

Simon Consulting, LLC

FINANCIAL INVESTIGATION • RECEIVERSHIP • VALUATION AND DAMAGES

“RECEIVERSHIPS”

Robb Itkin

Simon Consulting, LLC

ritkin@simonconsulting.net

602 396 7435

602 738 5000

- ◎ What is a Receivership?
- ◎ How Do You Get a Receiver Appointed?
- ◎ Advantages of Receiverships?
- ◎ What are the Receiver's Powers and Duties?
- ◎ What Happens Post-Foreclosure or Bankruptcy?

WHAT IS A RECEIVERSHIP?

- ⊙ Independent Third Party Oversight
- ⊙ Creature of Statute: ARS 12-1241 et seq. and 33-807 (Real Estate):

“[The Superior Court Judge] may appoint a receiver to protect and preserve property or the rights of the parties therein, even if the action includes no other claim for relief.”
- ⊙ Loan Documents

HOW DOES A RECEIVER GET APPOINTED?

- ◎ File Complaint: Ex parte vs. Notice
- ◎ Judge Evaluates Experience of Receiver
- ◎ Bond
- ◎ Who's the Client?
 - Court, however plaintiff (lender) generally selects Receiver and funds ongoing operation

WHY DO WE NEED RECEIVERS?

- ◉ Enforce Assignment of Rents/Profits
- ◉ Lender Liability Mitigation: “Control” Issues
- ◉ Preserve Status Quo/Enhance Value Pending Foreclosure
- ◉ Independent Assessment and Oversight
 - Operating Budget
 - Market Valuation
 - Borrower and Third Party Management
- ◉ Expertise in Dealing with Frustrated Vendors
- ◉ Intermediary/Liaison with Borrower and Lender and Other Stakeholders
- ◉ Market and Sell Asset (vs. Note)
 - Valuation and Strategic Investors

ADVANTAGES OF RECEIVERSHIPS

■ **To Lender:**

- Avoid lender liability 'control' issues
- Focused Assessment and Oversight from experienced, independent party re management and exit strategy
 - Operating Budget
 - Market Valuation
 - Borrower and Third Party Management
- Preserve value: prevent waste, complete entitlement, permits, construction
- Market and Sell Asset (vs. Note)
- Increase/Preserve Cash Flow
 - **Collect rents**
 - **New or existing leases and other contracts/vendors**

ADVANTAGES OF RECEIVERSHIPS

- **To Owner/Borrower:**
 - Facilitate workout with lender: Collaborative whenever possible!
 - Find viable investors/buyers
- **To Tenants:**
 - Assist resolution of outstanding property or lease issues (deferred maintenance, property management, lease renewals, etc.)
- **To Professionals/Vendors**
 - Retain you to assist Receiver
 - Liaison and provide information and facilitate recoveries

POWERS AND DUTIES:

◎ Take Possession of Property

- Borrower must turnover property, records, access
- Collaborative approach preferred
- Inventory personal property
- Report on health/safety issues
- Verify Insurance (policy limits, deductibles, carriers and expiration dates; add Receiver as additional insured)

POWERS AND DUTIES:

- ◎ Operate Business and Manage Asset
 - Collect Rents/Cash
 - Receivership Bank Accounts
 - Third Party Accounts (Property Management/HOA)
 - Taxes
 - Negotiate and Extend/Terminate Contracts
 - Pay Vendors
 - Pre vs. Post Receivership Debts
 - Renew Permits and Licenses
 - Prosecute/Defend Lawsuits that Impact Asset
- ◎ Employ Professionals (Attorneys, CPAs, HOA/Property Management, Brokers, General Contractors, Title and Escrow)
- ◎ Funding
 - Asset Cash Flow vs. Priority Advances from Lender

POWERS AND DUTIES:

◎ Market and Sell Asset

- Court Approval, often lender approval required
- Lender Liability: lender can only market its Note
- Market Valuation
- Strategic Investors: highest price
 - Buyer/Seller (lender) expectation gap
- Local vs. National Exposure

POWERS AND DUTIES:

◎ Court Reporting

- Borrower Cooperation/Enforcement
- Accounting and Cash Flows
- Strategic Decisions
 - Liens: Trustee Sale Impact vs. Ongoing Operations/PR
 - Leasing and Sales: Pricing and Marketing
 - Insurance: Adequacy of Coverage, Carriers & Deductibles
 - Compliance: DRE (Public Report), EPA/ADEQ, Municipal Ordinances (noise, signs, lighting)
 - Security
 - Construction and Permit Continuity

POWERS AND DUTIES: CONSTRUCTION

- ◎ Identify Status of Permits
 - Extend, Renew, Keep Active Permits
 - Avoid Possible Code Changes
 - Potentially Significant Cost Savings
- ◎ Evaluate Work in Process
 - Identify Critical Actions Needed to Preserve Asset
 - Negotiate Contracts to Complete Work, Shield Lender from Liability
 - Identify Significant Defects and Incomplete Work
 - Make Warranty Claims within Warranty Period

POWERS AND DUTIES

◎ Receiver's Counsel

- Separate vs. Lender/Plaintiff's Counsel

◎ Receiver Compensation

- Hourly
- Monthly Flat Fees
- Project/Success Fees

WHAT HAPPENS POST FORECLOSURE/BANKRUPTCY?

- ◎ Receivership Termination
- ◎ Asset Manager: Continuity for Trustee/Lender
Management, Marketing and Sale of Asset

Simon Consulting, LLC

FINANCIAL INVESTIGATION • RECEIVERSHIP • VALUATION AND DAMAGES

Robb Itkin

- ◉ Robb Itkin, a Managing Director for Simon Consulting,, provides business advisory services to our lender, attorney, real estate, investor and corporate clients, and manages the strategic oversight, operation, marketing and sale of business and real estate assets as court-appointed receiver, trustee, chief restructuring officer and expert witness.

- Receivership
- Business and financial restructurings
- Financial and fraud investigations
- Valuations
- Damage and economic analysis
- Related expert witness services

- ◉ Robb is highly regarded professional with over 25 years of experience in finance, real estate, law, and management. Robb has worked extensively in structuring and negotiating real estate transactions, M&A and capital markets transactions, finance, workouts and restructures ranging in size from \$1 million to over \$1 billion. He has managed significant receiverships involving subdivisions, resorts, condominiums, office, retail and industrial centers, luxury homes and apartments.
- ◉ Prior to joining Simon, Robb was Senior Managing Director at MCA Financial Group, and a partner at a national law firm, where he represented real estate developers and lenders. He held executive positions at Fortune 1000 and entrepreneurial companies, for which he managed the legal functions of multi-billion dollar divisions of CIT Group and Finova.
- ◉ *Robb has a B.S. in business administration from Boston University and a juris doctorate from The American University. Robb is a Certified Real Estate Specialist (State Bar of Arizona) and AV rated by Martindale Hubbell. Robb serves on the board of directors of several non-profit organizations, including the Association of Corporate Counsel—a nationwide industry group of more than 20,000 in-house corporate attorneys—where he served as President of the Arizona Chapter and on the National Board of Directors.*