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# Seminar Materials

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## Business Entities

## Receiverships

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## Points to Remember when Banking with Business Entities

- ❖ Documents to request at opening of the account:
  - ❖ Sole Proprietorship:
    1. Name Registration with the Secretary of State
  - ❖ Partnership:
    1. Partnership Agreement
    2. Statement of Partnership (for GP)
    3. Certificate of Limited Partnership
  - ❖ LLC:
    1. Operating Agreement
    2. Articles of Organization
    3. Resolution
  - ❖ Corporation:
    1. Bylaws
    2. Articles of Incorporation
    3. Resolution
- ❖ Check for good standing with the Secretary of State—The Ohio Secretary of State’s website (<http://www.sos.state.oh.us/>) can tell you the standing of any past or current business entity registered in Ohio. Each state has a similar website, although some do charge for the information.
- ❖ What should be included in the account name?—You should check to make sure that the account name and any and all documents associated with the account contain the business’s name exactly as it appears with the Secretary of State. By law, businesses must include some indication of their organization, either GP, LP, LLC, Ltd., Inc., Co. Corp., etc., and that is part of the legal name of the business entity. Ohio will allow for two businesses to have similar names as long as they are not the same type of business entity and the existing entity has agreed to allow the new entity to have the similar name. This is one of the reasons that it is so important to make sure that the exact business name is included in all documents, whether the business is opening an account or borrowing money.

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## Points to Remember when Considering Receiverships

- ❖ A cost-benefit analysis can help determine if a receivership is appropriate in your foreclosure or collection pursuit.
- ❖ The receiver cannot be a party interested in the subject matter of the court action, unless all parties consent.
- ❖ The receiver must be an individual, not a company.
- ❖ The Plaintiff may suggest a receiver, but the court does not have to appoint the person requested.
- ❖ The receiver is an arm of the court, acting to preserve the property pending the outcome of the foreclosure. They may act only at the direction and with the permission of the court (either given in the initial Order appointing the receiver, or by Motion made by the receiver or another party to the case).
- ❖ If the appointment of a receiver is not expressly listed as a remedy to default in the note and/or mortgage, the property must meet the criteria set out in the Ohio Revised Code or the local rules of the county in which the property is located.

A receiver is a useful tool in maintaining and possibly even increasing the value of the property pending the foreclosure.

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## **CHAPTER 2735: RECEIVERSHIP**

### **2735.01 Appointment of receiver.**

A receiver may be appointed by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in causes pending in such courts respectively, in the following cases:

(A) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(B) In an action by a mortgagee, for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt;

(C) After judgment, to carry the judgment into effect;

(D) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;

(E) When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

(F) In all other cases in which receivers have been appointed by the usages of equity.

Effective Date: 10-01-1953

### **2735.02 Qualifications of receiver.**

No party, attorney, or person interested in an action shall be appointed receiver therein except by consent of the parties. No person except a resident of this state shall be appointed or act as receiver of a railroad or other corporation within this state.

Effective Date: 10-01-1953

### **2735.03 Oath and bond.**

Before a receiver appointed as provided in section 2735.01 of the Revised Code enters upon his duties, he must be sworn to perform his duties faithfully, and, with surety approved by the court, judge, or clerk, execute a bond to such person, and in such sum as the court or judge directs, to the effect that such receiver will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Effective Date: 10-01-1953

### **2735.04 Powers of receiver.**

Under the control of the court which appointed him, as provided in section 2735.01 of the Revised Code, a receiver may bring and defend actions in his own name as receiver, take and keep possession of property, receive rents, collect, compound for, and compromise demands, make transfers, and generally do such acts respecting the property as the court authorizes.

Effective Date: 10-01-1953

### **2735.05 Examination.**

On application of the receiver or of a creditor, the court appointing such receiver as provided in section 2735.01 of the Revised Code may, upon reasonable notice, require any person, or officer or director of a corporation, or member of a partnership for which a receiver has been appointed, to attend and submit to an examination on oath as to its property, trade, dealings with others, accounts, and debts due or claimed from it, and as to all other matters concerning the property and estate of the person, partnership, or corporation for which such receiver has been appointed.

Effective Date: 10-01-1953

### **2735.06 Investment of funds by receiver.**

By order of the court appointing a receiver as provided in section 2735.01 of the Revised Code, funds in the hands of such receiver may be invested upon interest. No such order shall be made except upon the consent of all the parties to the action.

Effective Date: 10-01-1953

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

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Rule 45 of the Hamilton County Court of Common Pleas, effective April 15, 2009:

**Excerpt from RULE 45: Foreclosure**

(B) Receiverships

1. The following procedure shall be applied upon the filing of a motion for the appointment of a receiver in a foreclosure case with the Clerk of Courts:
  - a. The party seeking the appointment shall schedule a hearing before the Common Pleas Magistrate;
  - b. Unless the mortgage provides for appointment of a receiver without notice, notice of the hearing shall be served on interested parties either by attachment to the complaint and original summons, or by certified mail in accordance with the Ohio Rules of Civil Procedure;
  - c. Notice, if required, shall be served on the owner of the property three (3) days before the hearing; and
  - d. The Court may continue hearings from time to time upon the showing of good cause.
2. Appointment of Receivers – Prerequisites:
  - a. Before any receiver is appointed in a foreclosure case, the following must be demonstrated by affidavit, evidence or representation of counsel:
    - (1) That legal or equitable grounds exist necessitating the appointment of a receiver, and
    - (2) That the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt, or on grounds other than those prescribed herein.

3. Oath and Bond:

a. Upon appointment, a receiver shall qualify and give a bond in the amount required by the Court. Bond shall generally be of a nominal sum in the amount of \$100.00, when the property is vacant and it is anticipated in the motion and order that the receiver's duty will be that of caretaker. Bond shall generally be in a sum equal to the sum of monthly rents or accounts receivable, where there are rents and profits to be collected. If the receiver fails to qualify and give bond, the appointment is voidable.

4. Duties of Receivers:

a. All receivers shall take charge of property pending litigation, preserve property from waste or destruction, receive rents and profits, hold income subject to order of the Court, and have authority to sue in forcible entry in the receiver's name and capacity.

b. Within ninety (90) days of the date of their appointment and every ninety (90) days thereafter, receivers shall file a report of receipts and disbursements with the Clerk of Courts.

c. Absent wording in the original Order, no receiver shall diminish the financial resources of the receivership through expenditure for repairs, real estate taxes and assessments, gas, light and water bills, trash pick-up and insurance, without first procuring an order from the Court for that purpose, except that necessary outlays under \$200.00 which may be made without the order, subject, however, to the final approval of the Court in the receiver's account.

d. A Final Receiver Report shall be filed with the court within 60 days after the filing of the Order Distributing Proceeds. The Final Receiver Report shall indicate that no funds remain in the receiver's account and that all outstanding bills have been paid. The receiver shall not be dismissed until the Final Receiver's Report is approved by the Court as filed.