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Rent receivers remain the most powerful tool to protect the interests of foreclosing parties

September 15, 2010 - Connecticut

In a real estate climate that has seen a drastic reduction in the value of real property and the security offered by that collateral, a commercial lender almost uniformly finds a rent receiver to be a valuable companion on the road to foreclosure. While its title suggests that the rent receiver is primarily appointed to collect rental proceeds, the benefits of such an appointment often run much deeper, serving simultaneously as a method to protect the value of the collateral and demonstrate to the borrower that it will be forced to "play by the rules" pending completion of the foreclosure process.

Connecticut has set some fairly loose guidelines for the appointment of a receiver, but its unique foreclosure laws may make the appointment even more necessary. While the ability to have a receiver appointed is certainly not unique to the state, the concept of the mortgagee taking title to the property by operation of law through strict foreclosure, rather than through a foreclosure sale, often merits heightened attention to the appointment, if for no other reason than to safeguard the collateral while it presumably waits to enter the lender's hands. Indeed, especially in the current climate, it is common for both parties to a commercial mortgage to realize very quickly that the loan to property value may leave a significant deficiency for the foreclosing party, making considerations of retaining whatever value does exist of paramount importance.

Enter the rent receiver. While the appointment of the receiver is within the court's discretion, several factors play a significant role in the consideration of such an appointment, and the party seeking the appointment bears the burden of demonstrating the need for it. Although, as a practical matter, different courts give different weight to language in mortgage documents providing for a receiver in the event of default, the presence of the language is certainly a determining, if not dispositive, fact for most courts. Any lender writing commercial mortgages in the state would do well to account for this fact.

Courts also commonly consider whether the property will be able to satisfy the debt owed in the event of a successful foreclosure, the borrower's ability to satisfy any subsequent deficiency, whether there are outstanding tax payments, and the general condition of the property itself. Of course, anything that leads a court to believe that the borrower has neglected the property while simultaneously enjoying the benefits of remaining in default merits special attention. Thus, while there is no "silver bullet" that will lead to appointment, most courts have taken a common sense, practical approach.

The receiver is not only a valuable court resource to protect the value of the property, but also to ensure a much more efficient adjudication of the foreclosure action, if for no other reason than securing access to the property for purposes of appraisals and property inspections prior to taking title. In cases where the borrower is uncooperative, an increasing phenomenon with commercial

foreclosures, a rent receiver will obviate the need to file motions to compel access or otherwise involve the court, especially when the mortgagor has failed to appear in the case. The receiver can provide detailed rent rolls, and even market vacant units, all prior to transfer of title, all the while providing peace of mind to the mortgagee.

Of course, many borrowers cry foul when faced with the proposition that they may not be able to collect their rental proceeds by virtue of the receiver, often arguing that granting the receiver application effectively decides the foreclosure action. The reality, of course, is that the receiver is ultimately answerable only to the court. It would, of course, be disingenuous to fail to recognize that the receiver itself is generally selected by the foreclosing plaintiff, subject to the court's approval. However, as a safeguard to being unrestrained in its activities, the receiver must post an appropriate bond with the court to provide some assurance of its good faith, and generally to provide periodic status reports to the court detailing its activities.

In an age where borrowers file an increasing, some would say troubling, number of dilatory motions to grind the foreclosure process to a halt, counsel representing commercial lenders would be remiss not to consider having receivers appointed. Despite whatever difficulties and cost concerns such lenders may be confronted with regarding their appointment, rent receivers remain the most powerful tool to protect the interests of foreclosing parties short of foreclosure itself.

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