



NEWS

A Publication of the
California Receivers Forum

1031 Tax Deferred Exchanges

BY MARC BROOKS*

Many of you may know that I have continually been in the Escrow business since 1982, but what you may not know is that I have been administrating 1031 Tax Deferred Exchanges since 1986 and have been continually in the 1031 Tax Deferred Exchange Business since 1987. Thus, I have a unique perspective both on history and actual production.

As we came out of the Savings and Loan Crisis of the late 1970's and early 1980's, President Reagan based his 1981 economic plan on the idea that cuts in marginal tax rates would increase tax revenues. This economic plan was based largely on the economic theory known as 'Supply Side Economics'. Today, what we refer to as the '1031 Exchange' really came to significance in 1986 after multiple triggering events.

First, a seminal case allowing for like-kind deferred exchanges involving the Starker Family was decided in 1979, establishing the need for regulations regarding delayed tax-deferred like-kind exchanges. This case gave rise to the Deficit Reduction Act of 1984, which created the delayed tax-deferred like-kind exchange provisions that we have today. Then the Tax Reform Act of 1986, which changed how capital gains were taxed, triggered the tremendous explosion in the number of tax-deferred like-kind exchange transactions.

As a Receiver or Receiver's Counsel, you might be saying why should we be concerned with a 1031 Exchange for a Defendant or even a prospective Purchaser at all? It is

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PROFESSIONAL PROFILE: Ben King: A Rocker and a Rock, He Knows and Appeals to His Audience

BY ALAN MIRMAN*

At first glance, you or I might not expect Ben King to be a rocker - perhaps a rock (as in a stalwart person), but not a rocker. Looks and manner can be deceiving. When not enmeshed in receivership litigation or family life, Ben's side gigs include music production and playing guitar in a Rush tribute band. But that is just a fun fact - let's start this journey closer to the beginning.

Many of you readers know Ben as an excellent litigator, typically representing receivers or lenders. He is an active member of the Board of the CRF Los Angeles/Orange County Chapter, serving as Chair of the David J. Pasternak Education Committee. Previously he served as Chair of the LACBA Remedies Committee. A partner at Loeb & Loeb since 2008, where he started practicing law in 1999 after graduating from USC Law, he has litigated a number of interesting cases,

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Robert P. Mosier

***Robert P. Mosier** is a Southern California receiver and trustee and principal of Mosier & Company, Inc., a firm that has specialized in managing and turning around troubled companies for more than 25 years.

Publisher's Comments

BY ROBERT P. MOSIER, PUBLISHER*

It is my perception that 2020 has brought in a new era in business in general and the receivership area is not immune. COVID-19 has created a new and dramatically different "normal" from the lockdown of courthouses for three months to today's typically telephonic appearances and making an appointment with the Clerk's office to file an oath and bond.

I can confess that I did not appreciate just how good we had it in the old "normal" – clearly something that we took for granted. I concluded the sale of an apartment building during all of this that finally closed in May after nearly three months of the worst part of COVID-19, and the good news: only a 4% discount off of the negotiated purchase price. Getting a certified copy of the order approving the sale turned out to be the greatest challenge, and remarkably, the title company ended up closing the deal with a promise that the certified copy was "in the mail." Receivers typically don't make these types of promises. So, it is a new era – how long will it last, and will we ever see again the pre-COVID19 business model where a receiver could easily seek instruction on an ex-parte basis?

Thanks to CRF LA/OC board member and attorney **Alan Mirman's** clever pen, readers of this issue of *Receivership News* are in for a treat in reading this issue's professional profile: A Rocker – **Ben King**. Who would have thunk? A fair question might be: If Ben King suddenly concludes he is losing his argument in court, has he ever whipped out his guitar and broken into song as a final attempt to persuade the Judge of the wisdom of his argument?

Is there a silver lining in COVID-19? Stay tuned and stay healthy. RPM

Editor's Comments

BY KATHY BAZOIAN PHELPS*

As receivers, we are always looking for the silver lining. Well, stay at home orders these past few months due to COVID-19 caused some fine authors to dig deep and create some really interesting content for *Receivership News*. This issue is full of timely and useful information for receivers on a variety of topics. The article by **Marc Brooks** in this issue about 1031 tax deferred exchanges is a good reminder that we all need to keep our eyes on potential tax liability from these types of transactions. And speaking of taxes, check out Tax Tips for Receivers by **Chad Coombs** regarding partnership audit rules. This issue of RN also addresses the challenging decision of brokerage versus auction in the article by **Todd Wohl**, which takes a fresh look at the issues receivers should consider before committing to a sales process. **Eric Sackler** addresses the timely issue of rent collection and selling property in the COVID-19 environment. As we adjust to the new normal, **Dennis Gemberling** presents a look at how the hospitality industry is managing the economic impact of the pandemic.

A big thank you to all of our contributing authors and, as always, to **Peter Davidson**, for the fantastic content on a wide range of topics. Please your articles coming and feel free to run any ideas for articles past us for possible publication. Kathy



Kathy Bazoian Phelps

***Kathy Bazoian Phelps** is a partner at Diamond McCarthy, LLP, Los Angeles, and the co-author of *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. She frequently represents receivers and trustees.



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1031 TAX DEFERRED EXCHANGES...

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important that, in today’s environment, we consider the possible effects on both parties.

First, let’s examine the sale of real property from the perspective of the Defendant, then we will use the same example from the perspective of the potential Purchaser. Let’s make the assumption that the real property was a ‘Replacement’-or-‘Up-Leg’ Property in a 1031 Exchange is a Commercial Property, Retail Mall, Shopping Center and/or Residential Income Property, all that matters is that the Defendant held the property for ‘Investment Purposes’ (as defined by the IRS). Let’s make the following assumptions:

Original Acquisition Price	\$30,000,000
Original Principal Amount of Debt	\$20,000,000
Current Principal Amount of Debt	\$18,000,000
Current Sales Price	\$28,000,000
Net Proceeds (after all costs)	\$ 6,000,000
	(\$4,000,000 in expenses)

Furthermore, let’s make the Assumption that the

‘Relinquished’ – or – ‘Down-Leg’ Property was sold and used to acquire this ‘Replacement’ Property was as follows:

Principal amount of Debt at Sale	\$10,000,000
Equity (Net Proceeds)	\$10,000,000
Depreciated Value of Asset at Sale	\$14,000,000

Basically, the Defendant took their entire proceeds of their sale of the ‘Relinquished’ Property and rolled it into the ‘Replacement’ Property. At quick glance one might say, the Defendant purchased for \$30,000,000 with \$10,000,000 in equity, sold for \$28,000,000 with \$6,000,000 Sounds like they lost money, or did they?

Current Net Sales Price	\$24,000,000
(Current Price less Expenses)	
Less: Costs Basis	\$14,000,000
Gain on Current Sale	\$10,000,000

The Defendant acquired the aforementioned

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1031 TAX DEFERRED EXCHANGES...

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'Replacement' Property via a 1031 Exchange. They, in effect, rolled their cost basis from the 'Relinquished' Property to the 'Replacement' Property. The reality is the Defendant still has a gain of approximately \$14,000,000 and likely should enter into a new 1031 Exchange to continue to defer those Federal and State Taxes.

If the Defendant fails to enter into a 1031 Exchange at the time of the disposition the 'Replacement' Property, not only will the Defendant have the aforementioned \$14,000,000 gain, but the Defendant may also have 'Debt Relief' which also may be taxable. This example also assumes that Defendant has not had a succession of several exchange properties that may have 'Rolled Up' into this 'Replacement' Property. It's VERY common that sophisticated investors continue to 'Roll Up' or 'Exchange-Up' several times, thus the Defendant's cost basis could be substantially lower than just one previous 'Replacement' Property. If there has been a chain of three, four or five properties previously 'Rolled Up' Exchange Properties (which in our example could be very likely) the Defendant's cost basis could be substantially lower and, therefore, their tax gain/exposure could be substantially greater than \$14,000,000.

It is not the responsibility of a Receiver, Escrow Holder, or 1031 Exchange Accommodator to give a Defendant tax advice. However, I do believe that it is our moral responsibility to point out to the Defendant that they could have substantial tax liability and strongly urge them to seek tax advice. I would even strongly suggest that a Receiver do so in writing. In addition to just doing the right moral thing, the last thing that any Receiver needs is to answer a complaint from the Defendant a year or two after the Receivership Estate has been dismissed when the Defendant receives a tax bill from the State, IRS, or both.

Let's take a minute to address Purchasers who may be using exchange funds as all or a portion of the consideration when acquiring a Receivership Property (i.e., a 'Replacement' Property for their 1031 Exchange). Often they will want their Earnest Money Deposit to come from their Accommodator. Be aware this Accommodator may have special requirements. From the Earnest Money Deposit(s) to Amending the Purchase Contract/Escrow Instructions, be mindful, these 'requirements' are not etched in stone.

It is important to make note in any Purchase Agreement

that while the Receiver may cooperate with Purchaser's Exchange, the Receiver will not bear any costs or expenses associated with the exchange and will not adjust the closing date of the exchange to accommodate Purchaser's Exchange. Additionally, if the Purchaser is utilizing our Receivership Property as a 'Replacement' Property to satisfy their 1031 Exchange, the Purchaser only has 180 days from the recordation of the deed of their 'Relinquished' Property to consummate their acquisition (with almost no exceptions). The Purchaser should acknowledge, in writing, that there could be unforeseen delays in closing (let's say a delay in a court date, for example), and the Receiver is not responsible for same if the closing does not occur within the Purchaser's exchange timeline. The risk of this potentially significant tax burden should never be placed upon the Receivership Property.

In my almost three-and-a-half decades as an Escrow Agent here in California and 1031 Exchange Accommodator, I've only seen two exceptions to the 180 Day Closing Date rule. The first was when a Taxpayer lived or had their primary business in a County where the President of the United States declared that County a National Disaster Area. Such was the case in Los Angeles and Ventura Counties in the winter of 2018 as a result of Wild Fires (there was a 120-day extension). The second was now, due to COVID-19, wherein dates were extended to July 15, 2020; that's it! My point is that, as a Receiver, you can't commit to a closing date, nor be responsible if the closing date is extended for any reason!!

If you have any questions regarding 1031 Exchanges or Escrow, please feel free to reach out to me at any time—Marc Brooks is a CRF Member and Executive Vice President of Escrow of the West and can be reached at Mbrooks@EscrowoftheWest.com. If you need a 1031 Exchange Accommodator with over three decades of experience, please feel free to reach out to Kathy Brooks at Kathy@PrimeWestExchange.com.

**Marc Brooks is the Executive Vice President, Development, of Escrow of the West with offices in Beverly Hills, Westlake Village and Woodland Hills providing real estate escrow services for commercial sales, receiverships, 1031 exchanges, REO's, trust sales, probate, new construction and other specialty escrows.*



Marc Brooks

Brokerage v. Auction: Selling Minority, Partnership and Fee Simple Interests in Real Estate

BY TODD B. WOHL*

One of the most challenging tasks facing receivers is selling minority, partnership and fee simple interests of real estate to achieve maximum market value.

Why is this important to receivers, trustees, creditors, debtors and the scam parties? Because all the court-appointed professionals and their counsel run the risk of underselling the assets, and not creating a competitive and transparent sale process for any and all parties to participate. This can result in leaving money on the table and not fully discharging their responsibilities to their clients and the court.

There are two methods to sell real estate and Partnership Interests: Brokerage and Auction. Each has its own rules and its own advantages and disadvantages.

The Brokerage Option

The steps to selling real estate using the brokerage method involve using an individual or firm who charges a fee or commission to sell the real estate. The sellers of the real estate enlist a broker, who is expected to act as an unbiased third-person facilitator between the buyer and the seller. Brokerage firms tailor the listing term based upon the demands of the seller. Both commercial and residential properties are listed online through a regional or local Multiple Listing Service, or “MLS.” The MLS then feeds this information to companies such as Zillow, Realtor.com, Trulia, Loopnet and Costar and dozens of other for pay “public” websites. For many brokers who wish to advertise their properties, online listing services function as a

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PROFESSIONAL PROFILE

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ranging from creatively using a receiver to overcome the abandonment of a company so that valuable IP rights could be preserved and sold, to representing a lender attaching frozen shrimp (fortunately the goods were sold at the inception of the ensuing 6 years of litigation), to prevailing in a 3-day bench trial in a health and safety case to get his choice of receiver appointed.

As this Profile developed from initial inquiry to finished product, I learned that Ben is certainly a rock, if that means strong, persevering, and steady. Underlying those qualities reside the tools and approach which have led to success in all endeavors - profession, family, and hobbies. And they are linked by certain qualities, which inform all of Ben's endeavors.

Ben was born, raised and currently resides in the South Bay. He met Michelle ("Micki") Morris, his wife to be, when they were law school students, and they married in 1999. Their 21 years of marriage match his tenure at Loeb & Loeb. A wanderer he is not. They have raised two sons - Trevor (16) is in high school, while Nathan (18) attends college in Indiana. Ben



The King family staying "safe at home" in July 2020: From left to right, Trevor King, Nathan King (with "Benny The Dog"), Micki King and Ben King.

developed an expertise in pre-judgment remedies and commercial litigation, progressed to partner at Loeb & Loeb and coached his kids' ice hockey teams, while also playing in a rock band and producing music. How is that for success and broad focus?

Ben is a fan of pre-judgment remedies, which he describes as resolving a great many problems early in litigation. He has represented receivers and lenders in all the typical receivership contexts (equity/regulatory, rents and profits, health and

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Rent Collections and Selling Property in the COVID-19 Environment

BY ERIC SACKLER*



I'll never forget the moment. It was the early 90's and I was struggling in my first couple years in real estate brokerage during the post-recession lackluster economy. I turned on Larry King to see him interview this big NY real estate developer, hoping he'd shed some positive light on the real estate market ahead. "Stay alive 'till 95," I remember him intoning. I panicked! I could not wait until 1995 to make money in this business. I had to change what I was doing. I started cold calling on banks and institutions, trying to get their REO business. After several months, hundreds of phone calls and a handful of meetings later, I got my first assignment from Pacific Business Bank. After selling that property I leveraged the relationship to get into Bank of America, East West Bank, AMRESKO, and Home Savings.

Cut to today and, just like the early 90's and other economic downturns, this new COVID environment has caused me to change how I do business once again, and I've got a feeling this won't be the last.

So how have I changed and what are the best strategies for selling property in today's environment? PPP: Pricing, Positioning and Proactive marketing. And there is a bonus "P": Payments (rent payments). You can have a great property, priced well, perfectly positioned in the marketplace and hit up all the best buyers, but if tenants stopped paying rent or if the buyer does not have confidence that the tenants will keep paying their rent post-closing, the property will not sell.

Pricing

Although demand for commercial and apartment properties has decreased, so has the supply. This leaves a window of opportunity for sellers who wish to sell in 2020, to get their properties on the market before others do, because once the emergency order is lifted, more properties will hit the market. I advise sellers to price listings right at what we would conservatively expect to sell it for today.

Positioning

Position it for what most buyers are looking for in today's uncertain market – a safe, long-term investment that will see them through tough times that may be ahead, and/or one that has a lot of upside potential that they can reposition and eventually refi and/or flip.

Proactive Marketing

It is a must in this market where a large percentage of buyers are on the sidelines due to uncertainty. I have had to go to those sidelines and bring buyers into the game and, now more than ever, sell them on the reasons to invest. This includes direct mail, phone calls, Zoom calls, personal emails, texts, and social distance meetings.

Rent Payments

In order to get deals closed today, I have been helping my clients collect rents, negotiate rental abatements or deferrals and in some cases, helping renegotiate rental agreements. I listen carefully to tenants' requests for rent reduction, deferral or abatement, knowing that some tenants use these challenging times to ask for a rent reduction when they don't need it. Since the newly imposed tenant protection measures are weighted heavily in favor of tenants at the landlord's expense, encouraging tenants to pay their rent if they are able (especially residential tenants) takes finesse, absent a landlord's standard tools of inducement.

- Listen to tenants' needs carefully and use your best judgment regarding what to offer, if anything.
- Respond to calls promptly. Call or FaceTime them or schedule a Zoom meeting with them if you cannot do an in-person social-distance meeting. If tenants – especially apartment tenants – feel you're on their side, they will be more apt to be honest with you and do what's right by paying their rent if they have the means.

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RENT COLLECTIONS...

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- For retail and office tenants, work with them and help them navigate the PPP or EIDL programs. Get weekly updates and show an interest in their progress. Post notices on doors and/or send emails informing tenants of all the government programs available to help them.
- Conduct tenant outreach programs such as a monthly drawing whereby all apartment tenants who pay their rent are entered into a drawing, and the lucky winner receives a sizeable rent reduction for the following month's rent.
- If you agree to a rent reduction or deferral, don't make any long-term agreements or changes to leases. Let the tenant know that you will continue to work with them on a monthly basis as things change and evolve.

The success of rent collections and tenant retention is the tipping point that will make or break a deal once in

escrow today. To attract offers, a marketing plan to match the current, everchanging environment is vital. If there is one thing we've learned from past downturns, this one will pass and the market will once again make a comeback; although, the way in which we do business may change forever, for the better. We all can do as well or better in this down market as we've done in the past several years. It's not a matter of staying alive, but implementing the changes to help us thrive - now and in the future.



**Eric Sackler leads an elite team at Coldwell Banker Commercial. He has sold more than 1 billion dollars of commercial investment property in the past 30 years. His team also sells homes and condos in LA County. Eric has represented Receivers and Trustees for the past 10 years.*

Eric Sackler

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Hotel and Restaurant Receiverships and Adjusting to the New Normal

BY DENNIS GEMBERLING*

The hospitality industry is grappling with how to manage the economic impact of the COVID-19 pandemic. Between official stay-at-home orders and personal fears, people have cut back dramatically on travel. Hotels and restaurants have struggled in an environment that has made meeting economic forecasts impossible.

If you are managing one of these properties as a receiver, you have some difficult choices to make. Taking a long view of valuation can help you avoid squandering the potential value of the property.

Safety, Operations, and Compliance

When operating a hotel or restaurant as a receiver, you need to know when to close and how to open the property safely. A good place to start is with federal and state guidance on sanitation and readiness standards for hotels and restaurants. Because some of these guidelines differ by state, look to some of the more stringent standards to ensure you are ready in case your state's guidance evolves over time. For example, the guidelines issued by California for hotels and restaurants, include detailed standards¹ as well as those from the AH&LA and NRA.

If you have closed or limited work onsite, you likely have delayed maintenance and upgrades that require focus. Before you reopen or expand your services, ensure everything is up-to-date and up-to-code. An inspection² that considers property safety concerns and updates to CDC or OSHA standards is critical to your ability to operate safely as well as what any franchise or brand license guidelines require.

Overcome Funding Challenges

Funding may be a significant obstacle. In any receivership scenario, limited cashflow is a concern. Amid the COVID-19 pandemic, these limitations are amplified; rather than risk poor performance, the hotel or restaurant likely shut down entirely.³ The need to limit expenditures while bringing the business "back" creates a broad set of challenges.

One way to stanch the bleeding up front is to look to bridge loans for immediate funds. In a receivership, it is important to estimate costs; not only to maintain normal operations, but also to reach the standards established to reopen and operate safely during and after the pandemic.⁴ Temporary loans tied to an exit strategy, such as selling off

assets or the property itself, can help achieve the funding needed in the immediate term.

Many states have created legislation limiting restaurant landlords' ability to act against commercial tenants during the pandemic. Many landlords have an incentive in this environment to make lease concessions or temporarily reduce payments. Those delayed or reduced lease payments can free-up cash to regain footing for the property and get the business back up and running with budgetary breathing room.

Beyond this, focus on ways you can curb costs. Eliminating staffing redundancies and consolidating job positions can quickly save money and reduce cash outlays.

Similarly, look to ways to reduce the property's reliance on third-party deliveries and other inefficient cost centers. Any expense should be evaluated to determine whether it boosts the value of the business or the property.

Minimize Legal Exposure

Be aware of receivership litigation risks. The COVID-19 pandemic has upped some of these risks, so be proactive to head off potential claims.⁵

The most obvious exposures are sanitation and virus spread. Following legal and regulatory guidelines helps, but you should also post guidelines for patrons. Include warnings of the risks. An informed customer who refuses to abide by face covering or social distancing guidelines will face an uphill battle when suing the hotel or restaurant.

Employment-related lawsuits can also pose problems.⁶ Workers compensation claims have a new potential wrinkle as the pandemic continues.

Ensure your staff is following all precautions, and the space in which they work has implemented risk-reduction recommendations.

It is better to work with employees you need to let go by offering severance in exchange for certain agreements, rather than incur legal costs.

There will be potential litigation over cancelled room reservations, forfeited convention and wedding deposits, inability to honor group contracts and other customer complaints during and after the COVID-19 pandemic. Reach out proactively to resolve the disputes you can foresee. The more situations addressed before a complaint, the stronger your position to avoid liability later.

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Take the Long View on Value

A receiver’s focus is on preserving and enhancing the value of the business. During and after a pandemic, you may be tempted to dispose of assets quickly and “unload.” For many reasons, that is a dangerous approach to take right now.

Hotel and restaurant performance has always been cyclical, and the current economic downturn is likely to rebound sooner rather than later.⁷ Hotel and restaurant valuations are customarily based on income, even with real estate included.⁸ Using a dramatic downturn to get out of the property will likely cost a great deal in potential value and receipts.

Rebuilding should come first. Customers who have been unable to enjoy a restaurant or travel for months are going to return. Rather than run a fire sale to get what you can now, take the time and effort to help the business recover.

Most investors and hotel/restaurant buyers are looking for upsides. If upsides are demonstrated in the short-term during a receivership, it will lead to a higher sale price in the long term.

A priority for hotel and restaurant receiverships is to preserve and create value.

Whether receivers sell or return assets to viability, they have an opportunity to build value by taking a long view. The receivership plan should also include performing a hospitality operational assessment with 13-week and 12-month objectives as part of the economic feasibility plan reported to the court and all parties involved.

Ultimately, hotel and restaurant receiverships with a long view will create a powerful outcome for assets and hospitality businesses in the new normal.

1 <https://covid19.ca.gov/pdf/guidance-hotels.pdf>;
<https://covid19.ca.gov/pdf/guidance-restaurants-bars.pdf>.
 2 <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.
 3 https://www.hotel-online.com/press_releases/release/hotel-industry-facing-massive-foreclosures-of-thousands-of-hotel-properties/?utm_source=Hotel+Online+Subscribers&utm_campaign=9c2de556b2-EMAIL_CAMPAIGN_2020_06_30_07_49&utm_medium=email&utm_term=0_6443205a949c2dee56b2-144901745
 4 https://info.ahlei.org/hotel-reopening?mkt_tok=eyJpIjoiWWpVeVpqQmpNR05tTkdaaCIInQij0c3BqYnN4UFU1YzAwWGdGV0lNd0dTYWFvMElEQWpMVGRKaVXSm9wQVJ4Zkk4bXFuTTZ0R0haUVZwUzRMcmVQYmtMzk9OYlRzaERyd3lcl1pWAdJnTXFWOUFDU9IcFpNWNWV2F0eThlMU5jaG5xNW5iUmt6cDNwVkwzUmR0MkgifQ%3D%3D;
<https://skift.com/2020/06/24/hotels-could-face-9-billion-in-new-costs-to-stay-squeaky-clean/>; <https://lodgingmagazine.com/costs-on-the-rise-hotel-insurance-represents-a-growing-expense-for-hoteliere/>;
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doubt that the timing from when real estate is listed can dictate how quickly or whether or not a successful sale can be made.

Once under contract, the brokerage process allows the buyer the opportunity to conduct due diligence, obtain financing and property condition analysis. Additionally, the buyer will determine if it qualifies for financing. The buyer has the right to cancel the contract anytime as stated within the terms of the contract. Cancellation contingencies may include property condition, environmental impacts, conditional use permit expirations, change of use, city requirements for transfer to name a few. These conditions of sale provide for an uncertain closing date and price.



Compensation to the listing broker is paid by the seller and is calculated as a percentage of sale price which ranges from as low as 1% to 3%. The commission is negotiable and based on the estimated sale price at the time of contract execution. Typically, the buyer's agent will be paid, in a similar commission structure, by the seller. In some circumstances, the buyer will compensate their broker. Therefore, a total commission may range from 1% to 6%. The listing broker may provide for a discounted commission if dual agency occurs.

The Auction Option

Whether you use an auction to sell a Picasso, Ferrari, IP, Real Estate, Business Asset, Minority Interest, auctions undoubtedly make the asset the star in the marketplace! Auctions create a sense of urgency by establishing a definitive sales date, terms of sale, and an equitable sale process for all buyers. Using an auction platform brings in that competitive bidding environment that any court will

consider an equitable, transparent sale process.

The timeline of an auction will be suggested by the auction company and is based on a multitude of factors for the required exposure of the real estate and minority interest. Article 9 sales and nonreal estate may have a 30-day or less marketing timeline. Rule of thumb is 60 to 90 days for real estate plus the standard escrow (closing) timeframe of 15 to 60 days. Factors for consideration for the marketing timeline include court requirements, type of real estate, location of real estate, depth of buyer pool and buyer underwriting requirements. If the Receiver or Court approves, allowing pre-auction offers will decrease the sale timeline.

Sellers are free to customize their auction experience by choosing auction pricing options which include Published minimum bid price "reserve", Absolute (will sell at any price), and No Reserve (no minimum price with the option to cancel). These strategies will have a marked effect on motivating buyers. A published minimum price allows sellers to state a minimum price the real estate or minority interest will be sold. The seller is committed to selling at or above the reserve price, though only they have a right to sell below the reserve price. A published minimum price is crucial to pricing, because it is a motivating starting point for buyers interested by creating bidding momentum. On the opposite end of the spectrum are Absolute auctions which are the most powerful way to find market value because the real estate and minority interest will sell to the highest bidder at market value without limitation by the seller and may be used in conjunction with court confirmation

A sophisticated and experienced auction company will provide multiple bidding platforms which will be tailored to the seller's objectives and the real estate and minority interests potential buyer demand and demographics. Bidding platforms such as Sealed Bid, Multi-Round Sealed Bid, Onsite, Online, Telephonic, Live Online and In Court each have their benefits and may be used in sequence or in parallel. The auction company will provide suggestions as to which platforms to use based on a thorough analysis of real estate, potential buyer demand and depth of buyer pool.

The terms of sale and qualification process will be clearly outlined in the due diligence materials for buyers. Bidding

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requirements include, a “live funds” registration deposit, proof of funds to close and lender approval/qualification letter.

Underwriting and due diligence materials are provided by Seller (include any and all state required disclosures, financial reports, PTR’s, accountings, environmental reports, operating agreements, rent rolls, IRS k-1’s) at the start of the marketing campaign and available for review in a data room or online, therefore, buyers are prepared and their offers are fully vetted when providing their offers.

The auction process allows the seller to limit or eliminate contingencies when selling real estate and minority interests for Auction day offers. Auction day bids are “as is, with all faults.” Pre-Auction offers may have standard contingencies with the requirement to remove the contingencies 48 hours prior to the auction date. The benefit of excepting Pre-Auction offers will be on a case-by-case basis, though buyers may see value in a contingent offer (especially for residential real estate) and as such, bid higher.

The seller has the option to require the auction company to partner with the broker if the seller has a brokerage contract in force for the real estate. It is very common that both the broker and auction company work together (and are jointly compensated) to market and auction the real estate. The benefit of this partnership (assuming the real estate was listed for sale by the broker for some period of time prior to the auction company) is the continuity of buyer information and overall marketplace metrics which the auction company would not be privy to otherwise.

Compensation to the auction company is different than brokerage. The buyer will pay a “Buyer’s Premium” to the auction company. This is a standard auction industry method of compensation: the buyer’s premium is a percentage based on the sale price, which is added to the highest bid hence, the contract price. The commission ranges from as low as .05% to 4%. The commission is negotiable and based on the estimated sale price at the time of contract execution. Typically, the buyer’s agent will be paid a commission of .05% to 2.5%.

The Global Marketing Campaign

A global marketing campaign is the cornerstone of any auction. A global marketing campaign targets buyers on a local, national, and global level to proactively generate

interest and bring buyers who may be interested in submitting a bid for the property.

To market, advertise and promote the sale of the real estate and attract the right buyers, regardless of whether brokerage or auction process is chosen, a broker or auction company must provide a detailed and exact global marketing campaign. Using such a campaign not only allows the receiver and the sales professional to stand in court and defend the sale price of the assets, but also achieves global market awareness which will find the highest and best price. This global campaign includes identifying demographics and targeting geographic locales. Custom designed marketing collateral and materials such as signs, brochures, email blasts, and direct mail must be created and utilized. Brochures and offering memorandums should be available at opens houses and digitally on a website, and email blasts should be scheduled to agents, brokers, and buyers. Telemarketing, social media platforms, and networks of

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brokers and other public relations are other facets of a global marketing campaign. As mentioned before, online listing services are where most of initial searches commence; therefore, providing high quality videography and photography is crucial for both brokers and auction companies. Nowadays, Internet SEO (Search Engine Optimization) with online search platforms and social media platforms also proves to be a useful tactic in capturing the most possible Internet traffic.

Brokerage v. Auction

There are key differences and drawbacks worth noting when deciding which method should be used to successfully sell an asset. Where the auction process actively brings in buyers, the brokerage option passively waits for interested parties to reach out and express interest. This process can be compared to a store trying to sell their products. The more passive method allows the shop owners to display their products, and simply wait for people walking or driving past to step in and take a look. However, being proactive in reaching customers is key to marketplace awareness. This proactive method creates a sense of urgency with buyers – a “one day, one chance” opportunity – and provides affirmation that the seller is committed to the sale. Whereas a brokerage sale of real estate can sit for an indefinite amount of time on the market until it expires, real estate auctions provide a definite date for sale which motivates buyers to act quickly. Buyer interest and excitement increases because of the perceived value and opportunity that only an auction can generate. A property which has been languishing on the market is most likely not priced equally to what the market is willing to pay; an auction guarantees that this market value will be found.

In a brokerage, however, buyers have one year or whatever amount of time the contract with a listing broker states (anywhere from 3 months to 1 year) to adjust their purchasing times to the market conditions and make these real estate purchasing decisions. Because properties are less marketable and less valuable over time, failing to adjust the price accordingly will negatively affect the marketability and value. Real estate which has been on the market for an extended amount of time causes buyers’ and brokers’ thoughts such as “What is wrong with it?” or “This property must be overpriced” which may impact market value. Price adjustments are necessary because of the changing market, economy, psychology of buyers, and financing, to name a

few. There is no doubt that the timing of using an auction versus brokerage can dictate how quickly a successful sale can be made or whether there will even be a sale.

Whether you choose to auction or broker real estate, minority interests, or any other type of asset, the selling process is not one dimensional. Brokerage allows for unlimited time on market. Auctions provide a certainty with a scheduled sale date. Holding time must be a factor when selling real estate. Time can work both for and against sellers. In the end, being well-educated on how both auctions and brokerage work can benefit the Receiver and ultimately the creditors.

**Todd Wohl is the Senior Partner of Braun International, Premiere Estates Real Estate Group, Braun Minority Interest Market Exchange “MIMX” with headquarters in Los Angeles California with 2600 brokers, partners and specialists and offices in 48 states, Mexico, Caribbean and England. Todd is a licensed real estate agent, a trained auctioneer and is a certified appraiser with the American Society of Appraisers. Braun International was founded in 1908 in Cleveland, Ohio. Visit use at Braunco.com, PremiereEstates.com, Braunmimx.com*



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Ask The Receiver

BY PETER A. DAVIDSON*

Q I am a Chapter 7 bankruptcy trustee. One of the assets of the bankruptcy estate is a note, which is secured by an apartment building, owned by the debtor's brother. The note is in default and I have learned there are health and safety issues at the building. Another asset is the debtor's interest in a partnership, where the brother is the managing partner. The brother is selling off interests in real property owned by the partnership, but not remitting any of the proceeds to me. I intend to file adversary proceedings to judicially foreclose on the note and to recover the estate's interest in the partnership assets and for an accounting. Can I have the bankruptcy court appoint a receiver to collect the rents at the apartment building, pending foreclosure, and deal with the health and safety issues and can a receiver be appointed to conserve the partnership assets and perform the accounting?

A Whether the bankruptcy court will appoint a receiver depends on where the bankruptcy court is and who the bankruptcy judge is. If the court is in the Seventh or Eighth Circuits, it has been the law for over thirty (30) years that bankruptcy courts can appoint receivers in adversary proceedings. In the Ninth Circuit, it also appeared that bankruptcy courts could appoint receivers in adversary proceedings. That has now been called into question by Judge Mark Wallace in *In re Halvorson*, 607 B.R. 680 (Bankr. C.D. Cal. 2019). In the case, a Chapter 7 trustee filed a complaint for turnover, to avoid fraudulent transfers, for an accounting and other relief related to interests in various LLCs and real property. The trustee contended the property was marital community property of the debtor [and hence property of the estate - 11 U.S.C. § 541(a)(2)], but was being held by debtor's wife and other family members. The trustee moved to have a receiver appointed to take possession of, maintain, and manage the property. Judge Wallace denied the trustee's motion, finding the bankruptcy court does not have the power to appoint a receiver.

Section 105 of the Bankruptcy Code, titled "Power of Court", under subsection (a), gives the court broad, wide ranging authority. But Section 105(b) states: "Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title." Relying on the statute's "plain language" Judge Wallace held the court was prohibited from appointing a receiver. In doing so, however, he acknowledged many other courts have held otherwise.



In *In re Memorial Estates, Inc.*, 797 F.2d 516 (7th Cir. 1986), a bank held a note secured by real property, a cemetery. The note was in default and the bank learned a third-party was operating the cemetery, selling plots, and keeping the proceeds. It filed suit in state court to foreclose and moved to have a receiver appointed. Prior to the hearing on the motion, the debtor filed Chapter 7. The bank removed its action to the bankruptcy court and asked it to appoint a receiver to prevent waste and maintain and operate the cemetery. [Judge Wallace wrongly states the bankruptcy trustee moved to have the receiver appointed. *Halvorson*, 607 at 683. In fact, it was the bank. The trustee just did not object. *Memorial Estates*, 797 F.2d at 518]. The Seventh Circuit explained the prohibition in § 105(b) was on appointing a receiver for the entire bankruptcy estate, in order to prevent the circumvention of the appointment of a trustee. It concluded: "Section 105(b) is not addressed to the power of the bankruptcy court to appoint a receiver in a separate controversy between a creditor and the debtor or another creditor." *Id.* at 520.

The Eighth Circuit in *In re Cassidy Land and Cattle Co., Inc.*, 836 F.2d 1130 (8th Cir. 1987), followed the Seventh Circuit's lead. In the case, the Chapter 7 trustee brought an adversary proceeding to foreclose on mortgages held by the estate and moved to have a receiver appointed, pending foreclosure, to manage the property. The Eighth Circuit agreed with the Seventh Circuit that the power "precluded by Section 105(b) . . . is the power to appoint a receiver for the estate in lieu of a trustee . . . Section 105(b) is not addressed to the power of the bankruptcy court to appoint a receiver at the request of the trustee for the limited purpose of administering the mortgaged property pending disposition of the foreclosure proceeding." 836 F.2d at 1133.

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ASK THE RECEIVER

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Judge Wallace rejected both the Seventh and Eighth Circuits rulings, contending they fail to cite any authority supporting their conclusion. *Halvorson*, 607 B.R. at 683. The Seventh Circuit in *Memorial Estate*, however, cited the legislative history that the new Bankruptcy Code has provisions for the appointment of a trustee and, therefore, “[a]ppointment of a receiver would simply circumvent the established procedures.” 797 F.2d 519. It concluded the prohibition relates to a receiver for the whole case, in place of a trustee, not in an adversary. *Id.* Judge Wallace ignored this, instead citing another part of the legislative history which states: “. . .the bankruptcy judge is prohibited from appointing a receiver in a case under Title 11 under any circumstances. . . Appointment of a receiver would simply circumvent the established procedures.” *Halvorson*, 607, B.R. at 684 (emphasis added by Judge Wallace).

While Judge Wallace relies on some of the language of the legislative history from the adoption of the Code, he ignores the history of bankruptcy courts appointing receivers under the prior Bankruptcy Act and the reason for change; which explains the new prohibition. Under the Act: “Between the filing of a bankruptcy proceeding, either voluntary or involuntary, and the appointment and qualification of the trustee a considerable time often passes. During that time the property of the bankrupt for one reason or another may need protection and preservation by the court. The bankruptcy court should appoint a receiver thereof when the court is satisfied that the appointment or authorization is necessary to preserve the estate or to prevent loss thereto.” 4 *Clark on Receivers* § 1016 (3rd Ed. 1959) See also, *Clark* at § 1035 [“The purpose of the appointment of a receiver in bankruptcy is to preserve the property temporarily until a trustee may be elected or appointed or until the property may be disposed of by some order of court.”]. Section 11(a)(3) of the Bankruptcy Act provided the court could: “Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified . . .”

The procedures adopted by the Bankruptcy Code changed this, as alluded to in the legislative history city by the Seventh Circuit in *Memorial Estates*. Under the Code, a trustee is automatically appointed when a Chapter 7 case is filed and, unlike under the prior Act, in Chapter 11 debtors remain in possession of their assets unless the court appoints a trustee

(11 U.S.C. § 1101). Given these new procedures, there was no longer a need to appoint a receiver for the case and the prohibition was put into § 105(b) to prevent, as the Seventh Circuit states, circumventing the new procedure.

As indicated, the prohibition in § 105(b) is on appointing a receiver “in a case under this title.” One could argue, using the “plain language” that “case” refers to the bankruptcy case and not lawsuits related to a case, which are called adversary proceedings. See Federal Rules of Bankruptcy Procedure, 7001 and 7003. To avoid this conclusion, Judge Wallace argues adversary proceedings are included in “case,” because 11 U.S.C. § 324(b) provides that when a court removes a trustee for cause from a case, the trustee is also removed “in all other cases under this title in which such trustee . . . is then serving.” He concludes, if a trustee is removed from all the cases in which he serves, he could not possibly continue to serve as trustee in adversary proceedings in those cases, so the term “case” has to include adversary proceedings.

Whether one accepts Judge Wallace’s strained logic, it is clear, at least in his court, receivers cannot be appointed, even if requested by a trustee. Judge Wallace acknowledges not only that the Seventh and Eighth Circuits disagree, but so do lower court cases throughout the country, including not only other cases in the Ninth Circuit, but also in the Central District of California where he sits. See *In re Kellogg-Taxe*, 2014 WL 1329822 (Bankr. C.D. Cal. 2014). While he cites three Ninth Circuit cases holding otherwise, there are more. See e.g., *In re Ledstrom*, 2017 WL 1239144 (D. Nev. 2017); and *In re Cuzco Development USA, LLC*, 585 B.R. 870 (Bankr. Hawaii 2018).

Judge Wallace also concedes *Collier on Bankruptcy* also disagrees, but argues it and the other contrary cases simply rely on *Memorial Estates* and *Cassidy Land*. *Halvorson*, 607 B.R. at 680. Therefore, until the Ninth Circuit rules on the issue, whether the bankruptcy court can appoint a receiver will depend on which bankruptcy judge you are before. If the Ninth Circuit ever hears the issue, and agrees with Judge Wallace, it may take the Supreme Court to resolve the possible split in the Circuits.



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Peter A. Davidson



Partnership Audit Rules Bring Changes for Receivers and Partners

BY CHAD C. COOMBS*

Regarding income tax, partnerships used to be relatively simple for receivers. The receivers would get the partnership's assets and typically pay its claims, and the partners would get the flow-through of the partnership's tax income (or loss). On occasion, partners have complained that this result is unfair – the funds go to the claimants while the partners get the taxable income – but as one court noted, the partners who chose this form of entity for the flow-through tax benefits also must live with its burdens.¹

A principal issue for receivers is when partners want a say in how the partnership income tax returns are prepared. The IRS expects the receiver for either a partnership or all or substantially all of the partnership's assets to prepare and file the partnership's returns.² Though partners might want to take part in this process to make sure their tax liability is as low as possible and could have useful and helpful information, a receiver should maintain control over the tax returns the receiver signs and files.

What's Changing

New federal partnership tax audit rules enacted in November 2015 and generally effective for tax years beginning on or after Jan. 1, 2018,³ have changed significantly the way partnerships are audited and how they make adjustments, and receivers need to maintain control now more than ever. While income or loss reported on a partnership return still flows through to the partners, the new rules provide that the partnership itself – and not the partners – may be directly liable for income taxes assessed pursuant to an IRS audit. The new rules aim to simplify the audit procedure, but they also effectively might shift the liability for any tax due from the audit-year partners to the

current-year partnership and, in the case of a receivership, the receivership estate. If the partnership is liable to pay tax due after an audit, not only must the receiver pay the tax out of partnership assets, but the receiver could be personally liable for failing to pay the assessed tax pursuant to the federal claim priority statute.⁴

This change has a profound impact on how receivers should approach the receivership's partnership filing obligations. For tax years beginning on or after Jan. 1, 2018, a receiver no longer can file partnership returns and assume that in the event of an IRS audit, the partners and not the receivership will be responsible for any tax due. In other words, unless a certain election is made, a partnership in audit is liable for tax due like a taxable C corporation. However, once the partnership ceases to exist, any tax liability on audit shifts to the partners.

The new rules establish a partnership representative who will handle the partnership audit.⁵ The partnership representative takes the place of the tax matters partner under the old rules. The partnership representative, who does not have to be a partner and is designated on the annual tax return, is the partnership's sole representative upon audit and can bind the partnership into a settlement of the audit. The receiver does not automatically become the partnership representative, and a partnership may revoke the designation of a partnership representative.⁶

A partnership might be able to elect out of the new rules. Partnerships with fewer than 100 partners can elect out, but only if each partner is an individual, a deceased partner's estate, a C corporation, a foreign entity that would be required to be treated as a C corporation if it were a domestic entity, or an S corporation.⁷ Thus, a partnership

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TAX TIPS

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cannot elect out if it has a partner that is either a trust or a partnership. This election is made on a year-by-year basis with a timely filed tax return.

At the end of an audit, a partnership may elect to flow through the audit adjustments to the partners for the year under audit by making what is referred to as a push-out election.⁸ However, the partnership has a short window to make the election and must furnish statements of the adjustments to the audit year partners within 60 days after the adjustments are determined and file a copy of the statements with the IRS.

Looking Ahead

To date, little if any experience under the new rules provides further guidance, especially in the case of receiverships. However, the new rules do make it imperative for receivers of partnerships or their assets to be proactive, including, among other things:

- Timely filing Form 56, “Notice Concerning Fiduciary Relationship,” at the beginning of the receivership, notifying the IRS and other applicable taxing authorities of the receiver’s appointment
- Reviewing a copy of the current partnership agreement, especially for any provisions addressing the new audit rules, including appointment of the partnership representative
- Evaluating the income tax filing status of the partnership

Contacting a Tax Adviser

As is very common, receivers might not have adequate (or even any) historic information on which to base preparation of meaningful partnership returns, putting the partnership, and thus the receivership estate and the receiver, at greater risk of a potential tax liability should the return be audited. The lack of clear guidance about how the new rules affect receiverships gives receivers even more reason to seek a closing or other letter agreement with the IRS and other applicable taxing authorities to close the receivership and protect themselves from any potential liability. Receivers should consult their tax advisors as to the potential impact of the new rules and actions to take given the particular circumstances of their receivership.

¹ In re Nevin, 135 B.R. 652 (Bankr. D. Haw. 1991).

² See IRS Gen. Counsel Mem. 36811 (1976) and IRS Gen. Counsel Mem. 38781 (1981).

³ Enacted by the *Bipartisan Budget Act of 2015* as amended by the *Protecting Americans From Tax Hikes Act of 2015* and the *Consolidated Appropriations Act of 2018*. The new partnership audit rules are codified in IRC Sections 6221-41.

⁴ 31 U.S.C. Section 3713.

⁵ IRC Section 6223.

⁶ Treasury Regulations Section 301.6223-1(e).

⁷ IRC Section 6221(b).

⁸ IRC Section 6226.



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- ◆ This symbol indicates those who completed up to 14 hours of advanced receivership education at the Loyola V, Complex Case Symposium in January 2013.
- This symbol indicates those who facilitated and attended the Loyola V, Complex Case Symposium in January 2013.
- ⊗ This symbol indicates those who completed 9 hours of education at the Loyola VI Symposium in January 2015.
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- This symbol indicates those who completed 9 hours of education at the Loyola VII Symposium in March 2017.
- ◆ This symbol indicates those who facilitated and attended the Loyola VII Symposium in March 2017.
- ▲ This symbol indicates those who completed 6 hours of education at the Loyola VIII Symposium in January 2020.
- ⊗ This symbol indicates those who facilitated and attended the Loyola VIII Symposium in January 2020.

Loyola I-IV symbols have been deleted.

Heard in the Halls: NOTES, OBSERVATIONS, AND GOSSIP RELAYED

BY MICHAEL J. MUSE-FISHER*

Welcome to the latest edition of *Heard in the Halls*. Please provide your snippets of news, questions or comments about receivership issues or the professional community by telephone, mail, fax, or email to: **Michael J. Muse-Fisher** at Buchalter, A Professional Corporation, 500 Capitol Mall, Suite 1900, Sacramento, CA 95814; Phone: (213) 891-0700; Fax: (213) 896-0400; Email: mmuse-fisher@buchalter.com



Here is what we have *Heard in the Halls* ...

- **The Young Professionals Council (YPC) Receivership 101 Training:** The YPC is working with small, medium and large firms in Los Angeles and Orange County to provide training to attorneys on all things receiverships. If you or your firm are interested in getting a crash course in receiverships, or fine-tuning your existing receivership skills, please contact **Michael Muse-Fisher** (at mmuse-fisher@buchalter.com), and members of the YPC will make themselves available to present tips, tricks, strategies, and recommendations to you and your firm tailored to your specific needs.

THE COVID-19 SPECIAL

- Court closures, delays, budget issues, and scheduling issues. If you are first learning of COVID-19 from *Heard in the Halls*, I would advise you to put this down, turn on the news, and buy a nice mask. Masks are imperative; make sure to wear your mask (and wash your hands). For the rest of us acutely aware of COVID-19, the last few months have been disjointed, uncertain, and unsettling, to say the least. The court system across the State of California has been no different. Most courts are now back and operational (partially), although civil jury and bench trials are being delayed because of the backlog of criminal trials, which were postponed because of COVID-19. Presiding judges from each county have issued rolling orders affecting everything, including court staffing, hearing scheduling, filing deadlines, and the availability of ex parte relief. The same goes for statewide orders from the Governor and county-specific orders from other governing bodies. Also due to budget issues, we can anticipate more delays, court backlogs, and scheduling issues for the foreseeable future. Each court website has updates on these new rules and orders, so please check them out to assess how your cases may be impacted. There are also useful aggregators, including <https://support.onelegal.com/california-court-updates-covid-19>, and <https://newsroom.courts.ca.gov/coronavirus-updates>, that provide updates on COVID-19 updates across the state.
- **One Positive Development.** It's a busy time at CRF. Interest in membership is up and our organization is moving forward with new programming aimed at addressing the new pandemic-affected economy. As a result of COVID-

19, the CRF rolled out a *Call Connect* series which consists of monthly luncheon presentations to discuss all aspects of receiverships. This programming is designed to keep practitioners in contact, while complying with statewide shelter-in-place orders. The *Call Connect* series began in April and has continued monthly since then. The first *Call Connect* via Zoom, "Troubled Businesses 2020," was on July 22 and over 70 members participated. The next *Call Connect* will be on August 26 to discuss commercial real estate, retail, and restaurant receiverships in the time of COVID-19. I will be a presenter so you will get to hear my sultry voice, and I will be joined by **Stephen Donell** and **David Stapleton**, two of the most well-known and respected receivers in California. To sign up please register at receivers.org. Check with your chapter administrator to make sure your contact info is up-to-date. DID I MENTION, IT'S FREE!!!!

- **Sacramento, Where You At?** The Sacramento Chapter of the CRF is back up and running, thanks to the efforts spearheaded by **Scott Sackett**. The newest officers of the Board include Co-Chairs - **Scott Sackett** and **Mike Brumbaugh**, Treasurer - **Terri Riker**, Membership Chair - **Peter Martin**, and Co-Education Chairs - **Michael Muse-Fisher** (me) and **Kevin Collins**. There are still board positions open so please make sure to join the ranks if you are not already a member. The Sacramento Chapter is hosting an Education program on September 3, 2020, regarding a detailed discussion of COVID-19 and Receiverships, with a particular focus on navigating businesses who obtained PPP Loans through the CARES Act.
- **Spread the Word:** Know someone thinking about getting started in receivership work? Steer them to www.receivers.org to order a past Loyola program 4-disc DVD set for \$75 teaching receivership basics and including sample pleadings.

***Michael J. Muse-Fisher** is Senior Counsel of Buchalter, A Professional Corporation. Mr. Muse-Fisher specializes in creditor's rights, real estate disputes, corporate and partnership disputes, copyright and trademark disputes, cannabis law, and alternatives to bankruptcy. Representative clients include regional and national lending and financial institutions, state and federal receivers, and companies ranging from family-owned operations to Fortune 500 corporations.



Michael J. Muse-Fisher

PROFESSIONAL PROFILE...

Continued from page 7.



Ben King performs with his band "Xanadoodz: A Tribute to Rush" in January 2020.

safety). He says "most importantly, I have found a home in the receivership community which I find to be populated with some of the best people I have ever met: there is something about receivership practice that encourages people to be practical and reasonable – approaches that I found too scarce in my early general litigation practice."

During our COVID-restricted times, Ben is practicing remotely, as most of us are, but also finding time to expand and grow. Besides the Rush tribute band (which unfortunately is suffering cancelled gigs, as one might expect), he is following a long-held desire to learn to play drums and is self-teaching.

Ben explains the interplay of his work and hobbies as follows: "They both feed my creative and meticulous nature as well as my natural attraction to solving problems. Music production and performance are all about having a 'vision' of the final work in your head and communicating that in a way so that the listener gets to share that same vision. In the professional world, I often start with a sense of vision about

where I want to take the many 'listeners' out there, such as judges, clients, and colleagues. Once I have that vision, the same qualities of creativity, meticulousness, and above all persistence in solving problems help me to bring them there.

Over the years, I have learned to deal with the frustration that arises in music production and performance in a business-like manner, dissecting the problem and arriving at a result. Again, this kind of 'deep-breathed' methodical approach helps me attack the problem calmly. I've learned that this mentality translates well into the legal environment. Identify and isolate the problem elements, and then figure out how to make them work in favor of your vision!"

Ben is clearly an interesting guy. He described what feels like his core to me, relating that when his kids were growing up, they would accuse him of "seeing danger everywhere" and they were likely right. Not only that, he considers it as actually his best trait as a receiver's lawyer. "The key is to look far down the road on every engagement, apply the "what might happen" test, and maneuver the path for a receiver to implement his/her plan in an efficient and effective manner, while protecting the receiver from potential challenges." I've learned a lot and enjoyed writing this Profile. Get a chance to know Ben, and you certainly won't be disappointed.



Alan M. Mirman

**Alan Mirman provides legal counsel for many receivership matters. Mirman, Bubman & Nahmias is in Woodland Hills.*

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