



HindmanSanchez

Receivers: An Alternative Method To Collecting Delinquent Assessments

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Introduction

A receivership is the court ordered appointment of a rental manager for a property. The receiver (rental manager) should be a disinterested person who manages the rental of the property, collects the rents and disburses the rents according to the court's orders. The receiver should be experienced and knowledgeable in rental property management.

The purposes for utilizing a receivership in the context of delinquent assessments include: obtain payment of current assessments; reduce past due assessments; and prevent waste and deterioration of the property.

Criteria To Be Met

1. Assessments are not current.
2. The property is not owner occupied, i.e., vacant or occupied by a tenant.
3. The property is not in foreclosure by the lender.
4. The property is in good condition and requires minimal expense to make it rentable.

Procedure For Appointment Of Receiver

1. The association must have a lien for delinquent assessments.
2. A Verified Complaint (requesting the appointment of a receiver) along with other pleadings are filed in either county court or district court where the property is located.
3. Personal service of the Summons and Complaint is not required on the owner to get a receiver appointed. However, personal service is desirable to enable the association to get a money judgment for the delinquent assessments against the owner at the same time as the receiver is appointed.
4. We notify the first mortgagee and other lienholders by mailing them copies of the pleadings we file with the court but these other lienholders are not personally "served" with the pleadings.
5. A court hearing is set and attended by an attorney from our office. The Court may require witnesses to testify. The owner has the opportunity to object to the appointment of the receiver.
6. A bond is required, which is obtained by the receiver and ensures the receiver's performance of his duties.

7. The Order appointing the receiver, along with a letter instructing the tenants to pay rent to the receiver, is then posted or served on the occupants.

8. The receiver manages the property, collects the rents, and applies the money to the receiver's management fee, the maintenance/repair costs for the unit, the attorney fees to obtain the receiver, and to current assessments. Most courts will authorize the receiver to also apply the rents received against the amount of delinquent assessments. The Court may require the receiver to submit periodic reports to the Court. The receiver handles all management issues so the Association and its property management team need not be involved in the receivership.

9. The receiver can continue to collect the rents until the assessments are current and the owner demonstrates the likelihood of continued payment or a transfer of the ownership of the property occurs. If the owner fails to pay the mortgage and the property goes into foreclosure, the receivership should be terminated.

FREQUENT QUESTIONS AND ANSWERS

QUESTION:

How do we know when to consider using a receiver?

ANSWER:

If an owner demonstrates a pattern of non-payment of assessments and the property is rented or vacant, not in foreclosure, and in rentable condition, you should consider seeking the appointment of a receiver. A receivership is also advisable if there is a danger of continued deterioration of the property. If the first lien holder is in the process of foreclosing the property, the duration of the receivership would be minimal and not financially advisable.

QUESTION:

Do we have to sue the owner for non-payment of assessments before we can resort to a receiver?

ANSWER:

No, suit on the unpaid assessments is part of the litigation commenced to obtain a receiver. The lawsuit to place a receiver may be filed once the Association has recorded its lien for unpaid assessments.

QUESTION:

Who appoints the receiver?

ANSWER:

The court appoints the receiver. When we file the Complaint for the appointment of the receiver we ask the court to appoint an individual selected by us as the receiver. We recommend that the Association use individuals familiar with rental property management. Generally, upon reviewing the resume of a qualified rental manager, the court approves the person and the receiver is appointed.

QUESTION:

Does the receiver have to be the Association's property manager?

ANSWER:

No, the receiver should be an impartial, disinterested third person to act as a renal property manager. A person who has no relationship to the property and who is experienced in managing the same type of property involved is preferred.

QUESTION:

How long will it take to get a receiver appointed?

ANSWER:

After the lawsuit is filed, a hearing is set usually within two to three weeks. We provide as much notice as possible by mail, by posting, or by overnight mail, etc. to the owners. Although some Declarations permit the appointment of a receiver without notice to the owner, notice to the owner is still advisable as a matter of due process. The actual scheduling of the hearing is controlled by the court.

QUESTION:

What does the receiver do?

ANSWER:

The receiver preserves the property and, in some instances, prevents the deterioration of the property by repairing the structure. The receiver places tenants in the property, collects the rents, and disburses the money according to the priorities established by the court.

QUESTION:

Who pays to have the receiver appointed?

ANSWER:

The Association is responsible for paying attorney fees for the appointment of the receiver. However, the receivership action typically results in the Association recouping its costs to place the receiver plus recovering monies due for current and delinquent assessments.

QUESTION:

Will the Board or Association be liable if the receiver does something wrong?

ANSWER:

No, the purpose of the bond is to protect the Association from claims arising from the receiver's actions.

QUESTION:

When does the receivership end?

ANSWER:

The receivership is terminated by us if the ownership of the property changes or if the receivership generated enough money to bring the assessments current, reimburse the Association for its costs, and there is assurance that the owner will keep the assessments current. The receivership is

terminated by filing a motion with the final report itemizing the actions by the receiver and receivership assets.

QUESTION:

How successful have you been in obtaining receivers to collect assessments?

ANSWER:

We have obtained the appointment of a receiver in every case in which we have petitioned the court for an appointment. The receivership stays in place until the expenses of the receivership have been recouped and the delinquent assessments have been collected. In a few cases, the receivership was not a profitable venture, since a foreclosure was filed by the first lienholder cutting the receivership short, or the receiver was unable to place a tenant in the property due to the deteriorated condition of the property. HindmanSanchez P.C. originated the use of receivers to collect assessments and preserve the property in 1989. Since that time, we have completed in excess of 500 receivership actions throughout metropolitan Denver and the surrounding counties. Our experience in placing receivers has proven to be invaluable in our continuing efforts to minimize assessment delinquency.

QUESTION:

How much do receivers typically charge for their services?

ANSWER:

Receivers typically charge from \$100.00 to \$125.00 per month for each property for which they have been appointed receiver. The receiver may also charge an additional fee in the same range to initially evaluate the property and for the startup of the receivership.

QUESTION:

What does it cost to obtain a receiver?

ANSWER:

Our fee is billed in two stages; the initial amount of \$395.00 is billed at the commencement of the case and the remainder of the attorney fees are billed on an hourly basis for supervision of the disbursements by the receiver.–Depending on whether the receivership is contested, and other issues that may arise, the fees for a receivership can run from a low of \$500.00 to as high as \$2,000. Of course, every effort is made to recover these fees from the debtor. The estimated costs of a receivership are between \$500.00 to \$700.00.

QUESTION:

Will all courts appoint a receiver?

ANSWER:

All District Courts have the authority to appoint a Receiver. Every County Court in the Denver metro area, and most surrounding counties, will also assert jurisdiction and appoint receivers. The only exceptions are in El Paso County and Weld County where the lawsuit must be filed in District Court.

QUESTION:

What happens if a public trustee commences a foreclosure action during a receivership?

ANSWER:

The receivership will continue to remain in place until the public trustee sale. Under the new foreclosure law which became effective January 1, 2008, the sale will not occur until 120 days after the mortgagee files its Notice of Election and Demand.

Checklist For Feasibility Of Receivership

Association: _____

Name of Property Owner: _____

Address of Property: _____

1. Is the property: Vacant
 Occupied By Owner
 Occupied By Tenant
 In Foreclosure by Lender
2. If the owner does not reside in the property, what is the current address of the owner (if known)?

3. What amount is presently due in assessments? _____ How much are the monthly assessments? _____ Late charges? _____
4. Has a lien been filed for delinquent assessments, and if so, on what date (attach a copy)?

5. Is the property presently in rentable condition? _____ If not, what improvements need to be completed and what is the estimated cost? _____
6. What is the estimated monthly rent which a tenant could be charged?

7. What is the estimated current market value of the property?

8. What collection efforts have been made against the owner?

9. Is the owner current on the mortgage payments (if known)?

10. Attach a current ledger or account history for the property.
