

# With a Growing Number of Businesses In Distress, Fla. Lawyers Are Looking at Alternatives to Bankruptcy Filings

The commercial real estate market in particular is getting choppier, and practitioners are increasingly taking advantage of receiverships and assignment for benefit of creditors.

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Bankruptcy



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## What You Need to Know

- With bankruptcy work on the rise for some, bankruptcy alternatives are popping up more often.
- Both receivership and assignment for benefit of creditors cases have seen a surge recently, especially in Florida.
- The rise in Florida comes after new laws and some distress in the local commercial real estate market.

Bankruptcy work is trending upward for many lawyers in the practice, even for some operating in Florida's bustling economy, and many are increasingly working with popular alternatives to actual bankruptcy.

Receiverships are especially on the rise in Florida after the state passed new laws around the practice in 2020. Meanwhile, assignment for benefit of creditors, another bankruptcy alternative, is also seeing a moment as it offers entities more leverage in negotiations with creditors.

In regards to receivership work, one business litigation expert is seeing the cases accumulate within his practice.

"Fifteen or 20 years ago, receiverships were infrequently used tools that many people had never heard of. They were basically used in regulatory actions brought by the SEC, the FTC or the CFTC or they were used in foreclosure action," said Jeffrey Schneider, founding partner at Miami-based Levine Kellogg Lehman Schneider + Grossman. "In the last five to 10 years, they are more frequently used in business disputes."

In the context of a business dispute, if shareholders are fighting for control of a company and it makes the company inoperable, a receivership offers a third party to run the company while the shareholders litigate, said Schneider.

And because receiverships can rely on bankruptcy code while being held to fewer requirements, the process can be much faster and cheaper than an actual bankruptcy proceeding with some of the same outcomes, said Schneider.

The surge of popularity around receiverships has its origins in several high-profile cases, most notably the unwinding of Bernie Madoff's Ponzi

scheme, said Schneider, whose firm worked with some defrauded investors in that case. But in Florida, the practice has seen a more outsized jump thanks to new rules, specifically those targeting real estate-related distress.

The Uniform Commercial Real Estate Receiver Act was put in place in 2020 to codify Florida's laws around receiverships for real estate cases. Although Florida is not the first state to adopt the same framework, the state's strong real estate activity fits well with the set of rules.

"I think the game changer in the South Florida market has been the adoption of that act," said Jeffrey Snyder, the head of Bilzin Sumberg's bankruptcy practice. "The reality is that so much of our activity is real estate driven, so a commercial real estate receivership act really makes a difference in our market."

The state also has rules around assignment for benefit of creditors, or ABCs, another bankruptcy alternative on the rise. And Snyder says that because of the combination of both frameworks, Florida is ripe for that kind of work.

Because federal bankruptcy court demands more transparency and higher court fees, ABCs are becoming more popular for use with distressed companies.

But on top of its ability to avoid costly federal court proceedings, the process also offers those businesses leverage in negotiating with creditors, according to Joe Pack, founder of Pack Law.

The reason for the leverage is how the process classifies the business as insolvent, which disincentives plaintiffs lawyers to push for litigation, said Pack. And that brings those attorneys to the negotiating table.

And now that the commercial real estate space is starting to see some distress, according to Pack and others, the alternatives may start popping up more frequently.

Kozyak, Tropin & Throckmorton is one South Florida firm that has been involved in receiverships since the approach was more commonly used for fraud cases, said bankruptcy-focused partner Bernice Lee.

Having that real estate roadmap makes the process more attractive, Lee said. But she sees both receiverships and bankruptcy as complementary rather than different practices.

“Depending on what the goal is, a receivership may be better,” Lee said. “Do you need to stay with the assets? Maybe even grow value? Maybe try a receivership.”

And with bankruptcy work on the rise at Kozyak, Tropin & Throckmorton, Lee is keeping busy with both traditional restructurings and receivership work, even in South Florida’s bullish environment.

But for others, like Schneider at Levine Kellogg Lehman Schneider + Grossman, it’s the new options that are outpacing traditional bankruptcy work.

Meanwhile, other firms like Levine Kellogg Lehman Schneider + Grossman are seeing less bankruptcy work and more companies aiming for those other options, according to Jeffrey Schneider. So an accounting

of Chapter 11s alone won't necessarily offer a true snapshot of what the market looks like at the moment.