

MOTION TO APPOINT RECEIVER: THE MOST EFFECTIVE..., YET UNDERUTILIZED TOOL IN THE ADR STRATEGIST'S ARSENAL

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STATE COURT RECEIVERSHIPS

Types of State Court Receiverships?

- Lender Dispossessing Non-performing Borrower (CFA)
- Equity Receiverships
- Ponzi schemes, other Fraud
- Waste or Mismanagement
- Businesses Subject to Divorce/Probate
- Business Divorce or Wind-down
- Community Associations; “Blanket” Receiverships
- In Aid of Execution of Judgment

State Statutory Receivership and Proceeding Supplementary?

- Section 56.10 provides: If an execution cannot be satisfied in whole or in part for lack of property of the corporate judgment debtor subject to levy and sale, on motion of the judgment creditor the circuit court in chancery within whose circuit such corporate judgment debtor is or has been doing business, or in which any of its effects are found . . . may appoint a receiver for the corporate judgment debtor.

▶ 605.0704 Receivership or custodianship

- ▶ (1) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up and liquidate or one or more custodians to manage the business and affairs of the limited liability company
- ▶ (2) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:
 - ▶ (a) The receiver:
 - ▶ 1. May dispose of all or a part of the assets ...and
 - ▶ 2. May sue and defend in the receiver's own name,
 - ▶ ...(6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of a limited liability company. The ancillary receiver shall serve ancillary to a receiver located in another state if the court deems that circumstances exist requiring the appointment of such a receiver. ...

FLORIDA CONDOMINIUM ACT OR HOA ACT FLA. STAT. CHAPTERS 718 AND 720

- ▶ The Florida Statutes expressly provide for situations where a receiver may be appointed, such as when an association fails to fill vacancies on its board sufficient to constitute a quorum. See Fla. Stat. §718.1124; Fla. Stat. § 720.3053.
- ▶ This has also been seen when developers fail to properly turn over control of the board. A receiver is a “disinterested person appointed by a court or by a corporation or other person, for the protection or collection of property that is subject of diverse claims.” Granada Lakes Villas Condominium Ass’n, Inc. v. Metro-Dade Investments, **125 So.3d 756, 758 (Fla. 2013)**.

APPOINTING A RECEIVER STANDARD

Sound discretion of the court. *E.g. Wilkins v. Wilkins*, 144 Fla. 590, 198 So. 335 (1940); *Welch v. Gray Moss Bondholders Corporation*, 128 Fla. 722, 175 So. 529 (1937); *Prudence Co. v. Garvin*, 118 Fla. 96, 160 So. 7 (1935); *Singleton v. Knott*, 101 Fla. 1077, 133 So. 71 (1931); *Mirror Lake Co. v. Kirk Securities Corporation*, 98 Fla. 946, 124 So. 719 (1929); *Armour Fertilizer Works v. First Nat. Bank*, 87 Fla. 436, 100 So. 362 (1924); *Frisbee v. Timanus*, 12 Fla. 300 (1869).

RECEIVER QUALIFICATIONS – FIDUCIARY TO & ARM OF THE COURT

A receiver should not favor the interests of one party over any other party. *Beach v. Williamson*, 78 Fla. 611, 83 So. 860, (Fla. 1920); *Lehman v. Trust Co. of Am.*, 57 Fla. 473, 49 So. 502 (Fla. 1909); *State v. Jacksonville, Pensacola & Mobile R.R.*, 15 Fla. 201 (Fla. 1875). See also *Fugazy Travel Bureau, Inc. v. State by Dickinson*, 188 So. 2d 842 (Fla. 4th DCA 1966).

* Subject Matter Qualifications and Experience

BONDS

- When Required?
- When waived?
- Amount? The bond generally must be of a sufficiently high amount to protect the opposing party from loss should it ultimately be determined that the receivership was improvident. *Comprop Inv. Properties, Ltd. v. First Tex. Sav. Ass'n*, 534 So. 2d 418 (Fla. 2d DCA 1988). *Rescom Inv., Inc. v. Strategic Consulting and Managing, Inc.*, 635 So. 2d 1061 (Fla. 2d DCA 1994); *Cohen v. Rubin*, 554 So. 2d 4 (Fla. 3d DCA 1989).

EQUITY RECEIVER POWERS BY COURT ORDER

(NOT STATUTE)

The general powers of the receiver are not spelled out under any Florida statute, rule or case law.

MB Plaza, LLC v. Wells Fargo Bank, National Association, 72 So. 3d 205 (Fla. 2d DCA 2011) at fn. 2 –

("We are not aware of any Florida statute, rule, or case law that establish a receiver's 'usual powers and duties' in cases 'similar' to this case.")


THE APPOINTMENT ORDER

1. Oath:
 2. Bond:
 3. Possession of Property:
 4. Duties of Receiver:
 5. Cooperation by Defendants and Third Parties:
 6. Turnover:
 7. Outside Professionals:
 8. Receiver's Fees:
 9. Receivership Reporting:
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- Property held by a receiver is deemed held by the court, for the benefit of all lawful claimants. *Columbia Bank for Coop. v. Okeelanta Sugar Coop.*, 52 So. 2d 670 (Fla. 1951); *Johnson v. Metzinger*, 116 Fla. 262, 156 So. 681 (1934).
- A receiver cannot acquire any rights or powers over the property greater than those belonging to the owner and mortgagee. *See Hamilton v. Flowers*, 134 Fla. 328, 183 So. 811 (1938).

REPORTING

WHAT SHOULD BE REQUIRED?

- INVENTORY
 - FINANCIALS/EXPENSES
 - PROGRESS REPORTS
 - FEES
 - HEARINGS
- 

COMMUNICATIONS BETWEEN COURT AND FIDUCIARY?

What is appropriate?

Potential conflict of Interest Issues for Appointing Court?

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WHAT IS THE GOAL?

MAINTAIN STATUS QUO

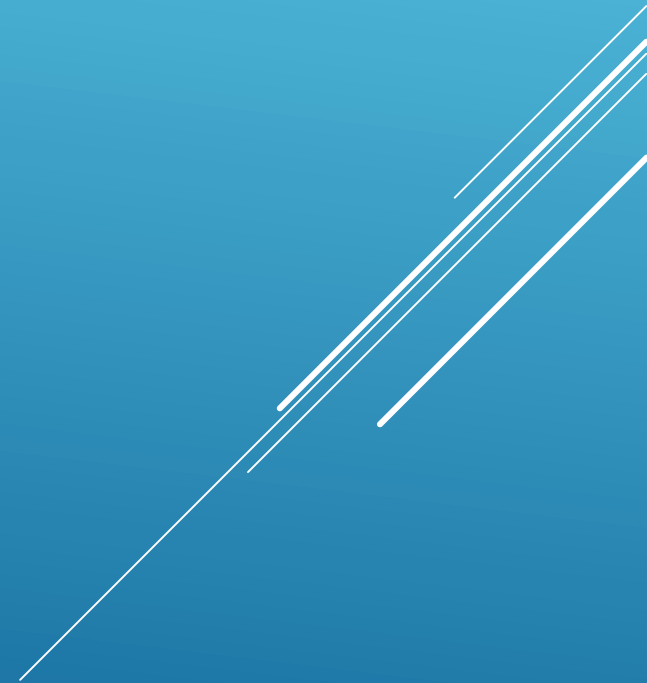
INVESTIGATE CLAIMS FOR & AGAINST RECEIVERSHIP ESTATE

OPERATE/WIND-DOWN BUSINESS(ES)


EFFECTUATE CLAIMS PROCESS/DISTRIBUTION

LIQUIDATION FOR BENEFIT OF CREDITORS

TERMINATING/CLOSING THE RECEIVERSHIP




OTHER FIDUCIARY APPOINTMENTS

- Custodian
 - Special Master/Magistrate
 - Corporate/Independent Manager
 - Curator
 - Corporate Auditor
 - Chief Restructuring officer
 - Monitor
 - Assignee (Assignment for the Benefit of Creditors – “ABC” – Chapter 727)
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UCRERA – UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

The Uniform Commercial Real Estate Receivership Act (UCRERA) comprises a comprehensive body of law that provides for the conditions and circumstances under which a receiver may be appointed over commercial real estate, the scope and procedures of a receivership proceeding, and the powers and duties of the receiver.



QUESTIONS???

