



Three Reasons to Consider Receiverships for Small Businesses In Trouble

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Small businesses have been widely expected to lead the economic recovery into this year, especially with the aid of the American Recovery and Reinvestment Act, which allowed small businesses access to new funding. While this effort has helped many businesses, others remain in financial trouble. In today's difficult economy, seeking receivership might be the best way for these challenged companies to stay in business.

While receivership and asset protection are common in big business, lenders should consider receivership as an increasingly viable alternative to bankruptcy for small businesses, too.

The recession has created a stronger demand for receivership services among many smaller businesses that may not have thought about this type of protection before. Businesses most likely to seek and benefit from receivership protection include: multi-tenant properties, convenience stores, gas stations, restaurants and other retail businesses, sports facilities, golf courses and manufacturing companies.

According to national publication Commercial Real Estate Journal, commercial real estate delinquencies in November 2009 rose 44 points from the prior month to 4.8 percent, and market research firm Real Capital Analytics estimated distressed commercial real estate at \$108 billion as of August 2009 — with \$14.3 billion in the Midwest. Commercial real estate research group Foresight Analytics says commercial delinquency rates have been increasing at an accelerated rate since fall 2008.

Why Consider Receivership?

With receivership, companies can avoid liquidation and bankruptcy, as a court orders that property be placed under the control of a receiver so that it can be preserved for the benefit of affected parties. So why consider receivership over the alternatives? Three important reasons: neutrality, property protection and reduced stress.

Neutrality. Receivership offers more complete access to confidential information, such as bank account balances, alternate funding sources and revenue-producing leases, that may not be readily available when a neutral third party is not involved. For both sides, this means there may be more resources to work with to restore value to the asset. For the lender, this means loss can be mitigated and for the owner, it may prevent or reduce a judgment. When a receiver is not involved, there is less flexibility in avoiding acceleration of a loan or foreclosure. Therefore, the process ultimately allows businesses to keep their doors open, retain jobs in the local community and maintain property values.

Consider a mixed-use office and retail property in Eden Prairie. The property was heavily mortgaged and multiple lenders were involved. Though construction was complete and the property was partially tenanted, the income from the property was being diverted and construction vendors were not being paid. As a receiver of the property, Management Resolutions was able to reallocate the income to pay vendors and minimize collection actions. The lenders also benefitted from access to the rents. Existing tenants were retained in part due to Man-

agement Resolutions' role in managing the physical property, and new tenants are being secured at a fair market rate. By stabilizing the property in this way, both the property owner and the lender are benefitting, as the value of the property is increased, minimizing loss on both sides.

Property protection. Receivership not only protects properties physically, but fiscally as well. In the case of a residential property, for example, a receiver may appoint a property manager to maintain the physical space and may play a role in securing tenants or reorganizing the ownership structure to protect its financial value.

Management Resolutions was recently appointed as receiver for a resident-owned cooperative community for occupants 55 and better in Edina. The cooperative had substantial reservations for occupancy, but when the housing market crashed, prospective owners were unable to sell their existing homes in order to make the move. This resulted in lower-than-expected occupancy at the cooperative and therefore created a cash flow problem.

As the receiver, Management Resolutions was able to negotiate a tenanti-
ng plan that includes rentals as well as sales in order to generate enough revenue to cover the operating deficit and reserve money for long-term repairs on a by-unit basis. Other elements of the operating plan include: establishing a budget to cover basic operations; reserving funds to cover future costs; paying vendors for previously delivered goods and services; and keeping taxes current.

Under the new operating model, not only is the current physical asset pro-

tected, the property is expected to achieve a successful turnaround in the next 12-18 months.

Reduced stress. The goal of receivership is to start solving problems for owners and lenders right away. This in itself reduces stress for both parties. Two significant elements that contribute to stress relief are credible reporting of progress and an experienced project team. Both should be grounded in a broad base of knowledge and deep understanding of court requirements.

A receiver is responsible for presenting financial, operating and administrative reports to the court monthly. Ensuring that reporting is timely and accurate demonstrates progress. By

law, all parties subject to receivership can review these reports. Making sure a receiver has an easily accessible and timely way to share this information can be critical to the success of a project.

Finally, consider the human part of the equation. Putting the right team in place can make the difference between a successful turnaround and ongoing difficulties. A senior manager who understands the intricacies of navigating the financial and legal requirements is the foundation of an effective team. When appointing a receiver, lenders and attorneys also should consider who the project manager will be — does that person have experience and a proven track record with the

industry or property type in question? The addition of a strong accountant and a team of employees who are skilled at day-to-day operations round out the most effective teams. Working with a trusted team often balances the stress inherent in receiver relationships.

Considering a recent Urban Land Institute and PricewaterhouseCoopers report that estimates recovery for the commercial real estate market won't happen until 2011, the time is right to consider receivership for small businesses.

