

PUBLICATION

An Overview of the Receivership Process in Tennessee

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Lenders have a number of options when faced with a borrower in default. In Tennessee, one option to seriously consider is seeking appointment of a receiver. A receiver will step into the role of the borrower or management company and will operate the property until the lender makes a decision about foreclosure or sale. Appointment of a well-qualified receiver can result in stabilized operations at either a residential or retail property and make the property more attractive to potential purchasers.

Grounds for appointment of a receiver under Tennessee law are:

1. if the property is being so misused, wasted, or neglected that it is greatly endangered and likely to be lost or rendered inadequate, especially if taxes are not paid;
2. if the defendant has abandoned the property;
3. if the defendant is insolvent or if the debt is overdue and the property subject to a mortgage is inadequate security.

A receivership action is commenced in Chancery Court (Tennessee's court of equity). A defendant is entitled to notice and a hearing prior to appointment of a receiver (i.e. there are no *ex parte* appointment options). In an emergency situation, the hearing to appoint a receiver can be held on a "show cause" basis and the standard to obtain such a hearing is the same as obtaining injunctive relief.

In terms of timing, if the Complaint is uncontested, 45 days is the general time frame for appointment unless an emergency situation justifies more immediate relief. The order appointing the receiver will outline in detail the specific rights of the receiver with regard to the property, including the ability to direct tenants to make payments directly to the receiver, entering into new leases and terminating leases, maintenance of the property, and the ability to sell the property.

Tennessee law requires a motion and a hearing to terminate a receivership. Given the relatively straightforward statutory framework and time frame, appointment of a receiver remains a viable option in Tennessee for a lender considering how to address property following a default by the borrower and to obtain the best value possible for all the parties.