Certainty in Receiverships

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Receivership is an equitable remedy with a long history of use by creditors and governmental agencies. The remedy allows a court-appointed officer to take charge of a business or its assets in order to address such issues as non-payment of debts or non-compliance with certain legal requirements.

In an August 2016 column regarding fiduciary accounting statutes, I compared Oklahoma state-court receiverships to the wild, wild west. As with fiduciary accounting statutes, most of Oklahoma's receivership statutes were drafted in 1910. Although the statutes were amended in 1989, the amendment did not do much to modernize the statutory scheme.

Over the years, several Oklahoma legislators have tried to update the receivership statutes, addressing common themes of certainty and transparency. But these proposals have not gathered sufficient steam to make their way through the legislative process.

This year, two separate bills have been filed seeking to enact the Uniform Commercial Real Estate Receivership Act. In the House, it takes the form of House Bill 1927, authored by Rep. Chris Kannady. In the Senate, Sen. David Holt introduced the Act as Senate Bill 362.

The Act was adopted and published by the Uniform Laws Commission in 2015. The Act was designed to provide a standard set of rules for receivership proceedings specifically dealing with commercial real estate. No state has yet to adopt the Act. Oklahoma could become the first.

Among other things, the Act would strengthen the rules against appointing a receiver who holds a conflict of interest. Oklahoma's current statute is vague, simply prohibiting appointment of a "party, or attorney, or person interested in [the] action." In contrast, the Act lists five specific categories of disqualifying conflicts.

In addition, the Act outlines the powers granted to receivers with a great deal more specificity than contained in Oklahoma's current laws. These powers include those that may be exercised without further order, as well as those that would require a specific order, such as incurring debt outside the ordinary course of business.

Unlike current Oklahoma laws on receivership, the Act would require the receivership to give notice to the receivership estate's creditors by mail and publication. The notice of appointment of receiver would grant creditors an opportunity to submit their claims to the receiver, much in the same way as claims are submitted to the executor of an estate.

In sum, this Uniform Act would provide the certainty and transparency that Oklahoma attorneys require in receivership proceedings.

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