Seeking Clarity Through the Uniform Commercial Real Estate Receivership Act

Insolvency professionals practicing in the real estate industry are nearly certain to encounter a receivership, whether on behalf of a property owner, manager, lessee, lender or other party.[1] A receiver is an individual charged by a court with taking possession of a piece of property to "receive, collect, care for, and dispose of the property or the fruits of the property."[2] Thus, the goal of appointing a receiver is to promote the adequate management and preservation of property.

However, differing state and local laws governing the appointment and powers of a receiver have resulted in significant inconsistencies across states and even counties within states. To combat this issue, the Uniform Law Commission (ULC) finalized a model Uniform Commercial Real Estate Receivership Act (UCRERA) in 2015.

Enacting Jurisdictions

As of the date of this article, 14 jurisdictions have enacted UCRERA: (1) Alabama;[3] (2) Arizona;[4] (3) Connecticut;[5] (4) the District of Columbia;[6] (5) Florida;[7] (6) Maryland;[8] (7) Michigan;[9] (8) Nevada;[10] (9) North Carolina;[11] (10) Oregon;[12] (11) Rhode Island;[13] (12) Tennessee;[14] (13) Utah;[15] and (14) West Virginia.[16] Illinois[17] and North Dakota[18] have also recently introduced UCRERA to their legislatures.

Overview of UCRERA

Prior to UCRERA, no comprehensive uniform law existed governing receivers for commercial real estate.[19] Consequently, the rules surrounding receivers were subject to significant inter- and intra-state variations that could differ even by what judge heard the case.[20] This fragmentation halted the development of "best practices" surrounding receivers, which, when combined with the unclear guidance on a receiver's powers, generated uncertainty that made proper performance of a receiver's obligations difficult.[21] Accordingly, the ULC sought to

standardize the process for appointing receivers and defining their powers, with the goal of promoting greater consistency, confidence and clarity in the receivership framework.

The ULC believes other benefits will occur through nationwide adoption of UCRERA. For example, under Section 9 of UCRERA, a receiver has the status of a lien creditor, thus allowing the receiver to establish priority over subsequent creditors and prior unperfected secured parties.[22] This authority allows for the sale of receivership property free and clear of all junior liens without requiring consent from junior lienholders, which can simplify the enforcement process.

Adoption of UCRERA in additional jurisdictions would provide a standardized legal framework that supports key receivership functions, such as streamlined appointments through enforceable receivership clauses, the imposition of an automatic stay upon appointment to preserve asset value, the potential for competitive market pricing in asset sales, and the authority for receivers to reject executory contracts. These provisions offer mechanisms that may improve the consistency and efficiency of creditor enforcement efforts.

Key Provisions

Appointment of a Receiver

In the context of mortgage enforcement, UCRERA identifies specific circumstances under which a court may appoint a receiver, including contractual provisions authorizing receivership, borrower default, or risk of harm to the property. These provisions establish statutory criteria that guide judicial decision-making in receivership requests. For instance, UCRERA recognizes the enforceability of a receivership clause in a mortgage where the borrower agrees to the appointment of a receiver upon default.[23] However, UCRERA also provides a safe harbor when loan documents do not contain a receivership provision, by permitting consideration of other factors like protection of the property from waste or the owner's failure to turn over rents or proceeds.[24]

UCRERA seeks to protect the interests of property owners and others by requiring notice and opportunity for a hearing before any determination on appointment is made.[25] However, Section 6(c) of UCRERA waives this requirement if the person seeking appointment provides security for the payment of damages, reasonable attorneys' fees and costs incurred if the court later concludes the appointment was not justified.[26]

Sale of Receivership Property

Section 12 of UCRERA establishes uniformity in receiver powers — both with and without court approval. There is particular divergence among state receivership laws concerning a receiver's ability to sell or transfer real property.[27] UCRERA addresses these issues in a number of ways. Section 12(a)(2) of UCRERA permits the receiver to sell receivership property in the ordinary course of business *without* court approval,[28] but the receiver is required to obtain court approval for non-ordinary-course transfers of receivership property — such as a sale of mortgaged property — under Section 12(b)(3).[29] Section 16 of UCRERA governs such non-ordinary-course transfers.[30] Specifically, with court approval, it is possible for the receiver to complete a free-and-clear sale of mortgaged property by means other than a public auction sale.[31]

Traditionally, when a receiver has been appointed over mortgaged property, its role was viewed as largely custodial.[32] This resulted in many creditors electing to utilize the foreclosure process for the sale of property.[33] However, a receiver's ability to market property in the receivership context allows buyers to complete more substantive due diligence, potentially increasing the sale price as compared to the public foreclosure process.[34] Thus, UCRERA's inclusion of the receiver's ability to make non-ordinary-course transfers with court approval provides transparency for a receiver's powers and creates the potential for higher economic returns, which may benefit all creditors (and possibly equity).

Automatic Stay

Under UCRERA, the appointment of a receiver functions as an automatic stay against any act of possession or attempt to enforce a lien against receivership property.[35] The scope of the stay is narrower than the Bankruptcy Code's automatic stay, and it doesn't prevent voluntary or involuntary bankruptcy proceedings from being commenced by or against the property owner.[36]

Parties subject to UCRERA's stay may petition the court for relief under Section 14(c) "for cause."[37] The term "cause" is intentionally left undefined by UCRERA, which grants the court significant discretion based on the debtor's circumstances.[38] However, a common situation that would almost certainly fall under this definition would be to allow a senior lienholder to exercise its right to obtain the appointment of a receiver or proceed with a foreclosure.[39]

Executory Contracts

Prior to UCRERA, existing law did not bind a receiver to an owner's executory contracts.[40] Section 17(b) of UCRERA follows suit, stating that with court approval, a receiver may reject or adopt an owner's executory contract.[41] Adoption and continued performance may be conditioned on terms appropriate under the circumstances to assure a receiver's ability to perform the contract.[42] UCRERA also makes clear that failure to request court approval operates as a rejection and breach for which a contract counterparty can file a claim in the receivership.[43]

Section 17 mirrors the Countryman executory contract test[44] applied in bankruptcy cases — that is, executory contracts are those that "are so far underperformed that the failure of either to complete performance would constitute a material breach . . . ."[45] Therefore, under UCRERA a receiver may not reject a contract that has been substantially performed by one party or for which the breach of another would not excuse the other's obligation to perform.[46]

Conclusion

Given the broadening adoption of UCRERA, including in some prominent states, real estate insolvency practitioners would benefit from understanding UCRERA and the statute's efforts to reduce ambiguity, establish uniformity, streamline the receivership process, and adopt substantive provisions analogous to the Bankruptcy Code.

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[1] Britney Baker is a senior associate, Christian Adams is an associate, and Bennett Stover is a summer associate in the Atlanta office of King & Spalding LLP.

[2] 1 *Clark on Receivers* § 11(a) at 13 (3d ed. 1959).

[3] Ala. Code § 6-6-780 (2025).

[4] Ariz. Rev. Stat. Ann. § 33-2601 (2025).

[5] Conn. Gen. Stat. Ann. § 52-619 (West 2025).

[6] D.C. Code Ann. § 42-1641 (West 2025).

[7] Fla. Stat. Ann. § 714.01 (West 2025).

[8] Md. Code Ann., Com. Law § 24-101 (West 2025).

[9] Mich. Comp. Laws Ann. § 554.1011 (West 2025).

[10] Nev. Rev. Stat. Ann. § 32.100 (West 2025).

[11] N.C. Gen. Stat. Ann. § 1-501 (West 2025).

[12] Or. Rev. Stat. Ann. § 37.010 (West 2025).

[13] 10 R.I. Gen. Laws Ann. § 10-21-1 (West 2025).

[14] Tenn. Code Ann. § 29-40-101 (West 2025).

[15] Utah Code Ann. § 78B-21-101 (West 2025).

[16] W. Va. Code Ann. § 55-21-1 (West 2025).

[17] H.B. 0028, 104th Gen. Assemb., Reg. Sess. (Ill. 2024).

[18] S.B. 2122, 69th Leg. Assemb. (N.D. 2025).

[19] Unif. Commercial Real Estate Receivership Act (UCRERA) prefatory note 2 (Unif. L. Comm'n 2017).

[20] *Id.* at 3.

[21] *Id.*

[22] UCRERA § 9 cmt. (Unif. L. Comm'n 2017).

[23] UCRERA § 6(b)(3) (Unif. L. Comm'n 2017).

[24] UCRERA § 6(b) (Unif. L. Comm'n 2017).

[25] UCRERA § 3(a) (Unif. L. Comm'n 2017).

[26] UCRERA § 6(c) (Unif. L. Comm'n 2017).

[27] UCRERA prefatory note 4 (Unif. L. Comm'n 2017).

[28] UCRERA § 12(a)(2) (Unif. L. Comm'n 2017).

[29] UCRERA § 12(b)(3) (Unif. L. Comm'n 2017).

[30] UCRERA §§ 12(b)(3), 16 (Unif. L. Comm'n 2017).

[31] UCRERA §§ 16(c), (e) (Unif. L. Comm'n 2017).

[32] UCRERA § 16 cmt. 1 (Unif. L. Comm'n 2017).

[33]Id.

[34] *Id.*

[35] UCRERA § 14(a) (Unif. L. Comm'n 2017).

[36] UCRERA § 14 cmt. 1 (Unif. L. Comm'n 2017).

[37] UCRERA § 14(c) (Unif. L. Comm'n 2017).

[38] UCRERA § 14 cmt. 3 (Unif. L. Comm'n 2017).

[39] *Id.*

[40] UCRERA § 17 cmt. 1 (Unif. L. Comm'n 2017).

[41] UCRERA § 17(b) (Unif. L. Comm'n 2017).

[42] *Id.*

[43] UCRERA § 17(b), (e) (Unif. L. Comm'n 2017).

[44] Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 (Minn. L. Rev. 439, 460 (1973)).

[45] UCRERA § 17 cmt. 1 (Unif. L. Comm'n 2017).

[46] *Id.*

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