



## ALERTS

### Florida Enacts Uniform Commercial Real Estate Receivership Act

July 7, 2020

#### Highlights

A new Florida law permits a receiver to sell or transfer receivership property free and clear of liens before a judgment is issued

A receivership proceeding involving commercial real estate may proceed with or without notice

The new law empowers the court to require the person whose conduct justified appointment of a receiver to pay for receiver's reasonable fees and expenses

On June 27, Gov. Ron DeSantis [signed the Uniform Commercial Real Estate Receivership Act](#) (UCRERA), which became effective on July 1. The UCRERA codifies existing Florida common law regarding commercial foreclosures as a remedy to stakeholders and provides much needed uniformity.

In light of the effects COVID-19 has had on commercial businesses, the UCRERA offers effective remedies and procedures to protect creditors' interests in commercial real property in Florida.

The act applies to receiverships for interests in commercial real estate

## RELATED PEOPLE



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and associated personal property. It does not allow for an independent cause of action, but is only available when a party brings an underlying action relating to commercial real estate, such as a foreclosure proceeding.

The appointment of the receiver is within the court's discretion. The court may appoint a receiver without notice to the property owner or an opportunity for a hearing, provided the lender can show either that it will suffer immediate and irreparable harm if such notice is given or that waste dissipation, impairment or substantial diminution in value of the property will occur if a receiver is not immediately appointed (before notice can be provided or a hearing can be set).

Additionally, regarding operation of the property, the receiver takes the place of the property owner and creditors are prohibited from using receivership property to satisfy their outstanding obligations without court approval. The court may also award the receiver reasonable fees and expenses incurred, as a result of performing his or her duties, and require the person who justified the receiver's appointment to pay those fees.

Under the UCRERA, the receiver is permitted to sell, use, license or transfer ownership in receivership property free and clear of any liens, or to adopt or reject executory contracts under certain circumstances, before judgment. The new law also allows the receiver to provide notice to creditors who may be unaware of the foreclosure or receivership proceeding and to efficiently dispose of or satisfy claims of creditors, subject to court approval.

Moreover, the new law establishes the following duties to the owners:

- a) Assist and cooperate in the administration of the receiver's duties
- b) Preserve and turn over all receivership property
- c) Identify and make available all records
- d) Submit to an examination under oath, if subpoenaed
- e) Perform any other duty imposed by the court

If the owner knowingly fails to perform his or her duties, the UCRERA provides for sanctions.

Enacting the UCRERA allows for a predictable framework for the appointment of a receiver and administration of commercial real property receiverships in the state of Florida.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Robert C. Folland at 614-628-1429 or [robert.folland@btlaw.com](mailto:robert.folland@btlaw.com), or Mark R. Owens at 317-231-7459 or [mark.owens@btlaw.com](mailto:mark.owens@btlaw.com).

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