

THE WHY, WHAT AND HOW OF HOTEL RECEIVERSHIPS

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After 9/11 until the beginning of the current financial meltdown in 2007, the hotel industry experienced an almost unprecedented boom in new development financed by low interest rates and easy credit. The recession and credit freeze has strained financial operations — cutbacks by business and pleasure travelers lowers occupancy rates, forcing competition and lowering average daily room rates (ADR's), creating a "double whammy" to revenue. A recent [PricewaterhouseCoopers](#) presentation summed this situation up by its title: "The Worst REVPAR [revenue per available room] Environment of Our Lifetimes," predicting that REVPAR will be down 11.2 percent from 2008 to 2009. For hotels that were financed with long-term permanent loans, the dramatic change in their finances may cause revenue to be insufficient to cover even operational expenses, much less debt service, putting the loans into default and the hotel at risk of going dark. For hotels that are under construction loans, the lack of liquidity in the marketplace coupled with the reduction in operating revenue will make securing a permanent takeout loan extremely difficult. Many market analysts predict that the hotel industry faces a mountain of impending loan defaults. In the securitized mortgage arena, which only represents a fraction of hotel lending, more than \$30 billion of commercial mortgage-backed securities were issued for hotels in 2006 and 2007, many of which are maturing this year. Renewing or extending these loans will be virtually impossible.

Why a Receivership?

Although a hotel looks and feels like any other real estate asset, the physical hotel is really a services-delivery location, more similar to a restaurant than a warehouse, office building or apartment complex. This service aspect, coupled with liability issues associated with areas like food and alcohol sales and valet service, significantly reduce lenders' desire to directly deal with the asset through foreclosure or other means of recovering on their collateral.

As long as the borrower and hotel operator are operating the hotel efficiently as compared to its competitive set of hotels and are otherwise maximizing revenue and applying that revenue to the loan, most lenders are willing to forebear from exercising their legal remedies or extend maturing loans instead of putting the property/collateral through the turmoil of the various loan enforcement options. However, if the lender is not comfortable with the borrower/operator's ability to operate the hotel or feels that the borrower is wasting the lender's collateral (not applying revenue to loan payments, taking personal property, etc.), the lender, although not wanting to take possession of the hotel, may determine that it needs to wrest control away from the borrower — which is where hotel receiverships come into play. A lender's decision to seek the appointment of a receiver instead of foreclosing (or in the event of extended delays in judicial foreclosure states during the foreclosure process) is typically motivated by a stagnant market where a quick sale is either unlikely or will be at a substantially discounted price or by the lender's belief that proper management could result in enhanced operational performance. The lender may have other reasons for preferring a receivership, such as distancing itself from potential liabilities (e.g., environmental problems, health/safety concerns, etc.).

In addition to a lender requested receivership, the owner/borrower may seek the appointment of a receiver if it does not operate the property and determines that the property's distress is caused by current management. In the hotel context, most receivers are hotel management companies (or in states like Texas that require that individuals be receivers, officers at hotel management companies that hire their management companies to manage the hotel asset).

The purpose of this article is to outline the basics of hotel receiverships for borrowers, lenders and management companies. ... [more](#)



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