



Governor Signs Bill Adopting the Uniform Commercial Real Estate Receivership Act

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On February 6, 2018, Governor Snyder signed Public Act 16 of 2018, which creates a Uniform Commercial Real Estate Receivership Act (the "Act") in Michigan. The bill was sponsored by State Representative Brandt Iden, of the 61st District. PA 16 can be viewed [here](#).

The Background of the Act

For many years in Michigan, the process of appointing a receiver, and a receiver's role in the court process, lacked clear guidelines. In 2014, the Michigan Supreme Court adopted amendments to the Michigan Court Rules which addressed and defined the procedures for the appointment, selection, duties and powers of, and a number of other issues related to, receivers in Michigan.

Ambiguous standards for receivership, which is an equitable remedy that allows a court to oversee the orderly management and disposition of property subject to a lawsuit, is not unique to Michigan. In Michigan and in many other states, there was no uniform set of receivership rules, and the courts of different states applied widely varying standards.

In an effort to bring greater clarity and standardization to the process, in 2015 the Uniform Law Commission (the "ULC"), which is the organization that drafted, for example, the Uniform Commercial Code, determined that it was advisable to have a model act that would govern the power, rights and duties of receivers appointed over commercial real property. The Uniform Commercial Real Estate Receivership Act resulted from this process.

In creating the Act, the ULC sought to bring greater predictability for litigants, lenders and other parties doing business with a company that is subject to receivership, and strike a balance between the need to create structure for this traditionally unstructured legal remedy, while not usurping the court's role to exercise its equitable powers based on the circumstances of a particular case.

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A Summary of the Bill's Provisions

The Uniform Commercial Real Estate Receivership Act, as adopted in Michigan, expands upon and codifies in statute the court rules previously established by the Michigan Supreme Court related to receiverships.

The Act applies to a receivership for an interest in real property and personal property related to or used in operating the real property. Some of the more significant provisions in the Act include:

- Providing for the appointment, removal, and discharge of a receiver, who would obtain the status of a lien creditor;
- Providing that a secured creditor may obtain the appointment of a receiver over its real property collateral based solely on an agreement in the lien instrument regarding the appointment of a receiver upon default;
- Providing for the various duties and powers of a receiver pertaining to the receivership property;
- Requiring notice and providing for distribution of receivership property to creditors;
- Setting forth the duties of an owner of receivership property; and
- Providing that a receivership order will operate as a stay against an act, action, or proceeding to obtain possession of, exercise control over, or enforce a judgment against receivership property, or to enforce a lien against receivership property in certain circumstances.

Of particular note, the Act describes the manner in which receivers may use and/or transfer receivership property. A receiver's rights and obligations are similar to those of a Chapter 11 trustee or debtor-in-possession in bankruptcy, including:

- Upon court approval, a receiver may use receivership property other than in the ordinary course of business.
- Also with court approval, a receiver may sell, lease, license, exchange, or otherwise dispose of receivership property. Unless an agreement of sale provides otherwise, such a transfer is made free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption. Such a transfer remains subject to a senior lien.
- A lien that is extinguished as a result of a transfer attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had before the transfer, even if the proceeds of the transfer are not sufficient to satisfy obligations secured by the lien.
- A transfer may occur by a means other than a public auction sale.
- A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien.
- A reversal or modification of an order approving a transfer does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.



The Governor also signed PA 15 of 2018 on February 6, 2018, which among other things, provides that an action to appoint a receiver is not an action to recover a debt for purposes of the foreclosure by advertisement process. The changes to both Acts are to take effect 90 days after signing. PA 15 can be viewed [here](#).

If you have any questions about these Acts, or receivership issues in general, please contact Scott H. Hogan at (616) 726-2207 or by email at shogan@fosterswift.com.

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