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BILL



ANALYSIS

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House Bill 4470 (as passed by the House)
House Bill 4471 (Substitute S-1)
Sponsor: Representative Brandt Iden
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-12-17

CONTENT

House Bill 4471 (S-1) would enact the "Uniform Commercial Real Estate Receivership Act" to govern the appointment, powers, and judicial oversight of receivers for commercial property. The Act would apply to a receivership for an interest in real property and any personal property related to or used in operating the real property, and would do the following:

- Specify that the court that appointed a receiver would have exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property; and specify the conditions under which a court could appoint a receiver.
- Allow a court to issue an order only after notice and opportunity for a hearing appropriate for the situation, under certain circumstances.
- Prohibit the court from appointing a person as receiver unless the person submitted a statement that the person was not disqualified.
- Require a receiver to post with the court a bond or alternative security.
- Specify the powers and duties of a receiver.
- Require an owner to perform certain duties, including assisting and cooperating with the receiver in the administration of the receivership, and preserving and turning over to the receiver all receivership property in the owner's possession.
- Specify that an order appointing a receiver would operate as a stay, applicable to all entities, of an act, action, or proceeding to obtain possession of or enforce a judgment against receivership property, or enforce certain liens against receivership property.
- Allow a receiver, with court approval, to engage an attorney, accountant, appraiser or other professional to assist the receiver in performing a duty or exercising a power.
- Allow a receiver, with court approval, to use or transfer receivership property other than in the ordinary course of business.
- Allow a receiver, with court approval, to adopt or reject an executory contract of the owner relating to receivership property.
- Specify that a receiver would be entitled to all defenses and immunities provided by State law for an act or omission within the scope of the receiver's appointment.
- Require a receiver to give notice of the appointment to the owner's creditors by delivery through first-class mail or other reasonable delivery, and by publication as directed by the court.

- **Allow the court to award a receiver, from receivership property, the reasonable and necessary fees and expenses of performing the duties and exercising the powers of the receiver.**
- **Require a receiver to file a final report with certain information, including a description of the receiver's activities during the receivership, a list of receivership property received and disposed of during the receivership, and any other information required by the court.**
- **Specify that a request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation, would not make the mortgagee a mortgagee in possession of the real property or an agent of the owner, and would not make the secured obligation unenforceable.**

House Bill 4470 would amend the Revised Judicature Act to specify that, for the purposes of foreclosure by advertisement, an action or proceeding for the appointment of a receiver would not be an action or proceeding to recover a debt.

The bills are tie-barred to each other, and each bill would take effect 90 days after its enactment.

House Bill 4471 (S-1) is described in more detail below.

Definitions

"Receivership" would mean a proceeding in which a receiver is appointed.

"Receiver" would mean a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by the proposed Act or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property. "Court" would mean the circuit court.

"Receivership property" would mean the property of an owner that is described in the order appointing a receiver or a subsequent order, including any proceeds, products, offspring, rents, or profits of or from the property.

"Owner" would mean the person for whose property a receiver is appointed.

"Proceeds" would mean any of the following property: a) whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property; b) whatever is collected on, or distributed on account of, receivership property; c) rights arising out of receivership property; d) to the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or e) to the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

"Rents" would mean all of the following:

- Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person.
- Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property.
- Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person.

- Sums payable to terminate an agreement to possess or occupy real property of another person.
- Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property.
- Other sums payable under an agreement relating to the real property of another person that constitute rents under law of the State other than the proposed Act.

Scope of the Proposed Act

Except as otherwise provided, the proposed Act would apply to a receivership for an interest in real property and any personal property related to or used in operating the real property. The Act would not apply to a receivership for an interest in real property improved by one to four dwelling units unless one of the following applied:

- The interest was used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as his or her primary residence.
- The interest secured an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes.
- The owner planned or was planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business.
- The owner was collecting or had the right to collect rents or other income from the property from a person other than an affiliate of the owner (as defined in the Act).

The Act would not apply to a receivership authorized by law of the State other than the proposed Act in which the receiver was a governmental unit or an individual acting in an official capacity on behalf of the unit, except to the extent provided by the other law. The Act would not limit the authority of a court to appoint a receiver under another law of the State.

Notice & Opportunity for Hearing

Except as otherwise provided below, the court could issue an order under the Act only after notice and opportunity for a hearing appropriate in the circumstances. The court could issue an order as follows:

- Without prior notice, if the circumstances required an order to be issued before notice was given.
- After notice and without a prior hearing, if the circumstances required an order to be issued before a hearing was held.
- After notice and without a hearing, if no interested party timely requested a hearing.

Power of the Court & Appointment of Receiver

The procedure for the selection, appointment, removal, and compensation of a receiver under the Act would be as established by rule of the Michigan Supreme Court.

The court that appointed a receiver under the proposed Act would have exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

A court could appoint a receiver as follows:

- After judgment, to carry the judgment into effect or to preserve nonexempt real property pending appeal or when an execution had been returned unsatisfied and the owner refused to apply the property in satisfaction of the judgment.
- In an action which a receiver for real property could be appointed on equitable grounds.
- During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to them.

A court also could appoint a receiver before judgment, to protect a party that demonstrated an apparent right, title, or interest in real property that was the subject of the action, if the property or its revenue-producing potential: a) was being subjected to or was in danger of waste, loss, dissipation, or impairment; or b) had been or was about to be the subject of a voidable transaction.

In connection with the foreclosure or other enforcement of a mortgage, the court could appoint a receiver for the mortgaged property under the following circumstances:

- Appointment was necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
- The mortgagor agreed in a signed record to appointment of a receiver on default.
- The owner agreed, after default and in a signed record, to appointment of a receiver.
- The property and any other collateral held by the mortgagee was not sufficient to satisfy the secured obligation.
- The owner failed to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect.
- The holder of a subordinate lien obtained appointment of a receiver for the property.

The court could condition appointment of a receiver without prior notice or without a prior hearing on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concluded that the appointment was not justified. If the court later concluded that the appointment was justified, the court would have to release the security.

Disqualification from Appointment

The court could not appoint a person as receiver unless the person submitted to the court a statement under penalty of perjury that the person was not disqualified. Except as otherwise provided, a person would be disqualified from appointment as receiver if the person met one or more of the following:

- Was an affiliate of a party.
- Had an interest materially adverse to an interest of a party.
- Had a material financial interest in the outcome of the action, other than compensation the court could allow the receiver.
- Had a debtor-creditor relationship with a party.
- Held an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

A person would not be disqualified from appointment as receiver solely because the person met any of the following:

- Was appointed receiver or was owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership.
- Was an individual obligated to a party on a debt that was not in default and was incurred primarily for personal, family, or household purposes.

- Maintained with a party a deposit account as defined in Section 9102 of the Uniform Commercial Code (a demand, time, savings, passbook, or similar account maintained with a bank).

A person who sought appointment of a receiver could nominate a person to serve as receiver, but the court would not be bound by the nomination.

Bond or Alternative Security

Except as otherwise provided, a receiver would have to post with the court a bond that: a) was conditioned on the faithful discharge of the receiver's duties; b) had one or more sureties approved by the court; c) was in an amount the court specified; and d) was effective as of the date of the receiver's appointment.

The court could approve the posting of alternative security, such as a letter of credit or deposit of funds; however, the receiver could not use receivership property as alternative security. Interest that accrued on deposited funds would have to be paid to the receiver on the receiver's discharge. The court could authorize a receiver to act before the receiver posted the bond or alternative security required.

A claim against a receiver's bond or alternative security would have to be made within one year after the date the receiver was discharged.

Receiver as Lien Creditor

On appointment of a receiver, the receiver would have the status of a lien creditor under both of the following: a) Article 9 (Secured Transactions) of the Uniform Commercial Code, as to receivership property that was personal property or fixtures; and b) the recording statutes of the State as to receivership property that was real property.

Collection of Receivership Property

Unless the court ordered otherwise, a person would have to do both of the following on demand by a receiver, as applicable:

- If the person owed a debt that was receivership property and was matured or payable on demand or on order, pay the debt to or on the order of the receiver, except to the extent the debt was subject to setoff or recoupment
- Unless the person was a creditor, if the person had possession, custody, or control of receivership property, turn the property over to the receiver.

If a creditor had possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on that possession, custody, or control, the creditor could retain possession, custody, or control until the court ordered adequate protection of the lien.

Unless a bona fide dispute existed about a receiver's right to possession, custody, or control of receivership property, the court could sanction as civil contempt a person's failure to turn the property over when required.

Receiver's Powers & Responsibilities

Except as limited by court order or law of the State other than the proposed Act, a receiver could do all of the following:

- Collect, control, manage, conserve, and protect receivership property.
- Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business.
- In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property.
- Assert a right, claim, cause of action, or defense of the owner that related to receivership property.
- Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties.
- On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that could affect administration of the receivership.
- Engage a professional, as described below.
- Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state.
- Exercise any power conferred by court order, the proposed Act, or other law of the State.

With court approval, a receiver could do any of the following:

- Incur debt for the use or benefit of receivership property other than in the ordinary course of business.
- Make improvements to receivership property.
- Use or transfer receivership property other than in the ordinary course of business.
- Adopt or reject an executory contract of the owner.
- Pay compensation to the receiver, and to each professional engaged by the receiver.
- Recommend allowance or disallowance of a claim of a creditor.
- Make a distribution of receivership property.

A receiver would have to do all of the following: a) prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property; b) account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property; c) file with the appropriate real property recording office a copy of the order appointing the receiver and, if a legal description of the real property were not included in the order, the legal description; d) disclose to the court any fact arising during the receivership that would disqualify the receiver; and e) perform any duty imposed by court order, the proposed Act, or other law of the State.

The powers and duties of a receiver could be expanded, modified, or limited by court order.

Owner's Duties

An owner would be required to do all of the following:

- Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties.
- Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.
- Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or

control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control.

- On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership.
- Perform any duty imposed by court order, the proposed Act, or other law of the State.

If the owner were a person other than an individual, these provisions would apply to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the owner's affairs.

If a person knowingly failed to perform a duty imposed under these provisions, the court could award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs, and/or sanction the failure as civil contempt.

Stay or Injunction

Except as otherwise provided below or ordered by the court, an order appointing a receiver would operate as a stay, applicable to all entities, of an act, action, or proceeding to do any of the following:

- Obtain possession of, exercise control over, or enforce a judgment against receivership property.
- Enforce a lien against receivership property to the extent the lien secured a claim against the owner that arose before entry of the order.

Except as otherwise provided below, the court could enjoin an act, action, or proceeding against or relating to receivership property if the injunction were necessary to protect the property or facilitate administration of the receivership. The court also could void an act that violated a stay or injunction.

A person whose act, action, or proceeding was stayed or enjoined could apply to the court for relief from the stay or injunction for cause.

An order would not operate as a stay or injunction of any of the following:

- An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person who sought appointment of the receiver.
- An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property.
- Commencement or continuation of a criminal proceeding.
- Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power.
- Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

If a person knowingly violated a stay or injunction, the court could award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs, and/or sanction the failure as civil contempt.

Engagement of Professional

With court approval, a receiver could engage an attorney, accountant, appraiser, auctioneer,

broker, or other professional to assist the receiver in performing a duty or exercising a power. The receiver would have to disclose to the court: a) the identity and qualifications of the professional; b) the scope and nature of the proposed engagement; c) any potential conflict of interest; and d) the proposed compensation.

A person would not be disqualified from engagement solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. The Act would not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

A receiver or professional engaged by the receiver would have to file with the court an itemized statement of the time spent, work performed, and billing rate of each person who performed the work and an itemized list of expenses. The receiver would have to pay the amount approved by the court.

Use, Transfer of Property not in the Ordinary Course of Business

With court approval, a receiver would be allowed to use receivership property other than in the ordinary course of business, or to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provided otherwise, a sale under these circumstances would be free and clear of a lien of the person who obtained appointment of the receiver, any subordinate lien, and any right of redemption but would be subject to a senior lien.

A lien on receivership property that was extinguished by a transfer would attach to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds were insufficient to satisfy all obligations secured by the lien.

A transfer under could occur by means other than a public auction sale. A creditor who held a valid lien on the property to be transferred could purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tendered funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

A reversal or modification of a court order approving a transfer would not affect the validity of the transfer to a person who acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer. "Good faith" would mean honesty in fact and the observance of reasonable commercial standards of fair dealing.

Executory Contract

Except as otherwise provided, with court approval, a receiver could adopt or reject an executory contract of the owner relating to receivership property. The court could condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver did not request court approval to adopt or reject the contract within a reasonable time after the appointment, the receiver would be deemed to have rejected the contract. ("Executory contract" would mean a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete the performance would constitute a material breach.)

A receiver's performance of an executory contract before the court's approval of its adoption or rejection would not be an adoption of the contract and would not preclude the receiver from seeking approval to reject the contract.

A provision in an executory contract that required or permitted a forfeiture, modification, or termination of the contract because of the receiver's appointment or the owner's financial condition would not affect a receiver's power to adopt the contract.

A receiver's right to possess or use receivership property under an executory contract would terminate on rejection of the contract. Rejection would be a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract would have to be submitted by the later of the time set for submitting a claim in the receivership, or 30 days after the court approved the rejection.

If, at the time a receiver was appointed, the owner had the right to assign an executory contract relating to receivership property under State law other than the proposed Act, the receiver could assign the contract with court approval.

If a receiver rejected an executory contract for the sale of receivership property that was real property in possession of the purchaser or a real-property timeshare interest, the purchaser could do either of the following:

- Treat the rejection as a termination of the contract, in which case the purchaser would have a lien on the property for the recovery of any part of the purchase price the purchaser paid.
- Retain the purchaser's right to possession under the contract, in which case the purchaser would have to continue to perform all obligations arising under the contract and could offset damages caused by nonperformance of an owner's obligation after the date of the rejection, but the purchaser would have no right or claim against other receivership property or the receiver for those damages.

("Timeshare interest" would mean either of the following, as applicable: a) an interest having a duration of more than three years that grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year; or b) if the Condominium Act applied, a time-share estate or a time-share license.)

A receiver could not reject an unexpired lease of real property under which the owner was the landlord if the tenant occupied the leased premises as the tenant's primary residence, or the receiver were appointed at the request of a person other than a mortgagee. A receiver could not reject an unexpired lease under those circumstances if the receiver were appointed at the request of a mortgagee and one or more of the following applied:

- The lease was superior to the lien of the mortgage.
- The tenant had an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy would not be disturbed if the tenant performed its obligations under the lease.
- The mortgagee had consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage.
- The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

Defenses & Immunities; Interim Report

A receiver would be entitled to all defenses and immunities provided by State law other than the proposed Act for an act or omission within the scope of the receiver's appointment. A receiver could be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

A receiver could file or, if ordered by the court, would have to file an interim report that included all of the following:

- The receiver's activities since appointment or a previous report.
- Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.
- Receipts and dispositions of receivership property.
- The receiver's fees and expenses and, if not filed separately, a request for approval of payment of the fees and expenses.
- Any other information required by the court.

Notice of Appointment

Except as otherwise provided, a receiver would be required to give notice of the appointment to the owner's creditors by deposit for delivery through first-class mail or other commercially reasonable delivery method to the last-known address of each creditor and by publication as directed by the court.

The notice would have to specify the date by which each creditor holding a claim against the owner that arose before appointment of the receiver would have to submit the claim to the receiver. The date specified would have to be at least 90 days after the later of the delivered notice or the last publication. The court could extend the period for submitting the claim. Unless the court ordered otherwise, a claim that was not submitted timely would not be entitled to a distribution from the receivership.

A claim submitted by a creditor would have to: a) state the creditor's name and address; b) state the amount and basis of the claim; c) identify any property securing the claim; d) be signed by the creditor under penalty of perjury; and e) include a copy of any record on which the claim was based.

An assignment by a creditor of a claim against the owner would be effective against the receiver only if the assignee gave timely notice of the assignment to the receiver in a signed record.

At any time before entry of an order approving a receiver's final report, the receiver could file with the court an objection to a creditor's claim, stating the basis for the objection. The court would have to allow or disallow the claim according to State law.

If the court concluded that receivership property was likely to be insufficient to satisfy claims of each creditor who held a perfected lien on the property, the court could order both of the following: a) that the receiver need not give notice of the appointment to all of the owner's creditors, but only those creditors the court directed; and b) unsecured creditors would not have to submit claims.

Subject to Section 21 of the proposed Act (described below), both of the following would apply to a distribution of receivership property: a) if the distribution were to a creditor who held a perfected lien on the property, it would have to be made in accordance with the creditor's

priority under the law of the State; and b) if the distribution were to a creditor with an allowed unsecured claim, it would have to be made as the court directed according to the law of the State.

Fees & Expenses; Removal & Termination of Receivership

Under Section 21 of the proposed Act, the court could award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties and exercising the powers of the receiver. The court could order one or both of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs: a) person who requested the appointment of the receiver, if the receivership did not produce sufficient funds to pay the fees and expenses; or b) a person whose conduct justified or would have justified the appointment of the receiver before judgment to protect a party that demonstrated an apparent right or interest in real property that was subjected to waste, loss, or dissipation or was the subject of a voidable transaction.

The court could remove a receiver for cause, and would have to replace a receiver who died, resigned, or was removed. If the court found that a receiver who resigned or was removed, or the representative of a receiver who was deceased, had accounted fully for and turned over to the successor receiver all receivership property and had filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver would be discharged.

The court could discharge a receiver and terminate the court's administration of the receivership property if the court found that appointment of the receiver was improvident or that circumstances no longer warranted continuation of the receivership. If the court found that the appointment was sought wrongfully or in bad faith, the court could assess against the person who sought the appointment the fees and expenses of the receivership, including reasonable attorney fees and costs, and actual damages caused by the appointment, including reasonable attorney fees and costs.

Receiver's Final Report

Upon completion of the receiver's duties, a receiver would have to file a final report including all of the following:

- A description of the receiver's activities during the receivership.
- A list of receivership property at the commencement of the receivership and any property received during the receivership.
- A list of disbursements, including payments to professionals engaged by the receiver.
- A list of dispositions of receivership property.
- A list of distributions made or proposed to be made from the receivership for creditor claims.
- If not filed separately, a request for approval of the payment of the receiver's fees and expenses.
- Any other information required by the court.

If the court approved a final report and the receiver distributed all receivership property, the receiver would be discharged.

Receivership in another State

The court could appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this State or subject to the jurisdiction

of the court for which a receiver could be appointed under the proposed Act if the person or nominee would be eligible to serve as receiver, and the appointment furthered the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

The court could issue an order that gave effect to an order entered in another state appointing or directing a receiver. Unless the court ordered otherwise, an ancillary receiver would have the rights, powers, and duties of a receiver appointed under the Act.

Effect of Enforcement by Mortgagee

A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation would not do any of the following:

- Make the mortgagee a mortgagee in possession of the real property.
- Make the mortgagee an agent of the owner.
- Constitute an election of remedies that precluded a later action to enforce the secured obligation.
- Make the secured obligation unenforceable.
- Limit any right available to the mortgagee with respect to the secured obligation.
- Constitute an action within the meaning of Section 3204(1)(b) of the Revised Judicature Act.

(Section 3204(1) of the Revised Judicature Act allows a party to foreclose a mortgage by advertisement if all of the circumstances listed in that section exist. Section 3204(1)(b) includes the condition that an action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part. Under House Bill 4470, for these purposes, an action or proceeding for the appointment of a receiver would not be an action or proceeding to recover a debt.)

Other Provisions

In applying and construing the proposed Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enacted it.

The Act would modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act but would not modify, limit, or supersede 15 USC 7001(c) of that Act, or authorize electronic delivery of any of the notices described in 15 USC 7003(b) of that Act.

(Under 15 USC 7001(c), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available satisfies the requirement that the information be in writing if it meets certain criteria. Under 15 USC 7003(b), Section 7001 does not apply to certain documents or notices.)

The proposed Act would not apply to a receivership for which the receiver was appointed before the bill's effective date.

MCL 600.3204 & 600.5807 (H.B. 4470)

BACKGROUND

The Uniform Commercial Real Estate Receivership Act was drafted by the Uniform Law Commission and completed in 2015. To date, the Act has been enacted by three states: Nevada, Oregon, and Utah.

According to a discussion of the Act on the Commission's website:

A receiver is a person appointed by a court to take possession of property and to manage or dispose of that property and any income the property produces. Usually the property or its owner is the subject of a lawsuit or a foreclosure action. The receiver's job is to ensure the property retains its maximum value and that any income is distributed to the proper parties.

Courts usually appoint receivers of commercial property when the court needs a responsible party to run a business located on the property, collect rents, or sell the property in an orderly manner. However, the standards for court appointment and the powers of the receiver vary widely from state to state, and sometimes from court to court. The Uniform Commercial Real Estate Receivership Act (UCRERA) provides a basic set of standard rules for receiverships, and gives courts the flexibility to design the most appropriate remedy for the circumstances.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.