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## The Case for Receivership

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When a commercial real estate loan is in default, one remedy that can prevent further losses or waste is receivership. Receivership will allow the property to receive the immediate attention it needs while protecting the lender from any potential liability. Additionally, if the lender lacks confidence in the management skills of the borrower or if the lender believes the borrower has committed financial defalcations and needs a thorough independent review of the borrower's operations and financial record keeping, a receiver will be able to conduct those actions.

Receivers can also maximize cash flow because they are not liable for pre-appointment trade obligations, and therefore may be able to renovate the asset or do needed construction for added value. Good candidates for receivership include commercial properties or businesses that:

- May have environmental or asbestos issues
- Are in tax default
- Have liens or other title issues
- Have tenants
- Have contracts in place that may need to be terminated
- Construction work that is needed at the premises
- Liquor/Beer/Wine License businesses
- Have accounts receivable to collect

### Additional Considerations

There are a few caveats that lenders should be aware of when requesting a receivership. For one, a lender may request a receivership, but a court must approve it.

In fact, many actions of a receivership must be court-approved. Generally, judges are reluctant to take businesses away from their owners and consider receivership a remedy of last resort for cases where property owners have shown bad faith, fraud, or are in imminent danger of losing the property.

Additionally, it behooves a lender to choose a receiver who has qualifications and experience relative to the asset. In Michigan, for example, a receiver's qualifications include past experience and an absence of any conflicts of interests. The court must approve the receiver, as well as the provisions of the order appointing the receiver.

Lenders should also be aware that, typically, the receiver's fees and costs are paid before the claims of the secured creditor. If there is insufficient cash flow to compensate the receiver, then the lender will be responsible to pay the receiver. Furthermore, if the court appoints a receiver who has not been requested by the lender, the receiver may be inexperienced, overly cautious or reckless and thereby incur additional unnecessary expenses.

However a seasoned receiver will be able to address the concerns of any borrower, while at the same time stabilizing a property, collect revenues and position the property for disposition, typically via a court-approved sale.

Receivership can insulate the lender from claims of lender-liability, replace ineffective management, and bring a measure of stability and accountability to a distressed asset.

