

PUBLICATION

Maryland Enacts Comprehensive Commercial Receivership Law

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On April 30, 2019, Maryland Governor Larry Hogan signed into law the Maryland Commercial Receivership Act, or MCRA, establishing a comprehensive statutory regime for the appointment, powers and duties of a receiver for commercial property. The MCRA goes into effect on October 1, 2019 and will augment existing case law and court rules governing courts' authority to appoint receivers and the powers of receivers once appointed.

The MCRA broadly applies to various forms of receiverships, including a receivership for an interest in real property and related personal property used in operation thereof; a receivership in voluntary dissolution or involuntary dissolution of a company; and any other receivership in which a receiver is appointed to take possession and control of a person's property with authority to liquidate the property or, in the case of a business, to wind-up the affairs of the business. Absent a court order, the MCRA does not apply to a receivership initiated by a government regulator, unless the regulator or the court-appointed receiver elect for the statute to apply.

The MCRA makes clear that receivership is both a pre- and post-judgment remedy. Further, the statute empowers the receiver to sell property free and clear of liens (upon certain conditions being satisfied), assume or reject leases and certain other contracts, operate a business, avoid certain transfers, and hire and compensate professionals. Significantly for senior lienholders, the statute permits a sale of property free and clear of subordinate liens and provides that such liens attach to sale proceeds in the order of their priority before the transfer, "even if the proceeds are not sufficient to satisfy all obligations" secured by such liens.

Not all of the receiver's actions require court approval under the MCRA. In the ordinary course of business, a receiver may incur unsecured debt; pay ordinary, reasonable and necessary expenses; employ certain agents, contractors and employees; and assert certain rights and causes of action of the receivership property free from some defenses that may otherwise be asserted against the owner of the property.

The statute also imposes duties on the owners of receivership property, which include assisting and cooperating with the receiver, and turning over to the receiver all receivership property (and records and other information relating to the receivership property) in the owner's possession, custody or control.

Except in cases of real estate receivership, the appointment of a receiver will result in an automatic stay of actions against the owner of the receivership property, with certain exceptions, such as exercise of a governmental entity's police powers. The MCRA allows a creditor to obtain relief from the statutory stay for cause shown.

Receiverships are an important tool for creditors seeking to preserve the value of their collateral. The comprehensive MCRA should provide greater predictability for those seeking the appointment of a receiver. The MCRA may also prove fruitful for creditors hoping to maximize the value of assets through a sale without the costs and risks associated with the foreclosure process.

For more information about this topic, or for assistance with commercial receiverships or workout issues, please contact the authors or any member of Baker Donelson's [Corporate Restructuring and Bankruptcy Group](#).