

I'm a contractor. Why should I care about the Missouri Commercial Receivership Act?

AUTHOR: MICHELE O'MALLEY

What is a receivership? In its basic form a receivership occurs when a creditor requests the court to appoint a third party to take control of a debtor's assets during the course of some litigation. This may include taking control of business operations, managing personnel, acting upon or rescinding business contracts, or liquidating the debtor's assets to satisfy creditors. Receivership is an extreme solution. Courts do not grant that relief without proven cause.

In the late summer of 2016, the Missouri Commercial Receivership Act ("MCRA") became law in the State. RSMo. 515.500 et. seq. The MCRA authors gathered prior court decisions, statutes and studied the practical application of prior Missouri receiverships to create a rule book for the process. While many in the legal community may look at the MCRA as a boon for financial institutions, this new law establishes greater checks and balances in the process that benefit a third party with an interest in a debtor's receivership estate.

As a construction contractor, you may encounter a receivership in many ways. If you hold a contract with a developer or property owner that becomes subject to a receivership, MCRA requires the Receiver provide you with notice of the receivership. Your knowledge of the receivership provides you a tool to protect your contractual participation in the project. The MCRA establishes a mechanism for you to participate with the Receiver to resolve construction disputes and for you to present and prioritize claims for payment.

If you lease equipment or obtain construction materials from a supplier and that company becomes subject to a receivership, the lease agreement or supply lines may be terminated because the agreement may be an executory contract. Your participation in the receivership process enables you to protect your business interests. Information learned from the receiver is critical for your strategic planning if you need to make operational adjustments, seek out new supply lines, or procure replacement equipment.

Finally, the MCRA establishes the playbook for a Receiver. If your business is targeted for receivership, you need to know your rights, as well as, the Receiver's obligations and limitations. An attorney with receivership experience and a firm understanding of the MCRA will assist you in navigating the process and working to protect your company's assets and promote its goals.