

**MODEL ACT ON THE APPOINTMENT AND POWERS  
OF REAL ESTATE RECEIVERS (MAPRER)**

**AGENDA FOR SEPTEMBER 27 – 28, 2013 DRAFTING COMMITTEE MEETING**

Materials Distributed for this Meeting:

- ❖ Discussion Draft “Model Act on the Appointment and Powers of Real Estate Receivers,” dated August 21, 2013
- ❖ Report by the questionnaire subcommittee dated August 27, 2013

Reference Materials Previously Distributed:

- ❖ Detailed memorandum dated April 2, 2013 and appendices
- ❖ State-by-state capsule summary of existing receivership laws
- ❖ State-by-state compilation of receivership statutes
- ❖ Uniform Assignment of Rents Act, with official comments
- ❖ JEB for Uniform Real Property Acts May 18, 2011 recommendation to ULC Scope and Program Committee
- ❖ Other reference materials:
  - Jim Baillie, Ryan Murphy, and Sarah Gibbs, “Minnesota Constructs Comprehensive Receivership Law”
  - Barnes & Thornberg LLP, “Michigan Court Authorizes Receiver Sale of Real Property Free and Clear of Redemption Rights”
  - Jeremy Downs, “Federal Receivers’ Reach, Authority Often Overlooked”
  - Morris A. Ellison, Lawrence M. Dudek, and Samuel H. Levine, “‘Tis Better to Receive – the Use of a Receiver in Managing Distressed Real Estate”
  - Loyola Complex Case Symposium, “Ask the Experts”
  - Loyola Complex Case Symposium, “Receivership vs. ABC vs. Bankruptcy”
  - J. C. Murray and K. R. Jannen, “Public and Private Sales of Real Property by Federal Court Receivers”
  - Receivership News, “California Court Finds Protections Afforded by California Foreclosure Laws Preclude Sale of Property Rents, Issues and Profits Receivers”

---

The Committee’s Charge: “*RESOLVED, that . . . a drafting committee on a Model Act on the Appointment and Powers of Real Estate Receivers be formed, and that the act not cover receivers appointed with respect to owner-occupied residences.*”

---

1) Housekeeping

- a) Introduction of committee members, reporter, advisors, and observers
- b) Meeting plan
- c) Committee dinner plans

2) Drafting Approach (briefing by Reporter)

3) Scope (§ 3)

a) *Main issues flagged in Reporter's Notes:*

- i) Relationship of the Act to other law
- ii) How to exclude single-use residential property
- iii) How to address property that the respondent uses partially as primary residence
- iv) Special receiverships, general receiverships, and custodial receiverships

4) Appointment

a) Standing; Appointment; Cases for Appointment (§ 5)

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

- (1) Whether standing and grounds should be addressed in a single section
- (2) What should be the appropriate standard for discretionary appointment
- (3) What standards should apply where the mortgage has a receivership clause
- (4) Failure to turn over "rents" or "net rents" as trigger for mandatory appointment

b) Ex Parte Appointment (§ 6)

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

- (1) Whether the Act should address *ex parte* appointments
- (2) Under what circumstances the petitioner should be required to post security
- (3) Whether a mortgage clause may authorize *ex parte* appointment

c) Persons Ineligible for Appointment (§ 7)

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

- (1) Non-independent receivers
- (2) How much detail should the Act contain about the receiver's family connections
- (3) Should the Act include a competence standard

5) Questionnaire Subcommittee (briefing by Patricia Fry)

6) Automatic Stay (§ 14)

- a) *Main issues flagged in Reporter's Notes:*
  - i) The two-level stay provisions in Subsections (a) and (b)
  - ii) Whether the Act should address the consequences of a stay violation

7) Receiver's Status and Powers – in General

a) Receiver's Status as Lien Creditor (§ 9)

- i) *Main issues flagged in Reporter's Notes:*
  - (1) Recording *lis pendens* or other evidence of receivership
  - (2) Whether to give receiver status of bona fide purchaser of real estate

b) Liens on After-Acquired Property (§ 10)

c) Turnover (§ 11)

d) Powers and Duties of Receiver (§ 12)

- i) *Main issues flagged in Reporter's Notes:*
  - (1) Whether the list of powers is sufficient
  - (2) Appropriate level of detail on incurring debts in the ordinary course of business
  - (3) Whether the Act should contain detailed provisions on disallowance of claims
  - (4) Level of detail for manner in which the receiver conducts discovery

e) Employment and Compensation of Professionals (§ 15)

- i) *Main issues flagged in Reporter's Notes:*
  - (1) Level of detail the Act should contain

f) Executory Contracts (§ 17)

- i) *Main issues flagged in Reporter's Notes:*
  - (1) What limits should apply to a receiver's power to reject an unexpired lease

8) Duties of Respondent (§ 13)

9) Receivership procedure/operation

- a) Receiver's Bond (§ 8)
- b) Interim Reports of Receiver (§ 20)
- c) Removal or Resignation (§ 22)
- d) Final Report and Termination (§ 23)
- e) *Main issues flagged in Reporter's Notes:*
  - i) How much detail should the Act contain on procedural matters
  - ii) When the bond must be posted
  - iii) Bonding costs
  - iv) What discretion should the court have to reduce the required bond amount
  - v) Whether to address who has standing to seek termination of the receivership
  - vi) "Petitioner pays" question

10) Other Sections

- a) Powers of Court (§ 4)
- b) Utility Service (§ 18)
- c) Immunity of Receiver (§ 19)
  - i) *Main issues flagged in Reporter's Notes:*
    - (1) Level of detail on the scope of a receiver's immunity
- d) Claims (§ 21)
  - i) *Main issues flagged in Reporter's Notes:*
    - (1) Whether secured creditors should have to file proofs of claim
    - (2) If secured creditors must file, what consequences if they do not
    - (3) Whether the Act should specify the evidentiary effect of a proof of claim
    - (4) Whether the Act should contain priority provisions

11) Receiver's Power to Sell

a) Sales in the Ordinary Course of Business (§ 12)

b) Sales Outside the Ordinary Course of Business (§ 16)

i) Discussion Draft Alternatives

(1) *Alt. A*: Power to sell left to other law, unless all parties consent

(2) *Alt. B*: Sale subject to the rights of non-consenting parties

(3) *Alt. C*: Sale free and clear

(4) *Alt. D*: Sale free and clear, even w/o court approval, if mortgagor consents

(5) *Alt. E*: Sale free and clear, even w/o court approval, after redemption period

ii) *Main issues flagged in Reporter's Notes:*

(1) Whether, and if so what other alternatives to consider

(2) Whether the Act should address the standards a court must apply

(3) "Public sale" v. "private sale"

(4) Whether to address attachment of liens to proceeds

(5) Credit bidding

(6) Distinction between public sale and private sale

(7) Safe harbor against objections

12) Ancillary Receiverships (§ 24)

a) *Main issues flagged in Reporter's Notes:*

i) How to address eligibility issues that may differ between states

ii) Whether, and if so how, to address conflict principles on the grounds for appointment

iii) Facilitating communication and coordination between main court and ancillary court

13) Definitions (§ 2)

a) *Main issues flagged in Reporter's Notes:*

i) "Court"

ii) "Assignment of rents" related definitions

14) Model or Form Receivership Order

[15] min.

- a) *Main issues flagged in Reporter's Notes:*
  - i) Whether the Act should contain a form, and if so where

15) Other Issues to Address

- a) Whether the Act should address:
  - i) Abandonment of assets
  - ii) Effect of a party's participating in the receivership
  - iii) Other issues
- b) Whether to seek guidance from the Executive Committee on any point

16) Enactability issues – to the extent not raised during substantive discussions

- a) Identification of potential enactability concerns
- b) Identification of additional potential observers

17) Next steps

- a) Summarize decisions made at this meeting
- b) Additional directions to the Reporter on preparing draft for the Spring 2014 meeting
- c) Next meeting