

Receivership 101: Real Estate

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Portfolio Asset Managers – Development Managers – Receivers

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About Wald Realty Advisors

Helping Clients Buy, Build, Operate, Reposition, Restructure & Sell

Portfolio Asset Managers / Development Managers / Receivers

Lenders have looked to us to assist them with their non-performing real estate loans since 1990.

Since then, we've gone on to work with more than 70 lenders and numerous investors to re-entitle, complete, operate, lease and sell real estate as receiver and post-foreclosure as asset and disposition manager.

Our first receivership was more than 25 years ago and we continue to derive great satisfaction from acting as trusted fiduciaries.

We focus exclusively on real estate and notably, among other things, have specialized expertise and experience with condominiums and tract housing.



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1. Why Does A Lender Need A Receiver?

- Lender Can't Operate or Control Borrower's Property Pre-Foreclosure *
 - Typically Takes At Least Four Months to Foreclose in California (Each State is Different)
 - Receiver Helps Insulate Lender from Risk of Loan Being Converted to Equity
 - Some States Allow Lenders to Take Limited Measures to Protect Property Pre-Foreclosure *

- Receiver Can Inspect, Protect, Maintain, Complete, Operate, Lease & Sell Property
 - Receiver Can Obtain Property Information
 - Receiver Can Perform or Provide Access for Testing and Inspection

- Receiver Can Help Insulate Lender from Pre-Foreclosure Claims via Receiver Sale
 - Mechanics Liens (But Not Stop-Notices)
 - Long-Term Construction Defects Liability on Pre-Foreclosure Construction
 - Potential Environmental Liability
 - Helps a lender remain a 'lender' and not become an 'owner' prior to foreclosure

2. What Is a Receiver?

- Receiver is an Agent of the State or Federal Court
 - Not a Bankruptcy Trustee
 - Doesn't Work For Lender or Borrower
 - Reports to All Parties and the Court
- Anyone Can Be a Receiver in California – There is No “List” in Most States
 - New York Requires Certification
 - Some States Prefer ‘Local’ Receivers
 - Receiver Can't Be Related to the Lender, Borrower or Other Party to the Receivership
- Typical Types of Receivers
 - Lawyer
 - Accountant
 - Asset Manager
 - Property Manager
 - Developer
 - Generalist Receiver
- Receiver Can't Have Prior Agreement on Fees, Vendors or Activities – Must Be Set Out in the Court's Order

3. What the Receiver Does

- Receiver Becomes the De-Facto “Owner” of the Property via Court’s Orders
 - Borrower Remains the Owner
 - Receiver Responsible for Property or for Borrowing Entity

- Receiver Can Only Do What’s Provided For In the Order
 - Protect and Operate
 - Gather Project Documentation and Permits
 - Take Control of Bank Accounts
 - Maintain Insurance
 - Entitle / Complete
 - Borrow / Lease / Sell

- Receiver Can Only Do What There’s Money to Pay For
 - Cash From the Property
 - Cash Borrowed from the Lender
 - Cash Borrowed from a Third-Party Lender By Priority Lien - Typically Paid via Sale of the Property

4. What the Lender's Counsel Does

- Lender's Counsel Prepares and Files the Initial Motions
 - Motion for Judicial Foreclosure
 - Motion for Appointment of Receiver and Receivership Order
 - Plaintiff's Bond
 - Ex-Parte vs. Noticed Motion
- Lender's Counsel Represents the Lender – Not the Receiver
- Receiver's Often Have Their Own Legal Counsel
- Receiver Can Make Motions Directly to the Court

5. The Receivership Order

- The Receivership Order
 - Form Order / California Judicial Council Form Order - www.courtinfo.ca.gov/forms/
 - Custom 'Long Form' Order
 - Consult the Prospective Receiver About the Proposed Order

- Adding Authority to Initial Order Typically Requires Additional Time and Court Hearings
 - Obtain Stipulated Order If Possible (i.e. Agreed To By Borrower)
 - Consult Counsel Regarding Best Strategy & Approach
 - Venue May Be Important

6. Other Receivership Issues

- Different Courts, Different Results
- Incomplete Construction and For-Sale Housing Doesn't Generate Cash Flow
- Borrower Bankruptcy - Receiver Must Turn Over Property, Unless...
 - Receiver Isn't Served With Notice of Bankruptcy
 - Lender's Counsel Promptly Pursues Relief From Stay
 - Bankruptcy Court Allows Receiver To Remain In-Place as Custodian
- Expiring Entitlements – Now You See It, Now You Don't
 - Public Agency Approvals May Expire if Building Permit Not Pulled
 - Tentative Tract Maps May Expire if Not Extended
 - Building Permits May Expire if Construction Stops

7. Other Receivership Issues

- Title Insurance for Receiver's Real Property Sales
 - Receivership Orders Subject to Appeal
 - Title Insurance Company Must Waive Appeal Period To Avoid Delays
 - Many Title Insurance Sales Reps Unaware of Issue – Typically Requires Underwriter Legal Approval

- Receivership of Real Property (Rent, Issues & Profits) vs Property Ownership Entity (Equity)
 - With Equity Receivership Court May Grant Receiver Sole Authority to File Bankruptcy
 - Equity Receivership Typically More Complex

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