

# PUBLICATION

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## Louisiana Receivers In Foreclosure - "Keep-er Away From My Collateral!!" Part 1

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**This is the first of two posts on "Keepers". The first post discusses (1) what a keeper is and (2) why you should designate a Keeper. The forth-coming second post will discuss (3) the benefits of a Keeper and (4) some risks relating to a Keeper.**

### What is a "Keeper"?

Many non-Louisiana based commercial lenders/servicers will frequently confess to being mystified by the apparent anachronisms of Louisiana's "civil law" system. The good news is that many of Louisiana's laws governing commercial transactions have been modernized in recent years to, conceptually at least, bring them in line with other states. While the concepts behind these changes may be familiar, however, in true civil law fashion some of the terminology used remains distinct to Louisiana and can cause an unnecessary level of unease amongst those who are unfamiliar with the enforcement of security interests in the state.

For example, most every lender/servicer is familiar with the concept of appointing a receiver to administrate secured collateral, but Louisiana lawyers are often greeted with puzzlement when they ask whether a client would like to have a "Keeper" appointed during a foreclosure. To clear the air, a Keeper under Louisiana law is the basic equivalent of a receiver in other states. Louisiana's Keeper laws can generally be found at La. R.S. 9:5136, *et seq.*, for immovable and movable property (though certain types of specialized collateral are governed by additional rules).

### Designate or You May Be Dismayed

Whether you have a mortgage on immovable/movable property or a security agreement under Chapter 9 of Louisiana's Commercial Laws, make certain your security instrument either designates a specific Keeper or clearly sets forth your right to appoint one along with the method that will be used to designate a Keeper in the future, and sets forth how the Keeper's compensation will be treated. Failure to do so will permit the Court, upon request via summary proceeding, to appoint a designee of the Court to act as Keeper. This can often-times be disastrous as the Keeper appointed by the Court may not have the particular expertise required to handle larger commercial/multi-family assets.

If, for some reason, your security instrument does not designate a specific Keeper, or a methodology for designating a Keeper, you may, via a separate instrument executed by the parties, cover this gap. But remember that if part of your collateral is immovable property, this separate instrument will have to be executed/acknowledged in the presence of a notary and two witnesses.

Finally, while Louisiana law does permit the secured party to designate itself as the Keeper, for a host of reasons it will nearly always be the wiser move to designate a third party to administrate your collateral during the pendency of a foreclosure action.