parties, filed with the clerk. Cal. Civ. Proc. Code § 566(a).

Standards for Appointment

Representative cases include:

Barclays Bank v. Superior Court of City and County of San Francisco, 137 Cal. Rptr. 743, 69 Cal. App. 3d 593 (1977) (although trust deed’s recital that upon default beneficiary is entitled to appointment of a receiver is not binding upon courts, recital has some evidentiary weight in determining whether receiver should be appointed as a matter of equity; recital presents a prima facie, but rebuttable, evidentiary showing of the beneficiary’s entitlement to appointment of receiver)

Title Guarantee & Trust Co. v. Monson, 11 Cal.2d 621, 81 P.2d 944 (1938) (where trust deed authorized beneficiary to take possession and collect rents after default, beneficiary's right to rentals was dependent solely upon the agreement, not upon statutory provision requiring mortgagee to show that mortgaged land was "probably insufficient to discharge the mortgage debt")

Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230 (9th Cir. 1994) (under California law, receiver may be appointed when grantor under deed of trust has contractually consented to appointment of receiver upon default)

Ex Parte Appointment

A lender may secure appointment of a receiver on an ex parte basis. The lender must show in detail, by verified complaint or declaration: (1) the nature of the emergency requiring appointment of a receiver and (2) the reasons why irreparable injury would be suffered by the lender during the time necessary for a hearing on regular notice. If ex parte appointment is granted, a hearing must be held within 15 (or, in some cases, 22) days to determine why the appointment should not be confirmed. See Trigild Deskbook at 61.

If a receiver is appointed upon an ex parte application, the court must require the party seeking the receiver to post an undertaking, in an amount set by the court, to protect the defendant against all damages the defendant may sustain due to the appointment in case the applicant "shall have procured the appointment wrongfully, maliciously, or without sufficient cause." Cal. Civ. Proc. Code § 566(b).

Powers of Receiver

The receiver has the power "to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize. Cal. Civ. Proc. Code § 568.

The receiver may deposit funds in interest bearing accounts in financial institutions, but those deposits must be federally insured; further, the institution may not be a party to the action and the receiver may not be an officer or shareholder (greater than 1%) in that institution. Cal. Civ. Proc. Code § 569.

Power of Sale

Cal. Civ. Proc. Code § 568.5 provides:

A receiver may, pursuant to an order of the court, sell real or personal property in the receiver's possession upon the notice and in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9.⁶ The sale is not final until confirmed by the court.

California's case law in this area is not yet fully developed and is subject to change. Courts have allowed receivers to use § 568.5 to sell property that is collateral for a loan, provided that appropriate court orders are first obtained. Courts frequently approve such sales if the borrower and guarantor agree. The Trigild manual indicates that the court should still have the authority to order such a sale absent agreement, but notes that the law is not quite settled in this regard.

⁶ These are the provisions of the California Code of Civil Procedure relating to the conduct of execution sales.

A receiver should be able to sell the real property securing a loan subject to the existing lien, which would allow the existing loan to be modified and assumed by the new buyer of the real property.

Colorado

Type of Instrument

Colorado uses the deed of trust.

Foreclosure Method/Timetable

While Colorado has judicial foreclosure, most foreclosures occur via Colorado's unique nonjudicial procedure under which a foreclosure sale is conducted by the Public Trustee. The process begins with the filing of a Notice of Election and Demand for Sale (NEDS); the sale (which requires an order authorizing sale from the district court) is held 110-125 days after the recording of the NEDS (215-230 days if the property is agricultural). This process can be expedited in case of abandonment. The mortgagee can obtain a deficiency judgment.

FHFA Estimated Timetable to Obtain Marketable Title: 330 days

General/Procedural

The appointment of a receiver may be the sole cause for relief in an action. Colo. R. Civ. Proc. 66(d)(1). Before commencing its duties, the receiver must post bond in an amount set by the court. Colo. R. Civ. Proc. 66(b).

Standards for Appointment

A court may appoint a receiver (1) prior to judgment, when the applicant establishes a prima facie right to the property, or to an interest therein, and the property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired; (2) by or after judgment, to dispose of the property according to the judgment or to preserve it during appeal; or (3) in all other cases where proper and in accordance with the established principles of equity. Colo. R. Civ. Proc. 66(a).

Representative cases:

Bank of America Nat'l Trust & Sav. Ass'n v. Denver Hotel Assocs. Ltd. Partn., 830 P.2d 1138 (Colo. Ct. App. 1992) (court could appoint receiver pursuant to deed of trust provision permitting appointment without regard to adequacy or value of property or solvency of any party bound for its payment; statute providing for appointment of receiver in limited circumstances did not prevent court from enforcing parties' agreement)

Ex parte Appointment

Ex parte appointment is authorized by Colo. R. Civ. Proc. 66(d)(3).

Power of Sale

Colo. R. Civ. Proc. 66(a)(2) indicates that a receiver can be appointed by the court to dispose of property according to a judgment. There is doubt that a receiver's sale would be free and clear of liens. Rossi v. Colo. Pulp & Paper Co. 299 P. 19 (Colo. 1931); Hough v. Lucas, 230 P. 789 (Colo. 1924).

Connecticut

Type of Instrument

Connecticut uses the mortgage.

Foreclosure Method/Time

Foreclosure in Connecticut is by judicial foreclosure, which occurs typically by strict foreclosure but can occur by sale where so ordered by the court. Connecticut does not permit nonjudicial foreclosure.

FHFA estimated foreclosure timeline to obtain marketable title: 690 days

General/Procedural

The appointment of a receiver is not regulated by statute; judicial discretion is established in the Connecticut Practice Book. The plaintiff is not entitled to a receiver as a matter of right and usually has to show that there is a great likelihood of a deficiency as well as threatened waste being committed at the property. Trigild Deskbook at 83.

Appointment of a receiver requires an application made to the judge before whom the foreclosure action is pending. With the exception of rent receivers, all appointment not made after notice to interested parties are temporary appointments. Conn. Super. Ct. R. § 21-3(a).

Before undertaking any actions, the receiver must post a bond “for such an amount as such court or judge may order and approve, payable to the state and conditioned for the faithful performance of their official duties.” Conn. Gen. Stat. Ann. § 52-506; Conn. Sup. Ct. R. § 21-4. In the case of a rent receiver, no bond is necessary if the receiver is a bank or trust company. Conn. Sup. Ct. R. § 21-21. A rent receiver shall provide quarterly reports to the court and reports at such other times as the court may require. Conn. Sup. Ct. R. § 21-24.

Ex Parte Appointments

If the exigencies of the situation so require, the court may appoint a receiver on an ex parte basis. With respect to receivers other than rent receivers, notice of not less than six days of hearing for confirmation of the appointment must be given by mail to all interested parties. Conn. Super. Ct. R. § 21-1. Upon the hearing, the court may confirm the appointed temporary receiver or appoint a new receiver. The appointment of a temporary receiver continues until a permanent receiver is appointed. Conn. Super. Ct. R. § 21-3.

Separate rules govern the appointment of rent receivers. Application for a rent receiver must be made in or ancillary to a civil action, either to the court before which such action is pending or, if the court is not in session, to a judge in chambers. Notice of the hearing should be given when practical, but such appointment may be made without notice if sufficient cause appears. Conn. Super. Ct. R. § 21-20.

Power of Sale

In a proper case, the court can order that the receiver may sell the property free and clear of any encumbrances, relegating the lienholders to proceeds of sale for payment. See, e.g., *Melrose v. Industrial Associates*, 72 A.2d 469 (1950). A sale by receiver under order of court is a judicial sale and becomes effective only when confirmed. *Id.*

Delaware

Type of Instrument

Delaware uses the mortgage.

Foreclosure Method/Timetable

Delaware permits only judicial foreclosure which takes approximately six if uncontested, with an additional month for judicial confirmation. There is no post-sale right of statutory redemption, and the mortgagor can recover a deficiency judgment.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days.

Standards for Appointment

Delaware statutes provide for receiverships in the event of insolvency, 8 Del. Code §§ 291-303, or corporate dissolution, 8 Del. Code § 279. Although earlier judicial authority provided that a receiver pendente lite should be appointed “only when necessary to prevent manifest wrong and injury, and when plaintiff would otherwise be in danger of suffering irreparable loss, *Gray v. Council of Town of Newark*, 79 A. 739 (Del. Ch. Ct. 1911), more recent authority has permitted the appointment of a receiver pendente lite for mortgaged real property after default, where the mortgage documents explicitly so provide. See, e.g., *Dover Associates Joint Venture v. Ingram*, 768 A.2d 971 (Del. Ch. Ct. 2000) (receiver appointed to collect rents and manage and maintain the property after default and sale proceedings had been initiated, under mortgage providing for “immediate” appointment of a receiver “upon application” after default).

Ex parte application

The Trigild Manual indicates that Delaware’s receivership rules are silent on whether ex parte relief is available, but that a mortgagee may be able to obtain expedited hearing of an application to have a receiver pendente lite appointed.

Power of sale

There is no authority regarding the ability of a receiver pendente lite to sell mortgaged property. An insolvency receiver has the statutory power to sell the property free and clear of liens “[w]henver the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien....” 8 Del. Code § 297.

District of Columbia

Type of Instrument

D.C. uses the deed of trust.

Foreclosure Method/Time

Judicial foreclosure in D.C. is rarely used. Nonjudicial foreclosure is permitted. Notice of commencement of foreclosure under power of sale is executed on form promulgated by the Mayor, and must be recorded and given to those entitled to notice at least 30 days prior to the sale. D.C. Code § 45-715. There is no statutory right of redemption following a nonjudicial foreclosure.

FHFA estimated foreclosure timeline to obtain marketable title: 300 days

General/Procedural

Receiverships in D.C. are governed by statutory and general equitable principles. Pursuant to the D.C. Code § 16-518, a receiver may be appointed to take possession of property which has been attached or is the subject of garnishment “when it seems expedient.” Such a receiver “shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions.” *Id.* Until a receiver has given a bond as required by the terms of his appointment, he cannot dispossess a party in possession.

The mortgagee may seek an appointment of a receiver after a default. Courts have equitable power to appoint a receiver for good cause.

Ex Parte Appointments

The mortgagee may obtain the appointment of a receiver ex parte, although most courts will do so only if “a genuine emergency exists” and there is a good reason for not providing notice. Ex parte orders are subject to swift review and reversal. See Trigild Deskbook at 99.

Power of Sale

There is no statutory authority for the receiver’s power of sale, but courts will consider applications to sell property on a case-by-case basis. See Trigild Deskbook at 100.

Florida

Type of Instrument

Florida uses the mortgage.

Foreclosure Method/Time

Foreclosure in Florida is judicial only. Following the foreclosure sale, the certificate of title/sale is delivered to the buyer after 10 days unless there are objections filed, in which case the certificate may not be delivered until the court resolves those objections. The mortgagor may redeem until the certificate is delivered. Fla. Stat. Ann. § 45.0315.

The FHFA's estimated foreclosure timeline to obtain marketable title: 660 days

General/Procedural

The creditor has no absolute right to the appointment of a receiver, no right to select the receiver in the event the court determines that a receiver should be appointed, and no right to determine the powers and duties of the receiver. The appointment, selection and the powers and duties of the receiver are within the sound discretion of the court. See Trigild Deskbook at 105-106.

Other than two statutory rules (one requiring receivers to conduct inventories, and another providing that corporations cannot be appointed as receivers), the appointments of receivers are creatures of common law.

Fla. R. Civ. Proc. 1.620 governs appointment of receivers, and incorporates by reference the provisions of Fla. R. Civ. Proc. 1.610, which governs temporary injunctions. Rule 1.610 would require the posting of bond "in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined."

Upon appointment, the receiver must file a complete inventory of the property coming under the receiver's control or possession within 20 days; thereafter, the receiver must provide an inventory and accounting every 3 months unless the court otherwise orders. Fla. R. Civ. Proc. 1.620(b).

Relationship with Rent Assignment Statute

Fla. Stat. Ann. § 697.07(4) provides as follows:

Upon application by the mortgagee or mortgagor, in a foreclosure action, and notwithstanding any asserted defenses or counterclaims of the mortgagor, a court of competent jurisdiction, pending final adjudication of any action, may require the mortgagor to deposit the collected rents into the registry of the court, or in such other depository as the court may designate. However, the court may authorize the use of the collected rents, before deposit into the registry of the court or other depository, to:

- (a) Pay the reasonable expenses solely to protect, preserve, and operate the real property, including, without limitation, real estate taxes and insurance;
 - (b) Escrow sums required by the mortgagee or separate assignment of rents instrument;
- and

(c) Make payments to the mortgagee.

The court shall require the mortgagor to account to the court and the mortgagee for the receipt and use of the collected rents and may also impose other conditions on the mortgagor's use of the collected rents.

Standards for Appointment

The primary standard for appointment of a receiver is whether the appointment will prevent the subject property from being wasted or subjected to a serious risk of loss. The court has great discretion, but the case law generally holds that the mortgagee must show that the secured property is being wasted or subjected to a serious risk of loss, or that rents or revenues from the property are being diverted and the value of the property is less than the mortgage debt. According to the Trigild Manual, the mere fact that the mortgage contains a clause giving the creditor an absolute, unfettered right to appointment after default carries little weight in Florida courts. Representative case authority:

DeSilva v. First Community Bank of Am., 42 So.3d 285 (Fla. Ct. App. 2010) (assignment of rents provision in mortgage did not warrant ex parte appointment of receiver in connection with foreclosure proceedings, where moving bank did not present a verified allegation or any evidence that rents were being collected on the mortgaged property and being dissipated by the mortgagor)

Carr v. Marion Mortg. Co., 128 So. 12 (Fla. 1930) (under mortgage pledging rents, mortgagee is entitled to receiver pending appeal of foreclosure judgment where sale stands confirmed for less than half of mortgage debt)

Ex Parte Appointment

Under Fla. R. Civ. Proc. 1.620, which governs appointment of receivers, the provisions of Fla. R. Civ. Proc. 1.610 (which governs temporary injunctions) apply in appointment of receivers. Under Rule 1.610, a temporary injunction without notice to the other party is available only if “(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.” Fla. R. Civ. Proc. 1.610(a)(1).

Most judges refuse ex parte appointment unless a genuine emergency exists and there is a good reason for not providing the other parties to the suit with reasonable notice. The Trigild Manual indicates that ex parte appointments are subject to swift review and reversal, and may also occasion the court to order a larger bond than would be required with an appointment with notice. If the mortgagor moves to dissolve the order appointing the receiver, the court is to hold a hearing on the motion with 5 days. Fla. R. Civ. Proc. 1.620, 1.610(d).

Power of Sale

A recent Florida decision calls into substantial doubt the ability of a receiver to sell the mortgaged property, even if authorized by the court, where the mortgage document itself does not expressly grant such a right to the receiver. In *Shubh Hotels Boca, LLC v. FDIC*, 46 So.3d 163 (2010), the trial court appointed a receiver for a Florida hotel in connection with a foreclosure of the mortgage lien. Because the hotel’s operation did not produce enough cash flow to pay property expenses, the mortgagor sought an order allowing the receiver to sell the property free and clear of liens. The trial court granted lender’s motion and authorized the receiver to market the property and to cease hotel operations. The receiver

obtained a willing buyer prepared to pay \$9 million to acquire the hotel. The mortgagor objected to the sale, arguing there was no legal authority for the receiver to sell the property. The trial court authorized the sale and the mortgagor appealed.

On appeal, the Florida District Court of Appeals reversed, noting that no Florida statute specifically authorizes a receiver to sell the mortgaged property before the mortgage is foreclosed by final judgment. The court held that absent such a statute, authority for a sale would have to come from the mortgage agreement itself. After reviewing the mortgage in question, the court held that the mortgage authorized the receiver to “protect and preserve” the mortgaged property, “operate” it preceding foreclosure, and “collect the Rents from the Mortgaged Property and apply the proceeds, over and above the cost of receivership, against the indebtedness.” The court held that this did not authorize the receiver to sell the property, but merely to protect and preserve it.

The court also rejected the notion that Florida common law accorded the receiver the power to sell as a matter of general principles applicable to receivership. The court held that “the mere appointment of a receiver does not itself confer any of the owner’s power or authority to sell such property,” and concluded that “the role of a receiver in a foreclosure action is only to preserve the property’s value.” Finally, the court noted that the mortgagor had a statutory right of redemption, and that “[r]ecognizing a general interim power of a receiver to sell mortgaged property in a foreclosure case would contravene these statutory rights.”

Georgia

Type of Instrument

Georgia uses the “deed to secure debt” or the mortgage

Foreclosure Method/Time

Georgia authorizes nonjudicial foreclosure, which is commonly used and very quick. Notice of the sale must be published for four weeks prior to the following Tuesday on which the sale will occur. There is no right of statutory redemption following the sale.

Before the mortgagee can bring an action for a deficiency judgment, it must file an action to confirm the sale. Following confirmation of the sale, the mortgagee can obtain a deficiency judgment in the amount by which the balance of the debt exceeded the fair market value of the land.

FHFA estimated foreclosure timeline to obtain marketable title: 270 days

General/Procedural

Ga. Code Ann. §§ 9-8-1 to 9-8-14 provide for the appointment of a receiver. A court may appoint a receiver where “property is in litigation and the rights of either or both parties cannot be fully protected,” Ga. Code Ann. § 9-8-1, or “whenever the danger of destruction and loss shall require such interference.” Ga. Code Ann. § 9-8-2. The power of appointing receivers “should be prudently and cautiously exercised and except in clear and urgent cases should not be resorted to.” Ga. Code Ann. § 9-8-4.

Large discretion is vested in the trial judge in appointing receivers. In addition, the court has discretion to require a receiver to post a bond in an amount fixed by the court and determined to be sufficient. The court shall also regulate the compensation paid to the receiver. Ga. Code Ann. § 9-8-10.

Ex Parte Appointments

Under extraordinary circumstances, the court may appoint a receiver before and without notice to the borrower having secured creditor if there is a showing that the collateral is in jeopardy. See Trigild Deskbook at 118.

Power of Sale

The receiver can sell property free and clear of liens if authorized by a court order. Unless otherwise provided in the order, “liens upon the property held by any parties to the record, shall be dissolved by the receiver’s sale and transferred to the funds arising from the sale of the property.” Ga. Code Ann. § 9-8-6.

Hawaii

Type of Instrument

Hawaii typically uses the mortgage.

Foreclosure Method/Time

Hawaii authorizes nonjudicial foreclosure under Haw. Rev. Stat. § 667-5 et seq. Notice of intention to foreclose must be posted on the property and given to those entitled to notice at least 21 days prior to the sale. Notice of the sale must be published for 3 consecutive weeks, with the last at 14 days prior to the sale. After a nonjudicial foreclosure sale, the affidavit of sale must be recorded in the public land records within 30 days. Following a nonjudicial foreclosure sale, the mortgagor has no right of statutory redemption and the mortgagee has no right to obtain a deficiency judgment.

Traditionally, foreclosure in Hawaii tended to be by judicial process, largely because of reluctance by title insurers to issue policies on property acquired in nonjudicial foreclosure, based upon concerns that Hawaii's process may have been constitutionally suspect. See Foreclosure Law & Related Remedies: A State-by-State Digest 138-139 (ABA). As this concern has somewhat eased, nonjudicial foreclosure has become somewhat more common.

FHFA estimated foreclosure timeline to obtain marketable title: 590 days

General/Procedural

There are no specific statutory provisions in the State of Hawaii concerning the appointment of receivers in foreclosure actions. Whether or not the mortgage documents contain an authorization for the appointment of a receiver, the court in its discretion may appoint one on a proper showing that such an appointment would be necessary to preserve and maintain the property for the protection of the rights of the secured creditors. See Trigild Deskbook at 123-124.

Ex Parte Appointment

If the mortgage documents provide for the appointment of a receiver on an ex parte basis and there is sufficient urgency to justify such an appointment, the court in its discretion may appoint a receiver without notice to the defendant mortgagor. However, such circumstances are rare. See Trigild Deskbook at 124.

Power of Sale

In *Wohlschlegel v. Uhlmann-Kihei, Inc.*, 662 P.2d 505 (Haw. Ct. App. 1983), the court upheld the power of a receiver to sell property pursuant to an order of the appointing court authorizing the receiver to sell the property.

Idaho

Type of Instrument

Idaho uses the deed of trust.

Foreclosure Method/Time

Idaho authorizes both judicial foreclosure, Idaho Code § 6-101 et seq., and nonjudicial foreclosure, Idaho Code § 45-1502. A mortgage must be foreclosed by judicial procedure. Following judicial foreclosure, the mortgagor has a statutory right of redemption that is six months in length (one year for tracts exceeding 20 acres in size).

For nonjudicial foreclosure, notice of the sale must be provided at least 120 days prior to sale. There is no right of statutory redemption following a nonjudicial foreclosure sale.

FHFA estimated foreclosure timeline to obtain marketable title: 440 days.

General/Procedural

Idaho Code § 8-603 provides that “no party, or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties filed with the clerk.”

Idaho Code § 8-604 requires that the receiver must post a bond in an amount determined by the court before undertaking its duties.

Idaho Code § 8-603 also provides that if a receiver “be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court” to protect against the risk that the receiver is improperly appointed.

Standards for Appointment

Idaho Code § 8-601(2) provides that a court may appoint a receiver in “an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.” Likewise, Idaho Code § 8-601(6) provides that a court may appoint a receiver “in all other cases where receivers have heretofore been appointed by the usages of courts of equity.” Finally, Idaho Code § 8-601A(2) provides that the mortgagee may obtain a receiver if it can establish

that personal property subject to the deed of trust or mortgage, or to related security documents, is in danger of being lost, removed, concealed, materially injured or destroyed, that real property subject to the deed of trust or mortgage is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

Representative cases include:

Kelly v. Steele, 72 P. 887 (1903) (held plaintiff had no ground for appointment of receiver, even though property was deteriorating in value and plaintiff was losing rents from property, where the property was

in the same condition it had been in for years, plaintiff did not charge that defendants were insolvent, or unable to respond in damages for the value of the rents)

Vaught v. District Court, 269 P. 595 (1928) (mortgagee, alleging breach of terms of mortgage, insufficiency of property, and right to rents, had prima facie right to appointment of receiver)

Beus v. Terrell, 269 P. 593 (1928) (receiver may be appointed in mortgage foreclosure action, where it appears conditions have not been performed and property is probably insufficient to satisfy debt)

Ex Parte Appointment

The process has an even higher burden than appointment of a receiver in normal circumstances. The waste or injury must be very significant and there must be moving evidence along the same lines, only available in the most compelling circumstances.

Power of Sale

Idaho Code § 8-605 provides that the receiver has the power to “bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.” *Cox v. Snow*, 273 P. 933 (Idaho 1929) holds that a determination of whether a sale of receivership property should be made is within the discretion of the court appointing the receiver.

Illinois

Type of Instrument

Illinois uses the mortgage.

Foreclosure Method/Timetable

Illinois permits only judicial foreclosure. The mortgagor can redeem the property until the later of six months after service of summons of the foreclosure action (seven months for residential property) or three months after the foreclosure judgment. The mortgagee can obtain a deficiency judgment following foreclosure. There is a “consent foreclosure” procedure that enables the mortgagee to obtain title free and clear of liens (in exchange for a waiver of any deficiency claim) if junior lienholders receive notice and do not object.

FHFA Estimate Timetable to Obtain Marketable Title: 540 days

General/Procedural

A receivership in Illinois is not governed by statute but rather by equity practice, as Illinois still has separate courts of law and equity (chancery). Receivership is a remedy to protect, preserve and administer property pending some other form of relief. Accordingly, courts in Illinois will not hear an action solely to appoint a receiver. Ordinarily, a party seeking appointment must have some right, claim or interest in the specific property for which receivership is sought.

Standards for Appointment

The state of Illinois law on the right of a mortgagee to obtain a receiver for mortgaged real estate can be found in *Bank of America, N.A. v. 108 N. State Retail, LLC*, 401 Ill.App.3d 158, 340 Ill.Dec. 323 (2010):

Prior to the enactment of the Foreclosure Law and consistent with judicial review of injunctive relief generally, Illinois statutory provisions relating to mortgage foreclosures granted a court discretion to award a mortgagee possession during the pendency of the foreclosure proceedings. However, the Foreclosure Law, enacted in 1987, employs mandatory language and drastically curtails a trial court's discretion in deciding motions to appoint a receiver. Section 15–1701(b)(2) of the Foreclosure Law provides that in mortgage foreclosure cases involving nonresidential real estate, a mortgagee is entitled to be placed in possession of the property prior to the entry of a judgment of foreclosure upon request, provided that the mortgagee shows (1) that the mortgage or other written instrument authorizes such possession and (2) that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause. However, if the mortgagor objects and demonstrates “good cause,” the court shall allow the mortgagor to remain in possession.

Ex Parte Appointment

The Trigild Manual indicates that ex parte appointment is appropriate only when there is real danger that the property will be wasted or removed from the jurisdiction, or in other exceptional cases. Trigild Manual, at 139.

Power of Sale

There does not appear to be any statutory or judicial authority in Illinois authorizing sales by a receiver.

Indiana

Type of Instrument

Indiana uses the mortgage.

Foreclosure Method/Timetable

Indiana permits only judicial foreclosure, which takes approximately six months to complete in an uncontested case. There is no post-sale right of statutory redemption. The mortgagee is entitled to pursue a deficiency judgment.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days

General/Procedural

Indiana's receivership statutes are found in Ind. Code §§ 32-30-5-1 through 32-30-5-22. The receiver may not be a party or a person with interest in the litigation. Ind. Code § 32-30-5-2. The receiver must post a bond in the amount determined by the court. Ind. Code § 32-30-5-3.

Standards for Appointment

The standards for appointment are set forth in Ind. Code § 32-30-5-1. The court may appoint a receiver "when it is shown that the property, fund or rent, and profits in controversy are in danger of being lost, removed, or materially injured." Ind. Code § 32-30-5-1(3). However, upon the motion of a foreclosing mortgagee, the court must appoint a receiver if the property is not occupied by the owner as the owner's principal residence and:

(A) it appears that the property is in danger of being lost, removed, or materially injured;

(B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.

Ind. Code § 32-30-5-1(4). The court may also appoint a receiver "where, in the discretion of the court, it may be necessary to secure ample justice to the parties." Ind. Code § 32-30-5-1(7).

Ex Parte Appointment

Notice to the defendant is required prior to appointment, "except upon sufficient cause shown by affidavit." Ind. Code § 32-30-5-9. Ex parte appointment is not customary.

Power of Sale

The receiver has the powers set forth in Ind. Code § 32-30-5-7 to (1) bring and defend actions; (2) take and keep possession of the property; (3) receive rents; (4) collect debts; and (5) sell property”

Iowa

Type of Instrument

Iowa uses the mortgage.

Foreclosure Method/Timetable

Iowa requires most mortgages to be foreclosed via judicial process. There is a nonjudicial “consent” foreclosure process under which the mortgagee can acquire title free and clear of junior liens unless the mortgagor files a rejection, in which case judicial foreclosure is required. There is no right to a deficiency judgment and no right of redemption following a consent foreclosure.

The time period for a nonjudicial foreclosure, and the applicable redemption period, varies depending upon the type of property and whether the mortgagee waives its right to a deficiency.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days

General/Procedural

A receivership is ancillary to the main action in Iowa and therefore must be combined with another cause of action involving the property that the receiver is to take possession. The receiver must post a bond in the amount set by the court before commencing its duties. Iowa Code Ann. § 680.3.

Standards for Appointment

The party seeking the appointment must show (a) a probable right to, or interest in, the property that is the subject of the controversy; (b) that the property, or its rents or profits, is in danger of being lost or materially injured or impaired; (c) that the appointment will promote the interests of one or more parties to the action; and (d) that the appointment will not unduly infringe upon the rights of any of the parties. Iowa Code Ann. § 680.1.

Representative cases include:

Wellman Savings Bank v. Roth, 432 N.W.2d 697 (Iowa Ct. App. 1988) (appointment of receiver to collect rents and profits prior to execution sale in mortgage foreclosure action was proper where terms of mortgage provided for appointment of receiver upon commencement of foreclosure action, property was insufficient to satisfy mortgage debt and there was danger of property being materially injured due to water damage and foundation problems, delinquent property taxes and impending cancellation of property insurance)

Ex Parte Appointment

The court may exercise discretion to appoint a receiver without notice in an emergency or unusual circumstance. Trigild Manual, at 154.

Power of Sale

The Iowa statute does not specifically provide authority for the receiver to sell property, but does provide that the receiver may “do such acts in respect to the property committed to the receiver as may be authorized by law or ordered by the court.”

Kansas

Type of Instrument

Kansas uses the mortgage.

Foreclosure Method/Timetable

Kansas permits only judicial foreclosure, which may be completed in 120 days in an uncontested proceeding. The mortgagor has a statutory right of redemption that is one year generally, but reduced to 3 months if less than one-third of the original indebtedness has been repaid. In addition, the terms of a commercial mortgage loan document may waive any right of statutory redemption and such a waiver is enforceable. Kan. Stat. Ann. § 60-2414(a). Junior lienholders have a three-month statutory redemption period post sale. The mortgagee may obtain a deficiency judgment.

FHFA Estimated Timetable to Obtain Marketable Title: 420 days.

General/Procedural

Before commencing its activities, the receiver must post a bond in the amount required by the court. Kan. Stat. Ann. § 60-1302. In addition, the court in its discretion may also require the applicant to post a bond. Kan. Stat. Ann. § 60-1304.

Standards for Appointment

A receiver shall not be appointed unless (a) the petition or application for appointment specifies the general character and probable value of the property or business (and, if real estate, estimated income generated) and (b) notice and an opportunity to be heard (except as to ex parte appointments). A lender can appoint a receiver absent appointment provisions in the loan documents through the Kansas statutes if it is in the best interest of the asset. Kan. Stat. Ann. § 60-1304.

Representative cases:

Browning v. Blair, 169 Kan. 139, 218 P.2d 233 (1950) (power to appoint a receiver is limited almost exclusively to cases where it is necessary in order to prevent fraud, to save subject of litigation from material injury, or to rescue it from threatened destruction; it is not properly exercised in any case where there is no fraud or imminent danger of property sought to be reached being lost, injured, diminished in value, destroyed, wasted or removed from the jurisdiction)

Hutton v. Rainbow Tower Associates, 226 Kan. 410, 601 P.2d 665 (1979) (evidence that mortgage note was in substantial default, that taxes were delinquent and no tax payments were being made, that individual partners in mortgagor limited partnership had no personal liability and could not be held for any deficiency, was sufficient to support trial court's finding that immediate and irreparable injury was likely to result to mortgagee unless receiver was appointed)

Ex Parte Appointment

Kan. Stat. Ann. § 60-1304 allows ex parte appointment if the judge “make[s] a finding that immediate and irreparable injury is likely to result, and shall set forth in the order the probable nature of such immediate and irreparable injury.” *In re Stanley Station Associates, L.P.*, 1992, 139 B.R. 990 (Bankr. D. Kan. 1992).

Because most loan documents provide for the appointment of an ex parte receiver upon default, courts will put some weight to the borrower's consent.

Power of Sale

The Kansas statutes do not specifically provide for the sale of property by a receiver. The ability of a receiver to sell property is still an open issue. Trigild indicates that it has included the power to sell in the receivership order, but has not actually had a Kansas receiver sell mortgaged property.

Kentucky

Type of Instrument

Kentucky uses the mortgage.

Foreclosure Method/Timetable

Kentucky permits only judicial foreclosure, which takes a minimum of four to six months in an uncontested proceeding. There is a one-year post-sale period of statutory redemption for the mortgagor. Ky. Rev. Stat. § 426.530. Junior lienholders do not have redemption rights. *Kirklevington Assocs., Ltd. v. Kirklevington North Assocs., Ltd.*, 848 S.W.2d 453 (Ky. Ct. App. 1993). Foreclosure cases are commonly referred to the commissioner.

FHFA Estimated Timetable to Obtain Marketable Title: 450 days.

Standards for Appointment

Ky. Rev. Stat. § 425.600(1) provides that the court may appoint a receiver upon application of a party who establishes that “he has, or probably has, a right to, a lien upon, or an interest in, any property or fund, the right to which is involved in the action, and that the property or fund is in danger of being lost, removed or materially injured.” The court may appoint a receiver, or order the master commissioner to take charge of the property or fund during the pendency of the action. Thus, the plaintiff’s right to request the appointment of a receiver is based in each of two sources: the equitable right provided in the statute, and by virtue of a provision to that effect in the loan documents. *G.B. Brasfield & Son v. Northwestern Mut. Life Ins. Co.*, 233 Ky. 94, 25 S.W.2d 72 (Ky. Ct. App. 1930).

Ex Parte Appointment

The Kentucky statute does not explicitly authorize ex parte appointment, but the Trigild Manual indicates that ex parte appointment is available when the lender is contractually entitled to appointment of a receiver without notice, or even without the contractual right where there is threat of irreparable injury to the property or fund at issue. Trigild Manual, at 168.

Power of Sale

In certain circumstances, responsibility for the foreclosure sale may be delegated to a master commissioner and thus may also be delegated to a receiver.

Maine

Type of Instrument

Maine uses the mortgage.

Foreclosure Method/Timetable

Nonjudicial foreclosure is permitted only for commercial mortgage foreclosures (business, commercial, or agricultural purpose); an individual owner cannot grant a power of sale to the mortgagee. Notice of sale must be recorded and published for 21 days prior to sale and sent to those entitled to notice least 21 days prior to sale. Mortgagee must also give notice at least 21 days prior to sale of its intention to pursue a deficiency judgment. There is no statutory redemption following nonjudicial foreclosure.

Judicial foreclosure is required for residential property. A judicial foreclosure takes approximately 8 months if uncontested, and is subject to a 90-day post-sale right of statutory redemption.

FHFA Estimated Timetable to Obtain Marketable Title: 570 days

General/Procedural

A number of Maine statutes provide for the appointment of a receiver in conjunction with dissolution proceedings. 13-B Me. Rev. Stat. § 1106(2) (nonprofit corporation); 13-C Me. Rev. Stat. § 1432 (corporation); 31 Me. Rev. Stat. § 1383 (limited partnership).

Standards for Appointment

There is no question in Maine that the courts will enforce a clause entitling a commercial mortgagee to the appointment of a receiver following default. *See, e.g.*, Fleet Bank of Maine v. Zimelman, 575 A.2d 731 (Me. 1990) (unambiguous language of mortgage entitled mortgagee to appointment of receiver to collect rental income from property subject to foreclosure action, regardless of underlying cause of default by mortgagor, where there was no dispute that mortgagor did not make timely and sufficient payments as required by note and mortgagors made no claim that mortgage contract was anything other than commercial loan agreement negotiated at arms-length between knowledgeable business persons)

Ex Parte Appointments

The Trigild Manual indicates that ex parte appointments are not available in Maine. Trigild Manual, at 186.

Power of Sale

Liquidating receivers appointed in dissolution cases have the authority, subject to court order, to sell all or any part of the assets of the dissolving entity, either at a public or private sale. There is no express statutory authority for receiver sales to be free and clear of liens. Trigild Manual, at 183, 186-187.

Maryland

Type of Instrument

Maryland uses the deed of trust.

Foreclosure Method/Timetable

Most foreclosures in Maryland occur via nonjudicial foreclosure and take approximately 90 days (longer for residential foreclosures thanks to heightened notice requirements). Notice must be given to those entitled to notice no less than 10 days and no more than 30 days prior to sale. The sale must be ratified and confirmed by the court before the lender may pursue a deficiency. There is no post-sale right of statutory redemption.

General/Procedural

Appointment of a receiver in Maryland is governed by Title 13 of the Maryland Rules of Procedure, Rules 13-101 to 13-707. The receiver must post a bond in the amount specified by the court before commencing its duties. Md. R. Proc. 13-107.

Standards for Appointment

The power of a court of equity to appoint a receiver is a discretionary one, and a receiver should not be appointed absent a showing of fraud, spoliation, or imminent danger of the loss of the property unless immediate possession is taken. *Southern Maryland Agriculture Ass'n v. Magruder*, 81 A.2d 592 (Md. 1951).

Ex Parte Appointment

Ex parte appointment is available, but most judges refuse to grant ex parte relief unless a genuine emergency exists and there is good reason for not providing the other parties to the suit with reasonable notice. Trigild Manual, at 196.

Power of Sale

There is no Maryland statutory or rule-based authority, nor any judicial precedent, authorizing the receiver to sell the subject property. The Trigild Manual indicates that courts will consider applications to sell property on a case-by-case basis.

Massachusetts

Type of Instrument

Massachusetts uses the mortgage.

Foreclosure Method/Timetable

Most foreclosures in Massachusetts occur via nonjudicial foreclosure as long as the mortgage contains the necessary power of sale. However, a prerequisite to foreclosure against an individual in Massachusetts is that the lender must get a judgment from the Land Court or Superior Court declaring that the debtor is not covered by the Service Members Civil Relief Act. The nonjudicial sale process itself takes approximately 75 days and requires 14 days prior notice to those entitled to notice as well as publication for three weeks. To preserve a deficiency claim, Mass. Gen. Laws Ann. ch. 244 § 17B requires the mortgagee to give notice of its intent to reserve a deficiency claim at least 21 days prior to sale, as well as an affidavit attesting to compliance with the statutory requirements no more than 30 days following the sale.

FHFA Estimated Timetable to Obtain Marketable Title: 350 days

General/Procedural

Massachusetts has no specific statutes governing the appointment of a receiver for mortgaged property, so appointment is governed by the Superior Court's general equitable power and Mass. R. Civ. Proc. 66. The receiver must file an inventory of the property within 30 days following his appointment unless so relieved of the obligation by the court. Mass. R. Civ. Proc. 66(b), (f).

Standards for Appointment

The court exercises broad discretion as whether to appoint a receiver or not. Depending on the judge, a default and a concomitant contractual right to the appointment of receiver may not be sufficient to support appointment, without other extenuating circumstances.

Representative cases:

Charlette v. Charlette Bros. Foundry, Inc., 793 N.E.2d 1268 (Mass. Ct. App. 2003):

The appointment of a receiver is incidental to other relief requested by a plaintiff, because such an appointment seeks to preserve property until the court can adjudge the parties' rights. Because receivership seriously interferes with a defendant's property interests, a judge should appoint a receiver only if he sees no other way to protect the plaintiff and other creditors.

Ex Parte Appointments

Ex parte appointment of a receiver is generally unavailable.

Power of Sale

The Trigild Manual indicates that receivers in Massachusetts are not considered to have the power to sell property. Trigild Manual, at 203.

Michigan

Type of Instrument

Michigan uses the mortgage.

Foreclosure Method/Timetable

Michigan permits nonjudicial foreclosure (or “foreclosure by advertisement”), which takes approximately 60 days to complete and requires only a posting of the notice of sale on the property and newspaper advertising for four weeks prior to sale. There is a post-sale right of statutory redemption following nonjudicial foreclosure that is six months in duration for most commercial mortgages (up to 12 months for residential property). The mortgagee may obtain a deficiency judgment following the foreclosure.

FHFA Estimated Timetable to Obtain Marketable Title: 450 days

General/Procedural

Mich. Comp. Laws Ann. § 600.2926 provides the authority for a circuit court judge to appoint a receiver in pending cases. The receiver must post bond as required by the court, and the court’s appointment order “shall define the receiver’s power and duties where they are not otherwise spelled out by law.” Receivers are not available as an independent remedy, but only as ancillary relief. The motion to appoint a receiver is ancillary to judicial foreclosure action.

Standards for Appointment

The Trigild Appointment notes that the court may appoint a receiver (1) to enforce assignment of rents; (2) to prevent waste; (3) due to non-payment of taxes and insurance, if so provided in the mortgage; (4) in construction lien foreclosures. Trigild Manual, at 208-209.

Courts have appointed receivers in situations in which the defendant was in possession of land and collecting rents without remitting them toward the payment of the debt. See, e.g., *W.R. Reynolds & Co. v. Gordon*, 207 N.W. 811 (Mich. 1926) (vendor entitled to appointment of receiver in suit to foreclose contract for sale of apartment house, where vendee’s interest had been transferred to various persons who without investment were intent on collecting rents and then abandoning premises); *Geer v. Finn*, 163 N.W. 20 (Mich. 1917) (in suit for accounting on sale of lands in which both parties were interested, where defendant was collecting installments on outstanding contracts and appropriating them, appointment of receiver pendente lite was not abuse of discretion).

Ex Parte Appointment

Typically unavailable, but a receiver “may be appointed without notice where the defendant is beyond the jurisdiction of the court or cannot be found or where some emergency is shown rendering the appointment, before the giving of notice, necessary to prevent imminent and irreparable injury, waste, destruction, or loss, or when notice itself will jeopardize the delivery of the property over which the receivership is to be extended.” *Tuller v. Webster*, 243 Mich. 239 (1928).

Power of Sale

In Michigan, a receiver is authorized to sell real property post judgment with a special order of the Court pursuant to Mich. Ct. R. 2.622 and Mich. Comp. Laws Ann. § 600.6104. Trigild Manual, at 209. Once

the receiver obtains a purchase agreement for the property, the receiver and plaintiff file a motion seeking court approval of the sale. Sales of real property by a receiver can also be effectuated pre-judgment if the order appointing the receiver authorizes the receiver to sell the real property.

In a recent unpublished decision, *CSB Bank v. Christy*, 2012 WL 5064618 (Mich. Ct. App. Oct. 18, 2012), the Michigan Court of Appeals affirmed a trial court order approving a sale of commercial real estate by a receiver, free and clear of the defendant owner's equity of redemption, where the sale occurred in an arms-length transaction and not through foreclosure.

Minnesota

Type of Instrument

Minnesota uses the mortgage.

Foreclosure Method/Timetable

Most mortgages in Minnesota are foreclosed nonjudicially (by “advertisement”). Foreclosure by advertisement takes eight to ten weeks (two weeks to draft/arrange publication of the notice of sale and six to eight weeks to publish the notice and conduct the sale). The mortgagor has a post-sale right of statutory redemption that is ordinarily six months, but is increased to 12 months if the property exceeded 40 acres in size (10 acres if the property was in agricultural use at time mortgage was granted), or is reduced to five weeks if the property has been abandoned.

Minnesota law prohibits a deficiency judgment following nonjudicial foreclosure unless the redemption period is 12 months, but a mortgagee can recover a deficiency following judicial foreclosure.

FHFA Estimated Timetable to Obtain Marketable Title: 450 days

General/Procedural

Minnesota has a comprehensive receivership statute that is found in Minn. Stat. Ann. § 576.21 *et seq.* The court can also appoint a receiver under the terms of an assignment of rents as contemplated in Minn. Stat. § 559.17. It distinguishes between limited receivership and general receivership. The limited receiver holds property for safekeeping and a limited receivership does not have broad notice, claims, or distribution provisions.

A receiver may be appointed under chapter 576 whether or not the motion for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment. Minn. Stat. Ann. § 576.25, subd. 1.

The court must make written conclusions that the receiver is qualified and is independent as to the parties and the underlying dispute. Minn. Stat. Ann. § 576.26, subd. 1. The receiver must post bond in an amount required by the court prior to commencing its duties. Minn. Stat. Ann. § 576.27.

Standards for Appointment

While appointment of a receiver is typically in the discretion of the court, Minnesota statutes provide a number of constraints on the court’s discretion and require the appointment of a receiver in a number of situations.

Minn. Stat. Ann. § 576.26, subd. 5(a) provides that a limited receiver “shall be appointed” in a mortgage foreclosure if the mortgage secures an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and is not a lien upon property that was entirely homesteaded, residential real estate containing four or fewer dwelling units where at least one unit is homesteaded; or agricultural property. Minn. Stat. Ann. § 576.26, subd. 5(b) also provides that the court shall appoint a receiver upon a showing that the mortgagor has breached a covenant contained in the mortgage regarding the application of tenant security deposits, payment of taxes or insurance (or escrow therefore), or regarding the habitability of the premises.

Minn. Stat. Ann. § 559.17, subd. 2 provides that if the terms of an assignment of rents provides that a receiver is to be appointed upon the occurrence of some specified event, and a showing is made that the event has occurred, the court shall, without regard to waste, adequacy of the security, or solvency of the mortgagor, appoint a receiver.

Ex parte appointment

Minn. Stat. Ann. § 576.25, subd. 7 provides that: “The court may appoint a receiver ex parte or on shortened notice on a temporary basis if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burdens of proof shall be as would be applicable to a motion made on notice that is not expedited.”

Power of Sale

Minn. Stat. Ann. § 576.46 authorizes a general receiver to sell receivership property free and clear of liens.

Mississippi

Type of Instrument

Mississippi uses the deed of trust.

Foreclosure Method/Timetable

Foreclosure in Mississippi occurs primarily through nonjudicial foreclosure. Miss. Code § 89-1-55 *et seq.* Sale occurs following publication of a notice of sale for three successive weeks prior to the sale. There is no right of statutory redemption following the sale. The mortgagor can be held liable for a deficiency judgment, but only where every aspect of the sale was commercially reasonable and the value of the property was less than the indebtedness. *Wansley v. First Nat'l Bank*, 566 So.2d 1218 (Miss. 1990).

FHFA estimated foreclosure timeline to obtain marketable title: 270 days.

General/Procedural

Miss. Code Ann. §§ 11-5-151 through 11-5-167 set forth the general receivership provisions under Mississippi law. The receiver shall post a bond in the amount approved by the court or chancellor, which bond shall be filed with the clerk of court. Miss. Code Ann. § 11-5-159. A receivership is an ancillary remedy that supports some other claim for substantive relief; as such, it is usually requested initially as one count of a multi-count complaint. Trigild Manual, at 221.

A defendant can avoid the appointment of a receiver by posting a bond, subject to the discretion of the chancellor. Miss. Code Ann. § 11-5-157.

Standards for Appointment

Mississippi statutes provide little guidance as to the circumstances justifying a receivership, the powers that may be granted to a receiver, or the structure of the receivership. Because there is “little Mississippi case law interpreting the receivership statutes,” courts will look to the general law of receivership for guidance. *Spectrum Oil, LLC v. West*, 34 So.3d 1213 (Miss. Ct. App. 2010). There is no absolute right to the appointment of a receiver, but rather the appointment is subject to the chancellor’s discretion.

The party seeking to have a receiver appointed must demonstrate a clear legal or equitable right to that relief. Examples of such a right is a lien upon property coupled with danger of neglect, waste, misconduct or insolvency or the defendant. Additionally, the party seeking that relief must show a reasonable probability of success on the merits. Trigild Manual, at 221.

Ex Parte Appointment

A receiver may be appointed without notice to the opposing party, but only for good cause shown. Miss. Code Ann. § 11-5-153 (“A receiver shall not be appointed without the party praying the appointment having given the opposite party at least five days’ notice of the time and place of making the application, unless it shall appear that an immediate appointment is necessary, or good cause be shown for not giving notice.”). A party seeking appointment of a receiver without notice must post bond in an amount fixed by the court to pay “all damages that may be sustained by the appointment of such receiver in case the appointment be revoked.” Miss. Code Ann. § 11-5-155.

Power of Sale

The Mississippi statutes provide no specific guidance regarding sales of receivership property. The Trigild Manual indicates that “sales of property and the procedures for same must be spelled out in the order.” Trigild Manual, at 223.

Missouri

Type of Instrument

Missouri uses the deed of trust.

Foreclosure Method/Timetable

Nearly all foreclosures in Missouri occur by nonjudicial foreclosure. Sale can occur within 30-45 days following default. The mortgagee must provide notice to the mortgagor and others identified by the statute at least 20 days prior to the sale. Missouri does have a one-year post-sale statutory redemption period that arises if the foreclosing mortgagee purchases at the sale, but it is rarely used as it requires the mortgagor to give notice of intention to exercise the redemption right prior to the sale and to post a bond. The mortgagee may recover a deficiency judgment; the Missouri Supreme Court has recently rejected the invitation to adopt the Restatement of Mortgages and imply a “fair value” limitation on the mortgagee’s ability to recover a deficiency. *See First Bank v. Fischer & Frichtel*, 364 S.W.3d 216 (Mo. 2012).

FHFA estimated foreclosure timeline to obtain marketable title: 270 days.

General/Procedural

Receiverships are not common in Missouri because nonjudicial foreclosure is available on a short time frame. The receiver must provide a bond, and has the same powers and is subject to all applicable provisions specified for a receiver appointed by virtue of the law providing for suits by attachment. Mo. Rev. Stat. Ann. § 515.250.

Standards for Appointment

The Missouri statute provides only that the court has the power to appoint a receiver whenever such appointment shall be deemed “necessary.” A receiver should be appointed only when the court is satisfied that the appointment will promote the interests of one or both parties; it will prevent manifest wrong, imminently impending; and, the injury resulting will not be greater than the injury sought to be averted. *Lynch v. Lynch*, 277 S.W.2d 692 (Mo. Ct. App. 1955). Older case law provides that a receiver may be appointed to take charge of property on a foreclosure proceeding in equity, where it is alleged that the mortgagor is insolvent and the property is insufficient to pay the debt. *Wolff v. Ward*, 16 S.W. 161 (Mo. 1891).

Other cases state that a receiver should not be appointed if a less drastic remedy can be invoked. Some cases interpreting the general statute have held that the courts have the power to appoint receivers to preserve property pending legal or equitable proceedings concerning the same, and the exercise of this power rests “within the sound discretion of the court.” Trigild Manual, at 231.

Ex Parte Appointment

The court has the authority to appoint a receiver ex parte under the proper circumstances. The court will need to be convinced that some affirmative harm would result by informing the borrower or its counsel in advance of the motion. A court will appoint a receiver ex parte when there is an emergency and to prevent irreparable injury. Trigild Manual, at 231.

Power of Sale

The Missouri statutes do not provide any guidance on the ability of the receiver to sell mortgaged real estate. The Missouri courts have held that a court of equity, having appointed a receiver to conserve the property of an insolvent corporation, can sell the property to prevent its deterioration and loss. *State ex rel. Connors v. Shelton*, 142 S.W. 417 (Mo. 1911).

Montana

Type of Instrument

Montana uses the deed of trust.

Foreclosure Method/Timetable

Foreclosures in Montana can occur via judicial or nonjudicial foreclosure. In addition, a special form of nonjudicial foreclosure is available under the Montana Small Tract Financing Act (MSTFA) for property not exceeding 40 acres. Mont. Code Ann. §§ 71-1-317 to 71-1-321. The timetable for conventional nonjudicial foreclosure is short (notice must be provided 30 days prior to sale). Mont. Code Ann. § 71-1-224. Under the MSTFA, notice must be provided at least 120 days prior to sale. Mont. Code Ann. § 71-1-313.

Regardless of the type of foreclosure, the mortgagor has a one-year statutory redemption period following the sale. Mont. Code Ann. § 25-13-802. If the mortgagor occupies the premises as a home, the mortgagor can retain possession during the redemption period. Mont. Code Ann. §§ 25-13-821, 71-1-229. No deficiency judgment is available following conventional nonjudicial foreclosure or foreclosure of residential property under the MSTFA. *First Nat'l Corp. v. Perrine*, 43 P.2d 1073 (Mont. 1935); *First State Bank of Forsyth v. Chunkapura*, 734 P.2d 1203 (Mont. 1987). Deficiency judgments are available following judicial foreclosure or following foreclosure of commercial property under the MSTFA. *Trustees of Wash.-Idaho-Mont.-Carpenters-Employers Retirement Trust Fund v. Galleria Partn.*, 780 P.2d 608 (Mont. 1989).

FHFA estimated foreclosure timeline to obtain marketable title: 360 days.

General/Procedural

Before assuming its duties as receiver, the receiver must take an oath to perform its duties and provide a bond in the amount approved by the court. Mont. Code Ann. § 27-20-301. No party, attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk. Mont. Code Ann. § 27-20-202. Receivership in Montana is ancillary to another pending action. Mont. Code Ann. § 27-20-102.

Standards for Appointment

A foreclosing mortgagee may obtain the appointment of a receiver “when it is shown that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not performed and the property is probably insufficient to discharge the mortgage debt.” Mont. Code Ann. § 27-10-102(4).

In foreclosure proceedings of a mortgage containing a stipulation pledging rents and profits, and where it is reasonably necessary to impound rents to secure enforcement of the debt, an application for receiver should ordinarily be granted, regardless of the mortgagor's solvency, unless the mortgagor can satisfy the court that the land is ample security for the debt. *Hastings v. Wise*, 297 P. 482 (Mont. 1931).

Ex Parte Appointment

Notice of an application for the appointment of a receiver in an action before judgment in the action must be given to the adverse party unless the party has failed to appear in the action and the time limited for the

party's appearance has expired or unless it appears to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of. Mont. Code Ann. § 27-20-201. If required by the court, the applicant must provide a bond to protect the defendant against damages sustained by the appointment if the appointment is later revoked. Mont. Code Ann. § 27-20-203.

Power of Sale

Mont. Code Ann. § 27-20-302 provides that “[t]he receiver has, under the control of the court, the power to ... (4) make transfers; and (5) generally do acts respecting the property that the court may authorize.” There does not appear to be any case authority interpreting the extent to which this provision authorizes a sale of mortgaged property free and clear of liens.

Nebraska

Type of Instrument

Nebraska uses the deed of trust.

Foreclosure Method/Timetable

Nebraska authorizes nonjudicial foreclosure, which commences with the recording of a notice of default with the register of deeds, prompting a 30-day period during which the borrower may cure by tender of the payments in arrears (60 days for farm property). If no cure occurs, the mortgagee must publish notice of sale for five consecutive weeks. There is no right of statutory redemption following foreclosure. The mortgagee can obtain a deficiency judgment following foreclosure, but must commence an action within three months following the sale.

FHFA Estimated Timetable to Obtain Marketable Title: 330 days

General/Procedural

A receivership is ancillary to the main action in Nebraska. Therefore, it must be combined with another cause of action, such as a mortgage foreclosure. Because a receivership is an equitable remedy, the action must be filed in a Nebraska District Court, as opposed to the Nebraska County Courts, which do not have equity jurisdiction. Neb. Stat. Ann. § 25-1081.

If the plaintiff seeks a receiver at the commencement of the case, the relief must be requested in the complaint. If the plaintiff seeks a receiver while the case is pending, the application must occur by motion setting for the facts and circumstances making appointment necessary or proper. Neb. Stat. Ann. § 25-1085. The receiver may not be a party, counsel, or in any manner interested in the suit. Neb. Stat. Ann. § 25-1086.

The receivership order shall require the plaintiff to post a bond sufficient to pay all damages which any other parties may sustain by reason of the appointment of a receiver, in case the court finally decides that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver. The amount of the bond shall not exceed double the value of the property in question, and shall be executed by one surety (where such surety is an incorporated and authorized surety company) or two (where such sureties are natural persons), and shall be filed in the office of the clerk of the district court. Neb. Stat. Ann. § 25-1084.

Grounds for Appointment

Nebraska state law provides for the appointment of a receiver, among other circumstances, in an action for the foreclosure of a mortgage or deed of trust and in connection with the exercise of the power of sale under a trust deed where the property subject to the trust deed is in danger of being lost, removed or materially injured or is probably insufficient to discharge the mortgage or trust deed. Neb. Stat. Ann. § 25-1081(2), (3). The court may also appoint a receiver in “all other cases when receivers have heretofore been appointed by the usages of courts of equity.” Neb. Stat. Ann. § 25-1081(8). Courts have held that the mortgagee’s application for appointment of a receiver in a foreclosure action may be granted on showing that mortgaged property is in danger of being lost, removed, or materially injured, or that probability exists that mortgaged property has insufficient value to discharge mortgage debt. *Federal Land Bank of Omaha v. Victor*, 440 N.W.2d 667 (Neb. 1989).

Ex Parte Appointment

The appointment of a receiver ex parte is prohibited under Nebraska law and any order appointing a receiver without notice is void. Neb. Stat. Ann. § 25-1089. However, the court may direct the county sheriff to take temporary possession of property pending the hearing on the application for appointment of a receiver if the five-day notice period prior to a hearing is “hazardous to the rights of any party.” Neb. Stat. Ann. § 25-1083.

Power of Sale

The Nebraska statutes do not address the ability of the receiver of mortgaged property to conduct a sale, and whether that sale would be free and clear of liens. Nebraska courts have held that a receiver in a mortgage foreclosure action is appointed for the purpose only of conserving the mortgaged property and applying the rents and profits of the property to the satisfaction of debt secured by the mortgage. *Federal Farm Mortg. Corp. v. Ganser*, 20 N.W.2d 689 (Neb. 1945).

Nevada

Type of Instrument

Nevada uses the deed of trust.

Method of Foreclosure/Timetable

Most foreclosures in Nevada occur through nonjudicial foreclosure, which commences with the recording of a notice of default and election to sell in the office of the county recorder and takes approximately four months. The mortgagor thereafter has 35 days in which to cure the default. After three months has elapsed since the recording of the notice of default, the trustee may record a notice of sale, which must be posted for 20 consecutive days and published once a week for three weeks. There is no right of statutory redemption following a nonjudicial foreclosure sale. The mortgagee must bring an action for a deficiency judgment within six months of the foreclosure sale.

Judicial foreclosure is available but rare. There is a one-year statutory right of redemption following a judicial foreclosure sale.

FHFA Estimated Timetable to Obtain Marketable Title: 360 days

General/Procedural

The Nevada statutes do not provide explicit provisions regarding the procedure for appointment of a receiver. The Trigild Manual suggests that the party seeking appointment must file a complaint and motion setting forth specific facts in support of the appointment, including the specific factors outlined in the state statutes. State law does not require the receiver to post a bond, but judges have the discretion to require one. Trigild Manual, at 252.

Standards for Appointment

In connection with a foreclosure, a receiver where it appears “where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.” Nev. Rev. Stat. § 32.010(2). The court may also appoint a receiver in cases where receivers have traditionally been appointed in equity. Nev. Rev. Stat. § 32.010(6).

Additionally, appointment of a receiver may be sought pursuant to the Uniform Assignment of Rents Act. Under Nev. Rev. Stat. § 107A.260, an assignee of rents is entitled to the appointment of a receiver if:

- (a) The assignor is in default and:
 - (1) The assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
 - (2) It appears likely that the real property may not be sufficient to satisfy the secured obligation;
 - (3) The assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
 - (4) A subordinate assignee of rents obtains the appointment of a receiver for the real property; or
- (b) Other circumstances exist that would justify the appointment of a receiver under law of this State other than this chapter.

A lender may also seek the appointment of a receiver where the property is affected by the presence of a hazardous substance. Nev. Rev. Stat. § 32.015.

Ex Parte Appointments

The Trigild Manual indicates that a receiver may be appointed on an ex parte basis “depending on the exigency of the situation.” Trigild Manual, at 252.

Power of Sale

While there is no express statutory authority for sales by receivers, the Trigild Manual indicates that sales by receivers appointed in connection with a non-judicial foreclosure or pursuant to the Uniform Assignment of Rents Act are common in Nevada, where the appointment order permits the receiver to market and sell the property, subject to further court and lender approval and notice to the borrower and other lienholders. Trigild Manual, at 253.

New Hampshire

Type of Instrument

New Hampshire customarily uses the mortgage.

Foreclosure Method/Timetable

New Hampshire permits nonjudicial foreclosure where the mortgage contains a power of sale, which may be completed in approximately 60 days. The process commences with the preparation and sending of a notice of sale at least 25 days prior to the sale. There is no post-sale right of statutory redemption. The mortgagee may obtain a deficiency judgment following the foreclosure sale.

FHFA Estimated Timetable to Obtain Marketable Title: 270 days

General/Procedural

The appointment of a receiver, including the appointment of a receiver for mortgaged property, is within the equitable powers of the Superior Court. N.H. Rev. Stat. Ann. § 498:1. If for a pending case, a party to the case seeking appointment of a receiver does so by filing a Motion for Appointment of a Receiver. If there is no pending case, any person who can establish a legal or equitable interest in the property may file a Petition for Appointment of a Receiver.

The issues at the hearing on the motion or petition to appointment a receiver will be: the need for a receiver and the possibility of accomplishing the desired purpose by an alternative remedy; the scope of the receiver's authority; the precise identity and location of the property to be taken and held; and the suitability of the person for the post. The decision to appoint or refuse to appoint a receiver is discretionary on the part of the court. Trigild Manual, at 259.

Ex Parte Appointment

The court may hear and grant the request for appointment of a receiver on an ex parte basis, but when it does, the court will use the procedures and guidelines established for temporary restraining orders in Superior Court Rule 161, which provides that:

Every temporary restraining order, which is granted without notice, shall be endorsed with the date and hour of issuance, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall expire by its terms within such time after issuance, not to exceed 10 days, as the Court fixes, unless, within the time so fixed, the order, for good cause shown, is extended for a like period, or unless the party, against whom the order is directed, consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the application for a preliminary injunction shall be set down for hearing at the earliest possible time, and in any event within 10 days, and, when the matter comes on for hearing, the party, who obtained the temporary restraining order, shall proceed with the application for a preliminary injunction, and if he or she does not do so, the Court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification, and, in that event, the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Power of Sale

New Hampshire statutes and case law do not provide any authority for receivership sales of mortgaged property.

New Jersey

Type of Instrument

New Jersey uses the mortgage.

Foreclosure Method/Timetable

New Jersey permits only judicial foreclosure, which can take 8-24 months depending upon county of venue and whether the foreclosure is contested. The Fair Foreclosure Act requires additional mortgagor protections in residential foreclosure cases. The mortgagor has a 10-day period to redeem following the foreclosure sale. The mortgagee must bring an action for a deficiency within three months following the date of the foreclosure sale.

FHFA Estimated Timetable to Obtain Marketable Title: 750 days

General/Procedural

The appointment of a rent receiver lies within the sound discretion of the Chancery Court. N.J. Stat. Ann. § 2A:17-66 also authorizes a court to appoint a receiver for property in aid of enforcement of a judgment. Under the statute, the court may, at any time and in its discretion, order the receiver to give bond for the faithful performance of his duties, in an amount and with such security as the court prescribes.

Standards for Appointment

A receiver will typically be appointed only upon a showing that there is a real danger of impairment of the lender's security and that the collateral is in a precarious or uncertain position.

The presence of a provision in the mortgage authorizing the immediate appointment of receiver upon the borrower's default is not dispositive of the issue; in fact, courts have held that such a provision cannot be enforceable in accordance with its terms. See *Barclays Bank, P.L.C. v. Davidson Ave. Assocs., Ltd.*, 274 N.J.Super. 519, 644 A.2d 685 (1994) (contractual provision for appointment of rent receiver upon mortgage default usurps judicial function and thereby contravenes public policy; rather, application for appointment of rent receiver is subject to careful review and exercise of sound discretion by chancery judge, notwithstanding express contractual provision for such appointment in loan documents).

In the *Barclays Bank* case, however, the court held that the appointment of a rent receiver was warranted when mortgagor failed to pay real estate taxes and insurance, thereby creating real danger of impairment of mortgagee's security. Courts will be less inclined to appoint a receiver if the borrower demonstrates that the security is more than adequate to meet the mortgage debt without sequestration of rents or that the land is worth more than the amount owed under the mortgage.

The determination of whether to appoint a receiver is factual and there is no single factor relied upon by the court in determining whether the lender's security is in jeopardy. Rather, the court will consider a number of factors, including: inadequacy of the property to satisfy the outstanding debt; inability of mortgagor to respond for deficiency; failure by mortgagor to pay real estate taxes and water rents; failure by mortgagor to keep property in good repair; failure by mortgagor to insure property; misappropriation of rents; decline in property value; and the presence of stipulations in the mortgage document consenting to the appointment of a rent receiver or the assignment of rents to the mortgagee upon default. Trigild Manual, at 268.

Ex Parte Appointment

Available only if it appears from the specific facts shown by affidavit or by the verified complaint that immediate and irreparable damage will result to the applicant before notice can be served and a hearing had thereon. Trigild Manual, at 269.

Power of Sale

N.J. Stat. Ann. § 2A:50-31 provides that:

When, in an action for the foreclosure or satisfaction of a mortgage covering real or personal property, or both, the property mortgaged is of such a character or so situated as to make it liable to deteriorate in value or to make its care or preservation difficult or expensive pending the determination of the action, the superior court may, before judgment, upon the application of any party to the action, order a sale of the mortgaged property to be made at public or private sale through a receiver, sheriff, or otherwise, as the court may direct. The proceeds of any such sale shall be brought into court, there to remain subject to the same liens and equities of the parties in interest as was the mortgaged property and to be disposed of as the court shall, by order or judgment, direct.

This statute is rarely used. Few published opinions have applied this statute, and only one opinion exists in which the court granted such relief. See *Mortgage Electronic Registration Systems, Inc. v. Rothman*, 2005 WL 280321 (N.J. Super. Ch. Div. 2005) (unpublished) (expansion of the debt via accruing interest and the accumulation or advancement of property taxes on real property whose value is substantially exceeded by the mortgage debt a sufficient basis for the court to permit the sale of the property).

New Mexico

Type of Instrument

New Mexico uses the deed of trust.

Foreclosure Method/Timetable

Most foreclosures in New Mexico occur by judicial foreclosure, which takes approximately 90-120 days if the foreclosure is uncontested. Sale cannot occur until four weeks after judgment. There is a post-sale right of statutory redemption that is 9-months in length, although the deed of trust can by agreement shorten the redemption period to one month. The mortgagee can obtain a deficiency judgment.

New Mexico has a nonjudicial foreclosure statute, but it is rarely used.

FHFA Estimated Timetable for Obtaining Marketable Title: 510 days

General/Procedural

New Mexico provides a receivership act that is moderate in scope. N.M. Rev. Stat. Ann. § 44-8-1 et seq. An applicant may apply to the district court for the appointment of a receiver by motion in an action already pending, or by a separate petition or complaint. N.M. Rev. Stat. Ann. § 44-8-5(A). The court may require the receiver to post a bond, in an amount established by the court, unless the mortgage, security agreement, contract or other written agreement dispenses with the posting of bond. N.M. Rev. Stat. Ann. § 44-8-6(D).

Standards for Appointment

N.M. Rev. Stat. Ann. § 44-8-4(A) provides that the court “shall appoint a receiver in an action by a mortgagee or secured party or in any other action based upon a contract or other written agreement, where such mortgage, security agreement, contract or other written agreement provides for the appointment of a receiver.” Section 44-8-4(B) gives the court the discretion to appoint a receiver “in actions where receivers have customarily been appointed by courts of law or equity” or where, “just cause exists and irreparable harm may result from failure to appoint a receiver.”

Ex Parte Appointment

Ex parte appointment is available with a very strong showing of an actual emergency. N.M. Rev. Stat. Ann. § 44-8-5(D).

Power of Sale

In New Mexico, receivers are to “collect and manage” and “operate, maintain and preserve the receivership estate.” The general concept is that the receiver will maintain, preserve and protect the assets pending final resolution of the foreclosure. As a result, receivers generally do not sell real property other than in the normal course of a business for which it is acting as receiver. Trigild Manual, at 274.

New York

Type of Instrument

New York uses the mortgage.

Foreclosure Method/Timetable

New York permits only judicial foreclosure, which takes 12 to 18 months to complete. The mortgagor has no right of post-sale statutory redemption. A report of sale must be prepared within 30 days after the sale. The sale must be confirmed before the mortgagee can recover a deficiency judgment, and a motion to this effect must be filed within 90 days following the sale.

FHFA Estimated Timetable to Obtain Marketable Title: 820 days

General/Procedural/Standards for Appointment

The appointment of a receiver in a New York foreclosure action is generally governed by N.Y. Real Prop. Act. & Proc. Laws § 1325(1) and N.Y. Real Prop. Law § 254(10). The latter recognizes the enforceability of a mortgage provision providing for the appointment of a receiver upon default without regard as to the adequacy of the mortgagee's security.

In the absence of a contractual right to a receiver under the mortgage, a plaintiff may resort to N.Y. Civ. Prac. Law & Rules § 6401, which provides for the appointment of a receiver upon motion of "a person having an apparent interest in property which is the subject of an action in the supreme or a county court ... where there is danger that the property will be removed from the state, or lost, materially injured or destroyed."

The appointment of a receiver is accomplished by the filing of a motion with the court following the commencement of the foreclosure action.

Ex Parte Appointment

Ex parte appointment of a receiver is permissible to the extent that the mortgage provides for ex parte relief.

Power of Sale

A receiver is not permitted to sell property under New York law. Trigild Manual, at 286.

North Carolina

Type of Instrument

North Carolina uses the deed of trust.

Foreclosure Method/Timetable

Most foreclosures in North Carolina are nonjudicial, which typically take 90-120 if uncontested and which begin with a pre-sale hearing before the clerk of superior court, at which the clerk authorizes the mortgagee to post and publish a notice of sale. After the sale, anyone has 10 days to post an “upset bid.” The clerk issues an order of possession when an upset bid is no longer possible. There is no statutory right of post-sale redemption. The mortgagee can recover a deficiency judgment unless prohibited by the loan documents or unless the mortgagee is a seller who holds a purchase money mortgage.

FHFA Estimated Timetable to Obtain Marketable Title: 300 days.

General/Procedural

A receiver may be appointed pursuant to N.C. Gen. Stat. § 1-502. The court must require the party seeking the receiver to post a bond payable to the adverse party in a form and amount approved by the judge. N.C. Gen. Stat. § 1-502.1. The receiver must also post a bond, with two sufficient sureties, prior to commencing its duties. N.C. Gen. Stat. § 1-504. Where the lender applies for a receiver upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, the court may refuse the appointment of a receiver if the defendant tenders to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff.

Standards for Appointment

A receiver may be appointed in North Carolina before judgment in order to protect the property pending litigation or post-judgment in order to carry the judgment into effect or dispose of designated property. N.C. Gen. Stat. § 1-502. A receiver may also be appointed pending a sale via power of sale pursuant to N.C. Gen. Stat. § 45-21.35.

The holder of the debt will file a civil action in the county where the property is located seeking the appointment of a receiver in a proceeding that is ancillary to the non-judicial foreclosure.

Ex Parte Appointment

The North Carolina statutes do not expressly address the applicant’s ability to obtain ex parte relief. In the Reporter’s experience (from practice in North Carolina circa 1990), judges customarily would appoint a receiver ex parte where the deed of trust contained a provision whereby the mortgagor consented to appointment of a receiver after default on an ex parte basis.

Power of Sale

The North Carolina statutes provide that the appointing court has the power to order a sale of property in the hands of the receiver. N.C. Gen. Stat. § 1-505 (“In a case ... in which a receiver has been appointed, the [court] shall have power and authority to order a sale of any property, real or personal, in the hands of a receiver duly and regularly appointed.... Sales of property authorized by this section shall be upon such terms as appear to be to the best interests of the creditors affected by the receivership.”). Section 1-505

further provides that the procedure for such sales is governed by Chapter 1, Article 29A of the North Carolina General Statutes, which makes clear that this sale may be conducted by the receiver. N.C. Gen. Stat. § 1-339.4(7). Case authority establishes that such a sale may be free and clear of liens, with the liens transferred to sale proceeds. *National Surety Corp. v. Sharpe*, 72 S.E.2d 109 (1952).

North Dakota

Type of Instrument

North Dakota uses the mortgage.

Foreclosure Methods/Timetable

All foreclosures in North Dakota except where the state is the foreclosing mortgagee. A “notice before foreclosure” must be provided to the record owner at least 30 days prior to the filing of the complaint. The process can be completed in 90 days if the foreclosure is uncontested. Following the sale, the mortgagor has a 60-day right of statutory redemption, unless the property is agricultural, in which case the mortgage has one year to redeem from the filing of the summons and complaint, or until 60 days after the sale, whichever is later. N.D. Cent. Code § 32-19-18.

FHFA Estimated Timetable to Obtain Marketable Title: 465 days

General/Procedural

North Dakota receivership statutes are found in N.D. Cent. Code §§ 32-10-1 to 32-10-5. The receiver may not be a party or a person with interest in the litigation absent the consent of the adverse party. N.D. Cent. Code § 32-10-2. The receiver must post a bond in the amount determined by the court. N.D. Cent. Code § 32-10-3. If the applicant seeks appointment ex parte, the court may require the applicant to post a bond to protect adverse parties against damages suffered if the receivership is later determined to have been improvidently granted.

Standards for Appointment

Receivers are appointed in the discretion of the court. The court may appoint a receiver upon request of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured. The court may also appoint a receiver in a foreclosure action, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed and that the property is probably insufficient to discharge the mortgage debt. N.D. Cent. Code § 32-10-1.

Ex Parte Appointment

Ex parte appointment is available, although the court may require the applicant to post a bond to protect against harm caused by improvident appointment. N.D. Cent. Code § 32-10-3.

Power of Sale

The receiver has the powers set forth in N.D. Cent. Code § 32-10-4 to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Ohio

Type of Instrument

Ohio uses the mortgage.

Foreclosure Method/Timetable

Ohio permits only judicial foreclosure, which can be completed in 150 days unless the foreclosure is contested. Once judgment is obtained, the sale process commences with an appraisal to determine the fair market value of the property. The opening bid must be at least 2/3 of the fair market value. The court has the discretion to allow the sale to be conducted by a licensed auctioneer in lieu of the sheriff's sale; these sales tend to be better advertised and to produce higher sale prices. The mortgagor has the right to redeem the property until the sale is confirmed, but has no right of statutory redemption thereafter.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days

General/Procedural

Ohio's receivership statutes are found in Ohio Rev. Code §§ 2735.01 to 2735.06. Appointment of a receiver is ancillary to some other action for relief. The receiver may not be a party or a person with interest in the litigation absent the consent of the adverse party. Ohio Rev. Code § 2735.02. The receiver must post a bond in the amount determined by the court. Ohio Rev. Code § 2735.03.

Standards for Appointment

Receivers are appointed in the discretion of the court. The court may appoint a receiver upon request of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured. The court may also appoint a receiver in a foreclosure action, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed and that the property is probably insufficient to discharge the mortgage debt. Ohio Rev. Code § 2735.02.

Consistent with usages of equity, judges typically appoint a receiver when, as part of the mortgage, the mortgagor consents to such appointment even if the evidence does not otherwise establish material injury and insufficient value to discharge indebtedness. In addition, some local court rules expressly allow appointment of a receiver if the foreclosed property is income producing or if the mortgage embraces the property's rents and profits. Trigild Manual, at 307-308.

Ex Parte Appointment

The Ohio statute does not explicitly address ex parte appointment. The Trigild Manual indicates that while most local court rules require a hearing, judges customarily will not require a hearing if the mortgage contains a provision by which the mortgagor consented to the appointment of a receiver without notice. Trigild Manual, at 309.

Power of Sale

The receiver has the powers set forth in Ohio Rev. Code § 2735.04 to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound

for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Thus, with court authority, the receiver may sell the subject property. The Trigild Manual suggests that for a sale to be free and clear of liens, especially when not all liens will be paid, it is preferable that the sale to occur with the consent of all parties. Trigild Manual, at 310.

Oklahoma

Type of Instrument

Oklahoma uses the mortgage.

Foreclosure Method/Timetable

Oklahoma provides for nonjudicial foreclosure, which may be completed within three months if timely notice can be provided to those entitled to notice. Where the property is the mortgagor's homestead, the mortgagor can elect to avoid a deficiency judgment if the sale occurs by power of sale, or can elect to require the mortgagee to foreclose by judicial process. For this reason, power of sale foreclosure is typically preferred only for commercial mortgages. There is no post-sale right of statutory redemption. The mortgagee may obtain a deficiency judgment if it files a motion to that effect within 90 days following the sale, and the deficiency judgment is subject to a fair market value limitation.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days

General/Procedural

Receiverships in Oklahoma are governed generally by Okla. Stat. tit. 12, §§ 1551-1559. The receivership is ancillary to an action for judicial foreclosure, or to a nonjudicial foreclosure under the Oklahoma nonjudicial foreclosure statute. Okla. Stat. tit. 12, § 1552 provides that no party, attorney, or interested party can be appointed receiver without the consent of all parties. Okla. Stat. tit. 12, § 1553 requires the receiver to post a bond in such sum as the court shall direct before commencing its duties.

Standards for Appointment

Section 1551(2) provides that the court may appoint a receiver at the request of a foreclosing mortgagee where (a) it appears that the mortgaged property is in danger of being lost, removed or materially injured, or (b) a condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt, or (c) a condition of the mortgage has not been performed and the mortgage instrument provides for the appointment of a receiver provides for the appointment of a receiver.

Representative cases:

MIF Realty, L.P. v. Duncan Development Co., 892 P.2d 664 (Okla. Ct. App. 1995) (suggesting that amendment of section 1551 to add provision permitting appointment of receiver where mortgage provided for appointment of receiver after default made such provisions enforceable — where they had previously been void as contrary to public policy — on ground that after the statute courts now had the power to enforce them and thus appointment was within jurisdiction of the court)

Anthony v. Smoot, 80 P.2d 259 (Okla. 1938) (appointment of a receiver in a mortgage foreclosure action is within trial court's sound judicial discretion; court did not abuse discretion in refusing to appoint receiver in mortgage foreclosure action, where plaintiff's share of probable income from mortgaged premises would apparently be insufficient to pay the expense of receivership, and there was no allegation or showing that defendant had permitted taxes on property to become delinquent)

Stephens v. Mortgage Bond Co., 38 P.2d 930 (1934) (refusal of trial court, finding that mortgaged property would in all probability sell for sum sufficient to satisfy judgment, to appoint receiver in realty mortgage foreclosure proceedings was not abuse of discretion)

Ex Parte Appointment

The Trigild Manual indicates that in limited circumstances a receiver may be appointed on an emergency temporary basis, by standards akin to those required for a Temporary Restraining Order. Trigild Manual, at 321.

Power of Sale

Section 1554 provides that the receiver has, under the control of the court:

power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the courts may authorize.

Thus, if authorized by the court, a receiver may sell property during the receivership. The receiver should seek an order from the court permitting the sale of the property.

Oregon

Type of Instrument

Oregon uses the deed of trust.

Foreclosure Method/Timetable

Oregon provides for both judicial and nonjudicial foreclosure. The timetable for nonjudicial foreclosure is 180 days or less. 120 days' notice is required to the mortgagor and subordinate interests of record. The mortgagee may not recover a deficiency following a nonjudicial foreclosure (but may foreclose on other collateral or collateral given by a guarantor). There is no statutory right of post-sale redemption following nonjudicial foreclosure.

Following judicial foreclosure, the mortgagee can obtain a deficiency judgment except following foreclosure of a purchase money mortgage (held by vendor or third party financing < \$50,000). Following judicial foreclosure, the mortgagor has a six-month post-sale statutory redemption period.

FHFA Estimated Timetable to Obtain Marketable Title: 330 days

General/Procedural

Oregon law provides for the appointment of a "corporate" receivership to wind up and liquidate the business and affairs of a corporation, Or. Rev. Stat. § 60.667, or for the appointment of a "general" receivership, Or. R. Civ. Proc. 80B.

Standards for Appointment

The court may appoint a general receiver to protect cash collateral, complete construction, prevent waste, and resolve partnership, divorce, or other dissolution disputes. Trigild Manual, at 340. See Or. R. Civ. Proc. 80B (court may appoint receiver: on application of party whose right to the property is probable where the property or its rents or profits are in danger of being lost or materially injured or impaired; in aid of attachment or execution; in cases of fraud).

Ex Parte Appointment

Or. R. Civ. Proc. 80C provides that "[n]o receiver shall be appointed without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court." This language appears to allow the court to shorten, but not eliminate, the notice period. The Trigild Manual indicates that ex parte appointment of a receiver is "generally not available." Trigild Manual, at 341.

Power of Sale

Oregon law does not provide authority for a general receiver to dispose of real property. Such a sale without consent of all interested parties would circumvent redemption rights and likely not be insurable. Trigild Manual, at 341. However, a corporate receiver "may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court." Or. Rev. Stat. § 60.667(3)(a).

Pennsylvania

Type of Instrument

Pennsylvania uses the mortgage.

Foreclosure Method/Timetable

Pennsylvania permits only judicial foreclosure. After judgment is entered, the Prothonotary issues a writ of execution. Subordinate lienholders as of the date of the writ must receive at least 30 days prior notice of the sale. The Trigild Manual suggests that depending on the county, an uncontested foreclosure should be completed in 9 months or less. Trigild Manual, at 345. There is no post-sale right of statutory redemption. The mortgagee must seek a deficiency judgment (subject to a fair value limitation) within six months after the Sheriff delivers a deed to the foreclosure sale purchaser.

FHFA Estimated Timetable to Obtain Marketable Title: 480 days.

General/Procedural

Pa. R. Civ. Proc. 1533(d) provides that the receiver must post a bond in the amount required by the court before assuming its duties. Pa. R. Civ. Proc. 1533(c) provides that the court may refuse to appoint a receiver if the defendant posts security in the amount required by the court.

Standards for Appointment

Pennsylvania permits the appointment of a real estate receiver pursuant to: (a) clear language in the loan documents which authorizes the appointment, or in the alternative; (b) based upon principles of equity. See, e.g., Metropolitan Life Ins. Co. v. Liberty Center Venture, 650 A.2d 887 (Pa. Super. 1994) (enforcing receivership clause in mortgage entitling mortgagee to appointment of a receiver after default).

Ex Parte Appointment

Pa. R. Civ. Proc. 1533(a) provides that “[a] temporary receiver may be appointed without notice if required by the exigencies of the case.” In such a situation, the court may require the applicant to post a bond in the amount set by the court (or to post legal tender in the same amount) to protect against injury caused by improvident appointment.

Power of Sale

Bogosian v. Foerderer Tract Committee, Inc., 399 A.2d 408 (Pa. Super. 1979) (liquidating receiver may sell property free and clear of liens when there is reasonable prospect that sale would produce a surplus capable of distribution to general creditors)

Rhode Island

Type of Instrument

Rhode Island uses the mortgage.

Foreclosure Method/Timetable

Foreclosure in Rhode Island typically occurs via nonjudicial foreclosure. Nonjudicial foreclosure requires advertisement for three consecutive weeks prior to the sale, preceded by notice to the mortgagor at least 20 days before first publication (for mortgagors that are not individual consumers) or 30 days before first publication (for individual consumer mortgagors).

There is no post-sale right of statutory redemption.

FHFA Estimated Timetable to Obtain Marketable Title: 330 days

General/Procedural

From the Trigild Manual:

Receivers for distressed commercial properties are available by two means: (1) petition for a receiver for the collateral property (and not the borrower) pursuant to the terms and conditions of the loan documents; or (2) petition for a receiver of the borrower entity (so long as the borrower is not an individual) under the applicable Rhode Island receiver statutes.

The availability of the former method turns on the specific language of the mortgage. So long as the mortgage provides for appointment of a receiver as one of the remedies upon default, the court will likely appoint a receiver for the operation and management of the collateral property. However, the mortgage will define the extent of the receiver's power. For instance, the receiver will not be able to exercise the power of sale for the property without additional court permission if the mortgage does not contain sufficient language for the receiver to do so.

The other option is to petition the borrower entity into receivership based upon its insolvency. Creditors regularly use Rhode Island state court receiverships to liquidate or reorganize failing debtors. There are few rules guiding the conduct of receiverships. Equitable considerations, recognized local practice, and the use of bankruptcy principles as persuasive precedent consequently govern most receiverships. [Trigild Manual, at 351]

Ex Parte Appointment

Under limited circumstances, a party may seek a temporary receiver on an ex parte basis upon the showing that Rhode Island Superior Court Rule 66(b) requires. [See Appendix, p. ____] In practice, the petitioner must generally demonstrate why it was unable to provide notice prior to seeking an ex parte appointment.

Power of Sale

Where the receiver is appointed for the borrower, the receiver has the ability to sell property in any manner that will capture the maximum reasonable value in the receiver's best business judgment, subject to court approval. The receiver must seek court approval of the sale, with notice to all creditors. There are

no statutes that govern the sale of property wherein a receiver is appointed for the property only. Trigild Manual, at 352-353.

South Carolina

Type of Instrument

South Carolina uses the mortgage.

Foreclosure Method/Timetable

South Carolina permits only judicial foreclosure. The foreclosure sale remains open for 30 days following sale, during which time any person may enter an “upset bid,” thereby triggering a second sale. The lender has the right to a deficiency judgment, although by waiving the right to a deficiency, the foreclosing lender can eliminate the possibility of a second sale. The mortgagor has no statutory right of post-sale redemption.

FHFA Estimated Timetable to Obtain Marketable Title: 420 days

General/Procedural

The South Carolina statutes provide that no receiver shall be appointed before judgment if the defendant post a bond in the amount of twice the value of the property. S.C. Code § 15-65-50. Where a receiver has been appointed, the defendant may have the appointment vacated and recover possession of the property by posting a bond in the amount of twice the value of the property. S.C. Code § 15-65-60.

Standards for Appointment

Appointment rests in the court’s discretion, regardless of the standard provision in most mortgages calling for the appointment of a receiver as a matter of right. S.C. Code § 15-65-10 provides that a court may appoint a receiver: (1) on application of a party with an apparent right to the property where the property, or its rents and profits, are in danger of being lost or materially injured or impaired; (2) after judgment, in aid of execution; (3) when a corporation is insolvent or has been dissolved, and (4) in such other cases as are provided by law or may be in accordance with the existing practice.

Language in court decisions suggests that the appointment of a receiver is a drastic remedy, to be exercised with great circumspection. As a practical matter, circuit court judges routinely appoint receivers where there is an assignment of rents and leases, a provision in a mortgage authorizing the appointment of a receiver as a matter of right, and an issue relating to rents or to the condition of the property. Other factors important in evaluating the decision to appoint a receiver are: actual physical deterioration of the estate’s assets; impairment of security; character of the property; and inadequacy of the value of the assets in proportion to the debt. Trigild Manual, at 357-358.

Ex Parte Appointment

S.C. Code § 15-65-20 provides that no court or judge shall appoint a receiver without notice of the application being given at least four days prior, “unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.” This language does not appear to sanction an order without any prior notice.

Power of Sale

The South Carolina receivership statutes do not address the powers of a receiver. The Trigild Manual indicates that a sale by the receiver is possible, but is not favored because the purpose of the receiver is to

maintain the status quo. *See, e.g.,* Kirven v. Lawrence, 137 S.E.2d 764 (S.C. 1964); Andrick Dev. Corp. v. Maccaro, 311 S.E.2d 95 (S.C. Ct. App. 1984)

South Dakota

Type of Instrument

South Dakota uses the mortgage.

Foreclosure Method/Timetable

Foreclosure typically occurs via nonjudicial foreclosure or by a deed in lieu procedure specified in S.D. Codif. Laws § 21-48A-1 (the deed in lieu proceeds involves notice to junior lienholders, who must redeem within 60 days or their liens are released). Regular nonjudicial foreclosure takes approximately 75-90 days to complete. For mortgages of 40 acres or less, the post-sale statutory redemption period is 180 days if the mortgage so provides; otherwise, the period is one year. S.D. Codif. Laws § 21-52-11. The foreclosing mortgagee can obtain a deficiency judgment subject to a fair value limitation, except that there can be no deficiency following the foreclosure of a mortgage held by a purchase money vendor. Foreclosure Law and Related Remedies: A State-by-State Digest, at 513.

FHFA Estimated Timetable to Obtain Marketable Title: 540 days.

General/Procedural

South Dakota receivership statutes are found in S.D. Codif. Laws §§ 21-21-1 to 21-21-10. The receiver may not be a party or a person with interest in the litigation absent the consent of the parties. S.D. Codif. Laws § 21-21-7. The receiver must post a bond in the amount determined by the court. S.D. Codif. Laws § 21-21-8.

Standards for Appointment

The standards for appointment are set forth in S.D. Codif. Laws §§ 21-21-1 to 21-21-5. Most pertinently, the court may appoint a receiver upon application of a foreclosing mortgagee where it appears that the property is in danger of being lost, removed, materially injured, or where the property is insufficient to discharge the debt. S.D. Codif. Laws § 21-21-2. The court may also appoint a receiver in any action in which a receiver would have been appropriate in equity. S.D. Codif. Laws § 21-21-5.

The Trigild Manual indicates that “a short-term mortgage may include a provision that in the case of foreclosure, the mortgage holder can appoint a receiver to take possession of the property if the property has been abandoned.” Trigild Manual, at 371.

Ex Parte Appointment

Ex parte appointment is available, although the court may require the applicant to post a bond to protect against harm caused by improvident appointment. S.D. Codif. Laws § 21-21-6.

Power of Sale

The receiver has the powers set forth in S.D. Codif. Laws § 21-21-9 “to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.”

Tennessee

Type of Instrument

Tennessee uses the deed of trust.

Foreclosure Method/Timetable

Most foreclosures in Tennessee occur via nonjudicial foreclosure and can be completed in as little as 60 days. Notice must be provided to the debtor by certified mail at least 30 days prior to the first publication of the notice of sale. Newspaper advertisement must be given at least 20 days prior to sale; if newspaper advertisement is not possible, notice must be posted for at least 30 days prior to the sale. Following a nonjudicial sale, there is a two-year right of statutory redemption unless the deed of trust contains an enforceable waiver of the right of redemption. Tenn. Code Ann. § 66-8-101.

FHFA Estimated Timetable to Obtain Marketable Title: 270 days

General/Procedural

Tennessee has few statutory provisions addressing appointment of receivers. Tenn. Code Ann. § 29-1-103 provides only that “the courts are all vested with power to appoint receivers for the safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery.” Tenn. Code Ann. § 29-1-104 provides that the clerk, when so directed by the judge, “shall take bond and security from the receiver, or the complainant, conditioned for the faithful discharge of the duties of the receiver.”

Standards for Appointment

The Tennessee statutes provide no guidance regarding the standards for appointment of a receiver. Standards are judicially developed and the applicable case authority is ancient. The appointment of a receiver is a matter resting in the discretion of the court. *Cone v. Paute*, 59 Tenn. 506 (1873). The beneficiary in a trust deed, after his right to a sale of the property has been adjudged, may have a receiver appointed, and the proceeds of the security impounded for his benefit during the litigation. *Bidwell v. Paul*, 64 Tenn. 693 (1875). Appointment of a receiver is appropriate where the applicant has a purchase money lien, and taxes are due and unpaid and about to be enforced by a sale of the land. *Darusmont v. Patton*, 72 Tenn. 597 (1880). The failure of the party in possession of land in litigation to pay the taxes accruing thereon is a sufficient ground for the appointment of a receiver. *Johnson v. Tucker*, 2 Tenn.Ch. 398 (1875).

Ex Parte Appointment

The Tennessee statutes provide no guidance regarding the availability of ex parte appointment. The Trigild Manual suggests ex parte appointment is not available. Trigild Manual, at 379.

Power of Sale

There is no statutory or judicial authority for the sale of receivership property.

Texas

Type of Instrument

Texas uses the Deed of Trust.

Foreclosure Methods/Timetable

While judicial foreclosure is available, foreclosure in Texas typically occurs by nonjudicial foreclosure, which takes no more than 45 days absent efforts by the mortgagor to obtain an injunction against the sale. Notice must be given at least 21 days prior to sale. There is no post-sale right of statutory redemption. The mortgagee may obtain a deficiency judgment, although the amount of the deficiency may be reduced if the mortgagor can establish that the fair market value of the property exceeded the sale price. For this reason, an appraisal is prudent in establishing the amount of the foreclosing lender's bid.

FHFA Estimated Timetable to Obtain Marketable Title: 270 days

General/Procedural

Chapter 64 of the Texas Civil Practice & Remedies Code contains the general provisions governing receivership. A receiver for property in Texas must be a citizen and qualified voter of this state at the time of appointment, and must not be a party, attorney, or other person interested in the action. Tex. Civ. Prac. & Rem. Code § 64.021(a). Before the receiver assumes his/her duties, the receiver must be sworn and post a bond in the amount fixed by the court. Tex. Civ. Prac. & Rem. Code §§ 64.022, 64.023.

Standards for Appointment

A court may appoint a receiver at the request of a foreclosing mortgagee only if “(1) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or (2) the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.” Tex. Civ. Prac. & Rem. Code § 64.001(a)(4), (c).

Judicial authority in Texas has established that when the facts of a case brought that case within any of the specific sections of Section 64.001(a), allegations and proof of insolvency of the defendant, inadequacy of legal remedy, or other equitable grounds for receiver were not required (i.e., the right to receivership on statutory grounds is determined by the statute rather than by rules of equity). See, e.g., *Zanes v. Mercantile Bank & Trust Co. of Texas*, 49 S.W.2d 922 (Tex. Ct. Civ.App.1932); *Anderson & Kerr Drilling Co. v. Bruhlmeier*, 136 S.W.2d 800 (Tex. 1940).

Ex Parte Appointment

Tex. R. Civ. Proc. 695 provides that “except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable.” Rule 695 requires three days’ notice. Nevertheless, the Trigild Manual suggests that a receiver may be appointed ex parte in “exceptional and extreme cases.” Trigild Manual, at 392.

Power of Sale

Tex. Civ. Prac. & Rem. Code § 64.031 provides that subject to the control of the court, the receiver may “(1) take charge and keep possession of the property; (2) receive rents; (3) collect and compromise

demands; (4) make transfers; and (5) perform other acts in regard to the property as authorized by the court.

Utah

Type of Instrument

Utah uses the Deed of Trust.

Foreclosure Method/Timetable

Utah permits nonjudicial foreclosure, which typically occurs within four months from the time the mortgagee provides the mortgagor with notice of default. Although Utah has a six-month statutory redemption period following a judicial foreclosure sale, there is no statutory redemption following nonjudicial foreclosure. Utah permits the mortgagee to obtain a deficiency judgment, although the deficiency following nonjudicial foreclosure is subject to a “fair value” limitation.

FHFA Estimated Timetable to Obtain Marketable Title: 330 days

General/Procedural

There are very few published decisions in Utah on receivership proceedings, and those cases that have been published generally recognize the broad, equitable power of the trial court to structure appropriate relief in a wide variety of situations. Trigild Manual, at 398-399.

Standards for Appointment

Rule 66 of the Utah Rules of Civil Procedure provides the grounds for appointment of a receiver. Among others, the court may appoint a receiver “in any action in which property is in danger of being lost, removed, damaged or is insufficient to satisfy a judgment, order, or claim” or “in all other cases in which receivers have been appointed by courts of equity.” Utah R. Civ. Proc. 66(a)(1), (5).

Ex Parte Appointment

Ex parte appointment appears to be available in Utah under special circumstances or for “cause.” Courts are reluctant to appoint receivers without notice in the commercial context, unless there are circumstances such as evidence that waste, destruction or improper disposition of the collateral is in process. In addition, courts are more likely to require a plaintiff’s bond when ex parte relief is sought. See Trigild Manual, at 400-401.

Power of Sale

There does not appear to be statutory or judicial authority recognizing the ability of a receiver to sell mortgaged property free and clear of liens. Nevertheless, there is judicial authority suggesting that a receiver may sell property as directed/authorized by the appointing court. *Shaw v. Robison*, 537 P.2d 487 (Utah 1975).

Vermont

Type of Instrument

Vermont uses the mortgage.

Foreclosure Method/Timetable

Vermont has both judicial foreclosure. Judicial foreclosure is strict foreclosure (direct conveyance of title to the plaintiff if the mortgagor does not redeem within six months of the date of the foreclosure judgment), if the mortgaged property is worth less than the balance of the debt and any unpaid taxes. Vt. Stat. Ann. tit. 12, § 4528(b). The mortgagee can get the six month redemption period shortened if the property has been abandoned or subject to waste.

If there is equity in the property, foreclosure occurs by public auction, which may occur 60 days after notice of sale is given.

Vermont does allow nonjudicial foreclosure, but not for owner-occupied single-family residences or duplexes where one unit is occupied by the owner. Vt. Stat. Ann. tit. 12, § 4531a.

FHFA Estimated Timetable to Obtain Marketable Title: 540 days.

General/Procedural

Various Vermont statutes provide for the appointment of receivers by courts in specific circumstances, including bank receiverships, receivership for a corporation in contempt for failure to produce books and records, receivership for the winding up of a corporation, and for management of attached stock of a manufacturing establishment. There are no specific statutes governing appointment of a receiver for mortgaged real estate. Nevertheless, receivership is available to mortgagees of real estate. See Trigild Manual, at 406.

Standards for Appointment

Early judicial authority concluded that a court would appoint a receiver only for the purpose only of preserving the property, and its rents and profits, from waste and diversion pending foreclosure. *Cheever v. Rutland & Burlington R.R. Co.*, 39 Vt. 653 (1863).

Ex Parte Appointment

Vermont courts will hear motions ex parte in compelling circumstances only (e.g., a rapidly wasting asset). See Trigild Manual, at 406.

Power of Sale

There are no statutory provisions that permit the receiver to sell mortgaged property free and clear of liens.

Virginia

Type of Instrument

Virginia uses the Deed of Trust.

Foreclosure Method/Timetable

Most foreclosures in Virginia occur by nonjudicial foreclosure, which can take up to eight weeks to complete. There is no statutory right of redemption following the sale. Virginia has no limitations on the mortgagee's ability to seek a deficiency judgment following foreclosure.

FHFA Estimated Timetable to Obtain Marketable Title: 270 days

General/Procedural

Receivership of mortgaged real estate is rare in Virginia due to the speed with which the mortgagee can obtain nonjudicial foreclosure. Virginia recognizes both general receivers and special receivers. A general receiver is appointed by a circuit court to receive, hold, and dispose of monies paid under any judgment, order, or decree of the court. Va. Code § 8.01-582. A special receiver is appointed "whenever the pleadings in any suit make out a proper case for the appointment of a receiver." Va. Code § 8.01-591.

Standards for Appointment

The Trigild Manual indicates that a party seeking appointment of a special receiver "must show some potential for loss or misappropriation of the property." See Trigild Manual at 413. Courts are directed to use great caution in appointing a receiver and should only do so when there is a strong showing of necessity.

Ex Parte Appointment

Ex parte motions for the appointment of receivers will be granted if an emergency situation exists such that the appointment is necessary to preserve the property. Va. Code § 8.01-592. The emergency appointment will not last longer than 30 days. During those 30 days, notice must be given to all parties having a substantial interest in the subject matter concerning any request to extend the receivership beyond the emergency period. Va. Code § 8.01-593.

Power of Sale

The Virginia statutes are silent regarding the receiver's power to sell property.

Washington

Type of Instrument

Washington uses the Deed of Trust.

Foreclosure Method/Timetable

Most foreclosures in Washington occur by nonjudicial foreclosure, with notices of the foreclosure and trustee's sale required at least 90 days prior to the sale date. The foreclosure sale cannot occur any earlier than 190 days from the date of default. There is no right of statutory redemption following the sale, but the mortgagee cannot obtain a deficiency judgment against the mortgagor following a nonjudicial foreclosure.

FHFA Estimated Timetable for Obtaining Marketable Title: 330 days

General/Procedural

In 2004, Washington enacted a new comprehensive set of receivership statutes. See Rev. Code Wash. Ann. § 7.60 *et seq.*

A court may appoint a general receiver or a custodial receiver. A general receiver is appointed to take possession and control of all or substantially all of a person's property with the authority to liquidate that property. A custodial receiver is appointed to take charge of limited or specific property of a person or is not given authority to liquidate property. If the sole basis for appointment of a receiver is the pendency of a foreclosure, the court must appoint the receiver as a custodial receiver. Rev. Code Wash. Ann. § 7.60.015. The court can convert either a general receivership or a custodial receivership into the other type.

The court may not appoint a party, relative, a party's agent or attorney, a person with an interest materially adverse to the interest of persons affected by the receivership generally, or a person who is the sheriff of any county. Wash. Rev. Code Ann. § 7.60.035. The receiver must post bond in an amount required by the court prior to commencing its duties. Wash. Rev. Code Ann. § 7.60.045. The court may condition the appointment of a receiver upon the applicant posting a bond, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained. Wash. Rev. Code Ann. § 7.60.025(5).

Standards for Appointment

The Washington statute provides that the court's discretion to appoint a receiver is customarily discretionary (i.e., "[a] receiver may be appointed"), and further provides that "a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate." Wash. Rev. Code Ann. § 7.60.025(1).

However, this subsection also states that the latter qualification does not apply if a foreclosing lender seeks a receiver and the right to a receiver is "provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property." *Id.* It is not absolutely clear whether this provision is intended to make a contractual receivership provision enforceable as a matter of right.

Ex parte appointment

The Washington statute ordinarily requires seven days' notice to an adverse party prior to appointment of a receiver. Wash. Rev. Code Ann. § 7.60.025(3). The Trigild Manual suggests that the Washington statute authorizes ex parte appointment, but while this section does provide that the court may "shorten or expand the period for notice ... upon good cause shown," but this does not clearly indicate that ex parte appointment is permissible (i.e., it is not clear that "shorten the period for notice" includes eliminating any notice prior to appointment).

Power of Sale

The Washington statute distinguishes between a "general receiver" and a "custodial receiver." Wash. Code Rev. Ann. § 7.60.005(11). The statute provides that a general receiver, "with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business," Wash. Code Rev. Ann. § 7.60.260(1), and that such a sale may be free and clear of liens and all rights of redemption. Wash. Code Rev. Ann. § 7.60.260(2) (in addition, sale of real property free and clear of liens and rights of redemption is permitted "where the debtor intended to sell [the property] in its ordinary course of business"). By contrast, a custodial receiver cannot sell real property free and clear other than in the ordinary course of business. Wash. Code Rev. Ann. § 7.60.260(1).

The Washington statute provides that "[w]hen the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee's sale ... the court shall appoint the receiver as a custodial receiver." Wash. Rev. Code Ann. § 7.60.015. This would indicate that ordinarily the foreclosing mortgagee would not be entitled to have the receiver sell the property free and clear, other than in the ordinary course of business. However, section 7.60.015 also provides that "[t]he court by order may convert either a general receivership or a custodial receivership into the other."

West Virginia

Type of Instrument

West Virginia commonly uses the deed of trust.

Foreclosure Method/Timetable

West Virginia allows nonjudicial foreclosure, which is commonly used and takes approximately 60 days. West Virginia does not recognize a right of statutory redemption following sale.

FHFA Estimated Timetable for Obtaining Marketable Title: 290 days

General/Procedural

West Virginia Code § 53-6-1 permits a court of equity to appoint a “special receiver” in a pending case upon a showing that there is a “danger of loss or misappropriation” of the subject property, including any rents or profits to which mortgagee may be entitled. The receiver must post a bond in an amount specified by the court. The receiver must render an accounting of the funds or property of which he is receiver when ordered to do so by the court. W.Va. Code § 53-6-3.

A suit does not lie for the sole purpose of appointing a receiver, but may only be appointed in a pending suit. *Nolan v. Guardian Coal & Oil Co.*, 194 S.E. 347 (W.Va. 1937); *Meyers Bros. v. Harman Bros.*, 89 S.E. 146 (W.Va. 1916).

Standards for Appointment

The appointment of a receiver was held improper where there was no showing of danger of misappropriation or loss of property to which plaintiff had any claim. *Wilson v. Hawker Lumber Co.*, 81 S.E. 568 (W.Va. 1914).

In order to obtain the appointment of a receiver, the plaintiff must show first that he has a clear right to the property itself, or that he has some lien upon it; and, secondly, that the property itself, or the income arising from it, is in danger of loss from the neglect, waste, misconduct, or insolvency of the defendant. *Kanawha Coal Co. v. Ballard & Welch Coal Co.*, 29 S.E. 514 (W.Va. 1897).

Ex Parte Appointment

W.Va. Code § 53-6-1 provides that a court may not appoint a receiver for real property, or the rents, issues and profits therefrom, “until reasonable notice of the application therefor has been given to the owner.”

Power of Sale

The Trigild Manual indicates that the court may appoint a receiver and direct the sale of the property. *See* Trigild Manual at 435. However, West Virginia courts have noted that the purpose of a special receivership is “conservation of property.” *Commercial Banking & Trust Co. v. Doddridge County Bank*, 188 S.E. 663 (W.Va. 1936).

Wisconsin

Type of Instrument

Wisconsin recognizes both the mortgage and the deed of trust. [The standard Freddie Mac single-family Wisconsin document is a mortgage.]

Foreclosure Method/Timetable

Wisconsin is a judicial foreclosure state. Nonjudicial foreclosure was abolished by statute in 1983. Once a foreclosure judgment has been entered, the mortgagor has a period of time in which to redeem the property prior to sale, during which time no sale can occur. This period is six months for commercial property, and twelve months for single-family residential property. If the mortgage so provides, the mortgagee can elect to cut the redemption period in half if it agrees to waive any deficiency claim against the mortgagor. The redemption period is two months if the mortgagee can demonstrate that the property has been abandoned.

FHFA Estimated Timetable for Obtaining Marketable Title: 510 days

General/Procedural

A receiver may be appointed under the circumstances identified in Wis. Stat. Ann. § 813.16. These include, but are not limited to, “when the applying party establishes an apparent right to or interest in the property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired.”

The receiver must post with the clerk of the court a bond “sufficient to cover all property likely to come into the receiver’s hands.” Wis. Stat. Ann. § 813.16(6).

Standards for Appointment

Appointment of a receiver is entrusted to the discretion of the judge.

Nonpayment of mortgage interest and real estate taxes may authorize the appointment of a receiver. *Chetek State Bank v. Barberg*, 489 N.W.2d 385 (Wis. Ct. App. 1992); *Dick & Reuteman Co. v. Hunholz*, 252 N.W. 180 (Wis. 1934).

Ex Parte Appointment

The Trigild Manual indicates that while there is no express prohibition against ex parte appointment, most courts will require some type of notice to the opposing parties, even where a motion is to be heard on an expedited basis. See Trigild Manual at 440.

Power of Sale

There appear to be no cases discussing the authority of a receiver of mortgaged property to sell the property free and clear of liens. The Trigild Manual indicates that a receiver may sell property upon the authorization of the court. See Trigild Manual at 440.

Wyoming

Type of Instrument

Wyoming uses the mortgage.

Foreclosure Method/Time

Most foreclosures in Wyoming occur by nonjudicial foreclosure, which usually takes six months or less to complete. For nonagricultural property, the mortgagor has a statutory right of redemption for 90 days following the sale; if the mortgagor does not redeem, junior lienholders have an additional 30 days to redeem. *See* Foreclosure Law and Related Remedies: A State-by-State Digest. There is a 12-month redemption period for agricultural real estate (parcels in excess of 80 acres outside the boundaries of a municipality). Wyoming allows deficiency judgments following nonjudicial foreclosure. *See Fitch v. Buffalo Fed. Sav. & Loan Ass'n*, 751 P.2d 1309 (Wyo. 1988).

FHFA Estimated Timetable for Obtaining Marketable Title: 390 days

General/Procedural

A receiver may be appointed by the district court under Wyo. Stat. § 1-33-101 in a variety of circumstances defined by the statute, including:

- “By a creditor to subject any property or fund to his claim.” Wyo. Stat. § 1-33-101(a)(ii).
- “By a mortgagee for the foreclosure of his mortgage and sale of mortgaged property where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that a condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.” Wyo. Stat. § 1-33-101(a)(iv).
- “In all other cases where receivers have been appointed by courts of equity.” Wyo. Stat. § 1-33-101(a)(viii).

No interested party can be appointed as a receiver without the consent of the parties. Wyo. Stat. § 1-33-102. Before assuming its duties, the receiver must post a bond in the amount established by the court, not to exceed double the amount of the property involved. Wyo. Stat. § 1-33-103.

Standards for Appointment

Wyo. Stat. § 1-33-101(a)(iv) provides that a mortgagee may obtain a receiver in a foreclosure proceeding where the property is “in danger of being lost, removed, or materially injured,” or where “a condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.” Wyoming courts have held that a receiver may be appointed in a mortgage foreclosure without a showing that the obligor is insolvent. *Grieve v. Huber*, 266 P. 128 (Wyo. 1928).

Ex Parte Appointment

Ex parte appointments are unavailable. *See* Trigild Manual at 449.

Power of Sale

The Wyoming statutes provide that the receiver “may bring and defend actions in his own name as receiver, take and keep possession of the property, receive rents, collect, compound for and compromise

demands, ***make transfers*** and generally do acts respecting the property as the court may authorize.” Wyo. Stat. § 1-33-104. The Trigild Manual indicates that a court order is generally required for a sale of receivership property. Trigild Manual, at 450.