

Minnesota Commercial Real Estate Receiverships: Nuts and Bolts

By: Ian M. Rubenstrunk
Director, Minnesota Chapter of Commercial Receivership Association
Management Consultant, Alliance Management, LLC

A receiver, at its essence, is a court-appointed third-party who takes control of assets while two or more parties resolve a dispute relating to those assets through litigation. A receiver serves as an “arm-of-the-court” and as a fiduciary to creditors. The receiver is tasked with carrying out the court’s orders regarding the assets placed under receivership administration. A receiver can be appointed in any number of matters, including a corporate wind-down, divorce, debt collection, and mortgage foreclosures.

Receiverships have been a remedy in Minnesota law for over a hundred years, but Minnesota recently revised its receivership statute in 2012. (*See* Minn. Stat. § 576.21 *et seq.*) These statutory revisions codified many legal principles that had previously only existed in court orders and case law decisions. Reducing these principles to a reliable statute provided a predictable framework for litigants, receivers and the court to navigate through a receivership case. Ten years later, the receivership statutes in Minnesota have generated a robust practice and a flexible, cost-effective remedy for parties involved in property-centric disputes.

HOW DOES A RECEIVERSHIP START?

One of the most common uses of the receivership remedy is in mortgage foreclosure matters, where a receiver is appointed to take possession and control of the real property while the lender forecloses its mortgage. A lender will commence a lawsuit to foreclose its mortgage and then will bring a motion to have a receiver appointed. That motion will identify the legal basis for appointing a receiver, identify a proposed receiver and its qualifications, and include a proposed order setting forth the powers that the receiver will have. Typically following a hearing on the motion, the court will grant the motion and enter an order appointing the receiver, which will set forth the scope of the receivership and the powers of the receiver.

TYPES OF RECEIVERSHIPS

In Minnesota, there are two types of receiverships: (1) limited receiverships and (2) general receiverships. The default rule in Minnesota is that in a mortgage foreclosure action the receiver will be a limited receiver.

A limited receiver is as the name suggests, limited. The receiver is appointed over specific assets and for a specific purpose, typically to preserve and protect the assets while the litigation is completed. For example, a limited receiver over a commercial building occupied by third-party tenants may only be tasked with ensuring that the status of the property is maintained and collecting rents from those tenants. The powers of a limited receiver are more fully set forth in Minn. Stat. § 576.29, subd. 1(a).

In a general receivership, a general receiver typically has broad powers over a wider universe of assets. For example, a general receiver appointed over a commercial building occupied by third-party tenants may be appointed as receiver over *both* the entity that owns the building and the building itself. Additionally, the receiver may be granted the power to operate businesses, pursue claims or causes of action, such as fraudulent transfers, compel discovery of documents, terminate leases (in addition to collecting rents) and even sell the property upon the court's approval. The powers of a general receiver are more fully set forth in Minn. Stat. § 576.29, subd. 1(b).

In addition to the statutory powers, the court may also modify the powers of a receiver in the order appointing receiver and grant additional powers to the receiver that are appropriate to a particular case.

WHO CAN BE A RECIEVER?

Under Minnesota law, any person or company can be a receiver if: (1) they are independent of the parties to the ligation, and (2) the court determines they are qualified to carry out the duties of the receivership. The full list of qualifications to be a receiver are set forth in Minn. Stat. § 567.26, subd. 2. In foreclosures cases, the receiver is typically either an individual or a company that has experience in commercial real estate property management and experience advising or operating distressed companies. The lender will often meet with the proposed receiver prior to filing its motion in order to evaluate the experience and qualifications of the receiver before asking the court to appoint that party.

WHAT HAPPENS ONCE THE RECEIVER IS APPOINTED?

Possession & Control

The immediate directive to any receiver is to take possession and control of the assets at issue. In that sense, the receiver effectively steps into the shoes of the owner of the property. The receiver will take immediate action to gather information related to the property and physical control, which may include an on-site visit, meeting with management, changing locks, taking over bank accounts, taking over payment of utilities, changing passwords to security systems, notifying tenants, and all other acts that would transfer daily operations to the control and supervision of the receiver.

Preserve & Protect

The next directive to the receiver after possession and control, is to preserve and protect the property and its value. The receiver will ensure that the property continues to operate as normal, with limited interruptions, whether that be a hotel, mixed use, multi-family, etc. This may include hiring a property manager if daily on-site presence is needed, making life safety repairs, maintaining insurance, collecting rents or other receivables, re-negotiating leases, paying normal operating expenses, contracting with vendors for ancillary services, like snow plowing, lawn care, event coordinators, etc.

Throughout the duration of the receivership, the receiver will provide interim reporting to the court addressing the receiver's activities during those interim periods and accounting for the collection or disposition of receivership property, including cash receipts and disbursements.

If the receiver is ever unsure about its duties during the receivership, it can ask the court for directions on how to address a particular issue, either *ex parte* or through a motion.

HOW DOES A RECEIVERSHIP CASE END?

A receivership case ends when the court enters an order terminating the receivership. The court will typically enter that termination order in response to a motion of the plaintiff or a motion of the receiver seeking termination, asserting that the receiver has fulfilled its obligations and is no longer needed. The receiver will then file a final report and the court will discharge the receiver.

In a commercial foreclosure case, a receiver will typically serve as receiver throughout the duration of the redemption period. In Minnesota, the redemption period in a foreclosure is usually either 6 months or 12 months after the sheriff's sale (auction) of the real property. In Minnesota, it is not uncommon for the receivership to remain open after the redemption period has expired so that the receiver can sell the real property for the plaintiff. In the event the receiver sells the property, the receiver will usually engage a real estate broker to list the property like any other commercial real estate and then seek the court's approval of any proposed sale.

In a general receivership, the receiver may also liquidate all of the assets in its possession and control and run a claims process to distribute proceeds of that liquidation to creditors, much like a bankruptcy case. The claims process is not common in commercial real estate receiverships.

CLOSING REMARKS

Receiverships in Minnesota, while codified and more streamlined by the 2012 revisions, provide a great deal of flexibility for parties to adapt the receivership to the needs of a particular dispute or asset class; flexibility that may not be available in other legal remedies. An experienced and well-qualified receiver can leverage its knowledge and skill set to bring certainty, clarity, transparency, and efficiency to a receivership case to maximize the value of assets for all interested parties.

About the Author

Ian M. Rubenstrunk is the Director of the Minnesota Chapter of the Commercial Receivers Association, and a Management Consultant, at Alliance Management, LLC. As a consultant at Alliance, Mr. Rubenstrunk serves as receiver in a variety of matters, including commercial real estate receiverships. Prior to joining Alliance, Mr. Rubenstrunk was an attorney at a Minneapolis law firm, focusing on bankruptcy, foreclosures, and receiverships. For more information on Mr. Rubenstrunk's experience, or the services offered by the Commercial Receivers Association or Alliance Management, please visit: www.commercialreceiver.org or www.alliancemgmt.com.

DISCLAIMER: This article is provided for informational purposes only and is not intended to be an exhaustive discussion of Minnesota receiverships. Additionally, nothing in this article shall be

construed as or relied upon as legal advice. If you have legal questions or other questions about your rights under Minnesota law, please contact a Minnesota foreclosure or receivership attorney.