

MICHIGAN'S NEW RECEIVERSHIP ACT

On October 15, 2020, Governor Whitmer signed into law the new Receivership Act, PA 210 of 2020 (the “Act”). The Act is immediately effective. Notably, the Act expands existing receivership law, which applied only to commercial real estate, such that it now applies to all commercial property.

The Act provides a state court process for selling or liquidating financially distressed businesses outside of bankruptcy court. It grants broad, bankruptcy-like, powers to a receiver appointed under the Act, such as the power to impose an automatic stay, the power to assign or reject contracts and leases, and the power to sell assets free and clear of liens.

The following are some of the most important changes to existing receivership law effectuated by the Act:

- The Act extends the provisions of the Uniform Commercial Real Estate Receivership Act, MCL 554.1101 *et seq.* to all commercial property, not just real property. Thus, it is now clear that the Act is applicable to operating and liquidating businesses.
- The Act harmonizes the process for appointing receivers with the Michigan Court Rules. The Act creates a strong presumption in favor of the appointment of a receiver selected by the parties.
- Additional noticing requirements are added to the Act regarding: (i) commencement of the receivership and appointment of the receiver, (ii) expanding, modifying or limiting the powers of the receiver, (iii) the sale of receivership property other than in the ordinary course of business, and (iv) the process for filing claims. The Act also provides for increased reporting by the receiver regarding the status of the receivership.
- The Act does not expressly provide for the provision of “adequate protection” to parties, such as secured creditors, whose collateral is used or sold by the receiver. Nevertheless, such parties will want to closely monitor a receivership proceeding and, where appropriate, petition the court for such relief.

Members of the Insolvency & Reorganization Group at Jaffe were involved in the drafting and negotiation of the Act. Our team is comprised of professionals with decades of experience in dealing with troubled companies. We have the expertise to address any issues that may arise during these challenging times.

Please feel free to reach out to us for more information.

THE JAFFE INSOLVENCY & REORGANIZATION GROUP

Paul R. Hage (Practice Group Leader)
Phone: 248.727.1543
Cell: 248.840.9079
phage@jaffelaw.com

Thomas E. Coughlin
Phone: 248.727.1391
Cell: 248.930.1742
tcoughlin@jaffelaw.com

Richard Kruger
Phone: 248.727.1417
Cell: 248.762.3657
rkruger@jaffelaw.com

Hailey Kimball
Phone: 248.727.1467
Cell: 989.306.1781
hkimball@jaffelaw.com

Judith Greenstone Miller
Phone: 248.727.1429
Cell: 248.755.0929
jmiller@jaffelaw.com

Eric Novetsky
Phone: 248.727.1406
Cell: 248.320.4028
enovetsky@jaffelaw.com

Deborah Rubin
Phone: 248.727.1582
Cell: 248.505.8044
drubin@jaffelaw.com

Alicia Schehr
Phone: 248.727.1448
Cell: 284.563.1515
aschehr@jaffelaw.com

Jay L. Welford
Phone: 248.727.1466
Cell: 248.225.5200
jwelford@jaffelaw.com



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