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BLOG UPDATE: FLORIDA'S COMMERCIAL REAL PROPERTY RECEIVERSHIP ACT BECOMES LAW

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In our March 24th, 2020, blog, we announced the Florida Legislature's passage of a comprehensive act affecting distressed commercial real estate. In March the Legislature enacted its version of the Uniform Commercial Real Estate Receivership Act ("UCRERA"). This week Governor DeSantis approved the bill; Florida's UCRERA becomes effective on, July 1, 2020.

Since the Legislature's passage of this legislation, the COVID-19 pandemic has become even more widespread in Florida. Businesses across the state were shuttered and patrons of real estate-oriented businesses stayed at home for months. And some of Florida's recently relaxed restrictions on businesses have been recoiled, leading to concerns about another extended period of business disruption. These continuing disruptions will certainly result in even deeper distress for Florida's businesses. Lenders and borrowers in the commercial real estate space should pay particular attention to the remedies specified in the UCRERA as the prospects of commercial foreclosures and receiver appointments loom large.

Prior to the UCRERA, receivers were empowered to protect and preserve commercial real estate assets in distress but generally were not active parties in foreclosure actions. Under UCRERA, however, the Florida Legislature has expressly empowered receivers to take a more active role in court proceedings, including the authority to compel witnesses to testify, to assert claims held by the owners of receivership property; owners of receivership property under UCRERA may be compelled to submit to an examination by the receiver and to grant access to various business records.

The new law also bestows broad authority upon state court judges to stay any proceedings that affect or concern receivership property and to enjoin anyone whose acts threaten to waste or misappropriate receivership property.

As noted in our earlier blog, the UCRERA now confirms a receiver's power, upon court approval and after notice to all parties, to transfer, sell or dispose of receivership property even before a final judgment has been entered. While lenders may view as positive this express grant of authority to receivers to sell receivership property pendente lite, borrowers may shudder at the prospect that their property might be sold away before their rights in and to that property are finally adjudicated.

By enacting this new law, the Florida Legislature has codified several powers granted by state courts to receivers under common law and has expanded those powers substantially. As we travel through (and eventually out of) the economic turmoil created by COVID-19, the UCRERA undoubtedly will play a prominent role in state foreclosure proceedings (and in federal diversity proceedings applying Florida law).

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