

## RECEIVERSHIP LAW CHANGE IN

# MICHIGAN

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# WILD WEST

By Stephen Weber

**As defined by Michigan law, a receivership is an equitable remedy allowing the court to oversee the orderly management and disposition of property subject to a lawsuit. A receiver is the court's representative and owes a duty to both debtors and creditors of a property in receivership.**

In the dark days of the Great Recession, many commercial real estate properties were placed into receiverships under Michigan law. The use of receiverships shortened the process of dealing with underwater properties in a more cost- and time-effective manner than traditional bankruptcy. Receiverships were one of the first choices for banks when dealing with properties that were potentially environmentally impacted. Receiverships also allowed a measure of control when owner/debtors were unwilling to cooperate.

There were downsides to receiverships as well. Michigan law only permitted a receivership to be put in place in connection with another legal action, such as a foreclosure. However, Michigan law was vague and caused issues for judges, plaintiffs, defendants, and other creditors who were unfamiliar with the process. This caused some unfortunate outcomes when unqualified receivers were put in place and their permitted actions were not well-documented in a detailed receivership order.

On May 7, 2018, Public Act 16-2018 became effective in Michigan. The new law is titled as the "Uniform Commercial Real Estate Receivership Act." This new law will remove many of the uncertainties that previously existed. The new law is a blending of certain powers and actions from federal bankruptcy law to provide clarity and certainty. The new law will:

- Provide for various duties and powers of the receiver over the property including:
  - Collect, control, manage, conserve, and protect the receivership property.
  - Operate a business constituting the receivership property.
  - Incur debt and pay expenses incidental to the receiver's duties.
  - Assert a right, claim, or cause of action, or defense that relates to the receivership property.
- Require notice and provide for a distribution of the proceeds from the receivership property to the creditors following the priority of the creditor's claim against the estate.
- Provide that a receivership order will operate as a stay against action against the receivership property.
- Court may order the petitioning party and/or a person whose conduct justified the appointment of a receiver to pay fees and expenses of receivership.
- Allow for the appointment of a receiver before the initiation of another action (such as non-payment of a mortgage if provided for in the documents).
- Require the receiver to prepare and retain business records, account for receivership property, and file with the appropriate recording office a copy of the receivership order.
- Require the property owner to assist the receiver in its duties or face civil contempt.
- Permit the sale of the receivership property, with court approval, free and clear of liens (which transfer to the sale proceeds).
- Permit, with court approval, the acceptance or rejection of executory contracts relating to the receivership property.

Public Act 16-2018 will enable creditors and debtors alike to understand the actions of a receivership which are well defined. It will allow for the orderly management and potential liquidation of troubled real estate assets in a uniform and court-monitored method. This will provide clarity to all parties, including the receiver, of their roles and responsibilities. It will no longer be the "Wild West."

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