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Rent Receivership in Connecticut: Legal Strategies for Servicers and Owners of Non-Performing Commercial Loans

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Servicers and owners of non-performing commercial loans may seek the appointment of a rent receiver to manage cash flow and keep utilities and property vendors current during the pendency of a foreclosure.

Connecticut courts consider several factors when deciding whether to appoint a receiver, including evidence of waste, the relationship between the debt and the property's value, and the terms of the loan documents.

This blog post outlines the legal framework and practical steps for successfully obtaining a rent receiver, with a focus on expediting the process and maximizing collateral value.

Legal Basis for Appointment

A rent receiver in Connecticut cannot be appointed without filing a motion. Courts consider three main factors in deciding whether to appoint a rent receiver:

1. whether there is waste;
2. the amount of the debt in relation to the value of the property; and
3. whether the loan documents provide for the appointment of a receiver to collect rents and profits upon default. *Antonino v. Johnson*.

A motion to appoint a receiver often contains a review of the loan documents that authorize the appointment, recites the amount of the debt, the current value of the property, and whether the lender anticipates that a deficiency may exist. C.G.S. § 49-14. In other words, if a lender is fully secured and there is an absence of waste, such as unpaid real estate taxes, a motion to appoint a rent receiver may be denied.

To expedite the adjudication of a motion to appoint a receiver, include it with the summons and complaint served on the property owner, and file it with the court when the summons and complaint are filed. Expedited adjudication is authorized under the Connecticut Practice Book § 21-20, including appointment without notice.

Required Court Evidence

If a borrower challenges the appointment of a receiver, the court will conduct a hearing that requires the following evidence:

- the original note;
- the mortgage;
- an affidavit of debt;
- a current appraisal; and
- proof of waste at the property, unpaid vendors, or delinquent real estate taxes.

Receivership Orders and Duties

A thorough receivership order should be submitted with the motion to the Court, addressing:

- the actions to be taken by the receiver;
- the amount of the bond under the Connecticut Practice Book § 21-21;
- the submission of monthly or quarterly accountings; and
- what expenses of the receivership or the property can be paid during the receivership.

A rent receiver acts as an arm of the Court, and is not a party to the litigation. *Desiderio v. Iadonisi*. Typically, a receivership does not commence until the receiver files their bond with the Court. The funds held in the receivership estate usually cannot be paid to either party without a court order. An order granting a motion to appoint a receiver is not final for purposes of an appeal. *Hartford Federal Savings & Loan Ass'n v. Tucker*.

Interim distributions to pay real estate taxes and utilities are often allowed during the pendency of the foreclosure. A lender will need to perfect its deficiency rights in order to obtain a distribution of surplus proceeds from the receivership, which means taking title to the property and filing a timely motion for deficiency judgment. C.G.S. § 49-14. A receivership usually concludes by filing a motion to discharge the receiver, which is effective upon the filing of a final accounting.

Recap of Practice Pointers for CMBS Servicers

- File the motion to appoint a receiver with the initial foreclosure pleadings.
- Ensure loan documents expressly authorize the appointment of a receiver.
- Gather and present evidence of waste or risk to the property.
- Prepare a detailed proposed receivership order.
- Monitor and document all receivership expenses and distributions.

Takeaways

By following these best practices, servicers and owners can help preserve the value of commercial collateral during foreclosure and maximize recovery. This guidance is intended to assist servicers of Commercial Mortgage Backed Securities ("CMBS") in preserving collateral, such as shopping malls and office buildings, during foreclosure proceedings.

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Authors

Geoffrey K. Milne

Senior Counsel

617-213-6805

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