

Law regarding Appointment of Receiver for HOA

As authorized in the Association's Collection Policy which was duly adopted pursuant to the rule making authority in the Association's Declaration and the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq., the Association is authorized to pursue a receivership action to collect past due assessments, fees and costs.

Plaintiff is also entitled to the appointment of a receiver pursuant to C.R.S. § 38-33.3-316(9), which provides as follows:

In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

Defendant does not occupy the Property, therefore no homestead exemption applies. Upon information and belief, Defendant does not reside at the Property.

15. Generally, a receiver should not be appointed ex parte "without prior notice and the opportunity to be heard" when enforcing statutory provisions. *GE Life and Annuity Assur. Co. v. Forts Collins Assemblage, Ltd.*, 53 P.3d 703, 705 (Colo. App. 2001). That said, "ex parte appointment of a receiver may be permissible under emergency circumstances or where notice is impractical." *Johnson v. McCaughan, Carter & Scharrer*, 672 P.2d 221, 222 (Colo.App. 1983).

16. Factors typically considered by a court when appointing a receiver are as follows:

"(1) the existence of a valid claim by the moving party; (2) the probability that fraudulent conduct has occurred or will occur to frustrate the claim; (3) imminent danger that property will be lost, concealed, or diminished in value; (4) inadequacy of available legal remedies; (5) lack of a less drastic equitable remedy; and (6) the likelihood that that appointment of a receiver will do more harm than good." *Waag v. Hamm*, 10 F.Supp.2d 1191, 1193 (D.Colo. 1998).

In this case, the Association may seek appointment of a receiver because this is an action to collect assessments, pursuant to C.R.S. § 38-33.3-316(9).

18. Additionally, in this case, ex parte appointment of a receiver is appropriate for the following reasons:

a. Notice to Defendant prior to appointment of receiver is impractical, as contemplated by *GE Life and Johnson v. McCaughan*. The Association has obtained a skip trace report to determine Defendant's residence. As noted above, the Association has attempted service of process upon Defendant, without success, at the Property set forth on a skip trace report. In light of the Association's attempts to locate and serve Defendant with process, notice of this Motion prior to appointment of a receiver is impractical.

b. Appointment of a receiver is necessary to protect the Association's rights in the Property, as contemplated by *Eureka*. In this case, the Association provides numerous services to Defendant and Property, and Defendant has failed to meet the obligation to pay assessments for said services. Defendant's failure to pay the assessments places an undue burden on the Association to pay for services that benefit Defendant and the Property. Defendant's failure to pay assessments has put the Property in danger of being materially injured. Failure to pay assessments impairs the Association's ability to maintain the common elements. Failure to maintain the common elements decreases the value of the common elements. The value of the Property is based, in part, on the value of the common elements. If the value of the common elements decreases, the value of the Property decreases. Thus, the Property is in danger of being materially injured due to the Defendant's failure to pay assessments.

c. Appointment of a receiver in this case satisfies many of the factors contemplated by *Waag*. Here, the Association likely has a valid claim for unpaid assessments, supported by the ledger attached hereto as Exhibit 3. Additionally, the legal remedy available to the Association of obtaining a money judgment against Defendant is inadequate as it is impractical for the Association to serve Defendant with process.

d. Last, appointment of a receiver will likely do more good than harm, as contemplated by *Waag*. If appointed, the receiver will likely satisfy the amount owed within 5 months of appointment. As noted above, the amount alleged to be owed is \$4,334.00 while the estimated rent is \$600.00 - \$900.00 per month, suggesting that the receiver could collect rent and use that to satisfy the amounts owed within several months. Given the additional fees a receiver will charge, a reasonable estimate of the period of the receivership is 7 months.