

Receivership 101: An Insider's Look at Receiverships

- **The Receiver – You Can't Live With Them and You Can't Live Without Them**
 - Lender Can't Run a Property Pre-Foreclosure – Patience Is A Virtue
 - Four Months to Foreclose – Always Takes Longer & Costs More
 - Receiver Insulates Lender from Risk of Converting from Lender to Partner
 - Allows Lender to Protect & Maintain Property
 - New Housing-to-Homeless Encampment in 60 Seconds
 - Prevents Dismantling and Destruction of Building
 - Theft of Copper Wiring, Steel, Appliances, Etc.
 - Unprotected Vacant Buildings Self Destruct
 - Receiver Can Insulate Lender from Pre-Foreclosure Claims
 - Pre-Receivership Project Costs
 - Long-Term Construction Defects on Pre-Foreclosure Construction
 - Potential Environmental Liability
- **What is a Receiver?**
 - Receiver is an Agent of the State or Federal Court
 - Not a Bankruptcy Trustee
 - Doesn't Work For the Lender (or the Borrower)
 - Works in a Fish Bowl – Reports to All Parties and the Court
 - Anyone Can Be a Receiver – There is No "List"
 - Third Party Layperson or Lawyer Acceptable to All Parties and the Judge
 - Must Qualify for a Receiver's Bond (One to Two Months Cash Flow)
 - The Three Types of Receivers – Will They Return Your Call?

- Lawyer
- Developer
- Property Manager
- Can't Have Prior Agreement with Plaintiff on Fees, Vendors or Activities
 - Receiver Must Make Declaration to the Court
 - If the Lender Wants it Done, Put it in the Order
- **What the Receiver Does – Anything the Court Order Allows (Almost)**
 - Receiver Becomes the De-Facto “Owner” of the Property
 - Borrower Remains Fee Owner
 - Receiver Typically Responsible for Property, Not the Borrowing Entity
 - Receiver Can Only Do What's Provided For In the Order
 - Protect and Operate
 - Gather Project Documentation and Permits
 - Take Control of Property and Borrower Accounts
 - Maintain Insurance
 - Entitle and Complete
 - Lease and Sell – Wholesale or Retail
 - Borrow & Litigate
 - Can't Market or Sell the Underlying Loan
 - Receiver Can Only Do What There's Money to Pay For
 - Cash From the Property – No Cash Flow on For-Sale Housing
 - Cash Borrowed From the Lender – Need Borrowing Authority
 - Cash Borrowed From a Third-Party Lender – How Does It Get Repaid?
 - Priority Lien
 - Sale of the Property
- **What the Lender's / Plaintiff's Counsel Does? – Represent the Lender and...?**
 - Lender's Counsel Prepares and Files the Initial Motions
 - Motion for Judicial Foreclosure
 - Motion for Appointment of Receiver and Receivership Order
 - Plaintiff's Bond
 - Ex-Parte vs. Noticed Motion

- Lender's Counsel Represents the Lender – Not the Receiver
- No Prohibition to Lender's Counsel Assisting the Receiver
- Lender's Interests Not Always Aligned with Receiver's Obligations
- Receiver is Ultimately Responsible to the Court
- Receiver Can Make Motions Directly to the Court
 - Non-Lawyer Receiver Allowed to Appear Without Counsel
 - Receiver May Also Engage Counsel With Court's Permission
- **The Receivership Order**
 - The Receivership Order
 - Judicial Council Form Order - www.courtinfo.ca.gov/forms/
 - Custom Narrative Order
 - Form Order Covered By Narrative Order – The Worst of Both Worlds
 - Adding Authority to Receivership Order Requires Additional Hearings
 - If You May Want the Receiver to Do It, Put It In the Order
 - Control Certain Activities By Requiring Plaintiff's Prior Consent
- **Current Receivership Issues**
 - Different Courts, Different Results
 - Calculating the Amount of the Receiver's Bond?
 - Educating the Judge
 - For-Sale Housing Doesn't Generate Cash Flow – Adding Insult to Injury
 - Receiverships Are Expensive
 - Lenders Have to Advance Funds Immediately
 - Receivers Can't Advance Funds Personally
 - Receivership Costs Are a First Priority Lien on Property
 - Borrower Bankruptcy - Receiver Must Turn Over Property, Unless...
 - Receiver Isn't Served By Debtor or Trustee
 - Lender's Counsel Pursues Relief From Stay

- Expiring Entitlements – Now You See It, Now You Don't
 - Public Agency Approvals Expire if Building Permit Not Pulled
 - Tentative Tract Maps Expire if Not Extended
 - Building Permits May Expire if Construction Stops
 - Many Approvals Could Not Be Obtained Again
- Receivers Can't Effectively Eliminate Mechanics Liens Thru Sale
 - Order to Set Aside Liens Subject to Automatic Appeal
 - Amount of Lien Claims Can't Be Disbursed Until Appeals Are Exhausted
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