

State Law Receivership for Commercial Real Estate: UCRERA Becomes Effective in Connecticut

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The law affecting distressed commercial real estate is about to change in Connecticut in a significant way. On July 1, 2023, the Uniform Commercial Real Estate Receivership Act ("UCRERA") becomes effective in the state. Those dealing with distressed assets in Connecticut should certainly understand the development. Others grappling with commercial real estate located elsewhere will also benefit from understanding how UCRERA compares to the law in other states.

Background of the Uniform Commercial Real Estate Act

The Uniform Law Commission ("ULC") is a well-known non-profit organization that seeks to bring clarity and stability to critical areas of state statutory law. For example, the ULC, also known as the National Conference of Commissioners on Uniform State Laws, developed the Uniform Commercial Code which helped to bring substantial uniformity of commercial law through the enactment of model legislation in all fifty states and other U.S. jurisdictions.

The ULC sought to bring similar uniformity to state receivership laws after noting a wide disparity of law and practice. The ULC developed UCRERA for application to receiverships involving commercial real estate with the goal of achieving greater predictability for litigants, lenders, and other parties affected by a receivership proceeding.

Progress though in achieving national uniformity has been slow. The ULC adopted UCRERA in the summer of 2015. Since then, per the ULC enactment tracker site, twelve states have enacted the model law (or a substantially similar version). Those states consist of: Arizona, Connecticut, Florida, Maryland, Michigan, Nevada, North Carolina, Oregon, Rhode Island, Tennessee, Utah and West Virginia. Although Connecticut enacted the law in 2021 its effective date was delayed until July 1, 2023.

Key Provisions

The full text of Connecticut's enacted version of UCRERA is available [here](#). Some key provisions include the imposition of an automatic injunction ("stay") against creditor collection activity, a mechanism for judicial approval of a receivership sale "free and clear" of liens (with liens attaching to available sale proceeds), and the establishment of process for the filing of creditor claims. Each of these components is discussed briefly below:

Automatic Stay

An order appointing a receiver over commercial real estate "operates as a stay, applicable to all persons, of an act, action or proceeding" affecting a wide range of creditor enforcement actions against the property. The law provides for creditors to seek relief from the stay to continue enforcement actions against the property, upon a showing of cause. A creditor who violates the stay may be liable for damages including actual damages and reasonable attorney's fees. The law allows for the imposition of civil contempt damages if the stay violation is found to be intentional.

Sale Free and Clear of Liens

A receiver, with court approval, may obtain authority to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange or other disposition. The statute specifically provides that a sale can be made “free and clear” of liens with any such liens attaching to the proceeds of the sale. Further, such a sale can be accomplished through either a private or public auction process. The law permits a secured creditor to credit bid outstanding indebtedness and thus offset against the purchase price all or part of the creditor’s allowed secured lien.

Claims Process

The law establishes a process for creditors with claims relating to the property to be notified of a deadline to file proofs of claim. Failure of a creditor to timely file a proof of claim will result in the creditor not receiving a distribution from the receivership proceeding (unless the court otherwise orders).

Summary

The above concepts will be familiar to anybody who has navigated federal bankruptcy proceedings. Clearly, the ULC tailored several bankruptcy law concepts that it thought would work well in state law receivership proceedings involving commercial real estate. Although nationwide adoption of UCRERA has been limited to date, it is possible that more states may consider adoption given the challenges present for the asset class in today’s economy. Lenders dealing with distressed property in Connecticut will begin to find out soon whether the law delivers on its promise of an efficient process for extinguishing junior liens, maximizing value and transferring title efficiently.

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