

Financial Institutions Law Update

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Opportunities for Creditors Under the Revised Receivership Act

Washington Governor Christine Gregoire has signed into law a series of changes to the state Receivership Act that will make it easier (and possibly cheaper) for creditors to utilize the Receivership Act as a tool to resolve troubled loan situations with their borrowers. The revisions will become effective 90 days after the Legislature adjourns, making July 24, 2011, the likely effective date. The changes clarify a number of points that previously puzzled both judges and practitioners.

Creditors' Rights

The revisions to the Act make clear that both judicial and non-judicial foreclosure proceedings constitute grounds for appointing a receiver. The Act also provides a welcome statutory definition of the *commencement* of a non-judicial foreclosure proceeding as the moment of effective service of a notice of default under RCW 61.24.030(8). The commencement of other types of proceedings is also defined under the revised Act.

Before the change, there had been some uncertainty whether the automatic stay provisions of RCW 7.60.110 would affect a petitioning creditor's right to continue a related foreclosure or forfeiture proceeding. A number of practitioners had difficulty convincing judges, commissioners and court staff that the automatic stay was not an obstacle to proceeding with a foreclosure or other type of relief. The revisions to the Act explicitly confirm that the stay does not apply to the petitioning creditor's foreclosure action and is not an impediment to completing the foreclosure process.

The revised Act also confirms the general receiver's power (upon court order) to sell real property free and clear of liens whether the sale is inside or outside the ordinary course of business. This clarification will now make the receivership option for liquidating distressed residential projects by selling individual units or lots a more effective means for lenders to maximize recovery from their collateral.

Flexible Time Frames

Finally, the Act resolves the uncertainty regarding the court's inherent power to shorten or extend the time frames specified in any statute of the Receivership Act. As amended, the Act

now provides express statutory authority for the court to shorten and expand *any* deadline for good cause shown. In addition, several critical deadlines were expressly extended under the revised Receivership Act. For instance, receivers will now have more time to acquire and report to the court and creditors certain information about the debtor's assets and liabilities. Under these amendments, receivers will also now have 30 days to publish and mail notice of the receivership. These extensions will permit receivers to prioritize tasks and better assess the debtor's financial circumstances during the first month of the receivership.

Benefits to Certain Unsecured Creditors

The revisions to the Receivership Act will also bring a positive change to certain unsecured creditors. The allowed amount of claims for wages, salaries and commissions increased from \$2,000 to \$10,950, and some of the other types of allowable claims were similarly updated to better reflect today's economic realities. Although these changes will only be relevant in the receiverships that generate *excess* funds after satisfying all of the debtor's secured obligations and receivership expenses, they reflect the Legislature's commitment to creditors' rights in the context of the Receivership Act.

Conclusion

Receiverships appear to be blooming in Washington and the upcoming changes to the Act will likely encourage more creditors to consider the receivership option as part of their workout or exit strategy. The revisions that will come into effect in July 2011 will make the Act easier to navigate and apply. Fewer judges and commissioners will be raising interpretational issues. While there are many problems still to be tackled, the revised Act will bring a number of benefits to creditors, including enhanced clarity and cost savings.

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