

RECEIVERSHIP

The Best Solution to Asset Recovery

Courtesy of Arthur Berry & Co. Fall 2011

Why Choose Arthur Berry & Company?

The Arthur Berry & Company receivership team can offer a wide array of experienced professionals and skilled labor. In house services come from individuals with backgrounds in Law, Banking, Financial/CPA, Business Ownership, and Turnaround Management. Our Commercial Real Estate Specialists include sales, leasing, property management, development, building, and financing.

The team is lead by Arthur J. Berry, a 35-year real estate attorney, bank/insurance and venture capital director, real estate broker, property manager and joint venture partner developer/builder who is keenly aware of the fiduciary role and reporting responsibilities in which those roles so require. The Arthur Berry & Company receivership team has a reputation for decisive and fair action and the ability to negotiate difficult situations without excessively bothering the client. We look to assume the receivership role as "treating the property as if it were our own" and making the best decisive business judgments in light of the current market conditions and parameters set by the parties.

We would be receptive to discussing receivership appointments from either Bank Clients or Complex Property and/or Business Situation Holders who need independent, professional project management or liquidation.

Contact us today!

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Visit us at www.arthurberry.com

The information herein is provided as a general guide for the receivership process and should not be construed as legal, financial, or other professional advice or, unless expressly stated, as the Receiver's official position on any subject matter. Users should not take or refrain from taking any action based upon content included without seeking legal counsel on the particular facts and circumstances issued from a licensed attorney.



Arthur Berry & Company

Receivership Highlights This Year

Seven Successful Projects thru 2011 Included:

23-Unit Trinity Townhouse Project

- Construction completion
- Litigation settlement
- Interim site management
- 100% sell out above appraisal forecast

Boise Downtown City Block

- 25% increase in operating income
- 3 tenant build outs and new leases
- Negotiations/litigation caused all tenants to pay as agreed or vacate

What is a Receivership?

A receivership is a court-appointed or stipulated taking of possession and managing a designated property or an operating business. An unbiased, third-party fiduciary is charged with the continued operating management or orderly liquidation of a troubled asset. The goal is to best protect all parties concerned and maximize the value of a problem property by using sound business judgment and skill.

Who Should be a Receiver?

While most jurisdictions have no specific requirements other than the receiver must be an unbiased third party, 18 years or older and no criminal record—an effective receiver must have an inherent understanding of the law, be quick on their feet, resourceful, and a good business manager.

Required Receiver Skill Set

A receiver must possess considerable knowledge in the type of property or business in his or her control. The best receivers have a combination of skill sets and considerable practice experience. Backgrounds in management, brokerage, law, accounting and marketing are the most important.

Steps in Receivership

1. Lender/owner acknowledgement that skilled third party can best manage the troubled asset.
2. Stipulation or court appointment of receivership engagement.
3. Contract outlining receivership objective, parameters, budget and decision authority limitations.
4. A motivating compensation program for the receiver which maximizes the net proceeds for the lender and borrower.



"One day son, all this will be the Receiver's."

Receivership Action Plan

1. All parties agree on objective and grant of authority.
2. Receiver assumes legal interim possession of property.
3. Development of plan to protect, preserve and liquidate assets for the highest value.
4. Notification to all concerned parties of new management (or possible interim ownership) and action plan.
5. Beginning financial audit, financial budget request and funding, interim reporting program with final court audit verification option.

Receivership Versus Bankruptcy?



Bankruptcy is a last resort. Receivership is a substantially less adversarial and very workable orderly solution to a solvable problem. Receiverships are fast, flexible, fair and very cost effective. Receiverships can be "unwound" by:

- Terms of the agreement
- A date certain
- Satisfaction of a financial goal
- Court order or voluntary termination by receiver

First, Chapter 11 cases are costly, especially for smaller to mid-sized businesses, and the administrative costs of a receivership are typically lower.

Second, receiverships may have less impact on crucial relationships with the company's trade creditors. The preservation of goodwill will serve to maximize the company's value so that its assets or operations may be sold for a higher recovery.

A Successful Receivership Produces

- Commercial speed, not court delays
- A professional and orderly process
- No "first day order" creditors, committees, or "carve out" debates
- An independent, unbiased solution with full fiduciary obligations
- A reduction in liability exposure to borrower and lender since active professional management is in place

THE BOTTOM LINE

"A good receiver treats the asset as if he owns it."

- Art Berry, Aug. 2010

Receiver Compensation . . . It Depends

A receiver is compensated in various manners like any other professional. Options include a fixed fee, hourly compensation based upon the complexity of the tasks and skill set level of the various receiver support staff, on a commission basis as a percentage of ongoing collections and/or liquidation proceeds, on a pure contingency basis, or a combination of the above based solely on the work performed. Be creative...it is an unprecedented market out there.

How To Get Started

1. Accept the fact that a qualified third party receiver is the most timely and most cost effective solution in a very difficult time.
2. Set a realistic ultimate goal and determine what parties can achieve it.
3. Set and fund a realistic budget. Problem solving generates cash but always has a front end load.
4. Enter into a Receivership Engagement Agreement or court-appointed simple order.

Arthur Berry & Company's Recent Receiver Engagements

Idaho Trust Bank, et al v. Trinity Investments LLC
23-unit mixed use condominium project, (construction completion, marketing plan + 90% sell out, management)

Wells Fargo v. Clockbuilding LLC *retail center*
(receivership filing caused settlement)

JPMorgan Chase Bank v. IBME LLC *office/retail building*
(receivership filing caused settlement)

Idaho Community Reinvestment Corporation v. Preston Associates & Soda Springs Associates
subsidized housing projects (both properties sold)

Torchlight Loan Services v. Bannock Block 44 LLC
Boise 15-tenant retail city block (growing cash flow to sell)

Chase Commercial REO Group v. Richard Robert
warehouse/industrial building (prepared for marketing)

JPMorgan Chase Bank v. River Rock Sand & Gravel
(receiver analysis sent to bank)

REFERENCES

V. Joseph Herman, Executive VP
First Security Bank - Norton, KS
785-877-3313

Thomas Prohaska, President
Idaho Trust Bank - Boise, ID
208-350-2000

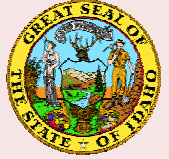
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Read online at
www.arthurberry.com

Mr. Berry, having served as a Director for three different banks, has terminated his active Director status in June 2011 in order to concentrate on Receivership projects.

Receivership Under Idaho Law

Basically, the parties can always stipulate to a receivership appointment and conditions. Ex parte court orders will be granted if the Deed of Trust is in default and there is danger of waste or sale proceeds may be insufficient.



Idaho Statute Title 8 Section 601 GROUNDS FOR APPOINTMENT. "A receiver may be appointed by the court in which an action is pending or has passed to judgment in an action by a mortgagee... where the condition of the mortgage (or note) has not been performed... or when the judgment debtor refuses to apply his property in satisfaction of the judgment... or in the case where a corporation is in imminent danger of insolvency."

Idaho Statute Title 8 Section 601A ADDITIONAL GROUNDS FOR APPOINTMENT OF RECEIVERS. "At any time after the filing for record of a notice of default... A receiver may be appointed... where it appears that personal property subject to the deed of trust or mortgage, or to related security documents, is in danger of being lost, removed, concealed, materially injured or destroyed, that real property subject to the deed of trust or mortgage is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures."

Idaho Statute Title 8 Section 603 WHO MAY BE APPOINTED. "If a receiver be appointed upon an ex parte application, the court, before making the order, may (or may not) require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court..."

And finally Idaho Statute Title 8 Section 605 POWERS OF RECEIVER. "The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally do such acts respecting the property as the court may authorize."

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