

RECEIVERSHIP

WHY EMPLOY A RECEIVER?

The majority of receivership appointments involve real property. They occur prior to, or during the pendency of a Trustee's Sale or mortgage foreclosure. There are many reasons why the appointment of a "Receiver" is appropriate. Listed below are seven of the most common reasons, and the benefits that accrue to the lender.

- I. **Control of Cash Flow.** Unless the borrower and tenants cooperate, an Assignment of Rents provision in the deed of trust can be an ineffective remedy without a Receiver to enforce it. It's more likely that borrowers will continue to collect rent, but may not pay utilities or other operating expenses. A lender, without a Receiver, may get the property back after foreclosure with past due bills and limited operating cash or tenant deposit and obligations.
- II. **Protection of the Property from Deterioration.** A defaulting borrower is less likely to spend money on needed repairs. Severe deferred maintenance can result in significant physical damage to the property and a decline in property value. The Receiver preserves and protects the asset in the lenders interest.
- III. **Maintain Occupancy and Promote Lease-up.** Loss of services, problems with deferred maintenance, and the state of uncertainty which surrounds a distressed property makes lease-up difficult and move-outs likely. It's far better to foreclose on a fully leased and occupied property than an empty one. If managed by the borrower during the foreclosure period, high vacancies and hostile tenants are often the result. A Receiver maintains a professional and motivated approach to the property.
- IV. **Pressure the Borrower.** Possession gives borrowers an advantage in work-out negotiations, especially with out-of-state lenders. However, once a Receiver is appointed, the borrower loses his cash flow, and with it, his negotiating edge. The appointment of a Receiver often ends a borrower's "stonewall" tactics. If a work-out can be structured, the appointment of a Receiver will more often than not be the catalyst that makes it come together, demonstrating the serious intent of the lender.
- V. **Preparation for Ownership.** Knowledge of actual property income and expenses are invaluable when deciding what to do with a property following foreclosure. Without a Receiver in place, prospective buyers often know more about the property than the acquiring lender. Appointment of a Receiver uncovers valuable information and provides assistance to the lender and his appraiser in determining a fair market value and/or deficiency.

Save Time and Money.

Control of Cash Flow.

Protection of the Property from Deterioration.

Maintain Occupancy and Promote Lease-up.

Pressure the Borrower.

Preparation for Ownership.



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VI. Borrower Bankruptcy. Threat of bankruptcy is a popular tactic of borrowers, especially when the property is owned by a partnership with a non-recourse loan. Since bankruptcies are sometimes filed the day before a Trustee's Sale, a Receiver will have already obtained information about the property, which can assist lender's counsel in obtaining relief from the automatic stay by the court. With a Receiver's input, lifting a bankruptcy stay may be easier to obtain. Also, appointment of a Receiver may be necessary to perfect the lender's security interest in the rents.

VII. Receivership Saves Time and Money in Disposing of the Property. Time saved by a lender marketing a foreclosed property for which they have complete information means the loan will be recouped sooner rather than later. The resulting savings invariably exceed any Receiver's fees the lender may have paid. Receiver's fees are paid from rents; rents, which in the absence of a Receiver, would otherwise have been collected by the borrower.

Choosing a court-appointed Receiver is one of the most important decisions one can make for distressed commercial real estate assets. A well qualified Receiver will greatly impact the asset's financial future.

The primary objective of the Receiver is to secure the accounts and records in order to protect the integrity of the asset and income stream. These services will include, but are not limited to the following:

- Third party independent control of the asset and maintain / retain insurance coverage, as a fiduciary of the court.
- Thorough inspection and documentation of property condition.
- Possession and preservation of the physical property from deterioration.
- Supervision and direction of daily and on-going activities of the property.
- Full review of all contractual services and required maintenance.
- Accounting of all income and expenses with budget control.
- Authorization, control and payment of payables and operating expenses.
- Understanding of institutional requirements, policies and goals.
- Specific recommendations for extraordinary maintenance requirements or capital improvements.
- Proactive management direction to establish the confidence of tenants and prospective buyers.
- Reports tailored to the needs of the court and secured creditors.

Upon appointment, the Receiver will inspect the property, advise and meet tenants and vendors, obtain and review records from the owner as well as establish the operational, maintenance prognosis, accounting procedures and systems. A property condition report is prepared and ready to be submitted to the court.