



ENACTMENT NEWS

House Bill 9 **Receiver's Powers** Effective March 19, 2015

House Bill 9, which authorizes the powers of a receiver, was signed into law by the Governor on December 19, 2014 and will become effective after 90 days.

The bill prohibits any party, attorney, or party interested in a receivership action from being appointed receiver except by consent of all parties and all persons holding a recorded ownership interest in or lien on the receivership property.

Currently, one of the conditions for appointing a receiver is that the property is probably insufficient to discharge the mortgage debt – the bill adds the possibility of a receivership if the mortgagor has consented in writing to a receivership.

The bill defines a receiver's powers to include

- (1) enforcement of a contractual assignment of rents and leases;
- (2) execution of deeds, leases, and other documents of conveyance;
- (3) opening and maintenance of deposit accounts in the receiver's name;
- (4) entering into contracts, including sale and lease, and contracts for construction so long as existing lien rights are not impacted (funds expended are treated as administrative expenses);
- (5) sale and transfer of real or personal property (requirements for sale are outlined in the bill), subject to a court's approval, a receiver may sell property free and clear of liens by private sale, by private auction, by public auction, or by any other method determined by the court to be fair;
- (6) if a receiver is appointed in attachment proceedings or the examination of a judgment debtor in proceedings in aid of execution, the receiver has the same powers as specified in the bill for receivership proceedings

The powers of the receiver are to be specified in the court's order appointing the receiver – the court can modify a receiver's powers.

- A court can order that real property be sold free and clear of liens, at the request of the receiver and after a finding that such a sale is in the best interest of the receivership estate
- The court order approving a receiver's application to sell real property must set a reasonable time (not less than three days) for all parties to exercise any equity of redemption or be forever barred from exercising it
- Until the date set by the court in the order, a fee owner may redeem the property from the sale by paying the receiver either the sale price or an amount equal to the total of all liens that were cancelled by the sale (whichever is greater)

The bill clarifies that leases, licenses, and assignments by which any right is granted to operate, sink, or drill wells for natural gas or petroleum create an interest in real estate. Further, such leases, licenses, and assignments fall under the category of leases that a county recorder is required to keep.

This bill had been amended in the Senate to include a “utility provision” – a provision that aimed to prevent a utility from unilaterally stopping service to a receivership property, despite adequate assurance of payment, in a maneuver that would allow the utility to be treated as a secured creditor and be paid ahead of all other secured creditors. That provision was removed during conference committee and the enacted bill does not contain it. Instead, the bill creates a Study Committee on Receivership Laws to study matters related to receiverships and payment of public utility services.