

The Uniform Commercial Real Estate Receivership Act - What is It and What Does It Mean for You?

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McAllister, LLP



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CELEBRATING
125
1890 2015
Years

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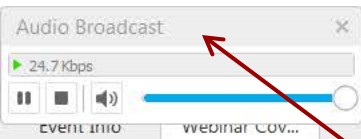
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Audio



Audio should stream automatically on entry through your computer speakers

Pepper Hamilton Webinar



A screenshot of the webinar interface. The top right shows icons for 'Participants', 'Chat', and 'Q&A'. Below these is a 'Participants' list with 'Brian Dolan (Host)' and 'Webinar Guest (me)'. The 'Q&A' section is currently empty. At the bottom, there is a text input field for asking questions, with a dropdown menu set to 'All Panelists' and a 'Send' button. A note below the input field reads: 'Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit.'

Audio

The screenshot displays the Cisco WebEx Event Center interface. At the top, the title bar reads "Cisco WebEx Event Center" with standard window controls. Below it is a menu bar with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area is split into two panes. The left pane shows a slide with the text "Pepper Hamilton Web" and a logo for "Pepper Hamilton LLP Attorneys at Law" celebrating 125 years (1890-2015). The right pane is the "Participants" window, which lists "Panelists: 1" (Brian Dolan (Host)) and "Attendees: Webinar Guest (me)". Below the attendee list are icons for audio, video, and chat. A red arrow points from the text "If you cannot stream audio, click phone icon and a phone number will be sent to you" to the phone icon in the participant list. An "Audio Connection" dialog box is open, showing two options: "I Will Call In" and "Call Using Computer" with a link to "Test computer audio". At the bottom of the interface, there is a "Q&A" section with a dropdown menu set to "All Panelists" and a "Send" button. The status bar at the bottom right indicates "Connected".

If you cannot stream audio, click phone icon and a phone number will be sent to you

Pepper Hamilton Web

CELEBRATING
1890 125 Years 2015
Pepper Hamilton LLP
Attorneys at Law

Participants

Speaking:

Panelists: 1

Brian Dolan (Host)

Attendees:

Webinar Guest (me)

Q&A

All (0)

Ask: All Panelists

Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit.

Send

Connected

Q&A

Cisco WebEx Event Center

File Edit View Communicate Participant Event Help

Event Info Webinar Cov... x

01

Participants

Speaking:

- Panelists: 1
 - Brian Dolan (Host)
- Attendees:
 - Webinar Guest (me)

Q&A

All (0)

Ask: All Panelists

Type question here... Send

Connected

Pepper Hamilton Webinar

CELEBRATING 125 Years 1890 2015

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Send us questions

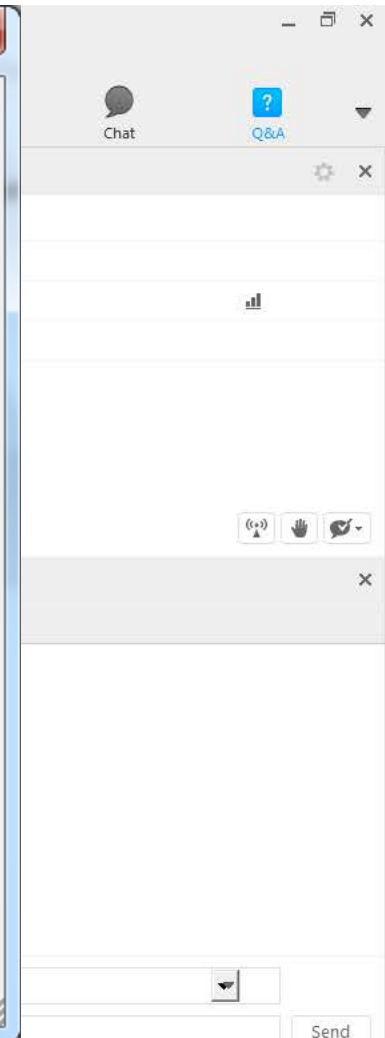
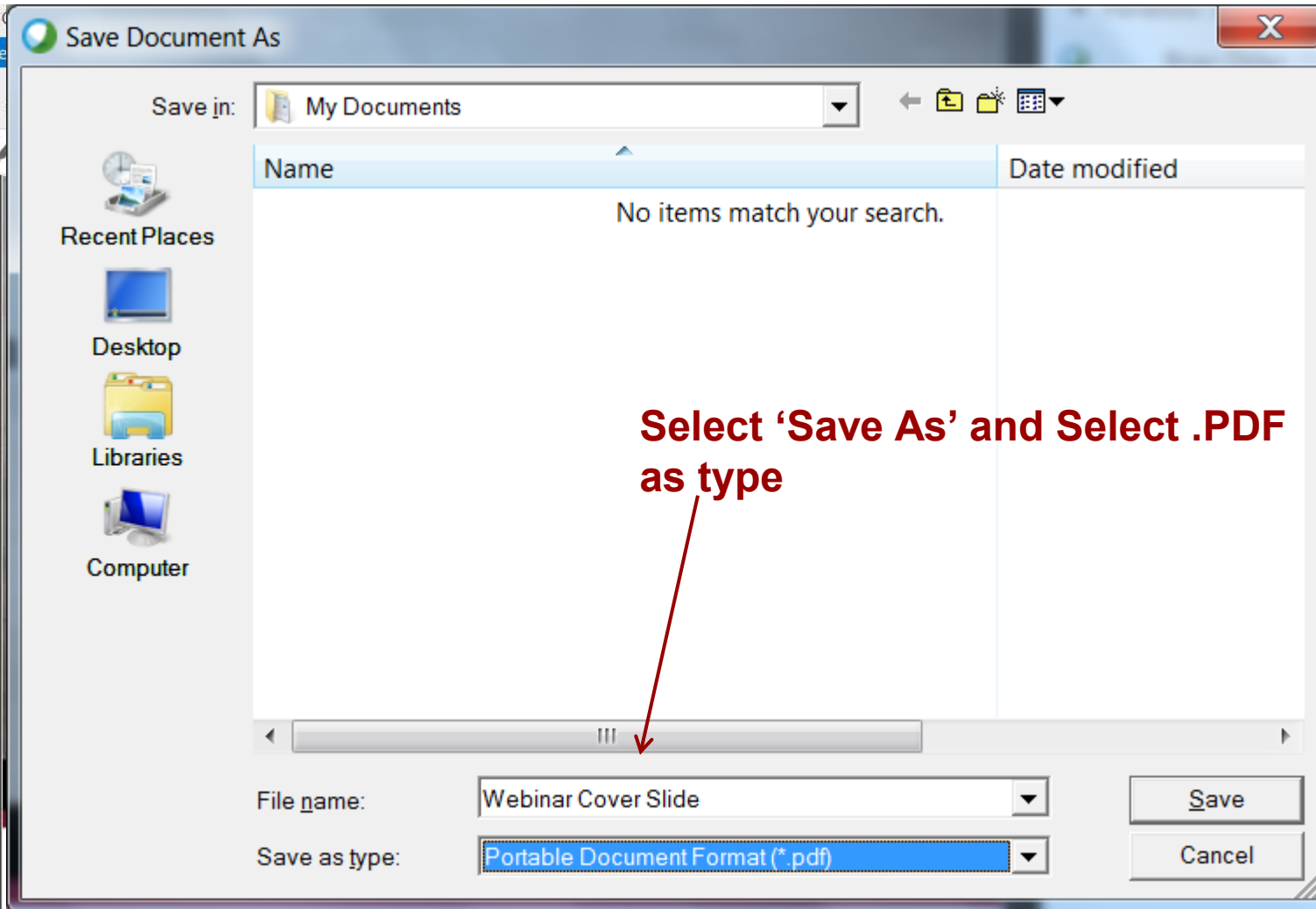
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The screenshot displays the Cisco WebEx Event Center interface. At the top, the title bar reads "Cisco WebEx Event Center" and includes a menu bar with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". Below the menu bar, there are tabs for "Event Info" and "Webinar Cov...". A red arrow points to the "File" menu item with the text "Click 'File'".

The main content area shows a slide titled "Pepper Hamilton Webinar". The slide features a large "125" with "1890" on the left and "2015" on the right, and "Years" written in a script font below the "5". Below this, the logo for "Pepper Hamilton LLP Attorneys at Law" is displayed.

On the right side of the interface, there is a "Participants" panel. It shows "Speaking:" with "Panelists: 1" and "Attendees:" with "Webinar Guest (me)". Below this is a "Q&A" section with a dropdown menu set to "All (0)" and a "Send" button. At the bottom right, there is a "Connected" status indicator.

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**Contact Brian Dolan at dolanb@pepperlaw.com for
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- ▶ Concentrates her practice in corporate restructuring insolvency and bankruptcy matters and has 29 years of experience in representing debtors, creditors' committee, secured creditors, trustees and individual creditors and parties in interest
- ▶ Extensive experience representing secured creditors in federal receivership actions
- ▶ Has authored, moderated and spoken on a variety of topics, including federal and state receiverships
- ▶ Was the American Bar Association Business Law Section Advisor to the Uniform Law Drafting Committee for the Uniform Commercial Real Estate Receivership Act.

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THOMAS S. HEMMENDINGER is of counsel to Brennan, Recupero, Cascione, Scungio & McAllister, LLP, with offices in RI and MA. He counsels financial institutions, logistics companies, and other businesses on commercial transactions, commercial litigation, bankruptcy, and receivership. He is the author of HILLMAN ON COMMERCIAL LOAN DOCUMENTATION (Practicing Law Institute, New York).

Tom is a member of the Uniform Law Commission and, most recently, served as the chairperson of the ULC drafting committee for the Uniform Commercial Real Estate Receivership Act (2015). He is a Fellow of the American College of Commercial Finance Lawyers and a member of the American Bankruptcy Institute, the American Bar Association, and the Association of Commercial Finance Attorneys.

He received his A.B. from Brown University and his J.D. from the University of North Carolina School of Law. He is admitted to practice in Massachusetts and Rhode Island.

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Receivership Law Today



Uniform Law Commission

- Project approval 2011
- Study process 2011-12
- Drafting process 2012-15



Our Goals

- Guidance to courts and litigants
- Preserve the flexibility of the remedy



Our Objectives—Clarity

- Grounds for appointment
- Receiver's powers
- Sale of real estate
- Third party rights



Notice and Opportunity for Hearing

- Common sense
- Constitutional



DUE PROCESS

Scope of the Act

- Commercial property
- Some edge cases



Grounds for Appointment

- Waste, loss, dissipation, or impairment
- Voidable transaction
- Post-judgment
- Equity catch-all
- Mortgage foreclosure

Receiver's Qualifications

- Independence
- Court has final say



Lien Creditor Status

- UCC Article 9
- Real property



After-acquired Property

- Rents
- Revenue



Collection and Turnover of Property

- Owner must assist, turn over, preserve, and identify
- Receivership property
- Debts owed
- Possessory liens
- Noncompliance

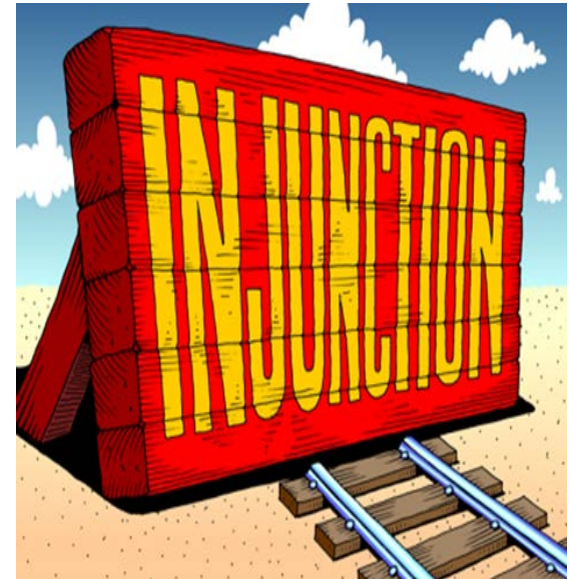


Powers and Duties of Receiver

- General powers and duties
- Powers the court may grant
- Duties the court may impose

Stay; Injunction

- Stay to protect receivership property and facilitate administration of case
- Injunction as needed
- Limitations
 - Plaintiff's foreclosure
 - Perfection of liens
 - Governmental matters



Sales Outside the Ordinary Course of Business

- Free and clear of liens
- Senior liens
- Flexible process
- Liens attach to proceeds



Sales Outside the Ordinary Course of Business

- Court must approve on notice
- Marketable, insurable title



Sales Outside the Ordinary Course of Business

- Safe-Harbor
 - Applies to appeals
 - Applies to other requests for relief
 - Preserves a good faith buyer's title



Borrowing

- Ordinary course of business
- Outside the ordinary course
- Collateral security



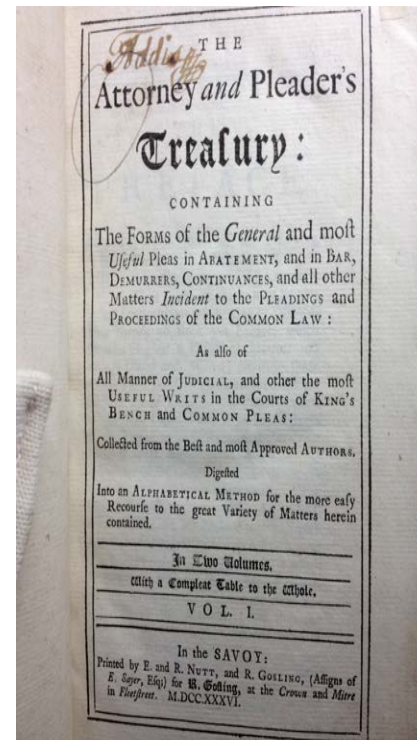
Executory Contracts

- Codifies the common law
- Tenant in receivership
- Landlord in receivership



Immunities and Personal Liability

- Defers to other law
- The *Barton* doctrine



Notice to Creditors and the Claims Process

- Meaningful and productive notice
- Claims process
- Distribution to creditors



Ancillary Receivership

- Facilitates inter-state projects
- Main court and ancillary court



Administrative Fees and Expenses

- Reasonable and necessary fees
- Special cases
 - Petitioner
 - Waster of assets



Thank you for your time and interest. For more information about enactment, please call or email:

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Questions?

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